

## STORMWATER FACILITIES OPERATIONS AND MAINTENANCE AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, owner(s) of \_\_\_\_\_ (hereinafter individually and/or collectively referred to as the “Landowner”)

### **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 Landowner 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 Stormwater Management Agreement prior to final approval of the \_\_\_\_\_ Stormwater Management Plan; and

**WHEREAS**, the Town and Landowner agree that the public health, safety and welfare of the residents of the Town require that on-site stormwater facilities (“Facilities”) be constructed, inspected, operated, maintained, repaired, eliminated and/or replaced on the Property by the Landowner; and

**WHEREAS**, the Town requires, through the implementation of the Stormwater Management Plan and the Town Stormwater Management Ordinance, and the Landowner agrees that the public health, safety and welfare of the Town residents requires that on-site stormwater management Facilities be constructed and adequately inspected, operated, maintained, repaired, eliminated and/or replaced by the Landowner and their successors in interest and assigns; and

**WHEREAS**, the Town and Landowner 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 Stormwater Management Plan shall be constructed, operated and maintained by the Landowner, or their successors and assigns, upon the Property in accordance with the terms, conditions, and specifications identified in the approved Stormwater Management Plan with a latest revision date of \_\_\_\_\_ which is 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. The Landowner, for themselves, their successors or assigns, shall operate and maintain the Facilities as shown on the Plan in a safe, attractive and good working condition which is acceptable to the Town, or its designee, in accordance with the specific operation and maintenance requirements noted on the approved Stormwater Operations & Maintenance ("O&M") Plan. The Landowner also agrees to the following:
  - a. Landowner is required to inspect the Facilities per the approved O&M Plan;
  - b. Copies of all inspection reports shall be provided to the Town every two years, and may be requested from time to time;
  - c. Landowner 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 Landowner, unless additional time is granted in writing by the Town or its designee; and
  - d. Landowner 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 [\$1,500 base fee + \$500 per additional Facility] 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.

Landowner agrees that the Stormwater Operations and Maintenance Escrow Account 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 expenses for the administration and enforcement of this Agreement.

The balance of the Stormwater Operations and Maintenance Escrow Account shall at no time be in an amount of less than [ \$1,500 base fee + \$500 per additional Facility] (“Minimum balance”). In the event that the balance of the Stormwater Operations and Maintenance Escrow Account falls below the Minimum Balance, the Landowner, within seven (7) business days, shall add to the current balance and the original escrow account.

3. The Landowner, for themselves, their 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 Landowner 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.
4. Any and all costs, fees and/or expenses of Town inspections shall be the responsibility of the Landowner.

5. In the event the Landowner fails or refuses to conduct or perform the maintenance, repairs, elimination and/or replacement required by the Town, Landowner 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.
6. In the event the Town, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, Landowner shall reimburse the Town for all expenses (direct and indirect) incurred within thirty (30) days of receipt of invoice from the Town. If the invoices issued by the Town to Landowner 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.*
7. 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.

8. The intent and purpose of this Agreement is to ensure the proper maintenance of the Facilities by the Landowner; provided, however, that this Agreement shall not be deemed to create any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
9. The Landowner, for themselves, their successors and assigns, shall release the Town from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the Facilities by the Landowner or Town.
10. 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 Landowner, the engineer, and contractor for the Landowner.
11. Nothing contained in the Agreement constitutes a waiver of the Town's immunity under any applicable law.
12. There is no prohibition on the right of the Town to assign its rights under this Agreement. The Town will release the Landowner's Escrow if it accepts new escrow from any Landowner who obtains the property. However, no such act of the Town will constitute a

release of the original Landowner from its liability under this Agreement in the event that the Town conditions its acceptance on retaining the Landowner as a liable party.

13. 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 Landowner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

14. 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.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the parties hereto have executed this Agreement the day and year first above written.

**ATTEST:**

**LANDOWNER:**

Print name: \_\_\_\_\_

By: \_\_\_\_\_

**ATTEST:**

# **TOWN OF McCANDLESS**

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Town Manager

By: \_\_\_\_\_  
\_\_\_\_\_, President of Council

## **LANDOWNER ACKNOWLEDGMENT**

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
COUNTY OF ALLEGHENY )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, the undersigned officer, personally appeared \_\_\_\_\_ from the \_\_\_\_\_, who acknowledged him- or herself as the \_\_\_\_\_ for this project and, 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 \_\_\_\_\_ by him- or herself.

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

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## 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.

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## Notary Public