

Prepared By: Eric M. Brown, Esquire
Siana Law, LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425

Return To: Eric M. Brown, Esquire
Siana Law, LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425

I hereby certify that the true
and correct address of the
Grantee, West Brandywine
Township, is 198 Lafayette
Road, Coatesville, PA 19320

For Grantee

Property Address: 115 Icedale Road
Coatesville, PA 19320
UPI No. 29-3-58

TRAIL EASEMENT AGREEMENT

This Agreement made this 11th day of April, 2022, by and between West Brandywine Township ("Township"), 198 Lafayette Road, Coatesville, PA 19320, of the first part; and Cory Warner and Kelly Warner, of the second part ("Landowner") (collectively, the "Parties").

WHEREAS, the Landowner is the record owner of one parcel of real property within the Township, Uniform Parcel Identifier No. 29-3-58, being 1.5 +/- acres in the aggregate (collectively, the "Subject Property"); and

WHEREAS, the Parties agree that the Subject Property is located in an ideal location to serve as a trail linkage between anticipated future trail systems in the Township, the connection of which would allow the community to travel by trail to areas where there are no existing trails, sidewalks or other available walkways; and

WHEREAS, the Landowner desires to allow, and the Township desires to install and maintain, itself or by and through its authorized assigns, a trail through and over a portion of the Subject Property for non-motorized, trail usage.

NOW THEREFORE, in consideration of the covenants herein contained, the Parties agree as follows:

1. TRAIL EASEMENT: The Landowner does hereby grant a ten (10) foot wide public trail easement to the Township, its successors and assigns, to utilize and maintain a public walking trail, signs, and any other necessary trail related improvements (collectively, the "Trail") on the Subject Property as depicted, described and delineated

on Exhibit "A" (the "Easement Area"). The location of the trail is more fully described in the attached legal description, which is marked hereto, incorporated herein and referenced as Exhibit "B."

2. TRAIL FACILITIES

- a) **Permitted Trail Facilities.** The Township shall have the perpetual right to create the Trail identified in Section 1 above and to enter the Easement Area at any time to construct, install, maintain and repair the following items:
 - 1) A trail not to generally exceed approximately ten (10) feet in clear width.
 - 2) Composition of trail: Stone Screenings
 - 3) Signs to mark the Trail, to provide information related to the Trail, and for interpretive purposes.
 - 4) Fencing, gates, and barriers to control access.

- b) **Trail Facilities Requiring Prior Written Consent of Landowner.** The Township shall have the right to construct, install, maintain and repair benches, picnic tables, wastebaskets, and bicycle racks subject to the prior written consent of the Landowner, which shall not be unreasonably withheld.

- c) **Definitions.** Construction, installation, maintenance, and repair of the Trail may include trailblazing; grading; building retaining walls, steps, railings, boardwalks, and bridges; cutting vegetation; application of gravel, crushed stone, wood chips, or paving; and identifying the Trail's path. These activities may include vehicular use.

- d) **Landowner Improvements.** The Landowner shall not construct, install or maintain facilities or improvements within the Easement Area except:
 - 1) Fencing along the boundary of the Easement area not impeding access to the Easement area.
 - 2) Items to which the Township, without any obligation to do so, gives its consent in writing.

3. PUBLIC USE OF TRAIL: The Parties agree that the following rules and regulations shall be established and maintained for the use of the Trail:

- a) All of the rules and regulations set forth in West Brandywine Code of Ordinances apply to the use of the Trail.
- b) Walking, hiking, jogging, and running shall be permitted uses of the Trail.
- c) No motorized vehicles (including automobiles, go-karts, all-terrain-vehicles, snowmobiles, and dirt bikes) may be utilized on the Trail through the Subject Property, with the exception of:
 - 1) Power-driven mobility devices for use by person who have mobility impairments; and
 - 2) Emergency vehicles in the case of emergency within the Easement Area.
- d) Equestrian use of the Trail shall be permitted, provided that such users undertake appropriate measures not to damage the Trail (e.g., through extensive wear and tear, by failing to clean up and remove horse manure, etc.). The Township may, upon request of Landowner or of its own volition, suspend equestrian use of the Trail to the extent that appropriate care is not being provided by such users.
- e) Biking and cross-country skiing may be permitted at the Township's election.
- f) The following uses of the Trail shall require prior written consent of the Landowner, which shall not unreasonably be withheld:
 - 1) Events such as charity runs or competitive races;
 - 2) Programmatic use by schools, clubs, or other groups; and
 - 3) Use of the Trail for purposes other than as a right-of-way for passage over the Subject Property such as picnicking or other stationary activities.
- g) Use of the Trail by the public is limited to the Trail Easement area.

- h) No person is permitted to charge a fee for access to the Trail or use of the Trail Facilities.
- i) Use of the Trail shall not be permitted before dawn or after dusk. The Township may establish more restrictive times of permissible use.
- j) Public access to the Trail may be temporarily closed by the Landowner or the Township in order to provide for maintenance to the Subject Property or the Trail.

4. PUBLIC ENTERS AT OWN RISK: Use of any portion of the Easement Area by members of the general public is at their own risk. Neither Landowner nor Township by entering into this agreement assume duty to or for the benefit of the general public for defects in the location, design, installation, maintenance, or repair of the Trail Facilities; for unsafe conditions within the Easement Area; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. The Township will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Township receives notice given in accordance with Paragraph 17 of the need to repair an unreasonably dangerous condition.

5. USE OF TRAIL BY LANDOWNER: Except as limited under this article, the Landowner has all the rights and duties recognized under applicable law to use the Easement Area for purposes consistent with and not interfering with the easement rights granted to the Township. The Landowner's rights include those set forth below:

- (a) **Mitigating Risk.** Cutting trees or otherwise disturbing resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons on or about the Easement Area.
- (b) **Grants to Others.** Granting leases, licenses, easements, and rights-of-way affecting the Easement Area to persons other than the Township but only for those facilities, improvements, activities, and uses permitted to the Landowner under this Agreement.
- (c) **Enforcement Rights.** Remove or exclude from the Subject Property persons who are (1) in locations other than the Trail or other Trail Facilities or (2) not engaged in permitted trail uses.

6. MAINTENANCE: The Township shall be responsible for maintenance of the trail and signage in the Easement Area reflected on Exhibit "A", associated with the Trail-related improvements.

7. IMMUNITIES AND INDEMNIFICATION:

- a) **Indemnification; Public Access Claims; Owner Responsibility Claims.** If any Loss or Litigation Expense for personal injury or property damage occurring within the Easement Area after the Easement Date by a third party relating to the use of the trail in the Easement Area (defined as a "Public Access Claim") is asserted against either the Landowner or the Township, or both, it is anticipated the Landowner or the Township will assert such defenses (including immunity under the Recreational Use of Land and Water Act and the Political Subdivision Tort Claims Act) as are available to them under applicable law. The phrase "Public Access Claim" excludes all claims (collectively, "Owner Responsibility Claims") for Losses and Litigation Expenses arising from, relating to or associated with (1) personal injury or property damage occurring prior to the date of this Agreement; (2) activities or uses engaged in by the Landowner, its contractors, agents, employees, tenants, and invitees, or anyone else entering the Property by, through, or under the express or implied invitation of any of the foregoing; or (3) structures, facilities, and improvements within the Easement Area (other than improvements installed by the Township).
- (b) **Indemnity.** If immunity from a Public Access Claim is for any reason unavailable to the Landowner, the Township agrees to indemnify, defend, and hold the Landowner harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim. Landowner agrees to indemnify, defend, and hold the Holder harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.

(c) **Definitions**

- (1) The term "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a Litigation Expense.
- (2) The term "Litigation Expense" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this agreement including, in each case, attorneys' fees, other professionals' fees, and disbursements.

8. COMPENSATION: The Township agrees to pay the Landowner the amount of ONE Dollars (\$1.00) for this trail easement.

9. REFERENCES TO TOWNSHIP: All references to the Township shall be construed to incorporate West Brandywine Township, its governing body, elected and appointed officials, consultants, and heirs, successors and/or assigns.

10. REFERENCES TO LANDOWNER: All references to the Landowner shall be construed to incorporate the Landowner, and its heirs, successors and/or assigns.

11. REPRESENTATIONS AND WARRANTIES; THIRD-PARTY BENEFICIARIES: Neither the Landowner nor the Township make any representations by execution of this Agreement that the Trail is safe for any intended purpose. The Parties further agree that this Agreement does not confer any enforceable rights or remedies upon any persons other than the signatories hereto, and any third-party usage of the trail shall be subject to all immunities of the Township and Landowner under the Recreational Use of Land and Water Act and the Political Subdivision Tort Claims Act, and as otherwise provided by law. There are no third-party beneficiaries to this Agreement.

12. FULLY INTEGRATED AGREEMENT: This Agreement, together with the Exhibits hereto and made part hereof, constitutes the entire understanding and agreement of the Parties.

13. AMENDMENTS; WAIVERS: No amendment or waiver of any provision of this agreement or consent to any departure by the Landowner from the terms of this agreement is effective unless the amendment, waiver, or consent is in writing and signed by an authorized signatory for the Township. A waiver or consent is effective only in the specific instance and for the specific purpose given. Any amendments shall be recorded in the office of the Recorder of Deeds of Chester County, Pennsylvania.

14. SEVERABILITY: If a provision of this agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this agreement invalid, illegal, or unenforceable in any respect.

15. COUNTERPARTS: This agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

16. NOTICES: Notice to the Township under this agreement must be in writing and given by one of the following methods: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid. In an emergency, notice may be given by phone (610-380-8200) or electronic communication (manager@wbrandywine.org) followed by one of the methods in the preceding sentence.

17. WARRANTY: The Landowner warrants to the Township that:

- (a) **Liens and Subordination**. The Easement Area is, as of the Easement Date, free and clear of all liens or, if it is not, that the Landowner has obtained and attached to this agreement as an exhibit the legally binding subordination of any lien affecting the Easement Area as of the date of this Agreement.
- (b) **Existing Agreements**. No one has the legally enforceable right (for example, under a lease, easement, or right-of-way agreement) to prevent the installation or public use of Trail Facilities.
- (c) **Hazardous Materials**. To the best of its knowledge, the Easement Area is not contaminated with hazardous or toxic materials, and no such materials have been stored or generated there.

18. ASSIGNMENT: The Parties shall not assign any of their rights, duties or obligations under this Agreement without the express written consent of the other party.

19. TRANSFER OF SUBJECT PROPERTY: In the event that the Landowner sell, transfer or otherwise convey the Subject Property, they shall inform the purchaser or grantee of such conveyance of the instant Easement and the requirements hereof and the successor in interest shall be bound by the instant Agreement.

20. AGREEMENT TO BE RECORDED: This Agreement shall be recorded in the office of the Recorder of Deeds of Chester County, Pennsylvania and indexed therein against the Subject Property and the name of the Landowner, and shall constitute a covenant running with the land, binding on the Parties, their heirs, successors and assigns.

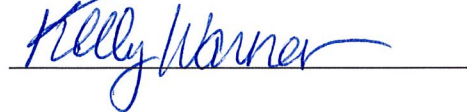
21. EXHIBITS: Each exhibit referred to in this agreement is incorporated into this agreement by reference.

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

WEST BRANDYWINE TOWNSHIP

BY: 
Dale Barnett, Township Manager

CORY WARNER AND KELLY WARNER

BY: 
BY: 

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: §§
COUNTY OF :

On this 11th day of April, A.D. 2020, before me, a notary public in and for the Commonwealth of Pennsylvania, personally appeared, Dale Barnett, who acknowledged himself to be the Township Manager of West Brandywine Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Bonnie T. Lucy
Notary Public

Commonwealth of Pennsylvania - Notary Seal
Bonnie T. Lucy, Notary Public
Chester County
My commission expires March 17, 2024
Commission number 1098596
Member, Pennsylvania Association of Notaries

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: §§
COUNTY OF :

On this 11th day of April, A.D. 2022, before me, a notary public in and for the Commonwealth of Pennsylvania, personally appeared, **CORY WARNER**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Bonnie T Lucy
Notary Public

Commonwealth of Pennsylvania - Notary Seal
Bonnie T Lucy, Notary Public
Chester County
My commission expires March 17, 2024
Commission number 1098596
Member, Pennsylvania Association of Notaries

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: §§
COUNTY OF :

On this 11th day of April, A.D. 2022, before me, a notary public in and for the Commonwealth of Pennsylvania, personally appeared, **KELLY WARNER**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

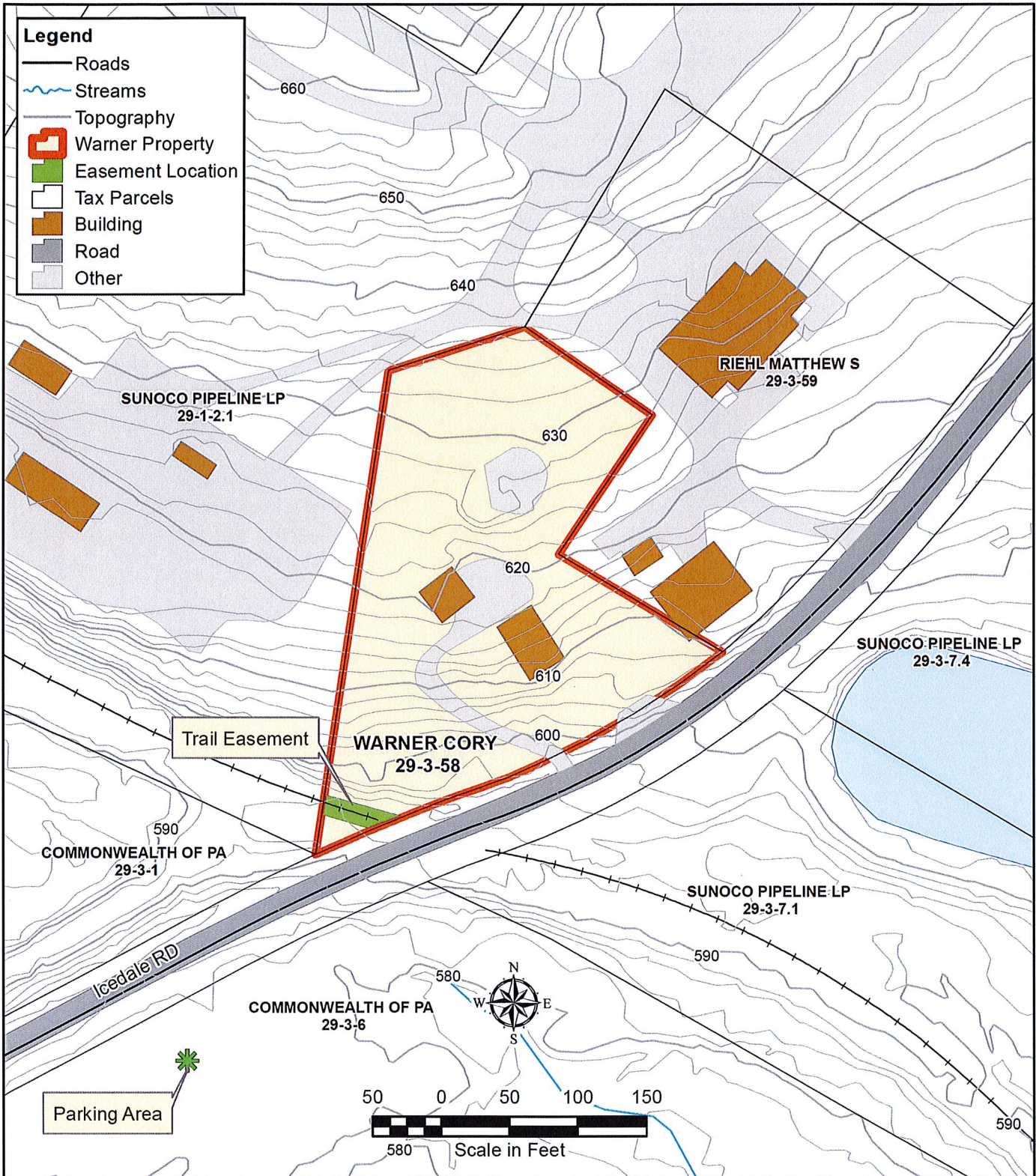
WITNESS my hand an official seal the day and year aforesaid.

Bonnie T Lucy
Notary Public

Commonwealth of Pennsylvania - Notary Seal
Bonnie T Lucy, Notary Public
Chester County
My commission expires March 17, 2024
Commission number 1098596
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

**Plan of the Subject Property
Delineating the Trail Easement Area**



Property of
Cory Warner & Kelly Warner
 115 Icedale Rd, Honey Brook, PA

Parcel # 29-3-58
 West Brandywine, Pennsylvania

**EXHIBIT A
 LOCATION OF
 TRAIL EASEMENT**

West Brandywine Township
 Chester County, Pennsylvania

198 Lafayette Road
 Coatesville, Pennsylvania 19320
 610.380.8200

EXHIBIT "B"

Legal Description of Trail Easement

610-356-9550
FAX 610-356-5032

Herbert E. MacCombie, Jr., P.E.
CONSULTING ENGINEERS & SURVEYORS, INC.
1000 PALMERS MILL ROAD
MEDIA, PA 19063

James W. MacCombie, P.E., P.L.S.
Herbert E. MacCombie, III, Technician

REPLY TO:
P.O. BOX 118
BROOMALL, PA 19008-0118

June 14, 2021

**DESCRIPTION
OF
TRAIL EASEMENT #2
THROUGH LANDS OF
CORY AND KELLY WARNER
WEST BRANDYWINE TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA**

ALL THAT CERTAIN ten (10) feet wide Trail Easement **SITUATE** in the Township of West Brandywine, County of Chester, Commonwealth of Pennsylvania, the approximate location as depicted on "Exhibit A Location of Trail Easement" and being more specifically described as follows to wit

BEGINNING at a point along the title line of Icedale Road, as originally laid out thirty three (33) feet wide, said point marking a corner of the lands of the now or late Sunoco Pipeline, L.P., and the lands of the now or late Cory and Kelly Warner along a line of the lands of the Commonwealth of Pennsylvania; thence extending from said point and place of beginning and leaving the said title line of Icedale Road along a line of the lands of the Commonwealth of Pennsylvania, N62°59'10"W, a distance of 151.58 feet to a point; thence extending from said point and continuing along a line of the lands of the Commonwealth of Pennsylvania along the arc of a circle curving to the right in a Northwesterly direction, having a radius of 1432.70 feet, the arc distance of 25.00 feet (CHORD: N62°29'10"W; 25.00') to a point; thence extending from said point and leaving the said line of the lands of the Commonwealth of Pennsylvania, along a line of the lands of Warner and Sunoco Pipeline, L.P., N38°31'30"E, a distance of 10.17 feet; thence extending from said point through a portion of the lands of Warner along the arc of a circle curving to the left in a Southeasterly direction, having a radius of 1422.70 feet, the arc distance of 22.97 feet (CHORD: S62°31'24"E; 22.97') to a point; thence extending from said point and continuing through the lands of Warner, S62°59'10"E, a distance of 162.87 feet to a point along the title line of Icedale Road; thence extending from said point along the said title line of Icedale Road, S75°29'00"W, a distance of 15.08 feet to the first mentioned point and place of beginning.

CONTAINING: 1,812 S.F. of land more or less.

Note: Easement description is based upon orientation contained within Cory and Kelly Warner Deed (Deed Book 5760 and Page 1076) recorded at the Recorder of Deeds for Chester County.