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EX001266

## LAND TITLE ACT

FORM 35  
(Section 220(1))

## DECLARATION OF BUILDING SCHEME

NATURE OF INTEREST: Charge: Building Scheme01 05/01/06 09:26:00 01 VI 611372  
CHARGE \$64.75

HEREWITH FEE OF \$64.75

Address of person entitled to apply to register this building scheme:  
30 Front Street, P.O. Box 190, Nanaimo, B.C. V9R 5K9Full name, address and telephone number of person presenting application:  
Brian J. Senini, 30 Front Street, Nanaimo, B.C., V9R 5K9 (250) 754-1234via: Kerry A. Polner   
Registry Co. Ltd. 10108 **BRIAN J. SENINI - Solicitor**I, **3536696 Canada Inc.** declare that:

- I am the registered owner in fee simple of the following land (hereinafter called "the Lots"):  
Lots 1 to 8, District Lot 78, Nanoose District, Plan VIP 78139
- I hereby create a building scheme relating to the Lots.
- A sale of any of the Lots is subject to the restrictions enumerated in the Schedule of Restrictions attached hereto.
- The restrictions shall be for the benefit of all the Lots.

## EXECUTION(S):

  
Officer Signature**KRISTIAN J. LITTMANN**  
BARRISTER AND SOLICITOR  
**STIKEMAN ELLIOTT LLP**  
SUITE 1700 PARK PLACE 666 BURNARD STREET  
VANCOUVER, BRITISH COLUMBIA, CANADA  
V6C 2X8 (604) 631-1300  
An Ontario Limited Liability PartnershipK 05 01/01/04  
Execution Date (Y/M/D)**3536696 CANADA INC.**  
by its duly authorized signatories:  
**ROGER ANDREWS**  
**REMCO DAAL**

Lawrence Neilson

(as to signature of Roger Andrews only)

## Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**FAIRWINDS - PHASE 9A****SCHEDULE OF RESTRICTIONS**

**The Building Scheme Restrictions set forth herein shall apply to each of Lots 1 to 8, District Lot 78, Nanoose District, Plan VIP78139.**

1. In this Building Scheme, unless the subject matter or the context requires otherwise, the following words or phrases shall have the following meanings:
  - (a) **"Ancillary Building"** means any Building ancillary to the main Building on any Lot including, without limitation, detached garages and storage sheds;
  - (b) **"Approval"** means the written approval required from the Developer, issued in accordance with the Architectural Guidelines, pursuant to paragraph 2 of this Schedule of Restrictions, PROVIDED ALWAYS THAT any such Approval shall only be required for so long as there is a Developer as defined herein;
  - (c) **"Architectural Guidelines"** means the set of building restrictions and requirements prepared by the Developer in effect from time to time, be administered by the Developer;
  - (d) **"Building"** means all buildings, improvements and structures of any type or kind, including swimming pools, located above or below ground level and any parts thereof (footings excluded), but shall not include Landscaping or Fencing;
  - (e) **"Building Envelope"** means, for any particular Lot, the area of the Lot within which any proposed Building and any Ancillary Building must be placed, or beyond which any Building or Ancillary Building are not allowed to project based on the setback requirements for any such Lot as provided for in this Building Scheme;
  - (f) **"Building Envelope Plans"** means each of the plans of the Lots prepared by Koers & Associates Engineering Ltd. attached to the Architectural Guidelines, which plans set out the Building Envelope for each Lot;
  - (g) **"Building Plans"** means complete drawings and specifications of a proposed Building and any proposed addition to, or extension of any Building including, without limitation:
    - (i) plans, elevations, cross-sections drawn at 1:50 or 1/4" = 1'-0"

- including details of type of building materials (including roofing), exterior finish materials and colour scheme;
- (ii) a Site Plan drawn at 1:100 or 1/8" = 1'-0" showing existing and proposed lot grades, retaining walls, location and quantities and qualities of materials used or excavated in the event of fill or excavation on the Lot, floor elevations, setbacks, house location, type and slope of driveway;
  - (iii) a Landscape Plan drawn at 1:100 or 1/8" = 1'-0" showing the type and location of Landscaping; and
  - (iv) any other information the Developer may reasonably require to ensure compliance with this Building Scheme,

but shall not include "mirror-image" type plans;

- (h) "**Building Scheme**" means this Declaration of Building Scheme attached hereto and the provisions of this Schedule of Restrictions;
- (i) "**Developer**" means 3536696 Canada Inc. and its duly authorized agents, successors and assigns;
- (j) "**Fencing**" means a fence, retaining wall or similar structure;
- (k) "**Front Yard**", for the purpose of Fencing, means that part of a Lot lying between the constructed adjacent public roadway that provides vehicle access to the Lot parallel and perpendicular 6.6 feet (2.0 metres) past the front of the principal Building constructed on the Lot;
- (l) "**Landscaping**" means all plant materials of any type or kind located above or below ground level, hot tubs, landscaping lighting, retaining walls, patios, walkways, fencing, sidewalks, driveways or any type or kind of pool, save and except a swimming pool, located on a Lot;
- (m) "**Lot**" means any one of the Lots;
- (n) "**Lots**" means the lots described in paragraph 1 of the Declaration of Building Scheme to which this Schedule of Restrictions is attached and any portion or portions into which such lots may be subdivided or consolidated, whether by subdivision plan or otherwise;
- (o) "**Municipality**" means the Regional District of Nanaimo or other successor local municipal body having jurisdiction over the Lots;
- (p) "**Owner**" shall mean any person or persons or corporate body registered

at the Victoria Land Title Office as either the registered Owner in fee simple of a Lot, the last registered holder of a Right to Purchase a Lot or any registered holder of a Life Estate interest in a Lot;

- (q) **"Street"** means any public street or road;
- (r) **"Work"** means any improvement of any kind whatsoever to a Lot and, without limiting the generality of the foregoing, shall include any site preparation, clearing, burning, excavation, filling, backfilling, blasting, grading or leveling of a Lot and any other construction-related activities on a Lot including any construction, alteration, addition or extension to a Building, Ancillary Building, Landscaping, Fencing or any other improvement to a Lot.

2. No Owner or anyone acting on behalf of an Owner, shall:

- (a) commence any Work on a Lot; or
- (b) make application for or obtain a building permit from the Municipality for any construction alteration, addition or extension to a Building, Ancillary Building or any other improvement to a Lot,

without having first received the Approval from the Developer authorizing the proposed Work on the Lot.

3. Once construction of any Building or alterations or extensions thereof on any Lot is commenced in compliance with the foregoing restrictions, the construction of such Building or alterations or extensions thereof shall not be discontinued and shall be completed as to external appearance, including finished painting, not later than six (6) months from the date of the commencement of any such construction on the Lot.

4. No Building nor any alteration or extension thereof, Ancillary Building, Fencing, or Landscaping, as the case may be, shall be commenced, placed, erected, constructed or allowed to remain on any part of a Lot:

- (a) except in compliance with the provisions of this Building Scheme, the provisions of the Architectural Guidelines, the provisions of any covenant, statutory right of way, easement or any other encumbrance registered against the title of the Lot, and in full compliance with all applicable laws, bylaws, ordinances, rules, regulations and orders of the Municipality and of any other governmental authority having jurisdiction over the Lot;

- (b) unless the Building is a single family residence;
- (c) unless the Building Plans in respect of any Building and any alteration or extension thereof have received the Approval of the Developer;
- (d) unless the Building has either:
  - (i) a finished main floor of not less than 1,600 square feet (149 square metres) (excluding the area of the garage) in the case of a single storey building; or
  - (ii) a finished main floor area of at least 1,200 square feet (112 square metres) (excluding the area of the garage) in the case of a two storey building;
- (e) unless the roof of the Building is constructed of cedar shakes, cedar shingles, clay tiles, or concrete tiles or as otherwise provided for in the Architectural Guidelines. In any event, no duroid shingles, asphalt shingles, fibreglass laminate shingles or standard straight line metal roofing shall be permitted;
- (f) unless any chimney of the Building is constructed of brick, stone, stucco or siding which matches the Building's accent veneer. No chimney shall be permitted which is constructed of concrete block or jumbo brick. No cantilevered chimneys shall be permitted;
- (g) unless the exterior finish of the Building is horizontal or vertical cedar, hardiplank, even-toned brick, or natural coloured fine-textured stucco or as otherwise provided for in the Architectural Guidelines. In any event no vinyl and aluminum siding, or jumbo or dual brick shall be permitted as an exterior finish;
- (h) unless the exposed height of the foundation walls of the Building is not greater than eighteen (18) inches;
- (i) unless the Building is wholly within the Building Envelope for the Lot, which, for each particular Lot, is defined as that area of the Lot not included within the following minimum setbacks (in metres) from the following Lot boundaries:

<u>Lot</u>	<u>Front Yard</u>	<u>Back Yard</u>	<u>Side Yard</u>
1	8	8	4
2	8	8 (south lot line)	3 (all other lot lines)
3	8	8 (south lot line)	3 (all other lot lines)

4	8	8 (southwest lot line)	3 (all other lot lines)
5	8	5 (southeast and southwest lot lines)	3 (all other lot lines)
6	8	8 (southwest and west lot lines)	3 (all other lot lines)
7	8	8	3 (all other lot lines)
8	8	8	3 (all other lot lines)

- (j) unless the vertical face of the Building is not greater than two storeys (including above ground basements) or 6 metres; and in any event, the height of a Building shall not be greater than 8 metres or as otherwise provided for in the Architectural Guidelines. The height of a Building shall be measured as the vertical distance the Building extends, at any complete vertical section of the Building, above a straight line connecting any two intersections of the existing grade and the outermost exterior building walls or supports;
- (k) unless the Building Plans in respect of any Ancillary Building and any alteration or extension thereof, including its type and design, have received the Approval of the Developer and provided any such Ancillary Building is located within the rear yard of the Lot and within the Building Envelope. In any event, no more than one Ancillary Building per Lot shall be permitted;
- (l) unless a minimum of two off-street parking spaces, in addition to a minimum of a single vehicle garage area, be provided for each Lot. No carports or one piece aluminum or steel garage doors shall be permitted;
- (m) unless the Fencing for the Lot has received the Approval of the Developer and provided the Fencing meets the following standards:
- (i) no Fencing shall be constructed, erected or allowed to remain in any Front Yards except ornamental Fencing to a maximum height of 3.3 feet (1.0 metres) when such Fencing is constructed in accordance with the design of the Building on the Lot, which has received the Approval of the Developer; and
  - (ii) in any event, no Fencing shall be constructed, erected or allowed to remain which is greater than 6.0 feet (1.85 metres) in height or which is of a chain link type or electric string type of fencing;
- (n) unless the Landscaping for the Lot, including type and design, has

received the Approval of the Developer. No retaining wall shall be constructed, erected or allowed to remain on any Lot unless the vertical face of such retaining wall is not greater than four feet (1.2 metres) in height, is constructed (including foundations) within the Lot, and in any event, no retaining walls shall be permitted within the front yard of any Lot unless such retaining wall is constructed using either natural stone or coloured or textured concrete; and

- (o) unless driveways are constructed of concrete or concrete pavers or as otherwise provided in the Architectural Guidelines. No gravel or asphalt driveways shall be permitted, save and except for certain parts of the driveways for Lots 2, 3 and 4 provided the Owner has first received the written Approval of the Developer.
5. The following limitations on the use of any of the Lots or any parts thereof shall be applicable:
- (a) none of the Lots nor any improvement on a Lot shall be put to any commercial, industrial, trade, business, or public or private utility use and without restricting the generality of the foregoing, none of them shall be used as an apartment house, boarding house, rooming house, "bed and breakfast" accommodation, hotel, beer parlour, resort, store, restaurant, shop or place of trade or business unless and until such use is permitted by applicable requirements of the Municipality and is approved by the Developer, who shall give such approval only where in its sole and absolute discretion such use is deemed not to be a detrimental to any of the Lots and PROVIDED ALWAYS THAT any signage proposed to advertise any such use shall be subject to the general provisions regarding signage contained in subparagraph (j) herein;
  - (b) no debris, dirt, building material, crates, packing cases, contractor's sheds, equipment or other unsightly objects or material shall be placed on any Street nor on any property adjoining any Lot nor allowed to remain on any Lot otherwise than during such time as construction work is actually in progress on such Lot, and no excavation shall be made unless necessary in connection with the erection of an approved Building or extension or alteration thereof;
  - (c) no mobile home, modular home, construction equipment, unlicensed vehicles, industrial trucks or industrial trailers having a gross vehicle weight in excess of one (1) Ton capacity shall be placed, maintained or occupied on any Lot and no trailer, boat, camper, mobile home, travel trailer, truck and camper, or recreation vehicle (collectively referred to as a

"Recreational Vehicle") shall be parked or stored on any Lot unless the Recreational Vehicle is placed in an enclosed garage or other area bounded by screening, which screening has first received the Approval of the Developer;

- (d) no animals shall be kept on any Lot except dogs and cats and other household pets, which shall be kept on a leash when outside of the boundaries of the Lot owned by the Owner of such pets;
- (e) no animal kennels or animal runs shall be permitted on any Lot;
- (f) no construction and excavation wastes, overburden soil or other substances deleterious to aquatic life shall be disposed of in such a manner as to permit their entry into any watercourse, ravine, or storm sewer disposal system;
- (g) no pole, mast, clothesline, antenna or similar object of any kind shall be erected or installed on any Lot or on the exterior of any Building, save and except an umbrella type clothesline;
- (h) no radio or television or transmitting antenna including satellite television receiving devices shall be placed on any Lot unless any such device is completely enclosed within a Building and is not visible from outside the Building, save and except for a satellite television receiving device having a diameter not greater than 24 inches to be placed in a location that has received the Approval of the Developer, but in any event not within the Front Yard;
- (i) no heat pumps shall be placed in a Building or on any Lot unless the location thereof has received the Approval of the Developer and the sound level at the property lines of the Lot will not exceed sixty (60) decibels;
- (j) no billboards, placards, advertising or signs of any kind shall be erected or displayed on any Lot, Building, or on any right of way, or in any window or door of any Building unless the dimensions, content, graphics and location of any such signage has received the Approval of the Developer. In the event of a Lot being listed for sale, any signage used to advertise the sale, the frame for the signage, the sign itself, and the method of displaying the sign must receive the Approval of the Developer. It is the intent that such signage shall be uniform for all the Lots and it is not the intent to control the agency with which a Developer lists the Lot for sale;



- (k) no decorative Christmas lights shall be permitted on Buildings or displayed on the Lots except during the months of November, December and January;
  - (l) no tennis court shall be constructed, placed, erected, installed or be permitted to remain on any Lot;
  - (m) no swimming pools of any kind whatsoever shall be constructed, placed, erected, installed or permitted to remain on any Lot, save and except for an "in-ground" swimming pool that is located entirely within the rear yard setback area of a Lot; and
  - (n) no trampolines, full swing sets, playground equipment, sporting facilities and vegetable gardens shall be placed in the Front Yard of a Lot, save and except for a basketball hoop.
6. The Developer of a Lot shall not:
- (a) cut down, cause deterioration to, destroy or otherwise remove any trees, brush or other natural vegetation from any Lot unless the Owner has first received the Approval of the Developer, PROVIDED ALWAYS THAT the Developer of a Lot may remove trees, brush or other natural vegetation where, in the reasonable opinion of the Owner, allowing the trees, brush or other natural vegetation to remain would be dangerous. In the event a person cuts down, causes deterioration to, destroys or otherwise removes any trees, brush or natural vegetation from any Lot without complying with this provision, without limiting any other rights hereunder, an Owner may require the offending Owner to replace such trees, brush or other natural vegetation with similar trees, brush or natural vegetation;
  - (b) allow a Building to fall into a state of disrepair, reasonable wear and tear excepted;
  - (c) allow a Building which has been partially or totally destroyed by fire, earthquake or otherwise to remain in such state for more than three (3) months from the time of such destruction;
  - (d) allow the Lot to remain in an unlandscaped condition after the expiry of a period of three (3) months from the date of completion of the external appearance of the Building, including finishing painting, unless such expiry date falls in the period between November 1<sup>st</sup> and May 1<sup>st</sup> of any year in which case landscaping shall be completed by not later than the following June 1<sup>st</sup> PROVIDED ALWAYS THAT no Owner shall be in

breach of this provision if the construction of Landscaping is interrupted by reason of strike, lockout, labour dispute, act of God, fire or other casualty, so long as the Owner takes such steps as are reasonably available to minimize the effect of such occurrence and such Owner diligently recommences the construction of Landscaping immediately after such occurrence; or

- (e) subdivide a Lot into two or more Lots, save and except where the subdivision is for the purpose of consolidating a part or all of a Lot with an adjoining Lot.
7. No grading, excavation, construction, or other Work shall be carried out upon a Lot which would interfere with, or alter in any way, the natural or established drainage systems of the Lot or adjoining Lots.
  8. No grading, excavation, construction, or other work shall be carried out upon a Lot which would undermine the slope stability of any roadway base unless appropriate temporary and/or permanent earth retention is constructed by the Owner.
  9. The Developer hereby expressly reserves the right, in its sole discretion, to exempt any Lot remaining undisposed of by the Developer at the time the exemption is to take effect from all or any of the restrictions and benefits contained in this Building Scheme and any such exemption shall not render the provisions so exempted invalid or unenforceable with respect to any other Lot charged by the provisions of this Building Scheme.
  10. In the event that any of the restrictions or terms contained in this Building Scheme is held to be invalid or unenforceable, such ruling shall not invalidate or make unenforceable the remainder of such restriction or the other restrictions and terms of this Building Scheme, which shall remain in full force and effect.