

LAND TITLE ACT
KAMLOOPS
(section 220(1))

DECLARATION OF BUILDING SCHEME

NATURE OF INTEREST CHARGE: Building Scheme

HEREWITH FEES OF: \$ 55.00

Address of person entitled to apply to register this building scheme:
MONTREAL TRUST COMPANY OF CANADA, in trust (see XK4919)
of #710, 530 - 8th Avenue S.W., Calgary, AB T2P 3S8

Full name, address, and telephone number of person presenting application:
MONTREAL TRUST COMPANY OF CANADA, in trust (see XK4919)
of #710, 530 - 8th Avenue S.W., Calgary, AB T2P 3S8

Signature of Applicant

Montreal Trust Company of Canada, in trust See XK4919, of #710, 530 - 8th Avenue S.W., Calgary, AB T2P 3S8, declare that:

- I am the registered owner in fee simple of the following land (the "Lots"):
Strata Lots 1 to 22 (inclusive)
District Lot 4596 Kootenay District
Strata Plan NES002344
Together with an interest in the common property in proportion to the unit entitlement of the strata lots as shown on form V
- 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 attached or annexed hereto.
- The restrictions shall be for the benefit of all the Lots.

EXECUTION(S):

Officer Signature(s)

Jonathan Lee
Notary Public in and for
the Province of Alberta
3700, 400 Third Ave., SW
Calgary, Alberta T2P 4H2
(403) 267-8222

Execution Date

Y	M	D
01	10	6
01	10	6

Chargeholder Signature(s)

MONTREAL TRUST COMPANY OF CANADA, in trust see XK4919 by its authorized signatory(ies)

Anne DeWaele

Name

LAURA LEONG
CORPORATE TRUST OFFICER

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.

CONSENT AND PRIORITY AGREEMENT OF CHARGE HOLDERS

The Montreal Trust Company of Canada, of #710, 530 - 8th Avenue S.W., Calgary, AB T2P 3S8, and Venstar Financial Inc. of #910, 510 - 5th Street Sw, Calgary, AB, T2P 3S2 the holder of the following registered charges, consent to the registration of the above Declaration of Building Scheme and agree that it shall have priority over our respective charges.

EXECUTION(S):

EXECUTION(S):

Officer Signature(s)

Execution Date

Chargeholder Signature(s)

Jonathan Lee
Notary Public in and for
the Province of Alberta
3700, 400 Third Ave., SW
Calgary, Alberta T2P 4H2
(403) 267-8222

Y	M	D
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01		

MONTREAL TRUST COMPANY
OF CANADA, in trust, See XK4919
by its authorized signatories

Anne DeWaele

LAURA LEONG
As to Mortgage: KR5250 TRUST OFFICER

Notary Public in and for
the Province of Alberta

VENSTAR FINANCIAL INC. by its
authorized signatories

Name

ALAN BALTANN

Name

As to Mortgage KR55252 and
Assignment of Rents KR55253

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.

- Notes:
1. The consent and grant of priority of chargeholders may be in separate counterparts of Form 35.
 2. The execution of all declaring or consenting parties must be witnessed in accordance with Part 5 of the Land Title Act.
 3. The type and registration number of the charge must be typed or printed immediately below the signature of the owner of the charge.

SCHEDULE OF RESTRICTIONS

SCHEDULE OF RESTRICTIONS

1. **DEFINITIONS**

1.1 For the purposes hereof the following words or phrases shall have the following meanings:

- (a) "Declarant" means the declarant of this building scheme being Montreal Trust Company of Canada
- (b) "Improvements" means any and all buildings, structures or fixtures, or development of any sort whatsoever including landscaping and walkways;
- (c) "Land Title Act" means the Land Title Act in force in the Province of British Columbia and any amendment thereto or replacement thereof;
- (d) "Lot" or "Lots" has the meaning set out in the Declaration to which this Schedule is attached and any part or parts into which it may be subdivided;
- (e) "owner" or "owners" means, individually or collectively as the context requires, one or more or all of the persons registered as having an interest as the owner in fee simple in respect of any of the Lots from time to time;
- (f) "present" or "presently" means as at the date of the Declaration to which this Schedule is attached; and
- (g) "Strata Corporation" means the corporation created and defined by Section 13 of the "Condominium Act".

2. **GENERAL RESTRICTION**

2.1 No Lots shall be used or developed nor shall there be commenced any Improvements on any part of the Lots except in compliance with the restrictions herein set out and except when the owner commencing or permitting the same or under whose auspices the same is commenced, is not in breach of any of the provisions hereof.

3. SPECIFIC RESTRICTIONS

3.1 No building, residence, structure, fence or other improvement or any addition thereto or alteration thereof which is visible from the exterior of such improvement shall be erected, constructed, placed or maintained in, on or above the lots unless and until proper plans and specifications (together with an additional copy of such plans and specifications for the permanent retention of the Declarant) showing all elevations and specifications thereof, setting forth all materials to be used with details of location and elevation thereof in relation to property lines and finished ground elevation have been submitted to and approved in writing by the Declarant.

3.2 The refusal or failure of the Declarant to give the approval referred to in paragraph 3.1 herein shall not be actionable by any person under any circumstances, it being in the sole discretion of the Declarant to give or withhold such approval. Without restricting the foregoing, in considering whether or not to give the approval referred to in paragraph 3.1 herein, the Declarant shall have the right, but shall not be obligated, to refuse to grant such approval if it is contemplated by the plans and specifications submitted that:

- (a) any building, dwelling or other structure to be constructed, placed or maintained on any Lot is not in accordance with Regional District of East Kootenay current building setback and building bylaw regulations;
- (b) any residence is to be constructed, placed or maintained on any Lot which contains interior area which is less than;
 - (i) one thousand two hundred (1,200) square feet on the ground floor thereof if a single storey dwelling house, or;
 - (ii) one thousand (1,000) square feet on the ground floor thereof and one thousand five hundred (1,500) square feet on the total of all floors if a multiple level dwelling house;
- (c) the roof of any building, dwelling or other structure which is to be constructed, placed or maintained on any Lot is not to be constructed of cedar shakes, concrete tile, metal or a finish compatible with the theme of the development of which the Lots are a part;
- (d) an exterior wall of any building, dwelling or other structure which is to be constructed, placed or maintained on any Lot is not to be constructed of cedar, brick, stone or a finish compatible with the theme of the development of which the Lots are a part;

- (e) any material is to be utilized, placed or maintained on any Lot which is old and unattractive or which is not in compliance with all laws and regulations currently then applicable to building on that Lot;

Following its review of each submission, the Declarant shall communicate in writing its approval or reasons for not giving approval to the person making the submission and shall also, where appropriate, make recommendations to the person in writing as to how the siting, design or exterior finish and colour of the proposed structure might be amended to fit more harmoniously with the natural surroundings and nearby dwellings which are already completed or under construction or for which the Declarant has already approved plans and specifications.

In the event the person submitting plans and specifications pursuant to paragraph 3.1 herein does not receive notice of approval within 40 days after receipt by the Declarant of such plans and specifications, such plans and specifications shall be deemed to be disapproved.

3.3 No building, dwelling or other structure other than one residence for one family or household unit and one further structure as may be incidental to the residential use thereof shall be erected, constructed, placed or maintained on any of the Lots except as provided in paragraph 3.4 herein and no such further structure shall be erected, constructed, placed or maintained on any of the Lots unless the exterior finish and design thereof is in harmony with the exterior finish and design of the residence on that same Lot.

3.4 None of the Lots nor any building, dwelling or other structure thereon 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, hotel, beer parlour, resort, store, restaurant, shop or place of trade or business unless and until such use is approved in writing by the Declarant who shall give such approval only where in its sole and absolute discretion such use is deemed to be for the benefit of the whole area comprised by the Lots; provided however that this restriction shall not prevent physicians, lawyers, writers, artists or other professional men or women from having their offices or studios on the Lots.

3.5 Notwithstanding any other provision contained herein, no fence shall be erected, constructed, placed or maintained on any of the Lots which:

- (a) exceeds three (3) feet in height;
- (b) is constructed of anything except natural wood, stone, or a finish compatible with the theme of the development of which the Lots are a part;

without the prior written approval of the Declarant.

3.6 No building, dwelling or other structure shall be allowed to remain with an unfinished exterior for a period longer than 12 months after the commencement of construction, erection or placing thereof on any Lot.

3.7 No Lot shall be devoid of proper landscaping for a period longer than 12 months after the commencement of construction, erection or placing of any building, dwelling or other structure thereon.

3.8 No lawns, ground cover, plants, shrubbery, trees or other form of landscaping shall be placed, grown or permitted on any of the Lots which is unattractive or incompatible with the landscaping of adjoining Lots and no such material or other landscaping shall be unreasonably neglected or maintained in a messy or untidy condition. Where there is any material on or landscaping of a Lot which is not in accordance with this paragraph, the Declarant, its agents, employees and independent contractors shall have the right, exercisable in its sole discretion, but shall not be obligated, to enter upon such Lot to remove such improper materials and perform such landscaping or maintenance so that all material on and landscaping of such Lot is in accordance with this paragraph, all at the sole cost and expense of the owner of such Lot, who shall pay the cost thereof to the Declarant upon delivery of an invoice or invoices therefor. The Declarant reserves the right, and the owner of such Lot provides the right for the Declarant to file a lien on the subject Lot for the amount of the invoice or invoices plus interest at 12% per annum (or other rate as the court may allow) until paid. All costs of filing and removing the lien shall be paid by the Lot owner.

3.9 No poultry, swine, sheep, horses, cattle or other livestock shall be kept or permitted upon any of the Lots except for small dogs, cats and other small pets, and no such pets as are permitted shall be allowed at large beyond the boundaries of the Lot owned by the owner of such pets. Any animal which is not permitted by or controlled in accordance with this paragraph may be removed or caused to be removed by the Declarant, or its agents or employees, at the risk and expense of the Lot owner.

3.10 No Lot shall be used for any purpose or purposes which are or will be offensive to the owner or occupant of any other Lot and, without restricting the foregoing, no noisy, obnoxious, offensive or immoral activity shall be permitted on any of the Lots.

3.11 No person shall be permitted to use or discharge any firearm, air gun or explosives including fireworks of any nature on a Lot, provided that the Declarant may in its discretion permit the use of firearms, air guns or explosives for specific purposes.

3.12 The structure erected by an owner upon a Lot as permitted by the Declarant, whether occupied or unoccupied, and each Lot shall be maintained in such manner as to prevent its becoming unsightly by reason of unattractive growth or the accumulation of rubbish or debris and all rubbish and garbage shall be kept in proper pest-proof containers.

3.13 No motorcycles, snowmobiles, trail bikes or other all-terrain vehicles of any description shall be operated on a Lot, or on the Common Areas except that licensed and insured vehicles may use the main road for the sole purpose of ingress and egress between the Lots and public roadways.

3.14 No exterior or interior signs, advertisements or billboards of any kind shall be placed, erected or exhibited in any manner on or about a Lot, provided that the occupant of any Lot may post a sign in the form approved in writing by the Declarant showing the name of the occupant of the Lot and the Lot street address.

4. MISCELLANEOUS

- 4.1 The provisions hereof shall be in addition to, but not in substitution for:
- (a) the provisions of any easements and rights to acquire easements presently registered in respect of all or any part of the said Lots;
 - (b) any generally applicable laws, ordinances, rules, regulations or orders of governmental authorities applicable to the Lots; and
 - (c) any restrictions pursuant to Section 220 of the Land Title Act registered in respect of all or any part of the Lots.

4.2 Nothing contained in this Building Scheme shall be construed or implied as imposing on the Declarant any liability in the event of non-compliance with or non-fulfilment of any of the covenants, conditions or stipulations contained herein.

4.3 No condoning, excusing or waiver by any person of and default, breach or non-observance by any other person at any time or times in respect of any provision herein contained shall operate as a waiver in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of any person in respect of such continuing default, breach or non-observance, and no waiver shall be inferred or implied by anything done or omitted to be done by the person having such rights.

4.4 The provisions hereof have been instituted for the general benefit of all owners of the Lots from time to time, and all such owners, in agreeing to buy Lots acknowledge such general benefit and a personal benefit attaching to that part of or interest in the Lot purchased by them and each of such owners agrees that his being in violation of the restrictions herein set out shall constitute any injury and damage to all of the owners which is or may be impossible to measure monetarily, and as a result, any or all of the other owners shall, in addition to all of the other remedies in law and in equity (including the right to damages), be entitled to a decree or order restraining or enjoining any breach of any of the provisions hereof and any owner in breach of any such provisions and named in the application for such an order shall not plead in defence thereto that there would be an adequate remedy at law, at equity, in damages or otherwise.

4.5 The Declarant reserves the right to transfer some or all of the rights and responsibilities granted herein at the Declarant's sole discretion to the Strata Corporation.

4.6 Should any part of this Building Scheme be declared or held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Building Scheme which shall continue in full force and effect and be construed as if this Building Scheme had been declared without such invalid or unenforceable part.

4.7 No owner shall sell, transfer or convey his interest in the Lots unless he concurrently obtains an agreement in writing binding upon the transferee and in favour of all of the other owners that such transferee shall be bound by the provisions hereof including this paragraph and whether or not this Declaration of Creation of Building Scheme or any of the provisions herein are found to be unenforceable as a statutory building scheme or a restrictive covenant.

4.8 Wherever and whenever the approval or consent of the Declarant is required to be obtained such approval or consent may be given by such officer, agent, committee, person or persons as may from time to time be nominated or appointed in writing by the Declarant for such purpose and such power of appointment or right of nomination may be delegated by the Declarant.