

APPENDIX D – Upland Owner Statutory Right of Way

TERMS OF INSTRUMENT – PART 2

Statutory Right of Way – riparian consent

BETWEEN:

ANNE ELIZABETH KENWAY

101 – 3670 Banff Court
North Vancouver, BC V7H 2Y7

(the "**Transferor**")

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

As represented by the Minister of Fisheries and Oceans
c/o Small Craft Harbours
401 Burrard Street
Vancouver, BC V6C 3S4

(**"Canada"**)

AND

CAPITAL REGIONAL DISTRICT

625 Fisgard Street
PO Box 1000
Victoria, BC V8W 2S6

(the **"CRD"**)

Canada and CRD collectively called **"Transferees"**)

- A. The Transferor is the registered owner in fee simple of the following lands on Galiano Island, in the Province of British Columbia:

Parcel Identifier: 000-111-996

Lot 1, District Lot 96, Galiano Island, Cowichan District, Plan 3688

(the **"Upland"**);

including the natural riparian right to cross the foreshore fronting the Upland and to any land covered by water adjoining the Upland.

- B. Canada has rights by way of a Provincial Order in Council to occupy the lands covered by water designated as District Lot 310, Plan 18TR01, adjacent to Upland (the **"Lease Area"**).

- C. The CRD will apply to Her Majesty the Queen in Right of the Province of British Columbia to become the lessee of a new water lot in the same location as District Lot 310, excepting that the southern side of the application will only go as far southerly as the edge of the Existing Improvements on District Lot 310;
- D. District Lot 310 and the Lease Area are hereinafter referred to as the “**Transferees’ Lands**”;
- E. The Transferees own, maintain and operate a public wharf and marine facility (“**Existing Improvements**”) within the Transferees Lands.
- F. The Upland and the Transferees’ Lands are adjacent to each other, and the Transferor as registered owner of the Upland is entitled to exercise riparian rights including access to and from the Upland by crossing the foreshore portions of the Transferees’ Lands for the purpose of gaining access to and from navigable waters in Trincomali Channel;
- G. The “**Right of Way Area**” is that part of Lot 1, Plan 3688 shown within heavy black outline on the explanatory plan EPP87311 a copy of which is attached hereto as Schedule “B”;
- H. The Transferees wish to interfere with the Transferor’s riparian right of access to and from those portions of the Transferees’ Lands fronting on the Right of Way Area, and the Transferor has consented to such interference and has agreed to grant this statutory right of way to permit the construction, operation, maintenance and use of a public wharf or other marine works or activities immediately seaward of the Upland;
- I. The Transferor requested and Canada and CRD have consented to grant to her moorage space, at ongoing rates, within the Existing Improvements and any future improvements, on the terms expressed in this Agreement
- J. This statutory right of way is necessary for the operation and maintenance of the Transferee’s undertaking.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars of lawful money of Canada, now paid by the Transferees to the Transferor (the receipt and sufficiency of which is hereby acknowledged by the Transferor), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

- 1. The Transferor hereby grants and conveys:
 - (a) unto the Transferees, their servants, employees, agents, contractors, tenants, invitees, licensees, successors and assigns and all those claiming through them and on behalf of all members of the public who so desire the full, free and uninterrupted right, licence, liberty, easement, right-of-way, privilege, and consent at all times and from time to time to impede, impair, interfere with, curtail and restrict, in whole or in part, the Transferor’s riparian right, as owner of the Upland, to pass and repass over the foreshore portions of the Transferees’ Lands to gain access to and from the Right of Way Area; and

- (b) unto the Transferee, its employees and contractors, as a statutory right of way the right to enter upon, pass, and repass over the Right of Way Area during normal business hours only for purpose of inspecting the public wharf.
- 2. The Transferor acknowledges and agrees that the easement and right-of-way hereby granted and set out in paragraph 1 shall entitle the Transferees to, inter alia:
 - (a) moor, maintain, replace in any form, renovate and repair buildings, structures, works, improvements, including the Existing Improvements, and chattels (collectively, the “**Works**”) on all or any part of the Transferees Lands;
 - (b) operate the Works, or repair, replace, rebuild, or reconstruct the Works in any form; and
 - (c) do all acts necessary or incidental to the business of the Transferee in connection with the foregoing.
- 3. The Transferor further covenants and agrees with the Transferees:
 - (a) that the Transferor will from time to time and at all times upon every reasonable request and at the cost of the Transferees do and execute or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances, in law whatsoever for the better assuring unto the Transferees, or either of them, of the rights, liberties, licences, easements, rights of way, privileges, and consents hereby granted; and
 - (b) that the Transferees, performing and observing the terms, covenants, and conditions on the Transferees’ part to be performed and observed shall and may peaceably hold and enjoy the rights, licences, liberties, easements, rights of way, privileges, and consents hereby granted without hindrance, molestation or interruption on the part of the Transferor or of any person, firm, or corporation claiming by, through, under, or in trust for, Transferor.
- 4. The Transferees hereby agree that they will not now or in the future extend any part of the Existing Improvements further southerly than the current southern most point of the existing wharf structure.
- 5. The Transferees hereby agree that the Transferor shall have priority for one moorage space of 18 feet, which shall be the southern one of the two moorage spaces on the landward side of the float portion of the Existing Improvements (the “**Moorage**”). Should this specific moorage space not be available for moorage use in the future, either due to changed configurations of the float or otherwise, then this grant of priority moorage allocation will apply to any other space associated with this wharf that will allow for moorage of an 18 foot vessel. The Transferees further agree that this priority shall apply to all future improvements to or versions of the Existing Improvements. The fee for the Moorage shall be whatever the then ongoing rate for such moorage is, with the proviso that the annual moorage fee shall never exceed 400 dollars. The 400 dollar maximum annual fee ceiling shall as adjusted over time by the Canadian Consumer Price Index.
- 6. In order to utilize the priority in this agreement in regard to moorage, the Transferor must inform the local harbour master by email or in writing of the period that the Transferor wishes to use the Moorage. The harbour master will ensure that the Moorage is available

within 60 days of receipt of such notice. For greater certainty the priority granted in regard to moorage in this agreement continues for so long as this Statutory Right of Way remains on title and effective, regardless of how many times the Transferor has requested to utilize the Moorage.

7. If the Transferor has not made a request to the harbour master, the harbour master can use the Moorage as the harbour master sees fit.
8. In no event will Transferor be liable to the Transferee for any damages, losses, costs or expenses of any kind whatever, directly or indirectly, related to, or arising out of, the existence of this statutory right of way or the exercise or purported exercise of any rights under it.
9. It is mutually understood, agreed, and declared by and between the parties hereto that:
 - (a) this agreement shall be construed as running with the Upland, and each and every part thereof in the event that the Upland is subdivided;
 - (b) no part of the fee of the soil thereof shall pass to or be bested in the Transferees under or by this agreement;
 - (c) the Transferor may fully use and enjoy the Upland subject only to the rights and restrictions herein provided;
 - (d) the Transferor is not personally liable for breach of these Covenants after the Transferor has ceased to be the owner of the Lands
 - (e) this agreement and the covenants herein shall only become null and void when the Transferees apply to the Land Title Office to have this Statutory Right of Way discharged.
10. Where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor.
11. This Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and assigns, as the case may be.
12. Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context.
13. This Agreement may be executed and delivered by facsimile or email and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this statutory right of way agreement has been duly executed and delivered by the parties executing the annexed Form C, D and E, or any of them, which form part of this agreement.