

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

RESTRICTIVE COVENANT, PARTY WALL, AND EASEMENT AGREEMENT  
Made pursuant to Section 68 of the Land Titles Act, RSA 2000, c.L04

BETWEEN:

INVESTMENT MANAGEMENT SERVICES LTD., a corporation with  
offices at 404, 600 Princeton Way, S.W., Calgary, Alberta, T2P 5N4  
(the "Grantor")

-and-

INVESTMENT MANAGEMENT SERVICES LTD., a corporation with  
offices at 404, 600 Princeton Way, S.W., Calgary, Alberta, T2P 5N4  
(the "Grantee")

Affecting Units 1 to 10 in Bare Land Condominium Plan 1124791

RECITALS

- A. The Grantor is the registered Owner of the Project; and
- B. The Grantor wishes to restrict development over the Project, and in particular over each Bare Land Unit that is to contain one half of a duplex style Condominium Home (hereinafter a " Dwelling Unit"). As the initial owner and developer of the project, INVESTMENT MANAGEMENT SERVICES LTD. wishes to ensure that each Bare Land Unit will be benefitted and burdened by the following:

ARTICLE 1

PREAMBLE AND DEFINITION

- 1.1 The recitals of fact contained in the preamble hereto are true, and are statements of representation and intent hereof, and form an integral part of this Agreement;
- 1.2 Unless the context otherwise requires and for the purposes of this Agreement, in addition to those words and phrases which have hereinbefore been ascribed meaning, the following words and phrases shall, respectively, be ascribed the following meanings:

"Act" means the Condominium Property Act, RSA 2000, c. C-22 as amended;

"Bare Land Unit" means the unit created by registration of the Condominium Plan;

"Board" means the board of directors of the Condominium Corporation;

"Common Area Units" means those Units comprising the landscaping, perimeter fencing, public parking, and roadways;

“Common Property” means the common property, as same is defined in subsection 1(f) of the Act, of the land comprised in the Condominium Plan;

“Condominium Corporation” means the body corporate incorporated pursuant to section 25 of the Act as a function of registration of the Condominium Plan, and its duly authorized agents, servants and employees;

“Condominium Plan” means the bare land unit condominium plan registered as Plan number 1124791;

“Dominant Tenement” means a lot for the benefit of which a particular easement, restrictive covenant or similar right or privilege is granted hereunder. Every lot is a dominant tenement herein;

“Dwelling Unit” means a residential living unit constructed on a Bare Land Unit in accordance with the within Restrictive Covenant, Party Wall and Easement Agreement, and the Bylaws;

“Grantee” means the Developer and its successors, assigns and successors in title to the Dominant Units;

“Grantor” means the Developer and its successors, assigns and successors in title to the Servient Units;

“Grants” means the within grants of easement and right of way as set forth in Article 3 hereof;

“Lands” means the Dominant Units, the Servient Units and the Common Property collectively;

“Local Authority” means the municipal government or other authority having due and proper jurisdiction over the Lands and the development thereof, and, without limitation shall include the Condominium Corporation and any insurer of the Lands and the development thereon;

“Managed Property” means that portion of the Lands which pursuant to the by-laws of the Condominium Corporation may be administered, controlled, managed, maintained and repaired, if the Condominium Corporation contracts to do so with any Owner, as the case may be, as set forth in the Bylaws;

“Management expenses” means those fees charged to any Owner by the Condominium Corporation for administration, management, maintenance and repairs of any improvements to a Bare Land Unit pursuant to the terms of a contract in writing to do so;

“Occupant” means any person or party lawfully entitled to occupy, use, or enter upon the Lands:

“Owner” means the registered or beneficial owner of a bare land unit and includes his respective heirs, executors, administrators, successors, assigns, transferees and successors in title to the Bare Land Unit;

“Parcel” means any of the Lands or any portion thereof without specific reference to the particularly described land or its ownership and being a general term and includes any lot or unit created upon registration of a subdivision plan or condominium plan in respect of the Lands;

“Project” means all of the real and personal property and fixtures comprising the Parcel, land and improvements which constitute the Bare Land Units, the Common Property and the Managed Property;

“Restrictive Covenant” means the restrictive covenant and easement contained herein;

“Servient Tenement” means a lot over which a particular easement is granted hereunder or a lot subject to the burden of such an easement, restrictive covenant or similar right or privilege. Every lot is a servient tenement herein;

“Unit” or “Units” means the Bare Land Unit or Units, as defined under the Act, created upon the registration of the Condominium Plan;

- 1.3 All headings are for convenience of reference only and do not, in any manner whatsoever, modify the contents of the within document;
- 1.4 All references, terms and phrases defined or otherwise, which are singular in number or imply gender, shall, as the case may be, include reference to the plural in number of all genders.
- 1.5 Unless specifically defined hereunder all terms and phrases requiring definition shall have such meaning as ascribed thereto under the Act.

## ARTICLE 2

### GRANT OF RESTRICTIVE COVENANT

- 2.1 The Grantor, as Owner of the Servient Lands, does hereby covenant to and agrees in favour of the Grantee, as Owner of the Dominant Lands to observe, adhere to and be bound by the following covenants, restrictions and prohibitions in respect of the Servient Lands:
  - (a) The Grantor shall not in any manner whatsoever improve, develop, alter, build upon or otherwise disturb any of the Servient Lands unless in compliance with this Restrictive Covenant;
  - (b) No fence of any kind, type, size or shape whatsoever shall be placed, erected or constructed upon any Bare Land Unit. The only permitted fence shall be the perimeter fence installed by the Developer;

- (c) No structure of any kind, type, size or shape whatsoever shall be placed, erected or constructed upon the Lands or any Bare Land Unit unless:
  - (i) such structure has been approved, in writing, by the Developer; **and/or**
  - (ii) such structure has been approved, in writing, by the Board;
- (d) No landscaping may be installed or completed on a Bare Land Unit unless such installation shall be in accordance with an approved Landscape Plan in the form required by the Board and/or the Developer;
- (e) The Condominium Corporation has a right to enter into a contract with any Owner to conduct maintenance of the managed property, the details of which shall be set forth in a contract in writing, including, but not limited to: the contracted duties and the amount being charged to the Owner for same. Accordingly, except with the written consent of the Board, an Owner shall not:
  - A) fail to maintain the exterior surfaces of his individual home in accordance with the approved development and to the standard set forth in the Bylaws in effect from time to time;
  - B) plant trees, build a fence, erect a barrier, install satellite dish, create flower beds or otherwise alter any areas which the Condominium Corporation has contracted to maintain;
  - C) paint, decorate, remodel, or otherwise affect the exterior of a Dwelling Unit;
  - D) make structural, mechanical or electrical changes to a Dwelling Unit unless the changes do not affect the areas which the Corporation is required to maintain, or any other Dwelling Unit;
  - E) interfere in any way with the common property areas which the Corporation is required to maintain;
  - F) alter watercourse/drainage;
  - G) fail to adhere to the terms of the Bylaws of the Corporation in effect from time to time;
  - H) fail to obtain and maintain sufficient insurance coverage for the Bare Land Unit and improvements thereon in accordance with the Bylaws of the Condominium Corporation;
  - I) fail to pay any management fees assessed by the Corporation, from time to time, for those items the Corporation has contracted to maintain with a Bare Land Unit Owner, that may be situated within the boundaries of a Bare Land Unit;

### ARTICLE 3

#### EASEMENT AGREEMENT

3.1 The Grantor, on behalf of itself and every transferee from it, and every person deriving title from it, in respect of each of the lots which a servient tenement, does hereby grant and convey to the Grantee, each transferee from the Grantee and every other person deriving title from the Grantee, and any person, firm or corporation providing a utility (including, but not so as to limit the generality of the foregoing, corporations providing electrical, natural gas, telephone and cable

television service) to such Grantor or his successor, in respect of each of the lots which is a dominant tenement, the right, privilege and easement hereinafter described thereover.

- 3.2 The Grantee, on behalf of itself and every transferee from it, and every person deriving title from it, in respect of each of the lots which is a dominant tenement, does hereby grant and convey to the Grantor, each transferee from the Grantor and every other person deriving title from the Grantor and any person, firm or corporation providing a utility (including, but not so as to limit the generality of the foregoing, corporations providing electrical, natural gas, telephone and cable television service) to such Grantor or his successor, in respect of each of the lots which is a servient tenement, the right, privilege and easement hereinafter described thereover.
- 3.3 The rights, privileges and easement hereby granted shall be and are the perpetual rights, privileges and easements of access to and passage through and over each lot by the owner of each adjoining lot for:
- (a) the reconstructing, repairing, replacing, maintaining and inspecting of a dwelling house which is or shall be constructed, save and except only to the extent hereinafter provided, wholly upon the dominant tenement in respect of which each easement is so granted;
  - (b) digging holes, constructing footings, walls and eaves and permitting the footings and eaves and exterior cladding or sheathing forming part of any such dwelling unit to remain, exist and project upon the servient tenement;
  - (c) the digging, putting down, taking up, relaying, reconnecting, disconnecting, constructions, repairing, replacing, maintaining, erecting, inspecting, and operating of a utility line or lines, together with the right of ingress and egress incidental thereto within, upon or under any building constructed thereon as may be necessary therefore (hereinafter called the "utility easements"). A utility line or utility lines for the purpose of this Agreement means sewer, water, natural gas transmissions, electrical, telephone, television lines and other utility lines, or any one or more of them, together with the usual or ordinary appurtenances thereto;

all in accordance with and SUBJECT TO the following terms and conditions:

- (i) The underground footings, roof eaves, eavestroughs, gables, overhangs, trims, exterior cladding or sheathing or other projections of any kind which form part of the dwelling unit situate upon the lot which is the dominant tenement in respect of each easement hereby granted, may be constructed and encroach onto and extend over the lot which is the servient tenement for such easement for a distance of not more than two (2) feet;
- (ii) The owner of the adjacent lot shall not acquire title to such projections by reason thereof nor shall the owner of the projections acquire any interest in the adjacent lot, other than by way of easement;
- (iii) The owner of the lot which is the servient tenement will not build, erect or maintain nor permit or suffer to be built, erected or maintained

upon the easements, or any of them, any fences, building or other structure, nor will he plant nor maintain, nor allow to be planted or maintained thereon any substantial trees, shrubs or landscaping which would or could prevent or hinder the reasonable exercise by the owner of the lot which is the dominant tenement of any of the rights hereinbefore granted and where public sidewalks are located within such easements which would interfere with the right of pedestrian passage on such sidewalks and easements, but this covenant shall not be deemed to prohibit the granting of any utility easement for a right-of-way for utilities on, over or under the lot or any part thereof, or the maintenance of any hard surfacing upon any driveway, or parking area where any such act is not otherwise restricted hereunder or by an easement granted for any utility right-of-way;

(iv) The owner of a lot which is the dominant tenement will, in carrying out any of the operations described in this Easement and Restrictive Covenant do so in a good and workmanlike manner and will cause, where reasonably convenient, all roof drainage, from such dwelling unit to be directed onto the building site of the dominant tenement by means of eavestroughs and downspouts or other suitable means and will cause and do as little damage and inconvenience as is possible to the owner and occupier, if any, of the lot which is the servient tenement and the ground upon which excavation or work, except utility line work, shall be undertaken in connection therewith shall be restored to its former condition. Without limiting the generality of the foregoing, the replacement of trees, shrubs, and landscaping as well as hard surfacing of a driveway or parking area shall be included in the obligation to restore;

(v) Rain, snow, hail, ice, dust, dirt or other items deposited by wind, storm, or other natural forces on the buildings of any of the lots may drain, fall, drop, bounce, run, drip, flow or otherwise find its way to the adjacent lot and shall not constitute a nuisance or trespass;

(vi) The owner of the lot which is the dominant tenement from time to time will indemnify and save harmless the owner from time to time of the lot which is the servient tenement in respect of each such easement from and against all claims, damages, debts, suits, dues, actions, liabilities and causes of actions, costs or sums of money whatsoever that the owner of the servient tenement may suffer or be put to by reason of anything done by the owner of the dominant tenement in the exercise of any one or more of the rights and privileges herein granted;

(vii) The cost of installation, operation, repair or maintenance of any utility line or lines situated within, upon or under a lot or lots and which is servicing more than one lot shall be borne and shared equally by the owners, from time to time, of each of the Bare Land Units that are serviced by such utility line or lines;

SAVE AND EXCEPT where such installation, operation, repair or maintenance is caused by the negligence of any one owner of the Bare Land Units serviced by

such utility line or lines in which event such costs shall be paid solely by such negligent lot owner and the ground upon which any utility line excavation or work shall be undertaken in connection therewith shall, where reasonably practicable, be restored to its former condition. The replacement of trees, shrubs, and landscaping, except grass, shall not be deemed to be reasonably practicable;

(viii) The easements hereby granted shall not be extinguished in the event that title to or ownership of any of the Bare Land Units which adjoin each other shall be vested in the same person. Further, and in any event, if any such extinguishment shall occur and title for such adjoining Bare Land Unit shall thereafter be divested from such common ownership, then and in such event the successors in title to such Bare Land Units shall be and remain bound to and in respect of the easement hereby granted and entitled to the benefits thereof as rights, privileges and obligations which are created under and by virtue of the easements hereby granted.

### 3.4 COMMON WALLS

- (a) It is agreed between the Grantor and Grantee and all transferees of the Bare Land Units from them and every other person deriving title from them respectively, that the right to the use, support and benefit of the common wall will accrue and enure to each of the Bare Land Units upon which the common wall is located;
- (b) All common walls shall be used and maintained as party walls and shall be owned jointly by the owners of the Bare Land Units upon which such common wall has been constructed. The middle line of the common wall is the dividing line between the two (2) Bare Land Units;
- (c) No part of any common wall as presently existing shall be deemed an encroachment or entitle either owner to an interest in the adjoining owner's Bare Land Unit;
- (d) The expense of maintaining, repairing or rebuilding any common wall shall be borne equally by the owners of the Bare Land Units on which it is jointly located or which jointly benefit from its existence, PROVIDED THAT whenever such common wall or any portion thereof is rebuilt it shall be erected on the place where it is now or first shall stand and shall be of the same size and of the same or similar materials and of like quality with the present or last existing common wall and shall be constructed in accordance with the minimum standards established by the Local Authority in the Province of Alberta;

PROVIDED FURTHER that should any common wall be destroyed or damaged as a result of the negligence of one of the adjoining owners, or his agents, employees, invitees, licencees or tenant, such owner shall bear the entire cost of repairing or reconstructing such common wall and any injury, loss or damage arising out of or resulting from such negligence;

- (e) If either adjoining owner shall neglect or refuse to pay his share of costs, or all such costs in the case of negligence, the other owner may have the

- common wall repaired or restored and shall be entitled to register a Builders' Lien on the Bare Land Unit of the owner so neglecting or refusing to pay his share of the repair or replacement costs;
- (f) Any adjoining owner is granted the right to break through the common wall for the purpose of repairing or restoring sewer lines, water lines and any other utilities subject to the obligation to restore the common wall to its previous structural condition at his own expense and the payment to, the adjoining owner of any damages caused thereby;
  - (g) Except as hereinbefore provided, no owner of any Bare Land Unit shall alter or change any common wall in any manner, interior decoration excepted;
  - (h) Each Bare Land Unit owner shall have a perpetual easement over that portion of the Bare Land Unit of the other adjoining owner on which the common wall is located for party wall purposes and no part of the estate in fee simple in any Bare Land Unit shall become vested in any Bare Land Unit owner by virtue of the existence of a common wall.

#### ARTICLE 4 EASEMENT AGREEMENT

- 4.1 Each Owner acknowledges and agrees that they are bound by the provisions of Sections 22, 23 and 24 of the *Condominium Property Act* respecting easements. In addition, each Owner further agrees that there is implied in respect of each Unit shown on the Condominium Plan and with respect to each Dwelling Unit constructed on a Bare Land Unit, the following:
- (a) in favour of the Owner of the Bare Land Unit and as appurtenant to the Dwelling Unit, an easement for the subjacent and lateral support of the Dwelling Unit and Bare Land Unit by the Corporate Property and by every other Dwelling Unit and Bare Land Unit capable of affording support;
  - (b) in favour of the Owner of the Bare Land Unit, and as appurtenant to the Bare Land Unit, an easement for the shelter of the Dwelling Unit and Bare Land Unit by every other Dwelling Unit and Bare Land Unit capable of affording shelter;
  - (c) in favour of the Owner of the Bare Land Unit, and as appurtenant to the Bare Land Unit, easements for the passage or provision of water, sewerage, drainage gas, electricity and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the Dwelling Unit and Bare Land Unit;
  - (d) as against the Owner of the Bare Land Unit, an easement to which the Bare Land Unit and any Privacy Area are subject, for the subjacent and lateral support of the Corporate Property and of every other Dwelling Unit and Bare Land Unit capable of enjoying support;

- (e) as against the Owner of the Bare Land Unit, an easement to which the Bare Land Unit and any Privacy Area are subject, to provide shelter to every other Dwelling Unit and Bare Land Unit capable of enjoying the shelter;
- (f) as against the Owner of the Bare Land Unit, easements to which the Bare Land Unit or any Privacy Areas are subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing within the Dwelling Unit, Bare Land Unit and Privacy Area as appurtenant to the Corporate Property and also to every other Dwelling Unit and Bare Land Unit capable of enjoying those easements;
- (g) as against the Owner of the Bare Land Unit, easements, to which the Bare Land Unit and any Privacy Areas are subject to the extent that any portion or part of the front step, deck, eaves, footing or such other structure shall encroach upon any Bare Land Unit, Dwelling Units or Privacy Area;

## 5.0 GENERAL PROVISIONS

5.1 Benefit and Burden to Run With the Lands: The benefit and the burden of all parts of this agreement shall run with the Lands. In other words, the rights given under the agreement are intended to benefit (and bind) all subsequent owners of Bare Land Units within the project.

5.2 Severability: If any part of this agreement is found to be void or unenforceable, the balance of the agreement shall remain in force, with such amendments as may be required to give effect to the spirit and intent of the agreement, as outlined in the introduction.

WHEREIN the registered owner of all Units within the Bare Land Condominium Plan # which this document relates, has hereunto affixed its corporate seal duly attested to by the proper signing officer in that regard, on the day and year first above written.

INVESTMENT MANAGEMENT  
SERVICES LTD.

Per: \_\_\_\_\_