

ARCHITECTURAL CONTROLS FOR 5 AVENUE SUBDIVISION

WHEREAS the Town of Nobleford (hereinafter called the “Town”) is the registered owner of the development known as 5 Avenue Subdivision in the Town of Nobleford 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 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 to each and every part thereof, and to the buildings, structures, improvements, and premises to be erected on each and every part of the Lands;

AND WHEREAS no development is to be undertaken on the Lands except as authorized by a Development Permit and in accordance with these Design Controls and all other applicable laws, regulations, and bylaws;

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

NOW THEREFORE the Town annexes to and for the benefit of the Lands and each and every part thereof and for the common benefit of the Town and of any and all Purchasers and Lot Owners of the Lands and each portion thereto the following restrictions, conditions, and covenants restrictive in nature, the benefits and burdens of such restrictions, conditions, and covenants to run with the Lands.

ARTICLE I INTERPRETATIONS

- 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 Town of the building plans and other required documentation with regard to Initial Development as set out in Article 3 herein;
 - B. **“Design Controls”** means the Design Controls and any amendments made to the same including, without limitation, the Design Specifications and the Grading Requirements, and the expressions “herein”, “hereof”, “above”, “below”, and similar expressions used

in any paragraph, subparagraph, section or article of these Design Controls shall refer and relate to the whole of these Design Controls and not to that paragraph, subparagraph, section or article only, unless expressly provided otherwise;

- C. **“Design Specifications”** means those specifications set out in Articles 4.1 to 4.15 inclusive herein;
- D. **“Development Officer”** means that person designated by the Town from time to time to administer the development of the Subdivision;
- E. **“Development Permit”** means a Development Permit granted or refused by the Town pursuant to an Application therefor;
- F. **“Grading Requirements”** means the grading and drainage requirements for any Lot as set out and prescribed in Article 6.1 herein;
- G. **“Improvements”** means the erection, construction, reconstruction, landscaping, grading, development, and/or redevelopment of any structure or land (including, without limitation, a residential dwelling, garage, fence, driveway or walkway) 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;
- H. **“Initial Development”** means the erection, construction or development of a residential dwelling for the first time on a Lot;
- I. **“Landscaping”** means landscaping of the front yard of a Lot or, if a corner Lot, the landscaping of the front and side yards of a Lot, which front and side yards face the street, as set out in Article 4.8.
- J. **“Lot Owner”** means the owner of a residential Lot located within the Subdivision;
- K. **“Manufactured Home”** means a dwelling unit that is constructed upon a chassis and is transportable and which, when placed on a foundation and connected to utilities, is ready for occupancy;
- L. **“Purchase Agreement”** means the agreement entered into between a Purchaser and the Town for the purchase of a particular Lot for the first-time following subdivision of the Lands;
- M. **“Purchaser”** means the purchaser named in the Purchase Agreement;
- N. **“Ready-to-Move Home”** means a dwelling unit that has been constructed off-site to be transported on-site, either as one unit or in components to be assembled into one unit on-site;
- O. **“Residential Dwelling”** means a single dwelling unit other than a Manufactured Home or a Ready-to-Move Home;
- P. **“Security Deposit”** means the amount payable as a security deposit by the Lot Owner to the Town in the amount of \$2,000;
- Q. **“Subdivision”** means the development known as 5 Avenue Subdivision situated within the corporate boundaries of the Town in the Province of Alberta.

1.2 **HEADINGS** - Headings of the articles herein 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, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include a natural person, incorporated organization, partnership, syndicate, association, trust, 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 is, for any reason, 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 constructed as if such invalid, illegal or unenforceable provision or a portion of such provision had 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.

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, subject to the Town's right 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 process set out in Articles 3 and 8 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's bylaws and all of its Building Codes, the Alberta Building Code, and all other applicable laws, regulations, and bylaws.

ARTICLE III APPLICATION

- 3.1 **APPLICATION** - No Lot Owner shall commence Initial Development without first applying for and receiving a Development Permit from the Town.
- 3.2 **SECURITY DEPOSIT** - The Security Deposit shall be paid to the Town at the time of closing of the Purchase Agreement and shall be in addition to any other development fees

imposed by the Town. The Security Deposit, less any 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 Development Officer that the Initial Development fully complies with these Design Controls.

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

ARTICLE IV DESIGN SPECIFICATIONS

- 4.1 **SETBACKS** – All Improvements on a Lot shall comply with the setback requirements as provided by applicable Town bylaws.
- 4.2 **MINIMUM SQUARE FOOTAGE** – No less than 1,000 square feet (above grade) for bungalows, bi-levels and split levels and no less than 1,400 square feet (total) for 1.5 storey or 2 story Residential Dwellings.
- 4.3 **READY-TO-MOVE HOMES** – Ready-to-Move Homes shall only be permitted at the discretion of the Development Officer.
- 4.4 **MANUFACTURED HOMES** – Manufactured Homes (including mobile homes) shall not be permitted.
- 4.5 **EAVES TROUGHS AND DOWNSPOUTS** – Prefinished metal eaves troughs and downspouts are required for each residential dwelling and garage on a Lot and must be designed to discharge water away from all adjacent Lots and clear of the foundation of the residential dwelling on the Lot. Downspout locations must be consistent with the lot grading and drainage requirements as set out in Article 6.1 herein.
- 4.6 **GARAGES** – All Residential Dwellings on a Lot must have an attached double garage of at least 20 feet in width which must be accessible by vehicle from the street. An additional rear garage or concrete pad may be permitted at the discretion of the Development Officer.
- 4.6.1 **GARAGE EXTERIOR FINISHES** – All garage finishes shall be consistent with the residential dwelling situated on the Lot including roof form, scale, materials, and detailing.
- 4.6.2 **CAR PORTS** – Car ports are not permitted.
- 4.6.3 **PARKING** – Any on-street parking or oversized-vehicle parking shall comply with all applicable Town bylaws. Any recreational vehicle parking pads are to be located

in the rear yard only and must be shown on the site plan at the time of application for a Development Permit. All recreational vehicles, campers, trailers, boats, unregistered vehicles and commercial vehicles must be parked in rear yards only.

- 4.7 **FENCES** – Fences may be erected within the Subdivision, subject to the applicable Town bylaws. No waivers will be provided for over-height fences. Chain-link and other wire fences are not acceptable.
- 4.8 **LANDSCAPING** – The landscape plan shall be supplied to the Town at the time of application for a Development Permit. Landscaping on each Lot shall meet or exceed the following minimum requirements:
- A. all front yards must be:
 - I. fully sodded to the corners of the residential dwelling; or
 - II. fully covered with ground cloth for the prevention of weeds, to the corners of the residential dwelling, with appropriate cover material to a depth of three (3) inches on top of the ground cloth, and, as an option in addition to these requirements, with shrubs and/or other plants planted in the cover material.
 - B. in the case of corner lots, all side yards facing the street must also be fully sodded or fully covered with ground cloth as set out above to the corners of the residential dwelling;
- 4.9 **CORNER LOTS** – Both street elevations must be designed and detailed as front elevations.
- 4.10 **IRON SURVEY PINS** – Iron survey pins, which have been installed on each Lot by an Alberta Land Surveyor, are to be protected during the course of construction. If the replacement of a missing or damaged iron pin is required, the same shall be done only by an Alberta Land Surveyor and replacement shall be at the expense of the Lot Owner.
- 4.11 **CONSTRUCTION-SITE MAINTENANCE** – During the course of construction, the Lot Owner is responsible for the orderly condition of the construction site. The Lot shall be kept free of weeds, and construction debris and waste shall be disposed of as soon as reasonably possible and shall not be allowed to accumulate on the construction site. In the event the Town deems that there is non-compliance with this Article 4.11, it may in its discretion but shall not be obligated to contact the Lot Owner to request the Lot be cleared of such weeds, construction debris and waste, and if not removed promptly the Town will be entitled but not obligated to clear such weeds, construction debris and waste at the cost of the Lot Owner.
- 4.12 **DISPOSAL OF SURPLUS EXCAVATED MATERIAL** – The Lot Owner is required to keep excavated materials within the perimeter of the construction site. The Lot Owner shall be responsible for the removal of any and all excess material from any area outside the confines of the Lot.

- 4.13 **PREVENTION OF DAMAGE AND REPAIR OF DAMAGED WORK** - To prevent damage to installed infrastructure, the Lot Owner is required to:
- A. protect sidewalks, curbs, gutters, swales and walkways when it is necessary for vehicles or equipment to be driven across them;
 - B. keep the street in front of the Lot clean during construction and keep catch basins adjacent to the Lot clear of debris and in working order at all times; and
 - C. record and report to the Town any and all damage to installed infrastructure, as well as the identity of the party that caused the damage.
- 4.14 **COSTS RESULTING FROM DAMAGE** - The Lot Owner is responsible for the payment of all costs associated with the repair of damage contemplated by Article 4.14 herein if:
- A. the cause of the damage is unknown;
 - B. the identity of the party that caused the damage is unknown; or
 - C. the party that caused the damage does not pay all of the costs of the repair, for any reason.
- 4.15 **DAMAGE PRIOR TO CONSTRUCTION** - If the Lot Owner notices damage to installed infrastructure prior to the commencement of construction, he or she must report the damage to the Town immediately after the time of discovery so that a record may be made of it in the Lot Owner's file. The cost to repair any damage not reported as required by this Article 4.15 will be the sole responsibility of the Lot Owner.

ARTICLE V PARKING AND STORAGE

- 5.1 **PARKING AND 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 occupying a building used for private residential purposes. Specifically, but without in any way restricting the foregoing, the following shall not be parked or stored on any Lot:
- A. heavy duty trucks or tractor-trailers;
 - B. construction equipment;
 - C. farm equipment;
 - D. abandoned or non-functioning vehicles or equipment;
 - E. auto or truck bodies or wrecks; and
 - F. gasoline, diesel or similar fuel, or volatile, explosive or dangerous substances other than those for ordinary household use in quantities reasonably appropriate for such use.

ARTICLE VI GRADING AND SOIL SUPPORT

- 6.1 **GRADING** - The creation and maintenance of proper grading and drainage elevations for the Lot shall be the sole responsibility of the Lot Owner at their cost, and shall be

completed and maintained in accordance with all standards and requirements as prescribed by the Town from time to time, including the requirements of the Development Permit and all applicable Town bylaws, notwithstanding that grading and drainage elevations may not be registered against title to any Lot. Lot Owners shall not suffer or permit the level or grade of the Lot and any surface drainage system to be altered in any manner unless it is in compliance with the above, and Lot Owners shall be responsible for ensuring that there is proper and adequate drainage on the Lot at all times. 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.

- 6.2 **SOIL CONDITIONS** - The Lot Owner is solely responsible for ensuring that appropriate investigations are completed at their cost to ensure that soil conditions will support the desired Improvements on the Lot. Any special construction procedures such as fill compaction or additional or deeper pilings shall be performed at the sole cost of the Lot Owner. The Town makes no representations, warranties, certifications or guarantees with respect to soil conditions.

ARTICLE VII SECURITY DEPOSIT

- 7.1 **PAYMENT OF SECURITY DEPOSIT** - A Purchaser shall pay the Security Deposit to the Town at the time of closing of the Purchase Agreement, which payment shall not include any other Development Permit application fees payable to the Town.
- 7.2 **RETURN OF SECURITY DEPOSIT** - A Security Deposit shall not be returned to the applicant unless and until it has been determined in the discretion of the Development Officer, acting reasonably that the Initial Development is in full compliance with the approved Development Permit, these Design Controls and applicable Town bylaws. The Town will hold the Security Deposit, without interest until such time as a final inspection of the Lot has been performed and full compliance has been established.
- 7.3 **DEDUCTIONS FROM SECURITY DEPOSIT** - In the event of deficiencies resulting from default or non-compliance with the approved Development Permit, these Design Controls or applicable Town bylaws, the Lot Owner shall immediately remedy any such deficiencies. Should such deficiencies not be remedied in accordance with terms established by the Town, the Town may in its discretion apply all or part of a Security Deposit to correct any deficiencies and also recover from the applicant any reasonable costs which exceed the amount of the Security Deposit. The applicant shall be liable for any damages to infrastructure on the construction Lot or, in the Town's sole discretion, on adjacent Lots and shall make reparations by way of the Security Deposit and additional payment of costs as required to remedy any deficiency.
- 7.4 **IDEM** - The Town, 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 Town, where such costs and expenses may include, without limitation and in addition to those contemplated by Article 7.3 herein, the Town'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 Town might take due to or in connection with a Lot Owner's breach or default of the terms and provisions of these Design Controls as well as any terms or conditions of the Development Permit. If the balance of the Security Deposit is insufficient to cover all of the Town's costs and expenses, then the Lot Owner shall pay, on demand, such costs and expenses on a full-indemnity basis.

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

ARTICLE VIII WAIVER AND ENFORCEMENT

- 8.1 **NO WAIVER BY TOWN** - No waiver or failure to promptly enforce any provision of these Design Controls shall constitute a waiver of any other provision, nor shall any waiver or failure to promptly enforce any provision of these Design Controls constitute a continuing waiver unless otherwise expressly provided. No action lies against the Town for failure to enforce these Design Controls in any event.
- 8.2 **NO WAIVER DESPITE APPROVAL** - The approval by the Town of an Application that contravenes these Design Controls is not a waiver of these Design Controls unless the Town expressly so provides in a written statement to accompany the Development Permit.
- 8.3 **RIGHT TO INSPECT** - Upon reasonable notice to the Lot Owner, the Town and its agents are hereby authorized to enter onto a Lot in order to perform an inspection to ensure compliance with these Design Controls and all other applicable laws, regulations, and bylaws prior to returning a Security Deposit to the Lot Owner.
- 8.4 **RIGHT TO AMEND OR WAIVE** - The Town reserves the right from time to time to unilaterally amend or waive all or any portion of these Design Controls.
- 8.5 **ENFORCEMENT** - If the Lot Owner refuses or fails to undertake the work required to comply with the terms of the Development Permit or these Design Controls, the Town may invoke a stop-work order under section 645 of the Municipal Government Act, RSA 2000, c M-26 (the "Act"), as amended, and a resulting enforcement order under section 646 of the Act.