

## Restrictive Covenant (June 8<sup>th</sup>)

This Restrictive Covenant (the “**Restrictive Covenant**”) is made effective this \_\_\_\_ day of June 2023 (the “**Effective Date**”).

- A. **WHEREAS** the individuals listed in Schedule “A” hereto are the registered owners in fee simple of those individual Lots which will comprise the Burdened Lands.
- B. **AND WHEREAS** the individuals listed in Schedule “B” hereto are the registered owners in fee simple of those individual Lots which will comprise the Benefitting Lands.
- C. **AND WHEREAS** the Burdened Lands and Benefitting Lands are within the [NTD: Insert] community (the “**Neighbourhood**”), located in the City of Calgary, as shown on the map attached hereto at Schedule “C”.
- D. **[NTD: Special recitals for the Chinook Park Restrictive Covenant in D and E to reflect the pre-existing RCs in the western portion of Chinook Park.] AND WHEREAS** the Neighbourhood currently has two restrictive covenants registered at the Alberta Land Titles Offices: (a) Instrument Number 1978ID, which affects the lots in the southwest portion of the Neighbourhood; and (b) Instrument Number 2772HT, which affects the lots in the northwest portion of the Neighbourhood (collectively, the “**Existing Restrictive Covenants**”).
- E. **AND WHEREAS** the Existing Restrictive Covenants prevent the subdivision of all affected lots and limit development to one single family dwelling house per lot, helping to maintain the nature and character of the Neighbourhood.
- F. **AND WHEREAS** the Burdened Parties and the Benefitting Parties (collectively, the “**Parties**”) view the Neighbourhood as unique within an increasingly dense city and agree that the nature and character of the Neighbourhood is the primary reason they chose to purchase a home in the Neighbourhood. The Parties are, therefore, entering into this Agreement to protect the nature and character of the Neighbourhood by preserving:
  - a) low-density development;

- b) the predominance of single-family detached homes with large yards and mature trees;
- c) wide lots;
- d) appealing streetscapes and sightlines;
- e) quiet, uncongested roadways; and
- f) calm traffic, particularly having regard to playground zones and school zones.

G. **AND WHEREAS** the Parties all agree that the value, use and enjoyment of any of the Benefitting Lands is directly affected and will be directly affected by developments undertaken upon any of the Burdened Lands. In particular, the Parties agree and acknowledge that the Benefitting Lands will benefit, and the use and value of the Benefitting Lands shall be enhanced if the community maintains the nature and character of the Neighbourhood and if restrictions are placed:

- a) against the subdivision of Lots within the Burdened Lands; and
- b) limiting the types of buildings built and maintained upon the Burdened Lands.

H. **AND WHEREAS** the Parties all agree that it is desirable that the burden of this Restrictive Covenant be annexed to and run with the Burdened Lands so that this Restrictive Covenant shall be enforceable against any of the Burdened Parties or future registered owners of the Burdened Lands;

I. **AND WHEREAS** the Parties all agree that it is desirable that the benefit of the Restrictive Covenant be annexed to and run with the Benefitting Lands so that this Restrictive Covenant shall be enforceable by any of the Benefitting Parties or future registered owners of the Benefitting Lands;

**NOW THEREFORE**, in consideration for the payment by each of the Benefitting Parties to each of the Burdened Parties of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Benefitting Parties and the Burdened Parties hereby covenant and agree as follows:

## 1 Interpretation

- 1.1 In this Agreement, the following terms shall have the following meanings:
- 1.1.1 “Agreement” means this Restrictive Covenant and all Schedules referenced herein.
  - 1.1.2 “Benefitting Lands” means those Lots described in Schedule “B” attached hereto.
  - 1.1.3 “Burdened Lands” means those Lots described in Schedule “A” attached hereto.
  - 1.1.4 “Benefitting Party” means the owner(s) of a particular Lot within the Benefitting Lands and their assigns, successors in title from time to time and all persons deriving title under it or them.
  - 1.1.5 “Benefitting Parties” means, collectively, the owner(s) of the Benefitting Lands and their assigns, successors in title from time to time and all persons deriving title under it or them.
  - 1.1.6 “Burdened Party” means the owner(s) of a particular Lot within the Burdened Lands and their assigns, successors in title from time to time and all persons deriving title under it or them.
  - 1.1.7 “Burdened Parties” means, collectively, the owners of the Burdened Lands and their assigns, successors in title from time to time and all persons deriving title under any of them.
  - 1.1.8 “Dwelling Unit” means a use that contains two or more rooms used or designed to be used as a residence by one or more persons; and that contains a kitchen, living, sleeping and sanitary facilities.
  - 1.1.9 “Land Titles Act” means the *Land Titles Act*, RSA 2000, c. L-4, as amended or replaced from time to time.
  - 1.1.10 “Lot” means a particular parcel of land comprising part of the Burdened Lands or Benefitting Lands set out individually in Schedule “A” and Schedule “B”, respectively.
  - 1.1.11 “Municipal Government Act” means the *Municipal Government Act*,

RSA 2000, c. M-26, as amended or replaced from time to time.

1.1.12 “Secondary Suite” means a use that:

- 1.1.12.1 contains two or more rooms used or designed to be used as a residence by one or more persons;
- 1.1.12.2 contains a kitchen, living, sleeping and sanitary facilities;
- 1.1.12.3 is self-contained and located within a Dwelling Unit; and
- 1.1.12.4 is considered part of, and secondary to, a Dwelling Unit.

1.1.13 “Single Detached Dwelling” means a use where a building contains one Dwelling Unit and may include a single Secondary Suite within the basement of the same building in an area where a Secondary Suite is permitted by the relevant municipal authorities.

1.2 For the purposes of this Agreement, the *Land Titles Act* and any applicable common law or case law, the Benefitting Lands shall be construed as the “dominant tenement”, and the Burdened Lands shall be construed as the “servient tenement”.

## **2 Schedules**

2.1 The Schedules to this Agreement are integral to it and are to be interpreted as such. The following schedules form part of this Agreement:

- 2.1.1 Schedule “A” – Registered Owners and Legal Descriptions of the Lots comprising the Burdened Lands;
- 2.1.2 Schedule “B” – Registered Owners and Legal Descriptions of the Lots comprising the Benefitting Lands; and
- 2.1.3 Schedule “C” – Map of [NTD: Insert].

## **3 Restrictive Covenant**

3.1 Only one Single Detached Dwelling may be erected on each Lot comprising

the Burdened Lands. This provision shall not be interpreted as prohibiting one Single Detached Dwelling from being built on two contiguous Lots listed in the attached Schedule "A".

- 3.2 The Burdened Lands shall not be subdivided.
- 3.3 No application shall be brought before any authority to subdivide the Burdened Lands.
- 3.4 Except as provided in this Agreement (and subject to any restrictions imposed from time to time by the City of Calgary) nothing in this Restrictive Covenant is otherwise intended to:
  - 3.4.1 interfere with the right of a Burdened Party to renovate a Single Detached Dwelling in a way in which it remains a Single Detached Dwelling, or to govern the construction or maintenance of any attached or unattached garage; or
  - 3.4.2 prohibit the construction and use of ancillary structures (such as, but not limited to, sheds, gazebos, pool equipment houses and outdoor dining facilities) that are unattached to the Single Detached Dwelling.
- 3.5 This Restrictive Covenant is enforceable by any of the Benefitting Parties and their successors against any of the Burdened Parties and their successors.

#### **4 Restrictive Covenant Creates an Interest in Land**

- 4.1 This Agreement creates an interest in land and the Parties agree that the burdens and benefits set out in this Agreement shall run with the Burdened Lands and the Benefitting Lands.
- 4.2 The registration of any person as the owner of any interest in the Burdened Lands and Benefitting Lands shall be subject to the provisions of this Agreement.

#### **5 Enforcement of this Restrictive Covenant**

- 5.1 This Agreement is enforceable by any or all of the Benefitting Parties. Any waiver by any or all of the Benefitting Parties of the strict performance of

this Agreement shall not constitute a waiver nor abrogate any other of the covenants set out in this Agreement. Further, without limiting the generality of the foregoing, any waiver by any or all of the Benefitting Parties of the strict performance of this Agreement shall not constitute a waiver by the applicable Benefitting Parties of any subsequent or ongoing failure to perform the covenants of this Agreement. A waiver by one or more of the Benefitting Parties does not constitute a waiver by the remaining Benefitting Parties.

5.2 The Burdened Parties acknowledge that the rights, restrictions, and obligations created by this Agreement are reasonable. Any breach of this Agreement by a Burdened Party (the “Breaching Party”) may cause damages not compensable in monetary terms. One or more Benefitting Parties may apply for:

5.2.1 an interim injunction to enforce the provisions of the Restrictive Covenant against the Breaching Party on an *ex parte* (without notice) basis, and no security for damages will be required for the injunction if an interim injunction is granted; and

5.2.2 subsequently, a permanent injunction against the Breaching Party on the same terms as the interim injunction but upon notice to the Breaching Party affected by any such injunction.

5.3 If the Breaching Party is found to have breached the Restrictive Covenant by a court of competent jurisdiction, that Breaching Party agrees to indemnify the Benefitting Party, or Benefitting Parties, enforcing this Agreement for the whole of all of the costs of obtaining the injunction, injunctions, or any other court-ordered remedy. Such indemnification shall include indemnification for the Benefitting Party’s or Benefitting Parties’ legal fees on a solicitor and own client full indemnity basis. Any awarded costs shall accrue interest calculated based on the Bank of Canada prime rate, plus 4% per annum, compounded annually. If such costs remain outstanding for more than thirty (30) days, that Breaching Party hereby mortgages, liens, charges and encumbers the portion of the Burdened Lands found to be in breach of the Restrictive Covenant to secure payment of such costs.

- 5.4 If any Burdened Party or Burdened Party's successor commences legal proceedings to have this Restrictive Covenant discharged or declared inapplicable, such Burdened Party or Burdened Party's successor must serve written notice of such legal proceedings upon each of the Benefitting Parties or Benefitting Party's successors. If such Burdened Party or Burdened Party's successor is unsuccessful in such proceedings, such Burdened Party or Burdened Party's successor shall pay the legal costs of all Benefitting Parties or Benefitting Party's successors who oppose said proceedings on a solicitor and own client full indemnity basis. All costs awarded, including interest, calculated based on the Bank of Canada prime rate, plus 4% per annum, compounded annually, shall form a charge against the title of each Lot owned by such unsuccessful Burdened Party or Burdened Party's successor.
- 5.5 If a Breaching Party is comprised of more than one owner, there shall be joint and several liability between those owners.

## **6 No Action for Failure to Enforce**

- 6.1 No action shall lie against any of the Benefitting Parties, or the Benefitting Parties' successors, for failure to enforce the provisions of this Agreement against the registered owner(s) of the Burdened Lands. The Parties agree that this Agreement shall constitute an absolute defence to any such action.

## **7 No Action against a Non-Owner**

- 7.1 No action shall lie against a Burdened Party for damages for the breach of any of the terms of this Agreement unless the Burdened Party remains the registered owner of any Burdened Lands. The Parties agree that this Agreement shall constitute an absolute defence to any such action.

## **8 Amendments to this Agreement**

- 8.1 Subject to the inclusion of additional Parties as contemplated in Article 10, the Parties may amend this Agreement, provided that seventy-five percent (75%) by number, of both the Burdened Parties and Benefitting Parties consent to such amendment in writing.
- 8.2 For the purpose of amendments, each Lot comprising the Burdened Lands

and Benefitting Lands is deemed to have only one "owner" regardless of how many persons may be registered on title to a Lot.

## **9 Notice**

- 9.1 Any notice required pursuant to this Agreement may be served in writing on the Parties personally or by registered mail at the addresses shown on title for the Burdened Lands or Benefitting Lands.
- 9.2 If notice is sent by registered mail, it is deemed received five (5) business days after acceptance at the post office.

## **10 Adding Parties to this Restrictive Covenant**

- 10.1 The Parties agree that individual lots within the Neighbourhood (as shown in Schedule "C" hereto) not presently subject to this Restrictive Covenant may be added to this Restrictive Covenant (and become encumbered by this Restrictive Covenant) by having the registered owners, or future registered owners of the applicable lots execute a copy of this Agreement and causing this Restrictive Covenant to be registered against the applicable lots by way of a Caveat.
- 10.2 It will not be necessary for the Parties to re-sign this Agreement upon the addition of new Parties and Lots.
- 10.3 No Party already subject to this Agreement is required to register an additional caveat against that Lot to show that the Burdened Lands and Benefitting Lands have been increased in accordance with this Article. The Parties recognize and agree that this Agreement is one Agreement, notwithstanding that it may be registered against the additional Benefitting Lands and additional Burdened Lands with different instrument numbers in the land titles office.

## **11 Expiration of this Restrictive Covenant**

- 11.1 This Restrictive Covenant will continue in effect for a period of 75 (seventy-five) years from the Effective Date. At that time, it shall be of no force and effect (the "**Expiration Date**") unless extended by agreement of the Parties.
- 11.2 Following the Expiration Date, and in the absence of any extension of this



Agreement by the Parties, any owner of a Lot within the Burdened Lands may discharge this Restrictive Covenant from their title.

## **12 Independent Legal Advice**

- 12.1 Each of the Parties acknowledges having been encouraged to, and given the opportunity to, obtain independent legal advice before executing this Restrictive Covenant.

## **13 Miscellaneous**

- 13.1 Each of the Parties agrees that a caveat giving notice of this Restrictive Covenant shall be registered at the Alberta Land Titles Office against the title to every Lot within the Burdened Lands and the Benefitting Lands, and each of the Parties directs the law firm Carbert Waite LLP, or any successor law firm or individual, to register such caveat against their respective titles as their lawful agent.
- 13.2 Insofar as any portion of this Agreement is made void or rendered invalid by any law in force in the Province of Alberta or adjudged not to be a covenant running with the Burdened Lands or Benefitting Lands, the remaining provisions shall remain valid and enforceable.
- 13.3 The preamble and recitals of this Restrictive Covenant are contractual and form part of this Restrictive Covenant and are not merely recitals.
- 13.4 This Restrictive Covenant may be executed in any number of counterparts, and all counterparts taken together shall constitute a single instrument.

**[This space intentionally blank.]**

**IN WITNESS WHEREOF**, the Parties have duly executed this Restrictive Covenant in counterpart for the Neighbourhood of \_\_\_\_\_ dated \_\_\_\_\_ at the City of Calgary in the Province of Alberta to be effective as and from the date first above written.

<p>_____ Witness Print Name:</p>	<p>_____ Burdened Party Print Name:</p> <p>_____ Burdened Party Print Name:</p>
<p>_____ Witness Print Name:</p>	<p>_____ Benefitting Party Print Name:</p> <p>_____ Benefitting Party Print Name:</p>

**SCHEDULE "A"**

**REGISTERED OWNERS AND LEGAL DESCRIPTIONS OF THE LOTS COMPRISING THE  
BURDENED LANDS**

<b>Name</b>	<b>Legal Description</b>	<b>Civic Address</b>

**SCHEDULE "B"**

**REGISTERED OWNERS AND LEGAL DESCRIPTIONS OF THE LOTS COMPRISING THE  
BENEFITTING LANDS**

<b>Name</b>	<b>Legal Description</b>	<b>Civic Address</b>

**SCHEDULE "C"**  
**NEIGHBOURHOOD MAP**