

Overview Of Restrictive Covenant Agreement

This document was created to provide readers with additional context about Restrictive Covenants and to provide an overview of the form of the Restrictive Covenant Agreement to be used for the separate Restrictive Covenants being created for each of Chinook Park, Eagle Ridge and Kelvin Grove.

It has been designed to help readers without a legal background understand more fully, using plain language references, the major concepts associated with the Restrictive Covenant. Additional information is available at our website, CKERC.ca.

While the form of the Restrictive Covenant reflects the insights of our lawyer and a team of volunteers from our community with backgrounds in law, contracts and property development, potential signatories are encouraged to seek independent legal advice about the form of the Restrictive Covenant Agreement insofar as they have any concerns about the document.

What is a Restrictive Covenant?

- Put simply, a Restrictive Covenant is a form of agreement between landowners in which one party restricts (i.e., burdens) the use of its land in some way for the benefit of the other landowner. Restrictive Covenants can be one-way or, as in our particular case, can be mutual or two-way, whereby all land subject to the Restrictive Covenant is both burdened and benefitted.
 - Each signatory burdens its own lands in favour of other lands that benefit from the Restrictive Covenant.
 - Because the Restrictive Covenant is a mutual agreement, each such burdened party is also a party that benefits from the corresponding undertakings of the other parties to the Restrictive Covenant.
 - The net effect is that each signatory is signing the Restrictive Covenant as both a “Burdened Party” for the restriction created with respect to its own lands and a “Benefitting Party” as the beneficiary of restrictions created by the other signatories with respect to their lands.
- The Restrictive Covenant is then registered through caveat on the land title to the property, so that it continues to apply to the lands even after the lands are sold.
- The obligations in a Restrictive Covenant can take many forms. They can, for example, go so far as to address architectural restrictions about such matters as colours, style of roofing and fencing, and can include restrictions on the type of garage or storage buildings that you might have.

In our case, the focus of the Restrictive Covenant is a prohibition against subdividing properties and changing the character of lots from that of what we’ll refer to in this overview as a single-family home.

This means that we are not concerned, for example, with renovations to existing homes, adding a second story to your family home or tearing down and rebuilding a new residence for your family. Subject to compliance with the City’s building restriction requirements re setbacks, height, etc., you retain the same freedom as you have today in this regard.

- For context, it is important to remember that approximately 225 homes in mostly the west part of Chinook Park have had a Restrictive Covenant on their lots for over 60 years that limit the ability to densify those lots.
 - This does not appear to have negatively impacted the desirability of owning a home in that portion of Chinook Park or in making modifications to those homes.
- The rights and obligations in the Restrictive Covenant only apply to lots subject to the Agreement.

The table that follows provides an overview and context about each Article of the draft Restrictive Covenant Agreement.

Article	Overview	Comments
General	The major themes in the Restrictive Covenant Agreement are: • Reinforcement that the Restrictive Covenant is being created to attempt to preserve the nature and character of the community. • The primary reason residents have chosen to make the major life and financial decision to live in the community. • Simplicity. • The use of a contemporary style that presents complex legal concepts in a way that is accessible to a non-legal audience. • A narrow focus on the potential subdivision of lots. • No restrictions on additions/changes and maintenance of homes. • The flexibility to add additional participants over time.	-Source materials for the Restrictive Covenant Agreement included the modern precedent originally shared with the community at the time the project was initiated and a recent form of Restrictive Covenant used successfully by two neighbourhoods in Edmonton. -The drafting committee included: our outside lawyer; two community volunteers who are lawyers with extensive experience with property matters; a contracts professional with a legal background; and a land development expert.
Preamble	-The most important of the Recitals is the one in which the parties recognize that the current character of the neighbourhood is the primary reason they chose to purchase a home in the neighbourhood. The parties are entering the agreement to protect the nature and character of the neighbourhood by preserving: -low-density development; -the predominance of single-family detached homes with large yards and mature trees; -wide lots; -appealing streetscapes and sightlines; -quiet, uncongested roadways; and -calm traffic, particularly having regard to playground zones and school zones.	-The Recitals are designed to be transparent that the parties have chosen to enter into the Restrictive Covenant Agreement to attempt to preserve the nature and character of the neighbourhood at a time when Calgary is becoming increasingly densified. -Clarity about the intention of the signatories will be beneficial if the validity of the Restrictive Covenant is ever challenged in Court. <i>-Note: The City does not recognize a Restrictive Covenant as a valid planning tool for its purposes. This does not change the fact, though, that the applicable property owners have freely chosen to enter a binding contractual relationship at this time with respect to the Restrictive Covenant that can be legally enforced in Court, notwithstanding the City's preference.</i>

Article	Overview	Comments
	-The subsequent Recital then recognizes that the nature and character of the neighbourhood can be maintained and enhanced by placing restrictions on the subdivision of lots in the neighbourhood. -The Restrictive Covenant for Chinook Park includes special Recitals that note the current Restrictive Covenants that have applied to much of the western portion of Chinook Park since the area was initially developed in the early 1960s.	
1-Interpretation	-The definitions of Burdened Lands, Burdened Party/Parties, Benefitting Lands and Benefitting Party/Parties are at the foundation of the document. Those definitions reflect the mutuality that is the core principle of the Restrictive Covenant. -Each signatory is giving something up as a “Burdened Party” with respect to its own lands (“Burdened Lands”) to receive something back as a “Benefitting Party” for its “Benefitting Lands” from the other signatories. -Dwelling Unit and Single Detached Dwelling are related terms, and are presented the way they are because of the possibility that there could be a Secondary Suite in the basement, as currently permitted by the City. The simplest way to look at those definitions is to think of a Single Detached Dwelling as a house, where there is the	-The use of the terms Burdened Lands, Burdened Party/Parties, Benefitting Lands and Benefitting Party/Parties is an illustration of the attempt we made to make the document more accessible to a non-legal audience. A more legalistic approach would have used the traditional legal terms “Dominant Tenements”, “Grantors”, “Servient Tenements” and “Grantees” throughout the Restrictive Covenant. -Mutuality of obligations and benefits is the foundation principle of the Restrictive Covenant. While each party is choosing to encumber to some degree what the owner (or its successor) can do with its own lands, it is receiving a corresponding benefit from the other signatories. In a subset of the neighbourhood in which the neighbours have all signed on to the Restrictive Covenant, for example, the Restrictive Covenant would prohibit a subdivision of lots immediately around them. -The choice to continue to allow a single Secondary Suite in the basement provides some flexibility for residents with particular needs, such as aging relatives and adult children, for example. It is not expected that there would be a proliferation of Secondary Suites in our neighbourhood that will pose challenges for parking, noise, etc.

Article	Overview	Comments
	possibility of a Secondary Suite in the basement. -The “Lot” is each parcel of land in the neighbourhood to which the Restrictive Covenant applies. -Article 1.2 reflects the legal requirement that there be “dominant” and “servient” tenements. The document otherwise uses the more intuitive defined terms of Benefitting Lands and Burdened Lands to address the relationship between the various parcels of land subject to the Restrictive Covenant.	-Although we have chosen more intuitive and descriptive definitions, the references to dominant and servient tenements in this manner satisfy the legal requirements associated with a Restrictive Covenant.
2-Schedules	-Schedules “A” and “B” identify the applicable Lots within the Burdened Lands and Benefitting Lands, the street addresses and the registered owners who have executed the Restrictive Covenant as Burdened Parties and Benefitting Parties. -Schedule “C” is a map of the neighbourhood.	-The Burdened Lands and Benefitting Lands are identified on a Lot basis, with street addresses and current signatories added for transparency. -The inclusion of a map of the neighbourhood reinforces the existing character of the neighbourhood by showing locations relative to streets and greenspaces.
3-Restrictive Covenant	-Article 3.1 states that only one Single Detached Dwelling may be erected on a Lot within the lands subject to the Restrictive Covenant. -Articles 3.2 and 3.3 prohibit the subdivision of the Lots subject to the Restrictive Covenant and any application to attempt to subdivide them. -Article 3.4 is a reminder that the Restrictive Covenant does not purport to interfere with normal rights of home ownership, such as renovations and the construction and maintenance of garages and ancillary structures like garden sheds, as long as the character of a Single Detached Dwelling is preserved.	-Article 3.1 through 3.3 reflect the core obligations of the Restrictive Covenant with respect to Single Detached Dwellings and a prohibition against subdivisions. -Subject to the overarching restriction against trying to subdivide the property and having not more than one Single Detached Dwelling on a Lot, the homeowner retains flexibility to make renovations, to do a rebuild and to add or modify a garage or a shed, provided the changes comply with any City restrictions re setback, height, etc. There is no attempt to create architectural guidelines about colours, style of roofing, fences or the types of garden sheds, for example.

Article	Overview	Comments
	-Article 3.5 is a reminder that any Benefitting Party (including successors in interest) can enforce the Restrictive Covenant against any Burdened Party (including successors in interest).	-As the Restrictive Covenant runs with the applicable lands, the Restrictive Covenant is enforceable by successors in interest against other successors in interest.
4-RC As Interest in Land	-The Restrictive Covenant runs with the applicable lands. Any subsequent owner acquires its interest subject to the terms of this Agreement during the period in which it remains in effect.	-It is inherent in a Restrictive Covenant that the rights and obligations are attached to the lands and are not just binding on the parties that were the original signatories to the Restrictive Covenant.
5-Enforcement of the RC	-Article 5.1 states that the Restrictive Covenant is enforceable by any of the Benefitting Parties (including their successors in interest). -Article 5.2 begins with a mutual acknowledgement that the rights, restrictions and limitations created by the Restrictive Covenant are reasonable and that any breach of the Agreement by any of the Burdened Parties may cause damages not compensable in monetary terms.	-The enforcement of the Restrictive Covenant does not require all Benefitting Parties to participate in the action. In practice, development applications will be the primary tool used to identify potential enforcement actions. As such, there is no expectation that individual residents will be diligently monitoring their neighbours. Frequently, communities with a Restrictive Covenant elect or appoint a committee to monitor development activity and notify signatories if a court action is required. We anticipate following that approach in CKE. In our case, residual funds (after legal costs) from the initial payment will be used to create a defence fund. The existence of an initial defence fund is expected to be a strong deterrent to an attempt to invalidate the Restrictive Covenant. This is particularly the case when this Restrictive Covenant was entered into voluntarily by the applicable residents and was constructed using current legal principles. -The introduction of the provision is designed to reinforce that: (a) the signatories have voluntarily chosen to encumber their lands in a way that is reasonable in return for receiving a corresponding benefit from their

Article	Overview	Comments
	This would typically see the applicable Benefitting Parties seek interim or permanent injunctive relief to prevent the applicable Burdened Party from proceeding with its activity (i.e., typically a subdivision or densification of the original Lot). -Article 5.3 requires a Burdened Party that is found to be in breach of the Restrictive Covenant to cover the costs of the Benefitting Parties that enforced the obligations of the Agreement. The provision includes additional content for the situation in which that Burdened Party does not pay those costs. -Article 5.4 addresses the situation in which a Burdened Party (or successor) commences legal proceedings to try to discharge/invalidate the Restrictive Covenant. The Article requires that Burdened Party/successor to send notice of those legal proceedings to <u>all</u> Benefitting Parties. If the Burdened Party/successor is unsuccessful, it will be required to cover the costs of the Benefitting Parties who defended against that action. The provision includes additional content for the situation in which that unsuccessful Burdened Party does not pay those costs.	neighbours in the community who were signatories to the Restrictive Covenant; and (b) the nature of the rights, restrictions and obligations under the Restrictive Covenant is that a monetary award of damages for breach of the Agreement may not provide an appropriate remedy (i.e., the most appropriate remedy is an injunction that prohibits the proposed action by the Burdened Party). -This is designed to create a significant negative consequence for a party that chooses to try to breach the obligations in the Restrictive Covenant. This discourages a party from starting down that path. -It is possible that a Burdened Party/developer might initiate legal proceedings at some point to attempt to discharge or invalidate the Restrictive Covenant. This is particularly the case if a developer anticipated that those benefitting from the Restrictive Covenant were unlikely to try to defend it or that they might not have the resources at hand to do so. The degree of organization in our community around the Restrictive Covenant and the existence of the initial defence fund provide strong deterrents against this in practice. The obligation for a party challenging the Restrictive Covenant to provide notice of its proceedings to every individual current Benefitting Party provides another major disincentive for a party to attempt to challenge the Restrictive Covenant. It is certainly possible that an action could be commenced, though, and

Article	Overview	Comments
	-Article 5.5 recognizes that there may be circumstances in which the applicable Burdened Party is comprised of more than one person. In that situation, the Benefitting Parties could choose to seek recovery of amounts owing from them jointly or against either of them individually.	there can never be a guarantee that such an action would not be successful at trial. If the challenging party's action is not successful, it will be required to assume legal costs of the defence of the Restrictive Covenant. The construction of this Article is a major deterrent to the challenge of the Restrictive Covenant. This is particularly in the context of a modern form of Restrictive Covenant freely entered into by the signatories, vs one that was imposed on them by the developer at the time the neighbourhood was initially developed. <i>-Note: Our vision is that any top up of the defence fund that may possibly be required in due course would be done on a voluntary basis, rather than through a mandated contribution of any sort.</i> <i>This reflects the belief that, in practice, those most directly affected by the contemplated change in status would be particularly motivated to contribute to any top up of the defence fund that may be required for any particular instance.</i> -This offers flexibility for the recovery of costs if the Burdened Party breaching the obligations in the Restrictive Covenant is comprised of more than one person.
6-No Action for Failure to Enforce	-This Article addresses the possibility that there may be a breach of the Restrictive Covenant obligations in circumstances in which no Benefitting Party has taken steps to enforce the Restrictive Covenant. If that were to occur, there is no remedy against any of the Benefitting Parties that did not exercise those rights of enforcement.	-Although it is the intention to monitor development activities in the community through an oversight process to ensure compliance of Burdened Parties with the Restrictive Covenant, it is possible that this might not occur in a particular instance. This Article shields the Benefitting Parties from legal responsibility under

Article	Overview	Comments
		the Restrictive Covenant if that were to occur.
7-No Action Against a Non-Owner	-A Burdened Party is potentially responsible for damages for breach of the Restrictive Covenant if it remains an owner of Burdened Lands.	-In practice, the primary remedy associated with non-compliance of the Restrictive Covenant will be injunctive relief. <i>Note: As the Restrictive Covenants for Chinook Park, Eagle Ridge and Kelvin Grove are distinct Agreements, this means that a former owner in Kelvin Grove who breached the Restrictive Covenant and who happens to own another lot in Chinook Park would not have exposure under this Article with respect to the lot in Chinook Park.</i>
8-Amendments to Agreement	-Other than for the potential expansion of the parties and Lots subject to the Restrictive Covenant under Article 10, the parties may amend the Restrictive Covenant with the approval of 75% of both the Burdened Parties and Benefitting Parties. -For this purpose, Article 8.2 clarifies that each Lot is deemed to have only one “owner”, even if there is more than one owner (e.g., spouses as joint tenants).	-One of the potential issues associated with traditional Restrictive Covenants is the potential difficulty in amending them over time. To try to mitigate potential problems we: (i) are creating separate Restrictive Covenants for each of Chinook Park, Eagle Ridge and Kelvin Grove; (ii) have included a narrow restriction (i.e., the subdivision scenario); (iii) have included the 75% threshold for amendments; and (iv) have included an expiry date in Article 11.
9-Notice	-Notices required under the Agreement may be served personally or by registered mail at the addresses noted on Schedules “A” and “B”.	-Notwithstanding the contemplated physical delivery of notices to each party at their street address, there will be internal communication processes in place for electronic communication from the oversight group to Benefitting Parties to the Restrictive Covenant with respect to matters for which there is not a mandatory notification process under the Agreement. The most obvious example would be to communicate with the parties in a situation in which there is a pending potential breach of, or a pending challenge to, the Restrictive Covenant.
10-Adding Parties to the Restrictive Covenant	-Article 10 allows additional parties and lots to become subject to the Restrictive Covenant over time.	-It is likely that there will be additional interest in signing on to the Restrictive Covenant as new

Article	Overview	Comments
	This can be done simply by structuring the Agreement so that new parties are added by signing a copy of the Agreement (with updated Schedules) and causing a caveat respecting the Restrictive Covenant to be registered against the applicable additional Lots. This does not require the original/then current parties/their successors to re-sign the Restrictive Covenant or for them to file an additional caveat against their titles to reflect the additional parties/Lots.	purchasers enter the community or after we begin to see densification applications being made to the City in due course. -While it was simple to do this from a contractual perspective, the land titles registration aspect is that the original Restrictive Covenant and the addition(s) will have different instrument numbers in the land titles office. -This is most likely to occur in the first 2-3 years after completion of the Restrictive Covenant. <i>-Note: Additional filings will be done on a grouped basis for a neighbourhood when there is a sufficient number of additional Lots to proceed to do so. As this work would be done on a one-off basis outside the main cycle, there will be some incremental costs that are yet to be determined to do this.</i>
11-Expiration of Restrictive Covenant	-The Restrictive Covenant expires on its own terms 75 years after its Effective Date (specified 2023 date +75 years), unless extended by agreement of the then parties. -Following the expiration date (and subject to any such extension), any owner may discharge the Restrictive Covenant from its title.	-One of the concerns historically expressed about Restrictive Covenants is that they apply on a perpetual basis. To address that concern, we have included an automatic expiration 75 years after the Effective Date, unless extended by agreement of the then current parties. This also offers certainty for the applicable owners if legislation were ever introduced by the Province that included a shorter termination period for any Restrictive Covenant that did not have a specified expiry date.
12-Independent Legal Advice	-Each party acknowledges that they were encouraged to seek independent legal advice about the form of the Restrictive Covenant Agreement before executing it.	-The form of the Restrictive Covenant reflects the insights of our lawyer and a team of volunteers from our community with backgrounds in law, contracts and property development. However, neither our lawyer, nor members of the committee can provide individualized legal advice on this document to residents. Potential signatories are advised to seek

Article	Overview	Comments
		independent legal advice about the form of the Restrictive Covenant Agreement insofar as they have any concerns about the document or whether participating in the Restrictive Covenant is appropriate for their individual situation.
13-Miscellaneous	-Article 13.1 authorizes our legal advisor to register a caveat giving notice of the Restrictive Covenant against the titles of the parties executing the Restrictive Covenant. -Article 13.2 addresses the possibility that a portion of the Restrictive Covenant may be held to be invalid by a law or Court. Insofar as that occurs, the remaining provisions of the Restrictive Covenant remain in force. -Article 13.3 reinforces that the Recitals form part of the document. -Article 13.4 allows for execution of the Agreement in counterpart, such that there will be separate execution pages for the owners of each Lot subject to the Restrictive Covenant.	--This is the most efficient way to handle the registration. (This is not intended to form a solicitor-client relationship between you and our legal advisor, though.) -This type of provision is typically included in agreements. -This is important because the Recitals provide insight about the intention of the signatories when they chose to enter into the Restrictive Covenant. A Court would consider the intention of the parties when they executed the Agreement if the Restrictive Covenant were ever challenged. -This is the most efficient way to handle execution of the document by a large number of signatories. -Signatories will be provided a copy of the applicable documents in due course.
Schedules "A" and "B"	-These Schedules identify the signatories and the legal descriptions and street addresses of the Lots subject to the Restrictive Covenant.	-Providing addresses facilitates delivery of any required notices.
Schedule "C"	-The inclusion of a map of the relevant portions of the neighbourhood provides additional context about the perspective of the parties at the time they executed the Restrictive Covenant.	--The inclusion of a map of the neighbourhood reinforces the existing character of the neighbourhood by showing locations relative to streets and greenspaces.