

15 JAN 2002 13 06

ET004538

Land Title Act

FORM 35

(Section 219.81)

DECLARATION OF BUILDING SCHEME

NATURE OF INTEREST: CHARGE: BUILDING SCHEME

HEREWITH FEE OF: \$

Address of person entitled to register this Building Scheme:

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

3730 Fairwinds Drive
Nanoose Bay, BC
V9P 9J6

VIA: KERRY A. POLLNER
BRIAN J. SENINI LAW CORPORATION
Barrister and Solicitor
30 Front Street, P.O. Box 190
Nanaimo, B.C., V9R 5K9

KITTO REGISTRY

BRIAN J. SENINI - Solicitor

10106

I, 3536696 Canada Inc. declare that:

- I am the registered owner in fee simple of the following land (hereinafter called "the Lots")
Lots 1 - 26, District Lot 78, Nanoose District, Plan VIP 73214.
- I hereby create a building scheme relating to the Lots.
- A sale of any of the Lots is subject to the restrictions enumerated in Schedule "A" attached hereto.
- The restrictions shall be for the benefit of all the Lots.

02 02/01/15 13:07:37 01 V1 3536696 CHARGE 455.00

Officer Signature(s)

Execution Date

Y	M	D
01	07	13

Transferor Signature

01 02/02/14 09:23:04 01 V1 351967 CHARGE 330.00

3536696 CANADA INC. by its duly authorized signatories:

Name: [Signature], VICE PRESIDENT

Name: [Signature], VICE PRESIDENT

[Signature]
Kerrie F. Forder
Solicitor, Prov. of Ontario
c/o Boutilier Goodman Real Estate Group Inc.
4 King St W
10th Floor
Toronto, Ont
M5H 1K6

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 matter set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- * If space insufficient, enter "SEE SCHEDULE" and attached schedule in Form F.
- ** If space insufficient, continue executions on additional page(s) in Form D.

SCHEDULE OF RESTRICTIONS

FAIRWINDS - PHASE 7C

THE BUILDING SCHEME RESTRICTIONS SET FORTH HEREIN SHALL APPLY TO EACH OF LOTS 1 TO 26 INCLUSIVE, DISTRICT LOT 78, NANOOSE DISTRICT, PLAN VIP73214.

1. In this Building Scheme, unless the subject matter or 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"** shall mean the written approval required from the Owner, 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 an Owner as defined herein;
 - (c) **"Architectural Guidelines"** means the set of building restrictions and ~~regulations~~ prepared by the Owner and affecting the Lots, referred to and incorporated herein by reference, as may be amended from time to time by the Owner;
 - (d) **"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;
 - (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 the applicable bylaws of the Municipality;
 - (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 Owner may reasonably require to ensure compliance with this Building Scheme,

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

- (g) "**Building Scheme**" shall mean and include this Declaration of Building Scheme attached hereto and the provisions of this Schedule of Restrictions;
- (h) "**Fencing**" means a fence, wall or similar structure;
- (i) "Front Yard" shall mean and include any part of a Lot lying between the adjacent public roadway that provides vehicular access to the Lot parallel and perpendicular 6.6 feet (2.0 metres) to the rear of the parallel face of any Building constructed on the Lot;
- (j) "**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;
- (k) "**Lot**" means any one of the Lots;
- (l) "**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;
- (m) "**Municipality**" means the Regional District of Nanaimo or other successor local municipal body having jurisdiction over the Lots;
- (n) "**Owner**" means 3536696 Canada Inc. and its successors and assigns;
- (o) "**Purchaser**" 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 Right to Purchase a Lot, the registered holder of the last registered Right to Purchase; and
 - (ii) where there is a registered Life Estate, the tenant of the Life Estate;
 - (p) “**Street**” means any public street or road;
 - (q) “**Work**” shall mean and include 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 Purchaser or anyone acting on behalf of a Purchaser, 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 Owner authorizing the proposed Work.
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 have received the Approval of the Owner;

- (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 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, 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;
- (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 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 Owner 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 Owner 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 Owner;
 - and

- (ii) 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 for the Lot, including type and design, has received the Approval of the Owner. 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.
- 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 Owner, 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 Owner;

- (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 Owner, 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 Owner and the sound level at the property lines of the Lot will not exceed fifty (50) 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 Owner. 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 Owner. 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 Purchaser 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 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 Purchaser of a Lot shall not:
- (a) construct, maintain, replace or repair any Building on a Lot, save and 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 1st and May 1st of any year in which case landscaping shall be completed by not later than the following June 1st PROVIDED ALWAYS THAT no Purchaser 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 Purchaser takes such steps as are reasonably available to minimize the effect of such occurrence and such Purchaser diligently recommences the construction of Landscaping immediately after such occurrence;
 - (e) cut down, cause deterioration to, destroy or otherwise remove any trees, brush or other natural vegetation from any Lot unless the Purchaser has first received the Approval of the Owner, PROVIDED ALWAYS THAT the Purchaser of a Lot may remove trees, brush or other natural vegetation where, in the reasonable opinion of the Purchaser, 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, a Purchaser may require the offending Purchaser to replace such trees, brush or other natural vegetation with similar trees, brush or natural vegetation;
 - (f) 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; or
 - (g) ~~take action to enforce any provision herein contained until the expiration of not less than thirty (30) days notice in writing of such intended action has been given by any such Purchaser to the Owner.~~
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 Purchaser.

9. The Owner hereby expressly reserves the right, in its sole and absolute discretion, to exempt any Lot remaining undisposed of by the Owner at the time the exemption is to take effect from any and all of the provisions herein and any such exemption shall not render the provisions so exempted invalid or unenforceable with respect to any other of the Lots charged by the provisions herein.