

Attached is a Sample Temporary Construction and Permanent Access Easement Agreement for the properties listed below:

Permanent & Temporary Easements

201 Birch St

360 CREAM ST

455 BIRCH ST

461 BIRCH ST

510 S WALNUT ST

Prepared By/Return To:
Michael G. Crotty, Esquire
Siana Law, LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425

Property Address: 455 Birch Street, Kennett Square Borough, Chester County, PA 19348

UPI Nos.: 3-5-73.2

**TEMPORARY CONSTRUCTION EASEMENT AND
PERMANENT ACCESS AND UTILITY EASEMENT AGREEMENT**

This Agreement is made this ____ day of _____ 2024, by and between 455 Birch, LLC (“Grantor”), a limited liability company having a mailing address of 455 Birch Street, Kennett Square, PA 19348, and Kennett Square Borough, a Pennsylvania Borough, having a principal place of business at 600 S Broad Street Suite 110, Kennett Square, PA 19348 (“Borough”) (collectively, the “Parties”).

WHEREAS, Grantor is the owner of certain real property located at 455 Birch Street, Kennett Square Borough, Chester County, PA 19348, UPI No. 3-5-73.2, memorialized by a Deed recorded in the Chester County Recorder of Deeds’ Office at Book 9637, Page 211 (the “Property”);

WHEREAS, the Borough is undertaking a project to improve and enhance sidewalks and pedestrian access along Birch Street;

WHEREAS, to fulfill the project, the Borough requires access slightly beyond the existing Borough right-of-way to the Property to replace and improve the sidewalks as more fully set forth and described on the Plan at Exhibit A;

WHEREAS, the Borough requires the ability to maintain the sidewalks, include the storm sewer, and, if necessary, undertake maintenance and repair actions;

WHEREAS, the Parties agree that, pursuant to the consideration herein, the Borough shall be granted a temporary construction easement and a permanent access easement through and

across a portion of the Property as more fully depicted in Exhibit A (the “Easement Area”), for the purposes set forth herein.

NOW, THEREFORE, in consideration of the covenants herein contained, the receipt, sufficiency and adequacy of such is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. INCORPORATION OF RECITALS. The foregoing recitals, including Exhibit A (Easement Area), are incorporated by reference as if set forth herein at length.

2. MONETARY CONSIDERATION. In consideration for the Easement rights set forth herein and pursuant to the other terms herein, the Borough shall pay Grantor nominal consideration of \$1.00.

3. PERMANENT ACCESS EASEMENT. Grantor hereby conveys and grants to the Borough a permanent, non-exclusive easement (“Permanent Access Easement”), over, under, in, along and upon the Easement Area, as more fully depicted in Exhibit A, to access, repair and maintain the area. The rights and benefits of the Borough to the Permanent Access Easement shall not terminate except upon agreement in writing by the Parties.

4. TEMPORARY CONSTRUCTION EASEMENT.

- (a) Grantor hereby conveys and grants to Borough a temporary, non-exclusive easement (“Temporary Construction Easement”), over, under, in, along and upon the Easement Area, as more fully depicted in Exhibit A, for replacement of the sidewalks. No clearing or encroachment shall be permitted outside of the Easement Area.
- (b) The Temporary Construction Easement shall expire on the earlier of the date that the replacement of sidewalks is completed, as certified in writing by the Borough Engineer, or within six (6) months from the date of this Agreement except as extended in writing by the Parties. The Borough agrees to provide Grantor with at least seven (7) days’ notice prior to the commencement of any construction. Upon the expiration of the term of the Temporary Construction Easement, all of the rights and benefits of the Borough to the Temporary Construction Easement area shall automatically terminate. The expiration of the Temporary Construction Easement shall not affect the rights of the Borough in the Permanent Access Easement.
- (c) Duty to Restore. Upon expiration of the Temporary Construction Easement, the Borough shall restore the Easement Area to a condition reasonably similar to the condition that the Easement Area was in prior to the commencement of the construction.

5. IMMUNITIES, INSURANCE AND INDEMNIFICATION. The Parties agree and recognize that the Borough is subject to certain immunities with respect to the ownership and use of the Temporary Construction Easement and the Permanent Access Easement, including, but not

limited to the Pennsylvania Political Subdivision Tort Claims Act, 53 P.S. § 8541 *et seq.* Until such time as the Temporary Construction Easement is terminated, the Borough shall maintain liability insurance, listing Grantor as an additional insured, for the Temporary Construction Easement, and hereby agrees to defend and indemnify the Grantor with respect to any claims, losses, damages or expenses sought by a third party as a result of negligent acts, errors or omissions of Borough with respect to the Temporary Construction Easement, and Borough obligations hereunder.

6. **CONTRACTORS' INSURANCE.** During the Term of the Temporary Construction Easement and Permanent Access Easement, any contractor engaged by Borough for the installation, construction, maintenance or repair of the multi-use trail shall procure and maintain with reputable insurers policies of insurance written on an occurrence basis or on claims made basis (in which event insurance shall be maintained during the Term of this Agreement), with limits not less than those indicated for the respective items as follows:

i. Statutory Workers' Compensation and Occupational Disease Insurance, including Employer's Liability Insurance complying with laws of each jurisdiction in which any work is to be performed or elsewhere as may be required. Employer's Liability Insurance shall be provided with a limit not less than: \$500,000 each occurrence;

ii. Commercial Liability Insurance, including but not limited to all Premises and Operations, Contractual Liability, Products-Completed Operations Liability, Fire Legal Liability, Explosion, Collapse and Underground Damage Liability, Broad Form Property Damage Liability, as well as coverage on all Contractor's mobile equipment (other than motor vehicles licensed for highway use) owned, hired or used in the performance of this Agreement with limits not less than: \$500,000 Bodily Injury, Personal Injury & Property Damage combined each occurrence and aggregate;

5. **REFERENCES TO BOROUGH.** All references to the Borough shall be construed to incorporate Kennett Square Borough, its governing body, elected and appointed officials, consultants, and heirs, successors and/or assigns.

6. **REFERENCES TO GRANTOR.** All references to Grantor shall be construed to incorporate Grantor and his heirs, successors and assigns.

7. **BOROUGH SHALL NOT PERMIT LIEN.** Borough shall not permit a lien to attach to all or any portion of, or interest in, the Property by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to the Borough. If any mechanic's, construction or other liens or orders for the payment of money shall be filed against all or any portion of or interest in the Property by reason of, or arising out of any labor or material furnished to Borough or for or by reason of any change, alteration or addition by Borough, or the cost or expense thereof, or any contract relating thereto, or against the Grantor as owner of the Property, by reason of the Borough's work or contract relating thereto, then, within forty five (45) days after the filing thereof, Borough shall cause the liens to be canceled and discharged of record, by bond or otherwise, at the expense of Borough.

8. EASEMENT RUNNING WITH THE LAND. The easements, covenants, rights, privileges and obligations set forth herein shall constitute covenants, easements, rights, privileges and obligations running with the land described herein and shall inure to the benefit of and be binding upon the respective parties hereto and their successors in interest in and to the respective parcels of land benefitted and burdened by the easements, covenants, rights and privileges set forth herein, in perpetuity.

9. ENTIRE UNDERSTANDING. This Agreement, together with the Exhibits hereto and made part hereof, constitutes the entire understanding and agreement of the Parties. The Agreement may not be amended, revoked, changed, altered or modified in any manner whatsoever, other than by written unanimous agreement of the Parties.

10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

[The remainder of this page has been left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement the day and year aforesaid.

GRANTOR

By: _____
455 Birch, LLC

**KENNETT SQUARE BOROUGH, by and through its
BOROUGH COUNCIL**

By: _____
Robert Norris, President

EXHIBIT “A”

EASEMENT AREA

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
 : §§
COUNTY OF CHESTER :

On this, the ____ day of _____, 2024, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Robert Norris, who acknowledged himself to be the President of the Kennett Square Borough Council, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC

Printed Name

MY COMMISSION EXPIRES:

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA	:	
	:	§§
COUNTY OF	:	

On this ____ day of _____, 2024, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of 455 Birch, LLC, and as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public