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BEECHER BAY FIRST NATION
MATRIMONIAL REAL PROPERTY ACT

Whereas the Beecher Bay First Nation has jurisdiction and authority over its reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the *Beecher Bay First Nation Land Code* effective the first day of August 2003.

And Whereas the SĆIA'NEW peoples of the Beecher Bay First Nation, through tradition and custom, believe the land to be a part of the people and that all things are connected to the land and to spiritual values.

And Whereas the land of the Beecher Bay First Nation is managed in common for the use and benefit of the SĆIA'NEW peoples as a whole and there are no permanent interests in the land.

And Whereas pursuant to the Framework Agreement on First Nation Land Management and the *Beecher Bay First Nation Land Code*, the Beecher Bay First Nation has agreed to enact rules and procedures applicable on the breakdown of a marriage to the use, occupancy and possession of Beecher Bay First Nation land and the division of interests in that land.

And Whereas the Beecher Bay First Nation intends to provide rights and remedies, without discrimination, to Spouses who have or claim an interest in Beecher Bay First Nation land upon the breakdown of their marriage.

And Whereas the Beecher Bay First Nation intends to respect the following general principles set out in the *Beecher Bay First Nation Land Code* with respect to the use, occupancy and possession of matrimonial real property on Beecher Bay First Nation land, and the division of interests in that land on the breakdown of a marriage:

(a) a child of the Spouses should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of that child;

(b) the Spouses should resolve spousal property matters by contract or agreement;

(c) each Spouse should have an equal right to possession of the matrimonial home;

(d) each Spouse should be entitled to an undivided half Interest in the matrimonial home as a tenant in common; and

(e) the rules and procedures will not discriminate on the basis of sex.

And Whereas the SĆIA'NEW peoples of the Beecher Bay First Nation further intend to respect the following additional principles with respect to the use, occupancy and possession of

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matrimonial real property on Beecher Bay First Nation land and the division of Interests in that land on the breakdown of a marriage:

(a) the value of mediation where the Spouses have not or are unable to reach an agreement between themselves;

(b) the traditional laws and customs of the Big House of the Beecher Bay First Nation should be respected in the granting of rights and remedies;

(c) the collective nature of membership interests in Beecher Bay First Nation land must be respected;

(d) whether the matrimonial home is a Band-owned Residence should be considered;

(e) the right of the Spouses to have access to a court of competent jurisdiction to deal with all their property rights, entitlements, and obligations on the breakdown of their marriage should be respected; and

(f) the Spouses should bear their own costs for proceedings under this Act.

Now therefore this *Beecher Bay First Nation Matrimonial Real Property Act* is hereby enacted as a law of the Beecher Bay First Nation.

PART ONE
APPLICATION

1. This Act may be cited as the *Beecher Bay First Nation Matrimonial Real Property Act.*

2. This Act applies to Interests in Beecher Bay First Nation land as defined in the *Beecher Bay First Nation Land Code* and includes Interests in that land claimed pursuant to this Act.

3. This Act is not intended to limit or preclude any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a marriage to any property other than an Interest or other entitlements or obligations of Spouses under such other law.

4. It is the intention of this Act that all rights, entitlements and obligations of Spouses in respect of Interests in Beecher Bay First Nation land are dealt with equitably on the basis of all their respective circumstances, including rights, entitlements and obligations.

5. For the purpose of this law the following definitions will apply:

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(a) "Band-owned Residence" means a residence owned by the Beecher Bay First Nation that is occupied by a Spouse or Spouses;

(b) "Child" means a child born in or out of wedlock, who is registered or entitled to be registered as a member of Beecher Bay First Nation, and a legally adopted child or a child adopted in accordance with Beecher Bay First Nation traditional law and custom;

(c) "Common Law Marriage" means two individuals not married to each other legally or in accordance with Beecher Bay First Nation traditional law and custom who have lived together as Spouses for a period of not less than five years;

(d) "Custom" means the traditional ways of life of the SĆIA'NEW peoples of the Beecher Bay First Nation as inherited from the SĆIA'NEW peoples' ancestors;

(e) "Council" means the Chief and Councillors of the Beecher Bay First Nation;

(f) "Dispute Resolution Panel" means the Panel established under section 38.1 of the *Beecher Bay First Nation Land Code*;

(g) "Elder" means any person 45 years of age or older who is acknowledged to be an Elder by the SĆIA'NEW peoples of the Beecher Bay First Nation;

(h) "Elders Advisory Council" means the Elders Advisory Council established under section 14.1 of the *Beecher Bay First Nation Land Code*;

(i) "Head of Household" means the individual acknowledged by the members of an Immediate Family as spokesperson for that Immediate Family;

(j) "Interspousal Contract" means:

i) an agreement entered into between Spouses who are married to each other or intend to marry, made in writing, signed by the Spouses and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Interests in Beecher Bay First Nation land; or

ii) a Separation Agreement entered into between Spouses who are married to each other and are living separate and apart, made in writing, signed by the Spouses and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Interests in Beecher Bay First Nation land;

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(k) "Interest " means any legal or equitable Interest held in possession by either or both Spouses;

(l) "Land Management Advisory Committee" means the Land Management Advisory Committee established under section 14.4 of the *Beecher Bay First Nation Land Code*;

(m) "Lands Manager" means the employee of Beecher Bay First Nation responsible for the administration of Beecher Bay First Nation land in accordance with the *Beecher Bay First Nation Land Code*;

(n) "Matrimonial Home" means an Interest that is, or if the Spouses have separated, was at the time of the separation, occupied by one or both Spouses as the family home or that is mutually intended by the Spouses to be occupied by one or both of them as the family home;

(o) "Member" means an individual whose name appears or is entitled to appear on the Beecher Bay First Nation membership list;

(p) "Spouse" means an individual who:

(i) is married to another, whether by traditional, religious or civil ceremony and includes a Spouse by Common Law Marriage; or

(ii) has in good faith entered into a marriage that is voidable or void and is asserting a right under this Act; and

(q) "Traditional Law" means a law observed or enforced by the Elders or otherwise in accordance with the traditions and customs of the SĆIA'NEW peoples of the Beecher Bay First Nation.

6. For greater certainty, this Act applies to an Interest where neither Spouse is a Member.

7. A Spouse does not have an election under this Act on the death of the other Spouse to claim, take or pursue an Interest held by the other Spouse, and the Interest will be determined by the last will and testament or administration of the estate of the other Spouse.

PART TWO
INTERSPOUSAL CONTRACTS

8. It is the purpose and intention of this Act to respect an agreement between the Spouses with respect to the use, possession, occupancy, disposition or partition of an Interest, including a

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Matrimonial Home.

9. An Interspousal Contract that is consistent with this Act and reflects the agreement of the Spouses with respect to an Interest, including a Matrimonial Home, is valid, binding and enforceable.

10. Notwithstanding section 9, a provision in an Interspousal Contract that would give, award, acknowledge or create an Interest greater than a life estate to occupy or possess the Interest in favor of a Spouse who is not a Member, is void.

11. A life estate to possess or occupy an Interest will be measured by the life of the Spouse who is intended to enjoy it.

12. Subject to this Act, a court of competent jurisdiction may, on application under Part Four, set aside a provision of an Interspousal Contract with respect to an Interest in Beecher Bay First Nation land if:

    (a) a Spouse failed to disclose to the other Spouse all Interests in Beecher Bay First Nation land, or any material information in respect of those Interests;

    (b) a Spouse did not understand the nature or consequences of the provision; or

    (c) otherwise in accordance with the law of contract.

13. This Part applies whether the Spouses entered into the Interspousal Contract on, before or after the date that this Act comes into force and effect.

PART THREE
MEDIATION

14. It is the intention of this part that Spouses who, on the breakdown of their marriage, do not have and are unable to conclude an Interspousal Contract with respect to Interests in Beecher Bay First Nation land, will submit to mediation in respect of such Interests.

15. For the purpose of this Part, Council in consultation with the Land Management Advisory Committee and the Elders Advisory Council will prescribe:

    (a) rules and procedures applicable to the conduct of mediation;

    (b) forms, certificates, and other documents;

    (c) fees, costs and consequential relief in respect of mediation services; and

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(d) a roster of qualified mediators, which will include one or more Elders who are qualified to apply the traditional laws and customs of the Big House of the Beecher Bay First Nation, available to assist Spouses in resolving disputes regarding Interests.

16. A member of the Dispute Resolution Panel will, on request of the Spouses, meet with the Spouses to explain the mediation process and will include in such meeting a recommendation that the Spouses obtain independent legal advise.

17. Spouses who do not have or are unable to conclude an Interspousal Contract may jointly initiate mediation with respect to Interests in Beecher Bay First Nation land, in which case it is intended that the Spouses utilize the services of a mediator whose name appears on the roster of qualified mediators prescribed under section 16(d).

18. A Spouse who does not have and is unable to conclude an Interspousal Contract may request mediation under this Part by filing a Notice of Request for Mediation, in the designated form and with proof of service on the other Spouse, with the Lands Manager.

19. The Lands Manager will on request assist a Spouse in completing a Notice of Request for Mediation.

20. The Spouse requesting mediation will ensure that a true copy of the Notice of Request for Mediation is served on the other Spouse.

21. Service under section 20 may be effected by:

(a) personal service;

(b) delivery to a solicitor representing the other Spouse in the matter of the breakdown of the marriage;

(c) a method provided for in an Interspousal Contract; or

(d) registered mail to the address where the other Spouse is known or believed to be residing, in which case service will be deemed to be effected seven days after the date the Notice of Request for Mediation is mailed.

22. Forthwith upon receipt of a Notice of Request for Mediation, the Lands Manager will deliver the Notice to the Land Management Advisory Committee.

23. Within thirty days of receipt of a Notice of Request for Mediation and proof of service under section 18 the Lands Manager will:

(a) arrange for a qualified mediator prescribed in section 16(d) to be available to the Spouses; and

(b) set a date for the Appointment for Mediation.

24. The Lands Manager may extend the period prescribed in section 23:

(a) at the joint request of the Spouses; or

(b) where the Lands Manager is unable to secure the services of a qualified mediator within the prescribed period of time.

25. The Lands Manager will serve Notice of an Appointment for Mediation upon both Spouses and the Lands Management Advisory Committee no less than 10 days before the date set in the Appointment for Mediation.

26. A Spouse who receives a Notice of Appointment for Mediation will attend the Appointment for Mediation.

27. Unless otherwise agreed:

(a) mediation will be conducted in confidence; and

(b) each Spouse will be responsible for an equal share of the costs of mediation.

28. The mediator will proceed expeditiously with the mediation and will use best efforts to assist the Spouses in resolving all issues with respect to the Interests.

29. Where mediation is successful, the agreement of the Spouses with respect to the Interests will be reduced to writing in a Separation Agreement, and that Agreement will expressly provide that each Spouse waives all rights to challenge its provisions under section 12.

30. A Separation Agreement concluded under section 29 will include provisions for all Interests held by either Spouse or both Spouses and will be a sufficient Interspousal Contract for purposes of this Act if it deals only with those Interests.

31. Where mediation is successful, the mediator will report this fact to the Lands Manager and the Lands Manager will notify the Lands Management Advisory Committee.

32. Where mediation is unsuccessful, the mediator will deliver to each Spouse and to the Lands Manager a confidential report upon the mediation and the issues remaining in dispute between the Spouses in relation to the Interests.

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33. Upon conclusion of an unsuccessful mediation, the Lands Manager will provide a certificate to the Spouses and to the Lands Management Advisory Committee which will be:

    (a) a certificate of compliance with this part; or

    (b) where the Lands Manager reasonably concludes that the other Spouse cannot be located, is avoiding or ignoring service of documents or has otherwise refused to participate in the mediation, a certificate of waiver in favor of the Spouse requesting the mediation.

34. Nothing in this Part is intended to prevent a Spouse from participating in an alternate dispute resolution process in relation to any matter other than an Interest, or to restrict the Spouses from otherwise reaching agreement with respect to an Interest, provided that such agreement results in a Separation Agreement that meets the requirements of this Act.

PART FOUR
ACCESS TO A COURT OF COMPETENT JURISDICTION

35. For the purpose of this part "court of competent jurisdiction" and "court" mean the British Columbia Supreme Court.

36. For greater certainty, no court other than a court of competent jurisdiction will exercise jurisdiction under this Act with respect to an Interest.

37. In the event of the breakdown of a marriage, a Spouse may apply to a court to determine a dispute in relation to an Interest provided that the Spouse has first complied with Part Three of this Act or has been relieved of such compliance by a provision of this Part.

38. No court will exercise jurisdiction under this Part without first enquiring whether or not the Spouses have requested or participated in mediation in accordance with Part Three and, if there has been no mediation, the court may:

    (a) direct that there be mediation; or

    (b) hear and decide an application under this part.

39. The Beecher Bay First Nation, which may be represented by the Elders Advisory Council or the Land Management Advisory Committee, will have standing in any proceedings under this Part and the court will consider any evidence and representations presented by the First Nation in respect of Beecher Bay First Nation laws, Traditional Laws or Customs.

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40. Subject to this Act, a court may decide in relation to Interests held by either Spouse, or both Spouses, in a manner consistent with the provisions of the British Columbia *Family Relations Act* relating to the ownership, possession or occupancy of real property, the division of interests in real property and net family property representing the value of interests in real property.

41. Notwithstanding section 40, the fact that an Interest does not include future or contingent Interests will not be construed to confer jurisdiction upon a court with respect to those Interests.

42. Notwithstanding section 67, a court may make an order where a Spouse has intentionally, recklessly or fraudulently depleted net family property that is an Interest and that would otherwise be subject to the presumption set out in that section.

43. Subject to the *Beecher Bay First Nation Land Code*, a court may make any order in relation to an Interest held by a Spouse, or both Spouses, that the court could make in respect of real property situated in the province of British Columbia, but not on First Nation Land, including:

    (a) an order that an Interest be transferred to a Spouse absolutely in accordance with this Act;

    (b) an order that an Interest be subject to a lease by one Spouse to the other Spouse for a term of years, subject to such terms and conditions as the court deems just in all the circumstances; or

    (c) an order that an Interest held by both Spouses be partitioned or partitioned and sold.

44. No order will be made under paragraph 43(a) in favour of a Spouse who is not a Member.

45. Where an order is made under section 43(c) for partition of an Interest, Council will direct the partition and the Lands Manager may, unless a court has made an order with respect to costs, make provision for a survey and for the allocation of the reasonable and necessary costs of the partition.

46. Where an order is made under section 43(c) for the partition and sale of an Interest, the sale will be by auction directed by the Council, and Council will by resolution make provision for a reserve bid representing a fair sale price for the Interest, and unless a court has made an order with respect to costs, for the allocation of the costs of the partition and sale.

47. Subject to this Act, a Spouse may apply to a court for determination of a question in relation to the right of possession of an Interest, and the court may:

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(i) cannot be found;

(ii) is not available;

(iii) is declared incompetent due to mental incapacity;

(iv) is otherwise incapable of giving or withholding consent;

(v) or is unreasonably withholding consent,

authorize a disposition or encumbrance of the Interest provided that such disposition or encumbrance is otherwise authorized under Beecher Bay First Nation laws and the court may prescribe such other conditions including the provision of or payment for other comparable accommodation, as the court may consider appropriate; or

(c) make an order under section 58(d) or (e), subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.

63. Regardless of which Spouse holds an Interest that is a Matrimonial Home, a court may on application:

(a) order the delivering up and preservation of the Interest;

(b) order that one Spouse be given exclusive possession, consistent with this Act, of the Interest, or part of the Interest, for such period as the court may direct, and release any other Interest that is a Matrimonial Home from the application of this Part;

(c) order a disposition or encumbrance of a Matrimonial Home,;

(d) if it is shown that a Spouse has:

(i) disposed of or encumbered a Matrimonial Home in a fraudulent manner calculated to defeat the rights of the other Spouse under this law, or

(ii) has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest is not a Matrimonial Home,

order the other Spouse to substitute any other Interest that such other Spouse may hold in Beecher Bay First Nation land for the Matrimonial Home, subject to such

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conditions as the court considers appropriate in all the circumstances;

(e) make an interim or temporary order to give effect to this Act or to protect the rights of a Spouse; or

(f) make any ancillary order, including an order as to costs that the court deems necessary to give effect to this Act.

64. A court, in considering whether to order that one Spouse have exclusive possession of a Matrimonial Home, will have regard to the principle that, subject to the best interests of the child, the custodial parent of a child should have exclusive possession of the Matrimonial Home for a period of time sufficient to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority and has the opportunity to complete their education.

65. Where the Spouses share joint custody of a child or children, the principle set out in section 64 will favor the Spouse with whom the child or children principally reside, and if the child or children reside substantially equal periods of time with each Spouse, the principle will be neutral as between the Spouses.

66. In applying the principle set out in sections 64, a court will have regard to whether a child is a Member.

PART SIX
GENERAL PROVISIONS

67. An Interest received by way of gift or inheritance by one Spouse from a third person who is a family member of that Spouse, or by one Spouse together with one or more other members of that Spouse's family, will be deemed, subject to proof to the contrary, to have been transferred with the intention that the Interest should continue to be held within that family exempt from any claim of the other Spouse, and that the Interest, the income from the Interest and the value of the Interest will be excluded from the receiving Spouse's net family property under sections 40 and 42.

68. Section 67 does not apply to a Matrimonial Home.

69. The possession of an Interest under this Act by a person who is not a Member is not assignable and will be deemed to terminate when that person ceases to use or occupy that Interest personally.

70. Any person who contravenes an order made by a court under this Act in relation to an Interest is guilty of an offence and liable on summary conviction to a fine of not more than $5000 or to imprisonment for a term of not more than three months, or to both.

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71. A fine payable under section 70 will be remitted to Beecher Bay First Nation by the court, after reasonable court cost have been deducted.

72. This Act will come into force and effect on the first day of August 2004.

Signatures of Council
(Beecher Bay First Nation Land Code, s. 7.6)

(Chief)

(Councillor)

(Councillor)

SUMMARY

Beecher Bay First Nation Matrimonial Real Property Act

There is no law in Canada governing distribution of shared matrimonial property on Indian Reserves if a marriage breaks down. The *Beecher Bay First Nation Land Code* enables the First Nation to fill this gap in the law. The Land Code requires the community to be consulted on the Act and the Land Management Advisory Committee to agree to the rules and procedures included in it.

The *Beecher Bay First Nation Matrimonial Real Property Act* is modeled on what other First Nations with Land Codes have enacted. The Act applies only to interests in Beecher Bay Indian Reserves and applies only to interests in land. It does not apply to alimony, child custody, support or maintenance payments, or division of other assets.

The proposed matrimonial property law operates in three stages:

- First, if a couple is able to resolve the division of properties by agreement between themselves, that agreement will be honored.
- Second, if the couple is unable to reach agreement, either or both of them can request formal mediation by an independent mediator. If they reach agreement through mediation, that agreement will be honored. Mediation must include an

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option to involve an Elder who is able to apply the traditional laws and customs of the Big House.

- Third, if the couple cannot reach agreement through mediation, the dispute will proceed to court and the ordinary laws applicable in BC and Canada will apply. The First Nation has a right to make representations to the court, which it may delegate to the Elders Advisory Committee or the Land Management Advisory Committee.

The procedures for each of these steps are set out in the proposed law. Special protections are included regarding the matrimonial home. These protections include priority for the best interests of any children, protection of property that is shared with other members of a spouse's family and protection against fraud and threats.

This enactment fulfills a commitment in the *Beecher Bay First Nation Land Code* and the Framework Agreement on First Nation Land Management.

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