

LRO # 20 **Transfer Easement**

Received as HR2002374 on 2023 11 23 at 11:31

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 11

Properties

PIN 07067 - 0117 LT Interest/Estate Easement Add Easement
 Description SERVIENT LANDS: PART LOT 7, BLOCK E, COMPILED PLAN 92, DESIGNATED AS PART 10
 ON PLAN 20R-22535; CITY OF BURLINGTON
 DOMINANT LANDS: SEE SCHEDULE.
 Address BURLINGTON

Consideration

Consideration \$2.00

Transferor(s)

The transferor(s) hereby transfers the easement to the transferee(s).

Name GALLERY DEVELOPMENTS (BRANT STREET BURLINGTON) INC.
 Address for Service 2119 Old Lakeshore Road
 Burlington, Ontario
 L7R 1C8

A person or persons with authority to bind the corporation has/have consented to the registration of this document.
 This document is not authorized under Power of Attorney by this party.

Transferee(s)

Capacity

Share

Name THE CORPORATION OF THE CITY OF BURLINGTON
 Address for Service 426 Brant Street
 P.O. Box 5013
 Burlington, Ontario
 L7R 3Z6

Statements

Schedule: See Schedules

Signed By

Denise Patricia Kocsis 1 James Street South 14th flr PO acting for Signed 2023 11 23
 Box 926 Transferor(s)
 Hamilton
 L8N 3P9

Tel 905-523-1333

Fax 905-523-5878

I have the authority to sign and register the document on behalf of the Transferor(s).

David Martin Klacko 426 Brant Street acting for Signed 2023 11 23
 Burlington Transferee(s)
 L7R 3Z6

Tel 905-335-7600

Fax 905-335-7842

I have the authority to sign and register the document on behalf of the Transferee(s).

Submitted By

SCARFONE HAWKINS LLP 1 James Street South 14th flr PO Box 2023 11 23
 926
 Hamilton
 L8N 3P9

Tel 905-523-1333

Fax 905-523-5878

Fees/Taxes/Payment

Statutory Registration Fee \$69.95
 Provincial Land Transfer Tax \$0.00
 Total Paid \$69.95

File Number

Transferor Client File Number : 18R380

Transferee Client File Number : 575-06-B.27

LAND TRANSFER TAX STATEMENTS

In the matter of the conveyance of: 07067 - 0117 SERVIENT LANDS: PART LOT 7, BLOCK E, COMPILED PLAN 92, DESIGNATED AS PART 10 ON PLAN 20R-22535; CITY OF BURLINGTON

DOMINANT LANDS: SEE SCHEDULE.

BY: GALLERY DEVELOPMENTS (BRANT STREET BURLINGTON) INC.

TO: THE CORPORATION OF THE CITY OF BURLINGTON

1. PATTI LYNN SULLIVAN

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for THE CORPORATION OF THE CITY OF BURLINGTON described in paragraph(s) (c) above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for _____ described in paragraph(s) () above.
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of _____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to.
-

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	\$2.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	\$0.00
(ii) Given Back to Vendor	\$0.00
(c) Property transferred in exchange (detail below)	\$0.00
(d) Fair market value of the land(s)	\$0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	\$0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	\$0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	\$2.00
(h) VALUE OF ALL CHATTELS -items of tangible personal property	\$0.00
(i) Other considerations for transaction not included in (g) or (h) above	\$0.00
(j) Total consideration	\$2.00

4.

Explanation for nominal considerations:

- o) Transfer of easement or right of way for no consideration.
-

5. The land is subject to encumbrance

6. Other remarks and explanations, if necessary.

- The information prescribed for purposes of section 5.0.1 of the Land Transfer Tax Act is not required to be provided for this conveyance.
 - The transferee(s) has read and considered the definitions of "designated land", "foreign corporation", "foreign entity", "foreign national", "Greater Golden Horseshoe Region", "specified region", "spouse" and "taxable trustee" as set out in subsection 1(1) of the Land Transfer Tax Act and O. Reg 182/17. The transferee(s) declare that this conveyance is not subject to additional tax as set out in subsection 2(2.1) of the Act because:
 - (c) The transferee(s) is not a "foreign entity" or a "taxable trustee".
 - The transferee(s) declare that they will keep at their place of residence in Ontario (or at their principal place of business in Ontario) such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act for a period of at least seven years.
 - The transferee(s) agree that they or the designated custodian will provide such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act, to the Ministry of Finance upon request.
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PROPERTY Information Record

A. Nature of Instrument: Transfer Easement
LRO 20 Registration No. HR2002374 Date: 2023/11/23

B. Property(s): PIN 07067 - 0117 Address BURLINGTON Assessment -
Roll No

C. Address for Service: 426 Brant Street
P.O. Box 5013
Burlington, Ontario
L7R 3Z6

D. (i) Last Conveyance(s): PIN 07067 - 0117 Registration No. HR2001108
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes No Not known

E. Tax Statements Prepared By: David Martin Klacko
426 Brant Street
Burlington L7R 3Z6

PUBLIC ACCESS EASEMENT RESERVED BY THE CORPORATION OF THE CITY OF BURLINGTON

Easement Lands: Part 10, Plan 20R-22535

1. Reservation of Easement:

- (a) The Transferor transfers unto the Transferee (the "City"), for be benefit of the City and its successors and assigns, the right, license, liberty, privilege and easement or right in the nature of an easement in perpetuity ("Easement") on, in, over and through the lands designated at Part 10, Plan 20R-22535 (the "Easement Lands"), for the use by the City and by the general public during the times set out herein as a publicly accessible open space and publicly accessible amenity area (collectively "Public Access Rights").
- (b) In addition to the Public Access Rights described herein, the City shall have the right but not the obligation to inspect, maintain, repair and replace improvements on the Easement Lands including any appurtenances, attachments, lighting, markers and other improvements in, on, over and/or through the Easement Lands, all at the Transferor's expense, together with rights of ingress, egress and staging in, on, over and through the Easement Lands for the City's servants, agents, contractors, vehicles, supplies and equipment, for all purposes necessary or incidental to the exercise and enjoyment of the rights reserved in this paragraph (such rights being collectively referred to as "City's Maintenance Rights").

2. Covenants of the Transferor:

- (a) Notwithstanding the City's Maintenance Rights in paragraph 1(b) herein, the Transferor covenants and agrees that: (i) the Transferor is responsible for all aspects of the operation, inspection, maintenance, repair and replacement of the Easement Lands, including but not limited to the clearing of ice, snow and debris, salting, and the repair and replacement of asphalt, concrete, handrails, illumination and any such other paved surfaces on the Easement Lands, together with the ongoing maintenance and upkeep of any and all trees and vegetation on the Easement Lands and that; (ii) the Transferor will maintain the Easement Lands in safe condition and good repair including but not limited to clearing of ice, snow, debris and salting, and will take all reasonable precautions so as to ensure the safe exercise by the general public of the rights reserved herein, all at the sole risk and expense of the Transferor (such obligations collectively being referred to as the "Transferor's Maintenance Obligations"). In undertaking the Transferor's Maintenance Obligations, the Transferor shall minimize to the extent reasonably possible any such temporary short term restrictions on public access to the Easement Lands, provided furthermore that if such temporary short term restrictions are reasonably required in connection with the exercise of the Transferor's Maintenance Obligations herein, the Transferor shall provide a minimum of thirty (30) days prior written notice to the City of the planned temporary short term restrictions and the

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Transferor shall furthermore be responsible for erecting such signage as the City may reasonably require notifying the public of such temporary access restrictions. The City shall advise the Transferor within fifteen (15) days of the date of such notice of any concerns that it may have with respect to the proposed obstruction during exercise of the Transferor's Maintenance Obligations, and, in such event, the Transferor shall consult with the Executive Director Community Planning, Regulation & Mobility to resolve such concerns prior to the proposed commencement of the maintenance or obstruction.

- (b) The Easement Lands shall be illuminated substantially in accordance with plans approved under Site Plan Agreement registered as instrument No. HR1716834 on July 30, 2020 (Site Plan File No. 535-021/18) and any such approved site plan drawings in connection therewith.
- (c) The Transferor covenants and agrees that the Easement Lands will remain open and accessible to the public between the hours of 6:00 a.m. to 12:01 a.m. the following day, 365 days per year, it being provided furthermore that a member of the public may be required to leave the Easement Lands in the case of a person who:
 - (i) unreasonably interferes with or restricts, or attempts to unreasonably interfere or restrict, the ability of other members of the public or other lawful users, including occupants of the condominium development, to access, use or enjoy the Easement Lands or any portion thereof;
 - (ii) carries on, or attempts to carry on, any illegal or unlawful activity on or within the Easement Lands;
 - (iii) acts in a manner unreasonably inconsistent with the intended use of the Easement Lands and the condominium development;
 - (iv) obstructs or injures, or attempts to injure, any other person or persons who are using or enjoying the Easement Lands or any portion thereof;
 - (v) harms or destroys, or attempts to harm or destroy, the Easement Lands or any portion thereof or any property rights associated therewith, and /or property of any person or persons entitled to use or enjoy the Easement Lands;

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- (vi) obstructs, damages, injures or interferes with, or attempts to obstruct, damage, injure or interfere with, any lawful business or occupation carried on by, or any rights or interest of, the building owners (s) or person(s) in lawful possession or ownership of the Easement Lands or condominium development or any portion thereof; or
 - (vii) commits any criminal or quasi-criminal offence or is in breach of any municipal by-law.
- (d) The Transferor covenants and agrees that the Easement Lands will remain free and clear of physical encumbrances; no trees, structures, obstructions, fences, tables, patios or signs of any kind will be placed or permitted to remain on the Easement Lands unless permitted by the City's Executive Director Community Planning, Regulation & Mobility or designate, and all conditions that the City may impose in granting such permission have been fulfilled to the satisfaction of the City. Notwithstanding the generality of the foregoing, the Transferor shall be permitted to install any such physical encumbrances as have been permitted and/or approved under Site Plan Agreement registered as instrument No. HR1716834 on July 30, 2020 (Site Plan File No. 535-021/18) and any such approved site plan drawings in connection therewith. Without limiting the generality of the foregoing, the Transferor acknowledges that the City will not consent to any construction, work, or improvement that will interfere with the Public Access Rights herein.
- (e) No other easement will be granted on, in, over, under or through the Easement Lands other than to or in favour of the City unless the City consents in writing to such easement and all conditions that the City may impose in granting such easement have been fulfilled to the satisfaction of the City.
- (f) This Agreement will be registered against the Easement Lands at the sole cost of the Transferor. Prior to registration the Easement Lands shall be free and clear of all physical and title encumbrances to the satisfaction of the City's Executive Director of Legal Services and Corporation Counsel. For greater clarity, for any financial encumbrances on title, the Executive Director of Legal Services and Corporation Counsel shall be satisfied provided the Transferor obtains, at no cost to the City, any necessary postponements to ensure that this Agreement and the grant of Easement contained herein has priority over any other interest in the Easement Lands.
- (g) The Transferor will not convey by deed, transfer, or grant or assign or exercise a power of appointment or enter into an agreement of purchase and sale in respect of the Easement Lands, or any portion thereof, or enter into any other agreement or lease which has or could have the effect of granting the use of or right in the Easement Lands, or any portion thereof, unless the Transferor requires the proposed purchaser, transferee, grantee, assignee, lessee, or other person who would be entitled to the benefit of such agreements or transactions, as the case may be, to execute and deliver

to the City an agreement with the City, satisfactory in form and content to the City's Executive Director of Legal Services and Corporation Counsel, in which such person agrees to assume and be bound by the covenants and obligations of the Transferor set out in this Agreement and be bound by the terms of this Easement, and agrees to obtain from any purchaser, transferee, grantee, assignee, lessee the same undertaking, so that at all times there is in force in favour of the City the agreement to be bound provided for in this paragraph. The foregoing requirement shall not apply to purchasers of condominium units provided that the covenant to comply with this Easement together with an assumption of all of the covenants and obligations of the Transferor herein are contained in the Condominium Declaration.

- (h) The Transferor will, from time to time and at all times hereafter, fully indemnify and save harmless the City, or its councilors, directors, elected or appointed officials, officers, employees, consultants, contractors, representatives, agents, successors and assigns, or any of them, (collectively, the "Indemnified Persons") from and against all actions, causes of action, suits, claims, demands, damages, liability, interest, expenses, losses, costs, liens, charges, prosecutions and any other proceedings whatsoever which may be brought against or made upon the Indemnified Persons, or any of them (collectively, "Claims"), and from and against all loss, costs, charges, liens, demands, judgments, damages, expenses, or interest they may suffer, sustain or be put to in respect of, resulting from, or arising out of any loss, damage, or injury (including death resulting from injury) to any person or property (collectively, "Losses") which result directly or indirectly from, is sustained by reason of, or arise out of: (i) the Easement or rights reserved in the Easement, except if, and to the extent, such Claims or Losses are the result of the gross negligence or willful misconduct of the Indemnified Persons; (ii) the default by the Transferor of any of its obligations herein, including the Transferor's obligation to maintain the Easement Lands in proper and good repair in and condition in accordance with this Agreement; (iii) any loss, damage or injury (including death resulting from injury) to any person or property, however caused, directly or indirectly, resulting from or sustained by reason of any act or omission of the Transferor or any person for whom it is in law responsible, in connection with the Easement or the exercise of rights under the Easement; (iv) the use or occupation of the Easement Lands, or adjoining lands by the Transferor, its agents, contractors, employees, tenants, permitted occupants, invitees or any person for whom the Transferor is responsible at law, whether or not such act or omission is otherwise permitted pursuant to the terms of this Agreement.
- (i) The Transferor shall take out and maintain, at its expense, commercial general liability insurance with respect to the Easement Lands for a limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence (such limit to be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the City) covering possible damages, losses, claims and expenses for or in connection with any personal injury, death or property damage that might be incurred on or about the Easement Lands. The insurance policy shall include the City as an additional insured and

shall contain a cross-liability and severability of interest clause and include contractual liability coverage. The liability insurance policy shall provide that any breach of a condition of the policy by an insured shall not affect protection given by the policy to any other insured. The liability insurance policy shall include a clause providing the insurer will not cancel or refuse to renew the said insurance without first giving the City thirty (30) days prior written notice thereof. The Transferor shall supply the City with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the City's Executive Director Community Planning, Regulation & Mobility or designate within thirty (30) days of issuance and evidence of continuance shall be remitted to the City at least thirty (30) days prior to the expiration of any insurance.

- (j) The Transferor releases, remises and forever discharges the Indemnified Persons from any and all manner of actions, causes of action, suits, claims, demands and any other proceeding whatsoever which the Transferor had, now has, or which its successors and assigns or any of them can, will, or may have against the Indemnified Persons, for or by reason of the existence or use of the Easement Lands or maintenance thereof including, without limiting the generality of the foregoing, any claim for consequential damages.
- (k) If the Transferor, in the sole and absolute opinion of the City's Executive Director Community Planning, Regulation & Mobility or designate, is in default of any of its obligations under this Agreement, the City may give twenty-four (24) hours notice of the default to the Transferor. In the event that the Transferor fails to cure the default within the twenty-four (24) hour period, or in the case of an emergency, the City's Executive Director Community Planning, Regulation & Mobility or designate being the sole judge thereof in either case, the City may without notice or any form of legal process whatsoever, cure the default. The Transferor shall pay to the City, upon demand, the cost to the City of curing the default. The City may recover the cost and any interest from the Transferor in any court of competent jurisdiction, as a debt due and owing to the City.

3. Notice:

- (a) Any notice, consent, approval or other communication required, permitted or desired to be given ("Notice") under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is delivered by personal delivery or by prepaid registered mail to the parties at the addresses shown below or at such other address as the respective parties may from time to time designate by like Notice:

If to the Transferor: Gallery Developments (Brant Street Burlington) Inc.
50 King Street East
Hamilton, ON
L8N 1A6

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If to the City: City Hall
426 Brant Street
P.O. Box 5013
Burlington, Ontario L7R 3Z6

Attention: Executive Director Community Planning,
Regulation & Mobility

With a copy to:

City Hall
426 Brant Street
P.O. Box 5013
Burlington, Ontario L7R 3Z6

Attention: Executive Director of Legal Services and
Corporation Counsel

For the purpose of this section, "Business Day" means a day which is not a Saturday or a Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario or a day that the City of Burlington is not open for business. Any Notice so given will be deemed conclusively to have been given and received on the date of delivery, if personally delivered, or on the third (3rd) Business Day following the date of mailing if sent by prepaid registered mail, provided that if there is any anticipated or existing postal dispute, Notice will be personally delivered.

4. General:

- (a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns including successors in title from title to time. The burden of the Easement hereby granted shall run with and bind each and every portion of the Easement Lands and shall be binding upon the Transferor, its successors and assigns and successors in title of the Easement Lands.
- (b) The benefit of the Easement, which the parties hereto acknowledge and agree is for the purpose of a transportation system, including public access and other public utilities, will run with and be appurtenant to the lands and hereditaments of the City and every part thereof, which lands and hereditaments include, without limitation, the City's public lanes, roads and highways. The parties furthermore acknowledge and agree that, in the event it should be determined that, notwithstanding the agreement of the parties as set out herein, all or a portion of this Easement does not pertain to a transportation

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system or other public utility, then the dominant tenement shall be all or any portion of: the lands forming part of the public highways known as Brant Street and James Street legally described in the parcel registers for PINs 07067-0001 and 07067-0002 respectively.

- (c) This Agreement shall be construed in accordance with the laws of the Province of Ontario.
- (d) The headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.
- (e) Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers.
- (f) The parties will do and execute such further acts and deeds and give such further assurances as may be reasonably necessary to implement the true meaning of this Agreement.
- (g) Time will in all respect be of the essence of all matters provided for in this Agreement, provided that the time for doing or completing of any matter may be extended or abridged by an agreement, in writing, executed by the City and the Transferor, or by their respective solicitors who are expressly appointed for that purpose.
- (h) Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City of all of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality, and the City will not be prevented or prejudiced in carrying out its statutory rights and responsibilities. Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligation on the City's officers, employees, agents, representatives or elected and appointed officials.
- (i) No communication or dealing between the Transferor and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City will be deemed to be a communication or dealing under the provisions of this Agreement between the Transferor and the City as parties to the Agreement, or to affect the City with notice of any such communication or dealings. It is intended and agreed that the City acts solely in a private capacity under this Agreement and any communication or dealing between the City and the Transferor as parties to this Agreement will only be effective if delivered in accordance with the notice provisions set out in this Agreement. No communication or dealing between the City as party to this Agreement and the Transferor as a party to this Agreement will relieve the Transferor from the responsibility of discharging its lawful obligations to the City

imposed by statute, regulation, by-law or in any other lawful manner separate and apart from the obligations of the Transferor imposed by this Agreement.

THIS INDENTURE shall enure to the benefit of and be binding upon the City, the Transferor and their respective heirs, executors, administrators, successors and assigns.

DATED the 22nd day of November 2023.

THE CORPORATION OF THE CITY OF BURLINGTON
(Transferee)

Per: [Signature]
Marfanne Meed Ward
Mayor

Per: [Signature]
~~Kevin Arjoon~~ Samantha Yew
Acting City Clerk / Deputy City Clerk

We have authority to bind the Corporation

GALLERY DEVELOPMENTS (BRANT STREET
BURLINGTON) INC.
(Transferor)

Per: [Signature]
Name: Domenic Carnicelli
Title: Co-President

Per: _____
Name:
Title:

I have authority to bind the Corporation

City of Burlington
Legal Department
Approved as to Form By:
DocuSigned by:
David Klacko
39F8D79833474BD...
David Klacko
Date: Nov-20-2023 | 16:37 EST

City of Burlington
Capital Works
Department
Approved as to Content By:
DocuSigned by:
Scott Hamilton
E49B77A1A7A744B...
Scott Hamilton, Director
Date: Nov-20-2023 | 15:29 EST

City of Burlington
Authorized by By-law:
25-2018
Passed on: April 26/18
Item: PB-33-18

