# **CO-OWNERSHIP AGREEMENT**

THIS AGREEMENT is dated the \_\_\_\_ day of October, 1992.

BETWEEN: Harvey Izchok Fink

Lasqueti Island, British Columbia

(Hereinafter called "FINK") OF THE FIRST PART

AND:

Corinne Joan Mol

Lasqueti Island, British Columbia

(Hereinafter called "MOL" OF THE SECOND PART

AND:

Lori Francis Ray

Lasqueti Island, British Columbia

(Hereinafter called "RAY") OF THE THIRD PART

AND:

John William Lindsay

Lasqueti Island, British Columbia

(Hereinafter called "LINDSAY") OF THE FOURTH PART

WITNESS:

That in consideration of the premises herein set forth, the parties hereto agree as follows:

# 1. INTERPRETATION/DEFINITIONS

#### 1.01 Definitions

In this Agreement, unless the context otherwise requires:

- (a) "Co-Owner" shall mean any of FINK, MOL, RAY or LINDSAY and their respective successors and permitted assigns.
- (b) "Co-Owners" shall mean all of FINK, MOL, RAY and LINDSAY and their respective successors and permitted assigns.
- (c) "Lands" shall mean the vacant lands and premises legally described as Parcel Identifier 009-721-207, The South West 1/4 of Section 20, Lasqueti Island, Nanaimo District and shall not include any buildings, fixtures or improvements.
- (d) "Homestead" shall mean the five (5) acre portion of the Lands each Co-Owner, with the consent of the Co-Owners, decides to develop.
- (e) "Homestead Premises" shall mean the buildings, fixtures and improvements each Co-Owner makes, places or builds on their Homestead.
- (f) "Co-Ownership Interest" shall mean all the interest of a Co-Owner in the Lands.

- (g) "Dispose" includes sell, assign, transfer, lease, mortgage, charge, encumber, create any security over, grant any interest in, or agree to pay any profits or grant any rights or options.
- (h) "Bona fide arms length offer" means an offer in writing signed by a person dealing at arm's length with the Co-Owner to whom such offer is made stating the price in lawful money of Canada at which, and the terms upon which, the person making the offer is willing to purchase the property described in such offer, and in a form (even if subject to conditions solely for the benefit of such person) legally enforceable against such person.
- (i) "Defaulting Co-Owner" shall mean a Co-Owner who has committed an event of default and "Non-Defaulting Co-Owner" shall mean any other Co-Owner that is not a Defaulting Co-Owner.
- (j) "Co-Ownership Value" shall mean the fair market value of a Co-Owner's Co-Ownership Interest plus the fair market value of their Homestead Premises.

### 1.02 Interpretation

For all purposes of this Agreement except as otherwise expressed and provided and unless the context otherwise requires:

- (a) "This Agreement" means this Co-Ownership Agreement as it may from time to time be supplemented or amended.
- (b) The words "herein" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision of this Agreement.
- (c) The index and headings are for convenience only and do not form a part of this Agreement and are not intended to intrepret, define or limit the scope, extent or intent of this Agreement or any of its provisions.
- (d) Any reference to "approval" or "consent" of any Co-Owner or similar expression needs the written approval or written consent of such Co-Owner.
- (e) Any reference to notice requires the written notice of such Co-Owner in accordance with paragraph 9.03 hereof.
- (f) Whenever singular, masculine or feminine is used in this Agreement, the same shall be construed to mean the plural, masculine or feminine or body corporate or vice versa where the context of this Agreement so requires.
- (g) In the event that any provision of this Agreement or any part hereof or the application thereof, to any party or circumstances, to any extent is invalid, illegal or unenforceable, the validity and legality and enforceability of the remaining provisions of this Agreement or the application thereof to other persons and other circumstances shall not in any way be affected or impaired thereby and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted.

(h) This Agreement shall be construed in accordance with and governed by the laws of British Columbia.

#### 2. PURPOSE AND INTENT

- 2.01 FINK as the registered legal and beneficial owner of the Lands, has agreed to sell an undivided one quarter (1/4) interest in the Lands to each of MOL, RAY and LINDSAY as Tenants in Common, and to retain an undivided one quarter (1/4) interest in the Lands as Tenant in Common.
- **2.02** It is the intention of the Co-Owners to hold the Lands and to not develop the Lands other than to provide one Homestead for each Co-Owner.
- 2.03 It is the intention of the Co-Owners to jointly control the use of the Lands through consensus and agreement between all Co-Owners.
- 2.04 It is the intention of the Co-Owners that each Co-Owner may develop their Homestead, including such buildings, fixtures or improvements, as that Co-Owner deems advisable.
- 2.05 The execution and performance of this Agreement shall not create nor shall the relationship of the Co-Owners as Tenants in Common constitute a partnership between the Co-Owners or any agency whatsoever.
- 2.06 No Co-Owner shall have nor shall they represent that they have, the authority or the power to act for or to undertake or create any obligation or responsibility, expressed or implied, on behalf of, or in the name of any other Co-Owner, nor shall they be or represent that they are the agent or legal representative of any other Co-Owner, except as otherwise specifically provided for in this Agreement or other written Agreement executed between all the Co-Owners.
- 2.07 All the Co-Owners specifically state that they are not carrying on business together and that any improvements to the Lands shall not be considered partnership property.
- 2.08 The Co-Owners acknowledge that it is the intention and agreement of the Co-Owners that no Co-Owner shall apply for Order from the Supreme Court of British Columbia pursuant to the *Partition of Property Act* to partition and/or sell the Lands or for any similar Order under any similar legislation.
- 2.09 The Co-Owners acknowledge that despite their intention and agreement in Paragraph 2.08 hereto, a Co-Owner could still apply for and obtain an Order from the Supreme Court of British Columbia pursuant to the *Partition of Property Act* to partition and/or sell the Lands as they can not agree to be bound by the Act.
- 2.10 The Co-Owners acknowledge and agree that without the unanimous consent of the Co-Owners, the Lands shall not be used for developed except as described in Paragraph 2.02, 2.03 and 2.04 hereof.

#### 3. FINANCING AND MANAGEMENT

- 3.01 Any funds required for property taxes, insurance or other charges attributable to the Lands (the "Common Expenses") shall be contributed by all Co-Owners in the proportion that their Co-Ownership Value, as at the date of the last assessment, has to the assessed value of the Lands and all the buildings, fixtures and improvements on the Lands.
- 3.02 Notwithstanding Paragraph 3.01, any home owner grant available to reduce property taxes shall be divided equally between those of the Co-Owners whose principal residence is on the Lands and shall be used to reduce each such Co-Owner's portion of Common Expenses.
- 3.03 Any Co-Owner may demand by notice from any other Co-Owner that has not paid their share of the Common Expenses that that Co-Owner pay their equal portion of any of the Common Expenses within thirty (30) days of the receipt of the notice.
- 3.04 In the event that any Co-Owner fails to pay their equal share in accordance with Paragraph 3.01, any other Co-Owner may pay the Defaulting Co-Owner's equal share of the Common Expenses and that Co-Owner shall have a charge upon the Defaulting Co-Owner's interest in the Lands in the amount equal to the Defaulting Co-Owner's share of the Common Expenses. The Co-Owner who pays the Defaulting Co-Owner's share of the Common Expenses shall be further entitled to the security in Paragraph 8 hereof.

### 4. MANAGEMENT

- **4.01** Except as provided in Paragraph 4.02, all questions affecting the development or use of the Lands shall be determined by unanimous agreement of all Co-Owners including, without limiting the generality of the foregoing:
  - (a) The location of any roads on the Lands; and
  - (b) The location of all Homesteads on the Lands.
- 4.02 Each Co-Owner may develop their Homestead, including such buildings, fixtures or improvements as that Co-Owner deems advisable, provided that such development does not violate the rules and regulations attached hereto as Schedule "A" and any amendments thereto as may be unanimously agreed by all the Co-Owners.
- **4.03** Any Co-Owner may request from the other Co-Owners their approval, authorization or consent to any proposed action concerning the development or use of the Lands.
- 4.04 In any instance under this Agreement, in which the approval, authorization or consent of the Co-Owner to any proposed action concerning the development or use of the Lands is requested, such approval, authorization or consent shall be deemed to have been given unless written objection to such proposed action setting out the grounds for such objection is given by the objecting Co-Owner to the other Co-Owners within sixty (60) days of receipt of the written request for such approval, authorization or consent.

- 4.05 For the better management of the Lands and in consideration of this Agreement, FINK shall allow the Co-Owners access to there Lands over those portions of the adjoining property owned by FINK as set forth on the Plan of the adjoining property attached hereto as Schedule "B" (the "Easement Area") including the right of the Co-Owners to construct, maintain and repair a roadway over the Easement Area and to pass and repass, with or without vehicles, over the Easement Area.
- **4.06** All Co-Owners shall comply with the rules and regulations attached hereto as Schedule "A" and all such amendments or additions thereto as may from time to time be unanimously agreed to by all the Co-Owners.
- 4.07 All Co-Owners shall ensure that all persons using or on the Lands with the consent of or at the invitation of a Co-Owner shall comply with the terms of this Agreement, the rules and regulations attached hereto as Schedule "A" and all such amendments or additions thereto as may from time to time be unanimously agreed to by all the Co-Owners.

### 5. DISPOSAL OF INTEREST

- **5.01** No Co-Owner shall dispose of their interest in the Lands or their Homestead without the written consent of the other Co-Owners.
- 5.02 No Co-Owner shall dispose of their interest in the Lands or their Homestead unless the prospective purchaser enters into and agrees to comply with the terms of this Agreement.
- 5.03 In the event that a Co-Owner wishes to terminate his involvement in the Lands, that Co-Owner shall offer their interest in the Lands and their Homestead to other Co-Owners at a price equal to that Co-Owner's Co-Ownership Value, which value shall be determined by Agreement between the Co-Owners within twenty one (21) days of the notice by terminating Co-Owner to the remaining Co-Owners.
- 5.04 In the event that the Co-Owners fail to agree on the Co-Ownership Value, in accordance with Paragraph 5.03 hereof, the terminating Co-Owner shall be entitled to list their interest in the Lands and their Homestead for sale but before accepting any bona fide arms length offer, they shall notify the other Co-Owners in writing, setting forth the price and terms of such bona fide arms length offer and the names, home address, business address and business or occupation of the person making the bona fide arms length offer or if the offer is from a corporation, such similar information for all shareholders owning twenty per cent (20%) or more of the shares of any class of the corporation as are known to the terminating Co-Owner or are ascertainable upon a reasonable enquiry. Subject to Paragraph 5.05, upon receipt of this notice, the other Co-Owners shall have the right to not accept the proposed bona fide purchaser, which right must be exercised within twenty (20) days after the date of the notice by notify the

- terminating Co-Owner in writing that they do not accept the proposed bona fide purchaser. Upon notice that the other Co-Owners do not accept the bona fide purchaser, the terminating Co-Owner shall not dispose of their interest in the Lands or their Homestead to the bona fide purchaser.
- 5.05 If pursuant to Paragraph 5.04, the terminating Co-Owner has proposed two different bona fide purchasers and the remaining Co-Owners have given notice not to accept both of those proposed bona fide purchasers, then when the terminating Co-Owner proposes a third different bona fide purchaser, the remaining Co-Owners must either elect by consensus to:
  - (a) Accept the third bona fide purchaser; or
  - (b) Purchase the terminating Co-Owner's interest in the Lands and their Homestead for the price and upon the terms stated in the notice, and upon receipt of such notice by the terminating Co-Owner a binding contract of purchase and sale of the terminating Co-Owner's undivided interest in the Lands and their Homestead shall be deemed to be formed between the other Co-Owner or Co-Owners and the terminating Co-Owner containing the price and terms of their election within twenty (20) days after the date of their receipt of notice.
- 5.06 If the terminating Co-Owner does not receive a notice within the period of time and in the manner specified in Paragraph 5.04 and 5.05, then the terminating Co-Owner shall be entitled to complete the sale of the terminating Co-Owner's undivided interest to the person making the bona fide arms length offer therefore. If, however, such sale to the person making the bona fide arms length offer does not complete within the time set forth in the notice, than any subsequent offer or sale to any person may be made again only if the requirements of this article are met and this Right of First Refusal shall survive and continue in full force and effect.
- 5.07 The terminating Co-Owner shall not dispose of the terminating Co-Owner's undivided interest in the Lands or their Homestead to any person at a price lower or upon terms different than the price and material terms contained in the notice.
- 5.08 In the event more than one Co-Owner desires to purchase a terminating Co-Owner's interest in the Lands or their Homestead all such Co-Owners shall purchase the terminating Co-Owner's interest in the Lands equally as Tenants in Common.
- 5.09 Notwithstanding anything contained in this Agreement, this Paragraph 5 shall not apply to a disposition of an interest in the Lands or Homestead to the personal representative of a Co-Owner upon the death of such Co-Owner or a disposition by the personal representative of a deceased Co-Owner to the heirs or beneficiary of a deceased Co-Owner.

## 6. DISTRIBUTION UPON SALE OF THE LANDS

- **6.01** If at any time the Co-Owners shall unanimously agree to sell the Lands the sale proceeds derived from the Lands shall be distributed as follows:
  - (a) Subject to Sub-Paragraph 2, to the Co-Owners in proportion to their respective Co-Ownership Value.

(b) To the extent that any Co-Owner has contributed towards the equal portion of any other Co-Owner for Common Expenses incurred, the sum that Co-Owner has paid towards the Defaulting Co-Owner's share of such Common Expenses shall be paid to that Co-Owner from the Defaulting Co-Owner's proportion of the sale proceeds.

#### 7. DEFAULT AND TERMINATION

- 7.01 The occurrence of any of the following events shall constitute an event of default under this Agreement:
  - (a) Any disposition by a Co-Owner of all or any part of its Co-Ownership Interest or their Homestead, except as may be permitted by this Agreement.
  - (b) The appointment of a receiver, trustee, officer, to take possession of the Co-Ownership Interest or the Homestead of the Co-Owner.
  - (c) If a Co-Owner makes an assignment for the benefit of its creditors or takes any other similar action for the protection of benefit of creditors which is not consented to by the other Co-Owners.
  - (d) If a Co-Owner files a petition in bankruptcy or a petition to take advantage of any other law of Canada or any province thereof for the relief of insolvent persons.
  - (e) If a petition in bankruptcy is filed against the Co-Owner and the Co-Owner is adjudicated a bankrupt in such proceedings.
  - (f) If an encumbrancee or a mortgagee takes possession of a Co-Ownership Interest or the Homestead of a Co-Owner or any substantial part thereof except as permitted herein.
  - (g) If a Co-Owner defaults in performance of any of the Agreements or obligations of any Co-Owner contained herein and if the default continues for a period of one hundred eighty (180) days following notice of such default by the Non-Defaulting Co-Owner to the Defaulting Co-Owner.
- 7.02 If an event of default has occurred, the Non-Defaulting Co-Owner or Co-Owners if they elect to do so, may elect to purchase the Defaulting Co-Owner's interest in the Lands and their Homestead at the Co-Ownership Value. The Co-Ownership Value shall be determined by agreement between the Co-Owners within twenty one (21) days of the notice by the Non-Defaulting Co-owner to the Defaulting Co-Owner.
- 7.03 In the event the Defaulting Co-Owner and Non-Defaulting Co-Owner fail to agree, in accordance with Paragraph 7.02, on the Co-Ownership Value of the Defaulting Co-Owner's interest in the Lands, then the Defaulting Co-Owner's Co-Ownership Value shalled be deemed to have a value equal to the Defaulting Co-Owner's Co-Ownership Interest multiplied by the assessed value of the Lands and all improvements on the assessment roll as determined in accordance with the Assessment Act of the Province of British Columbia for the calendar year in which the Non-Defaulting Co-Owner gives notice to the Defaulting Co-Owner.

# 8. SECURITY

- 8.01 Each Co-Owner (the "mortgagor Co-Owner") hereby grants, conveys, transfers. assigns, liens, mortgages, pledges, charges as and by way of a fixed and specific lien, mortgage, pledge and charge, (the "security") to and in favour of the other Co-Owners (the "mortgagee Co-Owner") and their respective successors and assigns all the right, title, estate and interest of the mortgagor Co-Owner, both present and future, in and to the Co-Ownership Interest and Homestead of the mortgagor Co-Owner (the "charge premises"), including all rents and revenues of the Lands attributed to the Co-Ownership Interest and Homestead of the mortgagor Co-Owner and which rents and revenues are hereby also assigned. To have and to hold the charged premises including all rents and revenues hereby assigned and all rights hereby conferred unto the said mortgagee Co-Owner and their respective successors and assigns forever, but in interest nevertheless for the use and purposes and with the powers and authority and subject to the terms and conditions mentioned and set forth in this Agreement as continuing security for the due payment of all amounts being and from time to time owing by a Co-Owner to any of the other Co-Owners in the performance of its obligations contained in this Agreement. Provided that until the said mortgagee Co-Owner is entitled to exercise any of its remedies under this Agreement, the mortgagor Co-Owner shall acquire possession of the charged premises, subject to the provisions of this Agreement, but at such time the said mortgagee Co-Owner shall have quiet possession of the charged premises.
- 8.02 A Co-Owner, at the request of the other Co-Owners covenants and agrees to execute, deliver and register in the appropriate Lands Titles Office, by way of specific liens, mortgages, pledges, charges and assignments by way of security in the appropriate registrable form and registered against the title to the Lands supplemental mortgages appropriate to subject the charged premises to the security and for the due protection of the security against claims by all subsequent transfers or encumbrances.
- 8.03 Whenever the mortgagee Co-Owner becomes entitled to exercise any of its remedies under this security, the said mortgagee Co-Owner may realize upon the security and enforce its rights by any or all of the its remedies herein expressly provided and by any additional remedies available to a mortgagee at law or in equity including, without limitation the following:
  - (a) Entry into possession of the charged premises, including the right to have, receive, demand, collect and sue for the rents and revenues of the property attributable to the Co-Ownership Interest of the mortgagor Co-Owner.
  - (b) The appointment and replacement in writing of a receiver manager (the "receiver") of all or any part of the charged premises and removal of the replacement from time to time of the receiver.
  - (c) Proceedings in any court of competent jurisdiction for the appointment of receiver of all or any part of the charged premises.
  - (d) Proceedings in any court of competent jurisdiction for the foreclosure of the charged premises.

(e) Filing of proofs of claims and other documents to establish its claims in any proceedings relative to the mortgagor Co-Owner.

#### 9. GENERAL PROVISIONS

- **9.01** This Agreement shall enure to and be to the benefit of and be binding upon the Co-Owners herein named, their heirs, successors and permitted assigns.
- **9.02** This Agreement may be amended at any time by written agreements signed by the parties hereto.
- 9.03 All notices requesting communications required or permitted under this Agreement shall be sufficiently given or deemed to have been received upon personal delivery or, if mailed, upon the first to occur of actual receipt or 48 hours after being placed in the mail, postage prepaid, registered or certified mail, return requested and addressed to the Co-Owners as follows:

(a)	If to HARVEY IZCHOK FINK,Lasqueti Island, British Columbia
(b)	If to CORINNE JOAN MOL,Lasqueti Island, British Columbia
(c)	If to LORI FRANCIS RAY,Lasqueti Island, British Columbia
(d)	If to JOHN WILLIAM LINDSAY,Lasqueti Island, British Columbia

or such other address or to the attention of such other person as specified in writing to the other Co-Owner, but notice of the change of address shall be effective only upon actual receipt thereof.

9.04 No consent or waiver, expressed or implied by any Co-Owner of any breach or default by a Co-Owner in the performance by the other Co-Owner of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such Co-Owner hereunder.

BY THE PARTY OF THE FIRST PART:	
Witness	HARVEY IZCHOK FINK
Address	
Occupation	
BY THE PARTY OF THE SECOND PART:	
	CORINNE JOAN MOL
Address	
Occupation	
BY THE PARTY OF THE THIRD PART:	
Witness	LORI FRANCIS RAY
Address	
Occupation	
BY THE PARTY OF THE FOURTH PART:	
Witness	JOHN WILLIAM LINDSAY
Address	
Occupation	

# **SCHEDULE "A"**

Rules and Regulations attached to the Co-Ownership Agreement of FINK, MOL, RAY and LINDSAY.

In accordance with Paragraph 4.05 and 4.06 of the Co-Ownership Agreement to which these Rules and Regulations are attached:

The Co-Owners, as that term is defined in the Co-Ownership Agreement, agree that the following Rules and Regulations shall apply together with such other Rules and Regulations as are unanimously agreed to from time to time by the Co-Owners and appended hereto:

#### **RULE NO. 1**

- (a) There shall be one Homestead on each forty (40) acre portion of the Lands.
- (b) Title to and ownership of each undivided one quarter (1/4) interest in the Lands may be owned by no more than two (2) persons.

#### **RULE NO. 2**

No Co-Owner shall, without the agreement of all Co-Owners:

- (a) Cut any tree in excess of eighteen (18) inches in diameter; or
- (b) Cut any cedar tree; or
- (c) Cut more than four (4) non-cedar trees under eighteen (18) inches in diameter in any calendar year.

This rule shall not apply to alder.

#### RULE NO. 3

No Co-Owner shall develop or propose to develop those areas of the Lands designated restricted areas on the Plan of the Lands attached hereto as Schedule "1".

### **RULE NO. 4**

No Co-Owner shall develop or use the Lands in any manner that may in any way detrimentally impact the natural streams and water courses on and over the Lands.

# **RULE NO. 5**

No Co-Owner shall allow any domestic animal or pet to be a nuisance to any other Co-Owner including without limiting the generality of the foregoing, allow any dog to disturb any other Co-Owner by barking.

### **RULE NO. 6**

- (a) Any and all electrical generating systems shall be placed underground or placed in improvements such that the noise from the electrical generating system does not disturb any other Co-Owner.
- (b) No Co-Owner shall disturb any other Co-Owner or permit any other Co-Owner to be disturbed by way of noise created from any ongoing homestead activity including without limiting the generality of the foregoing, any lawnmower, tractor or weed eater.

# **RULE NO. 7**

The Lands shall not be used for any commercial activity outside any area developed as a Homestead.

### **RULE NO. 8**

These rules may be amended from time to time or added to from time to time by the unanimous agreement of the Co-Owners.

Witness	HARVEY IZCHOK FINK
Witness	CORINNE JOAN MOL
Witness	LORI FRANCIS RAY
Witness	 JOHN WILLIAM LINDSAY