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LAND TITLE OFFICE  
LAND TITLE ACT VICTORIA  
FORM 35  
(Section 219.81)

1 # 155 CKg

DECLARATION OF BUILDING SCHEME

Nature of Interest: CHARGE: BUILDING SCHEME

Herewith Fee of: \$

12

Address of person entitled to register this Building Scheme:

3730 Fairwinds Drive  
Nanoose Bay, British Columbia  
V9P 9J6

Full name, address, telephone number of person presenting application:

Susan E. Lloyd  
STIKEMAN, ELLIOTT  
Barristers & Solicitors  
Suite 1700, Park Place  
666 Burrard Street  
Vancouver, B.C. V6C 2X8  
Tel: (604) 631-1800

WLI SERVICES INC.

Signature of Applicant, or Solicitor or Authorized Agent

WE, FAIRWINDS DEVELOPMENT CORPORATION, (Amalgamation No. 441838), declare that:

- We are the registered owners in fee simple of the following lands (hereinafter called the "Lots"):  
Lot 1, District Lots 8 and 78, Nanoose District, Plan VIP 68559  
Lots 2 to 48, District Lot 78, Nanoose District, Plan VIP 68559  
Lots 49 to 55, District Lot 8, Nanoose District, Plan VIP 68559
- We 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 attached or annexed hereto.
- The restrictions shall be for the benefits of all the Lots.

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138213 \$55.00

Officer Signature(s)

*J. Nicholas Schmalig*  
J. NICHOLAS SCHMALING  
Barrister & Solicitor  
#504 - 1367 WEST BROADWAY  
VANCOUVER, B.C. V6H 4A7  
TEL: (604) 736-7368

Execution Date

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Transferor(s) Signature(s)

FAIRWINDS DEVELOPMENT CORPORATION by its authorized signatory(ies)

*Neil Scott*  
Name: NEIL SCOTT

*Geoff Barker*  
Name: GEOFF BARKER

As to signature of Geoff Barker 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.

### SCHEDULE OF RESTRICTIONS

1. In this Building Scheme, unless the subject matter or context requires otherwise, the following words or phrases shall have the meaning ascribed to them below:

- (a) "**Ancillary Building**" means any Building ancillary to the main Building on any Lot including, without limitation, detached garages and storage sheds;
- (b) "**Architectural Guidelines**" means the set of building restrictions and regulations prepared by the Developer and affecting the Lots, referred to and incorporated herein by reference, as may be amended from time to time by the Developer;
- (c) "**Building**" means all buildings, improvements and structures of any type or kind located above or below ground level and any parts thereof (footings excluded), but shall not include Landscaping or Fencing;
- (d) "**Building Envelope**" means, for any particular lot, the area of the Lot within which the proposed Building and proposed Ancillary Building must be placed, or beyond which the Building and Ancillary Building are not allowed to project, based on the setback requirements for that Lot set out in section 4(i);
- (e) "**Building Envelope Plans**" means those drawings prepared by Koers and Associates Engineering Ltd. and attached to the Architectural Guidelines which set out the Building Envelope for each Lot;
- (f) "**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 reasonable require to ensure compliance with this Building Scheme,

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

(g) "**Building Scheme**" means the Declaration of Building Scheme to which this Schedule of Restrictions is attached, this Schedule of Restrictions and the Architectural Guidelines;

(h) "**Compliance/Damage Deposit**" means a deposit of three thousand dollars (\$3,000.00) to be paid by the Owner to the Developer at the time of the completion of the Owner's purchase of a Lot from the Developer which is required to:

- (i) offset the cost of possible damage to subdivision services, amenities and municipal works on or bordering a Lot or neighbouring Lot, or both, prior to or during Building construction; and
- (ii) ensure the Owner's compliance with this Building Scheme,

which deposit shall be returned to the Owner upon completion of construction of improvements provided that the site inspection report with respect to the Lot, prepared by the Developer at the Owner's request, shows that:

- (i) the provisions of this Building Scheme have been fully satisfied;
  - (ii) a final occupancy permit is issued by the Municipality;
  - (iii) all subdivision services and municipal works on and bordering the Lot and on neighbouring Lots are free from damage; and
  - (iv) curbs, sidewalks, and Streets adjacent to the Lot and neighbouring rights-of-ways are free from damage and construction debris;
- (i) "**Developer**" means Fairwinds Development Corporation and its successors and assigns;
- (j) "**Fencing**" means a fence, wall or similar structure;
- (k) "**Golf Course**" means the property located to the north of the Lots comprising the Fairwinds Golf Course;

- (l) **"Landscaping"** means all plant materials of any type or kind located above or below ground level, and any type or kind of pool, swimming pool, hot tub, landscaping lighting, retaining walls, patios, walkways, fencing, sidewalks or driveways 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"** means the person registered in the register of a land title office as owner in fee simple of a Lot, whether entitled to it in his or her own right or in a representative capacity or otherwise, or;
  - (i) where there is a registered agreement for sale and purchase of the Lot, the registered holder of the last registered agreement for sale and purchase; and
  - (ii) where there is a registered life estate, the tenant for life;
- (q) **"Street"** means any public street or road.

2. No person or persons shall:

- (a) place or deposit landfill, or any other like substance on any of the Lots;
- (b) excavate, blast or remove any fill or ground cover from any of the Lots or fell trees, clear brush or otherwise remove natural vegetation from any of the Lots;
- (c) apply for a building permit for the construction of any Building on any of the Lots; or
- (d) commence, place, erect or construct any Building, or make any alterations or extensions to the exterior of any Building, on any of the Lots if a building permit would normally be required by the Municipality for any such alterations or extensions;

without in each case first:

- (e) providing to the Developer the Building Plans, in triplicate, in respect of such Building or any alterations or extensions of such Building;
- (f) obtaining the written approval of the Developer of the Building Plans; and
- (g) having paid the Developer the Compliance/Damage Deposit,

provided that:

- (h) the Developer's response to the Owner's application for review of the Building Plans shall not be unreasonably withheld or delayed if all of the requirements of this Building Scheme have been complied with;
- (i) the Developer shall be deemed to have rejected the Building Plans if the person submitting the Building Plans pursuant to paragraph 2(e) has not received written notice of approval from the Developer within thirty days after receipt of the Building Plans by the Developer;
- (j) the refusal or failure of the Developer to approve the Building Plans will not be actionable by any person under any circumstances, it being in the sole discretion of the Developer to give or withhold such approval;
- (k) any approval of Building Plans granted by the Developer shall expire one year from the date of such approval being granted;
- (l) any changes to the approved Building Plans, including changes required by the Municipality for the issuance of a building permit, must receive written approval from the Developer prior to the changes being constructed; and
- (m) unless otherwise noted thereon, upon the Developer's approval of the Building Plans, the Developer shall be deemed to have given written approval for the cutting down, destruction or removal of any trees, brush or other natural vegetation from within the Building Envelope for 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 any of the Lots:

- (a) except in compliance with the provisions of this Building Scheme and all laws, bylaws, ordinances, rules, regulations and orders of all governmental bodies or authorities applicable to the Lots;
- (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 are first approved in writing by 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. The Developer, in its sole discretion, may approve other types of roofing materials. In any event, no duroid shingles and 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, even-toned brick, or natural coloured fine-textured stucco. The Developer, in its sole discretion, may approve other types of exterior finishes. In any event no "new-used" brick, vinyl and aluminium 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 situated 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 Lot boundaries:

<b>Lot #</b>	<b>Front Yard</b>	<b>Rear Yard</b>	<b>Side Yard</b>
1	8 metres	12 metres	3 metres
2	8 metres	10 metres	3 metres
3	8 metres	10 metres	3 metres
4	8 metres	10 metres	3 metres
5	8 metres	8 metres	3 metres
6	8 metres	8 metres	3 metres
7	8 metres	6 metres	3 metres
8	8 metres	8 metres	3 metres
9	8 metres	8 metres	3 metres
10	8 metres	6 metres	3 metres
11	8 metres	6 metres	3 metres
12	8 metres	6 metres	3 metres
13	8 metres	8 metres	3 metres
14	8 metres	8 metres	3 metres
15	8 metres	8 metres	3 metres
16	8 metres	10 metres	3 metres
17	8 metres	8 metres	3 metres
18	8 metres	8 metres	3 metres
19	8 metres	8 metres	3 metres
20	8 metres	8 metres	3 metres
21	8 metres	8 metres	3 metres
22	8 metres	8 metres	3 metres
23	8 metres	8 metres	3 metres

Lot #	Front Yard	Rear Yard	Side Yard
24	8 metres	8 metres	3 metres
25	8 metres	8 metres	3 metres
26	8 metres	8 metres	3 metres
27	8 metres	8 metres	3 metres
28	8 metres	8 metres	3 metres
29	5 metres from northwest lot line	5 metres from southeast lot line	6 metres from northeast lot line 4 metres from southwest lot line
30	8 metres	8 metres	3 metres
31	8 metres	8 metres	3 metres
32	8 metres from north road frontage	8 metres	3 metres from west lot line 5 metres from east road frontage
33	8 metres	8 metres	3 metres
34	8 metres	10 metres	2.5 metres
35	8 metres	8 metres	5 metres
36	10 metres from west lot line	25 metres from high water mark	5 metres
37	10 metres	A straight line between a point on the north lot line 17 metres from the high water mark and a point on the south lot line 25 metres from the high water mark	3 metres



Lot #	Front Yard	Rear Yard	Side Yard
38	10 metres	A straight line between a point on the north lot line 21 metres from the high water mark and a point on the south lot line 18 metres from the high water mark	3 metres
39	5 metres from west lot line	A line extending 17 metres due north from a point on the south lot line 21 metres from the high water mark, then extending due east for 20 metres (such point not to be closer than 15 metres from the high water mark), then extending due north to the north lot line	2.5 metres from north lot line 4 metres from south lot line
40	8 metres from road frontage	6 metres from east and southeast lot lines	2.5 metres from north lot line
41	8 metres	8 metres from north lot line	8 metres from northeast lot line 3 metres from west lot line
42	8 metres	8 metres	3 metres
43	8 metres	8 metres	3 metres
44	8 metres	8 metres	3 metres
45	8 metres	8 metres	3 metres
46	8 metres	10 metres	3 metres
47	8 metres	8 metres	3 metres

Lot #	Front Yard	Rear Yard	Side Yard
48	8 metres	8 metres	3 metres
49	8 metres	8 metres	3 metres
50	8 metres	8 metres	3 metres
51	8 metres	8 metres	3 metres
52	8 metres	8 metres	3 metres
53	8 metres	8 metres	3 metres
54	8 metres	8 metres	3 metres
55	8 metres	8 metres	3 metres

- (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. 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 Ancillary Building shall be of a type and design approved in writing by the Developer and 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. The Developer may, in its sole discretion, approve detached garages. No carports or one piece aluminium or steel garage doors shall be permitted;
- (m) unless the Fencing for the Lot is approved in writing by the Developer and meets the following standards:
- (i) no Fencing shall be constructed, erected or allowed or remain on any Lot adjacent to the Golf Course if such Fencing at or near the boundary line separating the Lot with the Golf Course is greater than 3.9 feet (1.2 metres) in height and unless such Fencing is screened by vegetation, of a type and design approved in writing by the Developer, planted on the Golf Course side of the Fencing;

- (ii) if the Lot is adjacent to the Golf Course no Fencing located in the side yards shall exceed 3.9 feet (1.2 metres) in height for a distance of 32.8 feet (10 metres) from the intersection of the side yard and the rear yard;
- (iii) no Fencing shall be constructed, erected or allowed to remain in 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 and the Developer has granted his prior written approval of such Fencing; and
- (iv) in any event, no Fencing shall be constructed, erected or allowed to remain which is greater than 5.9 feet (1.8 metres) in height or which is of a chain link type or electric string type of fencing;
- (n) unless the Landscaping shall be of a type and design approved in writing by 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. The Developer may, in its sole discretion, approve other types of driveway materials.

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 in writing by the Developer who shall give such approval only where in its sole and absolute discretion such use is deemed not to be a detriment to any of the Lots;
- (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, industrial trucks or industrial trailers 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 approved by 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 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;
- (f) 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;
- (g) no radio or television or transmitting antenna including satellite television receiving devices shall be placed on any Lot unless the device is completely enclosed within a Building and is not visible from outside the Building;
- (h) no heat pumps shall be placed in Buildings or on any Lot unless the siting has been approved by the Developer and the sound level at the property lines of the Lot will not exceed fifty (50) decibels;
- (i) no billboards, placards, advertising or signs or 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 without the prior written consent 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 shall be first approved by 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 an Owner lists Lots for sale;
- (j) no decorative Christmas lights shall be permitted on Buildings or displayed on the Lots except during the months of November, December and January;

- (k) no tennis court shall be constructed, placed, erected, installed or be permitted to remain on any Lot; and
- (l) no above ground pools shall be constructed, placed, erected, installed or be permitted to remain on any Lot without the prior written approval of the Developer.

6. The Owner of a Lot shall not:

- (a) construct, maintain, replace or repair any Buildings on the Owner's Lot except in compliance with the requirements of this Building Scheme;
- (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>; or
- (e) cut down, cause deterioration to, destroy or otherwise remove any trees, brush or other natural vegetation from any Lot without the prior written approval of the Developer, provided that the Owner of a Lot may remove trees, brush or other natural vegetation where, in the Owner's reasonable opinion, 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, the Developer or an Owner may require the offending Owner to replace such trees, brush, or other natural vegetation with similar trees, brush or natural vegetation and in addition, the Developer may retain the Compliance/Damage Deposit, if any, or may require the Owner to pay damages to the Developer in the amount of the Compliance/Damage Deposit.

7. The Developer or its agent shall at its sole discretion have the right to carry out on-site inspections during the construction period of a Building to ensure compliance by the Owner with the approved Building Plans. The Owner shall provide the Developer with timely notice of proposed changes to the approved Building Plans and approval for such

changes must be received in writing from the Developer prior to such changes being constructed.

8. No grading, excavation, construction, or other work shall be carried out upon a Lot which would interfere with, or alter in any way, the nature or established drainage systems of the Lot or adjoining Lots.

9. 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 to the satisfaction of the Developer, in its sole discretion.

10. The Developer reserves the right, in its sole and absolute discretion, to approve plans at minor variance with, or grant relief from, one or more of the restrictions set out in this Building Scheme dealing with Buildings and approval of Building Plans provided that the Developer is satisfied, in its sole discretion, that the design of the Building has architectural merit and is aesthetically appealing in relation to the site and neighbouring lots, and such relief shall not be considered as a waiver of the requirement of approval by the Developer for any of the restrictions and requirements contained in this Building Scheme.

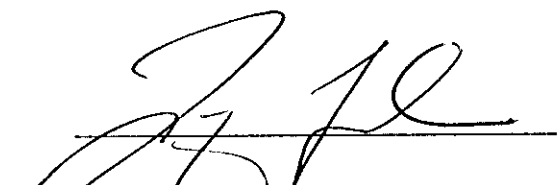
11. No Owner or any other person shall be in breach of the provisions of this Building Scheme if construction or Landscaping is interrupted by reason of strike, lockout, labour dispute, act of God, fire or other casualty so long as the owner or other person takes such steps as a reasonably available to it to minimize the effect of such occurrence and such Owner or other person diligently recommences the construction or Landscaping immediately after such occurrence.

**CONSENT AND PRIORITY AGREEMENT**

The undersigned, being the holder of a charge by way of Mortgage No. EB41024 as extended by ED100279 and EH106188, and modified by EG64243 (the "Charge") for valuable consideration, hereby consents to the granting of the within Building Scheme and agrees that the same shall take priority over The Toronto-Dominion Bank's right, title and interest in and to the lands charged thereby in the same manner and to the same effect as if the Building Scheme had been executed, delivered and registered prior to the execution and registration of the Charge and prior to the advance of any monies pursuant to the Charge.

Execution Date

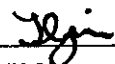
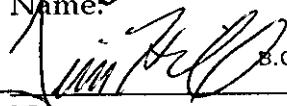

Officer Signature(s)

  
**LARRY J. GWOZD**  
*Barrister & Solicitor*  
 2700 - 700 WEST GEORGIA ST.  
 VANCOUVER, B.C. V7Y 1B8

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Transferor(s)

Signature(s)

THE TORONTO-DOMINION BANK  
 by its authorized signatories  
  
**GARRY KARCH**  
 SENIOR MANAGER  
 B.C. REAL ESTATE GROUP  
 Name:   
**THERESA GIV**  
 CREDIT ASSISTANT  
 B.C. REAL ESTATE GROUP  
 Name:   
**TIM A. HILL**  
 ACCOUNT MANAGER

END OF DOCUMENT