|  |  |
| --- | --- |
|  | Standard Form Agreements  Development Permit & Subdivision  Applications  **Development Engineering** |

**Your application to The City of Calgary for either a Development Permit or Subdivision has been processed and various documents may be required as a condition of the development or subdivision.**

**When completing the attached Building and Development Restrictive Covenant and Maintenance and Mutual Access Agreement (Retaining Wall)**, **please follow the instructions below.**

* The agreement provided by The City of Calgary is locked and only the field areas indicated may be completed. Each field specifies the information required to be keyed into each space. You may tab from field to field.
* The Plan number space in clause 1.01(f) and 1.01(h) should be left blank and will be filled in at the time the document is registered at the Land Titles office. A survey plan prepared by an Alberta Land Surveyor that delineates the easement area must accompany the agreement package.
* Once all the field areas have been filled in, save the document.

**NOTE: THIS PAGE IS FOR INFORMATION ONLY AND IS NOT PART OF THE AGREEMENT.**

* The order of assembly of the agreement should be:
  1. the agreement
  2. Affidavits after the signing page, if required; and
  3. last, the required Schedule(s).
* Print three (3) copies of the agreement and have each copy signed by the Grantor. **PLEASE DO NOT DOUBLE SIDE THE AGREEMENT, AFFIDAVIT(S) OR SCHEDULE(S) WHEN PRINTING.**
* Ensure that the corporate seal is affixed to each copy of the agreement.
* **If the Grantor does not have a corporate seal**, complete the Affidavit of Corporate Signing Authority and the Affidavit of Execution. These affidavits are also available for completion in locked form. Both affidavits will be required, originally sworn and signed, for each copy of the agreement.
* Include a recent corporate search for all corporations indicated in the agreement in the package to the City.

Once the copies of the agreement have been signed, sealed with the corporate seal, or the appropriate Affidavits have been attached to each copy of the agreement, mail, courier or deliver the copies of the agreement, the corporate search(es) and a **cover letter setting out the DP or SB number** to:

By Delivery or Courier: Development Engineering (#8032), The City of Calgary

Mail Room, Basement Floor, Municipal Building

800 Macleod Trail SE, Calgary

If by Mail: Development Engineering (#8032), The City of Calgary

P.O. Box 2100, Postal Station “M”, Calgary, Alberta T2P 2M5

Click here to enter text. Choose an item.Click here to enter text.

Click here to enter text.

This Agreement dated on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

BETWEEN:

Click here to enter text., having corporate offices and carrying on business in the City of Calgary, in 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 Grantee")

**BUILDING AND DEVELOPMENT RESTRICTIVE COVENANT AND**

**MAINTENANCE AND MUTUAL ACCESS AGREEMENT**

**(Retaining Wall)**

**Recitals:**

**WHEREAS** the Grantor is the registered owner of an estate in fee simple of the Servient Lands;

**AND WHEREAS** pursuant to the Grantor’s Choose an item. file number Choose an item.Click here to enter text., the City approved the development of the Servient Lands subject to certain conditions of approval, including a condition requiring the parties enter into a Building and Development Restrictive Covenant and Maintenance and Mutual Access Agreement (Retaining Wall) relating to the retaining wall and register such agreement Choose an item.;

**AND WHEREAS** the Approving Authority of the City of Calgary and the Grantee require that the Retaining Wall be preserved and maintained to prevent damage to the Dominant Lands due to failure of the Retaining Wall;

**AND WHEREAS** section 68(1) of the Land Titles Act provides that an owner may grant to himself or herself an easement or restrictive covenant for the benefit of land that the owner owns and against land that the owner owns and the easement or restrictive covenant may be registered under this Act;

**AND WHEREAS** the Grantor intends to grant a maintenance and access easement over the Servient Lands in favour of the Dominant Lands and accepts certain building and development restrictions;

**IN CONSIDERATION** of the approval of Choose an item. Choose an item.Click here to enter text., the mutual covenants contained herein, the payment of Ten Dollars ($10.00) from the Grantee to the Grantor and such other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS**

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

* + - * 1. "Agreement" means this Building and Development Restrictive Covenant and Maintenance and Mutual Access Agreement (Retaining Wall) and all of its amendments and recitals;
        2. "Approving Authority" means the City as the subdivision or development approving authority pursuant to Part 17 of the *Municipal Government Act*, RSA 2000, c.M-26, as amended;

(c) "Dominant Lands" means all land and/or Roads owned by the City located adjacent to or connecting to the Servient Lands, including but not limited to:

Click here to enter text.

1. "Grantee" means the registered owner(s) from time to time of the Dominant Lands, or any portion thereof, and their servants, tenants, agents, assigns and any subsequent purchasers and/or transferees of the Dominant Lands;

(e) "Grantor" means the registered owner(s) from time to time of the Servient Lands, or any portion thereof, and their tenants, agents, assigns and subsequent purchasers and/or transferees of the Servient Lands;

1. "Maintenance Access Easement Area" means the Maintenance Access Right of Way Plan registered in the South Alberta Land Titles Office as Plan \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
2. "Manager, Development Engineering" means the City official with the title Manager, Development Engineering appointed by the City from time to time, and any individual designated to carry out his/her duties in connection with this Agreement;
3. “Permissible Vegetation” means all the vegetation shown and described in the attached **SCHEDULE “A”**;
4. “Restricted Development Area” means the Restricted Development Area plan based on the recommended development setbacks from the Retaining Wall and registered in the South Alberta Land Titles Office as Plan \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
5. “Retaining Wall” means the system, as constructed or as will be constructed in accordance with the plans stamped by a qualified engineer and approved by the Approving Authority, and includes any grading, wall configuration, drainage, elevation, subsurface geotechnical properties, permissible structures surface treatments thereof and recommended development setbacks thereto, as shown on Schedule “B” attached hereto; and
6. “Servient Lands" means the lands owned by the Grantor and legally described as:

**ATTACHED SCHEDULE** Choose an item.

1. **TERM OF AGREEMENT**

2.01 This Agreement shall come into full force and effect on the date noted on the first page of this Agreement and shall continue in full force and effect in perpetuity unless terminated, discharged, varied or amended by the unanimous and mutual written agreement of the Grantor and Grantee.

1. **BUILDING AND DEVELOPMENT RESTRICTIONS**

3.01 (a)The Grantor acknowledges that the performance of the Retaining Wall may be compromised by activities carried out on or near it.

1. The Grantor being the registered Owner of the Servient Lands covenants and agrees for itself and its successors in title that, with respect to the Restricted Development Area, it will not, except with the express written approval of The Approving Authority, or except as indicated in the approved plans for the Retaining Wall, or except as required for the operation, repair and maintenance of the Retaining Wall:

(i) build, erect or maintain nor permit or suffer to be built, erected or maintained on the Restricted Development Area any building or structure including but not limited to any utility, fence, patio, mast, pole or deck;

(ii) cause, permit or maintain any deviation from the approved surface grades as set out in the attached **Schedule “B”**;

(iii) cause or permit any surcharge loading by vehicles, equipment or machinery on the Restricted Development Area;

(iv) cause or permit any disturbance, destruction, alteration or introduction of vegetation, other than Permissible Vegetation, on the Restricted Development Area;

(v) cause or permit any direction of water or drainage to either the Restricted Development Area or the Retaining Wall; and

(vi) cause or permit any disturbance of the ground or substrate including excavations, boring, grading, piling or tunneling.

3.02 The Grantor will indemnify and save harmless the Grantee with respect to the Restricted Development Area from and against all claims, damages, deaths, suits, dues, actions, liabilities and causes of action, costs, or sums of money whatsoever that the Grantee may suffer or be put to by reason of anything done by the Grantor on the Restricted Development Area in accordance with or in contravention of this Agreement.

1. **ACCESS EASEMENT**

4.01 (a) The Grantor does hereby grant to the Grantee for the benefit of and appurtenant to the Dominant Lands for the use of the Grantee and his successors and assigns, the perpetual and non-exclusive easement in common with the Grantor in, through and over the Maintenance Access Easement Area at all times hereafter to enter upon and pass over and through for the purposes of accessing, operating, testing, inspecting, photographing, measuring, maintaining, repairing, fortifying, modifying and replacing the Retaining Wall.

(b) The Grantor shall retain a right of egress and ingress on and over the Servient Lands.

(c) The Grantor covenants and agrees for itself and its successors in title that it will not:

(i) perform any act which would damage the Maintenance Access Easement Area or otherwise interfere with the Grantees' rights under this Agreement;

(ii) build, erect, plant or maintain nor permit or suffer to be built, erected, planted or maintained on or near the Maintenance Access Easement Area any building, structure, utility line, excavation, vegetation, landscaping, grading or surface treatment which prevents or interferes, or may prevent or interfere with the Grantees' exercise of their rights covered by this Agreement or which in the opinion of the Manager, Development Engineering, negatively alters the functional performance of the Retaining Wall, except with the express written approval of the Manager, Development Engineering; and

(iii) remove, replace, disturb, modify or damage vegetation or other surface revetments on the Retaining Wall, except with the express written approval of the Manager, Development Engineering.

(d) The Grantee covenants for itself and its successors in title that it will use the Maintenance Access Easement Area only for the purposes of accessing, operating, testing, inspecting, photographing, measuring, maintaining, repairing, fortifying, modifying and replacing the Retaining Wall, along with ingress to and egress from, the Dominant Lands and to pass and re-pass upon the Maintenance Access Easement Area either on foot or by means of vehicles or necessary machinery.

1. The rights conferred by this Agreement do not and shall not be deemed to include a right to park vehicles on the Maintenance Access Easement Area.

(f) The Grantee will indemnify and save harmless the Grantor with respect to the Maintenance Access Easement Area from and against all claims, damages, deaths, suits, dues, actions, liabilities and causes of action, costs, or sums of money whatsoever that the Grantor may suffer or be put to by reason of anything done by the Grantee in the exercise of any one or more of the rights, objections and privileges granted in this Agreement.

(g) The Grantor will indemnify and save harmless the Grantee with respect to the Maintenance Access Easement Area from and against all claims, damages, deaths, suits, dues, actions, liabilities and causes of action, costs, or sums of money whatsoever that the Grantee may suffer or be put to by reason of anything done by the Grantor in the exercise of any one or more of the rights, objections and privileges granted in this Agreement.

1. **MAINTENANCE OF THE RETAINING WALL**

5.01 (a) The Grantee shall be responsible for the costs of the operation, repair and maintenance of the Retaining Wall to the extent necessary to keep the Retaining Wall in service and good operating condition in the opinion of The City taking into consideration the Retaining Wall’s design.

(b) For the purposes of this Agreement "operation, repair and maintenance” shall include emergency work of a temporary or permanent nature, the normal operation, repair, testing, inspecting, measuring, maintaining, fortifying, modifying or replacing of the Retaining Wall.

(c) In the event that the Maintenance Access Easement Area or any portion or part of it is destroyed or damaged as a result of the wilful act or negligence of the Grantor or Grantee, then the entire cost of repairs shall be borne by the party whose negligence or wilful act caused the damage or destruction.

**6. GENERAL**

6.01 (a) This Agreement is governed by the laws of Alberta.

(b) The parties acknowledge and agree that the agreement and covenants granted herein are deemed to be and shall be covenants running with the Dominant and Servient Lands, and the Grantee shall register it against title to the Servient Lands.

(c) A term of this Agreement may not be waived, varied or discharged from title without the written consent of the Grantee and Grantor.

(d) This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors, successors-in-title and assigns.

(e) Throughout this Agreement, the singular shall include the plural and the masculine shall include the feminine as the case may be, and vice versa. Should the Grantor or Grantee at any time and from time to time comprise two or more persons, each such person shall be jointly and severally bound with the other and others for the performance of the obligations of the Grantor or Grantee of such rights.

1. The rights, privileges and easements granted in this Agreement shall be subject to any restrictions or other provisions contained in any other easement granted against the Maintenance Access Easement Area for the installation, use or operation of any utility on the Maintenance Access Easement Area or any part of it.

(g) Both the Grantor and the Grantee may, with respect to any breach of the provisions of this Agreement, in addition to any other remedy that may be available at law, apply to a Court of competent jurisdiction to restrain such breach by injunction. Neither the Grantor nor the Grantee shall have a duty to enforce the provisions of this Restrictive Covenant, and no action shall lie against such parties with respect to enforcement of this Restrictive Covenant. This clause shall be an absolute defense to any such action.

(h) No action shall lie against either the Grantor or the Grantee for damages, for breach of any one or more of the covenants contained in this Agreement unless the Grantor or Grantee were, at the time of the alleged breach, an owner of either the Servient or Dominant Lands and alleged and found by a court of competent jurisdiction to be in breach of this Agreement. This covenant shall constitute an absolute defence to any such action and may be pleaded as such.

(i) The parties acknowledge that this Agreement contains the entire terms, conditions and warranties and agreed to by the parties respecting the Maintenance Access Easement Area and that there are no terms, conditions, warranties or other agreements except as stated in this Agreement.

(j) If any covenant, term or provision of this Agreement, or application thereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, other than such term, shall be valid and enforced to the extent permitted by law.

(k) The parties acknowledge and agree that the headings in this Agreement have been inserted for convenience of reference only.

(l) The Recitals set forth above shall form a part of this Agreement.

1. **NOTICES**

7.01 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: Click here to enter text.

Click here to enter text., Click here to enter text.

Email: Click here to enter text.

Fax: Click here to enter text.

Attention: Click here to enter text.

To the Grantee: The City of Calgary, Development Engineering (#8032)

5th Floor, Municipal Building, 800 Macleod Trail S.E.

Calgary, Alberta T2P 2M5

Fax: 403-268-3636

Attention: Manager, Development Engineering

With a copy to: The City of Calgary, Law, Legal Services (#8053)

12th Floor, Municipal Building, 800 Macleod Trail S.E.

Calgary, Alberta T2P 2M3

Fax: 403-268-4634

Email: law.reception@calgary.ca

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** | **Initials** | | Bus. Unit: Development Engineering  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | | **Approved as to Form**  **by Law, Legal Services** | **Initials** | | Name:  File: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | | Click here to enter text.  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Corporate Seal)  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   |  | | --- | | **Affix Corporate Seal OR**  **use Affidavit of Corporate Signing Authority AND Affidavit of Execution** |   **THE CITY OF CALGARY**  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Coordinator, Utility Generalists  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  City Clerk |

**SCHEDULE** “A”

permissible vegetation

Click here to enter text.

**SCHEDULE** “B”

Retaining Wall Design

(ATTACH DESIGN PAGES BEHIND THIS PAGE)

**SCHEDULE** Choose an item.

Click here to enter text.

**SCHEDULE** Choose an item.

Click here to enter text.