

Draft 03-10-2022

Record and Return to:

EASEMENT AND RIGHT OF WAY AGREEMENT

For and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt of and sufficiency of which hereby is acknowledged **KENNETH BARTH**, an individual with an address at 185 Route 146, Altamont, New York 12009 (hereinafter called "Grantor") for itself and its successors and assigns hereby grants to TOWN OF GUILDERLAND, a municipal corporation whose address is 5209 Western Turnpike, Guilderland, New York its successors and assigns, (hereinafter called "Grantee") the following rights:

- (a) subject to the terms and conditions of this Agreement, the non-exclusive right within the Easement Area (as hereinafter defined) to construct, entrench, inspect, maintain, operate, repair, replace, alter, remove, protect, or abandon in place one, 20 foot wide multi-use path for public use and access along a right-of-way over, under, through, or across the Property (as hereinafter defined), along with ingress and egress to same.
- (b) the right of ingress and egress in, on, over and through the Property and within the Easement Area or the Temporary Easement Area for any and all purposes necessary or convenient to the exercise by Grantee of the rights and easements herein granted.
- (c) the additional right to maintain a temporary easement for public ingress and egress for the Multi-use Trail within the Temporary Easement Area .

Description of Property

A certain tract or parcel of land located in the Town of Guilderland, and being more particularly described in that certain Deed from Rudolf A. Barth to Kenneth Barth recorded with the Albany County Clerk on August 20, 2002 at Deed Book 2717, page 809, of the Albany County, State of New York (herein the "Property").

Easement area

The Easement Area as depicted in Exhibit "A" and Temporary Easement Area as depicted in Exhibit "A1" shall be approximately ten feet (20 ft.) in width over and across the Property, in the general vicinity depicted on Exhibit "A" attached hereto. The exact and permanent location of the Easement area shall be five feet (10 ft.) on each side of the centerline, as reasonably possible, of said Multi-use Trail ("Trail") as constructed. Upon completion of the Trail installation, Grantee shall prepare or cause to be prepared an as-built survey of the Trail at Grantee's expense and shall provide a copy of the survey to Grantor. Grantee shall make every attempt to locate the Trail along the centerline as set forth on Exhibits "A" and "A1". However, due to difficult and/or uneven terrain along various segments of the Trail route, there may be permitted instances where the Trail will

not be laid in the centerline as shown on Exhibits "A" and "A1", but will instead have to be laid at various distances from the centerline within the 20foot (20 ft.) width. Any further deviations from the Trail route shown on Exhibits "A" and "A1" shall be determined by mutual agreement of Grantor and Grantee.

Temporary Work Space Easement Area

Grantee may utilize a temporary workspace lying ten (10) feet adjacent and parallel to the Easement area. Grantee shall be entitled to the temporary use of such additional width as may be reasonably required in the connection with the initial construction of the pipeline. In addition, during initial construction of the Trail Grantee shall have the right to use additional workspace of ten feet (10) along the Easement area at the crossing of rivers, streams, drainage ditches, canals or other waterways, roads, railroads, pipelines or other like obstructions encountered on or adjacent to the Easement area.

Access to Easement area

Grantee shall have the right of ingress and egress over the lands of the Temporary Easement Area (as described in Exhibit "A1") to access the Permanent Easement Area (as described in Exhibit "A") by use of existing roads or within the Temporary Easement area. No additional roads or other means of access shall be constructed on the Grantor's land without Grantor's prior written consent. Such consent shall not be unreasonably withheld by Grantor.

All boundary fences cut or disturbed shall be repaired by Grantee upon the completion of construction, maintenance or repair activities.

Except as expressly provided herein, Grantee shall not have the right to install any associated equipment or facilities upon the Property without the express prior written consent of Grantor. Further, Grantee shall have no right to utilize the surface of the Grantor's Property in any manner, other than the temporary occupation and use in connection with the construction, maintenance or repair of the Trail, without the express written consent of Grantor. Notwithstanding the foregoing, it is agreed that Grantee may install, without consent of Grantor, trial markers, signs and posts within the Easement area.

The Grantor shall have the right to use and enjoy the surface of Grantor's Property but shall not interfere with the use of the Easement area by Grantee as set forth herein. Grantor shall not construct or maintain, or permit to be constructed or maintained, any building, structure, reservoir, excavation or obstruction on, over or under the Easement area that would materially impair access to the Trail, and shall not change the grade, alter the depth of soil cover, impound water or plant trees on the Easement area without the express written consent of the Grantee, which consent shall not be unreasonably withheld.

Grantor also grants to Grantee the right at any time, without additional compensation to Grantor, to keep the Easement area free of all timber, trees, undergrowth and other obstructions.

Grantee agrees to take all precautions necessary, at its sole expense, to protect or reinforce the Trail as necessary to accommodate the activities of Grantor, its grantees, contractors or assigns, specifically including but not limited to protections needed for Trail support for the crossing of the Trail with roads (including heavy equipment).

General Provisions

Grantor shall have the right but not the obligation to cut and remove all timber the removal of which is necessary in connection with the clearing of the Easement area and the construction of the Trail within sixty (60) days following receipt of notice from Grantee.

Grantee shall at all times comply with all applicable federal, state and local laws, rules and regulations relating to the performance of its activities on the Grantor's Property, and shall indemnify and save harmless Grantor, their employees, agents, contractors, officers, partners and directors from any liability, claims or demands arising out of and attributable to Grantee's failure to observe any applicable laws, rules or regulations. In addition, Grantee shall comply with any and all covenants, conditions, permits, approvals and restrictions affecting Grantor's Property to which Grantor has given Grantee written notice.

Grantee shall indemnify, defend, protect and hold Grantor their employees, agents, contractors, officers, partners and directors, harmless against any and all claims, demands, liabilities, damages, suits, actions, causes of actions, judgments, decrees, fines or penalties, including but not limited to those for personal injury, death or property damage, caused by or arising from the negligent or willfully wrongful: (i) operations or activities of Grantee; (ii) operations or activities undertaken by Grantee's contractors, officers, employees or (iii) agents under this Agreement or the presence of Grantee or its contractors, officers, employees or agents on the Property.

Grantee shall, during initial construction of the Trail maintain, at Grantee's sole cost at all times during the term of this Agreement the insurance coverages set forth below with companies satisfactory to Grantor with policy limits in amounts not less than those applicable for such coverages as set forth. A certificate naming Grantor as an additional insured (except with respect to worker's compensation coverage), evidencing coverages shall be delivered to Grantor prior to commencement of activities or operations hereto. Such certificate shall provide that any change restricting or reducing any such coverage or the cancellation of any policy under which any such certificate is issued shall not be valid as respects the Grantor's interest therein until the Grantor has received thirty (30) days' notice in writing of such change or cancellation:

- a. **Worker's Compensation and Occupational Disease Disability Insurance** - as required by the laws of the State of New York;
- b. **Comprehensive Automobile Liability Insurance** - covering owned, non-owned and hired vehicles with limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage claims;

- c. **Comprehensive General Liability Insurance** - including broad contractual liability, damage to underground property, collapse of structures, environmental damage or pollution and damage resulting from explosion or blasting, with limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage claims; and
- d. **Excess (Umbrella) Liability Insurance** - over Comprehensive General Liability and Automobile Liability insurance coverage afforded by the primary policies described above with minimum limits of \$4,000,000 excess of the specific limits.

Each policy, except Worker's Compensation, shall be endorsed to provide waiver of subrogation rights in favor of Grantor, its affiliates, and all other parties owning an interest in the Property or the Easement area on which activities and operations covered by this Agreement will be performed.

The Temporary Easement Area shall be abandoned and extinguished upon the provision for alternate access to the Permanent Easement Area, approved by the Grantee, from NYS Route 146 in the Town of Guilderland without the need for further action by the Grantor.

This Agreement (including the documents referred to herein) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral regarding the subject matter hereof.

This Agreement is for the sole benefit of and binding upon the parties hereto and their permitted successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason hereof. The rights of Grantee may be assigned or transferred in whole or in part with Grantor's written consent, which consent shall not be unreasonably withheld, however Grantee shall have the right to assign to its parent company or to any subsidiaries or affiliates without securing prior written consent of the Grantor, provided such conveyance shall be promptly sent to Grantor after execution.

This Agreement may not be amended or modified except by an instrument in writing signed by the parties hereto. Waiver of any term or condition hereof shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition hereof.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed within the State.

On and after the date hereof, the parties shall take such other action and execute such other documents as may be reasonably requested by any other party hereto from time to time to effectuate or confirm the transaction contemplated hereunder and to record it with the County Clerk of Albany County.

This Agreement may be executed manually, electronically (.pdf) or by facsimile and in one or more counterparts, each of which when so executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions hereof.

This Agreement (including the documents referred to herein) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral regarding the subject matter hereof.

[The remainder of this page is intentionally left blank.]

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, for so long as the pipeline(s) constructed hereunder is (are) used for the purposes set forth herein.

Signed and delivered on this _____ day of _____, 2022:

KENNETH BARTH

By: _____

Its: _____

TOWN OF GUILDERLAND

By: _____

Its: