

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

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RESTRICTIVE COVENANT

Pursuant to sections 48(1) and 68(1) of the *Land Titles Act* of the Province of Alberta

WHEREAS PCR Land Corp. (the "Developer") is the registered owner of lands legally described in Schedule "A" hereto (the "Lands");

AND WHEREAS the Developer is in the process of developing the lands as a single family community to be known as "Pinehurst Developments" and is desirous that such development be well-planned and that a uniform high standard of appearance be achieved for all improvements made on the Lands;

AND WHEREAS to establish such high standards of development it is desirable that a restrictive covenant be registered against the Lands containing certain restrictions, covenants and conditions in respect to the exterior design, use and development of the Lands and the buildings, structures, improvements and premises to be erected on the Lands, all as hereinafter set forth, which restrictions, covenants and conditions are not meant to detract or derogate from the land use by-laws of the Municipal District of Foothills No. 31, or such other municipality as may have jurisdiction over the Lands, but are in addition and supplementary to the restrictions, covenants and conditions contained in any land use by-law in force from time to time relating to the Lands:

NOW, THEREFORE, the Developer annexes to and for the benefit of the Lands and each and every part thereof, and for the common benefit of the Developer and of any and all purchasers of the Lands and each portion thereof, the following restrictions, conditions and covenants restrictive in nature, the benefit and burdens of such restrictions, conditions and covenants to run with the Lands:

ARTICLE 1 - DEFINITIONS

1.1 The following terms shall have the following meanings in this agreement and in Schedules "B" and "C" attached hereto:

- (a) "Design Committee" means the committee from time to time established pursuant to the provisions of Schedule "B" attached hereto;
- (b) "Design Criteria" means the design criteria described in Schedule "B" attached hereto;
- (c) "Development" means the carrying out of any permanent construction or any residential building, structure, improvement, landscaping or premises on or excavation of the Lands or any material changes or alterations to any such building, structure, improvement, landscaping or premises constructed on or in the Lands, excepting the construction of utility lines and related improvements;
- (d) "Homeowners' Association" means "Pinehurst Homeowners Association Ltd.", a not-for-profit company to or to be formed pursuant to the provisions of the *Companies Act* of the Province of Alberta for the purpose of creating a legal entity for use by the owners of the Lands from time to time to:

- (i) regulate and manage the public utility lots, municipal reserves, public walkways, road boulevards, road medians, entrance features, subdivision perimeter and entrance fencing, and associated community and related signage and other improvements being utilized in common from time to time by owners of the Lands; and
- (ii) appoint members to the Design Committee once the Developer ceases to be the registered owner of any of the Lands.

ARTICLE 2 - APPROVAL OF DEVELOPMENT BY DESIGN COMMITTEE

2.1 No development shall be commenced or carried out on any portion of the Lands except following application in writing for approval to the Design Committee, and then only as approved in writing by the Design Committee prior to the application for a development permit or building permit from the municipality having jurisdiction over the Lands, all as more particularly provided in Schedule "B" attached hereto. Any development carried out on the Lands without such approval shall be forthwith removed upon a written request of the Design Committee requiring such removal.

ARTICLE 3 - BUILDING AND USE RESTRICTIONS

3.1 Unless waived in writing by the unanimous agreement of the Design Committee, the restrictions set out in Schedule "C" attached hereto and forming part hereof apply to every Development on the Lands. There shall be no appeal from a decision of the Design Committee refusing to unanimously waive the restrictions set out in Schedule "C".

3.2 It is acknowledged that potable water will be made available to the Lands through a water delivery system constructed by the Developer. Other than the existing water well on Lot 16, no water wells shall be drilled on any portion of the Lands. All residences constructed on the Lands shall have external water meters.

3.3 No septic system shall be constructed on the Lands unless it is a private sewage disposal system meeting the standards set by the Developer and the Municipal District of Foothills No. 31. The septic system shall be designed by a qualified engineer and constructed to such specifications. The Owner of the Lands shall provide to the Developer a certificate from the Engineer, confirming the septic system has been completed in accordance with the specifications. The operation of the septic system shall be monitored by the Homeowners Association and the owner of the Lands shall be responsible for conducting such maintenance and making such repairs as directed in writing by the Homeowners Association from time to time. If any owner of the Lands fails to make such repairs in a reasonable period of time, the Homeowners Association shall have the right (but not the obligation) to enter upon the Lands and make the repairs at the expense of the owner of the Lands. The owner of the Lands shall upon demand forthwith reimburse the Homeowners Association for all expenses incurred in making the repairs. Any dispute in regard to the costs incurred in making the repairs shall have been referred to arbitration pursuant to the *Arbitration Act of Alberta*.

ARTICLE 4 - ENFORCEMENT

4.1 This restrictive covenant shall be enforceable by the Developer, the Homeowner's Association and by the owner or owners of any of the Lands; provided, however, the Developer, the Homeowners' Association and any owners of the Lands are not obligated to commence an action to enforce this restrictive covenant, and no action shall lie against the Developer by the Homeowners' Association, the Design Committee or any member of the Design Committee for damages arising from the breach of any one or more of the covenants contained in this restrictive covenant unless the Developer, the Homeowners' Association, the Design Committee or any member of the Design Committee is registered as owner of the Lot in connection with the alleged breach and such breach of this restrictive covenant is proved by a court of competent jurisdiction. This provision shall constitute an absolute defence to any action and may be pleaded as such.

ARTICLE 5 - SEVERABILITY

5.1 Should any part, term or provision hereof be declared or decided by any court of competent jurisdiction to be illegal or in conflict with the laws of the jurisdiction where the provisions hereof are to be performed, the validity of the remaining portion, terms or provisions hereof shall not be affected thereby and such illegal part, term or provision shall be deemed not to be a part hereof.

IN WITNESS WHEREOF PCR Land Corp. has caused its corporate seal to be hereunto affixed, duly attested by the hand of its proper officer in that behalf, this 17 day of Sept, 2002.

PCR LAND CORP.

Per: 

SCHEDULE "A"

Plan 0213321

Block 1,

Lots 1 - 26

EXCEPTING THEREOUT ALL MINES AND MINERALS.

SCHEDULE "B"

DESIGN COMMITTEE AND DESIGN CRITERIA

A. DESIGN COMMITTEE1. Formation and Constitution of the Design Committee

The Design Committee initially shall be the Developer or such person or company appointed by the Developer (the "Design Committee"). Once the Developer no longer has any legal or beneficial interest in the Lands, the Design Committee shall be that group of three individuals designated from time to time as members of the Design Committee by the Homeowners' Association. Such committee, whether appointed by the Developer or the Homeowners' Association, shall constitute the "Design Committee". In the event that a member of the Design Committee resigns or otherwise becomes unable or unwilling to continue to act as a member of the Design Committee, the remaining members of the Design Committee may fill the vacancy by the appointment of a new member pending a decision by the Developer or the Homeowners' Association, as the case may be, to appoint a new member of the Design Committee.

2. Appeal of Design Committee Decision

If the registered owner of any portion of the Lands is unhappy with a decision made by the Design Committee on matters set forth in Section B hereof, he may appeal that decision if he obtains support in writing for such appeal from at least five registered owners of other portions of the Lands. The notice of intention to appeal endorsed by such five other owners shall be delivered to the Design Committee and such notice shall list four independent architectural firms carrying on business in the City of Calgary, in the Province of Alberta, that the registered owner appealing the decision of the Design Committee would be prepared to accept as a sole arbiter to review the decision of the Design Committee. The Design Committee shall, within a period of ten (10) days from receipt of such notice of appeal, designate which of the four architectural firms so listed it would be prepared to have act as a sole arbiter and the matter being appealed shall then be referred to such architectural firm for a decision. The decision of such architectural firm made after hearing from both the owner of the portion of the Lands appealing the decision of the Design Committee and members of the Design Committee shall be considered for all purposes a decision of the Design Committee. All costs incurred by the independent architectural firm in reviewing the decision of the Design Committee and finalizing a decision shall be paid by the registered owner of the portion of the Lands making the appeal. There shall be no appeal from the decision of the Design Committee while the Developer has a legal or beneficial interest in the Lands.

3. Approval Process

Construction of any residential building, structure, improvement or premises on or excavation of any portion of the Lands or any material change or alteration to any buildings, structures, improvements or premises constructed on the Lands, excepting landscaping in compliance with the Design Criteria hereafter appearing, shall not be permitted unless the plans and specifications thereof have been submitted to the Design Committee and approved by such committee in writing. All approvals given by the Design Committee shall be subject to all regulatory approvals by the municipality in which the Lands are located being obtained, including a building permit issued by such authority.

Approval by the Design Committee will not be given unless an owner of a portion of the Lands seeking approval complies with the following:

(a) Such owner or his design representative shall have met with the Design Committee, or a designated member of the Design Committee, to discuss and review preliminary ideas and plans, which meeting is to be prior to any design submissions. At this preliminary meeting such items as site specific guidelines, general guidelines and intent will be outlined. Preferred access, utility entry, location of septic system, grading, character, massing and schedules will be discussed.

(b) Following the preliminary meeting, the Design Committee shall be supplied with drawings and specifications showing the proposed building or improvement in sufficient detail to illustrate to the satisfaction of the Design Committee the size and design of the building to be constructed, together with such information as materials to be used, colors, appearance, setbacks, siting, access, utility hookups, height and landscaping as may be necessary to enable the Design Committee to provide preliminary approval. Such information shall initially include a topographical site plan showing the relationship of the proposed building to be constructed to the roadway and showing the septic system, the utility access and plantings. Such site plan shall also include a sketch plan and elevations showing proposed massing and existing and final contour lines of the proposed building or improvement.

(c) Once preliminary approval has been obtained, the Design Committee shall be given two sets of full architectural drawings, including a landscape plan, the location of utility hookups and the septic system, and full specifications, including materials and colors, which plans and specifications shall have no less scale or detail than that required by the municipal district having jurisdiction over the Lands on applications for development permits.

B. DESIGN CRITERIA

In assessing whether it will approve a proposed building or improvement to be made on any portion of the Lands, it is anticipated that the Design Committee will, inter alia, consider the following factors:

- (a) whether the proposed design has been designed specifically for the site and the building proposed is carefully integrated into such site;
- (b) the siting of the building or other improvement, including massing and carriageway access;
- (c) proposed landscaping, including future landscape development, with an emphasis on a minimum of changes to the natural drainage patterns and contours. Any proposed changes to existing grades, swales or existing drainage patterns must be accompanied by a proposed method of handling changes in the direction, quantity or subsurface loading of water. All such proposals for change must be approved not only by the Design Committee but by a soil engineering consultant retained by the party proposing to make such change, such soil engineering consultant to be approved in advance by the Design Committee;
- (d) it will be a preference to use a predominance of one material for exterior finishes, with a maximum of three materials being considered desirable;
- (e) generally all-natural materials are preferred, although plastics, metals, etc. may be allowed with special approval;

(f) generally soft, natural and earth tones are preferred; on sites with existing tree cover, a minimum of tree removal is preferred;

(g) the site or location of all buildings or other improvements must be approved by the Design Committee (the "Designated Building Site"). The Design Committee will take into consideration the height, profile and proposed placement of buildings on the Lands in relation to the height, profile and location or potential location of other buildings or improvements on adjacent portions of the Lands in an effort to minimize obstruction of the view from other parcels as much as possible;

(h) buildings or other improvements to be constructed on the Lands shall be situated so that adequate distance is left between the buildings or other improvements and the front, back and side boundaries. Variations of the footprint within the yard requirements is desirable.

(i) the architectural style and exterior finish of all accessory buildings and improvements located on a parcel shall normally conform to that of the dwelling house on such parcel;

(j) driveways shall be constructed concurrently with the construction of a dwelling house on a parcel. Driveways may be constructed of stone, brick, interlocking pavers, or formed-in-place concrete. Entry to the Designated Building Site, including type and placement, must be approved by the Design Committee;

(k) from the commencement of construction the outer shell of a dwelling house should be completed within twelve months. Landscaping and all external construction should be completed within fifteen months from commencement of construction;

(l) chimney finishes on all buildings on the Lands shall be brick, stone or the same materials as the walls of the buildings of which they form a part. No metal chimneys or roof vents are permitted unless painted in matte-finish to match exterior finishes;

(m) all signs require approval from the Design Committee as to size, material, graphics and color. Normally, signs will not be permitted with the exception of:

- (i) identification signs showing the name and/or the address of the owner or occupant;
- (ii) temporary signs for the purpose of advertising the sale of property;
- (iii) signs erected by the Developer;

(n) the dominant exterior finish on each building should be carried around all elevations and should not be limited to the front elevation. One material shall predominate for the exterior finish of each building, with a maximum of three materials being on one building;

(o) all dwelling units must have an enclosed garage suitable for storing a minimum of two automobiles. Garages may be attached, detached or underground;

(p) no concrete foundations of any buildings on the Lands may be exposed to a height of more than one foot above ground level except with the consent of the Design Committee;

(q) any exterior lighting must be selected, designed or placed in such a way as to be indirect from all angles of offsite viewing ;

(r) all mechanical devices exterior to the dwelling being constructed on any parcel must be shown on plans and elevations and specific approval must be obtained from the Design Committee for all such devices. Without restricting the generality of the foregoing, it is understood that satellite dishes, solar-heating units and air-conditioning units will be considered to be mechanical devices external to the structure;

(s) roof design and materials are not permitted except in compliance with the following:

(i) roof pitches must be compatible;

(ii) wood shakes, clay, slate, fiberglass tile, architectural asphalt shingle, dark color metal roofing and concrete roof tiles. All colors must be approved by the Design Committee;

(t) the minimum gross ground floor area, excluding garages, balconies, verandahs or other appurtenant structures, of two-storey residences should normally be 2,500 square feet, a split-level residence 2,500 square feet, and a single storey residence 2,000 square feet.

Notwithstanding anything hereinbefore provided, the Design Committee may, in its sole discretion, refuse to approve any construction, location, alteration or renovation proposed to be made on the Lands on the basis that such construction, location, alteration or renovation does not conform to or is incompatible with the general development of the Lands, although decisions by the Design Committee may be appealed as above provided.

The Design Committee's stamp of approval affixed to plans, architectural drawings and specifications denotes the Design Committee's approval and acceptance of the technical information contained in such plans, architectural drawings and specifications, and approval of the visual design that the plans, drawings and specifications appear to represent. The stamp of approval may not be construed to mean that the Design Committee confirmed the dimensions shown on any submission. The owner of the parcel of land applying for approval of the Design Committee shall be responsible to ensure that all building codes and regulations and laws of governmental authorities having jurisdiction over the Lands have been complied with notwithstanding the Design Committee's stamp of approval.

SCHEDULE "C"**BUILDING AND USE RESTRICTION**

1. Development is restricted to one detached single-family residence on each separate subdivided parcel on the Lands, together with ancillary buildings such as a gazebo, guesthouse, garage, swimming pool and other uses which are clearly consistent with residential use.
2. The keeping of livestock is not permitted. Dogs shall not run free or be allowed to pack, and whenever off its owner's lot a dog shall be on a leash or under the full control of a responsible party.
3. No garbage, refuse or non-natural materials may be kept or stored on any lot located on the Lands unless kept or stored in an approved closed container or building, and no such garbage, refuse or non-natural material or objects shall be allowed to accumulate on any lot by the occupant thereof.
4. No lot located on the Lands shall be used for the storage of commercial vehicles or stockpiling of any materials or supplies or stock-in-trade or for any purpose, excepting such storage shall be permitted if temporary and associated with the construction, maintenance or repair of dwellings and roadways located on the Lands or the utilities related thereto or used in connection with landscaping the Lands.
5. The placement on any lot located on the Lands of mobile homes, transportable or modular homes and trailers is prohibited except as they may be housed in garages or enclosed storage as approved by the Design Committee.
6. No activity other than the construction of the dwelling house and other improvements on the lot located on the Lands shall be undertaken or permitted to be undertaken which creates or might reasonably be expected to create dust, odor, smoke, noise or traffic incompatible with a private community.
7. Motorized vehicles will not be allowed on the walkways, environmental reserves, municipal reserves or ditches.



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