

# **ALBERTA GOVERNMENT SERVICES LAND TITLES OFFICE**

**IMAGE OF DOCUMENT REGISTERED AS:**

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**ORDER NUMBER: 52851123**

## **ADVISORY**

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**To the Registrar of the South Alberta Land Registration District**

**CAVEAT FORBIDDING REGISTRATION**

Take notice that, the **Town of Taber, A-4900-50 Street, Taber, Alberta, T1G 1T1** claims an interest under and by virtue of rights granted to it under a restrictive covenant and registered pursuant to Section 651.1 of the Municipal Government Act RSA 2000 by **1338768 Alberta Ltd. to the Town of Taber** in

**Lots 1 to 28 inclusive, Block 9 and,**

**Lots 60 to 83 inclusive, Block 3**

**All in Plan 201 2110184**

Excepting thereout all mines and minerals being lands described in Certificate of Titles \_\_\_\_\_ standing in the name of **1338768 Alberta Ltd.** and I forbid the registration of any person as transferee or owner of, or of any instrument affecting the estate or interest, unless the certificate of title is expressed to be subject to my claim.

I designate the following address as the place at which notices and proceedings relating hereto may be served:

*Town of Taber A4900 50 Street Taber AB T1G 1T1*

Dated this 2 day of October, 2020

TOWN OF TABER

Per:

*P. Marks*

## AFFIDAVIT IN SUPPORT OF CAVEAT

I, Phyllis Monks, Town of Taber make oath and say:

1. That I am agent for the above named caveator.
2. That I believe that the said caveator has a good and valid claim on the said lands, and I say this caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

I certify that Phyllis Monks satisfied me that he/she is a person entitled to affirm.

Sworn before me at the Town )  
of Taber, in the Province of )  
Alberta, this 5<sup>th</sup> day of )  
October, 2020 )

P. Monks  
Signature

  
Commissioner for Oaths in and  
for the Province of Alberta

RAEANNE KEER  
A Commissioner for Oaths  
in and for Alberta  
Expires November 10, 2022

Expiry: November 10, 2022

***Westview Estates Subdivision***  
***Phase 6***  
***Taber, Alberta***

***Restrictive Covenant***  
***and***  
***Design Controls***

IN THE MATTER OF THE LAND TITLES ACT, R.S.A 2000, c.L-4, AND AMENDMENTS THERETO;

AND IN THE MATTER OF A RESTRICTIVE COVENANT MADE PURSUANT TO SECTION 48 THEREOF

**RESTRICTIVE COVENANT**

The undersigned, 1338768 Alberta Ltd., of the City of Lethbridge, as registered owner of an estate in fee simple, subject, however, to such reservations, exceptions and encumbrances as are notified on the existing Certificates of Title to those parcels of land legally described as:

LOTS 1 THROUGH 28 INCLUSIVE BLOCK 9 and  
LOTS 60 THROUGH 83 INCLUSIVE BLOCK 3 and  
ALL IN PLAN 141 2110184  
201

EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter collectively referred to as "the Lands");

does for itself and for its successors in title (each of which is hereinafter called "an owner" or hereinafter collectively referred to as "the owners") covenant and agree to observe and be bound by the hereinafter mentioned covenants, which covenants shall be construed to be and shall be covenants running with the Lands, and shall be appurtenant to and be binding upon the successors in title from time to time of all of the Lands for the benefit of all of the respective owners thereof, from time to time, such covenants being as follows:

1. To implement a building scheme and to maintain the general character of the Lands, the stipulations, restrictions and provisions as set forth in the design controls attached hereto and marked as "Appendix I" (hereinafter referred to as "the Design Controls") are established, imposed and annexed to the Lands and each of the lots comprising the Lands, (to be binding on all such lots as servient tenements and for the benefit of all such lots as dominant tenements), and the Lands and each of the lots comprising the Lands shall not be developed or used other than for single family residential purposes and only in accordance with the said Design Controls .
2. The owners of the Lands and each of the lots comprising the Lands shall not make any physical alterations to the Lands or construct any residence, improvement or appurtenance thereon or allow the existence of any condition which is contrary to the Design Controls.

This covenant is in addition to the requirements of the municipal or other governmental authorities having jurisdiction in respect of the use of the Lands, and nothing herein contained shall be construed as permitting or authorizing anything which is permitted, controlled or regulated by any statute, by-law, regulation or like enactment having the force of law.

This Restrictive Covenant may be enforced by any registered owner of a lot comprising the Lands, with the exception of the procedure for development approval for any initial house construction on any lot or lots comprising the Lands which is to be made through Consultants as more specifically provided for in the Design Controls (hereinafter referred to as "the Procedure for Development Approval"). The Consultants described in the Design Controls attached hereto shall be responsible for the Procedure for Development Approval for any initial house construction only and not for any subsequent development, construction, alterations or additions in respect of any lot or lots comprising the Lands regardless of whether or not 1338768 Alberta Ltd. should be the registered owner of any lot or lots comprising the Lands.

Notwithstanding any provision to the contrary set forth or contained in the Design Controls, there shall be no responsibility on the part of 1338768 Alberta Ltd. to enforce the provisions of the Restrictive Covenant, nor shall there be any liability to 1338768 Alberta Ltd. for its failure to enforce the same, regardless of whether or not 1338768 Alberta Ltd. is the registered owner of a lot or lots comprising the Lands. Nothing in this provision shall prohibit or preclude 1338768 Alberta Ltd. from enforcing this Restrictive Covenant in the event that 1338768 Alberta Ltd. should, in its sole and absolute discretion, determine to do so, provided always that at the time of such enforcement, 1338768 Alberta Ltd. is the registered owner of a lot or lots comprising the Lands.

No action shall lie against 1338768 Alberta Ltd. for breaches for any one or more of the covenants contained in this Restrictive Covenant unless 1338768 Alberta Ltd. is registered as owner of the Lot alleged to be in breach of this Restrictive Covenant and it can be proven in a Court of competent jurisdiction to have been the party responsible for said breach. This covenant shall constitute an absolute defence to any such action and may be pleaded as such.

This covenant shall be binding upon and shall enure to the benefit of any person, firm, corporation or other entity to whom the Lands or any of the lots comprising the Lands are conveyed such that the stipulations, reservations and provisions hereinbefore described shall:

- a. run with the Lands and each of the lots comprising the Lands;
- b. benefit and enhance the Lands and each of the lots comprising the Lands as dominant tenements.

The Lands and each of the lots comprising the lands, as servient tenements, are subject to this Restrictive Covenant and the restrictions, reservations and provisions as provided for herein.

IN WITNESS WHEREOF 1338768 Alberta Ltd., as the registered owner of the Lands, has caused its corporate seal to be affixed duly attested to by the hands of its proper officers duly authorized in that behalf.

DATED this 31<sup>st</sup> day of July, 2015  
2014.

1338768 Alberta Ltd.

Per: Domenic Ciselli

Per: John

# **Design Controls**

## ***Westview Estates Phase 6 Subdivision***

### **APPENDIX I**

**WHEREAS** 1338768 Alberta Ltd. (at the time of the registration of these Design Controls) is the registered owner of the development known as Westview Estates Phase 6 situated in the Town of Taber, in the Province of Alberta (hereinafter called the "Subdivision"), and is in the process of developing the Subdivision into a series of residential lots;

**AND WHEREAS** the controls contained herein are intended to implement standards of appearance and quality in the Subdivision by attaching certain restrictions, covenants and conditions restrictive in nature in respect of the exterior design, use (to the extent that use is a function of design) and development, to each lot located within the Subdivision (hereinafter referred to as a "Lot", or referred to as the "Lands" when referring collectively to all of the lots located within the Subdivision) and each and every part thereof and the buildings, structures, improvements and premises to be erected on each and every part of the Lands;

**AND WHEREAS** the restrictions, covenants and conditions contained herein are not meant to detract or derogate in any way from any applicable laws, regulations or by-laws (including but not limited to land use by-laws of the Town of Taber as may be enacted from time to time), but are in addition and supplementary to, the restrictions, covenants and conditions contained in any such laws, regulations and by-laws;

### **ARTICLE I**

#### **INTERPRETATION**

1.1 **DEFINITIONS** - Wherever used in these Design Controls, the following shall have the meaning set opposite them except where the context of these Design Controls otherwise requires:

- (a) "Application" means the submission by a Lot Owner to the Design Controls Consultant of the building plans and other required documents with regard to Initial Development as set out in Article 4.4 herein;
- (b) "Design Controls" means these Design Controls including any amendments made to the same, and the expressions "herein", "hereof", "above", "below", and similar expressions used in any paragraph, sub-paragraph, section or article of these Design Controls shall refer and relate to the whole of these Design Controls and not to that paragraph, sub-paragraph, section, or article only unless otherwise expressly provided;
- (c) "Design Controls Consultant" shall mean Martin Geomatic Consultants Ltd. or any other person, committee, or body corporate elected or appointed as the case may be by the Developer, whose main purpose is to review the Application and to inspect the Initial Development relative to the Design Specifications in accordance with the provisions of these Design Controls;

(d) "Design Specifications" shall mean those specifications set out in Article 5.1 to Article 5.16 inclusive herein;

(e) "Developer" means 1338768 Alberta Ltd. or any party that may be successor in interest to 1338768 Alberta Ltd.'s position as developer of the Subdivision;

(f) "Grading Application" shall mean the submission by a Lot Owner to the Grading Consultant of the grading and elevation plans and other required documents as set out in Article 10.4 herein;

(g) "Grading Consultant" shall mean *Martin Geomatic Consultants Ltd.* or any other person, committee, or body corporate elected or appointed as the case may be by the Developer, whose main purpose is to review the Grading Application and to inspect the Initial Development relative to the Grading Requirements and in accordance with the provisions of these Design Controls;

(h) "Grading Requirements" shall mean the grading and drainage requirements for any Lot as set out and prescribed in Article 8.1 and 8.2 herein;

(i) "Improvements" shall mean the erection, construction, reconstruction, development and or redevelopment of any structure or land (including without limitation a residential dwelling, garage, fencing, driveway or walkway, landscaping, or grading) and any improvements thereto, upon a Lot or to any structure located within the boundaries of a Lot, including the placement of any structure upon a Lot, and shall include without limitation, all Initial Development;

(j) "Initial Development" shall mean the erection, construction, or development of a residential dwelling (which must include an attached double garage and Landscaping) for the first time on a Lot;

(k) "Landscaping" shall mean landscaping of the front yard of a Lot, or if a corner Lot, the landscaping of the front and side yards of a Lot that face the municipality's street, as set out in Article 5.14 herein;

(l) "Lot Owner" means the owner of a residential Lot located within the Subdivision;

(m) "Purchase Agreement" means the Agreement entered into between a purchaser and the Developer for the purchase of a particular Lot for the first time following subdivision of the Lands;

(n) "Purchaser" shall mean the purchaser named in the Purchase Agreement.

(o) "Security Deposit" means the amount payable as a security deposit by the Lot Owner to the Developer as set out in the Purchase Agreement, or in the event an amount has not been set out in the Purchase Agreement, the security deposit shall be in an amount prescribed by the Developer from time to time.

(p) "Subdivision" means the development known as Westview Estates Phase 6 situated within the corporate boundaries of the Town of Taber in the Province of Alberta.

1.2 HEADINGS - Headings of the Articles hereof are inserted for convenience of reference only and shall not affect the construction or interpretation of these Design Controls.

1.3 CONSTRUCTION - Words importing singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and words importing persons shall include a natural person, incorporated organization, partnerships, syndicates, associations, trusts, government, governmental authority, any number or aggregate of persons or other legal entity.

1.4 PREAMBLE - The preamble shall form an integral part of these Design Controls.

1.5 RESPONSIBILITY - Non compliance with, or any violation of, these Design Controls on the part of any agent, employee, contractor, subcontractor, family member, invitee or guest of the Lot Owner shall be considered a default on the part of the Lot Owner.

1.6 SEVERABILITY - In the event that any one or more of the provisions contained in these Design Controls or a portion thereof, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the remaining portions of any such provision or any other provisions of these Design Controls and these Design Controls shall be construed as if such invalid, illegal, or unenforceable provision or a portion of such provision has never been contained herein.

1.7 GOVERNING LAWS - These Design Controls and the obligations and provisions contained herein shall be governed and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

## ARTICLE II OPERATION

2.1 OPERATION - These Design Controls shall apply to all Improvements on any Lot in the Subdivision and accordingly, all Improvements shall comply with these Design Controls including without limitation the Design Specifications and the Grading Requirements subject to the right of the Developer or the Design Controls Consultant or the Grading Consultant to modify, amend or waive the same. These Design Controls are for the benefit of all Lot Owners and all Lot Owners shall be bound by them. The approval processes set out in Articles IV and Article X herein shall apply to Initial Development only. In addition to the requirements contained in these Design Controls, all Improvements within the Subdivision MUST comply with the latest versions of the Town of Taber Bylaws and all of its Building Codes, the Alberta Building Code, and all other applicable laws, bylaws and regulations.

2.2 TIME RESTRICTION - Any Initial Development, which must include Landscaping and a garage as set out in the Design Specifications, must be fully completed on a Lot within two (2) years calculated from the Closing Date as defined in the Purchase Agreement, with such Initial Development complying with all of the terms and provisions of these Design Controls. In the event that an Initial Development is not completed within the two year period as calculated in this Article 2.2, the Security Deposit shall be forfeited to the Developer.

2.3 APPROVAL COSTS – The Lot Owner is responsible for the fees charged by Martin Geomatic Consultants Ltd. for the Grading Approval and Design Approval. The fee is \$400.00 + GST; and is payable to Martin Geomatic Consultants Ltd. upon receipt of their invoice. Not included in these fees are any fees associated with the preparation of a grading plan or plot plan.

### **ARTICLE III** **DESIGN CONTROLS CONSULTANT**

3.1 APPOINTMENT – Martin Geomatic Consultants Ltd. is appointed by the Developer in its sole discretion, as the Design Controls Consultant and can be removable without notice by the Developer.

3.2 ROLE - The role of the Design Controls Consultant is to ensure that the Lot Owner's plans with respect to Initial Development comply with the Design Specifications and that the Initial Development is completed in accordance with the Design Specifications. Neither the Design Controls Consultant nor the Developer shall be responsible for ensuring compliance with these Design Controls with regard to any Lot after the initial development approval of the Lot has been completed.

3.3 POWER - The Design Controls Consultant shall have in its sole discretion, the right to alter or reject any residential dwelling design or Application which in their opinion does not meet or follow the spirit and intent of these Design Controls or which may adversely affect any neighbouring Lot, property or residential dwelling. All decisions made by the Design Controls Consultant shall be final and binding in all respects.

3.4 DISCRETION - The Design Controls Consultant shall have the ability in its sole discretion to deviate from, modify, or waive, any of the Design Specifications and shall not have any liability for exercising its right to do the same.

3.5 INTERPRETATION OF DESIGN CONTROLS – The Developer and its Design Controls Consultant shall be responsible for the interpretation of these Design Controls and may modify the provisions stated herein at their sole discretion. Any dispute which may arise in connection with the Design Controls shall be determined by the Developer whose decision shall be final and binding.

### **ARTICLE IV** **PROCEDURE FOR DESIGN APPROVAL**

4.1 APPLICATION - No Lot Owner shall commence Initial Development, nor apply to the Town of Taber for a building permit for such Initial Development, without first submitting an Application to the Design Controls Consultant pursuant to the requirements contained herein and receiving approval for the same. The requirement to submit an Application to the Design Controls Consultant and to receive its approval shall only apply to Initial Development on each respective Lot, and shall not apply to any subsequent Improvements.

4.2 SECURITY DEPOSIT - The Design Controls Consultant shall not review any Application submitted to it without the Lot Owner first having paid a Security Deposit to the Developer. A fee charged by the Design Controls Consultant as contemplated by the Purchase Agreement or as prescribed by the Design Controls Consultant shall be deducted and paid from the Security

Deposit. The Security Deposit, less any and all applicable fees and deductions, shall not be returned to the Lot Owner unless and until it has been determined in the sole discretion of the Design Controls Consultant that the Design Specifications have been fully complied with in respect of the Initial Development and that the Lot Owner has complied with and has not violated any of the other provisions of these Design Controls including without limitation the Grading Requirements and the provisions of Article VII hereof.

4.3 WALKOUT BASEMENTS - Lot Owners must consult the Design Controls Consultant for any building development that incorporates a walk-out basement, prior to submitting an Application and prior to proceeding with preliminary house plans, to determine if the same is permitted, and if so, what requirements there may be with respect to the same.

4.4 APPLICATION REQUIREMENTS - All Applications shall include the following documents:

- (a) A completed application form as provided by the Design Controls Consultant;
- (b) Three complete copies of the proposed home plans, including floor plans, elevations, and sections;
- (c) A site plan including all building grades, lot grades, and setback information; and
- (d) Any other documents the Design Controls Consultant may reasonably request on a case by case basis.

4.5 INCOMPLETE APPLICATIONS - No Lot Owner shall submit an Application to the Design Controls Consultant that does not include the requirements contained in Article 4.4 above.

4.6 PLAN REVIEW - Upon confirmation by the Developer of payment of the Security Deposit by the Lot Owner as set out in Article 4.2 above, and upon reviewing the Lot Owner's Application, the Design Controls Consultant shall either reject or approve the Application.

4.7 CHANGES - There shall be no deviation from the plans contained in an approved Application unless the same is consented to in writing by the Design Controls Consultant. The Lot Owner shall complete and construct the Initial Development in accordance with plans as approved by the Design Controls Consultant.

4.8 PERMIT APPLICATION - Upon approval of the Application by the Design Controls Consultant, the Lot Owner shall pick up two copies of the approved Application and is to submit one approved copy to the Town of Taber for the purpose of obtaining any required building permits.

4.9 FINAL INSPECTION - The Lot Owner shall make a request to the Design Controls Consultant upon the completion of the Initial Development on any Lot for a final inspection of such Initial Development. Following the completion of the requested inspection, the Design Controls Consultant shall determine whether the Design Specifications have been properly followed with respect to the Initial Development of the Lot.

## ARTICLE V DESIGN SPECIFICATIONS

5.1 RESIDENTIAL DWELLING SIZES - No residential dwelling built upon the Lands shall be smaller than size specified in Appendix "A".

Lots 1 to 28 inclusive, Block 9 and Lots 60 to 83 inclusive, Block 3 (shaded in Appendix "A") all in Plan 141 \_\_\_\_\_ shall have a house with the minimum size as follows:

1200 sq. ft : Bungalow (Bi-Level Main Floor)

1400 sq. ft. : Split Level (Combined Floor)

1600 sq. ft : Two Storey (Both Floors)

5.2 SETBACKS - All Improvements on a Lot shall comply with the setback requirements as provided by applicable Town of Taber Bylaws.

5.3 DRIVEWAYS - All driveways and pathways facing the street shall be either broom finished poured concrete, stamped coloured concrete, poured concrete with an exposed aggregate finish or paving stones. Gravel or asphalt paved drives and pre-cast concrete slab walkways are not permitted. Acceptable colours shall be limited to natural earth hues of brownish, beige, tans, sand, grays, or reddish hues. Bright colours are not permitted.

All driveways shall be in the location as shown on the Appendix 'A'.

5.4 ROOF PITCH - Roof slopes of 5 in 12 or greater shall be required for all buildings.

5.5 ROOF MATERIALS - No roof situated on any Lot shall be made up of any material other than the following acceptable roof materials:

- (a) architectural asphalt shingles;
- (b) concrete tiles;
- (c) shakes; or
- (d) slate tiles;

Tar and gravel roofing, and rolled roofing are not acceptable.

5.6 ROOF COLOURS - The roof colour of any permanent structure (including but not limited to the residential dwelling and garage) located on a Lot shall be compatible with the colour of the exterior finish of the residential dwelling on such Lot.

5.7 EXTERIOR FINISH – The FRONT exterior finishes on any residential dwelling or structure located within the boundaries of Lots shaded on Appendix "A" are limited to the following materials:

- (a) Wood siding and battens with stone or brick;
- (b) Prefinished metal siding with stone and brick;
- (c) Stucco with stone or brick;
- (d) Vinyl siding with stone or brick;
- (e) "Hardy" board siding with stone or brick.

Where stone or brick is used as a complimentary finish, it shall comprise a minimum 30% of the wall area and blend in to create a uniform look of the main elevation and wrap each side elevation a minimum of two (2) feet (.61 m).

The SIDE and REAR exterior finishes on any residential dwelling or structure located within the boundaries of Lots 1 to 28 inclusive, Block 9 and Lots 60 to 83 inclusive, Block 3 (shaded in Appendix "A") all on Plan 141 \_\_\_\_ are limited to the following materials:

- (a) Wood siding and battens;
- (b) Prefinished metal siding;
- (c) Stucco;
- (b) Vinyl siding;
- (c) "Hardy" board siding;
- (d) Brick or Stone.

5.8 COLOURS - All colour schemes for residential dwelling units or any other structure located within the boundaries of a Lot must meet the following requirements:

- (a) Contrast between colours on adjoining lots shall be subtle;
- (b) Deeper colours shall be restricted to trim applications;
- (c) Colours of residential dwellings shall not be repeated within three lots of each other;
- (d) Acceptable colours shall be limited to natural earth hues of brownish, beige, tans, sand, grays, reddish, greenish, or bluish paler hues for the main body of the house. No bright colours are permitted.

5.9 ENTRIES - All front entrances on any residential dwelling on a Lot shall be designed to be fully visible from the street. Columns are to be built up to a minimum size of 10"square, at the narrowest dimension. All verandah bases shall be fully enclosed with materials complementing the exterior of the residential dwelling.

5.10 EAVES & OVERHANGS - Eaves on any structure situated on a Lot shall not be greater than 48" inches (1.2 m) nor less than 18". Fascia, soffit, flashing and trim are to be prefinished metal to complement the main body colour of the residential dwelling. Prefinished metal eaves troughs and downspouts are required and must discharge onto concrete splash pads as required by the Town of Taber.

5.11 GARAGES - All residential dwellings must have a double attached garage in the front.

(a) All garage finishes shall be consistent in massing, roof form, scale, materials and detailing with the residential dwelling situated on the Lot;

Car ports are not acceptable, and are not to be considered the equivalent of a garage.

5.12 FENCES - The Developer has constructed project fencing at key Subdivision points or along the perimeter of a Lot (the "Project Fencing") and the same shall not be removed. The exterior colour and design of the Project Fence shall not be changed and each Lot Owner will be responsible for maintaining their portion of the Project Fence in good condition. Fencing must be provided by the homeowner for side and rear yards. All side yard fencing is to end at the front setback line. Fencing on the side yards of corner lots will be reduced in heights, tapering to 1.2 m at the front setback line.

5.13 CORNER LOTS - All Improvements on corner Lots shall meet these additional requirements:

(a) Where two storey elevations are used, the side elevation must be treated with the same level of detail as the front elevation.

(b) Roof planes must wrap around building faces on both street exposures. Principle roof planes must slope toward both street frontages.

(c) Both street elevations shall be designed to be 'front' elevation requirements.

5.14 LANDSCAPING - The Landscaping on each Lot shall be installed by the lot owner and shall meet or exceed the following minimum requirements:

(a) SODDING - All front and side yards to the corners of the residential dwelling must be fully sodded.

(b) TREES - Each Lot shall contain at least one tree in the front yard meeting the following specifications:

(i) one deciduous tree of a one and half (1.5) inch (38m) caliper measured at a height of six (6") inches (.15M) above the finished grade; or

(ii) One coniferous tree of a five foot (1.5 m) height.

All landscaping works provided by the Developer if any, shall not be removed or changed, and each Lot Owner shall maintain all such landscaping located on their Lot in good condition.

5.15 RETAINING WALLS - The cost of retaining walls situated on a Lot shall be the responsibility of the Lot Owner. All retaining walls and their foundations are to be within Lot boundaries. Retaining walls must receive prior approval from the Grading Consultant.

5.16 PARGING - Parging of a residential dwelling inclusive of the garage must be stepped according to the final grade of the Lot and shall be no higher than twenty inches (20") at any point along the elevation.

## **ARTICLE VI** **PARKING AND STORAGE**

6.1 PARKING/STORAGE - Except during the construction of Improvements on a Lot, the Lot shall not be used for the storage of any materials, vehicles or equipment other than such as are usually and ordinarily stored in connection with the occupation of a building used for private residential purposes. Specifically, but without in any way restricting the foregoing, the following items shall not be parked or stored on, or adjacent to any Lot:

- (a) Large Trucks;
- (b) Construction equipment;
- (c) Farm equipment;
- (d) Abandoned vehicles or equipment, non-functioning vehicles or equipment, auto or truck bodies, wrecks, and other vehicles or equipment not currently in a functioning state; and
- (e) Gasoline, diesel fuel or similar fuel or volatile, explosive or dangerous substances other than those used for ordinary household purposes in quantities reasonably appropriate for ordinary household use.

## **ARTICLE VII** **SUBDIVISION PRESERVATION**

7.1 PRECAUTIONS - The Lot Owner shall take all necessary precautions and measures to ensure that no damage is done to any infrastructure or improvements in the Subdivision by the Lot Owner, and in the event that any damage to such infrastructure (including without limitation; water valves, curbs, sidewalks, gutters, roads, light standards, fire hydrants, utilities, deep services and all appurtenances to the same) is caused by the Lot Owner, the Lot Owner shall be solely responsible for such damage and shall pay all costs associated with repairing, reconstructing or replacing the same.

7.2 CONSTRUCTION SITE MAINTENANCE - The Lot Owner shall exercise all care and control necessary, during any excavation or construction work on any Lot, to ensure that all construction materials, including, but not limited to, excavated materials, are confined within the boundaries of the Lot and do not spill over or blow onto adjoining property or onto any public

streets or lanes or other public lands or any other portion of the Subdivision.

- (a) The Lot Owner shall be responsible for all costs and expenses to remove or clean up any construction materials that have for any reason whatsoever become situated on any other part of the Subdivision.
- (b) The Lot Owner and/or its Contractor must have a commercial garbage bin onsite during construction. If the Lot Owner is in breach of this clause the Developer shall have the right to clean up and the Lot Owner agrees to pay the Developer for the cost of this clean up.

7.3 SURVEY PINS - The Lot Owner shall take all measures necessary to protect any and all survey pins located on each Lot. If it is required to replace a damaged or missing survey pin, the same must be done by an Alberta Land Surveyor, and the cost of the same shall be at the sole expense of the Lot Owner.

## ARTICLE VIII GRADING AND SOIL SUPPORT

8.1 GRADING - Creating and maintaining proper grading and drainage elevations for a Lot shall be the responsibility of the Lot Owner, and shall be completed in accordance with the requirements prescribed by the Town of Taber and with any and all requirements prescribed by the Developer from time to time, notwithstanding the fact that neither may be registered against title to the Lot. Additional grading requirements include the following:

- (a) Individual Lot grading (including drainage swales and retaining walls) must be located within a Lot's boundaries and must not change any required drainage patterns; and
- (b) Lot Owners shall be responsible to ensure that there is adequate drainage at all times on the Lot.

8.2 SOIL CONDITIONS - A Lot Owner is the party responsible to ensure that appropriate investigations are completed to ensure that sub-surface soil conditions will support any Improvements on a Lot, and neither the Developer, nor the Grading Consultant, nor the Project Engineer or Design Control Consultant shall be deemed to have made any representations, warranties, certifications, or guarantees with respect to the same.

## ARTICLE IX GRADING CONSULTANT

9.1 APPOINTMENT - Martin Geomatic Consultants Ltd. is appointed by the Developer in its sole discretion, as the Design Controls Consultant and can be removable without notice by the Developer.

9.2 ROLE - The role of the Grading Consultant is to ensure that the Lot Owner's plans with respect to Initial Development comply with the Grading Requirements and that all Initial Development is completed in accordance with the Grading Requirements. Neither the Grading Consultant nor the Developer shall be responsible for ensuring compliance with these Design Controls with regard to any Lot after approval of the Initial Development on that Lot has been completed.

9.3 POWER - The Grading Consultant shall have in its sole discretion, the right to alter or reject any Grading Application which in their opinion does not meet or follow the spirit and intent of the Grading Requirements or which may adversely affect any neighbouring Lot, property or residential dwelling. All decisions made by the Grading Consultant shall be final and binding in all respects.

9.4 DISCRETION - The Grading Consultant shall have the ability in its sole discretion to deviate from, modify, or waive, any of the Grading Requirements and shall not have any liability for exercising its right to do the same.

9.5 FINAL APPROVAL - The Developer shall have the final authority to approve or disapprove applications as well as the authority to modify any of the guidelines.

## ARTICLE X PROCEDURE FOR GRADING APPROVAL

10.1 APPLICATION - No Lot Owner shall commence Initial Development, nor apply to the Town of Taber for a building permit for such Initial Development, without first submitting a Grading Application to the Grading Consultant pursuant to the requirements contained herein and receiving approval for the same. The requirement to submit a Grading Application to the Grading Consultant and to receive its approval shall only apply to Initial Development on each respective Lot, and shall not apply to any subsequent Improvements.

10.2 SECURITY DEPOSIT - The Grading Consultant shall not review any Grading Application submitted to it without the Lot Owner first having paid the Security Deposit to the Developer. A fee charged by the Grading Consultant as contemplated by the Purchase Agreement or as prescribed by the Grading Consultant shall be deducted and paid from the Security Deposit. The Security Deposit, less any and all applicable fees and deductions, shall not be returned to the Lot Owner unless and until it has been determined in the sole discretion of the Grading Consultant that the Grading Requirements have been fully complied with in respect of the Initial Development, and that the Lot Owner has complied with and has not violated any of the other provisions of these Design Controls including without limitation the Design Specifications and the provisions of Article VII hereof.

10.3 WALKOUT BASEMENTS - Lot Owners must consult the Grading Consultant, for any building development that incorporates a walk-out basement, prior to submitting a Grading Application and prior to proceeding with preliminary house plans, to determine if the same is permitted and if so, what requirements there may be with respect to the same.

10.4 GRADING APPLICATION REQUIREMENTS - All Grading Applications shall include the following documents:

- (a) A site plan including all building grades, lot grades, and setback information;
- (b) Three copies of the grading plans;

The Lot Owner will refer to the latest updated site plan provided by the Developer and Grading Consultant to ensure the proper grades, position of driveway, ROW's and any and all infrastructure (telephone box, electrical transformer, etc.) is indicated on the site plan. When presenting side elevations of the home, the correct sloping grade must be indicated. Elevations drafted flat with a variance of 12" or greater slope along the full length of the home according to the site plan will not be accepted.

**10.5 INCOMPLETE GRADING APPLICATIONS** - No Lot Owner shall submit a Grading Application to the Grading Consultant that does not include the requirements contained in Article 10.4 above.

**10.6 PLAN REVIEW** - Upon confirmation by the Developer of payment of the Security Deposit by the Lot Owner, and upon reviewing the Lot Owner's Grading Application, the Grading Consultant shall either reject or approve the Grading Application.

**10.7 CHANGES** - There shall be no deviation from the plans contained in an approved Grading Application unless the same is consented to in writing by the Grading Consultant. The Lot Owner shall complete and construct the Initial Development in accordance with the plans as approved by the Grading Consultant.

**10.8 PERMIT APPLICATION** - Upon approval of the Grading Application by the Grading Consultant, the Lot Owner shall pick up two copies of the approved Grading Application and is to submit one approved copy to the Town of Taber for the purpose of obtaining any required building permits.

## **ARTICLE XI** **LIABILITY LIMITATIONS**

**11.1 LIMITATIONS** - IT IS NOT THE INTENTION OF THESE DESIGN CONTROLS TO IMPOSE ANY LIABILITIES ON THE DEVELOPER, THE DESIGN CONTROLS CONSULTANT, OR THE GRADING CONSULTANT AND ACCORDINGLY:

- (a) The Grading Consultant or the Design Controls Consultant (hereinafter collectively called "the Consultants") or the Developer shall have no responsibility nor any obligation to review the Lot Owner's elevation/drainage and grading plans or construction plans to determine if there are any errors, discrepancies, problems or deficiencies in respect of the same, and the role and functions of the Consultants are for the sole and exclusive purpose of ensuring that the Lot Owner's elevation / drainage and grading plans and construction plans with respect to a Lot comply with the Grading Requirements and Design Specifications respectively and that the Initial Development has been completed in accordance with the same;
- (b) The foregoing role and functions of the Consultants and the application and approval processes as set forth herein do not create any standard of care, obligation or liability on the party of the Developer or the Consultants for or on behalf of the Lot

Owner, nor do the Developer or the Consultants have any legal obligations or liabilities to the Lot Owner with respect to the Lot Owner's development of the Lot which includes, without limitation, the Lot Owner's grading and drainage elevations and construction plans in respect of such Lot;

(c) The Developer and the Consultants shall have no responsibility for the accuracy, quality, correctness or reliability of information provided by the Lot Owner to the Consultants, and the Developer and the Consultants shall be indemnified by the Lot Owner for any and all losses, costs, expenses, damages or law suits resulting in any way therefrom;

(d) The Developer and the Consultants shall not be liable or responsible to the Lot Owner for any losses, costs, expenses, damages or law suits that the Lot Owner may suffer or incur by the Consultants exercising their role and functions as set forth in these Design Controls;

(e) The Developer shall not be liable to any Lot Owner for any of the actions of the Consultants, and no Lot Owner shall be entitled to make any claim against the Developer in respect of any act, error or omission of the Consultants;

(f) The Consultants are not the agents of the Developer and their appointment is related exclusively to completing their role and functions as set forth in these Design Controls;

(g) The Developer is not obligated to monitor or enforce these Design Controls and there is no liability on the Developer for the Developer's failure to do so regardless of whether or not the Developer is the registered owner of a Lot or Lots comprising the Subdivision at the time that any party fails to perform, observe or comply with these Design Controls;

(h) The Developer and the Consultants, or any one or combination of them, have the right at their sole discretion to modify any of the provisions of these Design Controls including the Grading Requirements and Design Specifications contained herein or waive compliance with the same. There shall be no liability on the part of the Developer or the Consultants to any Lot Owner or any party claiming through or under any Lot Owner by reason of the Developer or the Consultants modifying these Design Controls (including without limitation the Grading Requirements or Design Specifications) or waiving any compliance with such Design Controls (including without limitation the Grading Requirements or Design Specifications).

## **ARTICLE XII** **SECURITY DEPOSITS**

12.1 **NO INTEREST** - There is no obligation to invest the Security Deposit and no interest is payable to any party (other than the Developer) in respect of a Security Deposit.

12.2 **DEDUCTIONS** - The Developer, at its option, may appropriate and apply all or any part

of the Security Deposit it may be holding in respect of a particular Lot, on account of the costs or expenses sustained by the Developer arising from:

- (a) any remediation, repair, reconstruction or replacement that may be undertaken or completed by the Developer due to or in connection with a Lot Owner's breach or default of the terms and provisions of these Design Controls including, without limitation, the provisions of Article VII herein. (The Developer is not obligated to complete any remediation, repair, reconstruction or replacement under these Design Controls or as a result of any Lot Owner's breach or default under the same, and the decision to do so shall be in the Developer's sole and absolute discretion);
- (b) costs or expenses incurred by the Developer which include, but are not limited to, the Developer's legal fees and disbursements on a solicitor/client full indemnity basis due to any form of action including, but not limited to, any legal action that the Developer might take, due to or in connection with a Lot Owner's breach or default of the terms and provisions of these Design Controls, including without limitation, the provisions of Article VII herein. (The Developer is not obligated to take any actions whatsoever under these Design Controls or as a result of any Lot Owner's breach or default under the same, and the decision to do so shall be in the Developer's sole and absolute discretion.)

If the balance of the Security Deposit should be insufficient to cover all costs and expenses of the Developer, then the Lot Owner shall pay such costs and expenses of the Developer on a full indemnity basis **ON DEMAND**.

**12.3 TRANSFERABILITY** - The Developer may deliver or transfer the Security Deposit, or any portion thereof, to any other party for the Security Deposit to be held by such party and, on doing so, the Developer shall be and is hereby discharged from any further liability with respect to the Security Deposit.

## **ARTICLE XIII** **GENERAL**

**13.1 TIME** - Time shall be of the essence of these Design Controls.

**13.2 NON-WAIVER** - The failure by the Developer, the Design Controls Consultant or the Grading Consultant to require performance of any provision of these Design Controls shall not affect their right to require performance at any time thereafter, nor shall a waiver of any breach or default of these Design Controls constitute a waiver of any subsequent breach or default or a waiver of the provision itself unless the subsequent breach or default was waived in writing by the Developer, Design Controls Consultant or Grading Consultant.

**13.3 BINDING EFFECT OF WAIVER** - In the event that any of the provisions of these Design Controls are waived, modified or amended in writing by the Developer, Design Controls Consultant or Grading Consultant in respect of a particular Lot, such waiver, amendment, or modification shall apply to that particular Lot only and not to any other Lot, and no Lot Owner, whether the owner of the particular Lot or otherwise, nor any party claiming through or under such Lot Owner shall have any right to enforce the original provision or provisions of these Design Controls that have been subsequently amended, modified, or waived in writing by the

Developer, Design Controls Consultant, or the Grading Consultant. The provisions of these Design Controls that have been waived, modified or amended in writing by the Developer, Design Controls Consultant or Grading Consultant in respect of a particular Lot, shall be binding upon the Lot Owner of such Lot as well as all other Lot Owners including all of their successors in title and any party claiming through or under any Lot Owner, and such written waiver, amendment, or modification may be enforced as if the same formed part of these initial Design Controls.

13.4 **PRIME CONTRACTORS** - Nothing in these Design Controls shall in any way be construed or interpreted so as to deem the Developer, Design Controls Consultant, or the Grading Consultant to be Prime Contractors within the meaning of the Occupational Health and Safety Act of Alberta with respect to any Improvements.

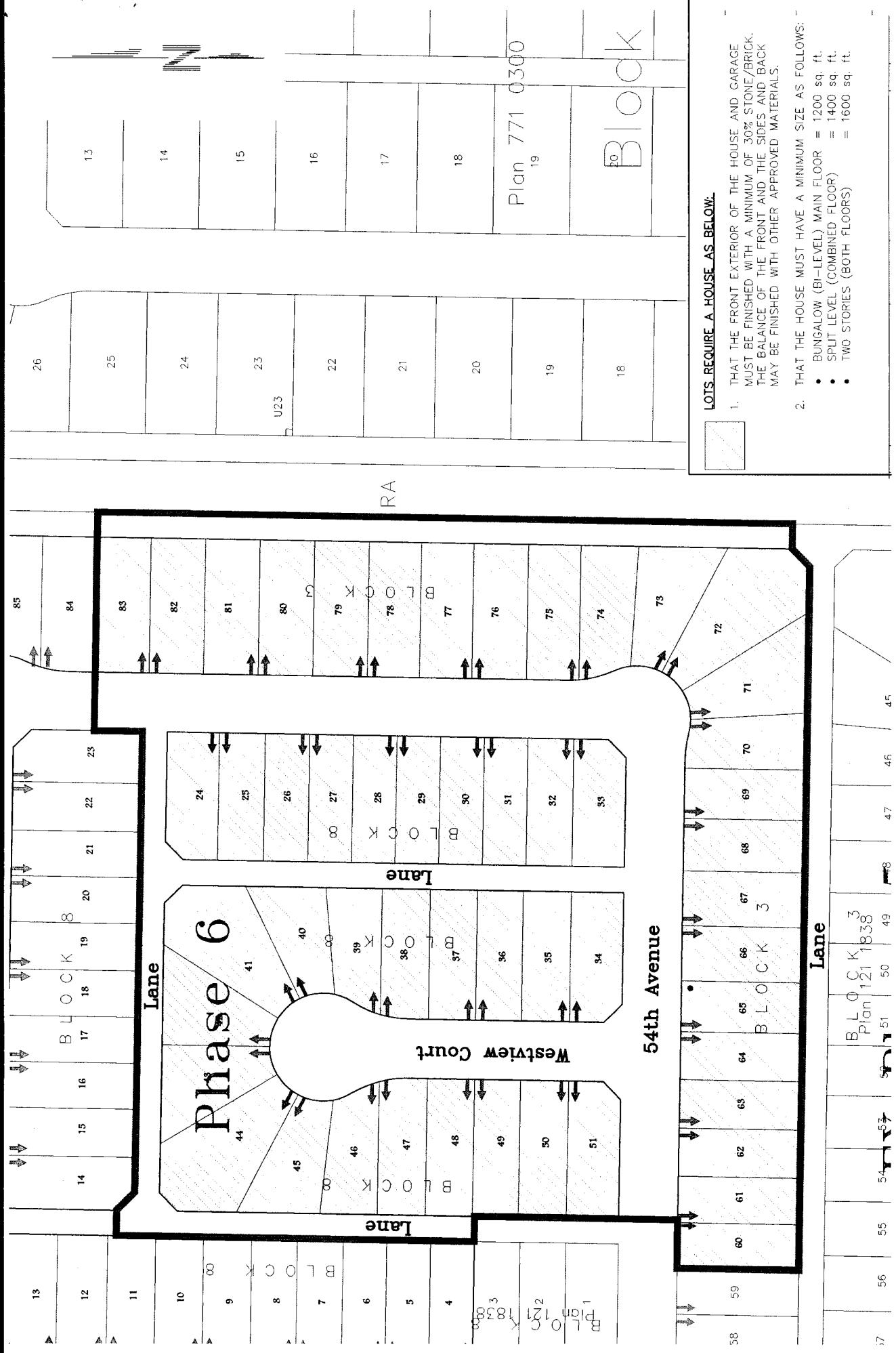
13.5 **INDEMNIFICATION** - In the event that a Lot Owner should violate any of the provisions of these Design Controls, including without limitation the provisions of Article VII herein, and the Developer should incur any costs or expenses including but not limited to the following:

- (a) any remediation, repair, reconstruction or replacement that may be undertaken or completed by the Developer due to or in connection with a Lot Owner's breach or default of the terms and provisions of these Design Controls including, without limitation, the provisions of Article VII herein. (The Developer is not obligated to complete any remediation, repair, reconstruction or replacement under these Design Controls or as a result of any Lot Owner's breach or default under the same, and the decision to do so shall be in the Developer's sole and absolute discretion);
- (b) costs or expenses incurred by the Developer which include, but are not limited to, the Developer's legal fees and disbursements on a solicitor/client full indemnity basis due to any form of action including, but not limited to, any legal action that the Developer might take, due to or in connection with a Lot Owner's breach or default of the terms and provisions of these Design Controls, including without limitation, the provisions of Article VII herein. (The Developer is not obligated to take any actions whatsoever under these Design Controls or as a result of any Lot Owner's breach or default under the same, and the decision to do so shall be in the Developer's sole and absolute discretion.);

The Lot Owner shall pay such costs and expenses of the Developer on a full indemnity basis ON DEMAND. The foregoing is in addition to any rights or remedies that the Developer may have at law or at equity or that the Developer may have against a Lot Owner with regard to Security Deposit deductions as set out in Article 12.2 above or the rights that the Developer may have under the Purchase Agreement in the situation where the Lot Owner was the Purchaser or assignee of the Purchaser. All rights and remedies that the Developer may have are cumulative and not exclusive, and such rights and remedies may be exercised by the Developer, either consecutively or concurrently at the Developer's discretion. The election by the Developer to take any one remedy against a Lot Owner does not constitute an election by the Developer to abandon any of its other rights and remedies.

13.6 **NON-RESTRICTION** - The provisions of these Design Controls do not preclude any Lot Owner (including the Developer while the Developer is the owner of any Lot) from pursuing any rights or remedies against any Lot Owner who violates a provision of these Design Controls. Any appropriation made in respect of a Security Deposit as provided for in these Design

Controls, whether in whole or in part, or any indemnification of the Developer by a Lot Owner as provided in Article 13.5 above shall not in any way restrict the rights of the Developer, Design Controls Consultant, Grading Consultant, or any other Lot Owner to enforce these Design Controls or to take any action (including, but not limited to, any legal action) against the Lot Owner that violates, fails or refuses to observe or perform the requirements of the same.



WESTVIEW ESTATES  
PHASE 6  
TABER, AB

# ARCHITECTURAL CONTROL APPENDIX A



Consulting Engineers, Planners, and Land Surveyors  
255-31st St. N. Lethbridge, Alberta T1H 3Z4  
Ph: (403) 329-0050 E-mail: geomart@mgl.ca



211027258 REGISTERED 2021 01 29  
CAVE - CAVEAT  
DOC 2 OF 7 DRR#: B18F910 ADR/KEITHREQ  
LINC/S: 0038804274 +

# **ALBERTA GOVERNMENT SERVICES LAND TITLES OFFICE**

**IMAGE OF DOCUMENT REGISTERED AS:**

**211027259**

**ORDER NUMBER: 52851123**

## **ADVISORY**

**This electronic image is a reproduction of the original document registered at the Land Titles Office. Please compare the registration number on this coversheet with that on the attached document to ensure that you have received the correct document. Note that Land Titles Staff are not permitted to interpret the contents of this document.**

**Please contact the Land Titles Office at (780) 422-7874 if the image of the document is not legible.**

**To the Registrar of the South Alberta Land Registration District**

**CAVEAT FORBIDDING REGISTRATION**

Take notice that, the **Town of Taber, A-4900-50 Street, Taber, Alberta, T1G 1T1** claims an interest under and by virtue of rights granted to it under a restrictive covenant and registered pursuant to Section 651.1 of the Municipal Government Act RSA 2000 by **1338768 Alberta Ltd. to the Town of Taber** in

- Lots 60 to 83 inclusive, Block 3, Plan 201 2110184
- Lots 1 to 28 inclusive, Block 9, Plan 201 2110184

Excepting thereout all mines and minerals being lands described in Certificate of Titles \_\_\_\_\_ standing in the name of **1338768 Alberta Ltd.** and I forbid the registration of any person as transferee or owner of, or of any instrument affecting the estate or interest, unless the certificate of title is expressed to be subject to my claim.

I designate the following address as the place at which notices and proceedings relating hereto may be served:

**TOWN OF TABER  
A-4900-50 Street  
Taber, Alberta, T1G 1T1**

Dated this 2 day of October, 2020

**TOWN OF TABER**

Per:



## AFFIDAVIT IN SUPPORT OF CAVEAT

I, Phyllis Monks, Town of Taber make oath and say:

1. That I am agent for the above named caveator.
2. That I believe that the said caveator has a good and valid claim on the said lands, and I say this caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

I certify that Phyllis Monks satisfied me

that he/she is a person entitled to affirm.

Sworn before me at the Town )  
of Taber, in the Province of )  
Alberta, this 5<sup>th</sup> day of )  
October, 2020 )

P. Monks

Signature

RAEANNE KEER  
A Commissioner for Oaths  
in and for Alberta  
Expires November 10, 2022

  
Commissioner for Oaths in and  
for the Province of Alberta

Expiry: November 10, 2022

## RESTRICTIVE COVENANT AS TO USE OF LAND

1338768 ALBERTA LTD., a body corporate, with offices in the City of Lethbridge, in the Province of Alberta, being registered owner of an estate in fee simple in possession of the land situated in the Town of Taber, in the Province of Alberta, and more particularly described as follows:

LOTS 60 TO 83 INCLUSIVE, BLOCK 3, PLAN ~~201~~ 2110184

LOTS 1 TO 28 INCLUSIVE, BLOCK 9, PLAN ~~201~~ 2110184

Excepting thereout all mines and minerals,

Does for itself and its successors in title (each of which is hereinafter called an "owner", covenant and agree to observe and be bound by the hereinafter mentioned covenants, which covenants shall be construed to be and shall be covenants running with the Lots and shall be appurtenance to and binding upon the successors in title from time to time of all of the Lots for the benefit of all of the respective owners thereof, from time to time and including the Town of Taber by virtue of its ownership of streets, lanes and municipal reserves adjacent to the Lots, such covenants being as follows:

1. The owner or owners from time to time of each of the Lots shall not suffer or permit:
  - (a) the level or grades of the side or rear yards as the case may be of the Lots, as established pursuant to the grade plan filed with the Infrastructure Services Department of the Town of Taber to be altered in any manner whatsoever; or the surface contours and surface drainage system established between the residences constructed on the Lots at the time of construction of such residences and in accordance with the grade plan filed with the Infrastructure Services Department of the Town of Taber, to be altered in any manner whatsoever.
2. The owner or owners from time to time, of each of the Lots shall not:
  - (a) suffer or permit dirt, fill, loam, gravel, paper, other debris, weeds, snow, ice or slush (collectively referred to as "material") to fill or accumulate or remain on or upon the lots and which material would:
    - (i) alter the level or grades of the Lots as established by the grade plan filed with the Infrastructure Services Department of the Town of Taber, or
    - (ii) restrict, impair, impede, alter or otherwise interfere with the drainage across the Lots including, without limiting the generality of the foregoing, drainage through or around any drainage control fence, grass swale, concrete or asphalt drainage gutter or other drainage control structure which may be erected on the Lots.
  - (b) alter, remove, damage or otherwise interfere with any drainage control fence, grass swale, concrete or asphalt drainage gutter or other drainage control structure which may be erected on the Lots.

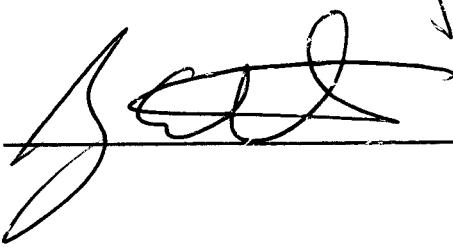
3. The owner or owners from time to time of the Lots shall allow its successors and assigns and their contractors, subcontractors, officers, servants, agents and workers, the right of ingress and egress and to pass and re-pass on the Lots, either on foot, or by way of vehicle or necessary machines and to remain thereon, to the extent reasonably required for the purpose of effecting any corrective measures of any kind which may be required by any Servicing Agreement entered into with the Town of Taber, Government authority or bonding company with respect to the Lots, the said rights and privileges to continue until the issue of Final Acceptance Certificates with respect to the Lots by the Town of Taber.
4. Words herein importing a number or gender shall be construed in grammatical conformance with the context of the party or parties in reference.
5. No action shall lie against the Town of Taber for damages for breach of any one or more of the covenants contained in this Restrictive Covenant unless it is registered as owner of the Lot alleged to be in breach of this Restrictive Covenant or can be proven in a court of competent jurisdiction to have been the party responsible for said breach. This covenant shall constitute an absolute defense to any such action and may be pleaded as such.

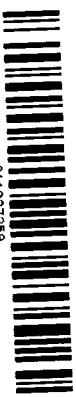
IN WITNESS WHEREOF has caused its corporate seal to be affixed duly attested to by the hands of its proper officers duly authorized in that behalf.

DATED at the City of Lethbridge, in the Province of Alberta, this 7<sup>th</sup> day of July, A.D. 2020.

1338768 ALBERTA LTD.

PER: Domenic Piselli

PER: 



211027259

REGISTERED 2021 01 29

CAVE - CAVEAT

DOC 3 OF 7 DRR#: B18F910 ADR/KEITHREQ

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