

**RESTRICTIVE COVENANT**

RE: Assiniboine Landing – [REDACTED]

BETWEEN:

**QUALICO DEVELOPMENTS (WINNIPEG) LTD.**

A body corporate entitled to carry on business in the Province of Manitoba

(the “**Developer**”),

- and -

[REDACTED]  
of Winnipeg, Manitoba

(the “**Owner**”)

**Recitals**

- A. The Developer has developed and is developing a residential development in the Municipality of Headingley known as “Assiniboine Landing” comprising Lots 1 to 10, Block 1, Lots 1 to 10, Block 2, Lots 1 to 6, Block 3, Lots 1 to 8, Block 4, Lots 1 to 5, Block 5, Lots 1 to 5, Block 6, Lots 1 to 3, Block 7, Lots 1 to 5, Block 8, all within Plan [REDACTED] WLTO in RL [REDACTED], Parish of Headingley (the “**Subdivision**”);
- B. The Developer is, or is entitled to be, the registered owner of certain lots within the Subdivision and other lots in the Subdivision have been or will be sold to other owners for their development, use and enjoyment (collectively, the “**Lands**”);
- C. The Developer wishes to implement a scheme of development control over the Subdivision including, in particular, restrictions and specifications for the development and use of the Lands as set forth in the Community Development Guidelines (hereinafter defined), a copy of which is attached hereto as Schedule “A”;
- D. The Developer and the Owner have entered into an Agreement dated [REDACTED] 20XX (the “**Purchase Agreement**”) pursuant to which the Owner has agreed to purchase from the Developer Lot [REDACTED] Block [REDACTED] Plan [REDACTED] in RL [REDACTED], Parish of Headingley (the “**Owner’s Lot**”) and has agreed to comply in all respects with the Community Development Guidelines and the building, development and use specifications, restrictions, requirements and obligations set forth therein and in the Purchase Agreement as they pertain to the Owner’s Lot.

**NOW THEREFORE THIS RESTRICTIVE COVENANT WITNESSES THAT:**

**ARTICLE 1  
PREAMBLE, DEFINITIONS**

- 1.1 The recitals of fact contained in the preamble to this Restrictive Covenant are true and form an integral part hereof.
- 1.2 In this Restrictive Covenant, including the annexed Schedules hereto, unless the context otherwise requires:

**“Association”** means A.L. Homeowners Association Inc.;

**“Community Development Guidelines”** means the community development guidelines in the form attached hereto as Schedule “A”, as such guidelines may be amended from time to time either by the Developer, prior to the Turn-Over Date, (and with the agreement of the Grantor if the amendment is in respect of the Servient Lands) or by the Association, from and after the Turn-Over Date, in accordance with the by-laws of the Association;

**“Dominant Lands”** means all or any portion of the Lands comprising the Subdivision, excepting the Servient Lands;

**“Grantee”** means Qualico Developments (Winnipeg) Ltd. and its successors, assigns, and successors-in-title to the Dominant Lands and, where the context permits, the Association, as agent for the from time to time owners of the Dominant Lands, from and after the Turn-Over Date;

**“Grantor”** means the Owner and the Owner’s heirs, executors, administrators, successors, assigns, and successors-in-title to the Servient Lands;

**“Restrictive Covenant”** means the restrictive covenant contained herein;

**“Servient Lands”** means those lands referred to in this Restrictive Covenant as being subject to the within restrictions and being the Owner’s Lot;

**“Turn-Over Date”** means the date that the Developer turns over responsibility for the subsequent enforcement of this Restrictive Covenant to the Association, as agent on behalf of the from time to time owners of the Dominant Lands, in place of the Developer and not to be earlier than the date that the Developer has unconditionally sold all of the lots comprising the Lands and the construction of the dwellings and improvements thereon has been completed.

## **ARTICLE 2 GRANT OF RESTRICTIVE COVENANT**

**2.1** The Grantor, as owner (or person(s) entitled to be owner) of the Servient Lands, does hereby covenant and agree to, with and in favour of the Grantee, as owner of the Dominant Lands or any portions thereof or any lots comprising the Dominants Lands, to, with and in favour of the from time to time owners of the Dominant Lands, where such lands are now or hereafter owned by a party other than the Grantee, and to, with and in favour of the Association, as agent of the from time to time owners of the Dominant Lands from and after the Turn-Over Date, 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 therein except in compliance with the Community Development Guidelines;
- (b) the Grantor shall not permit or allow any building, structure, improvement, development or dwelling of any kind, type, size or shape whatsoever to be placed, erected or constructed upon the Servient Lands except in compliance with the Community Development Guidelines;

- (c) the Grantor shall not use the Servient Lands or allow them to be used for any purpose other than in accordance with the provisions of the Community Development Guidelines;
- (d) the Grantor shall not construct, build or maintain any landscaping, landscape architecture, fencing or lot grading of any kind on the Servient Lands except in accordance with the provisions of the Community Development Guidelines and without limiting the generality of the foregoing:
  - (i) no fencing shall be constructed within 20 feet of the rear property line of the Servient Lands and within 80 feet of the rear property line of river lots comprising the Servient Lands, as applicable, and fencing in the "Naturalized Areas" (as described in the Community Development Guidelines) will be restricted to side yards only using open fence designs such as chain-link or wrought iron with native plant materials on both sides; all other fencing will be restricted to the "Manicured Landscaped Area" (as described in the Community Development Guidelines), the construction of which shall be accomplished via access from the "Manicured Landscaped Area" to prevent damage to the native grasses growing on the Servient Lands or the Lands adjacent thereto;
  - (ii) no trees or shrubs located on the Servient Lands shall be removed and/or pruned without the prior consent of the Grantee, including trees and/or shrubs that must be removed to allow for construction of the house and/or outbuildings on the Servient Lands and the Grantee reserves the right to require revised siting of the house and/or outbuildings to minimize the removal of trees and/or shrubs from the Servient Lands; and
  - (iii) "Naturalized Areas" (as described in the Community Development Guidelines) located on the Servient Lands and adjacent boulevards shall not be used or maintained or seeded or allowed to have planted upon them any trees, shrubs, grasses or flowers except in compliance with the provisions of the Community Development Guidelines and, without limiting the generality of the foregoing, the Grantor covenants and agrees to plant and maintain native grasses in the "Naturalized Areas" and to maintain the "Naturalized Areas" by regular weed control and thatch removal every 5 to 10 years in accordance with maintenance programs adopted by the R.M. of Headingley and the Association.

**2.2** The covenants and agreements expressed in paragraph 2.1 hereof are in addition to and not in substitution or replacement of all and every restriction, building code, regulation, by-law, standard, requirement and other provision governing the further development of the Subdivision and the Servient Lands and shall be applied in addition to and independently of each other.

**2.3** The benefit of the covenants and agreements set forth in paragraph 2.1 hereof shall be for the benefit of the Dominant Lands and each of the lots comprising the Dominant Lands and to the Grantee and its successors and assigns and its hereinbefore and hereafter successors-in-title of the Dominant Lands, and shall be enforceable by the Grantee and its successors and assigns and its hereinbefore and hereafter successors-in-title to the Dominant Lands and, from and after the Turn-Over Date, by the Association as agent for the from time to time owners of the Dominant Lands. The covenants and agreements of the Grantor herein shall run with the Servient Lands and shall be registerable accordingly.

**ARTICLE 3  
GENERAL**

- 3.1** The Grantor does hereby grant unto the Grantee and its successors and assigns, and to the Association, from and after the Turn-Over Date, and their respective contractors, subcontractors, officers, servants, agents and workmen the full right and liberty to ingress and egress and right and liberty to pass and re-pass on, over, in and through the Servient Lands, and all and each part thereof, either by foot or by way of vehicle or machine, and to remain on the Servient Lands and all and each part thereof for the sole purposes of effecting any corrective measure relating to any of the foregoing covenants. The rights and privileges hereby granted are and shall be covenants running with the Servient Lands.
- 3.2** The Grantor covenants and agrees to observe and be bound by the covenants contained herein provided that the said covenants shall only be personally binding upon the Grantor for such time that it remains owner of the Servient Lands, and only to the extent of those Servient Lands which from time to time and at such relevant time are owned by the Grantor, and no action shall lie against the Grantor hereunder unless the Grantor, as the case may be, is then and remains the registered owner of the Servient Lands alleged and proved by a court of competent jurisdiction to be in breach of this Restrictive Covenant. The covenant contained in this paragraph 3.2 shall constitute an absolute defence to any such action and may be pleaded as such.
- 3.3** The Association, being agent for all owners in the Subdivision and being responsible for the enforcement of the Restrictive Covenants herein from and after the Turn-Over Date, is hereby granted and acknowledged to have all the rights, privileges and benefits of the Grantee hereunder including without limitation, the full right and authority in its own name, from and after the Turn-Over Date, to take all proceedings in enforcement, remedy and recovery of damages resulting from breach or default of the Grantor (or any of its successors-in-title) of any provision hereof including without limitation paragraph 2.1.
- 3.4** If any provision of this Restrictive Covenant shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Restrictive Covenant shall not be affected thereby and each provision hereof shall be enforced to the fullest extent permitted by law.
- 3.5** Words herein importing a number or gender shall be construed in grammatical conformance with the context of the party or parties affected by this Restrictive Covenant from time to time.
- 3.6** This Restrictive Covenant may be registered as a restrictive covenant against the Servient Lands in the Winnipeg Land Titles Office and need not be registered against the Dominant Lands.
- 3.7** Nothing herein contained shall be construed or implied as imposing on the Developer, as Grantee, developer of the Subdivision or in any other capacity, on the Grantee or on the Association any liability in the event of non-compliance with or non-fulfillment of or non-enforcement of any of the provisions of this Restrictive Covenant.

EXECUTION PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Restrictive Covenant under seal as of the [REDACTED] day of [REDACTED], 20XX.

**QUALICO DEVELOPMENTS (WINNIPEG) LTD.**

Per: \_\_\_\_\_  
[REDACTED] Secretary

Per: \_\_\_\_\_  
[REDACTED] Secretary

SIGNED, SEALED AND DELIVERED )  
in the presence of )  
 )  
 )  
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 )  
\_\_\_\_\_  
WITNESS

\_\_\_\_\_ ●  
[REDACTED]