

**MUTUAL ACCESS EASEMENT AGREEMENT**

THIS MUTUAL ACCESS EASEMENT AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019

**BETWEEN:**

**ESQUIRE CONDOS UD INC.**

as registered owner of

Strata Lot 1; Block 8; Plan \_\_\_\_\_

(the "**Strata Lot 1 Owner**")

- and -

**ESQUIRE CONDOS UD INC.**

as registered owner of

Strata Lot 2; Block 8; Plan \_\_\_\_\_

(the "**Strata Lot 2 Owner**")

**RECITALS:**

- A. Esquire Condos UD Inc. ("**Esquire**") is the registered owner of a subleasehold estate, subject however to such encumbrances, liens and interests as are notified by memorandum underwritten and endorsed on the existing Certificate of Title, of the following lands:

STRATA LOT 1  
BLOCK 8  
PLAN \_\_\_\_\_

("Strata Lot 1")

STRATA LOT 2  
BLOCK 8  
PLAN \_\_\_\_\_

("Strata Lot 2")

(Strata Lot 2, together with Strata Lot 1, collectively, the "**Strata Lots**");

- B. Esquire wishes to provide access easements between and among the Strata Lots and to further provide for the mutual use, maintenance, repair, replacement and cost allocation of certain expenses; and
- C. Section 68(1) of the *Land Titles Act* of Alberta provides that an owner may grant to itself an easement or restrictive covenant for the benefit of land which it owns and against land which it owns and the easement or restrictive covenant may be registered under the said Act.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the sum of Ten (\$10.00) Dollars paid to each other, and 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, the parties herein agree as follows:

1. **Definitions.** In this Agreement, unless a contrary intention is expressed, the following terms shall have the following meanings:
  - (a) **“Agreement”** shall mean this Mutual Access Agreement as amended, updated, restated or supplemented from time to time;
  - (b) **“Breezeway”** has the meaning given to it in subsection 3(a)(iii);
  - (c) **“Easement Areas”** means collectively the Strata Lot 1 Easement Area and the Strata Lot 2 Easement Area;
  - (d) **“Other Owners”** means all Owners other than the specified Owner providing the grant of easement, provided however, an Owner may be both an “Owner” and an “Other Owner” if it is concurrently an Owner of more than one Strata Lot;
  - (e) **“Owners”** means the owners of the Strata Lots together and **“Owner”** means the owner of a Strata Lot individually, as the context may require;
  - (f) **“Strata Lot 1 Amenity Areas”** has the meaning given to it in subsection 3(a)(v);
  - (g) **“Strata Lot 1 Easement Area”** has the meaning given to it in subsection 3(a);
  - (h) **“Strata Lot 2 Amenity Areas”** has the meaning given to it in subsection 3(b)(iv); and
  - (i) **“Strata Lot 2 Easement Area”** has the meaning given to it in subsection 3(b).
2. **Term.** The Owners agree that this Agreement and the rights and privileges granted herein comes into full force and effect as of the date first written above and continues until terminated by an agreement in writing accompanied by a registrable discharge of easement from each of the Owners.
3. **Mutual Access Easement**
  - (a) The Strata Lot 1 Owner on behalf of itself and every transferee from it and every person deriving title to Strata Lot 1, hereby grants, conveys, gives, transfers and sets over to the Strata Lot 2 Owner, every transferee from them and every person deriving title from them, together with their tenants, contractors, subcontractors, servants and invitees, the non-exclusive right, privilege and easement in, across, through, over, from and to:
    - i. the exterior common areas of Strata Lot 1 shown and labelled as “Common Property” on the tentative plan attached hereto as Schedule “A”;
    - ii. the common areas of the parkade (being Lower Floor 1 and Lower Floor 2) of Strata Lot 1 shown and labelled as “Common Property” on the tentative plan attached hereto as Schedule “A”; and

- iii. the breezeway on Floor 3 of Strata Lot 1 shown and labelled as “Common Property (Breezeway)” on the tentative plan attached hereto as Schedule “A” (the “**Breezeway**”);

(collectively, the “**Strata Lot 1 Easement Area**”),

at all times and from time to time, for the purposes of:

- iv. vehicular, bicycle, pedestrian and parking access to and from Strata Lot 2; and
- v. the use and enjoyment of any amenity areas located within the Strata Lot 1 Easement Area including without limitation any gym, yoga room, spin studio, fitness area, workshop, bicycle repair station, pet wash area, car wash area, park, playground, yard or other similar amenities (collectively, the “**Strata Lot 1 Amenity Areas**”), subject to such reasonable rules and regulations (including without limitation as to hours of use) that may be implemented by the Strata Lot 1 Owner and notified in writing to the Strata Lot 2 Owner, provided that any such rules and regulations must be consistently applied, imposed and enforced upon the Owners.

(b) The Strata Lot 2 Owner on behalf of itself and every transferee from it and every person deriving title to Strata Lot 2, hereby grants, conveys, gives, transfers and sets over to the Strata Lot 1 Owner, every transferee from them and every person deriving title from them, together with their tenants, contractors, subcontractors, servants and invitees, the non-exclusive right, privilege and easement in, across, through, over, from and to:

- i. the exterior common areas of Strata Lot 2 shown and labelled as “Common Property” on the tentative plan attached hereto as Schedule “B”; and
- ii. the common areas of the parkade (being Lower Floor 1) of Strata Lot 2 shown and labelled as “Common Property” on the tentative plan attached hereto as Schedule “B”;

(collectively, the “**Strata Lot 2 Easement Area**”),

at all times and from time to time, for the purposes of:

- iii. vehicular, bicycle, pedestrian and parking access to and from Strata Lot 1; and
- iv. the use and enjoyment of any amenity areas located within the Strata Lot 2 Easement Area including without limitation any gym, yoga room, spin studio, fitness area, workshop, bicycle repair station, pet wash area, car wash area, park, playground, yard or other similar amenities (collectively, the “**Strata Lot 2 Amenity Areas**”), subject to such reasonable rules and regulations (including without limitation as to hours of use) that may be implemented by the Strata Lot 2 Owner and notified in writing to the Strata Lot 1 Owner, provided that any such rules and regulations must be consistently applied, imposed and enforced upon the Owners.

(c) The Strata Lot 1 Owner shall retain a right of egress and ingress in, across, through, over, from and to the Strata Lot 1 Easement Area subject to any restrictions contained in this Agreement.

(d) The Strata Lot 2 Owner shall retain a right of egress and ingress in, across, through, over, from and to the Strata Lot 2 Easement Area subject to any restrictions contained in this Agreement.

4. **Owners' Covenants**

(a) The Owners each covenant and agree that they shall:

- I. Clean, maintain, repair and replace any and all portions of the Easement Areas located within the Strata Lot for which they are the Owner so as to keep same in a good state of repair consistent with the standards of the surrounding neighbourhood at all times;
- II. not do any act or thing that would damage the Easement Areas or infrastructure located thereon or which could interfere in any way with the Other Owners' rights pursuant to this Agreement;
- III. not change or permit a change to be made to the existing surface grade of the Strata Lots in such a manner that could interfere in any way with the Other Owners' rights pursuant to this Agreement; and
- IV. not build, erect, plant or maintain or permit to be built, erected, planted or maintained on the Easement Areas any building, fence, structure, sign, tree, shrub, vegetation, landscaping or other works which could interfere in any way with the Other Owners' rights pursuant to this Agreement; and
- V. pay all municipal taxes and assessments which are levied against any Strata Lot for which they are the Owner, including without limitation that portion of the Strata Lot 1 Easement area and Strata Lot 2 Easement Area which lies in Strata Lot 1 or Strata Lot 2, as applicable.

(b) The Strata Lot 1 Owner covenants and agrees that, subject to subsection 3(a)(v) above, it shall keep the Strata Lot 1 Easement Area open at all times for the use of and access by the Strata Lot 2 Owner and their nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assigns and invitees as contemplated herein.

(c) The Strata Lot 2 Owner covenants and agrees that, subject to subsection 3(b)(iv) above, it shall keep the Strata Lot 2 Easement Area open at all times for the use of and access by the Strata Lot 1 Owner and their nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assigns and invitees as contemplated herein.

5. **Maintenance of Easement Areas.**

(a) Subject to subsection 5(c) below, the Strata Lot 1 Owner agrees that it shall be responsible for the operation and maintenance to a good operating condition, which includes cleaning, snow removal, landscaping and repair and replacement, as necessary, of the Strata Lot 1 Easement Area and that it shall be responsible for all costs relating thereto.

(b) The Strata Lot 2 Owner agrees that it shall be responsible for the operation and maintenance to a good operating condition, which includes cleaning, snow removal, landscaping and repair and replacement, as necessary, of the Strata Lot 2 Easement Area and that it shall be responsible for all costs relating thereto.

- (c) Notwithstanding subsection 5(a) above, the Owners agree that any reasonable costs relating to the maintenance of the Breezeway shall be shared equally between the Owners, with the Strata Lot 2 Owner compensating the Strata Lot 1 Owner for its share of such costs on a periodic basis as may be agreed to between the Owners, but in any case, not less than once per year.

6. **General.**

- (a) If any 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.
- (b) This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Alberta.
- (c) No action shall lie against the Owners for damages for breach of any one or more of the covenants contained in this Agreement unless the Owner is the registered owner of the applicable Strata Lot at the time of the alleged breach and it is proven in 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.
- (d) 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 Owners 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 Owners under this Agreement.
- (e) The parties hereby acknowledge and agree that every obligations or duty imposed upon them under this Agreement shall constitute a covenant, whether expressed as a covenant or not.
- (f) All obligations and covenants contained herein, although they may not be expressly be stated as covenants, shall be deemed to be covenants running with the lands, and specifically, with each of the Strata Lots.
- (g) This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors, successors in title, and assigns.
- (h) The Parties acknowledge and agree that this Agreement is to be registered against the certificates of title for each of the Strata Lots.
- (i) The failure of the Owners at any time to require strict performance by the Other Owners of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Owners of the performance of any obligation hereunder be taken or held to be a waiver of the performance of any other obligation herein.

[Remainder of page left blank. Signature page to follow.]

(j) Time shall be of the essence in this Agreement.

(k) The above recitals and attached schedules shall form part of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first written above.

**STRATA LOT 1 OWNER:**

**ESQUIRE CONDOS UD INC.**

Per: \_\_\_\_\_ c/s

Name: Gojko Trutina

Title: Director

**STRATA LOT 2 OWNER:**

**ESQUIRE CONDOS UD INC.**

Per: \_\_\_\_\_ c/s

Name: Gojko Trutina

Title: Director

PROPOSED EASEMENT



# SCHEDULE "A" STRATA LOT 1 TENTATIVE PLAN (CONTINUED)







