

Neighbourhood:
Stage:

**TOP OF BANK
RESTRICTIVE COVENANT**

THIS RESTRICTIVE COVENANT MADE THE _____ DAY OF _____, 20__.

BETWEEN:

DEVELOPER/OWNER
(the "Grantor")

- and -

THE CITY OF EDMONTON
(the "City")

WHEREAS:

- A. The Grantor is the registered owner or entitled to become the registered owner of the Servient Lands.
- B. The City is the registered owner or entitled to become the registered owner of the Dominant Lands.
- C. A geotechnical study of the Dominant Lands, the Servient Lands and surrounding lands, which study is dated _____ (Report File No. _____) was prepared by _____.
- D. The geotechnical study has concluded that to protect the integrity and stability of the Dominant Lands, it is necessary to restrict the development and use of the Servient Lands.

NOW THEREFORE IN CONSIDERATION OF the mutual benefits to the Grantor and the City as described in this Restrictive Covenant, the Grantor and the City agree as follows:

- 1. For the purposes of this Restrictive Covenant, the following definitions shall apply:
 - a. "Servient Lands" means:
 - Plan _____
 - Block _____
 - Lots _____

Excepting Thereout All Mines and Minerals

b. "Dominant Lands": means:

Plan _____

Block _____

Lots _____

Excepting Thereout All Mines and Minerals

c. "Development" means the carrying out of any construction, excavation, or the re-grading of the Servient Lands as well as any changes or alterations to any existing improvements on or in the Servient Lands. Development does not include perimeter fences, nor paved patios or wooden decks constructed on the ground surface. Any other structure that requires permanent foundations to be placed below the ground surface will be considered Development.

d. "Swimming Pool" means a swimming pool, ornamental pond, or other permanent structure designed to retain water on or below the ground surface.

e. "Geothermal Devices" means geothermal systems that make use of looping pipe systems that are installed below the ground surface and contain liquids.

f. "Restrictions" means those restrictions on use set out in Articles 4 to 6, inclusive.

2. The Grantor acknowledges that they have reviewed and are familiar with the findings and conclusions of the geotechnical study dated _____ (Report File No. _____), prepared by _____.

3. The use of the Servient Lands shall be restricted in the manner stated in Articles 4 through 8, inclusive of this Restrictive Covenant. The Restrictions shall be annexed to and burden the Servient Lands and shall be annexed to and benefit the Dominant Lands.

4. No Development shall be permitted on the Servient Lands which are contrary to the Restrictions.

5. There shall be no Development on those portions of the Servient Lands shown as Area ____ on Right of Way Plan _____.

6. The following Restrictions shall apply to the Servient Lands:

6.1 No Swimming Pool shall be constructed or installed.

6.2 An exception shall be permitted for the installation of a modestly sized, well maintained hot tub, situated above grade with a capacity of no more than 1.8 cubic metres. Any hot tub amenity must also be equipped with leakage detection and monitoring and an underdrain system which discharges into the appropriate sewer

system for the Servient Lands. No part of such hot tub amenity shall be constructed or installed on those portions of the Servient Lands shown as Area ___ on Right-of-Way Plan _____. The underdrain system shall be designed and installed under the supervision of a Professional Engineer of Alberta.

- 6.3 No permanent sprinkler or irrigation systems shall be constructed or installed.
- 6.4 No Geothermal Devices shall be constructed or installed.
- 6.5 Roof leaders, downspouts and sump pump discharge spouts shall not be allowed to discharge onto the ground. They shall be connected to the storm sewer system.
- 6.6 Grading of the site and temporary construction excavations shall not allow any ponding of water or the focused discharge of water toward the ravine slopes. Surface runoff shall be directed away from the slopes and into the storm drainage system where possible.
- 6.7 No significant granular or rock landscaping nor paved surfaces shall be constructed or installed where such may result in focused discharge of surface water toward the ravine slopes.
- 6.8 All local grading on the Servient Lands shall minimize disturbance to the natural conditions and the pre-development grades.
- 6.9 The topography and vegetation shall not be adversely altered to induce concentrated surface flow toward the ravine slopes. During development stages, temporary grading shall be provided to minimize any focused discharge of water toward the ravine slopes.
- 6.10 Excessive watering of lawns, trees, shrubs and other vegetation, or excessive or uncontrolled discharge of water, on the Servient Lands shall not be caused or permitted.
- 6.11 The retention of existing vegetation at the top of bank and along the ravine slopes is considered highly desirable from a slope stability perspective and all existing vegetation on the slopes shall be retained.
- 6.12 All buried water and/or sewer systems shall be constructed to ensure that excessive seepage into the ground does not occur. Such systems shall be constructed in accordance with the approved engineering drawings and the requirements of the City of Edmonton Design and Construction Standards.
- 6.13 All construction debris shall be disposed properly, and no dumping of any type of fill, grass cuttings or construction debris adjacent to or on/over the crest of the slopes shall be permitted.

7. No fill materials shall be placed on the Servient Lands unless such fill is placed in accordance with the approved lot-grading plan for the Servient Lands.
8. Any person carrying out Development on the Servient Lands is responsible for complying with:
 - a. the requirements of any federal, provincial, or municipal legislation;
 - b. the conditions of any easement, caveat or restrictive covenant;
 - c. the provision of this Restrictive Covenant.
9. No person shall submit an application for a development permit or a building permit that is contrary to or inconsistent with this Restrictive Covenant.
10. In the event that the registered owner of any lot in the Servient Lands shall become aware of any significant or unusual erosion or subsidence within the Dominant Lands, the Owner shall immediately notify the Deputy City Managers of Integrated Infrastructure Services and Urban Planning and Economy of the City and immediately take such precautionary measures within the property of such owner as may be dictated by sound engineering practices to eliminate or minimize any risk to improvements situated on the Servient Lands.
11. The Restrictions shall apply to the Servient Lands until such time as this Restrictive Covenant is terminated, in writing, by the City. The Restrictions shall be binding on the present and all future owners of the Servient Lands and on anyone who has or might in the future acquire any interest in the Servient Lands.
12. The present and all future owners of the Dominant Lands or anyone who has or in the future may acquire any interest in the Dominant Lands shall have the right to enforce the Restrictions for the benefit of the Dominant Lands.
13. All parts of this Restrictive Covenant shall continue to be in force unless a Court finds specifically that a provision is unenforceable. In that case, the provision specifically found by the Court to be unenforceable, and only that provision, shall be struck from this Restrictive Covenant.
14. The City or any other owner of the Dominant Lands is not obligated to enforce this Restrictive Covenant.
15. The City and any future owner of the Dominant Lands is not liable for damages that may arise as a result of the breach of the Restrictions by the Grantor or any future owners of the Servient Lands or anyone who has or might in the future acquire any interest in the Servient Lands.

16. The City and any future owner of the Dominant Lands shall not be obliged to restore any subsidence or erosion of the Servient Lands or to take any remedial action with respect to any subsidence or erosion of the Dominant Lands that may adversely affect the Servient Lands unless it can be shown that the actions of the City or such future owner caused the subsidence or erosion to occur.
17. The City or any future owner of the Dominant Lands may at any time bring an action to stop any breach of the Restrictions by the Grantor or any future owners of the Servient Lands or anyone who has or might in the future acquire any interest in the Servient Lands even if the City or a future owner of the Dominant Lands may not have brought an action in the past to stop the same breach of the Restrictions.
18. The word "Grantor" shall be read and interpreted as in the plural instead of the singular number, if there is more than one Grantor named, and in such case, the terms and conditions of this Restrictive Covenant shall bind the Grantors individually as well as jointly.
19. The masculine gender shall include the feminine or a body corporate where, in this Restrictive Covenant, the context or the parties require.
20. The word "shall" is to be read and interpreted as mandatory and the word "may" is to be read and interpreted as permissive.

DEVELOPER/OWNER

(Seal)

(Seal)

THE CITY OF EDMONTON

Clarence Wong, Director (Seal)
Subdivision and Development Coordination
Urban Planning and Economy

As to Contents
Urban Planning and Economy

Print Name

DATED THIS _____ DAY OF _____, 20__.

DEVELOPER

AND

THE CITY OF EDMONTON

**TOP OF BANK
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