

RESTRICTIVE COVENANT AS TO USE OF LAND

MEMORANDUM OF AGREEMENT made this ____ day of December, 2005.

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 Genstar Titleco Limited holds title to the Servient Lands and the Dominant Lands on behalf of Genstar Development Company, 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 of the Lots listed in Schedule "C" hereto are hereinafter referred to as the "Wood Screen Rear Lots"; and

WHEREAS those of the Lots listed in Schedule "D" hereto are hereinafter referred to as the "Wood Screen Side Lots"; and

WHEREAS those of the Lots listed in Schedule "E" hereto are hereinafter referred to as the "Wood Stucco Fence Lots"; and

WHEREAS those of the Lots listed in Schedule "F" hereto are hereinafter referred to as the "Chain Link Rear Lots"; and

WHEREAS that certain Lot listed in Schedule "G" hereto is hereinafter referred to as the "Chain Link Side Lot"; and

WHEREAS a sketch plan of Phase 31 of Panorama Hills, the subdivision phase of which the Servient Lands form a part, is attached as Schedule "H"; and

WHEREAS the Grantor does agree to restrict its right of use and development of the Lots by prohibiting the construction of certain improvements or the placement of non-permanent structures and chattels on the yards of certain of the Lots, so as to ensure a uniform streetscape along certain of the Lots, and to restrict the right of owners of certain of the Lots from changing the materials and colours of certain fencing or allowing such fencing to fall into disrepair.

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. **SATELLITE DISHES, CLOTHES LINES, ANTENNA AND ACCESSORY BUILDINGS**

1.1 Notwithstanding any land use or development by-law of the City of Calgary, no satellite dish over 18" in diameter, 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 any of the Lots.

1.2 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 any of the Lots.

2. **GARAGES AND RECREATIONAL VEHICLES**

2.1 Notwithstanding any land use or development by-law of the City of Calgary, no garage shall be constructed on any of the Lots unless the plans and specifications of such garage is approved in writing by Genstar prior to the commencement of construction thereof and unless it is constructed concurrently with the construction of the dwelling house on an Lot.

2.2 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 or its successors or assigns.

3. **FENCING**

3.1 The Grantor acknowledges that Genstar has constructed or may be constructing a wood screen fence along the rear yard of the Wood Screen Rear Lots where such lots abut other residential lots or a laneway, which wood screen fencing may be designed, located and constructed in Genstar's sole discretion, but shall generally be in accordance with the specifications attached hereto as Schedule "I" (the "Wood Screen Fence Specifications"). Notwithstanding the foregoing, the fencing on those of the Wood Screen Rear Lots legally described as Lots 38 to 49 inclusive in Block 60 may be "cut-out" to accommodate a pedestrian gate, a vehicle gate to access a parking pad, or a garage door entrance, and for such Wood Screen

Rear Lots, the Wood Screen Fence Specifications shall be deemed to be amended accordingly. The Grantor agrees to allow the initial construction of such wood screen fencing and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Wood Screen Rear Lots to properly maintain, repair, rebuild and otherwise keep such wood screen fence in good condition and where rebuilding is required, to rebuild same in accordance with the Wood Screen Fence Specifications. Where the Wood Screen Rear Lots abut another residential lot, the Grantee acknowledges that regardless of whether the wood screen fence is located wholly on the Wood Screen Rear Lot, the adjoining lot or partially on each lot, the Grantee shall be responsible for the painting of its side of such fence and for half of the costs of repair or replacement of such fence.

3.2 The Grantor acknowledges that Genstar has constructed or may be constructing a wood screen fence with pillars along the side yard of the Wood Screen Side Lots where such lots abut Panatella Manor N.W., which wood screen fencing with pillars may be designed, located and constructed in Genstar's sole discretion, but shall generally be in accordance with the specifications attached hereto as Schedule "J" (the "Wood Screen Fence Specifications"). The Grantor agrees to allow the initial construction of such wood screen fencing and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Wood Screen Side Lots to properly maintain, repair, rebuild and otherwise keep such wood screen fence with pillars in good condition and where rebuilding is required, to rebuild same in accordance with the Wood Screen Fence Specifications.

3.3 The Grantor acknowledges that Genstar has constructed or may be constructing a wood and stucco fence with pillars along the side yard of the Wood Stucco Fence Lots where such lots abut Panatella Manor N.W. or Panatella Boulevard N.W., which wood and stucco fencing with pillars may be designed, located and constructed in Genstar's sole discretion, but shall generally be in accordance with the specifications attached hereto as Schedule "K" (the "Stucco Flankage Fence Specifications"). The Grantor agrees to allow the initial construction of such wood and stucco fencing with pillars and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Wood Stucco Fence Lots to properly maintain, repair, rebuild and otherwise keep such wood and stucco fence with pillars in good condition and where rebuilding is required, to rebuild same in accordance with the Wood Stucco Fence Specifications.

3.4 The Grantor acknowledges that Genstar has constructed or may be constructing a chain link fence with gates along the rear yard of the Chain Link Rear Lots where such lots abut a park parcel, which chain link fencing with gates may be designed, located and constructed in Genstar's sole discretion, but shall generally be black vinyl-clad and 1.2 metres in height (the "Chain Link Fence Specifications"). The Grantor agrees to allow the initial construction of such chain link fencing with gates and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Chain Link Rear Lots to properly maintain, repair, rebuild and otherwise keep such chain link fence with gates in good condition and where rebuilding is required, to rebuild same in accordance with the Chain Link Fence Specifications.

3.5 The Grantor acknowledges that Genstar has constructed or may be constructing a chain link fence with gate along the side yard of the Chain Link Side Lot where such lot abuts a park parcel, which chain link fencing with gate may be designed, located and constructed in Genstar's

sole discretion, but shall generally be in accordance with the Chain Link Fence Specifications. The Grantor agrees to allow the initial construction of such chain link fencing with gate and its continued existence. Further, it shall be the responsibility of the Grantor and subsequent owners of the Chain Link Side Lot to properly maintain, repair, rebuild and otherwise keep such chain link fence with gate in good condition and where rebuilding is required, to rebuild same in accordance with the Chain Link Fence Specifications.

4. **GENERAL**

4.1 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 Panorama Hills Subdivision and to all of the Dominant Lands.

4.2 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.

4.3 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 Dominant 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 time, the Committee shall be composed entirely of individuals owning lots within the Dominant Lands or individuals designated as representatives of corporations owning lots within the Dominant Lands.

4.4 Notwithstanding anything to the contrary herein, Genstar (or the Committee, if Genstar has effected the delegation contemplated by clause 4.3 hereof) may, in its sole discretion, determine that the covenants herein contained shall not longer bind the Servient 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 Servient Lands notwithstanding such determination.

4.5 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 enforced to the fullest extent permitted by law.

4.6 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.

4.7 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.

4.8 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 December, 2005.

GRANTOR:

GENSTAR TITLECO LIMITED

Per: _____

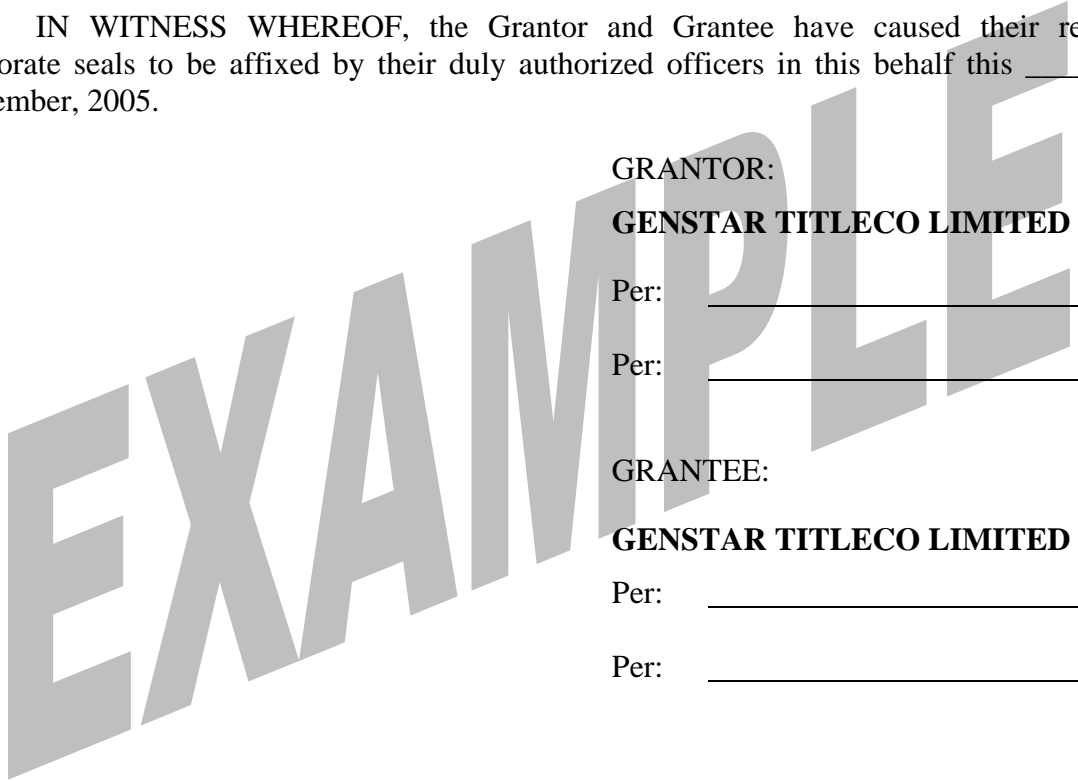
Per: _____

GRANTEE:

GENSTAR TITLECO LIMITED

Per: _____

Per: _____



**SCHEDULE "A"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005**

LEGAL DESCRIPTION OF SERVIENT LANDS

FIRSTLY: PLAN _____
 BLOCK ____
 LOTS ___ TO ___ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY: PLAN _____
 BLOCK ____
 LOTS ___ TO ___ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

THIRDLY: PLAN _____
 BLOCK ____
 LOTS ___ TO ___ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

SCHEDULE "B"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005

LEGAL DESCRIPTION OF THE BENEFITED LANDS

- FIRSTLY: PLAN 0414369
 BLOCK ____
 LOT ____
 EXCEPTING THEREOUT ALL MINES AND MINERALS
- SECONDLY: PLAN 0414369
 BLOCK ____
 LOT ____
 EXCEPTING THEREOUT ALL MINES AND MINERALS
- THIRDLY: THE SERVIENT LANDS

**SCHEDULE "C"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005**

LEGAL DESCRIPTION OF WOOD SCREEN REAR LOTS

FIRSTLY: PLAN _____
 BLOCK ____
 LOTS __ TO __ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY: PLAN _____
 BLOCK ____
 LOTS __ TO __ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

THIRDLY: PLAN _____
 BLOCK ____
 LOTS __ TO __ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "D"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005**

LEGAL DESCRIPTION OF WOOD SCREEN SIDE LOTS

PLAN _____
BLOCK ____
LOTS ____ AND ____
EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

SCHEDULE "E"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005

LEGAL DESCRIPTION OF WOOD STUCCO FENCE LOTS

FIRSTLY: PLAN _____
 BLOCK ____
 LOTS ____ AND ____
 EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY: PLAN _____
 BLOCK ____
 LOTS ____ AND ____
 EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "F"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005**

LEGAL DESCRIPTION OF CHAIN LINK REAR LOTS

FIRSTLY: PLAN _____
 BLOCK ____
 LOT ___ TO ___ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY: PLAN _____
 BLOCK ____
 LOTS ___ TO ___ INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE

**SCHEDULE "G"
TO A
RESTRICTIVE COVENANT MADE BY
GENSTAR TITLECO LIMITED
DATED DECEMBER ____, 2005**

LEGAL DESCRIPTION OF CHAIN LINK SIDE LOT

PLAN _____

BLOCK ____

LOT ____

EXCEPTING THEREOUT ALL MINES AND MINERALS

EXAMPLE