

## PART 2 – TERMS OF INSTRUMENT

### SECTION 219 COVENANT

This Agreement dated for reference the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ is

AMONG:

[INSERT NAME AND ADDRESS OF OWNER]

(the “Owner”)

AND:

**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 “Trust Committee”)

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of that parcel of land located on \_\_\_\_\_ Island, British Columbia which is legally described as:

Parcel Identification Number:

Legal Description:

(the “Land”) Also “**Lot**”;

- B. Section 219 of the *Land Title Act* (British Columbia) provides that there may be registered as a charge against the title to land a covenant, whether of a negative or positive nature, in respect of the use of land, the building on land, the subdivision of land and the preservation of land or a specified amenity on the land;
- C. The Owner has applied to the Trust Committee to rezone the Land to permit a subdivision of the land for residential development, by means of Galiano Island Land Use Bylaw No. 127, 1999 Amendment No. 2, 2024 (the “Rezoning Bylaw”);
- D. The policies in the Galiano Island Official Community Plan dealing with the Land require that an owner of the Land seeking a zoning amendment to permit subdivision, provide portions of the parent parcel to be used for nature protection and community park;
- E. The owner wishes to grant to the Local Trust Committee a covenant under Section 219 of the *Land Title Act* that permits the Owner to subdivide the Land and occupy the Land for residential purposes only in accordance with the plan of subdivision that was

presented to the Local Trust Committee in connection with the Owner's application to rezone the Land, and only if the Owner provides portions of the Land as park land;

- F. The Owner wishes to grant and the Trust Committee wishes to accept this Covenant over the Land, restricting the use of the Land in the manner specified;

This Agreement is evidence that in consideration of the premises and covenants herein contained, the payment of two dollars (\$2.00) by the Trust Committee to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### Section 219 Covenant

1. The Owner shall not use or permit the use of the Land or any building on the Land for any purpose, construct any buildings on the Land, or subdivide the Land except in strict accordance with this Agreement.

#### Interpretation

2. In this Agreement:

- (a) "Development Plan" means the plan for the subdivision of the Land titled "Development Plan of District Lot 85, Galiano Island, Cowichan District" dated June 17, 2025, a reduced copy of which is attached to this Agreement as Schedule A and which forms a part of this Agreement.
- (b) "Galiano Conservancy Association" means the society incorporated under the Society Act as the Galiano Conservancy Association, incorporation number S-25093, and having an office located at 2540 Sturdies Bay Road, Galiano Island, BC, V0N 1P0.
- (c) any reference to a numbered Lot is a reference to the area of the Land shown outlined and identified with that number on the Development Plan, both before and after subdivision, and if after subdivision an area of the Land identified with a lot number on the Development Plan is legally described with a different lot number, the number used in this Agreement shall be deemed to be a reference to the lot created by the subdivision.

#### Approvals

3. Where this Agreement requires the approval of the Local Trust Committee, approval may be given by the Islands Trust's Regional Planning Manager, Southern Team and must, if given, be in writing.

#### Restriction on Use

4. The Land must not be subdivided, nor shall the Owner of the Lot request an

occupancy permit for any dwelling on the Land, until the Owner has submitted to the Local Trust Committee a Hydrogeologist's Report prepared by an engineer or geoscientist with competency in the field of hydrogeology, regulated under the *Professional Governance Act, Engineers and Geoscientists Regulation*. The Hydrogeologist's Report must include:

- a. Confirmation that the well has sufficient available groundwater to provide the daily required volume of potable water to supply 2275 litres for each dwelling the well is servicing.
- b. Confirmation that the quality of groundwater from each well meets or exceeds the *Guidelines for Canadian Drinking Water Quality*.
- c. Inclusion of recommendations for mitigation measures, if applicable, to ensure long-term sustainable yield of the drilled wells and to lower the risk of saltwater intrusion.

#### No Subdivision Except in Accordance with Development Plan

5. The Owner shall not cause, permit or allow the Land to be subdivided except by a plan of subdivision that creates lots having boundaries and lot areas generally in accordance with the Development Plan.

#### Lot 6 Forestry Covenant

6. Concurrent with any application to subdivide the Land as permitted in s. 5 of this Agreement the Owner shall apply to register on the title to Lot 6 a covenant under s. 219 of the Land Title Act, in the form attached to this Agreement as Schedule \_\_, in favour of the Local Trust Committee, the Galiano Conservancy Association (the "Forestry Covenant").

#### Transfer of Lot 7 and Lot 8

7. The Owner must transfer Lot 8 zoned as Nature Protection the Penelakut Tribe, and Lot 7 zoned as Community Park to the Capital Regional District, Penelakut Tribe or other non-profit park or conservation society as determined by the Local Trust.

#### Emergency Access

8. The Owner must grant a Statuary Right of Way for emergency access in accordance with the Galiano Island Official Community Plan Bylaw No. 108. 1995, Schedule C 'Road Network Plan' prior to the Local Trust's consideration of adopting "Galiano Island Official Community Plan Bylaw No. 108, 1995, Amendment No. 2, 2024".

#### No Effect On Laws or Powers

9. This Agreement does not

- (a) affect or limit the discretion, rights, duties or powers of the Trust Committee or the Capital Regional District under any enactment or at common law, including in relation to the use or subdivision of the Land;
- (b) impose on the Trust Committee or the Capital Regional District any duty of care or other legal duty of any kind to the Owner or to anyone else;
- (c) oblige the Trust Committee to enforce this Agreement, which is a policy matter within the sole discretion of the Trust Committee;
- (d) affect or limit any enactment relating to the use or subdivision of the Land;
- (e) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Limitation on Obligations

10. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

Entry by Trust Committee Staff

11. The Owner hereby authorizes the Trust Committee, through its employees or agents, to enter the Land at all reasonable times for the express purpose of confirming whether or not this Agreement is being complied with.

Indemnity

12. The Owner hereby indemnifies and saves harmless the Trust Committee and its elected and appointed officials, officers, employees and agents, from and against all loss, damage, cost, actions, suits, debts, expenses and harm of any kind whatsoever which the Trust Committee may at any time suffer or incur arising out of or related to this Agreement or any breach of it.

No Liability in Tort

13. The parties agree that this Agreement creates only contractual obligations. The parties agree that 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 and to limit the parties to their rights and remedies under the law of contract.

### Covenant Runs With the Land

14. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under section 219 of the *Land Title Act* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

### Registration and Discharge

15. The Owner agrees to do everything necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement.
16. The Owner shall be entitled to a discharge of this Agreement from title to the Land in the event that the Rezoning Bylaw is not adopted by **MONTH, DAY, YEAR**.
17. The Owner shall, having subdivided the Land in accordance with Section 5 of this Agreement, be entitled to a discharge of this Agreement from title to Lots 7 and 8.
18. The Owner shall, having registered the Forestry Covenant on the title to Lot 6 in accordance with Section 6 of this Agreement, be entitled to a discharge of this Agreement from the title to Lot 6.
19. The Owner may obtain a discharge under Section 15, 16 or 17 by presenting a registrable discharge document to the Local Trust Committee for execution, and the preparation and registration of the document shall be for the Owner's account.

### Waiver

20. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver by the Trust Committee of a breach of this Agreement by the Owner does not operate as a waiver of any other breach of this Agreement.

### Severance

21. 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.

### No Other Agreements

22. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

Binding of Successors

23. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Further Acts

24. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

Deed and Contract

25. By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed the Land Title Office Form C which is attached hereto and which forms part of this Agreement.

## CONSENT AND PRIORITY AGREEMENT

### WHEREAS:

- A. [Name of land owner(s)] (the "Owner") is the registered owner of [insert full legal description] (the "Land");
- B. The Owner granted [Name of chargeholder] (the "Prior Chargeholder") a [identify mortgage or other charge], which was registered against the title to the Land in the Victoria Land Title Office under number [insert registration number] (the "Prior Charge");
- C. The Owner granted to the Island Local Trust Committee (the "Subsequent Chargeholder") a Section 219 Covenant which is registered against the title to the Land under number [insert registration number] (the "Subsequent Charge"); and
- D. Section 207 of the *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT WITNESSES THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION RECEIVED BY THE PRIOR CHARGEHOLDER FROM THE SUBSEQUENT CHARGEHOLDER (THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED):

- 1. The Prior Chargeholder hereby consents to the granting and registration of the Subsequent Charge and the Prior Chargeholder hereby agrees that the Subsequent Charge shall be binding upon its interest in and to the Land.
- 2. The Prior Chargeholder hereby grants to the Subsequent Chargeholder priority for the Subsequent Charge over the Prior Chargeholder's right, title and interest in and to the Land, and the Prior Chargeholder does hereby postpone the Prior Charge and all of its right, title and interest thereunder to the Subsequent Charge as if the Subsequent Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Prior Charge.

As evidence of its agreement to be bound by the above terms of this Consent and Priority Agreement, the Prior Chargeholder has executed and delivered Part 1 of *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

**END OF DOCUMENT**