

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

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ORDER NUMBER: 50777627

ADVISORY

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BETWEEN:

SPARTECH 1991 LIMITED

and

THE CITY OF CALGARY

WHEREAS:

- A. The City of Calgary is the owner of the Dominant Lands.
- B. Spartech 1991 Limited is the owner of the Servient Lands.
- C. The parties have entered into an existing easement agreement registered as Instrument Number 981 310 855 against title to the Dominant Lands and Servient Lands for a public pathway located on the Servient Lands.
- D. The parties have agreed that a second easement be granted by agreement over additional portions of the Servient Lands to provide for a wider public pathway for pedestrian and cyclist access to and egress from and between the Dominant Lands and Servient Lands and for the construction, maintenance, repair and replacement of the public pathway and curb.

THIS AGREEMENT IS EVIDENCE CONFIRMING THAT in consideration of the premises and in consideration of the sum of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties to this Agreement 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" means that portion of the Servient Lands as shown on the plan of survey registered in the Land Titles Office as Plan No. 241 0001;

(b) "Agreement" means this agreement;

(c) "Business Day" means any calendar day excluding weekends and statutory holidays in the Province of Alberta;

(d) "City" means The City of Calgary;

(e) "Dominant Lands" means all lands and public road right of ways owned by the City located near, adjacent or connecting to the Servient Lands, including but not limited to those lands legally described as:

PLAN 8510947
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.03 HECTARES (5.01 ACRES) MORE OR LESS

and municipally known as 2734 Radcliff Drive SE, Calgary, Alberta;

(f) "Effective Date" means September 1, 2022;

(g) "Grantor" means Spartech 1991 Limited or the then current registered owner or owners of the Servient Lands, from time to time;

(h) "Improvements" means the improvements to be constructed within the Access Easement, including but not limited to:

- (i) an asphalt pedestrian/cyclist pathway;
- (ii) associated curbs and gutters; and
- (iii) any necessary sodding or seeding to rehabilitate the Access Easement; and

- (i) "Servient Lands" means those lands owned by the Grantor and legally described and identified as the Servient Lands in Schedule "A" attached hereto.

"Background" and Schedules

1.02. The parties confirm and ratify the matters contained and referred to in the "Background" portion and schedules to this Agreement and agree that the same are expressly incorporated into and form part of this Agreement.

2. GRANT OF EASEMENT FOR ACCESS

2.01. The Grantor in this Agreement grants to the City and its nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assignees, invitees and the public at large for the benefit of and to be appurtenant to the Dominant Lands, for the use and enjoyment of the City and the public, the non-exclusive right of way and easement in common with the Grantor and the public, in, through and over the Access Easement, at all times from the Effective Date of this Agreement at their will and pleasure to enter upon and pass over with or without vehicles, for the purpose of obtaining ingress and egress to and from the Dominant Lands and to and from the Access Easement, and grants to the City the right to construct, install, inspect, maintain, repair, operate and replace the Improvements on the Access Easement to have and hold for so long as the City requires the Access Easement.

2.02. Within 12 months of the Effective Date, the City shall, at its sole cost and expense, prepare and register a plan of survey at the Alberta Land Titles Office. The plan of survey shall be conclusive proof of the exact area of the Access Easement. The City shall provide the said plan of survey to the Grantor for approval prior to registration of same, which approval shall not be unreasonably withheld.

3. GRANTOR'S AND CITY'S COVENANTS

3.01. The Grantor covenants and agrees for itself and its successors in title that it shall:

- (a) permit the construction of the Improvements within the Access Easement, to a "City standard", as identified by the City, including through any related development permit and associated drawings;
- (b) not do any act or thing that would damage the Access Easement or any infrastructure located thereon, including but not limited to the Improvements, or interfere in any way with the City's rights pursuant to this Agreement;
- (c) not 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; and
- (d) not build, erect, plant or maintain, or permit or suffer to be built, erected, planted or maintained on or within one meter of the Access Easement any building, fence structure, sign, tree, shrub, vegetation, landscaping or other works which could interfere in any way with the City's rights pursuant to this Agreement.

3.02. The City covenants that:

- (a) it will pay for and construct any or all of the Improvements;
- (b) it will maintain, repair, operate and replace the Improvements in a manner similar to that which the City maintains, repairs, operates or replaces similar Improvements elsewhere;
- (c) in carrying out any of its rights under this Agreement, it will do so in a good and workmanlike manner and will cause or do as little damage and inconvenience to the Grantor as is possible, and any excavations or work made or done in connection with the Servient Lands other than the area required for the Improvements shall, as far as is reasonably practical, be restored to its former condition;
- (d) it will indemnify and save harmless the Grantor from and against all claims, damages, debts, dues, suits, actions and causes of action, costs or sums of money that the Grantor may suffer or be put to by reason of the Access Easement; and

- (e) it will not obstruct or interfere with the ability of the Grantor, its servants, agents, tenants, invitees and licensees to pass and re-pass along, over and upon the Access Easement.

4. TAXES

4.01. This Agreement does not relieve the Grantor from its responsibility to pay all taxes arising from its ownership of the Servient Lands.

5. COVENANT RUNNING WITH THE LAND

5.01. The access easement granted in this Agreement is and shall be a covenant running with the land. The benefit of this Agreement shall run with the Dominant Lands for the benefit of the City and its successors and assigns in title, and the burdens of this easement shall run with the Servient Lands and shall be binding upon the Grantor and its successors and assigns in title.

6. NOTICES

6.01. Any notice or communication to be given or made to a party shall be in writing and may be sufficiently given if couriered, faxed or e-mailed to such party at the following addresses:

To the Grantor:

Spartech 1991 Limited.
2810 – 12 Street NE
Calgary AB T2E 7P7
Attention: Danica Bobyk:
E-mail: Bobyk.Danica@spartancontrols.com

To the City:

The City of Calgary
Real Estate & Development Services
3rdth Floor, 313, 7 Avenue S.E.
Calgary, Alberta T2G 0J4
Attention: Manager, Sales &
Acquisitions
Fax No.: (403) 268-1948

With a copy to:

The City of Calgary
Law – Law, Legislative Services &
Security
12th Floor, 800 Macleod Trail S.E.
Calgary Alberta T2G 2M3
Attention: Manager, Planning &
Real Estate
Fax No.: (403) 268-4634

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 next Business Day following the date of delivery by courier, fax or e-mail.

7. GENERAL PROVISIONS

7.01. The parties hereby acknowledge and agree that every obligation or duty imposed upon them under this Agreement shall constitute a covenant, whether expressed as a covenant or not.

7.02. Nothing in this Agreement shall relieve the Grantor from compliance with all applicable municipal bylaws, laws or regulations established by any Government Authority which may have jurisdiction over the Servient Lands.

7.03. Every provision of this Agreement by which the Grantor is obligated in any way shall be deemed to include the words "at the expense of the Grantor" unless the context otherwise requires.

7.04. Every provision of this Agreement by which the City is obligated in any way shall be deemed to include the words "at the expense of the City" unless the context otherwise requires.

7.05. If any covenant, term or provision of this Agreement, or application thereto to any person or circumstance shall, to any extent, be found to be or made invalid, void or unenforceable by any court of law, the remainder of this Agreement, other than such term, shall continue to be valid and enforced to the fullest extent permitted by law.

7.06. The waiver by the Grantor or the City of the strict performance of any of the provisions of this Agreement shall not in and of itself constitute a waiver of or abrogation of any other provision nor shall it constitute a waiver or abrogation of any subsequent breach of the same.

7.07. The Grantor's or the City's waiver of all or any portion of this Agreement must, without exception, be in writing and signed by the proper approving authority, and any action that fails to comply with this requirement shall, under no circumstances, be considered or construed to be a waiver.

7.08. Time shall be of the essence of this Agreement.

7.09. Any time limits specified in this Agreement may be extended with the consent in writing of both the Grantor and the City, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit contained herein, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

7.10. This Agreement, with Schedule "A" Servient Lands constitutes the entire agreement between the parties in respect of the subject matter hereof and the Grantor and the City agree that there are no other provisions, agreements or collateral agreements affecting the Access Easement except as are expressly contained in this Agreement. All previous verbal or written agreements with respect to the subject matter contained herein, if any, are hereby terminated and rendered null and void.

7.11. If any party is prevented from carrying out any of its obligations herein or is delayed in the performance of such obligations by reason of strikes, lock-outs, government restrictions, acts of God, unavailability of materials, labour or similar causes beyond all reasonable control of the party in question and such delay renders it uncertain or unlikely that such party can perform its obligations within the time provided in this Agreement, then the time for carrying out or performing such obligations on the part of such party shall be extended for a reasonable time which shall not be greater than the length of the delay caused by such events beyond the party's reasonable control.

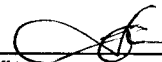
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8. EXECUTION

8.01. This Agreement shall be deemed valid and binding if signed in counterpart by the parties to the Agreement.


IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

SPARTECH 1991 LIMITED


Witness

Per: 
(seal)

Date: Oct 25 2023




Witness

Per: 

Date: OCT. 25/2023


I/We have the authority to bind the corporation.

THE CITY OF CALGARY

APPROVED	
As to Content RE&DS	
As to Form Law	
Corporate Approval Date: Sept. 6, 2022 File No. RE4189 LMR/C. Lee)	

Per: 
ACTION Manager, Sales & Acquisitions
Real Estate & Development Services

Date: Nov. 7, 2023

Per: 
Katarzyna Martin
City Clerk
(seal)

Date: NOV 20 2023


AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I, Jennifer Henrey, of the City of Calgary, in the Province of AB make oath and say:

1. I am an officer or a director of **SPARTECH 1991 LIMITED**, named in the within or annexed instrument.
2. I am authorized by the corporation to execute the instrument without affixing a corporate seal.

SWORN before me at the City of)
Calgary, in the Province of Alberta)
this 25 day of October, 2023)

A Commissioner for Oaths in and for)



Judy Du, Commissioner for Oaths
A Commissioner for Oaths
in and for Alberta
My Commission Expires May 13, 2025

AFFIDAVIT OF EXECUTION

I, Trina Courage, of the City of Calgary, in the Province of Alberta make oath and say:

1. I was personally present and did see Jennifer Henrey who is known to me to be the person named in the within (or annexed) instrument, duly sign the instrument;


or

I was personally present and did see _____ who, on the basis of identification provided to me, I believe to be the person named in the within (or annexed) instrument, duly sign the instrument;

2. The instrument was signed at the City of _____, in the Province of _____ and I am the subscribing witness thereto;
3. I believe the person whose signature I witnessed is at least eighteen (18) years of age.

SWORN before me at the City of)
Calgary, in the Province of Alberta)
this 25 day of October, 2023)

A Commissioner for Oaths in and for)



SCHEDULE "A"

SERVIENT LANDS

1. SERVIENT LANDS:

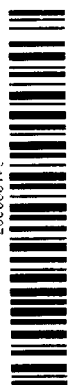
PLAN 8911094

BLOCK 2

EXCEPTNG THEREOUT ALL MINES AND MINERALS

AREA: 2.39 HECTARES (5.91 ACRES) MORE OR LESS

Municipally known as 2775 2 Avenue SE, Calgary, Alberta



241000337

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EASE - EASEMENT
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LINC/S: 0014516075 +