

**STORM WATER FACILITIES OPERATIONS AND
MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, a _____ with principal offices located at _____ (hereinafter individually and/or collectively referred to as the “Developer”)

A N D

TOWN OF MCCANDLESS, a Pennsylvania municipal corporation, which is a Home Rule Community, with principal offices located at 9955 Grubbs Road, Wexford, PA 15090 (hereinafter the “Town”).

W I T N E S S E T H:

WHEREAS, on _____, the Developer submitted to the Town an Application for the development of _____ in the Town of McCandless, Allegheny County, Pennsylvania, on real estate identified by the Allegheny County Department of Real Estate as Block and Lot _____ (“the Development” or “the Property”); and

WHEREAS, the Town of McCandless has ordained and enacted Ordinance 1528 dated September 26, 2022 and amendments thereto; and

WHEREAS, Section 913.19 of Ordinance 1528 requires the execution of a Storm Water Management Agreement prior to final approval of the _____ Stormwater Management Plan; and

WHEREAS, the Town and Developer agree that the public health, safety and

welfare of the residents of the Town require that on-site storm water facilities (“Facilities”) be constructed, inspected, operated, maintained, repaired, eliminated and/or replaced on the Property by the Developer; and

WHEREAS, the Town requires, through the implementation of the Storm Water Management Plan and the Town Storm Water Management Ordinance, and the Developer agrees that the public health, safety and welfare of the Town residents requires that on-site storm water management Facilities be constructed and adequately inspected, operated, maintained, repaired, eliminated and/or replaced by the Developer and its successor in interest and assigns; and

WHEREAS, the Town and Developer desire to set forth this Agreement between them with respect to the construction, inspection, operation, maintenance, repair, elimination, replacement and monitoring of the aforesaid Facilities so as to ensure the public health, coordinated and practical community development, convenience and general welfare of the residents of the Town.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto do agree as follows:

1. The Facilities included as part of the Storm Water Management Plan shall be constructed, operated and maintained by Developer, or its successors and assigns, or its agent or representative, upon the Property in accordance with the terms, conditions and specifications identified in the _____ Development Plan consisting of _____ sheets with a latest revision date of _____ which are sealed by _____, a licensed Pennsylvania professional engineer

(License Number _____). A copy of the Plan is attached hereto as Exhibit “A-1” and is incorporated herein by reference as if fully set forth herein.

2. Developer shall have tendered a cashier’s check or cash in the amount of One Thousand and 00/100 Dollars (\$1,000.00) to cover the estimated legal expenses and preparation of this Agreement.
3. The Developer, for itself, its successors and assigns, agrees that it shall maintain all Facilities in accordance with the approved inspection, operation, maintenance, repair, elimination and replacement schedule for the Facilities, including sediment removal, and any amendments thereto, and the Stormwater Management Ordinance(s) and Plan(s), and any amendments thereto. Developer for itself, its successors and assigns further covenants and agrees to inspect, maintain, repair and replace the Facilities in a safe, attractive and good working condition which is acceptable to the Town, or its designee, to assure that the Facilities perform according to their designed functions. In addition, all equipment and materials shall be chosen to minimize long-term maintenance requirements. Developer also agrees to the following:
 - a. Developer is required to inspect the Facilities per the approved operation and maintenance plan;
 - b. Copies of all inspection reports as herein provided shall be provided to the Town every two years, and may be requested from time to time;
 - c. Developer must report any malfunctions or defects in the Facilities to the Town in writing immediately upon completion of the aforesaid inspections. Maintenance, repairs, eliminations and/or replacements must be completed immediately by

Developer, unless additional time is granted in writing by the Town or its designee;
and

- d. Developer agrees to place into a replenishing escrow account, for the sole benefit of the Town, as Escrow Agent and escrowee, an initial sum of not less than Five Thousand Dollars (\$5,000.00) to secure the inspection, operation, maintenance, repair, reconstruction, elimination and/or replacement of any component, part, or all of the Facilities during the term of this Agreement. Receipt of the amount shall be acknowledged by the Town when so deposited.

Developer agrees that the Storm Water Operations and Maintenance Escrow Amount shall be used to reimburse the Town for any and all expenses, fees and charges incurred by the Town for the inspection, operation, maintenance, repair, reconstruction, elimination and/or replacement of any component, part, or all of the Facilities and/or the costs and/or expenses, for the administration and the enforcement of this Agreement.

The balance of the Storm Water Operations and Maintenance Escrow Account shall at no time be in an amount of less than Five Thousand and 00/100 Dollars (\$5,000.00) ("Minimum Balance"). In the event that the balance of the Storm Water Operations and Maintenance Escrow Account falls below the Minimum Balance, the Developer, within seven (7) business days, shall add to the current balance and the original escrow account. At its sole discretion, the Town shall review the Storm Water Operations and Maintenance Escrow Account on a periodic basis and may require reasonable increases in the Minimum Balance by

the Developer, after taking into account all relevant factors, including inflation, estimated inspection, maintenance, repair, reconstruction, elimination and replacement of any component, part or all of the Facilities.

4. The Developer, for itself, its successors and assigns, hereby grants the Town a non-exclusive right, which grants the right and permission to the Town and its authorized agents, representatives and employees to enter upon the Property and investigate and inspect the Facilities whenever the Town may deem necessary. In the event of an emergency or other occurrence of special or unusual circumstances or situations, the Town may enter the Property, without notification or identification, even if the Developer is or is not immediately available, to inspect and perform necessary maintenance and repairs, if needed, when the public health, safety or welfare of the residents of the Town are in jeopardy.

The Developer, if required, shall convey to the Town easements and/or rights-of-way to the Property to ensure access for periodic inspection by the Town and for maintenance.

Town inspections may include, but are not limited to, the entire facilities, berms, outlet structures, pond areas, and access roads, if any, to ensure the safe and proper functioning of the Facilities. Developer shall be entitled to a copy of the Town's inspection reports with findings and evaluations upon request.

5. Any and all costs, fees and/or expenses of Town inspections shall be the responsibility of Developer.
6. The Developer shall keep on file with the Town the name, address and telephone number

of the person or company responsible for the maintenance activities for the Facilities. In the event of a change in responsibility, any new contact information will be submitted to the Town within ten (10) days of the change.

7. In the event that the Town's or Developer's inspection report(s) indicate that maintenance, repair, elimination and/or replacement is needed of any component, part or all of the Facilities, and/or any other action is needed in order to bring the Facilities in compliance with the Town Ordinances, other local, state or federal law, except for in the case of an emergency, the Town shall send written Notice by first class mail to the Developer to correct the problem(s). The Developer shall bring the Facilities into compliance with the terms of this Agreement within a thirty (30) day period after the date of the Notice of necessary maintenance, repairs, elimination, replacement and/or other action to the Facilities issued by the Town. Any Notice required by the terms of this Agreement shall be sufficient if sent to Developer's last known address by first class mail. Developer authorizes the Town to enter onto the Property to verify that all maintenance, repairs, elimination, replacement or other action on the Facilities have been completed.
8. In the event Developer fails or refuses to conduct or perform the maintenance, repairs, elimination and/or replacement required by the Town, Developer authorizes the Town, or its authorized agents or contractors, the right to enter upon the Property under the Town's non-exclusive perpetual right and to perform any maintenance, repairs, elimination, replacement or other action it may deem necessary to maintain said Facilities.

It is expressly understood and agreed that the Town is under no obligation to maintain, repair, eliminate and/or replace such Facilities, and in no event shall this

Agreement be construed to impose any such obligations and/or liability on the Town.

9. In the event the Town performs work of any nature, or expends any funds in performance of said maintenance, repairs, elimination, replacement and/or other action for labor, use of equipment, supplies, materials and the like on account of the Developer's, or its successors- or assigns-in-interest's, failure to perform such maintenance, repairs, elimination, replacement and/or other action the Developer shall reimburse the Town, upon demand, within thirty (30) days of receipt of the invoice thereof. The Town's invoice shall include all costs and expenses for such maintenance, repair, elimination, replacement and/or other action performed by the Town, including any related reasonable consultation expenses with engineers, architects, professionals and attorneys ("professional fees"). If the invoices issued by the Town to Developer or its successor-in-interest are not paid in full within the said thirty (30) day period, the Town may enter a lien against the Property in the amount billed in such invoices plus costs, expenses, professional fees, and interest, or the Town may proceed to recover the costs of maintenance, repairs, elimination, replacement and/or other action expenses, professional fees, interest and penalties through proceedings in equity or at law, as authorized under the provisions of the Municipal Claim and Tax Lien Law, 53 P.S. Sec. 7101 *et seq.*
10. It is expressly understood and agreed that this Agreement shall be recorded in the Department of Real Estate in and for Allegheny County, Pennsylvania, and that this Agreement shall be binding upon Developer, its successors and assigns, including Developer's successor-in-title to the aforesaid Property, it being the express understanding of the parties that any and all duties and obligations of Developer with respect to the repair,

maintenance, elimination, replacement and/or other action of the Facilities set forth in this Agreement constitutes a covenant running with the Property and/or equitable servitude, and shall remain the obligation of the Developer, its successors and assigns, and successors-in-title, in perpetuity.

11. The Developer shall reimburse the Town for the cost of recording this Agreement, and the cost of recording any instruments required under the provisions of any Ordinance(s) and/or Code of the Town, as amended.
12. It is expressly understood and agreed that nothing contained herein shall be construed to waive or alter any requirements or any other Ordinance(s) and/or Code of the Town, and nothing contained herein empowers any Town Officer or employee to waive any requirement of such Ordinance(s). It is expressly understood and agreed that construction and/or installation of the Facilities upon the Property does not constitute approval for any development of the Property by the Town.
13. Developer does hereby agree to indemnify, protect, defend and hold harmless the Town and/or its officials, officers, employees, agents, representatives or contractors of and from all kinds and manner of actions, suits, demands, liens, judgments, liability of every kind and nature, claims, costs (including attorney's fees), expenses, liability and damages whatsoever, in law or in equity, arising from any injury to persons or properties or other damages arising out of and/or relating to the design, construction, use, maintenance, repair, elimination or replacement of the Facilities on this Property, maintenance of the bonds required under this Agreement and/or the Plan, or acts of the Developer's engineers, architects, or contractors and/or their employees (including, but not limited to, worker's

compensation indemnity). This paragraph shall apply against the Developer and its successors and assigns in interest. In the event Developer fails to undertake the defense of the Town, or the Town elects to defend itself, or the Town is required to enter upon its own defense, Developer shall reimburse the Town for any expenses it may occur, including legal fees, engineering fees, investigative expenses, and other expert witness fees, and shall pay any judgment rendered against the Town as a result of such suit, as well as in defending and/or obtaining compliance with the provisions of this Agreement and/or the Plan. In the event the Developer or its successors or assigns shall fail to pay the costs, legal fees, other expenses or damages as herein provided and the Town is required to pay the same, the Town shall have the right to recover said funds it has expended by either a civil action against the Developer, or its successors and/or assigns, or by causing a municipal lien or judgment to be recorded on the Property in an amount equal to the sums required to be expended, costs, professional fees and interest.

14. The person(s) designated as Developer hereby warrants to the Town that they have disclosed all person(s) who have titled interest to the Property that is the subject to this Agreement. The Developer also warrants that the person(s) executing this document are all persons who have interest to the Property referred to in the “WHEREAS” clauses of this Agreement.
15. Developer agrees at its expense shall furnish the Town a complete set of “As-Built Plans,” and As-Built information in electronic format as set forth in the Stormwater Management Ordinance, of the Facilities. The As-Built Plans shall be sealed by a registered professional surveyor or engineer and a note shall be contained on the plan stating that the Facilities

have been constructed within the recorded easements in accordance with the requirements of all Town ordinances including, but not limited to the Stormwater Management Ordinance.

16. The Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. This Agreement may not be assigned by the Developer without the express written approval and consent of the Town.
17. This Agreement contains all of the agreements of the parties regarding the matters herein treated and there are no collateral, prior, or other agreements between the parties. Any subsequent changes or amendments hereto shall be effective only if reduced to writing and signed by the parties hereto.
18. It is further agreed that the Town shall not be responsible for any defects in design, construction, installation, operation, maintenance or reconstruction of said Facilities, nor shall the Town be responsible for any damages that may accrue by reason of defective design, construction, installation, operation, maintenance, repair, elimination, replacement and/or other action at said Facilities. The sole responsibility for the design, construction, installation, operation, maintenance, repair, elimination, replacement and/or other action on said Facilities shall be assumed by the Developer, the engineer, and contractor for the Developer.
19. Nothing contained in the Agreement constitutes a waiver of the Town's immunity under any applicable law.
20. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect

the validity of any other part, term or provision and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

21. There is no prohibition on the right of the Town to assign its rights under this Agreement. The Town will release the Developer's Escrow if it accepts new escrow from any Developer who obtains the property. However, no such act of the Town will constitute a release of the original Developer from its liability under this Agreement in the event that the Town conditions its acceptance on retaining the Developer as a liable party.
22. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is sent via the United States Postal Service, first class mail, and addressed as follows:

If to Developer:

If to Town:

Town of McCandless
ATTENTION: Town Manager
9955 Grubbs Road
Wexford, PA 15090

or such other address as the parties shall establish by notice to the other.

23. The parties to the Agreement may amend or modify this Agreement only by written instrument executed on behalf of the Town after approval from the Town Council in accordance with the law.
24. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and the parties may become a party hereto by executing a counterpart

hereof. This Agreement and any counterpart so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterparts hereof to produce or account for any of the other counterparts.

25. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania applicable to agreements made and to be performed entirely within such Commonwealth.

This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the Commonwealth of Pennsylvania regardless of: (a) where this Agreement is executed or delivered; (b) where any payment or other performance required by this Agreement is made or required to be made; (c) where any breach of any provision of this Agreement occurs or any cause of action otherwise accrues; (d) whether any action or other proceeding is instituted or pending; (e) the nationality, citizenship, domicile, principal place of business or jurisdiction of organization, or domestication of any party; (f) whether the laws of the forum jurisdiction otherwise would apply the laws of a jurisdiction other than the Commonwealth of Pennsylvania; or (g) any combination of the foregoing.

The parties hereto hereby irrevocably consent: (a) to the jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania, and agree that venue in such court is proper in connection with any action or proceeding arising out of or relating to this Agreement or any document or instrument delivered pursuant to this Agreement; and (b) to the service of process by certified mail, return receipt requested.

Notary Public

TOWN ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

On this, the _____ day of _____, 20____, before me, a Notary Public,
the undersigned officer, personally appeared _____, who acknowledged him-
or herself to be the _____ of the TOWN OF MCCANDLESS, a
Pennsylvania municipal corporation, and that he or her as such _____, being
duly authorized to do so, executed the foregoing STORMWATER FACILITIES OPERATIONS
AND MAINTENANCE AGREEMENT for the purposes therein contained by signing the name
of the municipal corporation by him- or herself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public