

TEMPORARY EASEMENT AGREEMENT

This Temporary Easement Agreement, "Agreement", is entered on this ____ day of _____, 2018, by and between the City of Malden, "City", and Samuel Ruth and Sage Ruth, of 33 Gordon Street, Malden, Massachusetts, 02148, "Grantees" for the purposes recited herein and under the terms and conditions stated.

WHEREAS the City is the owner of certain land in Malden, Massachusetts abutting the land owned by Grantees; with the entirety of the City land more particularly depicted and described in a "Plan Showing Land Taken For The Laying Out Of Goodwin Avenue, Malden, Mass.", dated September 25, 1969, and recorded as Plan Number 1111 of 1969, at the Middlesex South District Registry of Deeds, at Book 11752, Page 622, **with the portion of City land abutting Grantees' parcel approximately 474.63 square feet**, more or less, "City Property"; and

WHEREAS Grantees are owners of certain land in Malden, Massachusetts known as and numbered **33 Gordon Street, Malden, Massachusetts** by virtue of and more particularly described in deed dated September 11, 2014 and recorded at the **Middlesex South District Registry of Deeds, at Book 64215, Page 380**, "Grantees Property", which Grantee Property immediately abuts a portion of the City Property; and

WHEREAS Grantees desire to acknowledge for themselves that access to Grantee's Property requires access over the City Property, and Grantees desire to enter this Agreement with the City for permission to use said City Property abutting Grantees Property for access purposes only;

NOW THEREFORE The City, in consideration of Grantees' compliance with all obligations, covenants, agreements, terms and conditions set forth herein, agrees to grant Grantees a non-exclusive, temporary, revocable easement to pass and repass over City Property abutting Grantees' Property, restricted to and specifically for purposes of Grantees accessing Grantees' existing driveway, a portion of which Grantees acknowledge is located on or along City Property identified as parcels No. 091-776-612 and 106-776-615, subject to the following terms and conditions:

1. The easement is subject to and subordinate to all existing matters currently of record.
2. The easement is revocable at any time by the City for any purpose.
3. The easement is temporary and non-exclusive, and Grantees agree and acknowledge Grantees have no exclusive rights in, on, under or along the City Property.
4. The easement is solely for purposes of permitting Grantees, Grantees' invitees, permittees and/or lawful tenants, as the case may be to pass and repass on and along City Property in order to access Grantees Property.

5. The easement shall not be used for purposes of Grantees' calculating square footage or otherwise complying with any zoning requirements, including, but not limited to zoning requirements for yard, setback, frontage, or qualifying for any zoning relief, or for any other purpose than that specified herein.
6. The easement shall not operate to prevent or prohibit use of the City Property by the City and/or the general public, including pedestrians, travelers, and/or cyclists, from traveling on and along City Property.
7. The Grantees are responsible at Grantees' sole cost and expense for all ongoing maintenance of the City Property, including, but not limited to maintaining the City Property in a safe and clean manner, and removing trash and debris, snow and ice, and/or any hazardous materials. Failure to maintain the City Property shall result in the City's withdrawal and revocation of this easement along City Property.
8. In the event Grantees fail, refuse or neglect to maintain the City Property in good repair and safe condition, the City may so elect in the City's sole discretion to cause repairs or maintenance to be undertaken, at Grantees' sole cost and expense; provided, however, that the City shall not be required to make any such repairs or maintenance.
9. Grantees shall not store any hazardous and/or unsafe materials in, on, under or along the City Property, and shall be responsible for correction and cleaning of any hazardous release in, on, under or along the City Property, regardless of whether release of hazardous materials was accidental or intentional, and shall ensure all contamination is removed.
10. The City and Grantees acknowledge that on a portion of the City Property is currently a portion of Grantees' shed and fence, and that Grantees' driveway runs over City Property to Goodwin Avenue. Unless otherwise required to be removed under the terms and conditions herein or as otherwise ordered by City Enforcement and/or Building Officials, Grantees shall be permitted by the City to allow these existing conditions to remain for the duration of this Agreement. Grantees shall not block or place or cause to be placed any additional structure or encumbrance in, on or along the City Property, and shall at all times maintain the City Property so as to remain accessible to all persons or parties utilizing the City Property, the City's public way, including, but not limited to citizens of the City, pedestrians, travelers, and passersby.
11. The City and Grantees acknowledge that Grantees have landscaped a portion of City property consisting of planting bushes/plants and the like. Grantees are permitted to continue to maintain said landscaping provided landscaping complies with the terms and conditions herein, or unless otherwise ordered to be removed. Grantees shall inform the City in writing of any land improvements which may impact or effect the City Property, and shall not be permitted to make any improvements which enter into, on, along, or under the City Property.
12. The Grantees shall be responsible any damages that occur to the City Property.

13. Grantees acknowledges that Grantees have no right, title or interest in the City Property, and have no right, title or interest in any construction, walkways, retaining walls, improvements, or the like, on and encroaching the City Property. The parties acknowledge that the City Property is not factored into or included in the assessment of real estate taxes on Grantees' Property.

14. Grantees acknowledge, agree and understand, on behalf of themselves and all successors-in-interest that no precedent is created hereby.

15. Grantees further expressly acknowledge, agree and understand, on behalf of themselves and all successors-in-interest that this Agreement with the City and Grantee's status as party to this Agreement shall not be construed as conferring upon Grantee or any future successor-in-title to Grantee Property any fee interest or right to or in any portion of the City Property, either voluntarily or by adverse possession, easement by prescription, implied easement, easement by necessity, or any other legal theory.

16. Grantees acknowledge this easement is temporary in nature and shall automatically be extinguished upon the conveyance, transfer, sale and/or other distribution of Grantees' Property.

By signature affixed hereto, Grantees acknowledge and agree:

that Grantees shall comply with all of the terms and conditions set forth herein;

that Grantees shall maintain City Property to the reasonable satisfaction of the City;

that any dispute regarding maintenance of City Property shall be resolved in the sole and exclusive discretion of the City and the Grantees shall comply with said directives;

that the City may withdraw and revoke the easement in the event the City determines, in its sole discretion, that use of the City Property is necessary for any City purpose;

that the City may withdraw and revoke the easement in the event the City determines, in its sole discretion, that Grantees' use of the property is hazardous and unsafe;

that Grantees shall comply with all applicable Federal, state, county, and municipal laws, orders, regulations, codes and ordinances, at Grantees' sole cost and expense;

and

that Grantees shall indemnify and hold harmless the City from all claims arising from Grantees' use and maintenance of the City Property, including any claims, suits, actions, losses, damages, judgments, and liabilities arising from Grantees' use and maintenance of the City Property.

WITNESS our hands and seals on this _____ day of _____, 2018.

Grantee

Grantee

City of Malden

Gary Christenson, Mayor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss _____, 2018

On this date before me, the undersigned notary public, personally appeared the above-named _____, Grantee, proved to me through satisfactory evidence of identification, which is a Massachusetts drivers license, to be the person whose name is signed on this document, and acknowledged to me that he/she signed this document voluntarily and for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss _____, 2018

On this date before me, the undersigned notary public, personally appeared the above-named _____, Grantee, proved to me through satisfactory evidence of identification, which is a Massachusetts drivers license, to be the person whose name is signed on this document, and acknowledged to me that he/she signed this document voluntarily and for its stated purpose.

Notary Public
My Commission Expires:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS _____, 2018

On this date, before me, the undersigned notary public, personally appeared the above-named, Gary Christenson, Mayor of the City of Malden, proved to me through satisfactory evidence of identification, which is that he is personally known to me to be the person whose name is signed on this document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: