

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

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ORDER NUMBER: 50149577

ADVISORY

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(13)
Encl

CAVEAT
FORBIDDING REGISTRATION

TO THE REGISTRAR OF THE ALBERTA LAND REGISTRATION DISTRICT:

TAKE NOTICE THAT: THE CITY OF CALGARY

claims an interest as Grantee under and by virtue of a **Public Access Easement Agreement** relating to Access Right of Way Plan 241 0609 and such agreement is made between **THE CITY OF CALGARY** and **THE CITY OF CALGARY**, a copy of which is attached as Schedule "A" and forms part of this Caveat, namely:

LOT 2, BLOCK 8
ALL ON PLAN 2410605
EXCEPTING THEREOUT ALL MINES AND MINERALS

standing in the register in the name of: **THE CITY OF CALGARY**

and it forbids the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest, unless the instrument or certificate of title, as the case may be, is expressed to be subject to its claim.

It appoints Law, Legal Services, Municipal Building, 12th Floor, 800 Macleod Trail S.E., Calgary, Alberta, T2G 2M3 as the place at which notices and proceedings relating hereto may be served.

DATED this 13 day of February, 2024.

THE CITY OF CALGARY
By its Agent in that behalf



JENNIFER NDIRANGU
PARALEGAL - PLANNING
PLANNING & REAL ESTATE
LAW, LEGAL SERVICES

AFFIDAVIT IN SUPPORT OF CAVEAT

I, **JENNIFER NDIRANGU**, of the City of Calgary, in the Province of Alberta **MAKE OATH AND SAY:**

1. I am the agent for the above named Caveator; and
2. I believe that the said Caveator has a good and valid claim upon the said lands and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

SWORN BEFORE ME at the City of
Calgary, in the Province of Alberta,
this 13 day of February, 2024.



ALANNA ROBERTS
A COMMISSIONER FOR OATHS
IN AND FOR ALBERTA
MY APPOINTMENT EXPIRES DEC. 24, 2025



Jennifer Ndirangu

CAVEAT FORBIDDING REGISTRATION

LAW, LEGAL SERVICES
THE CITY OF CALGARY (#8053)
FLOOR 12, CALGARY MUNICIPAL BUILDING
800 MACLEOD TRAIL SE
P.O. BOX 2100, POSTAL STATION "M"
CALGARY, ALBERTA T2G 2M3
FAX: 403.268.4634

File: P10888

SCHEDULE "A"
TO CAVEAT

**PUBLIC ACCESS EASEMENT AGREEMENT
CONDITION OF SUBDIVISION OR DEVELOPMENT PERMIT
THE CITY OF CALGARY IS A PARTY TO THE AGREEMENT
INDIVIDUAL(S) OR CORPORATION**

THIS PUBLIC ACCESS EASEMENT AGREEMENT dated on the 30th day of January, 2024.

BETWEEN:

THE CITY OF CALGARY, a municipal corporation
carrying on business in and pursuant to the Province
of Alberta

("the Grantor")

- and -

THE CITY OF CALGARY, a municipal corporation
carrying on business in and pursuant to the Province
of Alberta

("the City")

PUBLIC ACCESS EASEMENT AGREEMENT

RECITALS:

WHEREAS the Grantor is the registered owner of the Servient Lands;

AND WHEREAS the City is the registered owner of the Dominant Lands;

AND WHEREAS pursuant to the Grantor's subdivision application file number **SB2021-0144**, the City approved the development of the Servient Lands subject to certain conditions of approval, including a condition requiring the parties enter into an Access Easement Agreement and register such agreement concurrently with the registration of the final subdivision plan;

AND WHEREAS the Grantor intends to grant an access easement over the Servient Lands in favour of the Dominant Lands, for the benefit of the City;

NOW THEREFORE IN CONSIDERATION of the mutual covenants contained herein, the payment of Ten Dollars (\$10.00) from the City to the Grantor, the approval of **SB2021-0144** and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the provisions of this Agreement to be performed, kept and observed by the parties as herein provided, **THE PARTIES AGREE AS FOLLOWS:**

1. DEFINITIONS

1.01 In this Agreement, the following words and phrases when capitalized shall have the following meanings:

- (a) "Access Easement Area" means that portion of the Servient Lands which lies within the access right of way plan, registered as Plan number 24/0609 ;
- (b) "Agreement" means this Public Access Easement Agreement and all amendments thereto, together with all the above recitals and schedules attached hereto;
- (c) "City Specifications" means the design and construction requirements for sidewalks contained in City documents, as amended and replaced from time to time;
- (d) "Development or Subdivision Authority" means a person or body appointed as a Development Authority or a Subdivision Authority as contemplated by and in accordance with the *Municipal Government Act*, R.S.A. 2000, c.M-26, as amended and any successor legislation;
- (e) "Dominant Lands" means all land and public road right of ways owned by the City located adjacent to or connecting to the Servient Lands, including but not limited to **NIMBUS WAY N.E.**;
- (f) "Effective Date" means the date at the top of this Agreement;
- (g) "Grantor" means the registered owner(s) from time to time of the Servient Lands, or any portion thereof, and their successors and assigns and any subsequent purchasers or transferees of the Servient Lands;
- (h) "Manager, Development Engineering" means the City employee appointed to the position of Manager, Development Engineering or the individual authorized to act in his place generally or for the purpose of administering this Agreement;
- (i) "Servient Lands" means the lands owned by the Grantor and legally described as:

LOT 2, BLOCK 8
ALL ON PLAN 24/0605
EXCEPTING THEREOUT ALL MINES AND MINERALS
- (j) "Term" has the meaning ascribed in Clause 2 herein.

2. TERM OF AGREEMENT

- 2.01. The Grantor and City agree that this Agreement and the rights and privileges granted herein comes into full force and effect on the Effective Date and continues for as long as required by the Development or Subdivision Authority in connection with approval of **SB2021-0144**. This Agreement may be extinguished with the consent of the Development or Subdivision Authority which may be obtained through an application in writing to the Development or Subdivision Authority accompanied by a registerable discharge of easement and a copy of the certificate of title downloaded or obtained from Alberta Land Titles within one week of submission of the application.

- 2.02 The City agrees to discharge this Agreement, if at the City's sole and unfettered discretion, such Agreement is no longer required by the City. The Grantor shall pay all costs associated with the discharge of the Agreement, including, but not limited to, the preparation of the discharge of the Agreement by the owner's solicitors and the registration of same at the Land Titles Office.

3. ACCESS EASEMENT

- 3.01 Subject to Clause 8.01, the Grantor grants to the City for the use of the City (including its nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, and invitees) in common with the Grantor, the non-exclusive right, privilege and easement, in, across, through and over the Access Easement Area, and to and from the Dominant or Servient Lands, as may be necessary, at any time, without notice, for the following purposes:

(a) pedestrian access

- 3.02 The Grantor shall retain a right of egress and ingress in, through on and over the Access Easement Area subject to any restrictions contained in this Agreement.

4. GRANTOR COVENANTS

- 4.01 Subject to Clause 8.01, the Grantor covenants and agrees that it shall not:

- (a) do any act or thing that would damage the Access Easement Area or infrastructure located thereon or which could interfere in any way with the City's rights pursuant to this Agreement;
- (b) change or permit a change to be made to the existing surface grade of the Servient Lands in such a manner that could interfere in any way with the City's rights pursuant to this Agreement;
- (c) build, erect, plant or maintain or permit to be built, erected, planted or maintained on or near the Access Easement Area any building, fence, structure, including a cafe and/or sign, tree, shrub, vegetation, landscaping or other works which could interfere in any way with the City's rights pursuant to this Agreement.

- 4.02 The Grantor covenants and agrees that:

- (a) the City has the full and free right and liberty to erect, maintain and remove signage on the Access Easement Area pertaining to the use of the Access Easement Area;
- (b) the Grantor shall keep the Access Easement Area open at all times for the use of and access by the City and its nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assigns, invitees

and the public at large, unless otherwise approved or directed by Manager, Development Engineering

- (c) the Grantor shall pay all taxes levied over the Servient Lands, including the Access Easement Area, by any government authority.

5. CONSTRUCTION AND MAINTENANCE OF ACCESS EASEMENT AREA

- 5.01 The Grantor shall, at its sole cost and expense, construct the Access Easement Area to City Specifications.
- 5.02 The Grantor shall, at its sole cost and expense, maintain, repair and replace the infrastructure located on the Access Easement Area to keep the Access Easement Area in service and in good operating condition to the standards required pursuant to the *Occupiers Liability Act*, R.S.A. 2000, c.O-4, as amended, and any successor legislation, and such maintenance shall include items that are the responsibility of the property owner under a city of Calgary bylaw.
- 5.03 In the event that the Access Easement Area or any portion of it is destroyed or damaged as a result of the wilful act or negligence of the Grantor, then the entire cost of repairs shall be borne by the Grantor.
- 5.04 The City may use any necessary equipment to fulfil its obligations hereunder as deemed appropriate by the Manager, Development Engineering.
- 5.05 The parties acknowledge and agree that the City is under no obligation to inspect the Access Easement Area, or any portion thereof, to ensure that this Agreement is complied with.
- 5.06 All work performed on the Access Easement Area by the Grantor and City shall be carried out in a good and workmanlike manner.

6. INDEMNITY

- 6.01 The City shall indemnify and hold harmless the Grantor from and against all claims, damages, suits, actions, liabilities and causes of action, costs, or sums of money, including all claims for personal injury, death or property damage, whatsoever, that the Grantor may suffer by reason of the City failing to comply with this Agreement or by the City's negligence or misconduct in carrying out the provisions of this Agreement, but shall not extend to any loss incurred by the Grantor due to any act or omission of the City's invitees, including the public at large.
- 6.02 The Grantor shall indemnify and hold harmless the City from and against all claims, damages, suits, dues, actions, liabilities and causes of action, costs, or sums of money, including all claims for personal injury, death or property damage, whatsoever that the City may suffer by reason of the Grantor failing to comply with any provisions in this Agreement or by the Grantor's negligence or misconduct in carrying out the provisions

of this Agreement.

- 6.03 In the event of any loss, claim or demand advanced against the City, to which the Grantor has caused or contributed, nothing in this Agreement prevents the City from seeking contribution or indemnity from the Grantor to the extent of the Grantor's contribution to the loss.
- 6.04 In the event of any loss, claim or demand advanced against the Grantor, to which the City caused or contributed, nothing in this Agreement prevents the Grantor from seeking contribution or indemnity from the City to the extent of the City's contribution to the loss.
- 6.05 The parties acknowledge and agree that the provisions of this Agreement do not modify the standard of care owed in law either by the Grantor or City to any person with respect to the maintenance, repair and replacement of the Access Easement Area and infrastructure located thereon.

7. ASSIGNMENT ON DISPOSITION AND POSTPONEMENT

- 7.01 Concurrent with the assignment, sale or transfer of the entirety of the Servient Lands or any interest therein by which the rights and obligations under this Agreement are assigned, sold or transferred, the Grantor shall cause its assignee, purchaser or transferee to enter into an Assumption Agreement duly executed by the assignee, purchaser or transferee, in a form acceptable to the City, which shall provide for the assumption by such assignee, purchaser or transferee of all of the obligations imposed by this Agreement with respect thereto, at which time the assignor, vendor or transferor shall be deemed to be released from such obligations.

8. GENERAL

- 8.01 If the Grantor reasonably believes the Access Easement Area is unsafe for the purpose of the easement, the Grantor may take reasonable measures to restrict access to the Access Easement Area until such time as the Access Easement Area is safe and fit for the purpose of the easement.
- 8.02 If any provision of this Agreement or application thereto to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, other than such term, will be valid and enforced to the extent permitted by law.
- 8.03 This Agreement will be interpreted and enforced in accordance with the laws of the Province of Alberta.
- 8.04 No action will lie against either the Grantor or the City for damages, for breach of any one or more of the covenants contained in this agreement unless the Grantor or City were, at the time of the alleged breach, an owner of either the Servient or Dominant Lands. This covenant will constitute an absolute defence to any such action and may be pleaded as such.

- 8.05 Throughout this Agreement, the singular includes the plural and the masculine shall include the feminine as the case may be, and vice versa. Should the Grantor or City at any time and from time to time comprise two or more persons, each such person will be jointly and severally bound with the other and others for the performance of the obligations of the Grantor or City of such rights.
- 8.06 The parties hereby acknowledge and agree that every obligation or duty imposed upon them under this Agreement will constitute a covenant, whether expressed as covenant or not.
- 8.07 All obligations contained herein, although not expressly covenants are deemed to be covenants running with the Dominant Lands and Servient Lands.
- 8.08 This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective heirs, successors, successors in title and assigns.
- 8.09 Nothing in this Agreement relieves the Grantor from compliance with all applicable municipal bylaws, laws or regulations established by any other government authority which may have jurisdiction over the Servient Lands.
- 8.10 Every provision of this Agreement by which the Grantor is obligated in any way is deemed to include the words "at the expense of the Grantor" unless the context otherwise requires.
- 8.11 This Agreement does not constitute a development permit or any other permit issued by the City.
- 8.12 The failure of the City at any time to require strict performance by the Grantor of any obligation under this Agreement in no way affects its right thereafter to enforce such obligation, nor will the waiver by the City of the performance of any obligation hereunder be taken or held to be a waiver of the performance of any other obligation herein.
- 8.13 The City's waiver of all or any portion of this Agreement must, without exception, be in writing and signed by the Manager, Development Engineering, and any action that fails to comply with this requirement must not be considered or construed to be a waiver.
- 8.14 The Parties acknowledge and agree that the covenants contained herein are deemed to be, and will be, covenants running with the Dominant and Servient Lands, and will be registered by the City against title to the Servient Lands.
- 8.15 Time shall be of the essence of this Agreement.
- 8.16 The above recitals and attached schedules shall form part of this Agreement.

9. NOTICES

- 9.01 Any notice or communication to be given or made to either party shall be in writing and may be sufficiently given if messenger delivered or faxed to such party at the following addresses:

To the Grantor: The City of Calgary
 Real Estate & Development Services (#8052)
 3rd Floor, Administration Building
 323 – 7th Avenue S.E.
 Calgary, Alberta T2G 0J1
 Fax: (403) 537-3099
 Attention: Manager, Land & Asset Management

To the City: The City of Calgary
 Development Engineering, Mobility (#8037)
 6th Floor, Municipal Building
 800 Macleod Trail S.E.
 Calgary, Alberta T2P 2M5
 Fax: (403) 268-3636
 Attention: Coordinator, Mobility Generalists

With a copy to: The City of Calgary
 Law, Legal Services (#8053)
 12th Floor, 800 Macleod Trail S.E.
 Calgary, Alberta T2P 2M3
 Fax No.: (403) 268-4634
 Attention: Manager, Planning & Real Estate Section

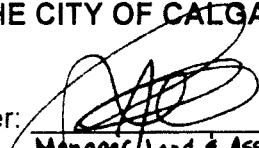
Either party may change its address by notice given to the other in accordance with this section in which event this section shall be deemed to have been amended accordingly.


Any notice or communication given in the foregoing manner shall be deemed to have been given and received on the date of delivery or fax.

IN WITNESS WHEREOF the parties have executed this Agreement as evidenced by their signatures, as of the day and year first above written.

APPROVED AS TO CONTENT REAL ESTATE & DEVELOPMENT SERVICES	INITIALS
Sherry Shimek	AS
APPROVED AS TO FORM BY LAW, LEGAL SERVICES	INITIALS
Adam Ferris	AF

THE CITY OF CALGARY

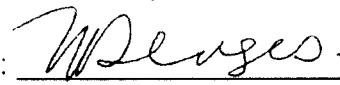
Per: 
 Manager, Land & Asset Management
 Real Estate & Development Services (Corporate Seal)

Per: 
 Nicole Dengis
 Acting City Clerk

FEB 09 2024

THE CITY OF CALGARY

Per: 
 Coordinator, Mobility Generalists

Per: 
 City Clerk

Nicole Dengis
 Acting City Clerk

FEB 09 2024

APPROVED AS TO CONTENT	INITIALS
Bus. Unit: Development Engineering Name: Dan Doupovec	DD
APPROVED AS TO FORM BY LAW, LEGAL SERVICES	INITIALS
Name: Adam Ferris File: P108448	AF

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 CAVE - CAVEAT
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