

## SHAREHOLDER'S AGREEMENT

THIS AGREEMENT is made as of \_\_\_\_\_, 2010.

AMONG:

**DISTRICT OF PORT HARDY**

Municipal Hall  
7360 Columbia Street  
P.O. Box 68  
Port Hardy, B.C. V0N 2P0

("Port Hardy")

AND:

**TOWN OF PORT MCNEILL**

1775 Grenville Place  
Box 728,  
Port McNeill, B.C. V0N 2R0

("Port McNeill")

AND:

**VILLAGE OF PORT ALICE**

1061 Marine Drive  
Box 130,  
Port Alice, B.C. V0N 2N0

("Port Alice")

AND:

**NORTH ISLAND COMMUNITY FOREST LTD.**

(the "Company")

### BACKGROUND

- A. The Company carries on the business of managing and operating the North Island Community Forest on behalf of the Shareholders.
- B. Port Hardy, Port McNeill and Port Alice are the registered and beneficial holders of the numbers of issued shares in the capital of the Company, which shares represent the only issued and outstanding shares of the Company.
- C. Port Hardy, Port McNeill and Port Alice wish to establish their respective rights and obligations in respect of their shares in the Company and their agreement in respect of the other matters set out in this Agreement.

## TERMS OF AGREEMENT

In consideration of the premises and the mutual covenants contained in this Agreement, the parties to this Agreement covenant and agree each with the others as follows:

### 1. Interpretation

1.1 **Definitions.** For the purposes of this Agreement (including the recitals), these terms shall have the following meanings:

- (a) **“Agreement”** means this Shareholders’ Agreement;
- (b) **“Board”** means the board of directors of the Company;
- (c) **“Business Day”** means any day except Saturdays, Sundays or statutory holidays in British Columbia;
- (d) **“Entity”** means any one of the District of Port Hardy, the Town of Port McNeill, the Village of Port Alice, and Northern Island Community Forest Ltd.;
- (e) **“Entities”** means all of the District of Port Hardy, the Town of Port McNeill, the Village of Port Alice, and Northern Island Community Forest Ltd.;
- (f) **“Interest”** means in respect of each Shareholder, all of that Shareholder’s Shares and any other right or claim that the Shareholder may have against the Company and the other Shareholders in that Shareholder’s capacity as a member of the Company;
- (g) **“Prime Rate”** means the annual rate of interest designated from time to time by the Royal Bank of Canada as its prime rate for Canadian dollar commercial loans made in Canada;
- (h) **“Purchaser”** means the Shareholder(s) who is/are the purchaser(s) of Shares or of an Interest pursuant to any of the provisions of this Agreement;
- (i) **“Shareholder”** means in respect of the Company, any one of Port Hardy, Port McNeill or Port Alice and **“Shareholders”** means two or more of them;
- (j) **“Shares”** means, in respect of each Shareholder, all of the shares in the capital of the Company directly or indirectly owned by that Shareholder or in respect of which that Shareholder has any right to purchase;

1.2 **Meaning of Control.** For the purposes of this Agreement, “control” where used in connection with a corporation means:

- (a) the right to exercise a majority of the votes which may be voted at a general meeting of such corporation; or

(b) the right to elect or appoint directly or indirectly a majority of the directors of such corporation or other persons who have the right to manage or supervise the management of the affairs and business of the corporation.

1.3 **Accounting Terminology.** All accounting terms not expressly defined in this Agreement shall have the respective meanings usually ascribed to them in accordance with generally accepted accounting principles in Canada.

1.4 **Meaning of Pro Rata.** Unless the context otherwise requires, all rights, obligations or other matters which are, under the terms of this Agreement, to be determined on a proportionate or pro rata basis shall be determined on a basis which is pro rata of proportionate to the total numbers of shares of the Company issued and outstanding as of the date of such determination.

1.5 **Headings.** The headings used in the Agreement are for convenience and reference only and shall not affect the construction or interpretation of this Agreement.

## 2. **Representations and Warranties**

2.1 Port Hardy jointly and severally represents and warrants to each of the other parties that:

- (a) Port Hardy is a duly incorporated municipality under the laws of the Province of British Columbia;
- (b) Port Hardy has the corporate power to enter into this Agreement and to perform and observe its obligations and agreements set out in this Agreement;
- (c) this Agreement has been duly executed and delivered by Port Hardy and is a valid and binding obligation against it and is enforceable in accordance with its terms.

2.2 Port McNeill jointly and severally represents and warrants to each of the other parties that:

- (a) Port McNeill is a duly incorporated municipality under the laws of the Province of British Columbia;
- (b) Port McNeill has the corporate power to enter into this Agreement and to perform and observe its obligations and agreements set out in this Agreement;
- (c) this Agreement has been duly executed and delivered by Port McNeill and is a valid and binding obligation against it and is enforceable in accordance with its terms.

2.3 Port Alice jointly and severally represents and warrants to each of the other parties that:

- (a) Port Alice is a duly incorporated municipality under the laws of the Province of British Columbia;
- (b) Port Alice has the corporate power to enter into this Agreement and to perform and observe its obligations and agreements set out in this Agreement;
- (c) this Agreement has been duly executed and delivered by Port Alice and is a valid and binding obligation against it and is enforceable in accordance with its terms.

2.4 **Corporate Matters.** The Shareholders and the Company agree that, notwithstanding any provisions to the contrary contained in the Articles of the Company, the matters referred to in this Agreement shall be applicable and that in the case of any inconsistency or conflict between the Articles of the Company and this Agreement, this Agreement shall govern.

2.5 No Shareholder without the consent in writing of all the other Shareholders, shall communicate to any person any trade secret or otherwise confidential information which he or she acquired in connection with the Company.

### 3. **Agreement on Corporate Matters**

3.1 **Directors.** The Board of Directors of the Company shall be composed of nine directors consisting of three nominees of Port Hardy, three nominees of Port McNeill and three nominees of Port Alice.

3.2 In the event that a position on the Board shall open for any reason, the Entity (if applicable) whose nominee shall have formerly occupied such position shall be entitled to nominate a new director to fill such vacancy.

3.3 In the event that an Entity chooses not to put forward a nominee or does not put forward a nominee within a reasonable period of time, the Shareholders shall be at liberty to elect a member at large.

3.4 If any Shareholder deems a nominee not be acceptable, then the Shareholders can request that another nominee be put forward for considerations until an acceptable nominee is found.

3.5 Unless otherwise provided in this Agreement, the conduct of the business of the Company shall be governed in accordance with its Articles.

3.6 A quorum required for the transaction of business at a meeting of the Board shall be 5 directors.

3.7 **Conflict Resolution.** The Board of Directors will use consensus in making decisions affecting the management of the Company. The Directors shall use a consensus process in all their discussions under the following principles:

- a) the purpose of the process is to reach a decision;
- b) a Director shall act in utmost good faith at all stages of the process;
- c) a Director shall respond to the concerns and goals of others as valid;
- d) a Director shall make best efforts to accommodate the interests and concerns of others, rather than the positions and demands of others; and
- e) a Director shall fully explore all submissions brought to them and shall search for solutions through problem-solving methods.

### 3.8 Consensus Process:

- a) A Director shall make best efforts to reach a consensus with the other Directors on all Board decisions.
- b) If the Directors present do not reach consensus on a specific question, they shall apply the following process:
  - i. the Director of Directors that dissent from the majority shall each identify whether the disagreement is over wording or over principles;
  - ii. if the disagreement is over wording, the Directors shall make best efforts to find alternative words so that consensus can be achieved;
  - iii. if the disagreement is about principle, the dissenting Director(s) shall prepare a written report as soon as possible that succinctly states:
    - A. their disagreement with other Directors;
    - B. their reasons for disagreement; and
    - C. a documented alternative to their views and the majority's view;
  - iv. on review of the alternative wording under ii above, or the alternative view under iii above, the Directors shall reconsider the question;
  - v. if the disagreement still cannot be resolved, the Directors shall settle the question by a majority vote of the Directors;
  - vi. when a majority vote occurs, the Directors shall include in the minutes of the meeting:
    - A. a record that the question was settled by a majority vote because of the inability to reach consensus;
    - B. all details of both sides of the disagreement; and
    - C. a copy of the dissenting Directors' report under iii above.

- 3.9 **Failure to Vote/Failure to Act.** If a Director fails to vote on any matter, the Director shall be deemed to have voted in the affirmative on that matter. Should a Director consistently fail to act in accordance with the Agreement, the Shareholders shall exercise their rights as members of the Company to remove such Director from the Board and,

subject to the terms of this paragraph, elect in his or her place an individual who will use his or her best efforts to carry out the provisions of this Agreement.

- 3.10 **No Dividends.** Notwithstanding the Articles of the Company, any and all dividends and any and all net revenue as a result of the winding up of the Company, voluntarily or otherwise, shall be directly payable to the Shareholders on a pro rata basis.

#### 4. **Finances**

- 4.1 **Bank Financing.** Subject to the Shareholders agreeing otherwise, the Company shall borrow from any person or entity, to the extent the Company is able on terms satisfactory to the Board, the funds required from time to time by the Company.
- 4.2 No Shareholder or Director shall be obligated to enter into any agreement of guarantee with respect to the indebtedness of the Company or to pledge its credit on behalf of the Company.
- 4.3 Except when precluded or otherwise prohibited by the terms of any debt instrument, and to the extent permitted by law, the retained earnings of the Company, after making such provisions and transfers to reserves, (as shall be required by the Directors to meet present and future expenses), shall be One Hundred Thousand Dollars (\$100,000.00).

#### 5. **Restrictions on Transfer**

- 5.1 **Restriction on Transfer.** No Shareholder shall Transfer all or any part of its shares to any person, whether a Shareholder or not, except as otherwise expressly provided in this Agreement.
- 5.2 Except as otherwise expressly permitted in this Agreement:
- (a) No Shareholder shall transfer any or all of its Shares (the "Interest"), unless the transfer is to the existing Shareholder(s) of the Company (the "Transfer").
- (b) Any Shareholder wanting to sell its Interest (the "Selling Shareholder"), must sell its Interest for exactly the par value of the shares, no more and no less, regardless of the value of the Company at the time of transfer. The Transfer shall occur within 30 days of the Selling Shareholder giving notice to the existing Shareholder(s) of its intention to sell.
- 5.3 Should any Shareholder incur a tax liability as a result of the sale of the shares from one to the other, the Company shall pay the amount equal to the Shareholder's tax liability resulting from the sale and purchase of the Shares and shall fully indemnify the Shareholder or Shareholders for any such tax liability. For greater clarity, the Company is only responsible for the additional tax liability that the Shareholder or Shareholders incur as a direct result of the sale of its shares, as set out in paragraph 5.2.

- 5.4 Should the existing Shareholder(s) choose not to buy the Selling Shareholder's Interest, then the Company is to be wound down and the net sale of the assets shall be directly payable to the Shareholders on a pro rata basis.
- 5.5 Upon the other Shareholder(s) accepting the offer to purchase the Interest from the Selling Shareholder, a binding contract of purchase and sale between the existing Shareholder(s) and the Selling Shareholder shall be deemed to come into existence on the terms set out in this Paragraph.
- (a) Time shall be of the essence and shall be binding upon the parties thereto and upon their respective heirs, executors, administrators, successors, legal representatives and assigns.
- (b) If the Selling Shareholder fails to attend the Closing or is present but fails for any reason whatsoever to complete the sale of the Interest when the existing Shareholder(s) is ready, willing and able to do so, the existing shareholder may deposit the Purchase Price for the Interest into a special account at any branch in Port Hardy, British Columbia of any Canadian chartered bank in the name of the Selling Shareholder and such deposit shall constitute valid and effective payment to the Selling Shareholder at the Closing even though the Selling Shareholder may have voluntarily encumbered or disposed of any of the Interest and notwithstanding the fact that a certificate or certificated representing any of the Interest may have been delivered to any pledge, transferee or other person.
- (c) If the existing shareholder(s) deposits the Purchase Price for the Interest into a special account pursuant to the previous paragraph, then from and after the date of such deposit (even if any certificate representing any of the Interest has not been delivered to the Purchaser or the Company) the sale and purchase of the Interest shall be deemed to have been completed and all right, title, benefit and interest, both at law and in equity, in and to the Interest shall be conclusively deemed to have been transferred and assigned to and become vested in the existing Shareholder(s) and all right, title, benefit and interest, both at law and in equity, of the Selling Shareholder, and of any other assignee, transferee or other person having any interest, legal or equitable, in or to the Interest, whether as a Shareholder or creditor of the Company or the Selling Shareholder, or otherwise shall cease and determine, but the Selling Shareholder shall be entitled to receive the Purchase Price for the Interest, without interest upon completion of all acts and deeds as were required of the existing Shareholder(s) to complete the sale of the Interest.
- (d) For the purposes of this section only, each Shareholder hereby irrevocably constitutes and appoints each other Shareholder as its true and lawful attorney in fact and agent for, in the name of and on behalf of such Selling Shareholder to execute the deliver, and to receive delivery of, all such assignments, transfers, deeds, assurances and instruments as may be necessary to effectively complete the sale of any Interest pursuant to this section on the records of the Company, and such appointment and power of attorney shall not be revoked by the bankruptcy, insolvency, winding-up, liquidation, dissolution, incapacity or death of such Selling

Shareholder and such Selling Shareholder hereby ratifies and confirms and agrees to ratify and confirm all that any other Shareholder, as attorney in fact and agent for, in the name of and on behalf of such Selling Shareholder, may lawfully do or cause to be done by virtue of this paragraph.

6. **Default**

6.1 **Events of Default.** An event of a default (a “Default”) arises if a Shareholder, or a Representative of a Shareholder (a “Defaulting Shareholder”):

- (a) fails to observe, perform or carry out any of its obligations under this Agreement and such failure continues for 30 days after any Shareholder(s) not in default (the “Non-defaulting Shareholder(s)”) gives a written notice of such default to the Defaulting Shareholder and the Company, which notice shall set out particulars of the Default and demand that the Default be cured;
- (b) fails to take reasonable actions to prevent or defend assiduously any action, proceeding, seizure, execution, or attachment which claims possession, sale, foreclosure, the appointment of a receiver or receiver-manager of his or her assets, or forfeiture or termination of or against any of the Interest of the Defaulting Shareholder, and such failure continues for 30 days after a Non-defaulting Shareholder has in writing demanded that such actions be taken or the Defaulting Shareholder fails to defend successfully any action, proceeding, seizure, execution or attachment; or
- (c) commits or is the subject of an Insolvency Event.

6.2 **Remedies.** If a Default occurs under subsection 6.1, any one or more of the Non-defaulting Shareholders may:

- (a) pursue any remedy available in law or in equity, each Shareholder and Representative acknowledging that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a Default;
- (b) take all actions in their own name or in the name of the Defaulting Shareholder or the Defaulting Shareholder’s Representative, or both, the Shareholders or the Company as may reasonably be required to cut the Default, and all payments, costs and expenses incurred by the Non-defaulting Shareholder(s) shall be payable by the Defaulting Shareholder to the Non-defaulting Shareholder(s) on demand with interest at the Prime Rate plus 2% per annum;
- (c) the Defaulting Shareholder shall be deemed to offer to sell to the Non-defaulting Shareholder(s) all, but not less than all, of its Interest and the procedure for transferring the Interest as set out in paragraph 5 of this Agreement, shall be followed; and

(d) waive the Default, provided that any waiver of a particular Default shall only be effective if it is in writing, signed by the Non-defaulting Shareholder(s), shall not operate as a waiver of any subsequent or continuing Default, and shall not be binding upon, or limit the remedies available to, any Non-defaulting Shareholder who has not signed such waiver.

## 7. Termination of Agreement

7.1 **Method of Termination.** This Agreement shall cease and determine on the occurrence of any of the following events, namely:

- (a) the Company suffering an Insolvency Event;
- (b) an event as set out in Section 5.4, or
- (c) the execution of an agreement of termination of this Agreement in writing by all of the Shareholders.

7.2 **Termination Shall Not Affect Right to Receive Money.** No termination of this Agreement shall affect the right of any party to whom money is owed at the time of termination to receive that money according to the provisions of this Agreement, or affect any other rights of that party under this Agreement.

## 8. Arbitration

8.1 **Arbitration.** Except for the sale price of an Interest, which shall be final and binding on the parties, all dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by a single arbitrator (the "Arbitrator") pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, as amended.

8.2 **Final and Binding.** The decision of the Arbitrator on all issues or matters submitted to the Arbitrator for resolution shall be conclusive, final and binding on all of the parties.

8.3 **Costs.** The Arbitrator shall determine who shall bear the costs of arbitration pursuant to this Section 8.

## 9. General

9.1 **Gender, Plural and Singular.** In this Agreement, the masculine includes the feminine and the neuter genders and the plural includes the singular and vice versa and modifications to the provisions of this Agreement may be made accordingly as the context requires.

9.2 **Alterations.** No alteration or amendment to this Agreement shall take effect unless it is in writing duly executed by each of the parties.

9.3 **Proper Law of Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and Canada.

- 9.4 **Invalidity.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision and any such invalid or unenforceable provision shall be deemed to be severable.
- 9.5 **Inclusive Language.** The word “including”, when followed by any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but rather it is to be construed to refer to all items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.
- 9.6 **Time of the Essence.** Time shall be of the essence of this Agreement.
- 9.7 **Notices.** Any notice, payment or other communication required or permitted to be given or served pursuant to this Agreement shall be in writing and shall be delivered personally or forwarded by registered mail to the party concerned addressed as follows:

If to Port Hardy	Municipal Hall 7360 Columbia Street P.O. Box 68 Port Hardy, B.C. V0N 2P0
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If to Port McNeill	1775 Grenville Place Box 728 Port McNeill, B.C. V0N 2R0
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If to Port Alice	1061 Marine Drive Box 130, Port Alice, B.C. V0N 2N0
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or to any other address as may from time to time be notified in writing by any of the parties. Any notice, payment or other communication shall be deemed to have been given on the day delivered, if delivered by hand, and within four Business Days following the date of posting, if mailed; providing that if there shall be at the time or within four Business Days of mailing a mail strike, slow-down or other labour dispute that might affect delivery by mail, then the notice or other communications shall be effective only when actually delivered.

- 9.8 **Shareholders to Take Further Steps.** Each Shareholder shall take all necessary actions (including amending the Articles of the Company) and shall exercise that Shareholder’s rights as a Shareholder of the Company to cause the Company to pass all necessary resolutions and effect all necessary corporate acts to comply with the intent and provisions of this Agreement, including the convening and attending at meetings, voting approval or necessary resolutions, or otherwise as may be necessary for the purpose of this Agreement.

- 9.9 **Company to be Bound.** The Company, so far as its powers apply, shall be bound by the terms of this Agreement and shall do and perform all such acts and things and execute all such documents and assurances as it has power to do and as is necessary to fully and effectually carry out the terms of this Agreement.
- 9.10 **Entire Agreement.** The provisions of this Agreement constitute the entire agreement between the parties and supersede all previous communications, representations and agreement, whether oral or written, between the parties with respect to the subject matter of this Agreement.
- 9.11 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties and, except as otherwise provided or as would be inconsistent with the provisions of this Agreement, their respective heirs, executors, administrators, successors and assigns.

AS EVIDENCE OF THEIR AGREEMENT, the parties have executed this Agreement as of the date and year first above written.

District of Port Hardy  
By its authorized signatories:

\_\_\_\_\_  
  
\_\_\_\_\_

Village of Port Alice  
By its authorized signatories:

\_\_\_\_\_  
  
\_\_\_\_\_

Town of Port McNeill  
By its authorized signatories:

\_\_\_\_\_  
  
\_\_\_\_\_

North Island Community Forest Ltd.  
By its authorized signatory(ies):

\_\_\_\_\_  
  
\_\_\_\_\_

