

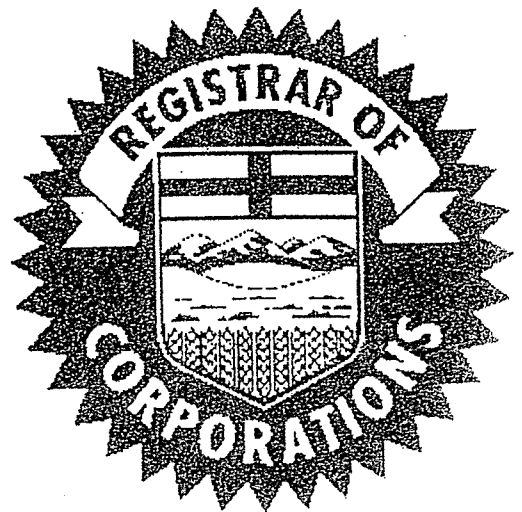
CORPORATE ACCESS NUMBER: 509312138

**Alberta**

SOCIETIES ACT

**CERTIFICATE  
OF  
INCORPORATION**

**THE LAKE AT HERITAGE POINTE OWNERS ASSOCIATION  
WAS INCORPORATED IN ALBERTA ON 2001/04/19.**





**A BY-LAW RELATING GENERALLY TO THE  
TRANSACTION OF THE BUSINESS AND AFFAIRS OF THE  
LAKE AT HERITAGE POINTE OWNERS ASSOCIATION**

**ARTICLE I – INTERPRETATION, DEFINITIONS, AND INCORPORATION  
OF “RESTRICTIVE COVENANT AND ENCUMBRANCE AGREEMENT”**

**1.01** These By-laws shall be construed with reference to the provision of *The Societies Act*, R.S.A. 1980, c. s-18, as amended from time to time (or any subsequent governing legislation), and terms used in these By-laws shall be taken as having the same respective meanings as they have when used in that Act. Notwithstanding anything else herein contained, these By-laws shall be read subject to the restrictions upon their scope and effect contained in *The Societies Act* and other applicable statutes and rules of law and equity, and any provisions herein repugnant to such restrictions shall, wherever possible, be severed from these By-laws, in order that the rest may stand.

**1.02** In the interpretation of these By-laws (including this Article 1.02), except where excluded by the context,

- a. words importing the singular number shall also include the plural, and vice-versa;
- b. words importing the masculine gender shall also include the feminine;
- c. words importing persons shall include corporations;
- d. the headings herein are given for convenience only, and shall not affect the interpretation of these By-laws;
- e. these By-laws shall be interpreted in a large and liberal sense so as to give effect thereto wherever possible;
- f. “Act” shall mean *The Societies Act* R.S.A. 1980, c. S-18 as amended, and any statute that may be substituted therefore;
- g. “Association” shall mean The Lake at Heritage Pointe Owners Association;
- h. “the Board” means the Board of Directors of the Association;
- i. “By-laws” shall mean the By-laws of the Association as amended from time to time;
- j. “Director” shall mean any person who has been duly elected or appointed to the Board;
- k. “HPLD” shall mean Heritage Pointe Lake Developments Ltd.;
- l. “Member” shall mean a member of the Association unless the context requires otherwise;
- m. “Registered Office” shall mean the registered office of the Association;
- n. “Special Resolution” shall have the meaning provided in the Act; and

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Corporate Registry  
Province of Alberta

- o. "Subdivided Lot" shall have the meaning given to it in Article 1 Paragraph 1.10 of Schedule "A".

1.03 These By-laws are subject to and are to be construed with the Restrictive Covenant and Encumbrance Agreement attached as Schedule "A", which governs in the event of any conflict with these By-laws. The purpose and objects of the Association are to carry out those duties and functions provided for in Schedule "A" to be performed or done by the Association and generally to provide for care and maintenance of the lake and other special features of The Lake at Heritage Pointe Subdivision as more particularly defined in Schedule "A".

## **ARTICLE II – MEMBERS OF THE SOCIETY AND VOTING RIGHTS**

2.01 Paragraph 3.1 of Article 3 in Schedule "A" is incorporated into these By-laws and is made a part hereof. Without limitation:

- a. The Members of the Association shall be those entitled to membership under Paragraph 3.1 of Article 3 in Schedule "A"; provided that as long as HPLD shall own any Subdivided Lots or other parcels comprising The Lake at Heritage Pointe Subdivision, the five (5) signatories to the application for incorporation of the Association shall, notwithstanding Schedule "A", and notwithstanding anything herein contained, be and continue to be Members whether or not they own any interest in a Subdivided Lot in such subdivision. Save for the said five (5) signatories, ownership (which may be beneficial ownership) in fee simple of a Subdivided Lot, or a fractional or joint tenant interest therein, is a prerequisite to membership in the Association. No one (save for the said five (5) signatories or other representatives of HPLD appointed hereunder) who is not an owner in fee simple as aforesaid shall be eligible for membership; and everyone who has been but ceases to be such an owner shall ipso facto cease to be a Member. An owner shall be entitled to become a Member forthwith on becoming registered (which may include registration by caveat) as an owner as aforesaid, and his membership shall be recorded by the Secretary upon his providing to the Association's Board satisfactory evidence of such ownership, or the Board otherwise being satisfied of such ownership.
- b. Voting rights of Members shall be as set out in Article 3, Clause 3.1.2 in Schedule "A".
- c. No owner shall be expelled from the Association as long as he continues to be a registered owner of a Subdivided Lot.

**2.02      Membership Year**

Membership year shall be from January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

**2.03      Notice of Meeting**

A Member shall be entitled to notice of and to attend all meetings of the Members of the Association. Notice may be given by delivery to, or prepaid mail addressed to the address of, the Subdivided Lot owned by a Member.

**ARTICLE III – MEETINGS OF THE ASSOCIATION**

**3.01      The Annual General Meeting**

- a.      An Annual General Meeting of the Association shall be held in each calendar year after 2001 in the City of Calgary or in the M.D. of Foothills, in the Province of Alberta, on a day fixed by the Board from time to time;
- b.      At least fourteen (14) days prior to the Annual General Meeting the Secretary shall mail or delivery to each Member a notice setting forth the date, place and time of the Annual General Meeting;
- c.      The Annual General Meeting shall consider the report of the President, review the Association's financial statements (which shall set out the Association's income, disbursements, assets and liabilities, and shall comply with the requirements of the Act), appoint such auditors or accountants as may be desired, elect the Board, and transact such other business as may be put before the meeting;
- d.      A quorum for the Annual General Meeting of the Association shall be the attendance of persons collectively representing twenty (20%) percent of the votes eligible to be cast at such meeting;
- e.      Unless any two Members demand a ballot vote, all voting at the Annual General Meeting shall be done by a show of hands;
- f.      Each Member may vote by proxy. Such proxy should himself be a Member of the Association or an officer or employee of a corporate Member, but before voting must produce and deposit with the Secretary a sufficient appointment in writing. The Secretary or in his absence the Chairman of the meeting shall have complete discretion to determine whether an appointment of proxy is valid and sufficient;
- g.      Except as to a Special Resolution, each issue and Resolution shall be decided by a majority of the votes of the Members present in person or represented by a proxy;
- h.      Accidental omission to give any notice to any Member or the non-receipt of any notice by any Member or any error in any notice not affecting the substance thereof shall not invalidate any action taken at a meeting held pursuant to such notice or otherwise founded thereon; and

- i. At the Annual General Meeting there shall be elected as many Directors as shall be required to fill the vacancies of the Board.

### 3.02

#### Special Meetings of the Association

- a. Special meetings of the Association shall be called at the direction of the President or upon request in writing of any five (5) Members in good standing, stating the object of the special meeting;
- b. At least fourteen (14) days prior (and if a Special Resolution is proposed at least twenty-one (21) days prior) to the special meeting, the Secretary shall mail or deliver to each Member a notice setting forth the date, place, time and purpose of the special meeting;
- c. The method of voting, the use of proxies and the quorum required for any special meeting shall be the same as for the Annual General Meetings;
- d. Accidental omission to give any notice to any Member or the non-receipt of any notice by any Member or any error in any notice not affecting the substance thereof shall not invalidate any action taken at a special meeting held pursuant to such notice or otherwise founded thereon.

### 3.03

#### Proceedings at General Meetings

- a. If within a half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of the Members, shall be dissolved, but in every other case it shall stand adjourned to the same day in the following week at the same time and place;
- b. The President, or in his absence, a Vice-President, shall preside at every General Meeting of the Society. If neither the President nor the Vice-President be present within a half an hour from the time appointed for the holding of the meeting, the Members present shall choose one of the Members to preside at such meeting;
- c. The person presiding may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business unfinished at the meeting from which the adjournment took place;
- d. At every General Meeting every question shall be decided in the first instance by a show of hands, unless before or upon the declaration of the result of the show of hands, a ballot be demanded by at least two (2) Members personally present and entitled to vote. A declaration by the person presiding that a resolution had been carried or carried by a particular majority, or lost, shall be conclusive evidence thereof, without proof of the number or proportion of the votes recorded in favour or against any such resolution. If a ballot be demanded in the manner above mentioned, it shall be taken at such time and place and in such manner as the person presiding may direct, and the result of the ballot shall be deemed to be the resolution of the General Meeting at which the ballot was demanded. A demand for a ballot may be withdrawn;

- e. In case of any dispute as to the admission or rejection of any vote, the person presiding shall determine the same, and such determination made in good faith shall be final and conclusive;
- f. Notwithstanding anything to the contrary contained in these By-laws, a resolution assented to and adopted in writing under the hands of sixty-five (65%) percent of all the Members entitled to vote thereon, though not passed at a General Meeting, shall be of the same force and effect as if it had been duly passed at a General Meeting duly convened, and no previous notice, or convening of any General Meeting for the purpose of passing such resolution shall in such case be deemed to have been necessary, whether the business transacted thereat is special or not, and a Member may signify his assent to such resolution in writing under his hand or by telegram or cable, and such resolutions shall be deemed to have been passed on any date therein stated to be the date thereof.
- g. Co-owners may vote by proxy jointly appointed by them, and in the absence of such proxy are entitled to vote on a show of hands; but on any vote by ballot each co-owner is entitled to such part of the vote applicable to the Subdivided Lot he co-owns as is proportionate to his interest in such Subdivided Lot.

3.04 In determining the identity or addresses of Members the Secretary shall be entitled to rely upon either (or both) titles searches and notifications of ownership given to the Board by Members or their representatives.

#### ARTICLE IV – THE GOVERNMENT OF THE ASSOCIATION

4.04

##### The Board of Directors

4.01

- a. Until the first Annual General Meeting of the Association, the following shall constitute the entire Board:

CAROL J. OXTOBY: Director, HPLD  
Address: #1 Heritage Pointe Drive  
R.R.# 1  
DeWinton, Alberta T0L 0X0

ABED ITANI: Director, HPLD  
Address: Suite 640, 602 - 12 Avenue S.W.  
Calgary, Alberta T2R 1J3

EDWARD STACK: Employee, HPLD  
Address: #1 Heritage Pointe Drive  
R.R.# 1  
DeWinton, Alberta T0L 0X0

TRACIE NOBLE: Employee, Upper Lakes Shipping Ltd.  
Address: #1 Heritage Pointe Drive  
R.R.# 1  
DeWinton, Alberta T0L 0X0

RANA SHAAR: Employee, Cidex Developments Ltd.  
Address: Suite 640, 602 - 12 Avenue S.W.  
Calgary, Alberta T2R 1J3

- b. Those persons listed in paragraph a. above (herein called the "Initial Directors") shall be entitled to continue to be Board members as long as HPLD shall continue to be an owner of at least one hundred (100) Subdivided Lots or of at least one unsubdivided parcel forming part of The Lake at Heritage Pointe Subdivision (as defined in Schedule "A"), provided that HPLD shall be at liberty from time to time to select and designate other persons to replace those (or some of those) listed above, and on its so doing the replacement persons shall take the place of those above-named who are so replaced;
- c. If an owner of a Subdivided Lot is a corporation, any one officer, director or other designate of the corporation is eligible to become a member of the Board, except in the case of HPLD, which shall have the right to designate five (5) members to the Board so long as HPLD remains owner of at least one hundred (100) Subdivided Lots or at least unsubdivided parcel, as aforesaid;
- d. With the exception of paragraphs a., b. and c. above, each Board member must be a Member in good standing of the Association at the time of his election and throughout his term of office; and a Board member shall ipso facto cease to be a Board member if he dies, is convicted of an indictable offence or is declared mentally incompetent by a court of law, or if he ceases to be a Member (or designate of a corporate Member);
- e. Subject to b. above, Board membership shall commence upon election or appointment to the Board and shall expire at the next succeeding Annual General Meeting, unless prior thereto the Board member resigns, becomes disqualified under clause (d) hereof or is removed under clause (f) hereof. Board members may be re-elected, but no person other than the designees of HPLD shall sit on the Board for longer than three (3) successive terms of office. The signatories to the application for incorporation are hereby appointed as, and shall form, the first Board of Directors of the Association;
- f. Casual vacancies on the Board may be filled by appointment by the remaining Board members to serve until the next Annual General Meeting; provided that a Board member (other than the HPLD representatives) may be removed prior thereto by resolution of the Members of the Association at any Special Meeting of the Members duly called for such purpose;
- g. The affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than seven (7) persons;

- h. The Officers shall consist of a President, Vice-President, Secretary and Treasurer, and they shall be appointed by the Board from amongst Board members; and the Board may appoint one person to more than one position, and the Board may also remove any officer from office;
- i. The number of Board members shall be five (5) for the initial Board and thereafter the number (not to be less than three nor more than seven) shall be fixed at each Annual General Meeting;
- j. The Board, at any Board meeting following the Annual General Meeting of the Association, may appoint not more than two (2) persons to the Board in the event that at the Annual General Meeting of the Association there are an insufficient number of persons elected to the Board;
- k. Any member of the Board shall be eligible for re-election to the Board, subject to the limitation set out in Section 4.01 (e);
- l. The Board shall, subject to these By-laws and any directions given it by majority vote at any General Meeting properly called and constituted, have full control and management of the affairs of the Association, and meetings of the Board shall be held as often as may be required, but at least once every twelve months, and shall be called by the President or on the instructions of any two (2) members of the Board provided they request the President in writing to call such meeting, and state the business to be brought before the meeting;
- m. Meetings of the Board shall be called by ten (10) days notice in writing and mailed to each member or by three (3) days notice by telephone unless waived by all of the members of the Board;
- n. A majority of the members of the Board, personally present, shall constitute a quorum at any meeting of the Board; provided that as long as HPLD is a Member, attendance of at least three (3) of its representatives is necessary for there to be a quorum;
- o. Each member of the Board including the President shall have one (1) vote. In the case of an equality of votes, the President shall not have a second or casting vote and the motion will be deemed defeated;
- p. A resolution of the Board in writing signed by all of the members of the Board shall be as effective as a resolution passed at a meeting of the Board duly convened and held.

#### 4.02

#### **Duties and Power of the Board**

- a. Except as provided in the Act and otherwise in these By-laws, the powers of the Association shall be exercised by the Board, and without restricting the generality of the foregoing, the duties of the Board shall include the responsibilities set out in Paragraph 3.2 of Article 3 of Schedule "A" together with the following:

- i. To facilitate and promote the objects of the Association;
  - ii. To create and define categories of Members;
  - iii. To engage, hire and discharge any employees, including administrative employees, in respect to the operation of the Association;
  - iv. To maintain and properly protect the assets and properties of the Association;
  - v. To prepare and approve an annual budget consistent with good management of the Association;
  - vi. To pay all expenses of and incidental to the operation and management of the Association;
  - vii. To remunerate or indemnify any persons for services rendered or liabilities incurred in connection with the affairs of the Association;
  - viii. To maintain all accounting and financial records of the Association;
- b. In addition, the Board shall have the following powers;
- i. To invest and deal with the monies of the Association not immediately required in such securities and in such manner as from time to time may be determined by the Board;
  - ii. To finance the operations of the Association and to borrow, raise or secure the payment of monies in such manner as the Board may, from time to time, think fit; provided that no borrowing in excess of \$5,000.00 shall be made without prior authorization of the Members in General Meeting; and no debenture shall be granted unless authorized by Special Resolution;
  - iii. To appoint legal counsel and auditors from time to time;
  - iv. To make rules and regulations for the operation of the Association and the use of lands and facilities which it owns or manages;
  - v. Without in any way abrogating or limiting the general responsibility of the Board, to delegate its powers and duties to any person engaged as a manager of the Association;
  - vi. To place and maintain, revise, replace, cancel, amend, reduce or increase insurance upon the improvements now or hereafter owned by the Association together with third party liability coverage, all on terms and conditions, in amounts and in respect of such perils as the Board may from time to time determine.
  - vii. To set, levy, issue and collect levies for the Rent Charge provided for in Schedule "A";

- viii. To issue certificates as to a Member's position with regard to Rent Charges, any such certificate to be signed by at least two members of the Board; and any certificate so issued shall estop the Association and all Members from denying the accuracy of such certificate as against any mortgagee, purchaser or other person dealing with the owner of the Subdivided Lot to which the certificate relates (but shall not be an estoppel as against the owner of such Subdivided Lot); and
- ix. Without limiting clause vi. hereof, to place and maintain third party liability insurance in such amounts and on such terms as the Board may from time to time select, insuring the Members and Board members in respect of the actions and omissions of the Association.

#### 4.03

##### **Board Committees**

- a. The Board may appoint committees to advise the Board from time to time in respect to the various duties and responsibilities of the Board;
- b. Each committee created by the Board shall be headed by one of its members appointed by the President to be Chairman of the committee;
- c. Each committee created by the Board shall meet at the call of the Chairman, record minutes of its proceedings, and distribute such minutes to the members of the committee and to the Chairmen of all other committees and furnish reports at the request of the President prior to each Board meeting. Unless waived by all of the members of the committee, not less than two (2) days prior notice of the date, place and time of a committee meeting shall be mailed or delivered to each member of the committee;
- d. A majority of the members of any committee personally present at a meeting shall constitute a quorum; and
- e. Each member of the committee including the Chairman shall have one (1) vote at the meeting of the committee but in case of an equality of votes there shall be no casting vote.

#### 4.04

##### **Officers**

- a. **President:** the President shall supervise the affairs of the Association, and be ex-officio a member of all committees. He shall, when present, preside at all meetings of the Association and of the Board. In his absence the Vice-President shall preside at any such meetings, and in the absence of both a chairman may be elected by the meeting to preside thereat;
- b. **Vice-President:** the Vice-President shall assist the President and preside at meetings in the absence of the President;
- c. **Secretary:** it shall be the duty of the Secretary to attend all meetings of the Association and of the Board, and to keep accurate minutes of same. He shall have charge of the seal of the Association. In case of the absence of the

Secretary, his duties shall be discharged by such person as may be appointed by the Board. The Secretary shall have charge of all the correspondence of the Association and be under the direction of the President and the Board. The Secretary shall also keep a record of all the Members of the Association and their addresses, send all notices of the various meetings as required, and shall collect and receive the Rent Charge assessments levied under Schedule "A" hereto or annual dues levied by the Association, such moneys to be promptly turned over to the Treasurer;

- d. Treasurer: the Treasurer shall receive all monies paid to the Association and shall deposit the same in whatever chartered bank, treasury branch or trust company the Board may order. He shall present a full detailed account of receipts and disbursements to the Board whenever requested and shall prepare for submission to the Annual Meeting a statement duly audited as hereinafter set forth of the financial position of the Association;
- e. The officers of the Association shall be appointed for a term of one (1) year or until the next Annual General Meeting whichever first occurs; and
- f. Any vacancy arising in any office shall, except as otherwise provided herein, be filled by the appointment by the Board of another member of the Board who shall hold such office until the next Annual General Meeting of the Association.

#### **ARTICLE V – BOOKS AND RECORDS AUDITING**

**5.01** The books and records of the Association may be inspected by any Member of the Association at the annual meeting provided for herein or at any other time upon giving reasonable notice and arranging a time satisfactory to the officer or officers having charge of the same. Each member of the Board shall at all times have access to such books and records.

**5.02** The books, records and financial statements shall be audited by an auditor appointed from time to time by the Board. Such auditor may be a Member and need not be a Chartered Accountant but such auditor shall not be a member of the Board.

**ARTICLE VI – MINUTES OF THE PROCEEDINGS**

6.01 The Secretary shall maintain and have charge of a copy of the Minute Book, the original Minute Book being maintained at the Registered Office of the Association, and shall record in the copy and cause to be recorded in the original, minutes of all proceedings of all meetings of the Members and of the Board.

6.02 The Board shall see that all necessary books and records of the Association required by the By-laws of the Association or by any applicable statute or laws are regularly and properly kept and filed.

**ARTICLE VII – SEAL OF THE ASSOCIATION**

7.01 The Board may, in the name of the Association, adopt a seal which shall be the common seal of the Association and which shall be under the control of the Board, and the responsibility for its custody and use from time to time shall be determined by the Board; but, in the absence of any specific determination, the seal shall be preserved by the Secretary who, together with the President, shall execute and affix the seal of the Association on all contracts of the Association required to be executed under the seal of the Association.

**ARTICLE VIII – REMUNERATION**

8.01 Unless authorized at any general meeting and after notice of same shall have been given, no Director, Officer or Member of the Association shall receive any remuneration for services performed in his or her capacity as a Member, Officer or Director. Nothing herein shall derogate from or affect the right of HPLD to receive compensation as manager for the Association or in respect of HPLD's performance of any Association duties or transactions.

**ARTICLE IX – INDEMNITY**

9.01 Each member of the Board and each Officer and employee of the Association shall be indemnified by the Association against any and all liability and reasonable expenses in connection with or resulting from any claim, action, suit or proceeding in which he may become involved as a party, or

otherwise, by reason of his having been a Director of the Board or Officer or employee of the Association except in relation to matters as to which he shall be adjudged with respect to such claim, action or proceeding to be liable for gross negligence or willful misconduct in the performance of his duty to the Association.

#### **ARTICLE X – BYLAWS**

**10.01** The By-laws may be rescinded, altered or added to by a Special Resolution of the Association at a general or special meeting of which at least twenty-one (21) days written notice specifying the intention to propose the resolution as a Special Resolution has been duly given.

#### **ARTICLE XI – WINDING UP**

**11.01** In the event the Association is wound up or dissolved, any surplus of funds shall be paid to such registered and incorporated charitable organizations as the Members by Special Resolution may from time to time determine. In no event shall the Members or any of them become entitled to any of the assets of the Association.

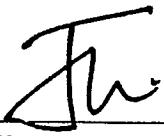
#### **ARTICLE XII - SIGNATORIES**

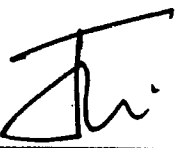
**12.01** The signatories to the Association are hereby ratified and confirmed as subscribers to the incorporation of the Association.


**ARTICLE XIII - NOTICES**

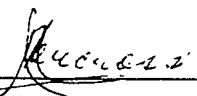
**13.01** Notices to Members may be given by delivery to, or by prepaid ordinary mail addressed to the address, of the Member's Subdivided Lot; and notices to Board members may be given by delivery to, or by prepaid ordinary mail addressed to, the Board member's last known address notified to the Association. Notices to the Association shall be given by personal delivery to a member of the Board.

DATED at the City of Calgary, in the Province of Alberta, this 17<sup>th</sup> day of April, 2001.


  
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Witness

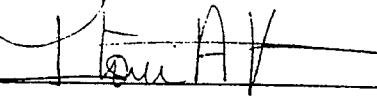
  
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Witness


  
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Witness

  
\_\_\_\_\_  
**CAROL J. OXTOBY**  
ADDRESS: #1 Heritage Pointe Drive  
R.R.# 1  
DeWinton, Alberta T0L 0X0

  
\_\_\_\_\_  
**ABED ITANI**  
ADDRESS: Suite 640, 602 - 12 Avenue S.W.  
Calgary, Alberta, T2R 1J3

  
\_\_\_\_\_  
**RANA SHAAR**  
ADDRESS: Suite 640, 602 - 12 Avenue S.W.  
Calgary, Alberta T2R 1J3

  
\_\_\_\_\_  
**EDWARD STACK**  
ADDRESS: #1 Heritage Pointe Drive  
R.R.# 1  
DeWinton, Alberta T0L 0X0

  
\_\_\_\_\_  
**TRACIE NOBLE**  
ADDRESS: #1 Heritage Pointe Drive  
R.R.# 1  
DeWinton, Alberta T0L 0X0

SCHEDULE "A"

RESTRICTIVE COVENANT AND ENCUMBRANCE AGREEMENT

MADE THIS \_\_\_\_\_ day of April, 2001.

BETWEEN:

HERITAGE POINTE LAKE DEVELOPMENTS LTD.,  
a body corporate incorporated under the laws of the Province of  
Alberta (hereinafter called the "Developer")

OF THE FIRST PART

- and -

THE LAKE AT HERITAGE POINTE HOMEOWNERS ASSOCIATION,  
incorporated under the Societies  
Act of Alberta with a registered office at #2500  
700 - 9th Avenue S.W. in the City of Calgary, in the  
Province of Alberta (hereinafter called the  
"Homeowners Association")

OF THE SECOND PART

WHEREAS:

- (a) The Developer is registered owner of the lands in the Municipal District of Foothills No. 31, in the Province of Alberta, legally described in Schedule "A" hereto (each lot within the said lands being hereinafter referred to as a "Subdivided Lot" and all the said lands being hereinafter collectively described as the "Stage One Lands");
- (b) The Stage One Lands are part of a planned development in stages of lands that are herein described as "The Lake at Heritage Pointe Subdivision", being lands legally described in Schedule "B" hereto;
- (c) The Developer wishes to develop on the Stage One Lands a residential development for single family homes, and on later stages of The Lake at Heritage Pointe Subdivision, single family homes, semi-detached family homes or condominiums, special aspects of which are or will be:
- i. development control;

ii. the sharing of operation, maintenance and, where applicable, replacement of Subdivision Features by and through the Homeowners Association; and

(d) The Homeowners Association is (or will be) the registered owner of one or more parcels of land within The Lake at Heritage Pointe Subdivision.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. **DEFINITIONS**

IN THIS INSTRUMENT the following terms have the following meanings:

1.1 **“Approving Authority”** means:

1.1.1 The Developer, if the Developer shall remain the legal or beneficial owner of any Subdivided Lots or other parcels within The Lake at Heritage Pointe Subdivision, or

1.1.2 The Homeowners Association, if the Developer shall no longer beneficially own any Subdivided Lots or other parcels within The Lake at Heritage Pointe Subdivision.

1.2 **“Architectural Guidelines”** means the architectural guidelines set forth in Schedule “C” hereto, as amended from time to time by the Approving Authority.

1.3 **“Homeowners Association Land Interest”** means the lands legally described in Schedule "D" hereto.

1.4 **“Material Alteration”** means:

1.4.1 any addition to a building situate on a Subdivided Lot, or

1.4.2 any change in the materials or colours or textures utilized in the exterior cladding of a building that significantly affect the style or appearance of the building and is inconsistent

with the styles or appearances provided for in the Architectural Guidelines, as determined by the Approving Authority.

- 1.5 **“Parcel”** means any one of the lots described in Schedule “A” hereto.
- 1.6 **“Public Lands”** means lands from time to time dedicated to the Municipal District of Foothills No. 31, including without limitation, public roadways, municipal reserves and environmental reserves.
- 1.7 **“Rent Charge Proportion”** means as to Subdivided Lots the fraction equal to one (1) divided by the Rent Charge Total.
- 1.8 **“Rent Charge Total”** means the number of Subdivided Lots from time to time situate within The Lake at Heritage Pointe Subdivision, as determined by the Homeowners Association from time to time.
- 1.9 **“Stage One Lands”** means all those lands legally described in Schedule “A” hereto.
- 1.10 **“Subdivided Lot”** means a single family residential lot, a semi-detached residential lot or a bareland condominium unit.
- 1.11 **“Subdivision Features”** means those lands, improvements and facilities within The Lake at Heritage Pointe Subdivision which are now or are intended to become hereinafter either owned by, or placed under the management or control of, the Homeowners Association, including, without limitation, the following:
  - 1.11.1 the lake and adjacent green spaces and beach area now or hereafter constructed within The Lake at Heritage Pointe Subdivision, together with appurtenant amenities such as landscaping, lighting, irrigation systems and amenities building;

1.11.2 the stone-work entries and appurtenant landscaping, irrigation and lighting now or hereafter constructed on or adjacent to any roadway entrance to any part of The Lake at Heritage Pointe Subdivision;

1.11.3 tennis court, tot lots and any other recreational facilities constructed or existing from time to time; and

1.11.4 common pathways and walkways (but not sidewalks), parking areas, decorative street lamps, landscaped cul-de-sac islands, flower beds and other landscaped areas (including such areas contained within Public Lands or public rights-of-way).

1.12 **“Term”** means the period commencing on the date hereof and expiring on the 99<sup>th</sup> anniversary of the date hereof.

1.13 **“The Lake at Heritage Pointe Subdivision”** means all those lands described in Schedule “B” hereto and includes the Stage One Lands.

## 2

### RESTRICTIVE COVENANT

THE DEVELOPER, as registered owner in fee simple of all of the Stage One Lands, and each of the Subdivided Lots within the Stage One Lands, subject to such liens, encumbrances and interests as are notified on the certificates of title thereto, in consideration of the premises and the mutual covenants herein contained, on its own behalf and on behalf of its respective successors in title to each such Subdivided Lot, does accordingly covenant and agree with itself as registered owner of each of the remainder of the Subdivided Lots within the Stage One Lands, and with the Homeowners Association as the owner of the Homeowners Association Land Interest, and with each of their respective successors in title thereto that:

- 2.1 The land use and occupancy restrictions hereinafter described as being applicable to the Stage One Lands shall be and be deemed to be covenants and conditions running with the Stage One Lands and each Subdivided Lot therein and shall enure to the benefit of all other Subdivided Lots in the Stage One Lands and to the benefit of the Homeowners Association Land Interest.
- 2.2 The said covenants and conditions shall not be personally binding upon or enure to the benefit of the Developer except while it remains the registered or beneficial owner of one or more of the Subdivided Lots and then only in respect of such Subdivided Lots as are owned by it.
- 2.3 The restrictions that shall apply to each Subdivided Lot within the Stage One Lands are the following:
  - 2.3.1. No building or other improvement, including landscaping, shall be constructed on any Subdivided Lot unless the plans and specifications therefore shall meet the Architectural Guidelines and shall first have been approved in writing by the Approving Authority. Further, no Material Alteration shall be made to any such building or improvement constructed on a Subdivided Lot without prior written approval by the Approving Authority.
  - 2.3.2. Approval by the Approving Authority may not be obtained unless plans and specifications of the building, or other improvement, or the addition or alterations, as the case may be, are first provided to the Approving Authority. Nothing in this paragraph 2.3 shall prevent any owner or occupant of a Subdivided Lot from carrying out repairs to a building, or other improvement, which have the effect of restoring the same to substantially the same state of appearance, design and use applying after its initial approved construction (or approved alteration).

- 2.3.3. No outdoor clothes-hanging devices and no outdoor communication or satellite dishes (except for satellite dishes which have an overall diameter of 24 inches or less and which are attached to the structure of the dwelling constructed on the Subdivided Lot) or aerials or similar devices shall be placed or kept on any Subdivided Lot.
- 2.3.4. No recreational vehicles or trailers shall be parked or kept on any Subdivided Lot (unless fully contained within a garage) for more than forty-eight (48) hours, without the prior written approval of the Approving Authority.
- 2.3.5. No signs or advertising material, other than bona fide realtor signs displaying information respecting "for sale" or "for rent" and not exceeding four square feet in area, shall be placed or kept on any Subdivided Lot or on a fence erected thereon, or in a window of a dwelling constructed thereon, without the prior written approval of the Approving Authority.
- 2.3.6. No rock, soil or other material of any kind shall be dumped or stored on any Subdivided Lot except for clean earth for the purpose of landscaping such Subdivided Lot.
- 2.3.7. No materials, vehicles or equipment, other than such as are usually parked or stored in connection with the occupation of a building used for private residential purposes, shall be parked or stored on any Subdivided Lot. Storage of vehicles, of any type, for a period of more than forty-eight (48) hours is not permitted, unless fully contained within a garage.
- 2.3.8. No animal (except a domestic dog or a domestic cat), bird or reptile (all of the foregoing including domestic dogs and cats being hereinafter referred to as a "pet") of any kind exceeding ten

kilograms shall be kept on any Subdivided Lot without the prior written approval of the Approving Authority, and the Approving Authority may, if such approval has been given, withdraw such approval on fifteen days notice to the owner of the Subdivided Lot on which the pet is being kept. An owner of a Subdivided Lot shall not keep in or on the Subdivided Lot more than four pets (excluding fish) of which no more than two shall be dogs and no more than two shall be cats.

2.3.9. No structure, moveable structure, storage shed, playhouse, gazebo, satellite dish, telecommunications antenna, clothesline or other fixture, piece of equipment or chattel (a "Structure") shall be erected, placed or allowed to remain within six and one-half (6.5) metres of the rear property line of any Subdivided Lot (such 6.5 metre area being hereinafter called the "Open Area"). No Structure may be erected, placed or allowed to remain on that portion of the rear yard of a Subdivided Lot which does not form part of the Open Area without the prior written approval of the Approving Authority.

2.3.10. No irrigation system shall be installed on any Subdivided Lot which does not comply with the restrictions and specifications set forth in the Architectural Guidelines.

2.3.11. No in-ground swimming pools shall be installed on any Subdivided Lot without the prior written approval of the Approving Authority.

2.3.12. No fence, wall, hedge or enclosing structure whatsoever may be constructed or be allowed to be maintained upon any Subdivided Lot except pursuant to paragraph 2.3.1 hereof and in compliance with the Architectural Guidelines.

- 2.4 The Approving Authority may designate a person, firm or corporation to act as its agent in carrying out its functions as the Approving Authority.

3. **THE HOMEOWNERS ASSOCIATION**

3.1 **Membership and Voting Rights**

- 3.1.1 Every owner in fee simple of a Subdivided Lot within The Lake at Heritage Point Subdivision shall be entitled to be a member of the Homeowners Association, subject to and bound by the Homeowners Association's Application for Incorporation, By-laws, Rules and Regulations, and this Agreement. The Developer shall be and is entitled to be a member in respect of each Subdivided Lot as to which the Developer is and remains the beneficial owner until such time (in respect of each Subdivided Lot respectively) as the Subdivided Lot is transferred to a purchaser who buys the Subdivided Lot from the Developer. The Developer shall also be entitled to be a member in respect of such of the lands within The Lake at Heritage Point Subdivision as remain owned by the Developer, including both Subdivided Lots and unsubdivided portions of The Lake at Heritage Point Subdivision. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as defined above, shall be the sole qualification for membership. When any Subdivided Lot is owned by two or more persons or other legal entity, all such persons or entities shall be members but they shall have voting rights limited as herein set out. An owner of more than one Subdivided Lot shall be entitled to membership in respect of each Subdivided Lot owned by him. Save as provided in paragraph 3.1.3 hereof, membership shall be appurtenant to and may not be separated from ownership of any Subdivided Lot, and entitlement to it shall be automatically transferable by conveyance or other transfer of the Subdivided Lot. Anyone who ceases to be an owner of a Subdivided Lot shall ipso facto cease to be a member.

This provision shall not apply to the Developer who shall be a member so long as the Developer legally or beneficially owns one or more Subdivided Lots or any unsubdivided lands within The Lake at Heritage Pointe Subdivision.

3.1.2 The Homeowners Association shall have two classes of voting membership, Class A and Class B. All votes shall be cast in the manner provided in the By-laws. When more than one person or entity holds an interest in any Subdivided Lot, the vote for such Subdivided Lot shall be exercised (as between them) as provided for in the By-laws; but in no event shall more than the number of votes hereinafter designated be cast with respect to any such Subdivided Lot. The two classes of voting memberships, and voting rights related thereto, as follows:

3.1.2.1 Class A members shall be:

3.1.2.1.1 the subscribers to the Homeowners Association's incorporation and charter documents (and substitutions therefore made by the Developer); and

3.1.2.1.2 all owners, other than the Developer, of Subdivided Lots.

3.1.2.2 Class A membership holders shall be entitled to one (1) vote for each subscriber and one (1) vote for each Subdivided Lot owned;

3.1.2.3 The Developer shall be the only Class B member. Class B members (the Developer) shall have Fifty (50) votes for each Subdivided Lot which the Developer owns legally or beneficially, and Two Hundred (200) votes for that portion (if any) of The Lake at Heritage Pointe Subdivision that remains unsubdivided and owned by the Developer from time to time.

3.1.3. Notwithstanding the foregoing, the subscribers to the Homeowners Association's incorporation and charter documents are entitled to be and shall be members, whether or not they shall own any Subdivided Lots, until such time as the Developer shall have subdivided and sold and transferred at least three hundred and fifty (350) Subdivided Lots in The Lake at Heritage Pointe Subdivision. Further, the Developer may select and designate and retain as members, substitutions for such subscribers (who may be officers, directors or employees of the Developer), who shall be eligible to be members even though they do not own any Subdivided Lots. Such persons who are members pursuant to this clause 3.1.3. shall each and all be entitled to continue to be members until the Developer shall have sold and transferred to purchasers at least three hundred and fifty (350) Subdivided Lots. They shall automatically cease to be members after the Developer's transfer of the three hundred and fiftieth (350<sup>th</sup>) Subdivided Lot. They shall, notwithstanding their ceasing to be members, nonetheless be entitled to serve as members of the Board of Directors and/or officers of the Homeowners Association until the Developer no longer owns any land in The Lake at Heritage Pointe Subdivision. After the transfer of three hundred and fifty (350) Subdivided Lots by the Developer as aforesaid, the said five (5) members shall not have any power to vote in their own right; but any one (or some or all of them) may act as proxies for and cast votes for the Developer.

## 3.2 Rights and Obligations of the Homeowners Association

- 3.2.1 The Homeowners Association shall be responsible during the Term for the management and control of all Subdivision Features, and shall keep the same in good, clean and proper condition, order and repair.
- 3.2.2 The Homeowners Association may obtain, employ and pay for the services of any entity or person (hereinafter called the "Manager")

to assist in managing its affairs and carrying out its rights and obligations hereunder to the extent it deems advisable, as well as such other personnel as the Homeowners Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Homeowners Association or by the Manager. Without limitation, the Homeowners Association may contract with or employ the Developer or an associated company to perform and exercise (and in the Homeowners Association so contracting with the Developer, the Developer and the representatives it elects under paragraph 3.1.3. hereof shall be free to exercise the Developer's voting rights in the Homeowners Association) its rights and obligations or to act as Manager. Any management agreement must be terminable for cause upon thirty (30) days notice, be for a term not to exceed three years, and be renewable only upon mutual consent of the parties.

3.2.3 The Homeowners Association may exercise other rights or privileges given to it expressly by this Agreement, its Articles or By-laws, or by law, and every other right or privilege reasonably necessary to effectuate the exercise of any right or privileges granted herein or therein.

#### 4. COVENANT FOR MAINTENANCE ASSESSMENTS

- 4.1 There shall be payable to the Homeowners Association from time to time, as assessed and levied by the Homeowners Association from time to time, by the registerer owner in fee simple of each Subdivided Lot, a sum equal to such Subdivided Lot's Rent Charge Proportion of the Homeowners Association's Costs (as hereinafter defined), as and by way of a Rent Charge.
- 4.2 The Developer, as registered owner in fee simple of each of the Subdivided Lots within the Stage One Lands, subject to such liens, encumbrances and interests as are notified on the certificates of title thereto, hereby grants to the Homeowners Association, a Rent Charge as against and in respect of each such Subdivided Lot,

equal, as to each such Subdivided Lot within the Stage One Lands, to the lesser of:

4.2.1 \$900.00 per annum during the first year of the Term, and in subsequent years of the Term, an amount representing an increase over the prior year's Rent Charge equivalent to the increase, if any, in the Consumer Price Index as it applies to Calgary, or such other amount as is determined by Special Resolution pursuant to paragraph 4.3 hereof; or

4.2.2 the Rent Charge Proportion of the Homeowners Association's Costs applicable to such Subdivided Lot from time to time during the Term hereof determined as herein provided for;

and encumbers, mortgages and charges each such Subdivided Lot as security for payment of the Rent Charge applicable to each such Subdivided Lot, respectively, and grants also to the Homeowner's Association a right of distress in respect of the Rent Charge.

4.3 "Homeowners Association's Costs" for any period shall mean any and all costs incurred or to be incurred in such period (including without limitation, reasonable reserves for future maintenance, repair and replacement costs) by the Homeowners Association in respect of carrying out and exercising its rights, duties and obligations hereunder, as determined by the Board of Directors of the Homeowners Association from time to time. Notwithstanding the foregoing, and notwithstanding paragraph 4.2 hereof, the Homeowners Association's Costs for any Subdivided Lot shall not exceed the amounts set forth and described in paragraph 4.2.1 unless authorized by Special Resolution of the Homeowners Association whereby a minimum of seventy-five (75%) percent of all of the members of the Homeowners Association approve the change.

4.4 The registered fee simple owner from time to time of each Subdivided Lot shall pay the Rent Charge applicable to his Subdivided Lot as and whenever required

by the Homeowners Association. The Board of Directors of the Homeowners Association shall from time to time estimate the Homeowners Association's Costs (including without limitation, reserves for maintenance, repair and replacement costs) for such period as it deems convenient to its administration and shall notify each owner of the amount of such estimate and the owner's share thereof (that is, his Rent Charge) by notice in writing delivered to or on, or mailed by ordinary mail to the address of any dwelling situate on, each Subdivided Lot. Each such estimate shall state an annual amount for the Rent Charge payable for the period such as will (if paid) pay the full amount of such estimate within the period. The Rent Charge for each Subdivided Lot shall be the sum so notified by the Homeowners Association as applicable to the Subdivided Lot and the annual amount shall be due and payable in advance by way of one annual payment, or at the option of the Homeowner's Association, two semi-annual payments, commencing on the 1<sup>st</sup> day of November, 2001.

- 4.5 The Rent Charge shall be and is hereby made an encumbrance upon each respective Subdivided Lot within the Stage One Lands, and the Homeowners Association shall have and be entitled to enforce such Rent Charge against each such Subdivided Lot in the same manner as provided for an encumbrance under the Land Titles Act of Alberta.
- 4.6 The Rent Charge shall run with and bind the title to each respective Subdivided Lot.
- 4.7 Notwithstanding anything herein contained, no Rent Charge shall be levied, assessed or payable for any period prior to November 1, 2001; and the Developer shall perform all duties and functions of the Homeowners Association at the Developer's sole cost and expense until such date. The Developer, and all owners of Subdivided Lots, shall be subject to all Rent Charges levied on Subdivided Lots owned by them, respectively, from and after November 1, 2001.
- 4.8 The Board of Directors of the Homeowners Association shall (subject to the limitation stated in paragraph 4.3 hereof) be the sole determiner of the

Homeowners Association's Costs, the Rent Charge Proportion, the amount of the Rent Charges from time to time and the dates on which they are payable; and a certificate stating the same and signed by an officer of the Developer if the Developer is then a member of the Homeowners Association, shall be conclusive and binding on all owners within The Lake at Heritage Pointe Subdivision (including without limitation the owners of the Subdivided Lots in the Stage One Lands). The Board of Directors of the Homeowners Association shall, for and on behalf of the Homeowners Association, determine the Subdivided Lots in addition to the Stage One Lands that fall within The Lake at Heritage Pointe Subdivision from time to time; and the foregoing certificate provisions shall apply as such determination.

- 4.9 Without limiting the foregoing, the Homeowners Association hereby confirms that the Rent Charge for each Subdivided Lot within the Stage One Lands for the period commencing November 1, 2001, has been estimated at the sum of Nine Hundred (\$900.00) dollars per annum per Subdivided Lot within the Stage One Lands and such Rent Charge shall be payable in advance by annual or semi-annual payments commencing on the 1<sup>st</sup> day of November, 2001. If the Homeowners Association or its Board of Directors fails or omits to determine or notify owners of the Rent Charge for any portion of the Term hereof after October 31, 2002, or if the Rent Charge for any portion of the Term shall otherwise not be ascertained or ascertainable then the Rent Charge for such portion of the Term shall be and be deemed to be Nine Hundred (\$900.00) dollars per annum payable in advance in annual or semi-annual installments for Subdivided Lots within the Stage One Lands.
- 4.10 Any Rent Charge not paid when due shall bear interest (and the owner of the Subdivided Lot in default shall pay interest on the Rent Charge in default) at the rate of SIXTEEN (16%) per cent per annum calculated monthly, not in advance, from the date due until paid; and such interest shall be and is hereby made a charge upon the said Subdivided Lot.

4.11 The Homeowners Association shall be at liberty, in its sole discretion, to postpone the Rent Charge and Encumbrance herein provided for, in respect of any Subdivided Lot, to a registered first mortgage of such Subdivided Lot, on such terms and conditions as the Homeowners Association may require.

5. **TERM**

5.1 This Agreement and the rights, licenses, interest, privileges and charges hereby granted shall be for a term of ninety-nine (99) years commencing on the date hereof and expiring on the ninety-ninth (99<sup>th</sup>) anniversary of such date.

6. **MISCELLANEOUS**

6.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.2 If any part of this Agreement shall be void, unlawful or unenforceable for any reason whatsoever, such part shall be severable from this agreement without affecting or derogating from the validity and enforceability of the remainder hereof.

6.3 This Agreement shall be governed by the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties have each executed this Agreement as witnessed by the hands of their proper officers duly authorized in that behalf as of the day and year first above written.

HERITAGE POINTE LAKE  
DEVELOPMENTS LTD.

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

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

THE LAKE AT HERITAGE POINTE  
HOMEOWNERS ASSOCIATION

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

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

**SCHEDULE "A"**

**STAGE ONE LANDS**

Block 1, Lots 1 - 34 Inclusive Plan \_\_\_\_\_

Block 2, Lots 1 - 32 Inclusive Plan \_\_\_\_\_

Block 3, Lots 1 - 12 Inclusive Plan \_\_\_\_\_

Block 4, Lots 1 - 5 Inclusive Plan \_\_\_\_\_

**EXCEPTING THEREOUT ALL MINES AND MINERALS**

**SCHEDULE "B"**

**The Lake at Heritage Pointe Subdivision**

Block 1, Lots 1 - 34 Inclusive Plan \_\_\_\_\_

Block 2, Lots 1 - 32 Inclusive Plan \_\_\_\_\_

Block 3, Lots 1 - 12 Inclusive Plan \_\_\_\_\_

Block 4, Lots 1 - 5 Inclusive Plan \_\_\_\_\_

Block 6 Plan \_\_\_\_\_

Block 7 Plan \_\_\_\_\_

Block 9 Plan \_\_\_\_\_

Block 5, Plan 0110933

Block E, Plan 7959 JK

**EXCEPTING THEREOUT ALL MINES AND MINERALS**

