

ALBERTA GOVERNMENT SERVICES LAND TITLES OFFICE

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ADVISORY

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1802 - 11 Street SE Land Easement

RE: LRT Right of Way

THIS EASEMENT AGREEMENT dated for reference April 20, 2017.

BETWEEN:

11-STREET DEVELOPMENTS LTD.

and

THE CITY OF CALGARY

THIS AGREEMENT WITNESSES THAT for good and valuable consideration, the **PARTIES** AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

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

- (a) "Agreement" means this easement agreement, all attached schedules, and any subsequent amendments in writing agreed to by the parties hereto;
- (b) "City" means The City of Calgary, and the registered owner from time to time of the Dominant Lands, or any portion thereof;
- (c) "Consideration" means the consideration payable by the City to the Grantor for the Easement Area pursuant to Section 3.01;
- (d) "Dominant Lands" means those lands legally described in Schedule "A" attached hereto;
- (e) "Easement Area" means that portion of the Servient Lands which lies within the Plan of Survey, registered as plan number 1711691;
- (f) "Effective Date" means June 30, 2017;
- (g) "Government Authority" means any federal, provincial, municipal or other governmental body, agency, tribunal or authority having jurisdiction and lawfully empowered to make or impose laws, bylaws, rules or regulations with respect to the Dominant Lands, the Servient Lands and the parties obligations hereunder;
- (h) "Grantor" means 11-Street Developments Ltd., or the registered owner from time to time of the Servient Lands, or any portion thereof;
- (i) "Plan of Survey" means the registerable access right of way plan of survey, a copy of which is attached hereto as Schedule "B"; and

(j) "Servient Lands" means those lands legally described in Schedule "A" attached hereto.

2. TERM

2.01. The Grantor and the 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 City.

3. CONSIDERATION

3.01. The consideration for the grant of easement and right of way shall be the sum of ONE HUNDRED SIX THOUSAND FIVE HUNDRED (\$106,500.00) DOLLARS plus GST (if applicable) and shall be paid by the City to the Grantor on the Effective Date.

3.02. The Grantor and the City agree that the Consideration is based upon the assumption that the Easement Area will comprise 3,049 SQUARE FEET. The Plan of Survey will be prepared by an independent Alberta land surveyor engaged by the City and shall be conclusive proof of the exact area of the Easement Area. If the area of the Easement Area as determined by the Plan of Survey, is more or less than 3,049 SQUARE FEET, then the Consideration shall be adjusted and increased or decreased, as the case may be, by an amount equal to the differential in area multiplied by THIRTY FIVE (\$35.00) DOLLARS per square foot.

4. EASEMENT

4.01. The Grantor grants to the City for the benefit of and appurtenant to the Dominant Lands, a non-exclusive right, privilege and easement in, across, through and over the Easement Area for the City (including its nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, guests and invitees), to pass in, through, over and to remain in and on the Easement Area, as may be necessary, at any time, without notice, for the construction, repair, maintenance, inspection or replacement of any light rail transit infrastructure or associated infrastructure located on, over or adjacent to the Servient Lands.

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

4.03. The City shall, at its sole cost and expense, prepare and register the access right of way plan for the Easement Area on or before the Effective Date.

4.04. The parties acknowledge and agree that the covenants contained herein are deemed to be, and will be, covenants running with the Dominant Lands and the Servient Lands, and this Agreement may be registered by the City against title to the Servient Lands.

5. GRANTOR COVENANTS

5.01. The Grantor covenants and agrees that it shall not:

- (a) do any act or thing that would damage the Easement Area, the infrastructure located thereon or the light rail transit or associated infrastructure adjacent to the Servient Lands 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 Easement Area in such a manner that could interfere in any way with the City's rights pursuant to this Agreement;
- (c) 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) build, erect, plant or maintain or permit to be built, erected, planted or maintained on or near the Easement Area 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.

5.02. 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 Easement Area pertaining to the use of the Easement Area;
- (b) the Grantor shall keep the 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, guests and invitees, unless otherwise approved or directed by the City;
- (c) the Grantor shall pay all taxes levied over the Servient Lands, including the Easement Area, by any Government Authority.

6. RESTRICTED USE OF EASEMENT AREA

6.01. The Grantor and the City acknowledge and agree that the Easement Area shall not be developed or used for any purpose other than for landscaping (excluding all trees) and perimeter fencing, but only if such use does not interfere with the City's use of the Easement Area or any light rail transit or associated infrastructure located on, over or adjacent to the Servient Lands.

6.02. Except in times of real or apprehended emergency, the City shall provide the Grantor with notice of at least ONE (1) week if it needs to use the Easement Area free of parked cars. In the event, the City requires the use of the Easement Area free of parked cars, no compensation will be payable by the City to the Grantor.

7. MAINTENANCE OF EASEMENT AREA

7.01. In the event that the Easement Area or any portion of it is destroyed or damaged as a result of an act, omission, or negligence of the Grantor or any person for whom the Grantor is responsible for at law, then the entire cost of repairs shall be borne by the Grantor.

7.02. After the exercise of the right, privilege and liberties granted to the City under this Agreement, the City shall restore, as would a careful and prudent owner, the surface of the Easement Area, including, without limitation, the restoration of landscaping and concrete or asphalt surfacing of the Easement Area to a similar condition of the Easement Area prior to such exercise of the aforementioned right, privilege and liberties granted to the City.

7.03. The Grantor and the City may use any necessary equipment to fulfill its obligations hereunder as deemed appropriate by the proper approving authority at the City.

7.04. All work performed on the Easement Area by the Grantor and City shall be carried out in a good and workmanlike manner.

8. INDEMNITY

8.01. 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 losses, damages, liabilities, costs or sums of money, including all claims for personal injury, death or property damage, whatsoever, incurred or suffered by the Grantor due to any act or omission of the City's guests and invitees, including the public at large. 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, claim or demand.

8.02. 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 (including any person for whom the Grantor is responsible for at law) failing to comply with any provisions in this Agreement, or by reason of any negligence or misconduct in carrying out the provisions of this Agreement by the Grantor (including any person for whom the Grantor is responsible for at law), or by reason of any pre-existing registrations or encumbrances in favour of any person, or that entitle any person to a benefit that affects, directly or indirectly, the rights and obligations of the City under this Agreement.

8.03. Notwithstanding anything else contained herein to the contrary, the Grantor hereby releases and forever discharges the City, its officers, agents, employees, insurers and assigns of and from all claims, actions, causes of action, dues, expenses, damages of any kind, and claims for market value, injurious affection, disturbance damages, business losses, nuisance, costs, fees, interest and demands of any and every kind whatsoever at law or in equity, or under any statute, which the Grantor ever had, now has, or can, shall or may have against the City by reason of, or in any way arising out of or related to, directly or indirectly, the construction, operation or existence of the light rail transit infrastructure or any associated or related infrastructure or improvements constructed on any abutting or adjacent lands, including, but not limited to any damage, including damage from falling snow, ice or debris, to any vehicles or landscaping as a

result of the existence, operation, maintenance, construction, repair, alteration, inspection or replacement of the light rail infrastructure or associated infrastructure located on, over or adjacent to the Servient Lands.

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 couriered or faxed to such party at the following addresses:

a) The Grantor:

11-Street Developments Ltd.
226, 1111 Olympic Way S.E.
Calgary, Alberta T2G 0E6
Attention: Reece Torode

b) The City:

The City of Calgary
Real Estate & Development Services
6th Floor, 133 – 6th Avenue S.E.
Calgary, Alberta T2G 4Z1
Attention: Manager, Sales & Acquisitions
Fax: (403) 537-3099

With a copy to:

The City of Calgary
Law Department
12th Floor, 800 Macleod Trail SE
Calgary, Alberta T2G 2M3
Attention: Manager, Real Estate &
Expropriation
Fax: (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 date of courier or fax.

10. INTENTIONALLY DELETED

11. GENERAL

11.01. 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.

11.02. This Agreement will be interpreted and enforced in accordance with the laws of the Province of Alberta.

11.03. 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 the 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 the City of such rights. Notwithstanding the foregoing, and in the event the Grantor is a condominium corporation, the obligations of any owner of any deemed or common interest in any lot which, as grantor, has granted an easement set forth in this Agreement shall be deemed to rest exclusively with the condominium corporation and not the individual condominium unit holders.

11.04. 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.

11.05. This Agreement and the rights, privileges and obligations herein will be binding upon and enure to the benefit of the parties hereto and their respective successors, successors in title, assigns and transferees.

11.06. 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.

11.07. Every provision of this Agreement by which the Grantor is obligated in any way is deemed to include the words "at the sole cost and expense of the Grantor".

11.08. This Agreement does not constitute a development permit or any other permit issued by the City.

11.09. 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.

11.10. 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 must not be considered or construed to be a waiver.

11.11. Time is of the essence.

11.12. This Agreement together with Schedule "A" Lands and Schedule "B" Plan of Survey constitutes the entire agreement between the parties in respect of the subject matter hereof and the parties agree that there are no other provisions, representations, agreements, collateral agreements or conditions affecting the Easement Area. All other previous verbal or written agreements with respect to the matters contained herein, if any, are hereby terminated and rendered null and void.

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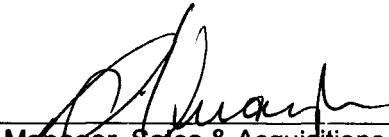
11.13. All obligations contained herein, although not expressly covenants, are deemed to be covenants running with the Dominant Lands and the Servient Lands.

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

APPROVED	
As to Content RE&DS	
As to Form Law	

THE CITY OF CALGARY

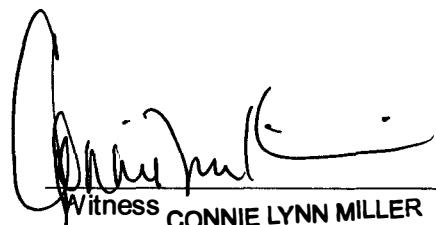
Per:


Manager, Sales & Acquisitions
Real Estate & Development Services

Per:

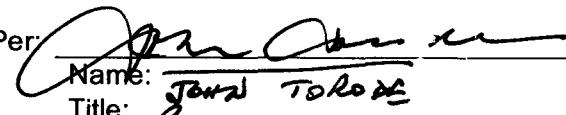

City Clerk (seal)
MAY 29 2017

11-STREET DEVELOPMENTS LTD.


Witness **CONNIE LYNN MILLER**
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires December 31, 2019

Witness

Per:


Name: Jeanne Tolosa (seal)
Title: PRESIDENT

Per:

Name:
Title:

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SCHEDULE "A"

LANDS

Dominant Lands

PLAN CALGARY 1594F
THAT PORTION OF BLOCK R
WHICH LIES TO THE NORTH OF A LINE DRAWN PARALLEL WITH AND ONE HUNDRED
AND TEN (110) FEET PERPENDICULARLY DISTANT SOUTHERLY FROM THE NORTHERN
BOUNDARY OF SAID BLOCK "R"
EXCEPTING THEREOUT THE STREET WIDENING ON PLAN 413LK
EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 1109 – 17 Avenue S.E., Calgary, Alberta

Servient Lands

PLAN CALGARY 1594F
THAT PORTION OF BLOCK R WHICH LIES TO THE SOUTH OF A LINE DRAWN PARALLEL
WITH AND ONE HUNDRED AND TEN (110) FEET PERPENDICULARLY DISTANT
SOUTHERLY FROM THE NORTHERN BOUNDARY OF SAID BLOCK AND TO THE NORTH
OF A LINE DRAWN PARALLEL WITH AND THREE HUNDRED AND EIGHT (308) FEET
PERPENDICULARLY DISTANT NORTHERLY FROM THE SOUTHERN BOUNDARY
THEREOF
EXCEPTING THEREOUT ROAD PLAN 1711690.
EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 1802 – 11 Street S.E., Calgary, Alberta.

BETWEEN:

11-STREET DEVELOPMENTS LTD.

and

THE CITY OF CALGARY

EASEMENT AGREEMENT

The City of Calgary
Law Department

12th Floor, Calgary Municipal Building
800 Macleod Trail SE
Calgary, AB T2G 2M3

(P. O. Box 2100, Station "M" (8053)
Calgary, AB T2P 2M5)

Law File No.: RE3418 (K. Marcotte)
RE&DS File No.: 1802 – 11 Street S.E. (D. Grandbois)



171202403

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EASE - EASEMENT

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