**Instructions to Preparing Attorney**

**Deed of Easement for**

**General Public Access Purposes**

The following are instructions to the drafting attorney for preparation of the form **Deed of Easement for General Public Access Purposes (the “Public Access Easement**” and/or “Easement”) in accordance with the requirements of the City of Raleigh.

This Easement must be recorded by the end of the next business day after recording of the subdivision or non-subdivision plat/map, as may be applicable, and must be the first encumbrance against the property (“Property”) that is the subject of development approval, with priority granted only to other easements required by the City of Raleigh. Any mortgages, non-governmental liens, or deeds of trust against the Property must be subordinated to this Easement.

**Preparation of this form may be deemed to be the practice of law in the State of North Carolina and should only be performed by an attorney licensed to practice in the State of North Carolina.**

Before preparing this form, you should have copies of all approval documents issued for the proposed development by the City of Raleigh. These approval documents may list additional conditions of approval that must be satisfied prior to authorization to record lots or issuance of permits for the development. Once completed, submit the Easement instrument, along with any exhibit maps referenced therein which serve as the Property’s description, to the City at LegalDocumentReview@raleighnc.gov for review by City staff prior to execution.

The instructions below are numbered in accordance with the areas in the Easement requiring customization for each individual project. All fields must be filled out and none should be left blank or with the reference number remaining. The terms in this instruction document shall bear the same meaning as defined in the attached Easement.

1. Name of attorney (or law firm) preparing this form for submission to the City for review.

1. Insert the Wake or Durham County Tax Property Identification Number, whichever applies.
2. City of Raleigh Case ID number issued by the City of Raleigh, which typically starts with ASR, SUB, SP, Z, SR or R.
3. State the legal name of Grantor, which should match the name of the owner in property records and in the deed conveying the Property to Grantor.
4. State of legal formation of Grantor. If Grantor is an unmarried individual, then insert “N/A” in this field. If Grantor is a married individual and his or her spouse is either on the deed conveying the Property to Grantor or has marital interest in the Property, then insert the legal name of spouse in this field.
5. State the type of legal entity of Grantor. If Grantor is an unmarried individual, then insert “N/A” in this field. If Grantor is a married individual and his or her spouse is either on the deed conveying the Property to Grantor or has marital interest in the Property, then insert “spouse” in this field.

**[6A]** State whether the instrument is recorded in the Wake or Durham County Register of Deeds.

1. Insert the width of the Easement being provided.
2. Insert the width of the paved path to be constructed within the Easement, as applicable.
3. Insert “X” in the appropriate box to describe the status of the Property. Please leave “blank” the other box.
4. Print name and title of individual signing on behalf of Grantor. The individual signing the Easement on behalf of Grantor must be authorized to bind the Property to the terms of the instrument. If Grantor is an individual signing in a personal capacity, “N/A” may be inserted for title.
5. Insert legal name of trustee on deed of trust to be subordinated to the Easement, if applicable. Multiple subordination pages must be utilized if multiple deeds of trust, mortgages, or liens must be subordinated. If not applicable, indicate “N/A” in this field.
6. Insert legal name of beneficiary on deed of trust to be subordinated to the Easement. If not applicable, indicate “N/A” in this field.
7. Insert deed book and page information for deed of trust being subordinated to the Easement, including the county where the deed is record. If not applicable, indicate “N/A” in this field.
8. Insert full name of attorney (as licensed) and NC State Bar identification number for the attorney that prepared this Easement form.
9. Insert full name of surveyor (as licensed) that prepared the plat dedicating the Easement; the name of the plat as titled thereon; the date of the plat; the book and page; and the county where the plat will be recorded.

Upon approval of this Easement form by City staff, the instrument may be executed and recorded. Prior to recording, the date should be inserted by the Grantor or its attorney and the book/page recording information for the plat must be inserted in the Easement by the attorney recording the instrument. Note that approved plats must be recorded at the Wake County Register of Deeds Office or the Durham County Register of Deeds Office, whichever shall apply, on or before the 14th day following approval by the City. The 14-day expiration date shall be clearly indicated on the plat. By the end of the next business day following recordation of the plat, all required legal instruments (including deeds of easement) shall be recorded, and recorded copies of the plat and all legal instruments required by the City in association with development approval shall be provided to the City.

Instrument prepared by:  [1]

*[Utilizing City of Raleigh Form Instrument]*

Brief description for index: Public Access Easement

Property PIN:  [2]

City Case No. ID:  [3]

Mail after recording to: City of Raleigh

 Land Development Manager

 Planning and Development Department

P.O. Box 590

 Raleigh, NC 27602

**DEED OF EASEMENT FOR GENERAL PUBLIC ACCESS PURPOSES**

This Deed of Easement for General Public Access Purposes (this “Public Access Easement” and/or “Easement”) is made and executed this       day of      ,      , by \_\_\_\_\_[4]\_\_\_\_\_, a \_\_\_\_\_[5]\_\_\_\_\_ \_\_\_\_\_[6]\_\_\_\_\_ (the “Grantor”) to the City of Raleigh, a North Carolina municipal corporation, with a mailing address of PO Box 590, Raleigh, NC 27602 (the “City”). The designation “Grantor” as used herein shall include said party, its heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

Grantor warrants that it is the owner of the property (the “Property”) described in the instrument recorded at Book      , Page      , \_\_\_\_\_[6A]\_\_\_\_\_ County Registry, that it is vested of the Property in fee simple, and that the Property is free from encumbrances except as expressly stated within this instrument.

For valuable consideration, the receipt of which is hereby acknowledged by the Grantor, which may include permitting and approvals of the City for development activity on the Property, and in further consideration of the mutual covenants and terms, conditions and restrictions hereinafter set forth, the Grantor hereby gives, grants, bargains, and conveys unto the City, its heirs, successors and assigns in perpetuity, those rights-of-way, privileges, and easements enumerated and described hereinbelow, and as more particularly identified and described in Exhibit A, attached hereto and incorporated herein by reference, and as follows:

**PUBLIC ACCESS EASEMENT**

A permanent easement upon, under, above and across the Property, being \_\_\_\_\_[7]\_\_\_\_\_feet in width for the purposes of providing a paved vehicular, bicycle and pedestrian connection between public rights-of-way for vehicular and pedestrian passage, access, ingress, egress and regress with the paved area being \_\_\_\_\_[8]\_\_\_\_\_feet in width consisting of a minimum of eight (8) inches ABC Stone base and three (3) inches of S9.5B Asphalt (the “Roadway Improvements”), such Easement being for the purposes stated herein, and the use and enjoyment of the general public, and for all other purposes for which the City is authorized by law to use the Easement. The Roadway Improvements shall be constructed and maintained to City standards, and shall have a speed limit not to exceed “25 MPH.”

Grantor acknowledges that this Easement and the recording thereof shall not be construed to be an offer or acceptance of dedication of public rights-of-way for a street, alley, sidewalk, bridge, or otherwise, as contemplated in N.C. Gen. Stat. § 160A-296, Article 15 of the North Carolina General Statutes, and North Carolina law.

Grantor, its successors and assigns, shall be responsible for the operation and maintenance of this Public Access Easement and complying with all terms and conditions herein, relevant provisions of City Code, applicable regulations and law, and the City development approvals and plans applicable to the Property, and the failure to comply with the same may subject the Property and its owners, successors, or assigns to significant daily civil penalties and other enforcement actions by the City of Raleigh and/or applicable governmental authorities.

THE FURTHER TERMS AND CONDITIONS of the easement interest herein conveyed are as follows:

1. Grantor shall (i) prohibit gates or other such obstructions from being constructed or installed across the Easement, (ii) keep and maintain the Easement clear of parked vehicles at all times (except for within designated parking areas) by, among other means, the erection of “No Parking” signs along the Easement, the painting of “Fire Line” markings on the pavement of the Easement, and the towing and/or removal of unlawfully parked vehicles, (iii) erect and maintain street lights (and pay the electric power company for power usage in connection with same) along the Roadway Improvements in accordance with the City’s public street standards, and (iv) maintain and repair the Roadway Improvements at its sole cost and expense. The City assumes no responsibility for the maintenance or repair of the Roadway Improvements. The term “maintain” as used herein shall include, without limitation, paving, cleaning, snow removal, repair and replacement of the Roadway Improvements.
2. The construction of speed bumps, speed humps, or other traffic calming devices shall be prohibited within the Easement without the prior written consent of the City.
3. In the event the Grantor fails, within thirty (30) days after written notice from the City, to adequately maintain or repair the Roadway Improvements at the Grantor’s sole cost and expense in accordance with the City’s standards of street repair and maintenance, then the City shall be permitted (but not required) to effectuate any maintenance or repairs and be reimbursed by Grantor for any and all costs and expenses related thereto. In the event the Grantor fails to pay such costs and expenses upon demand from the City, such costs and expenses shall constitute a lien upon the Property and the City shall have all rights and remedies of a lienholder under applicable law in addition to but not in lieu of any other rights or remedies available at law, in equity or otherwise.
4. In the event of any breach or default of the terms and conditions of this Easement, the City shall be entitled to exercise any rights and remedies under applicable law, whether at law, in equity or otherwise; provided, however, any such default or breach shall not result in the termination of this Easement in whole or in part. Except as otherwise specifically provided herein, no remedy provided in this instrument shall be exclusive, but each shall be cumulative with all other remedies stated herein. All remedies at law or in equity shall be available. It is understood that enforcement remedies provided in this Easement shall not diminish any police powers the City may have, and the City is free to use its governmental powers notwithstanding any election to enforce this instrument.
5. This Easement is binding upon the Grantor, its heirs, successors and assigns, and runs with the land, however further subdivided or reconfigured, and shall be binding upon any subsequent owner or owners of the Property.
6. This Easement shall continue in perpetuity and may not be amended or modified except by a writing executed by the City and the Grantor and recorded in the Register of Deeds where the property is located.
7. Notices: All notices or other communications arising under this Easement shall be sent to the following:

|  |  |
| --- | --- |
| City of RaleighLand Development ManagerPlanning and Development Department222 W. Hargett StreetRaleigh, North Carolina 27601 | Grantor’s name and address:  |

Nothing herein shall be constructed to grant to the City any right of access through or over any other property of the Grantor except that lying within this Easement.

Grantor shall in all other respects remain the fee owner of the Property and area subject to this Easement, and may make all lawful uses of the Property not inconsistent with this Easement and its terms and conditions.

THE PROPERTY HEREIN DESCRIBED AND CONVEYED IS: (choose one)

[ [9] ] Located on a parcel that includes the Grantor’s primary residence, but the Grantor’s primary residence is not a property interest being conveyed; or

[ [9] ] Does not include a primary residence.

**Subordination**

[Any existing deeds of trust, mortgages, or liens encumbering the Property, other than property tax liens for the current tax year or governmental improvement assessment liens, must be subordinated to this Easement. Such encumbrances must be listed and the Easement must be executed by the beneficiary and trustee (if trustee execution is necessary per the terms of the security instrument), mortgagee, or lien holder to evidence such subordination.]

GRANTOR REPRESENTS THAT NO SUPERIOR DEEDS OF TRUST, MORTGAGES, OR LIENS (OTHER THAN PROPERTY TAX LIENS FOR THE CURRENT TAX YEAR OR GOVERNMENTAL IMPROVEMENT ASSESSMENT LIENS) ENCUMBER OR AFFECT THE PROPERTY AT THE TIME OF THE EXECUTION AND RECORDING OF THIS EASEMENT, OR THAT IF ANY OF THE FOREGOING EXIST, THEY SHALL BE SUBORDINATE TO THIS EASEMENT THROUGH THE SUBORDINATION LANGUAGE HEREIN.

Grantor acknowledges that the City is acting in reliance on the Grantor’s authority to enter into this Easement and the terms, conditions, obligations, and restrictions imposed herein in its authorization to either subdivide the Property or in the issuance of any permits or development approvals associated with any construction of improvements on the Property and that the City may suffer irreparable harm from the violation of the terms established herein.

TO HAVE AND TO HOLD said Easement, together with all rights, privileges and appurtenances as thereunto belonging unto the City, together with the terms, conditions, obligations and restrictions imposed herein which shall be binding upon the Grantor, its successors and assigns, and shall continue as a servitude running with the land in perpetuity. Grantor covenants that it is vested of the Property in fee simple, has the right to convey the same in fee simple, that the Property is free from encumbrances except as herein stated or subordinated herein, and that Grantor will warrant and defend such title to the same against claims of all persons. This Easement shall not divest the Grantor of any rights or interests in its Property not herein mentioned.

*[Signature pages follow this page]*

**[Grantor Signature Page]**

IN WITNESS WHEREOF, Grantor hereby executes this **Public Access Easement** under seal as of the day and year first above written.

 GRANTOR:

  [4]

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

 Name:  [10] Its:  [10] (Title)

NORTH CAROLINA

 GRANTOR

\_\_\_\_\_\_\_\_\_COUNTY ACKNOWLEDGMENT

 I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: (Print name of signatory in blank)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Affix Notary Stamp or Seal]

 **Approved for Recording:**

 City of Raleigh

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[Subordination signature page follow this page.]*

[**Subordination Signature Page]**

 [11] , as Trustee, and  [12] , as Beneficiary, under that certain Deed of Trust recorded in Book  [13] , Page  [13]  [13] County Registry, North Carolina, join in this **Public Access Easement** for the sole purpose of expressing their consent hereto and of binding, subjecting and subordinating said Deed of Trust and their interest in the Property to the terms, covenants and conditions of this Easement.

TRUSTEE:

  [11]

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title)

BENEFICIARY:

  [12]

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title)

*[Notary acknowledgments for the Trustee and Beneficiary follow this page.]*

NORTH CAROLINA

 TRUSTEE

\_\_\_\_\_\_\_\_\_\_\_ COUNTY ACKNOWLEDGMENT

 I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: (Print name of signatory in blank)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Affix Notary Stamp or Seal]

NORTH CAROLINA

 BENEFICIARY

\_\_\_\_\_\_\_\_\_\_\_COUNTY ACKNOWLEDGMENT

 I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: (Print name of signatory in blank)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Affix Notary Stamp or Seal]

**Attorney Certification:**

I,  [14] , an attorney licensed to practice law in the State of North Carolina, certify to the City of Raleigh that this **Public Access Easement** has been prepared in accordance with the instructions provided by the City of Raleigh, that I am familiar with the requirements of any development approvals of the City of Raleigh associated with this Easement and have prepared this instrument in accordance with such requirements. If a deed of trust is being subordinated to this Easement and the signature of the trustee is not provided herein, I hereby certify that I have reviewed that deed of trust and verify that the terms of the deed of trust do not require trustee consent or signature for the subordination herein to be effective.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NC Bar #:  [14]

 Attorney at Law

**EXHIBIT A**

Those **Public Access Easement** areas specifically enumerated herein located in, upon, and across the Property of the Grantor, and being more specifically identified and described on a plat prepared by  [15] , entitled “­ [15] ,” dated  [15] , and recorded in Book of Maps [15] , Pages [15] ,  [15] County Registry.