

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 8925

DATE 9-26-19

TITLE

RESOLUTION TO APPROVE AN EASEMENT AGREEMENT BETWEEN
THE CITY OF WILLIAMSPORT AND MCCORMICK ASSOCIATES, INC.

BE IT HEREBY RESOLVED, by the City Council of the City of Williamsport that the appropriate City Officials are authorized to execute the required documents necessary to carry out the attached easement agreement between the City of Williamsport and McCormick Associates, Inc. on tax parcel 65-004-126.

James M. Froude
City Clerk

Approved

Mark Dillman
President

EASEMENT AGREEMENT

MADE the ____ day of _____ in the year two thousand nineteen (2019),
between:

CITY OF WILLIAMSPORT, a Pennsylvania city of the third class, organized and existing under the Optional Third Class City Code, with a principal address at 245 West Fourth Street, Williamsport, Lycoming County, Pennsylvania, Party of the First Part, **GRANTOR**,

- AND -

McCORMICK ASSOCIATES, INC., a corporate entity organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal address at 835 West Fourth Street, Williamsport, Lycoming County, Pennsylvania, Party of the Second Part, **GRANTEE**.

WITNESSETH, that in consideration of **ONE AND 00/100 DOLLARS (\$1.00)**, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantee, its successors and assigns, an easement subject to the following terms and conditions and the said Grantee, its successors and assigns agree to be legally bound by the terms, obligations and conditions hereof:

1. Grantor is the owner of certain real property located in the City of Williamsport on the corner of West Fourth Street and Maynard Street, consisting of approximately 2.85 acres, and known for identification purposes only as Lycoming County Tax Parcel No. 65-004-126, on which is located Way's Garden (hereinafter "Way's Garden").
2. Grantee is the owner of certain real property located in the City of Williamsport with an address of 835 West Fourth Street, consisting of approximately 0.55 acres, and known for identification purposes only as Lycoming County Tax Parcel No. 65-004-125, which is appurtenant to Way's Garden, on which is located McCormick Law Firm (hereinafter "Grantee's Land").
3. Attached as Exhibit A are the plans for a parking lot improvement to be located in Way's Garden immediately to the south of Grantee's Land ("Parking Lot Plans").
4. As depicted on the Parking Lot Plans, the parking lot improvement will consist of at least nineteen (19) parking stalls, with one (1) stall designed as a handicap accessible parking stall, accessible to Maynard Street via the alley located along the southern boundary of Way's Garden. Grantee understands and agrees that the one (1) stall designed as a handicap accessible parking stall and the two (2) southern-most parking stalls as depicted on Exhibit A shall remain generally open for the use of Grantor and Way's Garden and not subject to the exclusivity provision of Paragraph 9(a).
5. As depicted on the Parking Lot Plans, the parking lot improvement will also be accessible to Grantee's Land via a connecting driveway.
6. Grantor agrees, as part of the overall Way's Garden improvement project, to, at its sole cost and expense or that of the Way's Garden Commission, prepare the portion of

Way's Garden on which the parking lot improvement is to be located as depicted on the Parking Lot Plans with said preparations to consist of: (a) demolition and removal of any above grade structures, trees or other vegetation; and, (b) rough grading of the area for the parking lot.

7. Grantee agrees, at its sole cost and expense, to construct the parking lot improvement as depicted on the Parking Lot Plans, as permitted to be amended hereby (hereinafter "Parking Lot"). For purposes of this Agreement, Grantor agrees that Grantee's agreement to construct the parking lot improvement specifically excludes (i) the draining structures and improvements and (ii) the proposed electrical work as depicted on the Parking Lot Plans and Grantor further agrees that Grantor shall be responsible, at its sole cost and expense, to install (i) the drainage structures and improvements and (ii) the proposed electrical work as depicted on the Parking Lot Plans.

8. Grantor agrees that the Parking Lot Plans may be modified in the sole discretion of Grantee to increase the number of parking spaces and the surface area of the bituminous parking lot between the location of the parking lot improvement as depicted on the Parking Lot Plans and Grantee's Land in the event Grantee demolishes the existing garage located on Grantee's Land, provided that such additional surface area does not create the need for a NPDES permit for the Parking Lot (which is presently under one (1) acre of disturbed area).

9. In consideration of Grantee's agreement to construct the parking lot improvements as depicted hereinabove, Grantor hereby grants and conveys to Grantee a perpetual easement to use and enjoy the Parking Lot subject to the following terms and conditions:

(a). Grantee shall have exclusive use of the Parking Lot between the hours of 8:30 am to 5:30 pm, on weekdays, Monday through Friday.

(b). Appropriate signage shall be installed agreeable to the parties indicating that the Parking Lot is for the use of Grantee between the hours of 8:30 am to 5:30 pm, on weekdays, Monday through Friday and Grantee shall have the right to reasonably enforce this exclusive use of the Parking Lot during these hours to insure Grantee's exclusive use of the Parking Lot.

(c). Priority use of the Parking Lot at all other hours shall be established by Grantor and the Way's Garden Commission.

(d). Grantee shall maintain the Parking Lot, to include sealing and relining of parking spaces as reasonably required. Grantee shall not be responsible for damage caused to the Parking Lot by third party users or members of the public. In the event Grantor or Grantee seeks maintenance of the Parking Lot above and beyond what is standard and usual and customary for a parking lot, the requesting party shall be responsible for the costs of any such additional maintenance. The parties agree that maintenance for purposes of this Section shall not include winter maintenance to include snow removal, which is addressed hereinbelow.

(e). Grantor and the Way's Garden Commission agree to properly light and maintain lighting for the Parking Lot and to provide a walkway from the Parking Lot to Way's Garden as depicted on the Parking Lot Plans.

(f). Grantor agrees to provide winter maintenance, including snow removal, of the Parking Lot but Grantee may provide such winter maintenance, including snow removal, as is deemed necessary by Grantee for its use of the Parking Lot between the hours of 8:30 am to 5:30 pm, on weekdays, Monday through Friday. Grantor's provision of winter maintenance will be performed in order of priority based upon Grantor's municipal responsibilities and by agreeing to perform winter maintenance hereunder does not guaranty priority of winter maintenance of the Parking Lot by Grantor. Notwithstanding the foregoing, Grantee may, in its sole discretion, undertake such additional winter maintenance as Grantee deems necessary to its use of the Parking Lot. Grantor agrees that Grantee shall have no obligation to provide any maintenance, including winter maintenance to include snow removal, of the alley located along the southern boundary of Way's Garden, which shall be the public's means of accessing the Parking Lot, and such maintenance, including winter maintenance to include snow removal, shall remain the sole responsibility of Grantor.

(g). Grantor agrees that public access to the Parking Lot shall only be from Maynard Street by and through the alley located along the southern boundary of Way's Garden and Grantor agrees that Grantee may take reasonable steps to prevent access by members of the public to the Parking Lot by and across Grantee's Land from West Fourth Street including, but not limited to, appropriate signage and, if deemed necessary in the sole discretion of Grantee, a gate or other barrier which may be locked or otherwise constructed to prevent access from the Parking Lot to Grantee's Land.

(h). Grantor and the Way's Garden Commission agree that the Parking Lot will be used and maintained in such a manner as to not unreasonably interfere with the use and enjoyment of the Parking Lot by Grantee during the aforementioned exclusive hours of 8:30 am to 5:30 pm, on weekdays, Monday through Friday. Grantee agrees that the Parking Lot will be used and maintained in such a manner as to not unreasonably interfere with the use and enjoyment of the Parking Lot by Grantor and the Way's Garden Commission during all hours other than the aforementioned exclusive hours of 8:30 am to 5:30 pm, on weekdays, Monday through Friday.

(i). The easement granted hereunder, with the exception of the aforementioned exclusive hours of 8:30 am to 5:30 pm, on weekdays, Monday through Friday, is not exclusive to Grantee and Grantor and the Way's Garden Commission may access the Parking Lot for any legitimate purpose related to its ownership of Way's Garden provided said purpose does not interfere with Grantee's exclusive use hours from 8:30 am to 5:30 pm, on weekdays, Monday through Friday.

10. The parties agree that the easement granted hereunder shall include the use and enjoyment of the Parking Lot as well as access to and across the Parking Lot from Grantee's Land to and from the alley located along the southern boundary of Way's Garden as well as access to those portions of Way's Garden reasonably required for access to the Parking Lot for maintenance, repairs and replacement.

11. Grantee shall save Grantor and the Way's Garden Commission, its employees, agents, licensees, or invitees harmless from all loss, damage, liability or expense incurred, suffered or claimed by reason of the negligence or neglect of Grantee.

12. Grantor shall save Grantee and McCormick Law Firm, a general Pennsylvania partnership, their owners, partners, employees, agents, licensees, or invitees harmless from all loss, damage, liability or expense incurred, suffered or claimed by reason of the negligence or neglect of Grantor, the Way's Garden Commission or members of the public otherwise accessing the Parking Lot.

13. Grantor agrees to be responsible for and to appropriately repair and replace any and all damage to the Parking Lot by virtue of the use of the Parking Lot and/or Way's Garden by Grantor, the Way's Garden Commission or those acting through Grantor and the Way's Garden Commission or members of the public otherwise accessing the Parking Lot and/or Way's Garden.

14. It is expressly understood and agreed that the easement granted hereunder runs with the land and the easement granted by this Easement Agreement shall transfer to the successors and assigns of Grantee.

15. Grantor shall name Grantee and McCormick Law Firm as an additional insured and/or loss payee on its insurance coverages for the Parking Lot and Way's Garden.

16. Grantee shall name Grantor and the Way's Garden Commission as an additional insured and/or loss payee on its insurance coverages for the Parking Lot.

[Remainder of this Page Intentionally Blank – Signature Page to Follow]

IN WITNESS WHEREOF, intending to be legally bound hereby, the said Grantee has set its hands and seals to this Easement Agreement and the said Grantor has caused this Easement Agreement to be signed by its duly authorized officers the day and year first above written.

ATTEST:

GRANTEE:

MCCORMICK ASSOCIATES, INC.

Name:
Title:

By: _____
Name:
Title:

ATTEST:

GRANTOR:

CITY OF WILLIAMSPORT

Janice Frank
Janice Frank
City Clerk

By: Gabriel J. Campana
Gabriel J. Campana
Mayor of the City of Williamsport

By: Paulette L. Woodring
Deputy
Margaret J. Woodring
Controller of the City of Williamsport

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF LYCOMING :

On this ____ day of _____, 2019, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunder set my hand notarial seal.

My Commission Expires:

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF LYCOMING :

On this ____ day of _____, 2019, before me, a Notary Public, the undersigned officer, personally appeared Gabriel J. Campana and Margaret J. Woodring, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunder set my hand notarial seal.

My Commission Expires:

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF LYCOMING :

RECORDED on this ____ day of _____ 2019, in the Lycoming County Recorder's Office in Record Book _____, Page _____.

Given under my hand and seal of the said office the date above written.

Recorder