

Wilmington, Delaware
July ____, 2023

WHEREAS, pursuant to Wilm. C. (Charter) § 1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose;

Sponsor: and

**Council
Member
Harlee**

WHEREAS, Wilm. C. § 2-621(a) generally authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

WHEREAS, Wilm. C. § 2-628(a) authorizes the Department of Real Estate and Housing, subject to the approval of Council by resolution, to grant such easements as shall be deemed necessary and appropriate; and

WHEREAS, the City currently owns 1001 N. Park Drive, Wilmington, Delaware, a parcel comprising part of Brandywine Park (the “Property”) (being New Castle County Tax Parcel No. 26-013.40-075); and

WHEREAS, the Freire Charter School Wilmington, Inc. (“Freire”), located at 201 and 205 West 14th Street, Wilmington, Delaware (collectively being New Castle County Tax Parcel No. 26-028.20-113) is currently developing the property located at 205 West 14th Street to be used as a gymnasium for its adjacent school and, as a result, is being required by the fire marshal to provide an exit from the building and walkway to the backyard that will encroach approximately twelve (12) inches beyond the property line and run forty-two (42) feet along the property line 205 West 14th Street shares with the Property; and

WHEREAS, Freire has requested the City grant it an easement accommodating the exit and walkway that will encroach upon the Property, as well as a temporary construction easement to build the exit and walkway, as set forth in a proposed agreement between the City and Freire (the “Walkway and Temporary Construction Easement Agreement”), a copy of

which, in substantial form, is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the City advised the Division of Parks and Recreation of the Delaware Department of Natural Resources and Environmental Control, which maintains and manages Brandywine Park for the City, of Freire's request for the easements and has received no objection; and

WHEREAS, City Council deems it necessary and appropriate to approve the grant of the easements to Freire as set forth in the Walkway and Temporary Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby approves the City's grant of an easement for an exit and walkway and a temporary construction easement to Freire in the Property pursuant to the terms of the Walkway and Temporary Construction Easement Agreement, a copy of which, in substantial form, is attached hereto and incorporated herein as Exhibit A.

BE IT FURTHER RESOLVED that the Mayor, or his designee, is hereby authorized to execute any and all documents necessary to effectuate the grant of the easements, and the appropriate officers of the City are hereby authorized to take any and all further undertakings and assurances that may be appropriate.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves the City's grant of an easement to the Freire Charter School Wilmington, Inc. in Brandywine Park to accommodate the construction and maintenance of an exit and walkway required by the fire marshal, as well as a temporary construction easement to build the exit and walkway.

EXHIBIT A

Tax Parcel Nos.: 26-013.40-075
and 26-028.20-113

Prepared by and Return to:
Elizabeth D. Power, Esquire
City of Wilmington Law Department
800 North French Street, 9th Floor
Wilmington, DE 19801

WALKWAY AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS WALKWAY AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “Agreement”) is made this ___ day of _____, 2023 by and between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware (the “Grantor” or the “City”), and the FREIRE CHARTER SCHOOL WILMINGTON, INC., a Delaware non-profit corporation (the “Grantee”).

WHEREAS, the Grantor owns a certain parcel of parkland with an address of 1001 North Park Drive, Wilmington, Delaware, being Tax Parcel No. 26-013.40-075 (the “Property”); and

WHEREAS, the Grantee owns an adjacent parcel of land and building situated upon it with an address of 205 West 14th Street, Wilmington, Delaware, being Tax Parcel No. 26-028.20-113 (the “Grantee’s Land”); and

WHEREAS, in order to comply with the requirements of the City Fire Code and the City Fire Marshal, the Grantee intends to construct a building exit and walkway to the rear yard of the Grantee’s Land, said exit and walkway thereby encroaching upon the Property; and

WHEREAS, the Grantee requires a permanent easement on, over, and across the Property in order to accommodate the exit and walkway and a temporary construction easement on, over, and across the Property in order to install the exit and walkway; and

WHEREAS, the Wilmington City Council has approved by resolution the granting of the easements set forth in this Agreement.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby and by the foregoing recitals, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, promise and agree to the following:

1. Walkway Easement. The Grantor hereby gives, grants, and conveys to the Grantee, its lessees, successors, and assigns, a non-exclusive easement (the “Walkway Easement”) over, upon, and across certain portions of the Property as specifically depicted in Exhibit “A” attached hereto and incorporated by reference herein (the “Easement Area”) in order to (i) construct, install, maintain, repair, replace, and remove a building exit and walkway required for compliance with City Fire Code regulations and requirements of the City Fire Marshal, (ii) remove the current fence

abutting the walkway and install and maintain a new fence on the park side of the walkway (the “New Fence”), and (iii) plant and maintain American Arborvitae (the “Trees”) on the park side of the New Fence. The City shall not place, plant, erect, or construct any manner of tree, shrub, bush, fence, structure, or other man-made improvement within the Easement Area that would impair the use of the Walkway Easement by the Grantee.

2. Additional Requirements for the Walkway. The walkway shall exit only towards the back parking lot on the Grantee’s Land and shall not afford access to the neighboring yards or any portion of the parkland. The new exit door shall be (i) alarmed, (ii) marked as “emergency exit only”, and (iii) used only as an emergency exit.

3. Removal and Replacement of the Fence; Planting of American Arborvitae. In order to construct the exit and walkway, the Grantor acknowledges and expressly permits the Grantee the right to remove the current fence that now runs through the Easement Area; provided, however, that the Grantee, at its sole cost and expense, shall promptly replace the current fence with the New Fence at a location as close as practicable to the Easement Area and property line that divides the Property from the Grantee’s Land. The New Fence shall: (i) be metal and of a design approved by the Grantor, (ii) be at least six feet (6’) in height and comply with applicable law, (iii) be no farther than one foot (1’) from the walkway, (iv) not contain any barbed wire, and (v) be maintained by the Grantee, at its sole cost and expense, in excellent condition at all times so that it does not become an eyesore. The Grantee, at its sole cost and expense, shall plant the Trees along the whole length of the park side of the New Fence to screen the park view. The Grantee shall be responsible, at its sole cost and expense, for the maintenance of the Trees. Upon the completion of the removal of the current fence, installation of the New Fence, and planting of the Trees, the Grantee shall request that the Grantor review and inspect such work for compliance with this Agreement; if the inspection reveals any deficiencies, the Grantee shall, at its sole cost and expense, remedy the deficiencies.

4. Temporary Construction Easement. The Grantor does hereby grant unto the Grantee and its respective agents, contractors, representatives, licensees, and invitees a right of ingress and egress to, on, and over additional portions of the Property, as specifically depicted in Exhibit “A” attached hereto and incorporated herein (the “Construction Easement Area”), for the purpose of providing temporary construction access in order to install and construct the required exit and walkway (the “Temporary Construction Easement”, and, together with the Walkway Easement, the “Easements”). The Temporary Construction Easement described in this Section 4 shall terminate upon the completion of the construction of the exit and walkway, which in any event shall be no later than December 1, 2023. The Grantee, at its sole cost and expense, shall restore the Construction Easement Area and other portions of the Property that are damaged by the construction of the exit and walkway or the use of the Construction Easement Area to their pre-construction condition to the degree that is reasonably practicable. Upon the completion of any such restoration, the Grantee shall request that the Grantor review and inspect the restoration for compliance with this Agreement; if the inspection reveals any deficiencies, the Grantee shall, at its sole cost and expense, remedy the deficiencies. The restoration shall be undertaken and

completed immediately after the construction is finished, which in any event shall be no later than December 31, 2023.

5. Access. The Grantor grants to the Grantee a right of ingress and egress to, on, and over the Property for the limited purpose of exercising the easement rights granted pursuant to this Agreement.

6. Reservation of Rights. The Grantor expressly retains for itself, as well as for its successors and assigns, full rights to the use of the Easement Area for any lawful purposes that do not interfere with, or impede the use of, the Easements granted to the Grantee herein, including by way of example but not limitation, the right to utilize the Easement Area for continued ingress, egress, and regress.

7. Abandonment of Easement. If the Grantee, or its successors and assigns, ever abandons the exit and walkway on the Property, the Walkway Easement as set forth in Section 1 above shall terminate, be null and void, and will no longer encumber the Property. "Abandonment" as used herein has its plain and legal meaning, but includes the following: the failure to maintain the building exit and walkway to the standards required by all applicable statutes, ordinances, and regulations related to public health and safety and such failure continues for a period of sixty (60) days following notice from the Grantor to the Grantee of the need to properly maintain the exit and walkway; if the Grantee ceases to use the building on the Grantee's Land as a school; or any change in the applicable law that eliminates the need for the existence of the exit and walkway in order to maintain compliance with the City Fire Code regulations and requirements of the City Fire Marshal that necessitated its installation. If the Grantee, or its successors and assigns, abandons the exit and walkway, the Grantee, its successors or assigns, shall, at its sole cost and expense, remove the exit and walkway and restore the Property to its condition before the installation of the exit and walkway, or, alternatively, shall be liable to the Grantor for the full amount of the reasonable cost to the Grantor of restoring the Property to its pre-installation condition. The Grantee shall notify the Grantor in writing of its intent to abandon the Walkway Easement at least ninety (90) days before it takes any action that is reasonably likely to cause an abandonment of the Walkway Easement, or, if appropriate, immediately following the discovery of any change or condition that necessitates an abandonment of the Walkway Easement.

8. No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, this Agreement is solely for the benefit of the parties hereto, their successors and assigns, and shall not benefit any third party or create or operate to create, either expressly or impliedly any rights, title, or interests hereunder in favor of any third party.

9. Indemnification. The Grantee shall defend, indemnify, and hold the Grantor, its officers, agents, and employees, safe and harmless from and against from any and all losses, costs, damages, claims, actions, or liabilities on account of the death or injury of any person or persons and/or any and all damage or destruction of any property on the Easement Area or Construction Easement Area whenever such death, injury, property damage, or destruction is the result of the exercise of the Grantee's rights herein, but excluding those losses, costs, damages, claims, actions,

or liabilities solely arising from Grantor's gross negligence or willful misconduct. This section shall survive any subsequent termination of this Agreement.

10. Insurance. The Grantee shall carry commercial general liability insurance with commercially reasonable limits of not less than One Million Dollars (\$1,000,000.00), with contractual liability sufficient to cover the Grantee's obligations pursuant to Section 9 of this Agreement. The Grantee shall name the Grantor as an additional insured on the Grantee's insurance policy. A copy of the certificate of insurance shall be provided to the Grantor upon the execution of this Agreement, and thereafter, annually upon the anniversary date of the execution of this Agreement.

11. Notices. All notices under this Agreement shall be in writing and sent prepaid by (i) certified mail, return receipt requested, (ii) overnight courier of national or regional recognition (such as UPS or Federal Express) or (iii) personal delivery or courier. The written notice shall to the extent practicable cite to the applicable term of the Agreement and must in all cases be accompanied by a copy of the executed Agreement:

(a) If intended for the City of Wilmington (the Grantor):

City of Wilmington Law Department
800 N. French Street, Ninth Floor
Wilmington, DE 19801
Attn: City Solicitor

(b) If intended for the Freire Charter School Wilmington, Inc. (the Grantee):

Freire Charter School Wilmington
201 W. 14th Street
Wilmington, DE 19801
Attn: Corporate Secretary

12. Miscellaneous.

(a) If any provision of this Agreement, or the application thereof to any person or circumstances, is or shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other persons or circumstances, shall not be affected thereby.

(b) The paragraph headings in this Agreement are for convenience only, and do not define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

(c) This Agreement shall be binding upon the parties and their successors and assigns in title and inure to the benefit of the parties and their employees, successors, assigns, independent contractors, and agents and its terms shall run with the land.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. All disputes in connection with this Agreement shall be resolved by a court of competent jurisdiction located New Castle County, Delaware.

(e) The Grantee shall abide by all laws and regulations whatsoever in effect which govern the construction, installation, maintenance, repair, replacement, and removal of the exit, walkway, New Fence, and Trees. In the event the Grantee fails to comply with any such law or regulation, the City shall be afforded all rights and remedies available at law, including, but not limited to, the right to cure any unlawful condition at the expense of the Grantee, and, in its discretion, to terminate this Agreement and the Walkway Easement and Temporary Construction Easement it grants.

(f) This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

(g) This Agreement may not be modified, changed, or supplemented, nor may any of the obligations and rights be waived, except by written instrument signed by both parties to this Agreement.

(h) This Agreement may be executed in one or more counterparts, and all counterpart-signed documents shall be deemed to be an original and one (1) instrument.

(i) This Agreement shall be recorded in the office of the Recorder of Deeds for New Castle County, Delaware.

[signature page follows]

IN WITNESS WHEREOF, the parties executed this Agreement under seal on the date first above written.

CITY OF WILMINGTON

Witness

By: _____(SEAL)

Name: Tanya Washington

Title: Chief of Staff, Mayor's Office

[CORPORATE SEAL]

State of Delaware)
) ss.
County of New Castle)

On this _____ day of _____, 2023, there did appear before me, a Notary Public for the State and County aforesaid, Tanya Washington, the Chief of Staff of the Mayor's Office of the City of Wilmington, who did execute the foregoing Walkway and Temporary Construction Easement Agreement on behalf of the City of Wilmington.

Notary Public

[signatures continue on next page]

**FREIRE CHARTER SCHOOL WILMINGTON,
INC.**

Witness

By: _____(SEAL)
Name:
Title:

[CORPORATE SEAL]

State of Delaware)
) ss.
County of New Castle)

On this _____ day of _____, 2023, there did appear before me,
a Notary Public for the State and County aforesaid, _____, the
_____, who did execute the foregoing Walkway
and Temporary Construction Easement Agreement on behalf of Freire Charter School
Wilmington, Inc.

Notary Public

EXHIBIT A

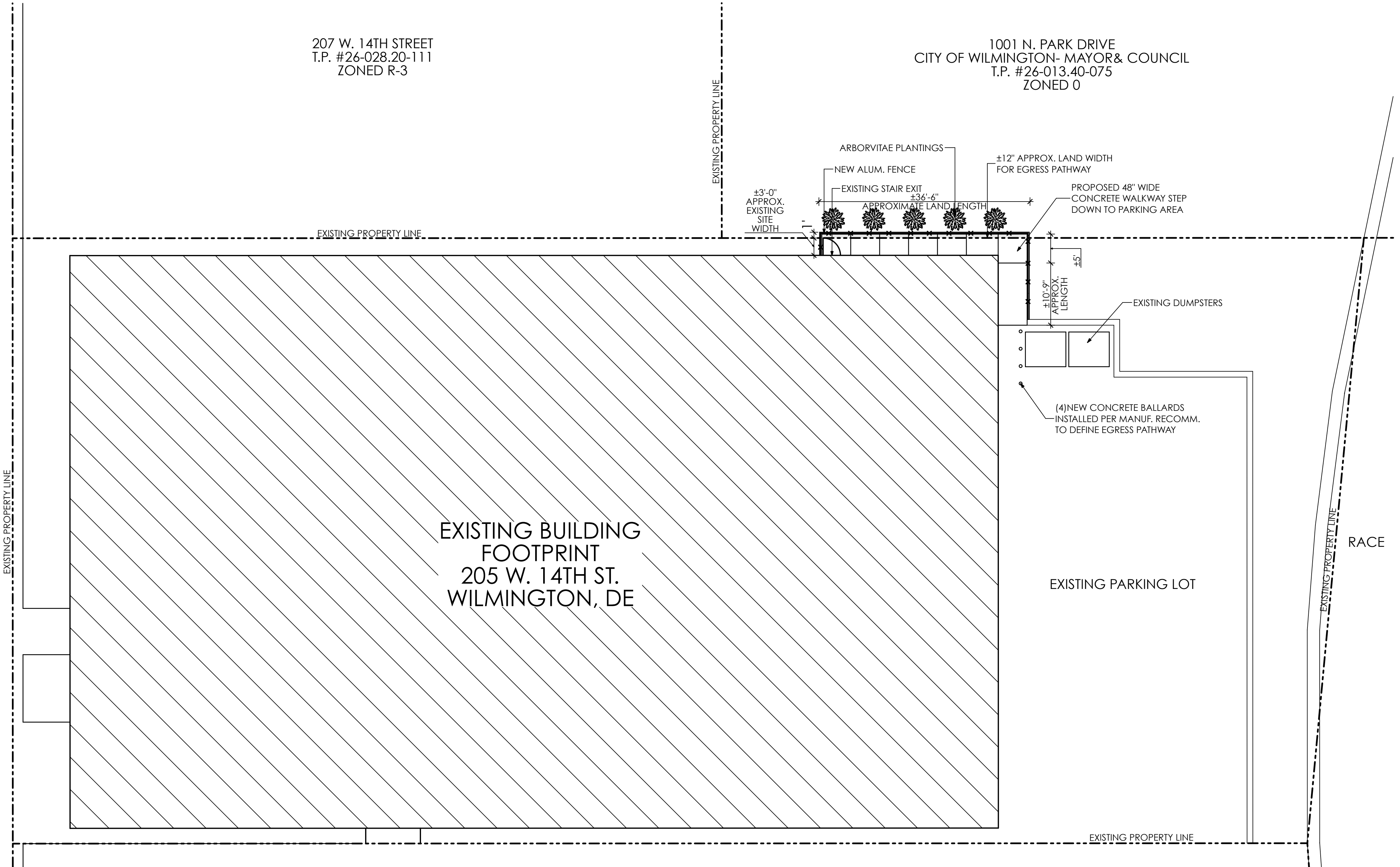
[Depiction of Easements]

207 W. 14TH STREET
T.P. #26-028.20-111
ZONED R-3

1001 N. PARK DRIVE
CITY OF WILMINGTON- MAYOR & COUNCIL
T.P. #26-013.40-075
ZONED 0

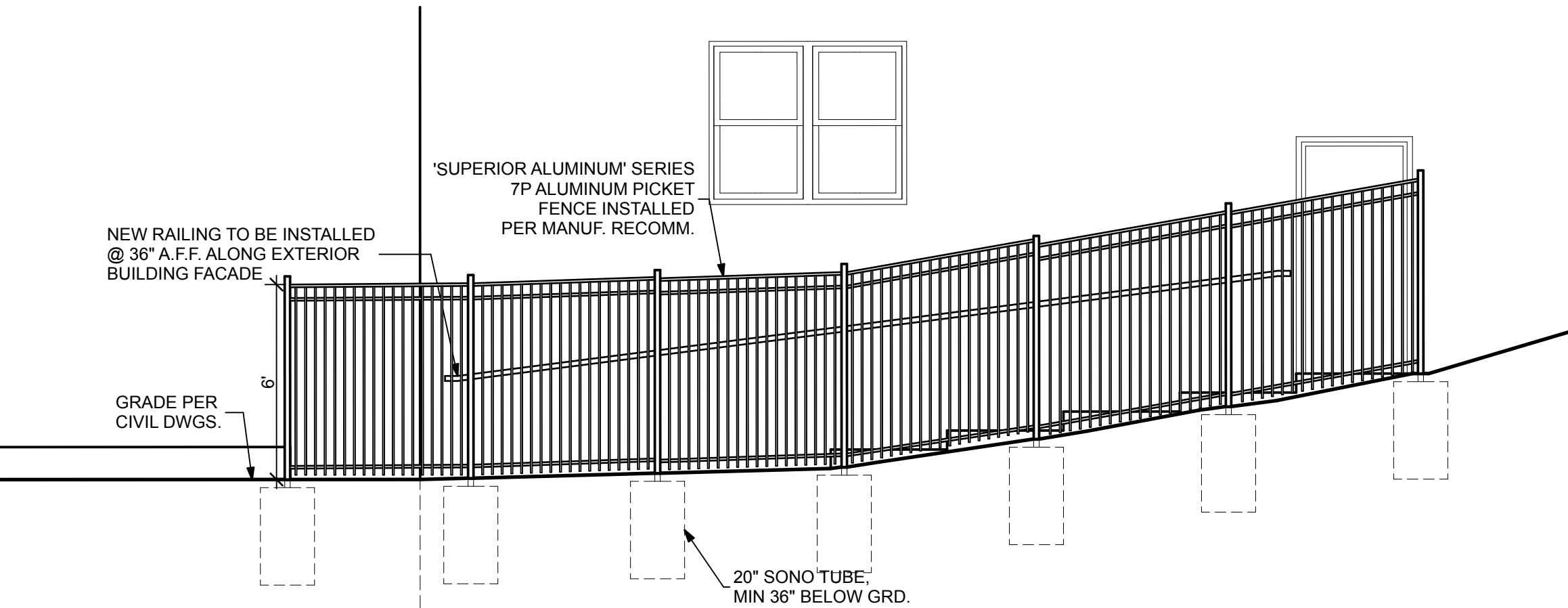
FOURTEENTH STREET

RACE



1
EASEMENT PLAN

SCALE: 3/32" = 1'-0"



2
FENCE ELEVATION

SCALE: 1/4" = 1'-0"

SEAL

SEAL DATE- 03.28.23
REGISTRATION EXPIRES- 1/31/24

The professional services of the architect are undertaken for and are performed in the interest of the Freire Charter School Wilmington. No contractual obligation is assumed by the architect for the benefit of any other person involved in the project.



ARCHITECTURE • PLANNING
INTERIOR DESIGN • GRAPHIC ARTS

1309 VEALE ROAD
SUITE 22
WILMINGTON, DE 19810
302.478.3777

256 EAGLEVIEW BLVD
SUITE 194
EXTON, PA 19341

PROJECT NAME

FRIERE CHARTER SCHOOL WILMINGTON

201/205 W 14TH ST
WILMINGTON DE

NEW CASTLE COUNTY, DE

DRAWING NAME

EASEMENT PLAN & DETAIL

ISSUED FOR PERMIT 03.28.23

MARK	DATE	DESCRIPTION

REVISIONS

PROJECT NO: 2022-094

DRAWN BY: RLR

CHK'D BY: KWW

DATE: 05.18.23

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DRAWING NUMBER

A10.2

SHEET 37 OF 34