

Prepared by and return to:

KRISTIN S. CAMP, ESQUIRE
Buckley, Brion, McGuire & Morris LLP
118 West Market Street, Suite 300
West Chester, Pennsylvania 19382
(610) 436.4400

UPI No. 1-12-137.1

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____, 2022 by and between **EDWARD E. MARKOSKI AND TIFFANY M. MARKOSKI**, adult individuals with an address at 516 Spring Grove Lane, West Chester, Pennsylvania 19382 (collectively, the “Grantor”) and **THE BOROUGH OF WEST CHESTER**, a political subdivision of the Commonwealth of Pennsylvania with an address of 401 East Gay Street, West Chester, Pennsylvania 19380 (the “Borough”).

BACKGROUND

WHEREAS, Grantor is the fee simple owner of that certain property located at 516 Spring Grove Lane in the Borough of West Chester, Chester County, Pennsylvania, more particularly identified as UPI No. 1-12-137.1 (the “Property”); and

WHEREAS, an 18-inch corrugated metal pipe located in College Avenue (the “Pipe”) crosses onto the Property and discharges into the Plum Run; and

WHEREAS, the Pipe has collapsed and must be replaced; and

WHEREAS, the Borough desires to replace the Pipe with an HDPE pipe (the “New Pipe”) and in order to do so has requested Grantor to grant a temporary construction easement over the Property consistent with the terms of this Agreement; and

WHEREAS, in order to maintain the New Pipe once it is installed on the Property, the Borough requires, and the Grantor is willing to grant, a permanent maintenance easement over the Property consistent with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth in the Background section are incorporated herein as if here set forth in their entirety.

2. **Grant of Temporary Construction Easement.** For and in consideration of the sum of One Dollar (\$1.00), Grantor hereby grants and conveys to the Borough and its agents, employees and contractors a temporary construction easement (the "Temporary Easement") over and across the Property in such location(s) as reasonably necessary to perform all work in connection with the removal of the Pipe and installation of the New Pipe. The Temporary Easement shall be used by the Borough and its agents, employees and contractors to access and remove the Pipe and to install the New Pipe in its place. If necessary to remove the Pipe and install the New Pipe, the Borough shall be authorized to remove trees located over the Pipe.

3. **Term of Temporary Construction Easement.** The term of the Temporary Easement shall begin upon the commencement of construction and shall terminate upon the completion of the installation of the New Pipe and the restoration of the Property associated with such work by the Borough.

4. **Construction Fencing and Restoration.**

A. During any use of the Temporary Easement granted hereinabove, the Borough shall maintain temporary construction fencing along the perimeter of the construction area to direct members of the public away from the Temporary Easement. Such construction fencing shall not restrict or impede access to the Property.

B. Upon the completion of the installation of the New Pipe, the Borough shall fully restore the surface of the ground of the Property to substantially its condition prior to such disturbance. Any areas on the Property which were disturbed shall be filled, compacted and seeded with grass as may be necessary to restore the surface of the Property to substantially its condition prior to such disturbance.

5. **Grant of Permanent Easement.** For and in consideration of the sum of One Dollar (\$1.00), Grantor hereby grants and conveys to the Borough and its agents, employees and contractors a permanent maintenance easement over and across the Property (the "Permanent Easement") in such location(s) as reasonably necessary to access, maintain, repair and replace, as necessary, the New Pipe. The Permanent Easement shall be used by the Borough and its agents, employees and contractors to perform all activities necessary or convenient to maintain the New Pipe in good working order and condition, including, without limitation, the right to access, maintain, repair, replace, reconstruct, renew, remove and inspect the New Pipe located on the Property. Except for emergency situations, the Borough and its agents, employees, and contractors shall provide a minimum twenty-four (24) hours notice to the Grantor prior to any entry upon the Permanent Easement. Such notice may be made by mail, email, or telephone. Any areas on the Property which are disturbed by the Borough and/or its representatives as a result of the use of the Permanent Easement shall be filled, compacted and seeded with grass as may be necessary to restore the surface of the Property to substantially its condition prior to such disturbance.

6. **Indemnification and Insurance Provisions.** The Borough shall indemnify and save harmless Grantor from any claims, demands, suits or judgments whatsoever arising as a result of the Borough's use and occupancy of the Temporary Easement, except for claims that arise from Grantor's negligence or willful misconduct. At all times while performing work on the Property, the Borough and its agents, servants and employees, and all contractors and subcontractors performing the work contemplated by this Agreement, shall carry or be required by the Borough to carry and maintain in full force and effect, general liability insurance and worker's compensation insurance in the minimum statutory amount(s) mandated by the Commonwealth of Pennsylvania.

7. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with governed by the laws of the Commonwealth of Pennsylvania without regard to conflicts of laws principles.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the rights granted and the obligations assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

9. **Binding Effect.** This Agreement is made expressly for the benefit of, and shall be binding on, the heirs, executors, administrators, successors and assigns of the respective parties. Any and all conveyances, leases or encumbrances of any part of the Property shall be subject to the provisions hereof.

10. **Modifications.** This Agreement shall not be changed, modified, amended, withdrawn or canceled except by written document executed by Grantor and the Borough.

11. **Recording.** This Agreement shall be recorded in the Office of the Recorder of Deeds for Chester County, Pennsylvania.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Witness:

GRANTOR

EDWARD E. MARKOSKI

TIFFANY M. MARKOSKI

Attest:

THE BOROUGH OF WEST CHESTER

Sean Metrick, Secretary

By: _____
Michael Stefano
President, Borough Council

COMMONWEALTH OF PENNSYLVANIA:

: ss

COUNTY OF CHESTER

:

On the ____ day of _____, 2022, before me the undersigned, a notary public for the Commonwealth of Pennsylvania residing in the County of Chester, personally appeared Michael Stefano, who acknowledged himself to be the President of the Borough Council of **THE BOROUGH OF WEST CHESTER**, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the Borough as such officer.

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

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA:

: ss

COUNTY OF CHESTER

:

On this, the ___ day of _____, 2022, before me, the undersigned officer, personally appeared **EDWARD E. MARKOSKI AND TIFFANY M. MARKOSKI** known to me or satisfactorily proven to be the people whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

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

Notary Public

My Commission Expires: