

26 OCT 2007 10 16

LB128717

Page 1 of 9 pages

C-65.65 FTS

LAND TITLE ACT  
FORM 35  
(section 220(1))

## DECLARATION OF BUILDING SCHEME

NATURE OF INTEREST CHARGE: Building Scheme

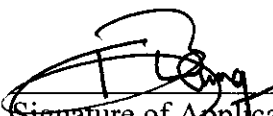
HEREWITH FEES OF: \$ 65.65

RE 07/10/26 10:30:10 01 KL 018431  
CHARGE 038.65

Address of person entitled to apply to register this building scheme:  
Suite 900 - 999 West Hastings Street  
Vancouver BC V6C 2W2

Full name, address, and telephone number of person presenting application:  
B. Glenn Leung  
McCarthy Tétrault LLP  
P.O. Box 10424, Pacific Centre  
Suite 1300, 777 Dunsmuir Street  
Vancouver, British Columbia  
Canada V7Y 1K2

SUBMITTED BY: KERSHAW  
KUROYAMA REGISTRY

  
Signature of Applicant or  
Solicitor or Authorized Agent

Tower Ranch Holding Corporation (Inc. No. BC0449686) (the "**Developer**") declares that:

1. The Developer is the registered owner in fee simple of the following land:

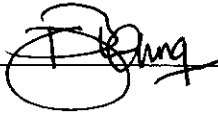
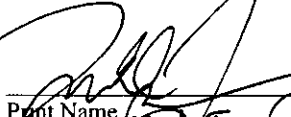
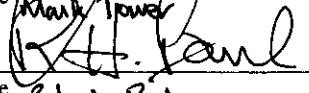
Lots 1 to 54  
Section 31  
Township 27  
Osoyoos Division Yale District  
Plan KAP85114

(collectively, the "**Land**")

2. The Developer hereby creates a building scheme relating to the Land.

3. The Land, and any part thereof, is subject to the restrictions enumerated in the schedule attached or annexed hereto.

## EXECUTION(S)

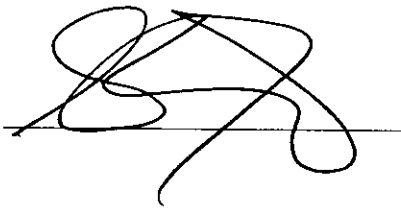
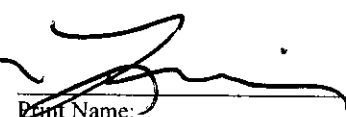
Officer Signature(s)	Execution Date			Developer Signature(s)
	Y	M	D	
 <b>B. GLENN LEUNG</b> <i>Barrister &amp; Solicitor</i> 1300 - 777 DUNSMUIR STREET VANCOUVER, B.C. V7Y 1K2 604-643-7108	07	07	27	<b>TOWER RANCH HOLDING CORPORATION</b> by its authorized signatory  Print Name <u>Mark Tower</u>  Print Name <u>Robert Paul</u>

## 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 Bank of Nova Scotia, the holder of Mortgage KH21405, modified by LB26067 (extended by LB26066), and Assignment of Rents LB26068 consents to the registration of the above Declaration of Building Scheme and agree that it shall have priority over our charges.

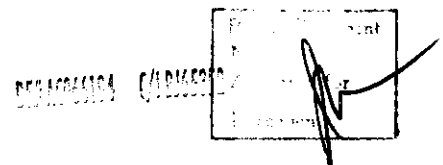
<p>Officer Signature(s)</p>  <p><b>SARAH A. BATUT</b> Barrister &amp; Solicitor 2100 - 1075 West Georgia Street Vancouver, B.C. V6E 3G2 604-631-4954</p>	<p><b>Execution Date</b></p> <table border="1"> <thead> <tr> <th>Y</th> <th>M</th> <th>D</th> </tr> </thead> <tbody> <tr> <td>07</td> <td>07</td> <td>31</td> </tr> </tbody> </table>	Y	M	D	07	07	31	<p>Chargeholder Signature(s)</p> <p><b>THE BANK OF NOVA SCOTIA</b>, by its <del>authorized signatory (ies)</del> <i>duly</i> <i>appointed attorney</i></p> <p>Print Name: _____</p>  <p>Print Name: <b>Gary M. Lindsey, AGM</b> Global Risk Management</p>
Y	M	D						
07	07	31						

### OFFICER CERTIFICATION

**BW 485436**

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 declared by Tower Ranch Holding Corporation (hereinafter called the "**Master Planner**").

1. All home plans and landscaping plans must be approved by the Administrator appointed hereunder prior to making application for a building permit in respect of any lot (a "**Lot**") forming part of the Lands. The Administrator will administrate and control all design elements and features requiring approval under these restrictions and under the Tower Ranch Design Guidelines as determined, published and modified from time to time by the Master Planner in its sole discretion (the "**Design Guidelines**"). The Administrator will be that person appointed from time to time by the Master Planner or that person appointed as Administrator pursuant to section 8, as the case may be.

Unless specifically permitted in writing by the Administrator, no person will commence any improvements of any sort (collectively or individually herein referred to as "**Improvements**"), including without limitation, any:

- (a) excavation or removal of any fill, trees or ground cover;
- (b) application for development approval or a building permit;
- (c) construction of any buildings or other improvements of whatsoever nature; or
- (d) landscape treatment,

on any of the Lots without first:

- (e) submitting the plans and specifications (the "**Plans and Specifications**") to the Administrator, for the prior written approval by the Administrator; and
- (f) complying with the provisions set out herein and in the Design Guidelines and obtaining all approvals contemplated hereunder from the Administrator.

Except for the first review and one subsequent modification in respect of a Lot, any application or reapplication to the Administrator for approval of any Plans and Specifications shall, in the discretion of the Administrator, include a fee in payment of expenses incurred by the Administrator in providing its approval hereunder in an amount required from time to time by the Administrator. Plans and Specifications submitted to the Administrator shall be prepared in accordance

with, and shall comply in all respects with, the Design Guidelines. The Administrator shall receive and consider the Plans and Specifications in a timely manner and either grant or reject approval of such Plans and Specifications, or make recommendations for alterations of such Plans and Specifications, provided always that the Administrator shall not act arbitrarily.

2. No alterations or modifications to any Improvements constructed on any Lot which have been approved by the Administrator pursuant to the terms hereof shall be made without the approval in writing of the Administrator and the approval criteria and procedures herein and in the Design Guidelines then in effect shall apply to all such alterations and modifications.
3. Without limiting the generality of section 1 or section 2:
  - (a) no removal of any trees or groundcover will be carried out at any time on any Lot except in accordance with the Design Guidelines;
  - (b) any Improvements on a Lot intended to be used as a dwelling unit is restricted to a duplex or single family dwelling; and
  - (c) no auxiliary suites will be permitted on Lots.
4.
  - (a) After a person commences construction of any Improvements on any of the Lots upon complying with the requirements set out herein, such person shall not discontinue the construction of such Improvements until the same is completed in all respects in accordance with the approved Plans and Specifications.
  - (b) No owner of a Lot shall fail to substantially complete the Improvements, including landscaping, in accordance with the approved Plans and Specifications within the 24 month period after the on-site commencement of such Improvements.
  - (c) No temporary structure, trailer or residence will be permitted within any Lot except as is reasonably required during any period of construction which is being carried out in accordance with the requirements of this Building Scheme.
  - (d) No house trailer, travel trailer, mobile home, camper, recreational vehicle, similar or other vehicle or structure designed for or capable of providing overnight accommodation, unlicensed vehicle, commercial truck or other commercial vehicle, boat, trailer, machinery or equipment will be permitted within any Lot, except within wholly-enclosed buildings or garages or within an area with adequate screening approved in writing by the Administrator.

- (e) No owner will cause or permit any Improvements on his or her Lot to deteriorate or become unsightly or incompatible with the general character of the neighbourhood in which the Lots are situated, whether as a result of lack of regular and reasonable upkeep, maintenance and repair, or for any other reason whatsoever.
- (f) No visible billboard, placard, advertising or signage of any kind will be permitted within any Lot, except for a standard "For Sale" sign when the Lot is for sale, a small and unobtrusive sign identifying a home occupation or business, political signs during any political campaign, or any other sign approved in writing by the Administrator in its discretion.
- (g) Notwithstanding subsections 4(a) and (b), a person will not be in breach of the restrictions therein if such construction is interrupted by reason of strike, lockout, labour dispute, act of God, inability to obtain labour or materials or both, enemy or hostile action, civil commotion, and fire or other casualty provided that such person takes such steps as are available to it to minimize the effect of such occurrences and diligently recommences construction after each such occurrence.
- (h) The design and exterior finishes and colours of a house to be constructed on any Lot must not be the same or too similar (in the sole opinion of the Administrator) to that of any house situated on any Lot which is located within three Lots of the Lot in question, or which is located directly across the street from the Lot in question.
- (i) No in ground swimming pools are permitted on any Lot that is adjacent to any golf course fairway unless appropriate screening is constructed to the satisfaction of the Administrator. No above ground swimming pools are permitted on any Lot.
- (j) No dog runs, kennels or shelters are permitted on any Lot unless approved by the Administrator and, if so approved, shall be fully screened from all roads and all golf course fairways.
- (k) No playground equipment or structures (including swing sets, slides, trampolines and similar equipment) are permitted in the rear yard of any Lot that is adjacent to any golf course fairway, open space or road, unless approved by the Administrator.
- (l) No fencing is permitted within the front yard of any Lot. All fencing must be reviewed and approved by the Administrator prior to installation. Fencing in rear yards that are adjacent to any golf course fairway will be restricted in the manner set out in the Design Guidelines.

- (m) No vegetable gardens are permitted on any Lot that is adjacent to any golf course fairway, open space or road unless the garden would not normally be seen from any golf course fairway, open space or road. The location and size of any garden must be specified on the landscape plan approved by the Administrator.
  - (n) No composting units or structures of any type are permitted on any Lot unless the design and location are approved by the Administrator.
  - (o) No landscape ornaments or figurines are permitted on any Lot unless approved by the Administrator. All such ornaments and figurines must be specified in the landscape plan approved by the Administrator.
5. Following approval of the Plans and Specifications, no construction of Improvements will be commenced or carried out on any Lot:
- (a) except in accordance with the approved Plans and Specifications; and
  - (b) except in compliance with all applicable laws, ordinances, rules, regulations or orders of governmental or municipal authorities.
6. No person carrying out any works upon any Lot shall damage sidewalks, curbs, cobblestone street pavers, landscape elements, gas lines, telephone lines, sewers, water lines, electrical distribution equipment or other utilities (the “Services”) and:
- (a) the Administrator may either repair any such damage and charge the owner of the Lot all costs incurred inclusive of an administration fee of 10% of such costs or deliver written notice to the owner of the Lot to repair and replace the Services if so damaged; and
  - (b) if the owner of the Lot refuses or neglects to repair or replace any damaged Services, the Administrator may undertake such repairs and replacement and the owner of the Lot shall indemnify the Administrator against the cost of all repairs (inclusive of an administration fee of 10% of such costs) which the Administrator shall make,
- and the owner of each Lot hereby grants to the Administrator an irrevocable license from the date hereof until such date as the applicable approving authority issues the final approval in respect of the subdivision in which the Lot is located, to enter upon the owner’s Lot for the purpose of exercising its rights pursuant to this section 6.
7. No restrictions in this Schedule of Restrictions will be applicable to a Lot when the Master Planner is the registered owner thereof.

8. When the Master Planner ceases to be the registered owner of any portion of the Lands (including all Lots), the Administrator will be appointed by the Home Owners' Association (the "**HOA**") in respect of the Tower Ranch Development or, if no such association exists at that time, the Administrator will be elected by simple majority of the owners of the Lots. Notwithstanding the foregoing, the Master Planner will be entitled, at its option, to assign its responsibility for appointing the Administrator hereunder to the HOA at any time following incorporation of the HOA.
9. No owner will permit any damaged Improvements to remain in their damaged state unless the owner is pursuing with all due diligence reasonable steps to either repair the damaged Improvements to their pre-damaged condition or to completely remove the damaged Improvements and restore and clean up the Lot in a good and workmanlike manner forthwith after such removal.
10. No material alteration to or modification, maintenance or repair of any Improvements will be carried out unless Plans and Specifications are submitted to and approved by the Administrator in accordance with this Building Scheme and unless the owner of a Lot complies with all other provisions of this Building Scheme in respect thereof as if they were new Improvements.
11. The Master Planner reserves the right to exempt any Lot which is owned by the Master Planner at the time the exemption takes effect from all or any of the restrictions and benefits herein.
12. Any notice, demand or other communication to the Administrator in respect of this Building Scheme will be in writing and may be given to the Administrator c/o Intrawest Placemaking, Ste. 900 – 999 W. Hastings St., Vancouver, B.C., V6C 2W2 or such other address as the Administrator may notify the owner in accordance with this section 12. Any notice, demand or other communication to any owner in respect of this Building Scheme will be in writing and may be given to the owner of a Lot at the owner's address shown on title to the Lot according to Land Title Office records. A written notice, demand or other communication will be deemed to be received (i) when delivered, if delivered by hand, or (ii) five business days after the mailing thereof, if mailed by postage prepaid mail in a post office box in the Province of British Columbia.
13. The provisions of this Building Scheme are in addition to, and not in substitution for, any other applicable laws, bylaws, rules, regulations or orders of any applicable authority and any other contractual requirements or requirement under any encumbrance registered against title to any of the Lots.
14. Any owner of a Lot, including the Master Planner and the Administrator, if either of them is an owner of a Lot, will have the authority to enforce any provision of this Building Scheme or the Design Guidelines, but under no circumstances will



any owner of a Lot, including the Master Planner and the Administrator, have the obligation to enforce any of these restrictions. In addition to any other remedies available at law or in equity, a court of competent jurisdiction may order injunctive relief restraining any breach of any provision of this Building Scheme or mandating the performance of any act or thing in order to cure any breach of any provision of this Building Scheme.

15. No owner of a Lot will be liable for any breach of this Building Scheme in respect of any Lot to the extent that such breach arises after such person has ceased to be the owner of the Lot.
16. This Building Scheme will run with and bind each of the Lots and each and every portion thereof for the benefit of all of the owners of Lots and will render each and every owner or occupier of the Lots at any time and from time to time subject to the restrictions hereof.
17. If any provision of this Building Scheme is found by a court of competent jurisdiction to be void or unenforceable, such provision will be severed from this Building Scheme and the remaining provisions of this Building Scheme will remain in full force and effect.
18. This Building Scheme will expire and be of no further force or effect on the date which is 25 years after the date of the registration hereof in the Land Title Office.

END OF DOCUMENT