

Town of Asquith

RESTRICTIVE COVENANT – ARCHITECTURAL, CONSTRUCTION and LAND USE

TO: THE REGISTRAR

Date: _____

WHEREAS:

1 The Town of Asquith is the registered owner of the Dominant Lands and the Servient Lands.

2 The Town of Asquith intends to impose a scheme of mutually enforceable restrictions with respect to the use and improvement of the Servient Lands for the benefit of the Dominant Lands in order to preserve the integrity of the Development.

WITNESSETH:

1. In this Restrictive Covenant, including the preambles and schedules annexed hereto, the following words and expressions shall have the following meanings:

- (a) "Development" means the residential subdivision described as the Lunn Street development, and includes Lots _____ Block, _____ Plan, _____, within which the Servient Lands are located;
- (b) "Dominant Lands" and "Servient Lands" means the lands comprising the Lots shown on **Schedule "A"** and all Lots are part of a building scheme and each lot is both a dominant and servient tenement to every other lot;
- (c) "Dwelling" means any residential dwelling constructed upon a lot;
- (d) "Guidelines" means the Architectural and Construction Guidelines in Schedule "B" annexed hereto.
- (e) "Lot" means any of the lots comprising the Servient Lands;
- (f) "Owner" means those persons who are the registered owners of a Lot;
- (g) "Restrictions" means the restrictions contained in paragraph 2 of this Restrictive Covenant;

(h) "Restrictive Covenant" means this agreement including the schedules annexed hereto which schedules are incorporated into and form a part of this agreement;

2. For the benefit of the Dominant Lands, the following Restrictions are to be annexed to and run with the Servient Lands, namely:

(a) No Lot shall be used for manufacturing, professional, commercial, trade, or business purposes, or for other than single family private residential purposes unless:

- (i) such use shall comply in all respects with any applicable Town of Asquith and/or Provincial requirements or other governing regulations; and
- (ii) such use shall not be an annoyance or nuisance to the occupiers of neighboring Lots, acting reasonably; and
- (iii) such use shall not require signage, extraordinary parking or changes to the exterior of the Dwelling constructed upon the Lot so as to cause the Dwelling to appear from the outside as being used for any purpose other than for single family private residential purposes;

(b) No more than one Dwelling shall be constructed upon any Lot;

(c) No mobile or rebuilt homes shall be permitted on any Lot and no existing home shall be moved onto any Lot, however, Modular and Manufactured homes built to conform to the design of and appear the same as traditional site built homes and conform to all other requirements pursuant to this agreement are allowed so long as the width of the narrowest side of the dwelling is at least one half of the width of the longest side of the dwelling;

(d) No Dwelling or other improvement (including, but not limited to a garage, storage shed or domestic animal shelter) shall be constructed upon a Lot unless it is constructed in compliance with the Architectural and Construction Restrictions as set out in **Schedule "B"** attached;

(e) No drainage grade or swale left or created in the Development or on any particular Lot for the purpose of permitting surface drainage shall be altered, built upon or obstructed in any manner that would interfere with the surface drainage from the Lot or adjacent land;

(f) The Owner of any Lot shall not permit any Dwelling or other improvement (including but not limited to a garage, storage shed, fence or animal shelter) built upon such Lot to remain in a state of disrepair or in an unfinished, unmaintained or unpainted state;

(g) No sign or advertising matter of any kind shall be placed on or adjacent to any Lot, except for a sign offering the Lot for sale or rent, or an unobtrusive entrance

sign identifying the Owner, occupant, address or name of the Lot which sign shall be located entirely within the boundaries of such Lot and shall not exceed 1 square metre in surface area;

(h) Except during the construction of a Dwelling or major improvement on a Lot, no Lot shall be used for 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;

(i) The Owner of a Lot shall not permit any violation of these Restrictions or the Architectural and Construction Restrictions attached as **Schedule "B"** to take place or continue on the Owner's Lot;

(j) The Owner shall not make application for, nor further subdivide the Lot;

(k) No unlicensed or inoperative vehicles and no inoperative tractors, equipment, implements or other machinery shall be stored or kept on any lot;

(l) Any antenna or pole placed on any Lot or structure on the Lot shall not extend 2 metres above the nearest structure to the antenna;

(m) During construction, it shall be the responsibility of each Lot owner to insure that:

- i. construction sites are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner;
- ii. All construction related materials (soil, fill, equipment, tools, building materials such as lumber, etc) are to be contained within the property boundaries at all times and not encroach onto adjoining properties;
- iii. Any owner or contractor shall dispose of all waste resulting from the construction in a timely manner to ensure there is no unreasonable accumulation of waste on the property, or scattering onto nearby properties during construction;
- iv. It is highly recommended that a waste disposal bin remain on-site for the duration of construction;
- v. No burning or burying of waste material is allowed;
- vi. It is the owner or contractors responsibility to clear the site of all waste and prevent the waste from being blown onto nearby properties. If the waste is not contained and/or removed in a timely manner, the town may remove the waste from the property and/or collect the windblown waste and the costs of doing so will be charged to the property owner.

(n) The owner or contractor is responsible for the removal of all excess earth, and it cannot be spread onto adjacent properties or other properties without prior written arrangements being made with the town of Asquith.

(o) Connection of foundation drains (ie, weeping tile) of any building to the sanitary sewer system collection system will not be permitted. It is recommended a sump pump be used to discharge the water to the surface drainage system.

(p) The Owner shall be responsible to make arrangements with any public utility for connection to public utility services, and be solely responsible for the cost thereof.

(q) The Town of Asquith does not clear back alleys of snow in the winter or maintain the alleys in the summer. Property owners contemplating garages only accessible from the alley need to take this into consideration.

(r) The civic address shall be posted at the front of the property during construction.

3. If any of the Restrictions or the application thereof to any party or any circumstances shall be held by any court of competent jurisdiction to be invalid or unenforceable to any extent, then such Restriction shall be severed from the remainder of this Restrictive Covenant to the extent required thereby and the remainder of the Restrictive Covenant or the application of such Restriction to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each of the remaining Restrictions of this Restrictive Covenant shall be valid and enforceable to the fullest extent permitted by law.

4. This Restrictive Covenant is in addition to the requirements of any municipal or other governmental authorities having jurisdiction with respect to the use of the Servient Lands, and nothing contained herein shall be construed as permitting or authorizing anything which is prohibited or authorizing anything which is prohibited by statute, bylaw, regulation or like enactment having the force of law and having application to the Servient Lands.

5. The Town of Asquith may take action or proceedings to enforce this Restrictive Covenant but nothing herein shall require or oblige the Town of Asquith to enforce this Restrictive Covenant or render the Town of Asquith liable for failure of the owner of any Lot to adhere to or to comply with the Restrictions contained in this Restrictive Covenant.

6. If the Town of Asquith shall hereafter cease to exist or own any portion of the Dominant Lands or Servient Lands, any reference to the Town of Asquith contained in this Restrictive Covenant shall be read as referring to those persons

who together are the Owners at that time of not less than 75% in number of the Lots comprising the Development instead of to the Town of Asquith.

7. The Owner of any Lot comprising the Dominant Lands shall be entitled to enforce the Restrictions contained in this Restrictive Covenant against the Owner of any Lot comprising the Servient Lands.

8. Any notice required or permitted to be given under this Restrictive Covenant shall be in writing and shall be sufficiently given to the party to whom it is addressed if delivered or forwarded by registered mail:

(a) to the Town of Asquith at either the then town office of the Town of Asquith or any other address notice of which may be given by the Town of Asquith to the Owners of the Lots; or

(b) to the Owner of a Lot at the address for the Owner shown on title to such Lot; and every such notice shall be deemed to have been given and received at the time when, in the ordinary course of transmission, it would have been delivered at the address to which it was sent.

9. This Restrictive Covenant shall be binding upon the Owner of each Lot and the Restrictions shall be annexed to and run with the Servient Lands and be binding upon all subsequent purchasers of the Servient Lands and each Lot comprising the Servient Lands and shall not be discharged without the prior written consent of the Town of Asquith and Owners of more than 75% of the Dominant Lands who shall have the option, but not the obligation, of enforcing the terms hereof.

IN WITNESS WHEREOF the purchaser and Servient Land Owner has executed these presents the day and year first above written.

Purchaser, Servient Land Owner (s) Print Name(s)

Servient Parcel Land Description:

IN WITNESS WHEREOF the Town of Asquith, in its own behalf and on behalf and as representative and agent of the remaining owners of the Dominant Lands has executed these presents the day and year first above written.

Town of Asquith

Schedule "B"

Town of Asquith – Lunn Street Development

ARCHITECTURAL & CONSTRUCTION RESTRICTIONS

1. All Dwellings or other improvements on any Lot shall be constructed in accordance with these Guidelines.
2. All construction on any Lot shall also comply with all applicable building codes and municipal by-laws, regulations and other requirements, and be in conformity with the provisions of any easement, right-of-way, and restrictive covenant registered against title to such Lot.
3. No development shall be commenced or carried out on any Lot until all required development and building permits have been obtained from the applicable municipal authorities. Construction of any improvement shall not continue unless these permits remain in full force and effect.
4. The Dwelling and any improvements constructed on a Lot shall not increase existing cross drainage to other Lots.
5. No development of any type shall be undertaken on any Lot unless appropriate steps are taken to confine the placement and storage of all construction materials, including excavated materials to that Lot.
6. All roofing shall have a fire rating of class A, B, or C. Unrated cedar shakes are not acceptable.
7. All buildings additional to the Dwelling shall be constructed in the same architectural style and out of the same exterior materials as the Dwelling so as to conform in appearance to the Dwelling. Steel and metal Quonsets and outbuildings are not permitted. Storage sheds not exceeding 120 square feet need not be constructed out of the same exterior materials as the Dwelling.
8. Cedar siding is not permitted due to the increased fire hazard it creates.

9. Where rear or front walkout conditions exist, retaining walls on walkouts or forced walkouts must follow the corresponding grade and be composed of concrete, allen block or treated lumber acceptably finished. Railway ties will not be permitted.

10. The exterior of all buildings constructed upon a Lot, including all finishing, staining or painting, shall be completed within 12 months from the date of commencement of construction.

11. The Developer, its' servants, agents, contractors and appointees will not be held responsible or liable for the enforcement of or ensuring compliance with these Guidelines by or against an Owner of any Lot.

12. DWELLINGS

No dwelling shall be constructed on any of the lots which has an above grade floor area (excluding attached decks, patios and garages) less than:

- 1,100 square feet in the case of a bungalow or bi-level dwelling;
- 1,500 square feet in the case of a two-storey dwelling

For all dwellings intended to be constructed with an attached garage, the garage must be constructed at the same time as the dwelling is built.

All front facing garages must be paired together on common property lines. Attached as Appendix "A" to this Schedule "B" is a diagram, indicating in red and/or otherwise by labelling the required location and abutting property line for each attached garage. Garages must be placed as indicated on Appendix "A". The purpose of the requirement is to pair garages together to provide a better streetscape experience.

The roof of the principal dwelling shall have a minimum 4-in-12 pitch.

Setback requirements from property lines are as follows:

- a) Twenty-five (25) feet from the front property line.
- b) Four (4) feet from the side property lines.
- c) Two (2) feet from the back property line.

The front of the dwelling shall face Lunn Street, but for Lot 20, which may face Lunn Stree or East Avenue.

13. LOT GRADING AND DRAINAGE

All dwelling construction along Lunn Street shall include, at the owner's cost, the installation of a culvert, at least 10 inches in diameter, under all driveway accesses to the property from Lunn Street.

The corner lot at the intersection of Lunn Street and East Avenue shall also install a culvert at least 10 inches in diameter should property access be required from East Avenue.

No individual shall alter the integrity of the drainage currently established along Lunn Street or East Avenue, or negatively affect the drainage plan within the Town of Asquith generally. Should this be altered, costs to restore it will be charged back to the property taxes of that owner.

Drainage on individual lots shall not direct water onto adjacent lots.

Lot Grading- The sloping of the lot to provide good drainage away from buildings in such a way that surface runoff from rainstorms or snowmelt is directed toward the overland drainage system. Complete development of all lots may occur over a number of years. Early development does not preclude a property owner's responsibility to maintain this surface drainage system. If a property owner obstructs drainage in any way, thereby creating a potential flooding problem for neighbors upstream, that property owner must immediately correct the situation at their own expense. Similarly, a lot should not be landscaped below surrounding grade otherwise flooding may occur.

Grading between lots – Drainage swales are shallow sloped channels located on common property lines and graded in such a manner as to move surface runoff away from lots toward the surface drainage system.

As noted above, the final grade of soil against structures and at property lines for each individual lot shall be as determined by the Town of Asquith.

14. The Town of Asquith may assign its rights of enforcement pursuant to this agreement to any Dominant Tenant, or owner of Dominant Lands and in such case the Dominant Tenant shall be entitled to the costs and damages set out in this Agreement.

15. These Architectural and Construction Restrictions are intended to impose a scheme of mutually enforceable restrictions with respect to the improvement of the Servient Lands for the benefit of the Dominant Land.

16. If any of these Restrictions or the application thereof to any party or any circumstances shall be held by any court of competent jurisdiction to be invalid or unenforceable to any extent, then such Restriction shall be severed from the remainder

of these Architectural and Construction Restrictions to the extent required thereby and the remainder of the Architectural and Construction Restrictions or the application of such Restriction to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each of the remaining Restrictions of this Restrictive Covenant shall be valid and enforceable to the fullest extent permitted by law.

17. These Architectural and Construction Restrictions shall be binding upon the Owner of each Lot and the Restrictions shall be annexed to and run with the Servient Lands and be binding upon all subsequent purchasers of the Servient Lands and each Lot comprising the Servient Lands and shall not be discharged without the prior written consent of the Developer and Owners of more than 75% of the Dominant Lands who shall have the option, but not the obligation, of enforcing the terms hereof.

18. These Architectural and Construction Restrictions are annexed to and form part of the Restrictive Covenant to which they are annexed.

Serviant Land Owner's Initials