

PART 2 – TERMS OF INSTRUMENT

SECTION 219 COVENANT

THIS AGREEMENT dated for reference the _____ day of _____, 20__ is

BETWEEN:

_____ [NAME OF OWNER 1], of _____
[INSERT ADDRESS]

(the “ **_____** ”) [NTD: Owner 1 will be defined by the last name, for example (the “Smiths”)]

AND:

_____ [NAME OF OWNER 2], of _____
[INSERT ADDRESS]

(the “ **_____** ”) [NTD: Owner 2 will be defined by the last name, for example (the “Smiths”)]

(collectively, the “**Owners**”)

AND:

GAMBIER 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, BC, V8R 1H8

(the “**Local Trust Committee**”)

GIVEN THAT:

A. The _____ [Owner 1] are the registered owners of those lands on Keats Island legally described as:

[INSERT LEGAL DESCRIPTION, INCLUDING PID]

(the “ **_____ Lands** ”) [NTD: “Owner 1 Lands”]

B. The _____ [Owner 2] are the registered owners of those lands on Keats Island legally described as:

[INSERT LEGAL DESCRIPTION, INCLUDING PID]

(the “ _____ **Lands**”) [NTD: “Owner 2 Lands”]

- C. The _____ [NTD: “Owner 1 Lands”] and the _____ [NTD: “Owner 2 Lands”] are hereinafter collectively referred to as the “**Lands**”;
- D. The Owners seek to construct a dock that will serve **BOTH/ALL** the _____ [Owner 1 Lands] and the _____ [Owner 2 Lands] (the “**Shared Dock**”);
- E. The Owners seek to increase the float area for the Shared Dock and, pursuant to regulation 4.4.7 of the *Keats Island Land Use Bylaw No. 78, 2002* (the “**Land Use Bylaw**”) have agreed to enter into this section 219 covenant with the Local Trust Committee.

This Agreement is evidence that, in consideration of the payment of \$2.00 by the Local Trust Committee to the Owners (the receipt and sufficiency of which are acknowledged by the Owners), and in consideration of the promises exchanged below, the Owners covenant and agree with the Local Trust Committee, in accordance with s. 219 of the *Land Title Act* (British Columbia), as follows:

Use of the Shared Dock

- 1. In this agreement the following words have the following meanings:
 - (a) “Float Area” means the maximum area that may be covered by dock floats in the marine-area. [NTD: **I modified this from the text of the Land Use Bylaw, you may be aware of a better way to define this.**]
- 2. The Float Area of the Shared Dock may be a maximum of _____ square metres.
- 3. The Shared Dock must be the only dock that is constructed to serve the Lands.
- 4. The Shared Dock must be constructed on the Lands, or any part of the water or foreshore lying adjacent to the Lands.
- 5. The Shared Dock must be constructed, maintained and utilized in compliance with the Land Use Bylaw and in compliance with all requirements and conditions of the private moorage lease granted by the Province of British Columbia.
- 6. This covenant may only be discharged from title to any of the Lands, if the float area of the Shared Dock is decreased in size such that it complies with the Land Use Bylaw.

Severance

- 7. If any portion of this is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

Runs with the Lands

8. The covenants set forth herein shall charge the Lands pursuant to section 219 of the *Land Title Act* and shall be covenants the burden of which shall run with the Lands and bind the Lands and every part or part thereof, and shall attach to and run with the Lands and each and every part into which the Lands may be divided or subdivided, whether by subdivision plan, strata plan or otherwise whatsoever.

Indemnity

9. The Owners hereby release, indemnify and save harmless the Local Trust Committee, its elected officials, officers, employees, agents and others for whom the Local Trust Committee is responsible at law from and against any and all manner of actions, cause of action, claims, costs, expenses (including actual legal fees), losses, damages, debts, demands and harm, by whomsoever brought, of whatsoever kind and howsoever arising out of or related to the Agreement or any breaches of this Agreement by the Owners, provided however that this indemnity shall not apply to any actions, cause of action, claims, costs, expenses (including actual legal fees), losses, damages, debts, demands and harm caused by the negligent actions or omissions of the Local Trust Committee, its elected officials, officers, employees, agents and others for whom it is responsible in law.

No Liability in Tort

10. 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.

Registration

11. The Owners shall do everything necessary at the Owners' expense to ensure that this Agreement is registered against title to the Lands 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 against the title to the Land.

Powers of the Local Trust Committee are Unaffected

12. This Agreement does not:
 - (a) affect or limit the discretion, rights, duties, or powers of the Local Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Lands except as expressly set out herein;

- (b) impose on the Local Trust Committee any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement except as expressly set out herein;
- (c) affect or limit any enactment relating to the use or subdivision of the Lands; or
- (d) relieve the Owners from complying with any enactment, including in relation to the use or subdivision of the Lands.

No Public Law Duty

- 13. Wherever in this Agreement the Local Trust Committee is required or entitled to take any action or exercise any contractual right or remedy, the Local Trust Committee may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.

Waiver

- 14. 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 of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

No Other Agreements

- 15. 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.

Enurement

- 16. This Agreement and each and every provision hereof shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assign, as the case may be.

Governing Law

- 17. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.

Execution Using Forms C

- 18. As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part I of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

PRIORITY AGREEMENT

GIVEN THAT:

- A. The _____ (the "**Prior Chargeholder**") holds a mortgage registered against title to the lands legally described in the *Land Title Act* (British Columbia) Form C to which this Priority Agreement is attached (the "**Lands**") in the Victoria Land Title Office under number _____ (the "**Prior Charge**");
- B. The owners of the Lands and the transferee described in item 6 of the Form C attached hereto (the "**Subsequent Chargeholder**") have entered into a section 219 covenant respecting the Lands, to which this Priority Agreement is attached (which covenant is referred to herein as the "**Subsequent Charge**"); and
- C. Section 207 of the *Land Title Act* (British Columbia) permits the Prior Chargeholder to grant priority over the Prior Charges to the Subsequent Chargeholder;

This priority agreement witnesses that, in consideration of \$2.00 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 Lands.
- 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 Lands, 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.

IN WITNESS WHEREOF the Prior Chargeholder has duly executed this Priority Agreement by signing the Form D to which this Priority Agreement is attached.

END OF DOCUMENT