

SEWER DEVELOPMENT AGREEMENT
FOR ENCLAVE AT DEER CROSSING

THIS SEWER DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of this _____ day of _____, 2023 (the “Effective Date”) by and between Henderson Investments LLC, (hereinafter referred to as “Grantee”), and the Town of McCordsville, Indiana, an Indiana municipal Corporation, by and through its Town Council (hereinafter referred to as “the Town”).

WITNESSETH

WHEREAS, Grantee and the Town wish to enter into an agreement regarding the development of sanitary sewers on Grantee’s property, more particularly described as Section 1 on **Exhibit A** attached hereto and incorporated by reference herein (hereinafter “the Development”), which facilities shall collect and transport wastewater and effluent to the Town’s Wastewater Treatment Plant (herein referred to as “Plant”); and

WHEREAS, The Town wishes to acquire and Grantee wishes to dedicate appropriate easements for municipal purposes (the “Utility Easements”) to allow the Town to service the Development with sanitary sewer service.

NOW, THEREFORE, the parties agree as follows:

1. Compliance with Local Rules

Grantee agrees in all respects to comply with the Town’s Master Sewer Plan, Sewer Rate Ordinance, Sewer Use Ordinance, and the McCordsville Zoning Code adopted January 11, 2011 and any and all amendments or supplements thereto, and the McCordsville Stormwater Management Ordinance, and any and all relevant Town Ordinances and state statutes unless otherwise agreed to herein or as otherwise approved by the Town.

2. Wastewater Facilities and Easements

Grantee shall design and prepare cost estimates for the construction and installation of facilities sufficient to collect all wastewater and effluent generated on or within the Development in addition to any force mains, gravity interceptor lines or other facilities necessary to transport said wastewater and effluent to the Town’s regional collection system at a point designated by the Town’s engineer and all necessary infrastructure to provide adequate connection to said system by adjoining property owners. All of the aforementioned infrastructure shall be collectively referred to as “the Facilities.” The Facilities shall be utilized to deliver wastewater, liquid waste, sewage, and other effluent from Grantee’s property and to the Plant by way of the regional collection system. The Town of McCordsville shall be responsible for obtaining all easements or rights-of-way necessary to install the Facilities set forth above, except for the portion of the Facilities located on the subject Development owned by Grantee, and to connect said Facilities to the Plant. The costs of said easements or rights-of-way shall be reimbursed to the Town by Grantee. In addition, Grantee agrees to grant, at no cost to the Town, all necessary easements

or rights-of-way as determined by the Town's engineer that are necessary to provide for extension of the Town's regional wastewater collection system to adjoining properties and/or sewage collection basins.

3. Oversizing Reimbursement – N/A

4. Sewer Availability

In exchange for the Town's allocation of sufficient treatment to serve the estimated amount of 22 EDU's for the Development, the Grantee shall be required to pay to the Town the Utility Access Fees as set forth in the Town's Sewer Rate Ordinance. At the time of signing a recorded plat or detailed unit development plan, Grantee shall be required to pay to the Town the first installment of the Utility Access Fee amounting to One Thousand Four Hundred Dollars (\$1,400.00). At the time of issuance of the sewer connection permit, the Grantee shall pay to the Town the second installment of the Utility Access Fee in the amount of Three Thousand One Hundred Dollars (\$3,100.00).

5. Engineering Review

The design, construction, and specification of material and equipment to be used in all the Facilities installed by Grantee shall be subject to approval and construction observation by the Town's designated and qualified agent and/or consulting engineer whose decision shall be final as to any question arising regarding the same. Grantee shall contract directly with the Town's consulting engineer to review the plans for the design of said Facilities whose approval of the design, location, and specification for all materials and equipment shall be required prior to the commencement of construction and which will be in substantial compliance as to location as set forth on **Exhibit A** attached hereto and incorporated by reference herein. The decision of the Town's consulting engineer shall be final as to any question arising regarding the design, construction, or specification of material and equipment to be used in the construction of said Facilities. The cost for review of the design, construction, and specification of material and equipment to be used in the construction of the Facilities shall be in accordance with the schedule of charges for such review and construction observation fees as posted on the McCordsville website (www.mccordsville.org) at the time of each submitted section. Grantee shall be responsible for any such design review and/or construction observation fees or any other cost in connection with such inspection and approvals.

6. Dedication

Upon the completion of construction and installation of the Facilities, Grantee shall dedicate all of said Facilities and all easements and rights-of-way necessary to service and maintain said Facilities, without restriction, to the Town.

7. Bonds

Prior to dedication of said Facilities and deeding the title in fee simple or other transfer of all rights-of-way and easements rights required to service and maintain

said Facilities, Grantee shall place on file with the Clerk-Treasurer of the Town all bonds and/or other documents in amounts deemed acceptable to the Town pursuant to the McCordsville Subdivision Control Ordinance. Upon acceptance of the dedication of the said Facilities and the completion of all requirements herein by Grantee, the Town agrees to commence immediately to maintain and operate the sewer collection and treatment Facilities, subject to the invocation of the provisions of the Maintenance Bond.

8. Arbitration

The parties agree that should a disagreement regarding the terms and provisions of this Agreement arise and the parties are unable by negotiation to resolve said dispute, the parties shall submit the dispute to binding arbitration with each party to select an arbitrator of their choice and the two (2) selected arbitrators to select a third arbitrator with the cost of arbitration to be paid equally by the parties.

9. Assignment

The parties further agree that should Grantee desire to assign its rights, duties, and obligations under this Agreement, at any time within ten (10) years of the date of execution of this Agreement, said assignment may only be accomplished after receipt of the Town's written consent, which said consent shall not be unreasonably withheld or delayed. If Grantee, at any time, after the execution of this Agreement shall assign its rights, duties and obligations herein, Grantee shall notify the Town in writing ten (10) days prior to such assignment, the name, address, phone number and contact person of the assignee.

10. Binding

The terms of this Agreement shall be binding on and shall insure to the benefit of each party's heirs, executors, personal representatives, successors, assigns, parent companies, subsidiaries, lessees or other authorized person or entity acting on either party's behalf.

11. Breach

In the event of any breach of this Agreement by any party hereto, the non-breaching party shall be entitled to pursue all remedies available to it at law or in equity including enforcing this Agreement by specific performance.

12. Notices

Any notices, requests, demands, consents or other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered on the second day after such notice is deposited in a receptacle of the United States mail, registered or certified, first class postage prepaid, return receipt requested, address as follows:

To Grantee:

Henderson Investments LLC

11691 Fall Creek Rd. Suite 210
Indianapolis, IN 46256

To Town: Town of McCordsville
6280 W. 800 N.
McCordsville, IN 46055

13. Execution

Each person executing this Agreement on behalf of Grantee shall supply contemporaneously with the execution of this document all necessary documents and records indicating authority to enter into this Agreement and to bind Grantee to the terms thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date.

Henderson Investments LLC

Town of McCordsville, Indiana

By: Richard Henderson
Title: President

By: Gregory J. Brewer
Town Council President