

RESTRICTIVE COVENANT AS TO USE OF LAND

MEMORANDUM OF AGREEMENT made this ____ day of August, 2006.

BETWEEN:

GENSTAR TITLECO LIMITED, a body corporate with an office in the City of Calgary, in the Province of Alberta (hereinafter called the "Grantor")

OF THE FIRST PART

- and -

GENSTAR TITLECO LIMITED., a body corporate with an office in the City of Calgary, in the Province of Alberta (hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS the Grantor is the registered owner of those certain lands (the "Servient Lands") in the Province of Alberta described in Schedule "A" attached hereto and forming an integral part hereof and each lot comprising the Servient Lands is hereinafter sometimes called a "Lot" and collectively the "Lots"; and

WHEREAS the Grantee is the registered owner of those certain lands (the "Dominant Lands") in the Province of Alberta described in Schedule "B" attached hereto and forming an integral part hereof; and

WHEREAS the Grantee is the developer of the subdivision in which the Dominant Lands and Servient Lands are located (and in such capacity, is sometimes hereinafter referred to as "Genstar");

AND WHEREAS those certain Lots listed in Schedule "C" hereto are hereinafter referred to as the "Feature Fence Lots";

AND WHEREAS that certain Lot listed in Schedule "D" is hereinafter referred to as the "Feature Fence with Chainlink Lot;

AND WHEREAS those certain Lots listed in Schedule "E" hereto are hereinafter referred to as the "Chainlink Side Yard Fence Lots";

AND WHEREAS those certain Lots listed in Schedule "F" are hereinafter referred to as the "Chainlink Rear Yard Fence Lots";

AND WHEREAS those certain Lots listed in Schedule "G" hereto are hereinafter referred to as the "Wood Screen Fence Lots";

WHEREAS, notwithstanding the foregoing the Grantor does agree to restrict its right of use and development of the Servient Lands by prohibiting the construction of certain improvements or the placement of non permanent structures and chattels on the front and rear yards of certain of the Servient Lands so as to ensure a uniform streetscape along the Lots, and to restrict the right of owners of the Feature Fence Lots, the Feature Fence with Chainlink Lot, the Chainlink Side Yard Fence Lots, the Chainlink Rear Yard Fence Lots and the Wood Screen Fence Lots from altering or allowing the disrepair of certain fencing which may be constructed by Genstar;

NOW THEREFORE this Agreement witnesseth that in consideration of the premises and as authorized by the *Land Titles Act* of the Province of Alberta, the Grantor being the registered owner of all the lands comprising the Servient Lands does, for itself, its successors in title and assigns of the Servient Lands, and each Lot, covenant and agree with the Grantee and its successors in title and assigns to observe and be bound by the following covenants:

1. RETAINING WALLS AND FENCES

1.1 Notwithstanding any land use or development by law of the City of Calgary, no fence or retaining wall shall be constructed on the front yards of any of the Lots, except as permitted by Genstar in its sole discretion, and except as may be constructed by Genstar.

2. SATELLITE DISHES, CLOTHES LINES AND ANTENNA

2.1 Notwithstanding any land use or development by law of the City of Calgary, no satellite dish (other than a dish of no more than 18" in diameter which is installed in an inconspicuous location), clothes line, television antenna, short wave radio antenna or any communication

antennae of any size or type shall be installed, erected or be allowed to remain on the front yards of any of the Lots.

2.2 Notwithstanding any land use development by law of the City of Calgary, no carport, playhouse, gazebo, shed or other storage structure shall be erected or constructed on the front yards of any of the Lots.

2.3 Notwithstanding any land use by law of the City of Calgary, no television, short wave radio or other communication antennae of any size or type shall be installed, erected or be allowed to remain on the rear or side yards of any of the Lots.

3. RECREATIONAL VEHICLES

3.1 No motor home, utility trailer or recreational vehicle of any size, shape or form shall be allowed to remain on any of the Lots unless housed at all times within a fully enclosed garage, the design of which must be approved by Genstar.

4. GARAGES

4.1 Notwithstanding any land use or development by law of the City of Calgary, no garage shall be constructed on any Lot unless it is of the type, design, size and location which complies in all respects with the architectural control requirements of the Grantee in effect at the time of such construction.

4.2 In order to secure the strict compliance with clause 4.1 hereof by the Grantor, Genstar may require, in its absolute discretion, that, prior to the commencement of a Garage on a Lot, the Grantor shall deposit with Genstar a sum of money, bond, letter of credit or some other form of security satisfactory in form and amount to Genstar in its discretion (such security being hereinafter referred to as the "Security Deposit"). The Security Deposit shall be returned to the Grantor, without interest, only if its obligations set forth in clause 4.1 hereof are fully met by the Grantor in respect of the construction or alteration of the said improvements, the determination thereof being in the sole discretion of Genstar. In the event of a breach by the Grantor of its obligations set forth in clause 4.1 hereof, Genstar shall be entitled to retain such portion of or all of the Security Deposit as may be necessary to compensate Genstar for its damages suffered as a

result of such breach which damages shall include, without restricting the generality of the foregoing, the cost of remedying any such breach. The retention of the Security Deposit or portion thereof shall not be deemed to be a penalty but shall be partial satisfaction of Genstar's damages and such retention shall be without prejudice to any other rights or remedies available to Genstar at law.

5. WOOD FENCING

5.1 The Grantor acknowledges that Genstar may be constructing fencing with pillars on a portion of the side yard boundary of the Feature Fence Lots where such Feature Fence Lots abut a municipal road or a municipal reserve parcel, which fencing (the "Feature Fencing"), if constructed, shall be designed and constructed in Genstar's sole discretion, but shall generally be 1.5 metres in height with stone pillars, and in accordance with the specifications shown in Schedule "H" hereto (the "Feature Fence Specifications"). The Grantor agrees to allow the initial construction of the Feature Fencing and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Feature Fence Lots to properly maintain, repair, rebuild and otherwise keep the Feature Fencing in good condition, and if rebuilding or repair is required, to rebuild or repair in its original location and in accordance with the Feature Fence Specifications.

5.2 The Grantor acknowledges that Genstar may be constructing wood fencing with pillars on a portion of the side yard boundary of the Feature Fence with Chainlink Lot where such Lot abuts a municipal reserve parcel, and may be constructing chain link fencing on the balance of such side yard boundary, which fencing (the "Feature Fencing with Chainlink"), if constructed, shall be designed and constructed in Genstar's sole discretion, but a portion of which shall be constructed to the Feature Fence Specifications, and a portion of which shall be constructed to the Chainlink Specifications as referenced in Section 6.1 hereof, all as shown in the Specifications in Schedule "I" hereto (the "Feature Fence with Chainlink Specifications"). The Grantor agrees to allow the initial construction of the Feature Fencing with Chainlink and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Feature Fence with Chainlink Lot to properly maintain, repair, rebuild and otherwise keep the Feature Fencing with Chainlink in good condition, and if rebuilding or repair is required, to

rebuild or repair in its original location and in accordance with the Feature Fence with Chainlink Specifications.

5.3 The Grantor acknowledges that Genstar may be constructing fencing on the side yard boundary of the Wood Screen Fence Lots, where such Lots abut a private walkway, which fencing (the "Wood Screen Fencing with Chainlink"), if constructed, shall be designed and constructed in Genstar's sole discretion, but a portion thereof shall generally be wood fencing 1.8 metres in height and the remaining portion thereof shall be chainlink fencing, all in accordance with the specifications shown in Schedule "J" (the "Wood Screen Fence with Chainlink Specifications"). The Grantor agrees to allow the initial construction of the Wood Screen Fencing with Chainlink and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Wood Screen Fence Lots to properly maintain, repair, rebuild and otherwise keep the Wood Screen Fencing with Chainlink in good condition, and if rebuilding or repair is required, to rebuild or repair in its original location and in accordance with the Wood Screen Fence with Chainlink Specifications.

6. CHAIN LINK FENCING

6.1 The Grantor acknowledges that Genstar may be constructing chain link fencing on a portion of the side yard boundary of the Chainlink Side Yard Fence Lots to the rear of such Lots, which fencing (the "Chainlink Side Yard Fencing") may be 1.2 metres high and constructed of green vinyl chain link (the "Chainlink Specifications"). The Grantor agrees to allow the initial construction of the Chainlink Side Yard Fencing and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Chainlink Side Yard Fence Lots to properly maintain, repair, rebuild and otherwise keep the Chainlink Side Yard Fencing in good condition and if rebuilding or repair is required, to rebuild or repair in its original location and in accordance with the Chainlink Specifications.

6.2 The Grantor acknowledges that Genstar may be constructing chainlink fencing on the rear yard boundary of the Chainlink Rear Yard Fence Lots where such Lots abut a municipal reserve parcel or a private walkway, which fencing (the "Chainlink Rear Yard Fencing") may be constructed in accordance with the Chain Link Specifications. The Grantor agrees to allow the initial construction of the Chainlink Rear Yard Fencing and its continued existence. Further, it

shall be the responsibility of the Grantor and subsequent owners of the Chainlink Rear Yard Fence Lots to properly maintain, repair, rebuild and otherwise keep the Chainlink Rear Yard Fencing in good condition and if rebuilding or repair is required, to rebuild or repair in its original location and in accordance with the Chainlink Specifications.

7. GENERAL

7.1 The Grantor covenants and agrees with itself, its successors and assigns in title to observe and be bound by the covenants contained herein PROVIDED THAT the said covenants shall be personally binding upon the Grantor and its successors and assigns in title only while and so long as it remains the owner of the Lots, and the said covenants shall be construed to be and shall be covenants running with the Servient Lands and shall be appurtenant to other lands in the Chaparral Subdivision and to all of the Dominant Lands.

7.2 Genstar may, with respect to any breach of the obligations by the owner or owners of the Lots enforce the provisions of this restrictive covenant and may, in addition to any other remedy that may be available at law, apply to a Court of competent jurisdiction to restrain such breach by injunction. Genstar shall have no duty to enforce the provisions of this restrictive covenant and no action shall lie against it with respect to enforcement of this restrictive covenant and this clause shall be an absolute defence to any such action.

7.3 In Genstar's sole discretion, Genstar may at any time during the currency of this restrictive covenant, delegate the authority to enforce the provisions hereof to a group of individuals representative of owners of lots located within the Benefited Lands, which group of landowners shall be chosen by Genstar in its sole discretion (the "Committee"). After such delegation, the Committee shall determine the terms of reference by which the composition of the Committee shall be reconstituted in the future, provided that at all times, the Committee shall be composed entirely of individuals owning lots within the Benefited Lands or individuals designated as representatives of corporations owning lots within the Benefited Lands.

7.4 Notwithstanding anything to the contrary herein, Genstar (or the Committee, if Genstar has effected the delegation contemplated by clause 7.3 hereof) may, in its sole discretion, determine that the covenants herein contained shall no longer bind the Burdened Lands and

accordingly abandon any and all rights and obligations herein contained. Such determination shall be effective as and from the date that notice in writing to that effect is advertised in a daily circulation newspaper in the City of Calgary. Genstar shall have no obligation to remove this Restrictive Covenant or any caveat pursuant hereto from title to the Burdened Lands notwithstanding such determination.

7.5 If any provision of this Restrictive Covenant Agreement shall be determined by a Court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and each provision hereof shall be enforceable to the fullest extent permitted by law.

7.6 Words herein importing a number or gender shall be construed in grammatical conformance with the context of the party or parties affected by this Agreement from time to time.

7.7 This Restrictive Covenant is granted by the Grantor in accordance with the provisions of section 68(1) of the *Land Titles Act* (Alberta) R.S.A. 2000, Chapter L 4.

7.8 This Restrictive Covenant may be registered per se or by way of a Caveat by Genstar against the Lots in the Land Titles Office for the South Alberta Land Registration District.

IN WITNESS WHEREOF, the Grantor and Grantee have caused their respective corporate seals to be affixed by their duly authorized officers in this behalf this ____ day of August, 2006.

GRANTOR:

GENSTAR TITLECO LIMITED

Per: _____

Per: _____

GRANTEE:

GENSTAR TITLECO LIMITED

Per: _____

Per: _____

EXAMPLE

**SCHEDULE "A" TO A RESTRICTIVE COVENANT AGREEMENT
MADE THIS ____ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF SERVIENT LANDS

PLAN 051 _____
BLOCK _____
LOTS ____ TO ____ INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "B" TO A RESTRICTIVE COVENANT AGREEMENT
DATED THIS ___ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF DOMINANT LANDS

FIRSTLY: PLAN 0113604
BLOCK 29
LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY: PLAN 0113604
BLOCK 24
LOT 93

EXCEPTING THEREOUT ALL MINES AND MINERALS

THIRDLY: All that portion of Section Twenty Three (23),
Township Twenty Two (22), Range One (1)
West of the Fifth Meridian covered by the waters of Lake Chaparral

EXAMPLE

**SCHEDULE "C" TO A RESTRICTIVE COVENANT AGREEMENT
MADE THIS ____ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF THE FEATURE FENCE LOTS

PLAN 051 _____
BLOCK _____
LOTS _____ and _____

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "D" TO A RESTRICTIVE COVENANT AGREEMENT
MADE THIS ____ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF FEATURE FENCE WITH CHAINLINK LOT

PLAN 061 _____
BLOCK _____
LOT _____

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "E" TO A RESTRICTIVE COVENANT AGREEMENT
MADE THIS ____ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF CHAINLINK SIDE YARD FENCE LOTS

PLAN 061 _____
BLOCK _____
LOTS ____ TO ____ INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "F" TO A RESTRICTIVE COVENANT AGREEMENT
MADE THIS ____ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF CHAINLINK REAR YARD FENCE LOTS

PLAN 061 _____

BLOCK _____

LOTS ____ TO ____ INCLUSIVE and LOTS ____ TO ____ INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "G" TO A RESTRICTIVE COVENANT AGREEMENT
MADE THIS ____ DAY OF AUGUST, 2006**

LEGAL DESCRIPTION OF WOOD SCREEN FENCE LOTS

PLAN 061 _____
BLOCK _____
LOTS ____ AND ____

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE