

FA100926

18 AUG 2006 12 00

FA100925

LAND TITLE ACT
[Section 219 (9)]
PROVINCE OF BRITISH COLUMBIA
FORM C
GENERAL DOCUMENT

Page 1 of 13 Pages

1. APPLICATION: (Schwabe/Wensley/42934/JDM/jan)

MULLIN, DEMEO, Lawyers
1626 Garnet Road
Victoria, BC, V8P 3C8
Phone: (250) 477-3327

Signature of Authorized Agent

C. Drake

2/3

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

Lots 1 to 4 inclusive, Section 6, Range 2 East, South Saanich District,
Plan VIP 81549

2c

3. NATURE OF INTEREST: *

DESCRIPTION
SEE SCHEDULE

DOCUMENT REFERENCE

PERSON ENTITLED TO INTEREST

01 06/08/18 12:00:31 01 VI 715517
CHARGE \$130.40

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No.
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument

A selection of (1) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): * **SAMUEL RICHARD SCHWABE, SHELLIE MAE SCHWABE, KEVIN WILLIAM WENSLEY and CIDALIA MARIA WENSLEY HSBC BANK CANADA (as to priority only)**

6. TRANSFEREE(S): *

THE CORPORATION OF THE DISTRICT OF CENTRAL SAANICH, a Municipal Corporation having its municipal offices at 1903 Mount Newton Cross Road, Saanichton, BC, V8M 2A9

7. ADDITIONAL OR MODIFIED TERMS: * N/A

8. EXECUTION(S): The Transferor(s) accept(s) the above consideration and understand(s) that this instrument operates to transfer the freehold estate in the land described above to the Transferee(s).

OFFICER SIGNATURE

EXECUTION DATE

**JOHN D. MULLIN
BARRISTER & SOLICITOR
1626 GARNET ROAD
VICTORIA, BC V8P 3C8**

Y	M	D
06	08	08

SAMUEL RICHARD SCHWABE

SHELLIE MAE SCHWABE

SOLICITOR OR NOTARY
(as to both signatures)


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.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

OFFICER SIGNATURE

EXECUTION DATE

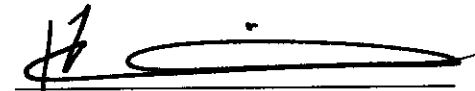
PARTY(IES) SIGNATURES



**JOHN D. MULLIN
BARRISTER & SOLICITOR
1628 GARNET ROAD
VICTORIA, BC V8P 3C8**

(as to both signatures)

Y	M	D
06	08	08


KEVIN WILLIAM WENSLEY
CIDALIA MARIA WENSLEY

SOLICITOR OR NOTARY
(As to both signatures)

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.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

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EXECUTION DATE

PARTY(IES) SIGNATURES

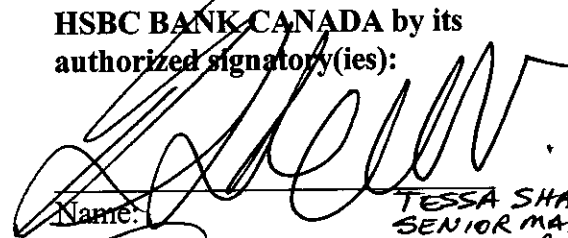


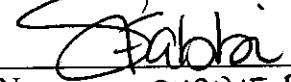
LIZ WYLIE
A Commissioner for Taking Affidavits
for British Columbia
401 West Georgia Street
Vancouver, B.C. V6B 5A1
Date Commission Expires: May 31, 2009

(as to both signatures)

Y	M	D
06	8	16

HSBC BANK CANADA by its
authorized signatory(ies):


Name: **TESSA SHAW**
SENIOR MANAGER
DIRECT BANK.


Name: **STEPHANIE FARBI**
ACCOUNT MANAGER PFS 3
DIRECT BANK

SOLICITOR OR NOTARY
(As to both signatures)


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LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

OFFICER SIGNATURE

EXECUTION DATE

PARTY(IES) SIGNATURES




Commissioner for taking
oaths in and for the
Province of British Columbia



PAUL D. HAMES
CHIEF CONSTABLE
CENTRAL SAANICH POLICE
1903 Mt. Newton Cross Road
Saanichton, BC V8M 2A9
(as to both signatures)

Y	M	D
06	07	10

THE CORPORATION OF THE
DISTRICT OF CENTRAL SAANICH
by its authorized signatory(ies)


Name: **JACK MAR**
Mayor
District of Central Saanich

Name:

GARY NASON
Administrator
District of Central Saanich

SOLICITOR OR NOTARY
(As to both signatures)

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.

LAND TITLE ACT
FORM E
SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

3. NATURE OF INTEREST:

DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire Instrument	Transferee
Priority Agreement granting Covenant No. <u>FA 100925</u> priority over Mortgage No. CA180199 and Assignment of Rents No. CA180200	Page 12	Transferee

TERMS OF INSTRUMENT – PART 2
SECTION 219 COVENANT

THIS INDENTURE made this 8 day of August, 2006.

WHEREAS the Transferor is the registered owner of all and singular those certain parcels or tracts of land and premises situate, lying and being in the Municipality of Central Saanich, in the Province of British Columbia and more particularly known and described in Item 2 on the first page hereof (hereinafter referred to as the "Lots").

AND WHEREAS the Transferee approved the creation and development of the Lots on the basis of compliance with certain site requirements, building requirements and storm water management obligations.

AND WHEREAS the Transferee has requested that the Transferor as owner of the Lots enter into this covenant with the Transferee.

AND WHEREAS the Transferor has agreed to grant this covenant.

AND WHEREAS The Transferor has agreed to plant 24 native species trees, six per Lot, after registration of the subdivision plan creating the Lots, and to provide the Transferee with a security deposit to guarantee performance of this obligation and has entered into this covenant to further secure the foregoing.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and in consideration of the sum of Ten Dollars (\$10.00) now paid by the Transferee to the Transferor, the receipt whereof is hereby acknowledged, and other good and valuable consideration, the Transferor does hereby covenant and agree with the Transferee, pursuant to Section 219 of the *Land Title Act*, as follows:

1. SITE REQUIREMENTS

1.1 Tree Preservation

No trees existing on the Lots as of the date of registration of this covenant, or to be planted by the Transferor as required by this Agreement and as a condition of approval of the subdivision creating the Lots may, without the Transferee's approval in writing, be cut down or removed from the Lots, except those which are unhealthy or otherwise dangerous, as determined by a written report from a registered arborist. For the purposes of this section, intentionally damaging the roots or trunk of a tree so as to cause death shall be deemed to be cutting down or removing the tree. If an unhealthy or dangerous tree is to be removed in accordance with an arborist's recommendation, the Transferor shall replace it with an appropriate tree or trees acceptable to the Transferee.

The Transferor acknowledges that Garry Oak, Arbutus and Dogwood trees are protected by bylaw of the Transferee, regardless of their location on the Lots.

In the event that the Transferor cuts down or removes any tree on the Lots in contravention of this Agreement or fails to reasonably maintain the trees to be planted pursuant to this Agreement, the Transferor shall, upon being given notice to do so, replace such tree with a specimen or specimens of the same species as were cut down or removed. The aggregate trunk diameter at breast height of the replacement tree or trees shall be equal to the aggregate trunk diameter at breast height of the tree or trees that were cut or removed. The Transferor shall also provide to the Transferee in respect of each tree cut down or removed a sum of \$100 per centimetre of trunk diameter measured at breast height, for the Transferee's use in tree planting projects in public parks, boulevards or other public areas of the Transferee's choosing; and reimburse the Transferee in respect of any investigation and enforcement costs it has incurred in relation to the contravention, including actual legal costs. The Transferor shall maintain any replacement tree planted on the Lots in accordance with sound arboricultural practices.

As a measure of remediation for the removal of the stand of mature trees in the northeast corner of Lot 1, the Transferor shall plant six native species trees (the "Initial Replacement Trees") on each of the Lots within one year of registration of the subdivision plan creating the Lots. The parties acknowledge that the Transferor has prior to the execution of this Agreement provided security in the amount of \$12,000 to the Transferee to secure this obligation. The Transferee may retain the security until it is reasonably satisfied that each Initial Replacement Tree has been satisfactorily established.

The Initial Replacement Trees shall have a minimum size of 7 cm caliper DBH and shall be of suitable Native Species. The Initial Replacement Trees shall be watered, fertilized and maintained strictly in accordance with appropriate landscape standards and shall be replaced at the Transferor's expense if they do not survive transplanting.

The Transferor shall submit a Landscape Plan showing the size, type and location of the Initial Replacement Trees for approval by the Transferee's Approving Officer prior to the issuance of any building permit in respect of any of the Lots, and the Transferee shall be entitled to withhold any such building permit until the Landscape Plan has been approved.

1.2 Landscaping

Landscaping of the Lots may include any combination of lawns, trees, shrubs, and planting beds, but shall not consist entirely of lawns. Plantings of native plant species should be used in preference to exotic species. Street trees along the Wallace Drive frontage are encouraged with a minimum of one per Lot at 7 cm caliper DBH.

1.3 Lot Grading

Grading of the surface elevation of the Lots shall conform as nearly as possible to the pre-existing surface grades of the Lots and shall not substantially alter the pre-existing surface water drainage pattern.

1.4 Retaining Walls

Maximum height of retaining walls on the Lots shall be 1.2 m. The exterior surface of exposed concrete retaining walls shall be faced with exposed aggregate, rock, or split face concrete block.

2. BUILDING REQUIREMENTS

The requirements of this section 2 apply to any dwelling constructed, erected or placed on the Lots. Prior to obtaining any building permit in respect of the Lots, the owner shall obtain the written approval of the Transferee's Approving Officer to the design of the dwelling.

2.1 Approval Before Construction

No single family dwelling shall be constructed on the Lots until the Transferee's Approving Officer has approved in writing the design of the dwelling as being in compliance with this Agreement.

2.2 Building Envelope

No building shall be built, constructed or placed on any part of Lot 3 except within the area outlined in heavy black line on the Explanatory Plan of Covenant prepared by Ronald L. Johns, BCLS, a reduced copy of which is attached hereto as Schedule "A". *VIP 81599*

2.3 Building Massing

The gross floor area of the upper storeys in any multi-storey dwelling, including areas of roof decks, shall be no more than 90% of the gross floor area of the storey beneath, measured to the outer surface of the exterior walls and including attached garages. The second storey shall be either stepped back or encompassed within the roof structure.

For a multi-storey dwelling, at least 50% of the length of the outer walls of an upper storey fronting a highway, road or private access road, shall be offset a minimum of 1.2 m from the outermost walls or veranda structural beam located in the storey beneath.

Any building mass that contains a garage shall appear separate and secondary to the mass of the dwelling, with no full floor level permitted above the garage space for a distance of at least 1.2 m (4') back from the front wall of the dwelling unit.

No more than 10% of the length of outer walls of any storey of a building elevation shall extend outwards beyond the outer walls of the storey beneath.

No building elevation shall include columns, pillars or pilasters carried continuously through more than one storey.

Rear building elevations shall have varied planes.

2.4 Streetscape

The design of each dwelling shall be substantially different from that of neighbouring dwellings. For the purpose of this requirement, dwellings whose floor plans have been mirrored, flipped or rotated will not be considered to have substantially different designs.

Setting garage doors back from the dwelling frontage is encouraged. Side-entry garages are also encouraged.

2.5 Front Entry

The front entrance of every dwelling on the Lots shall be readily visible from the street or private access road. Front doors shall be highlighted by being recessed, extended outward, or accessed from a porch or veranda. Porches and verandas are encouraged.

2.6 Exterior Finish and Materials

The dominant exterior finish on each building on the Lots must be carried around all sides and shall not be limited to the front building face. Natural finish materials such as wood shingles, cedar siding, fibre-cement plank siding and board-and-batten, in conjunction with brick or natural stone, are preferred. Vinyl and metallic aluminum siding are prohibited on any building or structure.

Stucco is not permitted as a primary finishing material but may be used as an "in-fill" fields or panels. The maximum area of stucco allowed within any elevation shall not exceed 40% of the area of that elevation excluding the area of windows and doors in that elevation.

No building elevation fronting a highway, road or private access road shall have a single exterior finishing material that is applied over more than 75% of the area of the wall elevation and the area of the wall elevation shall, for the purpose of this calculation, not include any glazed area.

2.7 Doors and Windows

Metallic coloured window sashes are prohibited.

Windows and doors must be trimmed or recessed from the face of the exterior wall.

If shutters are used they must be sized to the opening.

2.8 Roof and Chimney

Buildings and structures with multiple roof lines are encouraged. Designs incorporating steeper slopes are recommended.

Roofing materials on sloping roofs on any building or structure including any detached garage shall be cedar shakes or shingles, fiberglass reinforced shingles, slate, or other materials with a natural appearance.

All chimneys must be encased in finishing materials of stone, cultured stone, brick or siding material. Exposed 'Jumbo' brick or concrete block chimneys are prohibited.

2.9 Driveway Locations

No driveways shall be located on any of the Lots except as approved in writing by The Corporation of the District of Central Saanich. There shall be no driveway access to Lot 4 from Wallace Drive.

3. STORM WATER MANAGEMENT

- 3.1 No dwelling shall be built, erected, or otherwise placed on the Lots and the Transferee shall be under no obligation to issue any building permit for such improvement, unless and until the Transferor at his, her or their own expense installs runoff control facilities on the Lots that will reasonably control post development storm water runoff from the Lots to the extent that volumes of runoff water occurring after construction shall not be greater than runoff water volumes occurring prior to construction during similar weather conditions. Installation of runoff control facilities may occur prior to or concurrently with construction of a single family dwelling for which a building permit has been granted.

- 3.2 Without limiting the generality of clause 3.1, the Transferor shall install a retention system complying with the specifications to be provided by the Transferee as part of the runoff control facilities and shall connect all storm drains from all buildings, structures and impermeable surfaces on the Lots to the retention system such that all storm water runoff from such surfaces on the Lots enters the retention system prior to entering the storm drainage system of the Transferee. The Transferor shall inspect the retention system prior to September 30th in each calendar year and ensure that the retention system is in operation and shall maintain the retention system such that the retention system will operate within its design parameters at all times.

4. GENERAL TERMS AND CONDITIONS:

- 4.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, administrators, executors, successors, and permitted assignees, including all persons who after the date of the Agreement acquire an interest in the Lots or any parcel into which the Lots may be subdivided, but no person is liable for any breach of the Agreement that occurs after they have transferred all of their interest in the Lots.
- 4.2 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 4.3 The Transferor acknowledges that no waiver of this Agreement on the part of the Transferee shall be effective unless it is a waiver in writing given pursuant to a resolution of the Council of the Transferee.
- 4.4 The Transferor will indemnify and save the Transferee harmless from and against any claims, demands, actions, loss, damage, costs and liabilities for which it may be liable, for which it may suffer or incur or be put to by reason of the granting of the covenants in this Agreement or any breach of the covenants by the Transferor, including any costs the Transferee incurs in the enforcement of this Agreement on a solicitor and own client basis.
- 4.5 The Transferor agrees to allow the Transferee access to the Lots for the purposes of the tree planting required pursuant to section 1.1 of this covenant on the Transferor's default, and agrees to reimburse the Transferee for any actual cost of such tree planting on the Transferor's default that is in excess of the amount of the security indicated in section 1.1.
- 4.6 Whenever the singular or the masculine are used in this Agreement they shall be construed as being the plural or feminine or body corporate where the context or the parties hereto so require.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of *the Land Title Act* Form C and Form D to which this Agreement is attached and which form part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS **HSBC BANK CANADA** (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (called the "Charges") encumbering the Lots (the "Lots") described in Item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Victoria Land Title Office under numbers CA180199 and CA180200 respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lots.
2. The Chargeholder hereby grants to the Transferee described in Item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lots, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

NOTICE DECLINING TO REGISTER
SECTION 308 (FORMERLY SECTION 288) - LAND TITLE ACT

VICTORIA LAND TITLE OFFICE
850 BURDETT AVE
VICTORIA BC V8W 1B4

Date of Issue: 24-AUG-06

MULLIN, DEMEO
C/O GUY DRAKE

In the matter of the following application(s):

Doc.: FA100921	to FA100924	FREEHOLD TRANSFER	
Doc.: FA100925		COVENANT	Returned
	FA100926	PRIORITY AGREEMENT	Returned
Doc.: VIP81549		SUBDIVISION PLAN	

Related to the following parcels:

01	06/08/25 11:05:48 01 VI	716502
	DEFECT / WITHDR	\$30.00

009-016-023

TAKE NOTICE that I am unable to proceed with registration of the noted application(s). My reasons for refusing to proceed and my requirements are as follows:

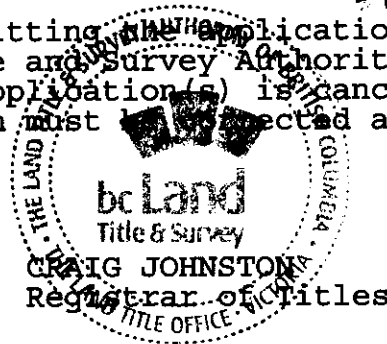
FA100925 - REQUIRE A REFERENCE PLAN AS TO PARAGRAPHS 2.2 AND 2.9

If these requirements are not met within 31 days from the date of this notice, the application(s) will become cancelled and void.

Fee for this notice: \$30.00

Please pay the defect fee when re-submitting the application(s).
Cheques are made payable to "Land Title and Survey Authority of BC".
A cancellation fee will apply if the application(s) is cancelled.
Any document which is returned herewith must be corrected and re-submitted.

KATIE SALMOND
Title Examiner
Telephone No.: 356-7462



VIP81599

If you wish to review the contents of this notice with the Land Title Office, please contact the title examiner.