

SCHEDULE "A"

"EAGLE BROOK"

Fairmont Hot Springs, BC

STATUTORY BUILDING SCHEME

Declaration of Covenants and Restrictions

The within Statutory Building Scheme is declared by Fairmont Hot Springs Resort Ltd., as Grantor.

WHEREAS the Grantor is the registered owner in fee simple of certain real property situate in Fairmont Hot Springs in the Province of British Columbia, which property is legally known and described as:

Strata Lots 1 through 22, District Lot 138, Kootenay District Plan NES2874 (the property)

AND WHEREAS the Grantor has completed the registration of a subdivision plan creating single-family lots, roads and common areas (the Phase 1 Subdivision);

AND WHEREAS the Grantor desires to have the Phase 1 Subdivision developed, maintained and preserved for high quality residential use and enjoyment;

NOW THEREFORE THIS BUILDING SCHEME WITNESSETH that in consideration of the foregoing, the Grantor does hereby for itself, its successors and assigns in title, covenant and agree to observe and be bound by the hereinafter mentioned covenants, which said covenants shall be construed to be and shall be covenants running with the land and shall be appurtenant to all of the said bare land strata lots for the benefit of all the respective owners thereof, from time to time, as follows:

Section 1 -- Land Use Rules and Restrictions

a) Compliance with Laws and Building Scheme

No construction or occupation of any improvements shall take place which is in violation of any municipal bylaws, ordinances or the provisions of this Statutory Building Scheme.

b) Buildings

Development is restricted to one single-family residence on each Lot, together with such ancillary improvements and uses as are expressly provided for herein. No owner may construct, cause to be constructed, place or permit to be placed, any trailer or package home, any manufactured or modular home, or any similar type of dwelling unit. Each residence built upon each Lot in the Phase 1 Subdivision must be stick-built and site-designed pursuant to the provisions of this Building Scheme.

c) Use and Condition of Lot

Development of improvements on each Lot shall be restricted to the development area specified by the Grantor for each Lot. The remainder of each Lot shall be a non-disturbance area, which area shall be left in its natural state. No change in the natural topography of the Lot or removal of any natural ground and/or tree cover shall be permitted, except in the instance of removal of dead trees, shrubs or other vegetation as is deemed by the Grantor to be a fire hazard, in which instance such trees, shrubs or other vegetation shall be removed. No man-made improvements shall be constructed upon or placed or maintained within a non-disturbance area on any Lot.

The development area/non-disturbance area for each Lot shall be defined by means of a development plan specific for each Lot. Such development plan shall be provided to the purchaser as part of the agreement of purchase and sale. No disturbance of any Lot shall be permitted prior to the owner obtaining a building permit in the manner hereinafter provided.

d) Objectionable Behaviour

No Lot owner, or resident, tenant or visitor to any Lot shall cause or permit any noxious or offensive activity to be carried on upon their Lot, nor shall any activity occur that shall cause a nuisance, embarrassment, disturbance or annoyance to any other Lot owner.

e) Camping/Clotheslines

There shall be no camping or any other form of temporary occupation upon any Lot. No clothesline(s) shall be permitted to be erected upon any Lot.

f) Vehicle Storage/Operation

No mobile home, travel trailer, truck camper, house trailer, nor any derelict or unlicensed motor vehicle shall be kept, parked, stored or maintained on any Lot unless same is fully enclosed within the Lot owner's garage so as to be removed from view from any adjoining Lot. All boats and boat trailers shall be kept within a fully enclosed garage. No off-road motorcycles, all-terrain vehicles or similar types of recreational vehicles shall be permitted to be operated or driven upon any Lot.

g) Garbage

No garbage, rubbish or trash shall be kept upon any Lot except in covered receptacles.

h) Use of Residences

No owner shall cause or permit the owner's residence to be used for other than a single-family residence, and in particular, no residence shall be used for the purpose of any trade, trade vocation, commercial enterprise of any description, charitable, religious or educational uses, and without restricting the generality of the foregoing, none of them shall be used as an apartment house, bed and breakfast

establishment, recreational facility, boarding house, rooming house, vacation rental, hotel, beer parlour, resort, store, restaurant, shop or place of trade or business unless and until such use is approved in writing by the Grantor 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 making their offices or studios on the Lots. In addition, no owner shall permit the residence to be occupied by any person not the owner thereof or rented to any person for any period less than 28 days without the written permission of the Grantor, which permission may be arbitrarily refused.

i) Destroyed Improvements

All improvements which have been partially or totally destroyed shall be fully repaired, reconstructed or removed within three (3) months from the date of destruction or such reasonably longer period of time as may be necessary to complete any repair or reconstruction with due diligence and continuity provided, however, that the time for completion of such repair, reconstruction or removal shall be extended for the period of actual delay encountered due to reasons beyond the owner's control (other than the owner's financial inability), such as strikes, lockouts, embargoes, shortage of labour and materials, wars, riots and acts of God. In the event of removal, the Lot shall be cleared of all debris and restored to the grade which existed prior to the destruction of the improvement thereon (provided, however, that all basements and similar excavations shall be restored to the level of the surrounding grade), and shall be landscaped promptly.

j) Antennae

No pole, mast, antenna or aerial structure shall be installed or maintained on any Lot. No satellite dishes or exterior television receiving dish or antenna of any sort shall be permitted on any Lot except such dishes as are less than 18" in diameter, and such permitted dish shall be only affixed to the rear roof of the residence and in no case shall the permitted dish be visible from the access road.

k) New Materials

All improvements shall be constructed with new materials (except for used materials incorporated into the improvements for decorative or aesthetic effect), and no used structure shall be relocated to or placed upon any Lot.

l) Fences

No permanent fencing shall be constructed on any Lot, except where required for purposes of enclosing outdoor swimming pools and, at the Grantor's discretion, a fence along walkways and a screen fence for lots backing onto Ogilvy Wills may be built where and as approved by the Grantor. All other barriers shall consist of natural vegetation only (i.e.: hedges).

m) No Time Sharing, Etc.

No time-share ownership plan or time-share use plan, nor any fractional ownership or vacation rental plan shall be permitted to operate with respect to the use, occupancy or ownership of any Lot.

n) Utility Lines

All power, telephone, water, sewer, television and other utility lines servicing any Lot shall be installed underground.

o) Tree Removal

No living tree or trees may be cut or removed or caused to die without the express approval of the Grantor; provided however, the Grantor may authorize the reasonable removal and/or trimming of trees and natural vegetation from a Lot during the approval of plans and construction phase of development, as set out in section 4 hereof. Thereafter, owners desiring to remove trees to provide, improve or protect views shall be obliged to obtain the permission of the Strata Association prior to such removal.

Section 2 -- Architecture

The following architectural controls are applicable to all construction, reconstruction and refinishing of all improvements placed or constructed upon any Lot, and shall be complied with by each owner.

It is intended that the appearance of residences within the Phase 1 Subdivision shall be completed to ensure an overall aesthetically pleasing and harmonious street scape.

The architectural theme for residences and all other related components of the Phase 1 Subdivision is alpine mountain. Preferred materials will generally include treated shakes or approved composite material facsimile, slate or approved composite material facsimile, or approved metal roofing, rough-sawn timber beams and columns, wood battens, horizontal wood siding and shakes wall cladding, or approved composite facsimiles, stone and rock accents, and other such complementary products.

The configuration, shape and form of residences and permitted related improvements should reflect and integrate the existing natural and man-made opportunities and constraints. The natural features would include topography, view lines, tree cover, sun exposure and other such issues. The man-made conditions would include road access, servicing, utilities, drainage and adjoining property development.

a) Homes Style & Size

The residence style and size permitted within the Phase 1 Subdivision shall have the following minimum sizes:

- i) single storey 1,600 sq. ft.;
- ii) storey and a half 1,700 sq. ft. (total) with 1,400 sq. ft. on main floor;

- iii) two storey minimum combined 1,800 sq. ft.

Repetitive use of similar dwelling styles (form, shape and appearance) will not be accepted. Each house should be individual and distinct from others in the Phase 1 Subdivision.

b) Garages

All houses must have attached garages (or attached by means of a breezeway), which garages must be located on the street side of the house and must be integrated aesthetically with the overall house appearance. Garages must be a minimum of 500 sq. ft. and a minimum of 9 ft. in height. All garages must accommodate two vehicles.

All eave lines on flat or walkout Lots must have 12 ft. maximum height from front grade.

c) Accessory Buildings

Any accessory building located on the Lot shall be finished to match the principal building located thereon.

d) Outside Walls

Outside walls should be broken and articulated to provide character on the front and rear elevations. Front to back split-levels are encouraged where the natural terrain is conducive.

Outside walls shall be clad wood, brick, stone or approved facsimile. No vinyl or metal siding is acceptable. The use of horizontal wood siding (or approved composite facsimile) having a maximum wale of 6" is preferred.

For brick and stone, a minimum return of 24" should be provided.

Trim and accents may consist of rough-sawn timber plank and post, milled or natural log, rough-sawn or hand-split shakes or wood shingles, brick, natural or synthetic boulder, natural or cultured stone, and other such rustic materials as may be approved by the Grantor.

The front elevations of residences shall have a minimum of 20% face area in boulder, stone or rock. On corner Lots, the side elevation facing the side street will require the same detailing as the front elevation. All fronts must be wood siding, shake or shingle (or approved composite facsimile), with fire-retardant stain and 24" return on side corners.

e) Roofs

All house roofs shall have a minimum pitch of 6 in 12 with minimum eave and gable extensions of 16". Roof cladding shall consist of pre-finished metal, clay, concrete, approved composite facsimiles, or other such low-combustible materials.

f) Fascias and Soffits

All fascia shall be wood (or approved facsimile). No vinyl fascias shall be permitted. All eavestroughing, soffits and downspouts shall be colour-coordinated with the trim of the house.

g) Exposed Foundations

Exposed concrete from basement foundation walls shall not be more than 24". The exposed face shall be parged.

h) Balconies and Porches

Main floor porches are permitted on the street side of houses. Balconies can be provided along the sides and rears of houses as setback requirements permit.

I) Fireplaces and Chimneys

Both wood or gas fireplaces or stoves are acceptable. Wood-burning fireplaces and stoves must be equipped with approved spark arresters.

All fireplace chimneys on an outside wall and any chimney flues must be enclosed and clad to complement the exterior appearance of the house, and rock, brick or stone shall be preferred.

Central propane has been provided for the subdivision. Propane tanks will not be permitted on any lot.

j) Colours

No house shall have more than three colours displayed on any exterior wall, excluding natural wood and stone. Medium to dark earthtone colours are allowed, and no white material of any kind shall be displayed on any exterior wall (such as white vinyl doors and/or white vinyl window frames, etc.).

k) Animals

No owner(s) shall permit their animals to roam at large within the Subdivision. Dogs must be leashed when not upon the owners Lot. Owners may construct a dog run upon their Lot but such dog run must:

- i) be within the disturbed area of the Lot, fully 10' from side yards;
- ii) constructed of wood (no chain link structure shall be permitted) and be 42" maximum in height;
- iii) be constructed at the rear of the owners house and hidden and/or camouflaged from view; and
- iv) maximum square footage of such dog run shall not exceed 330 sq. ft.

l) Parking

No owner or tenant shall cause or permit vehicles to be parked on the Subdivision access roads. All vehicular parking must be restricted to the owner's driveway (maximum 2 vehicles) and the owners enclosed garage (2 vehicles minimum).

m) Exterior Lighting

All exterior lighting installed either upon the exterior of the house or upon the Lot shall conform to the following standards:

- i) no mercury vapour lamps, or lamps which emit light with a similar character;
- ii) no neon lamps, or tube lighting of any kind;
- iii) no flashing lights or lamps of any type whatsoever shall be used upon any Lot.

Exterior lighting should be selected for aesthetic illumination except where safety or security is the primary reason for illumination. Lights shall not exceed a lumen level of one foot-candle at the ground, unless a greater intensity is required for safety reasons, or by applicable bylaws.

n) Signs

All signs are prohibited within the Phase 1 Subdivision with the exception of:

- i) temporary signs (not to exceed 2' by 3' and set in approved frames) for the purpose of advertising the Lot or the house for sale;
- ii) temporary construction signs (during the time of construction, only) denoting the architects, engineers, contractor and other related subjects, shall be permitted;
- iii) identification signs showing the name of the owner or occupant, and/or the house number or name, not to exceed 12" in height;
- iv) any sign erected by the Grantor or the Strata Association;
- v) street identification signs erected by the Grantor or the Association.

Section 3 -- Construction Covenants

Each owner shall abide by the restrictions described below during the course of any construction upon the owner's Lot.

a) Grading and Excavation

Unless otherwise approved by the Grantor, no owner shall take or borrow any fill or topsoil material from any other area of the Property, nor dispose of any material from the owner's Lot on any other area of the Property.

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 system thereon.

b) Debris and Trash Removal

All trash and debris on the construction site shall be cleaned up and removed from each construction site at least once a week to an off-site landfill disposal. Each construction site must have a dumpster or disposal bin placed on it for the deposit of construction debris, and such dumpster or disposal bin shall be serviced weekly. Light weight material, packaging and similar items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Each construction site shall be kept neat and shall be policed properly to prevent it from becoming a public eyesore or nuisance. Dirt, mud, debris or concrete resulting from activity on each construction site shall be removed promptly from public or private roads, open spaces, driveways and other portions of the Property.

c) Compliance with Laws

Each owner shall comply with all laws governing or administering the construction of improvements upon the owner's Lot.

d) Dust and Noise

All Lots will be developed and improvements will be maintained thereon by the Grantor and other third parties. Each owner understands and accepts that such activities may result in the creation of dust, noise, vibrations and other nuisances by the Grantor or by such third parties, and agrees that such construction activities, dust, noise, vibrations and other nuisances shall not constitute a breach of any covenant or warranty by the Grantor or serve as the basis for the filing of any suit against the Grantor for abatement or injunction of such activities, dust, noise, vibrations or nuisances or for damages or otherwise or for any complaint with any court or regulatory agency.

Section 4 -- Procedures for Approval of Plans and Construction

No construction (including any grading, excavation or fill work) shall be performed or commenced on any Lot without the prior approval of the Grantor.

a) Prior to Approval

Prior to application to the Regional District of East Kootenay for a building permit, each Lot owner shall:

i) pay to the Grantor a security deposit in the amount of \$5,000.00, which deposit shall ensure the owners compliance with the provisions of this section;

ii) provide to the Grantor all architectural plans and specifications in respect of the proposed design and construction of the proposed improvement upon the Lot; and

iii) make formal application for a building permit only after receipt of the Grantor=s approval of the proposed improvements;

(iv) provide evidence to the Grantor that they have contracted with one of the Grantor=s approved contractors, as provided for in the agreement of purchase and sale, for the construction of the residence upon the Lot.

Plans and specifications shall include:

I) a site plan for the parcel showing (A) proposed building locations, (B) existing and proposed contour lines, (C) proposed location of all amenities and utilities, (D) proposed auto access, and (E) proposed parking. The siting of the building shall allow for generous green spaces between properties and comfortable side yards for neighbouring properties. Final siting of all buildings shall be determined by the Grantor;

II) a grade slip showing the elevations for lowest top of footings and the final grade;

III) working drawing of the floor plans;

IV) drawings showing all elevations of all improvements;

V) description of exterior materials and colour, with samples;

VI) a landscape plan showing locations of existing trees and proposed landscape plan;

VII) the owner's proposed construction schedule shall provide for completion within twelve months of the date of the Grantor's approval under this Section, excepting landscaping and driveway completion, which shall be completed within eighteen months of the Grantor's approval.

b) Construction to Commence Within Three (3) Years

Construction of the owners residence must be commenced within 3 years of the date of registration of title to the original owner thereof. Construction will be deemed to commence upon the owners receipt of a building permit from the Regional District of East Kootenay.

In the event the owner shall fail to commence construction upon the owners Lot within the aforesaid period, then the Grantor, at its option, may elect to re-purchase the Lot from the owner in the manner and subject to the terms and conditions of an option agreement as specified in the Grantors agreement of purchase and sale in respect of the Lot.

c) Subsequent Changes

Any amendment, variation, change, omission from or addition to any item previously approved by the Grantor (other than amendments, variations, changes and additions which are immaterial or insubstantial) shall require the Grantors prior approval.

d) Completion of Work

All work approved by the Grantor shall be prosecuted to completion diligently and in good faith. Promptly upon the completion of any work for which the approval of the Grantor is required, the owner doing such work or for whom such work was done shall give written notice thereof to the Grantor, and within ten (10) days thereafter the Grantor, or the Grantor's duly authorized representative may inspect such work to determine whether it was done in compliance with the Grantor's approval, and shall notify the owner of any non-compliance within such ten (10) day period, whereupon the owner shall remedy such noncompliance within a period of fifteen (15) days after notice of such non-compliance is received by the owner, or if such non-compliance reasonably cannot be remedied with the said 15-day period, the owner shall begin to remedy such non-compliance within the said 15-day period and with due diligence shall remedy such compliance as soon as reasonably possible. Upon final completion of the improvements the owner shall apply to the Grantor for a completion certificate. Upon receipt of same, the owner will be entitled to a refund of the aforesaid security deposit, subject only to the provisions of sub-paragraph (e) below.

e) Breach of Covenant

The owner will not allow any breach of any of the covenants contained herein to continue for a period in excess of fifteen (15) days after notice in writing is delivered to the Lot owner by the Grantor. In the event the owner allows such breach to continue, then the Grantor, or the Association, as the case may be, may cause such work as may be necessary to cure such breach to be performed and the cost thereof including any administrative and legal costs shall be a debt owing by the owner, payable on delivery to the owner of such Lot of an invoice for such work. The above-mentioned security deposit may, at the option of the Grantor or Association, as the case may be, be applied by the Grantor or the Association to the payment of such curative work, administrative and/or legal costs, in which case the owner shall have no further right to repayment of the said security deposit.

f) Rejection of Approval

Any rejection of a request for approval with respect to these restrictions shall be final and binding and shall not be open to question by the owner of the Lot, and failure of the approving body to enforce these restrictions or to exercise its power in a judicial manner shall not render the approving body liable in damages or to any claims or demands whatsoever.

g) Alterations, etc.

After construction of any improvement upon the Lot is completed, no owner shall, except with the prior approval of the Grantor, make any alterations to such improvement which would affect the exterior appearance thereof.

h) Exterior Maintenance

Each owner shall maintain the exterior of all improvements so that the exterior does not in any way appear to be in a state of disrepair or neglect. Any change in exterior colour or material will require the prior approval of the Grantor.

Section 5 -- No Representations by the Grantor; Non-Liability

No review or approval by the Grantor of any item submitted to the Grantor pursuant to this Statutory Building Scheme shall constitute a warranty or representation, to anyone, direct or indirect, that such item:

- a) has been prepared free of defects or is of good workmanship or design, or will result in improvements which are readily marketable or free of design or construction defects; or
- b) complies with any or all applicable laws (including building code requirements); or
- c) will result in any Government entity's or any other person's approval of same.

The Grantor shall not be liable to the owner or any other person for any damage, loss or prejudice suffered or claimed on account of:

- A) the Grantor's mistake in judgment or negligence; or
- B) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, or other request or item, whether or not defective; or
- C) the construction of any improvement or performance of any work, whether or not such construction of performance complies with this Statutory Building Scheme; or
- D) the manner, appearance, style or quality to or in which any Lot shall be developed, improved, landscaped, maintained or occupied.

Section 6 -- Enforcement of this Statutory Building Scheme

Part 1 Persons Entitled to Enforce this Building Scheme

The following persons (the "Enforcing Person") shall have the right to exercise any remedy at law or in equity for the enforcement of this Statutory Building Scheme:

- a) the Grantor, for such period of time as the Grantor shall retain ownership of the Lots within the Phase 1 Subdivision;
- b) thereafter, and in perpetuity, the designated representative of the Strata Association or its assignee.

The Grantor shall, upon sale of 100% of the Lots within the Phase I Subdivision, formally transfer and assign all its right, title and interest in and to the within Statutory Building Scheme to the Association, with the purpose and intent that the Association shall thereafter administer and enforce the Building Scheme in place and in stead of the Grantor.

Part 2

If any owner or other person subject to this Statutory Building Scheme shall breach or fail to comply with any provision of this Statutory Building Scheme, and such breach or non-compliance shall not be fully remedied within fifteen (15) days after notice of the breach or non-compliance is sent to or received by the owner or, if such breach or non-compliance cannot reasonably be remedied with the said 15-day period, such owner shall have failed to begin to remedy such non-compliance with the said 15-day period and shall have failed to exercise good faith and due diligence to remedy such breach or non-compliance as soon as reasonably possible, then each Enforcing Person (except as otherwise stated) shall have the following rights and remedies:

a) Without liability to the owner or any other person for trespass or damages, to enter upon any Lot and require such Lot owner, at the owner's cost and expense, to perform immediately all work necessary or desirable to remedy such breach or non-compliance, and/or to abate summarily and remove any improvement or anything else or any condition which is not in compliance; and/or

b) To commence and maintain actions and suits to require the owner to remedy such breach or non-compliance or for specific performance, or to enforce by mandatory injunction or otherwise all of the provisions of this Statutory Building Scheme, or to restrain or enjoin any breach or threatened breach of this Statutory Building Scheme, or to recover damages; and/or

c) To pursue all other rights and remedies available at law or in equity.

In any action for the enforcement of the provisions of this Declaration or for damages or any other form of relief, the prevailing party in such action shall be entitled to recover from the losing party all of the prevailing party's costs, expenses and reasonable solicitors' fees.

No remedy herein reserved is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to any remedy given hereunder or now or hereafter existing at law or in equity. The Enforcing Person shall have the right to hire contractors and agents in performing any work to be performed by the Enforcing Person.

No Enforcing Person, nor any other person, shall have any liability whatsoever if it or any other Enforcing Person elects not to enforce any of the provisions of this Statutory Building Scheme or if it or any other Enforcing Person undertakes such enforcement and thereafter terminates enforcement activities or does not succeed in such enforcement activities.