

# SUSTAINABLE FORESTRY COVENANT

## Section 219 (*Land Title Act*) Covenant and Section 218 (*Land Title Act*) Statutory Right of Way

This Agreement dated for reference XXXXXXXX, 2025, is

AMONG:

**INSERT name / address.**

(the "**Owner**")

AND:

**THE GALIANO ISLAND LOCAL TRUST COMMITTEE**, a corporation under the *Islands Trust Act*, R.S.B.C. 1996, c.239, with an office at Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the "**Local Trust Committee**")

AND:

**THE GALIANO CONSERVANCY ASSOCIATION**, a society duly incorporated under the *Society Act*, R.S.B.C. 1996, c.433, (Inc. No. S-25093) with an office at 2540 Sturdies Bay Road, Galiano Island, British Columbia, V0N 1P0

(the "**Galiano Conservancy**")

(collectively, the "parties")

WHEREAS:

- A. The Owner is the registered owner in fee simple of the Land.
- B. The Land contains significant Amenities of great importance to the Owner, the Covenant Holders and the public;
- C. The Owner is committed to restoration of the forest cover and biodiversity of the Land which were degraded by past industrial forestry, and to the ongoing use of the Land for sustainable forestry and associated processing;

- D. The purposes of the Galiano Conservancy include: (1) Protect and restore the integrity and resilience of Galiano's terrestrial, freshwater and marine ecosystems for the benefit of this and future generations. (2) Own, and hold covenants on, a network of sustainably-managed protected areas.
- E. Under the *Islands Trust Act*, the object of the Islands 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 the residents of British Columbia generally;
- F. The Galiano Island OCP enacted under the *Islands Trust Act* and the *Local Government Act* contemplates the construction and use of an accessory residential dwelling per 20 ha on the Land only if the Owner grants to the Covenant Holders a covenant by which the Owner is obliged to, among other things, manage the Land in accordance with sustainable forest practices;
- G. The Owner has applied to the Local Trust Committee to rezone a portion of the Land to the Forest 3 (F3) zone, and a portion of the Land to the Forest Industrial (FI) zone, and the Owner has agreed to grant this covenant as required to obtain rezoning approval;
- H. The Owner wishes to grant the Covenant Holders a covenant respecting the use and subdivision of the Land pursuant to s. 219 of the *Land Title Act*, and a statutory right of way over the Land pursuant to s. 218 of the *Land Title Act*;
- I. The statutory right of way granted in this Agreement is necessary for the administration of the covenants granted in this Agreement and the operation and maintenance of the undertaking of the Covenant Holders;
- J. The Covenant Holders are all persons authorized to accept covenants pursuant to s. 219 of the *Land Title Act*, and statutory rights of way pursuant to s. 218 of the *Land Title Act*;

NOW THEREFORE in consideration of the payment of \$2.00 by each of the Covenant Holders to the Owner, the receipt and sufficiency of which are acknowledged by the Owner, and in consideration of the promises exchanged below, the Owner grants to the Covenant Holders a statutory right of way pursuant to s. 218 of the *Land Title Act* and a covenant pursuant to s. 219 of the *Land Title Act* on the terms set out herein:

## 1. Definitions

In this Agreement

- (a) "Allowable Annual Cut" means a volume of timber, measured in cubic meters, that may be harvested annually from the Forest Management Unit, and which may be either, at the discretion of the Owner,

- (i) calculated by multiplying the combined area, in hectares, of Mature Forest and Immature Forest within the Forest Management Unit by 4 cubic meters per hectare, or
  - (ii) specified in a Forest Management Plan in accordance with Section 7 of this Agreement;
- (b) "Amenities" includes any natural, scientific, environmental, wildlife, plant life, biodiversity, and aesthetic values identified in the Baseline Report;
- (c) "basal area" the cross-sectional area of trees measured at breast height (1.3);
- (d) "Baseline Report" means the description of the Land and Amenities in the form of text and mapping as of the date of this Agreement, prepared in accordance with Section 5, a copy of which is attached as Schedule B;
- (e) "Business Day" means any day other than Saturday, Sunday or British Columbia statutory holidays;
- (f) "Covenant Holders" means the Local Trust Committee and the Galiano Conservancy collectively, and "Covenant Holder" means any one of them individually, as the context may require;
- (g) "Cut Control Period" means the period between January 1, 2025, and December 31, 2034, or each subsequent period of ten years;
- (h) "dbh" means diameter at breast height which is 1.3 m above ground level;
- (i) "Developable Area" means that portion of the Land used for accessory dwellings and accessory buildings and structures and gardens and identified as such in the Baseline Report;
- (j) "Driveway Access Road" means the road so identified in the Baseline Report that serves as the primary access to and from Haulback Road to the Developable Area and the Forest Industrial Area and serves as the primary artery for Forestry Access Roads and Emergency / Restoration Access Roads.
- (k) "Emergency / Restoration Access Roads" means the roads so identified in the Baseline Report that provide rough access to the Land for emergency purposes or for the purposes of conducting ecological restoration or for low impact, non-motorized, recreational purposes. These roads are restricted to existing old logging roadbeds and may be kept clear of debris and vegetation growth but may not be upgraded to Forestry Access Roads or expanded without prior consent of the Covenant Holders or through approval of a Forest Management Plan. Vehicle use of these roads is meant to be occasional or temporary in nature.
- (l) "Forestry Access Roads" means the roads so identified in the Baseline Report or in a Forest Management Plan used to access the Land for sustainable forestry related activities.

- (m) “Forest Industrial Area” means the portion of the Land that is zoned Forest Industrial and used for forest industrial activities as defined in the Galiano Island Land Use Bylaw 128;
- (n) “Forest Management Plan” means the management plan for the Land prepared in accordance with Section 7;
- (o) “Forest Management Unit” means the area of the Land excluding the Developable Area, and the Forest Industrial Area;
- (p) “GIFA Forest Practices Guidelines” means the document of that title issued by the Galiano Island Forest Association, describing recommended sustainable forestry practices for local forest managers, and attached as Schedule C;
- (q) “Harvesting” means the felling and removal of trees with a dbh greater than 20cm from the Forest Management Unit;
- (r) “Immature Forest” means a forest with a stand age of at least 40 years, or where the basal area of trees 20 cm or more in dbh is at least 20 m<sup>2</sup>/hectare;
- (s) “Land” means District Lot 14, Galiano Island, Cowichan Land District;
- (t) “Mature Forest” means a forest with a stand age at least 80 years, or where the basal area of trees 30 cm or more in dbh is at least 40 m<sup>2</sup>/hectare and the basal area of trees 50 cm or more in dbh is at least 20 m<sup>2</sup>/hectare;
- (u) “Natural Disturbance” means the impact of a naturally occurring event that causes significant mortality or damage to a stand of trees, including fire, wind, ice, snow, drought or attack by insects or disease;
- (v) “OCP” means *Galiano Island Official Community Plan Bylaw No. 108 1995*;
- (w) “Opening” means an area of Understocked Land greater than 0.25 hectare that can be represented as a single polygon on a map and that has been subject to Harvesting, Spacing or Natural Disturbance and that is relatively homogeneous with respect to forest cover and history of Harvesting, Spacing, silvicultural treatments or Natural Disturbance, provided that any two or more areas that meet the definition of an opening and are individually greater than 0.5 hectare in area and are less than 30 meters apart at the closest point are considered to be a single opening;
- (x) “Protected Stand Network” means the area so identified in the Baseline Report including creeks, ditches, wetlands, riparian areas and setbacks, shoreline setbacks, sensitive areas, and forested areas to be permanently reserved from Harvesting.
- (y) “Registered Professional Forester” means a person certified and in good standing as a registered professional forester with the Association of British Columbia Forest Professionals, or any successor in function;

- (z) "Rent Charge" means the rent charge granted by the Owner under Section 12;
- (aa) "Rent Charge Amount" means the amount of the Rent Charge as calculated from time to time in accordance with this Agreement;
- (bb) "Restocked Forest" means an area in which there are 400 or more trees per hectare reasonably well distributed throughout the area;
- (cc) "Spacing" means the felling or girdling of trees, without removal of the trees from the Land, undertaken to increase the distance between the remaining live trees for ecological restoration, fire risk mitigation, or timber production purposes;
- (dd) "Successfully Regenerated Forest" means an area in which there are 400 or more healthy trees of ecologically suitable species per hectare that are reasonably well distributed throughout the area, whose height generally exceeds by 50% or more the height of competing vegetation located within 1 meter of the trees;
- (ee) "Sustainable Forestry" means a program of forest management activities that can be implemented on the Forest Management Unit indefinitely while maintaining or, where necessary, restoring, the biodiversity, productivity and ecological integrity of the forest within the range of natural variability; and
- (ff) "Understocked Land" means a contiguous area within the Forest Management Unit that is greater than 1 hectare in area and can be represented as a single contiguous polygon on a map, and in which the basal area of trees 20 cm or more in dbh is less than 20 m<sup>2</sup>/hectare and in which there are fewer than 400 acceptable trees/hectare reasonably well distributed throughout the area. The airstrip and gravel pit identified in the Baseline Report are excluded.

## 2. Representations and Warranties

- a) The Owner warrants that the facts set out in Recitals A, C, G and H are true as of the date of this Agreement.
- b) The Galiano Conservancy warrants that the facts set out in Recitals D and J are true as of the date of this Agreement.
- c) The Local Trust Committee warrants that the facts set out in Recitals E, F, G and J are true as of the date of this Agreement.
- d) The parties warrant that the facts set out in Recital B and I are true as of the date of this Agreement.

## 3. Intent and Purpose of this Agreement

The parties agree that the intent and purposes of this Agreement are:

- (a) to ensure management of the Forest Management Unit in accordance with Sustainable Forestry practices;
- (b) to restrict subdivision of the Land;
- (c) to establish a Protected Stand Network that serves to protect wildlife habitat and ecological values on the Land.
- (d) to provide a measure by which the parties may monitor and assess change and alterations to the Land and compliance with the covenants in this Agreement; and
- (e) to be perpetual, reflecting the public interest in the protection, preservation, and conservation of the biodiversity of the Land and the Amenities for ecological and environmental reasons.

4. Amendment and Discharge

Neither the s. 219 covenant (including rent charge) nor the s. 218 statutory right of way granted by this Agreement may be amended or discharged except by an instrument in writing executed by each of the parties.

5. Baseline Report

- (a) The Parties acknowledge that the Baseline Report, attached as Schedule B to this agreement accurately describes the Land and its Amenities as of the date of this agreement.
- (b) The Parties agree that the Baseline Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.

6. Restrictions

The Owners shall not, except with the prior written approval of the Covenant Holders, in the sole discretion of each of them, cause or allow:

- (a) Harvesting within the Forest Management Unit, during any Cut Control Period, of a volume of timber greater than the Allowable Annual Cut;
- (b) other than for access roads identified in the Baseline Report or the Forest Management Plan, cut patches of areas greater than 0.5 hectare created or located less than 30 meters from the edge of adjacent cut patches, during a Cut Control Period;
- (c) the Harvesting of timber within the Protected Stand Network identified in the Baseline Report, except for the purposes of ecological restoration, or for maintaining access roads, buildings, or maintained clearings identified in the

Baseline Report, or as allowed under an approved Forest Management Plan or approved otherwise by the Covenant Holders;

- (d) the removal, alteration or intentional harm of indigenous vegetation or soils within the Protected Stand Network identified in the Baseline Report, except for the purposes of ecological restoration, or for footpaths, or for maintaining access roads, buildings, or maintained clearings identified in the Baseline Report, or for establishing and maintaining roads identified in the Forest Management Plan, or for purposes approved otherwise by the Covenant Holders;
- (e) the siting of new buildings, clearings, or other infrastructure, including fences, within the Protected Stand Network identified in the Baseline Report, except for the purposes of ecological restoration, or for footpaths, or for maintaining access roads identified in the Baseline Report, or for establishing and maintaining roads identified in the Forest Management Plan, or for purposes approved otherwise by the Covenant Holders;
- (f) the subdivision of the Land except in compliance with the Strata Property Act or Section 99 of the Land Title Act;
- (g) the Land or any part of the Land to be leased or licensed unless the tenant or licensee is expressly required by the terms of the lease or license, and has agreed in writing, to comply with the provisions of this Agreement;
- (h) any activity on the land that requires a development permit under s. 489 of the *Local Government Act* without first obtaining a development permit, or if the requirement for a development permit does not apply because of the operation of another enactment, the consent of the Local Trust Committee by resolution, and in making a resolution under this section the Local Trust Committee may consider the development permit area guidelines which would otherwise apply;
- (i) the Developable Area to be greater than 8 hectares;
- (j) any accessory residential buildings or uses, or accessory buildings associated with accessory residential uses, except within the boundaries of the Developable Area;
- (k) the Forest Industrial Area to be greater than 2.7 hectares;
- (l) any forest industrial buildings or uses except within the boundaries of the Forest Industrial Area;
- (m) pesticides, herbicides, insecticides, or fungicides to be introduced or applied to the Land except in the event of an otherwise uncontrollable infestation and with permission, which shall not be unreasonably withheld, of each of the Covenant Holders;
- (n) wetlands identified in the Baseline Report to be drained or intentionally altered, except for the purposes of ecological restoration, or, with the prior written approval of the Covenant Holders, to improve water retention provided the function of the wetland will be maintained;

- (o) except for access roads and landings identified in the Baseline Report, or in the Forest Management Plan, motorized vehicle routes to be established or used on the Land.

## 7. Forest Management Plan

- (a) Prior to undertaking Harvesting that removes more than 4 cubic meters per hectare annually from the Forest Management Unit, averaged over a Cut Control Period, the Owner shall create and submit to the Covenant Holders a Forest Management Plan that outlines the forest management goals and objectives, describes the corresponding strategies and methods to be used to Harvest timber and otherwise manage the Land, and meets all other requirements set out in this section.
- (b) The Forest Management Plan shall include:
  - (i) a calculation by a Registered Professional Forester, or by a person with experience in Sustainable Forestry practices whose qualifications are acceptable to the Galiano Conservancy, of the Allowable Annual Cut;
  - (ii) provisions for monitoring the Owner's compliance with the Plan, undertaken at the expense of the Owner, that are approved by the Covenant Holders, acting reasonably; and
  - (iii) a map of the roads and landings required for timber extraction and timber storage prior to extraction.
- (c) The Annual Allowable Cut included in a Forest Management Plan under this section must be determined based on a quantitative inventory of the forest so as to establish in the earliest practicable time and maintain over the continuous long term at least 70 percent of the area of the Forest Management Unit as Immature Forest or older, with at least 40 percent of that area as Mature Forest or older.
- (d) The Covenant Holders, shall, within 25 business days of receipt of the Forest Management Plan, notify the Owner in writing whether or not that Covenant Holder, acting reasonably, approves the provisions for monitoring the Owner's compliance with the Plan. Without limitation, the Covenant Holders may withhold approval if the monitoring provisions do not make the Owners responsible for the costs of monitoring compliance with the Forest Management Plan, including the costs of any person retained to carry out or assist with monitoring compliance under this section. For clarity, until such time as the Covenant Holders provide approval of the monitoring provisions as set out in the paragraph, the Forest Management Plan will have no effect and the Owners must not undertake Harvesting under the Plan.
- (e) The Forest Management Plan and any subsequent revisions shall be consistent with the GIFA Forest Practices Guidelines, or with any replacement Sustainable Forestry guidelines that are approved by the



Covenant Holders and the Owners, except as specifically provided in Section 7.

- (f) Should the Forest Management Plan be revised, all revisions shall be submitted to the Covenant Holders by the Owners within 20 business days of completion of the revised Plan.
- (g) In the event of a Natural Disturbance, the Owners may revise the Forest Management Plan to allow for removal of diseased trees and standing dead timber other than retained habitat snags. Removal of any live trees shall be included in the calculation of Allowable Annual Cut.
- (h) The Forest Management Plan shall identify all existing and proposed roads necessary to practice Sustainable Forestry and to access the Developable Area.

#### 8. Forest Stewardship Obligations

- (a) The Owners covenant and agree that the land within the Forest Management Unit shall be used and maintained in accordance with the requirements set out in this section.
- (b) The Owners must take all reasonable measures to ensure that any areas within the Forest Management Unit that at any time become Understocked Land as a result of Harvesting or Spacing, become Restocked Forest, Successfully Regenerated Forest or Immature Forest within 5 years after the year in which the area became Understocked Land, and that any such areas become Successfully Regenerated Forest or Immature Forest within 15 years after the year in which the area became Understocked Land.
- (c) The Owners must take all reasonable measures to ensure that any areas within the Forest Management Unit that at any time become Understocked Land as a result of Natural Disturbance such as wildfire or severe blowdown, become Restocked Forest, Successfully Regenerated Forest or Immature Forest within 10 years after the year in which the area became Understocked Land, and that any such areas become Successfully Regenerated Forest or Immature Forest within 20 years after the year in which the area became Understocked Land.
- (d) The Owners must ensure that any area within the Forest Management Unit that is converted to access roads is kept to the minimum necessary for the safe and efficient implementation of Sustainable Forestry practices and to maintain adequate emergency access to the Land. Existing access roads and abandoned old roadbeds should be utilized whenever practically possible, rather than constructing new roads.
- (e) The Owners must ensure that Forestry Access Roads are constructed and maintained so as to maintain the natural surface drainage patterns of the land and that any section of road that is cut into the slope of the land in a way that intercepts and channelizes subsurface water, includes structures to dissipate

that water and to allow its re-absorption into the soil spaced not more than 50 meters apart along the road, except where the road has been certified to be in accordance with good management practices by an engineer or other person with applicable experience whose qualifications are acceptable to the Covenant Holders.

- (f) The Owners must ensure the Driveway Access Road and Forestry Access Roads, including associated stream crossings, culverts, ditches and other drainage structures, are constructed and maintained according to good management practices acceptable to the Covenant Holders or certified by an engineer or other person with applicable experience whose qualifications are acceptable to the Covenant Holders, and avoid transportation of sediment to a stream, lake, wetland or the ocean in amounts that could have a significant adverse environmental impact.
- (g) The Owners must ensure that any area within the Forest Management Unit that is cleared to accommodate service of electricity, telephone and other utilities to the permitted buildings within the Forest Industrial Area and access or service of utilities to the Developable Area is kept to the minimum necessary.
- (h) The Owners must take reasonable measures, when conducting sustainable forestry or related activities within the Forest Management Unit, to prevent the introduction of new invasive non-native species of plants and to limit the spread of existing populations of invasive non-native species of plants.

## 9. Reporting

- (a) The Owners must keep an ongoing record of all Harvesting that occurs within the Forest Management Unit. The record must include the following information:
  - (i) the volume of timber Harvesting in the current calendar year;
  - (ii) the total volume of timber that has been Harvested in all previous years of the current Cut Control Period;
  - (iii) the Allowable Annual Cut for each previous year of the current Cut Control Period, and the method that was used to determine the Allowable Annual Cut for each year;
  - (iv) whether any roads, logging trails or utility corridors were constructed or deactivated within the Forest Management Unit, accompanied by a sketch map showing the approximate location of roads or logging trails in the Forest Management Unit and identifying changes that occurred during the previous year;
  - (v) all monitoring provisions stipulated under a Forest Management Plan.
- (b) The Covenant Holders may request a written or verbal report of the Harvesting record from the Owners once per calendar year, timing to be

determined by the Covenant Holders, and the Owners must provide the report within 30 Business Days of the request.

#### 10. Statutory Right of Way

- (a) The Owner grants to each Covenant Holder a license, and statutory right of way pursuant to Section 218 of the *Land Title Act*, permitting each Covenant Holder to enter upon and inspect the Land:
  - (i) at least once each calendar year, with the date for each inspection to be agreed on by the parties before August 31 of each year, but if the parties cannot agree on those days before August 31 each year, the Covenant Holders are entitled to enter upon and inspect the Land in accordance with clause 10 (a) (ii);
  - (ii) at all reasonable times upon prior written notice by the Covenant Holders to the Owner of at least 24 hours, unless, in the opinion of a Covenant Holder, there is an emergency or other circumstance which makes such notice impractical, in the sole discretion of the Covenant Holder; and

for the purposes of:

- (iii) inspecting the Amenities and the Land including the right to take soil, water and other samples, and to make visual recordings, in order to monitor compliance with and enforce the terms of this Agreement;
- (iv) undertaking work, activities and operations to rehabilitate or restore the Amenities or the Land to its condition as allowed in this Agreement where such work, activities and operations arise as the result of breach of the covenants herein by the Owner and the exercise of rights by the Covenant Holders pursuant to Section 11;
- (v) undertaking or evaluating any acts or programs that have been agreed to by the Owner and the Covenant Holders for conservation, maintenance, restoration or enhancement of the Amenities and the Land;

and for all such purposes the Covenant Holders must determine among themselves, except in the emergency circumstances described in Section 10 (a) (ii), the time of the inspection and who may enter on their behalf, and each Covenant Holder shall be entitled to be represented by at least one individual.

- (b) The Covenant Holders may bring onto the Land workers, vehicles, equipment and other materials provided that the Covenant Holders may not exercise any rights under Section 10 (a) (v) unless they are in compliance with Section 23 of this Agreement.

## 11. Enforcement Remedies of the Covenant Holders

- (a) If any Covenant Holder, in its sole discretion, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any provision of this Agreement, that Covenant Holder may serve on the Owner and the other Covenant Holder a notice setting out particulars of the breach together with an estimate of the maximum costs of remedying the breach.
- (b) The Owner shall have 40 business days from receipt of such notice or from the conclusion of the dispute resolution provision under Section 13 if it is invoked, to remedy the breach or make arrangements satisfactory to the Covenant Holder giving notice for remedying the breach.
- (c) If the Owner does not remedy the breach within a reasonable period of time, to the satisfaction of the Covenant Holder giving notice, the Covenant Holder may, but is not required to, enter upon the Land and carry out the Owner's obligations.
- (d) Where a Covenant Holder carries out the obligations of the Owner, the Owner must reimburse that Covenant Holder for any expenses incurred, up to the estimated maximum costs of remedying the breach set out in the notice. Such costs, until paid, constitute a debt owed by the Owner to the Covenant Holder, recoverable by all remedies available to a creditor in respect of a debtor.
- (e) This Section 11 does not affect the right of a Covenant Holder to pursue any other legal or equitable remedy in relation to a breach or an anticipated breach of this Agreement, nor does it limit, impair or disable the Covenant Holders from exercising rights under Section 12 of this Agreement.
- (e) A Covenant Holder may appoint another Covenant Holder as its agent for the purpose of recovering any debt owed by the 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, subject to any terms of the appointment, as agent for the Covenant Holder that incurred the expenses.

## 12. Rent Charge

- (a) The Owner grants to the Covenant Holders in perpetuity a Rent Charge in the amount of \$12,500 to be adjusted annually as provided for in this Agreement, which Rent Charge shall be the absolute property of the Covenant Holders in fee simple.
- (b) The obligation of the Owner to pay the Rent Charge is suspended and deferred so long as the Owner is not in breach of this Agreement.

- (c) Upon the Owner being in breach of the Agreement, a Rent Charge of \$12,500 shall forthwith become due and payable by the Owner to the Covenant Holders, and the Rent Charge shall thereafter accrue from day to day at the rate of \$12,500 per annum so long as the breach continues and shall be paid on demand.
- (d) The Rent Charge specified in Section 12(c) as adjusted pursuant to Section 12(g) shall be increased by 110% of the market value, at the date of any breach of this Agreement as determined by a qualified professional or other agent satisfactory to the Covenant Holders, of any timber or other wood products, flora or fauna, mineral, rock, gravel, soil or other material, which have been harvested, altered, damaged, destroyed or removed from the Land in contravention of this Agreement or the Management Plan, and, by 110% of any increase in market value of the Land directly resulting from a breach of this agreement.
- (e) The Rent Charge shall rank in priority to all financial charges and encumbrances burdening or charging the land save and except those set out in Schedule A, provided that the Covenant Holders agree to postpone and subordinate the Rent Charge to a first mortgage charging the Land, and only if the principal amount of the mortgage does not exceed 75% of the market value of the Land as encumbered by the covenants in this Agreement and evidenced by an appraisal prepared at the expense of the Owner by a person designated A.A.C.I. by the Appraisal Institute of Canada or a person designated as a Certified Appraiser R.I. by the Real Estate Institute of British Columbia, and tendered to the Covenant Holders before or concurrently with any request to postpone and subordinate.
- (f) The Covenant Holders may exercise any and all remedies available at law or in equity for enforcement of the Rent Charge, and without limiting the foregoing may sue in debt and levy distress against the Land.
- (g) The Rent Charge Amount specified in Section 12(c) shall be adjusted on January 1 of each year beginning in the year following that in which this Agreement is executed, 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 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.
- (h) If Statistics Canada or its successor in function ceases to publish a CPI or comparable indicator as determined by the Covenant Holders in their sole discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be +3%.
- (i) If any of the Covenant Holders wishes to enforce the Rent Charge, it shall provide notice to that effect to the other parties. This notice may be given at any time after notice is given under Section 11.

- (j) A Covenant Holder receiving notice under Section 12(i) may within 30 days from receipt give notice to the party giving notice under Section 12(h) that it wishes to enforce the Rent Charge jointly, and if it does not do so it is deemed to have elected not to enforce the Rent Charge.
- (k) If the Rent Charge is enforced jointly:
  - (i) reasonable expenses incurred as a result of the enforcement of the Rent Charge shall be shared equally among the parties enforcing the Rent Charge; and
  - (ii) the net proceeds obtained as a result of the enforcement of the Rent Charge shall be shared equally among the parties enforcing the Rent Charge;unless otherwise agreed in writing among the Covenant Holders.
- (k) If a Covenant Holder receiving notice under Section 12(i) does not elect in writing to enforce the Rent Charge jointly, that Covenant Holder shall have no entitlement to the Rent Charge and shall have no obligation to assume expenses incurred in such enforcement unless otherwise agreed in writing among the Covenant Holders.
- (l) A Covenant Holder who elects not to enforce the Rent Charge jointly shall notwithstanding such election execute all documents which may be necessary for the enforcement and collection of the Rent Charge.

### 13. Dispute Resolution

- (a) In the event of a dispute, any of the Covenant Holders or the Owner may give notice to each of the other parties requiring a meeting of all parties within 10 business days of receipt of the notice. Such meeting is to be held at a location on Galiano Island specified in the notice. For this purpose, a "dispute" means any disagreement as to the meaning of this Agreement, any disagreement as to an action or proposed action taken by a party under this Agreement, including an action taken in that party's sole and unfettered discretion, or a breach or anticipated breach of this Agreement.
- (b) If notice is given under Section 13(a), all activities giving rise to a breach or anticipation of a breach of this Agreement or giving rise to a disagreement as to the meaning of this Agreement, or as to a proposed action pursuant to this Agreement, shall immediately cease.
- (c) The parties must attempt to resolve the disagreement or the matter of breach or anticipated breach, acting reasonably and in good faith, within 20 business days of receipt of the notice.
- (d) If the parties are not able to resolve the matter within the time stipulated in Section 13(c), any party may require the appointment within 10 business days, of a mutually acceptable person to mediate the disagreement, the

costs being borne equally by all parties other than a Covenant Holder that has not given notice to the other Covenant Holders that it joins with the other Covenant Holders in asserting a breach or anticipated breach or alleging any particular meaning of this Agreement. The parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 days after the mediator is appointed.

- (e) This Section 13 does not affect the right of any party to seek and pursue other remedies, legal or equitable.

#### 14. Assignment of Agreement or Dissolution of the Covenant Holders

- (a) This Agreement shall be assignable by a Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to an entity that is authorized at the time of assignment to hold statutory rights of way pursuant to s. 218 of the *Land Title Act* and covenants pursuant to s. 219 of the *Land Title Act* and any applicable regulation under it.
- (b) The Covenant Holders agree that before any of them assigns its rights and obligations under this Section 14, it shall consult with the Owner, and consider the Owner's comments, with respect to the proposed assignee. The Covenant Holder must give notice to the Owner of the proposed assignment, setting 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 a Covenant Holder under this Agreement. If the Owner does not provide comments to the Covenant Holder regarding the proposed assignee within 20 business days of such notice, the Owner is conclusively deemed to have consented to the assignment. For certainty, the Owner agrees that the Covenant Holder is only required to consult the Owner and that the Covenant Holder is entitled to assign its rights and obligations so long as it has consulted the Owner.
- (c) In the event of the winding-up or dissolution of a Covenant Holder, the Covenant Holder shall use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity who is authorized to hold statutory rights of way pursuant to s. 218 of the *Land Title Act* and covenants pursuant to s. 219 of the *Land Title Act*. If the Covenant Holder does not assign and transfer all of its interest under this Agreement as set out in this Section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to the other Covenant Holder. The consultation process set out in Section 14(b) does not apply to this Section.

#### 15. Notice

- (a) Any notice, request for approval or consent under this Agreement may be given by any of the following means:
- (i) delivered in person; or
  - (ii) sent by email to the parties at their respective email addresses set out in subsection (c), followed by a copy sent by ordinary mail; or
  - (iii) sent by Xpresspost requiring signature on delivery, addressed to the parties at their respective addresses set out in subsection (c).
- (b) A notice:
- (ii) delivered in person is deemed received on delivery;
  - (iii) sent by email is deemed received on the next Business Day after it is sent;
  - (iv) sent by Xpresspost is deemed received on the second Business Day after it is mailed.
- (c) The addresses of the parties for notice are as follows:
- The Owners:

**INSERT NAME/ADDRESS/EMAIL**

provided that if the ownership of the Land has changed, to the registered owner in fee simple as indicated on title to the Land at the time of notice.

The Covenant Holders:

The Galiano Island Local Trust Committee  
200-1627 Fort Street  
Victoria, British Columbia  
V8R 1H8  
Email: [insert email]

The Galiano Conservancy Association  
2540 Sturdies Bay Road  
Galiano Island, British Columbia  
V0N 1P0  
Email: [insert email]

- (d) Each party must give written notice to the others of any change in its address or email from that set out in subsection (c) as soon as reasonably practicable following such change of address.

#### 16. No Exemption from Jurisdiction



Nothing in this Agreement shall exempt the Owner from any statutory requirement or imposition or from the ordinary jurisdiction of the Local Trust Committee, its bylaws, permits, regulations and orders.

#### 17. Approvals

Wherever in this Agreement the approval or consent of the Covenant Holders is required, or some act or thing is to be done to the satisfaction of a Covenant Holder:

- (a) such approval, consent or expression of satisfaction may be given by an officer of the Covenant Holder designated in writing by the Covenant Holder for such purpose;
- (b) such approval, consent or expression of satisfaction shall not be deemed to have been fulfilled or waived unless it is received from the Covenant Holder in writing;
- (c) no prior approvals, consents or expressions of satisfaction and no condoning, excusing or overlooking by the Covenant Holder, or any of them, on previous occasions when such approvals, consents or satisfactions were required shall be taken to operate as a waiver of the necessity for such approvals, consents or expressions of satisfaction whenever required by this Agreement;
- (d) any approvals or consents may be given on terms and conditions, provided the terms and conditions imposed by each Covenant Holder are identical; and
- (e) the discretion of the Local Trust Committee shall be contractual only, and shall not be subject to public law duties, and the principles of procedural fairness and the rules of natural justice shall have no application.

#### 18. No Derogation and Permissive Rights

- (a) Nothing contained or implied herein shall impair, limit or affect the Local Trust Committee's rights and powers in the exercise of its functions pursuant to the *Islands Trust Act* or pursuant to any other enactment, and all such powers and rights may be fully exercised in relation to the Land as if the covenants herein had not been granted by the Owner.
- (b) The rights of the Covenant Holders pursuant to this Agreement are not obligations and such rights may be exercised at the sole discretion of the Covenant Holders. Without limiting the generality of the foregoing, nothing in this Agreement obliges the Covenant Holders to perform any act or incur any expense.

#### 19. Priority

The Owner shall after executing this Agreement do or cause to be done all acts reasonably necessary to grant priority to the s. 219 covenant and the statutory right of way contained in this Agreement over all charges and encumbrances which may have been registered against title to the Land in the Land Title Office save and except those set out in Schedule A or which have been granted to the Local Trust Committee.

## 20. Further Acts

The Owner shall do and cause to be done all things and shall execute and cause to be executed all plans, documents and other instruments which may be necessary to give proper effect to the intention of this Agreement and the covenants and rights granted in this Agreement.

## 21. Owner's Indemnity

The Owner covenants to and does hereby indemnify and save harmless each of the Covenant Holders, their respective 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 Holders shall or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss:

- (a) arising directly or indirectly from a breach or non-performance of this Agreement and the covenants herein by the Owner, its officers, employees, agents, contractors, licensees, and invitees;
- (b) arising directly or indirectly from the proper exercise by the Owner of any rights to use the Land pursuant to this Agreement or in the fulfilling of its obligations pursuant to this Agreement; or
- (c) 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 of the Land.

## 22. Covenant Holder Indemnity

The Covenant Holders other than the Local Trust Committee hereby indemnify and save harmless the Owner, its officers, employees, contractors, invitees and agents at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature by whosoever brought, made or suffered for which the Owner shall or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property, or economic loss arising from negligence of the Covenant Holders other than the

Local Trust Committee exercising any right to enter upon the Land pursuant to Section 10 or Section 11 of this Agreement.

23. Insurance

For the purposes of exercising rights under Section 10 and Section 11, each of the Covenant Holders other than the Local Trust Committee will obtain and maintain at their sole expense comprehensive general liability insurance in an amount not less than Five Million Dollars combined single limit against claims for personal injury (including death) and property damage or other loss arising out of the exercise of their rights to enter upon the Land for the purposes of Section 10 and Section 11 and to undertake any work, activities or operations on the Land in accordance with Section 10 and Section 11. Such insurance shall name the Owner as an additional insured.

24. Performance at Cost of Owner

Unless otherwise expressly provided in this Agreement, whenever the Owner is obliged or required to do or cause to be done any act, matter or thing, such act, matter or thing shall be done by the Owner at its sole expense

25. Representations and Warranties

The Covenant Holders each represent and warrant that they are persons authorized to hold covenants pursuant to s. 219 of the *Land Title Act*, and statutory rights of way pursuant to s. 218 of the *Land Title Act*.

26. Entire Agreement

This is the entire Agreement between the parties and none of the Covenant Holders has made any representations, warranties, guarantees, promises, covenants or agreements to or with the Owner other than those expressed in writing in this Agreement.

27. Amendment

No amendment to this Agreement is valid unless in writing and executed by the Parties.

28. Interpretation

- (a) This Agreement is comprised of the recitation of the parties, the recitals to this Agreement, the express terms of the Agreement, and the Schedules to the Agreement.
- (b) Where this Agreement says something is in the "sole discretion" of a party, that thing is within the sole, absolute and unfettered discretion of that party.
- (c) The rights of the Covenant Holders under this Agreement may be exercised by each of them independently unless this Agreement expressly provides otherwise.
- (d) In this Agreement:
  - (i) wherever the singular or masculine is used it shall be construed as meaning the plural or the feminine or the body corporate or politic where the context so requires;
  - (ii) every reference to a party is deemed to include heirs, executors, administrators, successors, assigns, officers and employees of such parties wherever the context so requires or allows; and
  - (iii) the headings are inserted for reference and convenience only and must not be used to construe or interpret the Agreement.

## 29. Severance

All provisions of this Agreement are to be construed as covenants and should any section or lesser portion of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such section or portion shall be severed and the invalidity or unenforceability of such section or portion shall not affect the validity of the remainder which shall remain binding on the Owner and shall charge the Land and be enforceable to the fullest extent of the law.

## 30. No Liability in Tort

This Agreement creates only contractual obligations. No tort obligations or liabilities of any kind exist among 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 and to limit the parties to their rights and remedies under the law of contract.

## 31. Waiver

An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by each of the Covenant Holders and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.

### 32. Time

Time is of the essence of this Agreement

### 33. Interest in Land

The statutory right of way and covenants in this Agreement shall charge the Land pursuant to s.219 and s.218 of the *Land Title Act* as the case may be and the burden of all the covenants in this Agreement shall run with the Land and bind the successors in title to the Land and charge the Land and every part into which the Land may be divided or subdivided.

### 34. Enurement

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors, heirs, executors and administrators.

### 35. Independent Advice

The Owner acknowledges and agrees that the Owner has sought and obtained, to the Owner's satisfaction, independent legal advice as to the meaning and effect of this Agreement, and the Owner further acknowledges and agrees that no legal advisor of the Covenant Holders or any of them has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement.

### 36. Owner's Reserved Rights

Unless expressly restricted or prohibited by this Agreement, the customary rights of the Owner to use, occupy and maintain the Land as owner of the land are fully reserved to the Owner and, without limiting the generality of the foregoing, the following rights are expressly reserved to the Owner:

- (a) to clear land and maintain cleared land within the Developable Area and the Forest Industrial Area, except for those areas designated as Protected Stand Network;
- (b) to construct and maintain such septic field or other domestic sewage treatment and disposal facilities within the Developable Area and the Forest Industrial Area as may be required for the permitted buildings;
- (c) to construct, maintain, and restore service of electricity, telephone, water and other utilities to permitted buildings within the Developable Area and the Forest Industrial Area;
- (d) to construct, maintain, restore or replace buildings and other improvements permitted within the Developable Area and the Forest Industrial Area;

- (e) to maintain, restore or replace the Driveway Access identified in the Baseline Report or permitted within the Developable Area and the Forest Industrial Area;
- (f) to implement restoration management for the control of invasive non-native plants;
- (g) to allow public access to the Land;
- (h) to install, maintain, restore or replace any signs that may be permitted on the Land;
- (i) to apply for a change in tax classification.

37. Payment and Interest on Monies Owed

Any monies owed by the Owners to the Covenant Holders pursuant to this Agreement:

- (a) shall be paid by the Owners to the party or parties to which it is owed; and
- (b) shall bear interest at 3% per annum over the prime rate of interest charged by the banker of the Islands Trust for short-term unsecured commercial loans.

38. Execution

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 Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**SCHEDULE A**  
**Permitted Encumbrances**

**SCHEDULE B**  
**BASELINE REPORT**