

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

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ADVISORY

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RESTRICTIVE COVENANT AND EASEMENT

THIS AGREEMENT made as of the 30th day of May, 2007.

WHEREAS Delcon Ellerslie is the registered owner of the Dominant Lands and the Servient Lands described in Schedule "A" hereto situate in the City of Edmonton;

AND WHEREAS Delcon Ellerslie intends to impose a scheme of mutually enforceable restrictions with respect to the use and improvements of the Lands and buildings thereon in order to preserve the integrity of the Development, which restrictions are not meant to detract or derogate from the Land Use Bylaw of the City of Edmonton currently in force, but are in addition to and supplementary to the restrictions, covenants and conditions contained in the said Land Use Bylaw.

AND WHEREAS Section 68(1) of the Act provides that an owner may grant to himself an easement or restrictive covenant for the benefit of land which he owns and against land which he owns and that the easement or restrictive covenant may be registered under the Act;

NOW THEREFORE, Delcon Ellerslie does hereby declare, establish, impose and annex to the Servient Lands and each and every portion thereof for the benefit of the Dominant Lands, the following stipulations, restrictions, provisions and easements to run with the Lands and be binding upon the registered owners from time to time of the Lots:

1. In this Restrictive Covenant, including the preamble, the following words and expressions shall have the meaning herein set forth:
 - a) "**Act**" means the Land Titles Act (Alberta) as amended from time to time;
 - b) "**Association**" means the homeowners association which from time to time may be designated by Delcon Ellerslie as the homeowners association established for the benefit of the Servient Lands;
 - c) "**Delcon Ellerslie**" means DELCON ELLERSLIE LANDS LTD. and its successors and assigns
 - d) "**Developer**" means DELCON ELLERSLIE LANDS LTD. in its capacity as developer of the Development, and includes its successors and assigns;
 - e) "**Development**" means the residential subdivision plan within which the Lots are located;
 - f) "**Development Fencing**" means the fence or fences now or hereafter placed or constructed by, or for and on behalf of, the Developer upon any portion of each of such Lots;

- g) "**Dominant Lands**" means the lands described as such in Schedule "A" hereto;
 - h) "**Dwelling**" means any residential dwelling constructed on any of the Lots;
 - i) "**Grantee**" means DELCON ELLERSLIE LANDS LTD. in its capacity as Developer and includes its successors and assigns, ;
 - j) "**Grantor**" means DELCON ELLERSLIE LANDS LTD. in its capacity as owner of the Lands and includes its assigns and successors in title, ;
 - k) "**Lands**" means the Dominant Lands and Servient Lands described in Schedule "A" hereto;
 - l) "**Lots**" means the subdivided residential lots described in Schedule "A" hereto and individually each shall be a "**Lot**";
 - m) "**Owners**" means the registered legal owner or owners of the Lands and "**Owner**" means the registered legal owner or owners of a Lot;
 - n) "**Restrictions**" means the provisions, restrictions and stipulations contained in Paragraph 2 of this Restrictive Covenant;
 - o) "**Restrictive Covenant**" means this agreement as the same may be amended from time to time and the expressions "**herein**", "**hereof**", "**hereto**" "**above**", "**below**", and similar expressions if used in any article, section or paragraph of this agreement refer to this agreement including the schedules hereto and do not refer solely to a particular article, section or paragraph unless specifically stated herein;
 - p) "**Servient Lands**" means the lands described as such in Schedule "A" hereto.
2. For each of the Lots comprising the Servient Lands described in Schedule "A" hereto, for the benefit of the Dominant Lands, the following restrictions, stipulations and provisions are to run with the Lands, namely:
- a) Without the prior consent of the Grantee, none of the project fencing provided by Delcon Ellerslie for the Development shall be removed or changed from the original design or colour and the owner from time to time of any of the Lots shall preserve the original design and colour of and maintain in good condition that portion of the project fence located on such Lot. In the event of removal or replacement, such fence shall be rebuilt at the expense of the owners of such Lot to its original design and colour unless otherwise agreed in writing by the Grantee.
 - b) No fence, other than project fencing provided by Delcon Ellerslie, shall be built upon the Servient Lands unless the said fence is built according to the design, standards, specifications, and colour of the fence described on the plan attached hereto as Schedule "B" or is built according to a design, standard, specification and colour otherwise agreed to in writing by the Grantee.

- c) Unless otherwise agreed in writing by the Grantee, no structure constructed by Delcon Eilerslie on the Lands for purposes of enhancing the appearance of the Development shall be added to, removed or changed except to maintain or repair the said structure in keeping with the original design.
 - d) Without the prior written consent of the Grantee, no changes shall be made to the completed exterior of any Dwelling for a period of two years from the date that such Dwelling is occupied for the first time as a residence.
 - e) Roofs of the Dwellings shall be finished with materials approved in writing by the Grantee.
3. Notwithstanding anything herein contained to the contrary, the Restrictions may be amended from time to time by the Grantee or the Association provided that such amendments are made in writing. the Grantee or the Association shall make a copy of such amendments available to any registered owner of the Lots upon request at the registered office of the Grantee or the Association, as the case may be, from time to time.
 4. The Restrictions are enforceable by the Owners or any one or more of them and any waiver by any Owner of the strict performance of the covenants set out herein shall not of itself constitute a waiver or abrogation of the covenants set out herein.
 5. Nothing herein shall require or oblige the Grantee or the Association to enforce the Restrictions or render the Grantee or the Association liable for the failure of any of the Owners from time to time to adhere to or comply with the Restrictions, it being the intention to attach to each of the Lots, and the Owners from time to time thereof, the obligation for compliance with the Restrictions.
 6. The Restrictions shall be binding upon and enure to the benefit of the registered owner from time to time of each of the Lots and the restrictions herein shall run with the Lands and each of the Lots and the restrictions herein shall run with the Lands and each of the Lots comprising the Lands.
 7. If any of the Restrictions herein 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 and Easement, and the remainder of this Restrictive Covenant and Easement or 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 shall be valid and enforceable to the fullest extent permitted by the law.
 8. The Restrictions are in addition to the requirements of the municipal or other government authorities having jurisdiction in respect of the use of the Lands, and nothing contained herein shall be construed as permitting or authorizing anything which is prohibited, controlled or regulated by any statute, bylaw, regulation or like enactment having the force of law and having application to the Lands.

9. The Grantor hereby grants to the Grantee and its successors and assigns and its successors in title to each Lot and its and their respective lessees, sublessees, licensees, invitees, servants, agents, employees and contractors, and to the Association and its successors and assigns, together, in each case, with their respective necessary vehicles, equipment and machines, the right, privilege, license, permission, right-of-way and easement of access, passage and re-passage over, along, across, through and upon each of the Lots as is required for the purpose of placing, constructing, erecting, maintaining, repairing, replacing and inspecting the Development Fencing.
10. There shall be included in the said grant all things necessary and incidental to the full enjoyment of the rights and privileges granted in clause 9 preceding.
11. Notwithstanding the grant contained in clause 9 neither the Grantee nor the Association shall have any obligation to maintain, repair, replace or inspect any of the Development Fencing.
12. The Grantor or its respective successors or assigns shall not use or permit to be used the Lots in any manner so as to interfere with the use and enjoyment thereof by the Grantee to the extent that the Grantee is entitled to use and enjoy same. It is hereby covenanted and agreed that the Grantee shall peaceably hold and enjoy all rights and privileges and other appurtenances granted hereunder without hindrance or interruption by the Grantor or any person or persons claiming by, under, or through the Grantor. The Grantor further agrees that it will not build, erect or maintain nor suffer to be built, erected or maintained any building or structure, nor plant or maintain, nor allow or suffer to be planted or maintained, any trees, shrubs or landscaping, on any of the Lots which would or could prevent or hinder the exercise by the Grantee of any of the rights or privileges or other appurtenances granted hereunder.
13. Upon the execution of this Restrictive Covenant and Easement, and at all times hereafter, unless and until the easement granted hereunder is terminated in accordance with the provisions hereof, the Grantee, or any person, firm or corporation, or anyone claiming by, through, under or in trust for the Grantee, or any of them, may enter upon or occupy the Lots as agents, servants, workmen and contractors, owners and occupiers, for the purposes as aforesaid.
14. Without imposing any obligation to do so, the Association, or its assignee, may, enter upon those portion of the Lots as set out in clause 9 hereof, to maintain, repair, replace and inspect the exterior of the Development Fencing, provided that the cost of such maintenance, repairs, replacement and inspection shall be borne by the registered owners of the Lots.
15. The Grantee, upon notice to the Owners, may, at any time, terminate the easements, or any of them, granted pursuant to this Restrictive Covenant and Easement.
16. It is hereby acknowledged and agreed that the rights and privileges and other appurtenances granted in clauses 9 to 15 inclusive of this Restrictive Covenant and Easement constitute transfers of easements and rights in the nature of easements by the Grantor to the Grantee and that the provisions of clauses 9 to 15 inclusive of this Restrictive Covenant and Easement shall run with and bind each Lot as a servient tenement and shall bind the Grantor and its assigns and successors in title with respect

to each Lot and shall in respect of each Lot which is a servient tenement run with, benefit and accommodate each of the other Lots and the dominant tenement and shall enure to the benefit of the Grantee and its assigns and successors in title with respect to each of the Lots.

17. Should any provision or portion of this Restrictive Covenant and Easement be illegal or not enforceable, it shall be considered separate and severable from this Restrictive Covenant and Easement and the remaining portion and provisions shall remain in force and be binding upon the parties hereto as though the said provision or portion thereof had never been included herein.
18. No action shall lie against Delcon Ellerslie or the Association for damages for breach of any one or more of the covenants contained in this Restrictive Covenant and Easement unless Delcon Ellerslie or the Association is registered as Owner of the Lot alleged, and proven by a court of competent jurisdiction, to be in breach of this Restrictive Covenant and Easement and in such circumstance such action shall only lie against the party who is registered as Owner of the Lot alleged, and proven by a court of competent jurisdiction, to be in breach of this Restrictive Covenant and Easement. This covenant shall constitute an absolute defence to any such action and may be pleaded as such.
19. The Grantee may delegate to the Association the power to grant any approval, give any consent or make any amendment to this Restrictive Covenant which the Grantee has the right or power to grant or make hereunder.
20. The Grantee may assign its interest, in whole or in part, in this Restrictive Covenant and Easement, and upon such assignment, the assignee shall assume all responsibility for the Grantee's obligations set forth in this Restrictive Covenant and Easement in relation to such assigned interest, and the Grantee shall not, from and after the date of any such transfer or conveyance, be responsible for such obligations with respect to the interest therein so assigned.
21. In the event that the Grantor shall transfer or convey any interest in a Lot or Lots, or any part thereof, the purchaser or transferee shall be bound by the terms of this Restrictive Covenant and Easement in and with respect to the Lot or Lots or interest therein so transferred or conveyed and shall, upon the request of an Owner, execute such agreements or further assurances as may be reasonably required to confirm such obligation. From and after the date of any such sale and conveyance, the purchaser or transferee shall assume all responsibility for the compliance with the obligations hereunder of the Grantor in and with respect to the Lot or Lots, or interest therein so transferred or conveyed and the Grantor shall be released from all of its obligations hereunder in and with respect to the Lot or Lots or interest therein so transferred or conveyed.
22. This Restrictive Covenant and Easement shall be governed by and interpreted in accordance with the laws of the Province of Alberta.
23. The Grantee shall be entitled to register this Restrictive Covenant and Easement (by caveat(s) or otherwise) against the Lots.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals as witnessed by the hands of their proper officers duly authorized in that behalf, as of the 30th day of May, 2007.

DELCON ELLERSLIE LANDS LTD.
in its capacity as Grantor

PER: _____

DELCON ELLERSLIE LANDS LTD.
in its capacity as Grantee

PER: _____

SCHEDULE "A"

LANDS

Rutherford Stage 26 RF4

SERVIENT LANDS:

FIRSTLY:

PLAN 062 0061
BLOCK 8
LOTS 114A TO 129A (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY:

PLAN 062 0061
BLOCK 8
LOTS 114B TO 129B (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS

DOMINANT LANDS:

FIRSTLY:

PLAN 062 0061
BLOCK 8
LOTS 114A TO 129A (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY:

PLAN 062 0061
BLOCK 8
LOTS 114B TO 129B (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS

SCHEDULE "B"

FENCE DETAILS

**SEE FENCE DESIGN PLAN REFERRED TO AS SCHEDULE "B" AND ATTACHED
HERETO AND MARKED AS:**

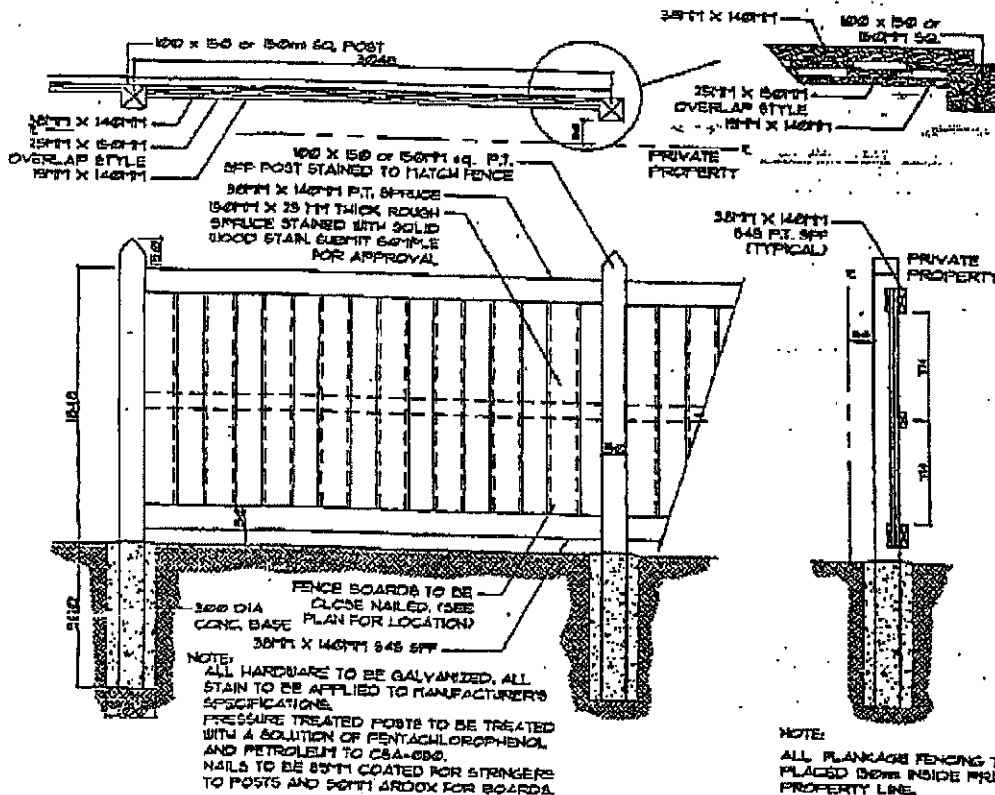
- 1. DOUBLE BOARD WOOD SCREEN FENCE**

SCHEDULE 'B'

THE PROMENADE PHASE 2 IN RUTHERFORD
RUTHERFORD
STAGE 26

INSTALLATION CLARIFICATION

WITH THE FULL AGREEMENT OF BOTH OWNERS, THE SIDE YARD FENCE AT THE COMMON PROPERTY LINE MAY BE CONSTRUCTED WITH 100 X 150 (4" X 6") POSTS AND BE LOWER IN HEIGHT, BUT CONSISTENT IN STYLE AND COLOUR ALL OTHER FENCES, WITH PUBLIC VIEW (INCLUDING LANE ADJACENCY) MUST ADHERE TO THE MINIMUM REQUIREMENTS AS SET OUT HERE, INCLUDING A MINIMUM 1.848 HEIGHT FENCE AND 100X150 (4"X6") POSTS



WOOD SCREEN FENCING NOTES:

1. ALL TIMBER POSTS AND BEAMS TO BE PRESSURE TREATED SPP GAIN TIMBER WITH TWO COATS OF STAIN.
2. ALL LUMBER SHALL BE CLEAN, CONSTRUCTION GRADE SPP MEMBERS, FINISHED AS PER THE DETAILS UNLESS OTHERWISE SPECIFIED.
3. ALL LUMBER SHALL BE STRAIGHT, SOUND AND FREE OF SPLINTS, WARPS, CRACKS, LARGE KNOTS AND OTHER DEFECTS.
4. COLOR FOR THE WOOD SCREEN FENCE TO BE RUTHERFORD GREEN BY CLOYERDALE PAINTS.
5. ALL DIMENSIONS ARE IN MILLIMETERS (mm) UNLESS OTHERWISE NOTED.

NOTE:
ALL PLANKAGE FENCING TO BE PLACED DOWN INSIDE PRIVATE PROPERTY LINE.
ALL INTERIOR FENCING TO BE PLACED ON PROPERTY LINE.

DOUBLE BOARD WOOD SCREEN FENCE
SCALE: N.T.S.



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AGRE - AGREEMENT
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