

**RESOLUTION NO. 2018-208**

**RESOLUTION OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF A STORM WATER PIPE MAINTENANCE AGREEMENT**

**WHEREAS**, AZ Tuckerton, LLC is the owner of property located at Block 276, Lot 12 in the Township of Little Egg Harbor; and

**WHEREAS**, the AZ Tuckerton required an Access Permit from the NJDOT for direct access to and from the site from Route 9 and required the installation of approximately 305 linear feet of storm water pipe to be installed within the right of way of Route 9; and

**WHEREAS**, as a condition of the Access Permit, the NJDOT required the Township to assume all maintenance obligations for the 305 linear feet of the storm water pipe but permits the Township to assign the maintenance obligations to another entity; and

**WHEREAS**, the Township desires to assign the sole and exclusive obligation for maintenance of the storm water pipe to AZ Tuckerton, LLC; and

**WHEREAS** the Township Committee desires to authorize the execution of the Storm Water Pipe Maintenance Agreement, attached hereto as Schedule A, under which the Township assigns to AZ Tuckerton the sole and exclusive obligation to maintain the Storm Water Pipe at the cost and expense of the Developer, the Agreement also requires the Developer to defend and hold harmless the Township of Little Egg Harbor from any loss, cost or expense arising from the maintenance of the storm water Pipe.

**NOW, THEREFORE, BE IT RESOLVED**, that the Township Committee of the Township of Little Egg Harbor, County of Ocean, State of New Jersey as follows:

1. That the Mayor is hereby authorized to execute, and the Township Clerk to attest, to the Storm Water Pipe Maintenance Agreement with AZ Tuckerton, LLC which is attached hereto and incorporated herein as Schedule A.

2. That a certified copy of this resolution shall be forwarded to AZ Tuckerton, LLC and the New Jersey Department of Transportation.

Motion to Approve: *Crea*      Second: *Stevens*      Roll Call:

Crea	<u>yes</u>
Gormley	<u>yes</u>
Kehm	<u>yes</u>
Schlick	<u>yes</u>
Stevens	<u>yes</u>

**CERTIFICATION**

I, **DIANA K. MCCRACKEN, RMC**, Municipal Clerk of the Township of Little Egg Harbor, do hereby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the 13<sup>th</sup> day of **September, 2018**.

*Diana K McCracken, RMC*  
**DIANA K. MCCRACKEN, RMC**, Clerk  
Township of Little Egg Harbor

## STORM WATER PIPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between AZ TUCKERTON, LLC, a New Jersey Limited Liability Company, having an address of 20 South Olive Street, Suite 203, Media, Pennsylvania 19063 (the "Developer") and the TOWNSHIP OF LITTLE EGG HARBOR, a municipal corporation of the State of New Jersey, with principal offices at 665 Radio Road, Little Egg Harbor, New Jersey 08087 (the "Township").

### BACKGROUND

A. Developer is the owner of an approximately 26,500 square foot tract of real estate located in Little Egg Harbor Township, New Jersey, situated generally along N.J. State Highway Route 9 near Mile Post 61.85 with an address of 409 NJ Route 9 South and being shown as Block 276, Lot 12 as shown on the Little Egg Harbor Township Tax Map (the "Property").

B. Developer made application for preliminary and final major site plan approval with certain variances and waivers which was granted by the Little Egg Harbor Township Planning Board following a hearing held before it on April 5, 2018 and memorialized by Resolution of Approval 2018-11 adopted May 3, 2018 ("Resolution") (hereinafter Little Egg Harbor Township Planning Board referred to as the "Board"). Said approval was granted in order to allow the Developer to construct, establish and maintain an approximate 6,000 square foot "AutoZone" retail store with accessory parking, landscaping, stormwater management facilities and other associated site improvements (the "Project").

C. Developer also made application to the New Jersey Department of Transportation for an access permit since the Project will have direct access to and from N.J. State Highway Route 9, which application is pending under Application #: A-8-C-14480-2018 (the "Access Permit").

C. As a condition of the Access Permit, the Township, or its designated assignee, is required to submit a letter to the New Jersey Department of Transportation assuming all maintenance responsibilities for approximately 305 linear feet of proposed 15" storm water pipe that will serve the Project and will be located within the N.J. State Highway Route 9 right-of-way (the "Stormwater Pipe").

D. The Stormwater Pipe will be located off-tract in the N.J. State Highway Route 9 right-of-way. Developer is voluntarily willing to assume all maintenance responsibilities from the Township for the Stormwater Pipe located within the N.J. State Highway Route 9 right-of-way as required under the terms of the Access Permit.

E. In order to memorialize the understanding between the parties that Developer will maintain the Stormwater Pipe within the N.J. State Highway Route 9 right-of-way as required under the Access Permit, Developer is willing to enter into this Agreement in favor of the Township.

NOW, THEREFORE, in consideration of recitals A through E, and other valuable consideration, and in further consideration of the mutual covenants as set forth below, the parties, intending to be legally bound, agree as follows:

1. **Incorporation of the Recitals.** Developer and Township each specifically approve and adopt as part of this Agreement, as if set forth at length herein, the above Recitals, A through E.

2. **Maintenance of Stormwater Pipe.**

2.1. Developer shall maintain the Stormwater Pipe within the N.J. State Highway Route 9 right-of-way in order to service the Project, as shown on the approved Grading & Utility Plan prepared by SR3 Engineers dated December 22, 2017 and revised through July 13, 2018 (one sheet), a reduced size copy of which is attached hereto as **Exhibit "A"**. Developer shall perform each and every task related to the maintenance of the Stormwater Pipe in accordance with the requirements of the New Jersey Department of Transportation and the Township. Performance of the requirements set forth by the New Jersey Department of Transportation and the Township shall be at the sole cost and expense of Developer. Developer shall also be solely responsible for oversight of any and all work, to ensure that the Stormwater Pipe functions and meet requirements as set forth by both the New Jersey Department of Transportation and the Township.

2.2. In the event any portion of the Stormwater Pipe requires maintenance or repair, that ~~shall be the sole and exclusive obligation of Developer at its sole cost and expense. This shall be a~~ continuing obligation as to Developer, its successor and assigns.

3. **Indemnification.** Developer hereby agrees to defend, indemnify and hold harmless the Township from any loss, cost or expense arising from, out of or in any way connected with the maintenance of the Stormwater Pipe in accordance with the requirements set forth by both the New Jersey Department of Transportation and the Township.

4. **Inspections.** The Township shall have the right, but not the obligation, from time to time, to perform inspections or otherwise review the condition and progress of the construction and/or maintenance of the Stormwater Pipe by Developer. All such inspections and reviews shall be for the sole use and benefit of the Township and are intended to provide information regarding compliance with its requirements and the Resolution.

5. **Miscellaneous.**

5.1. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

5.2. If any provision of this Agreement or the application thereof to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.3. The article headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement, and shall not be considered in construction or interpretation of this Agreement or any part thereof.

5.4. This Agreement shall be binding upon and shall inure to the benefit of Developer and the Township and all of their successors, assigns, successors-in-right, title and interest.

5.5. This Agreement and the exhibit attached hereto contain the entire Agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded



COMMONWEALTH OF PENNSYLVANIA:

: SS:

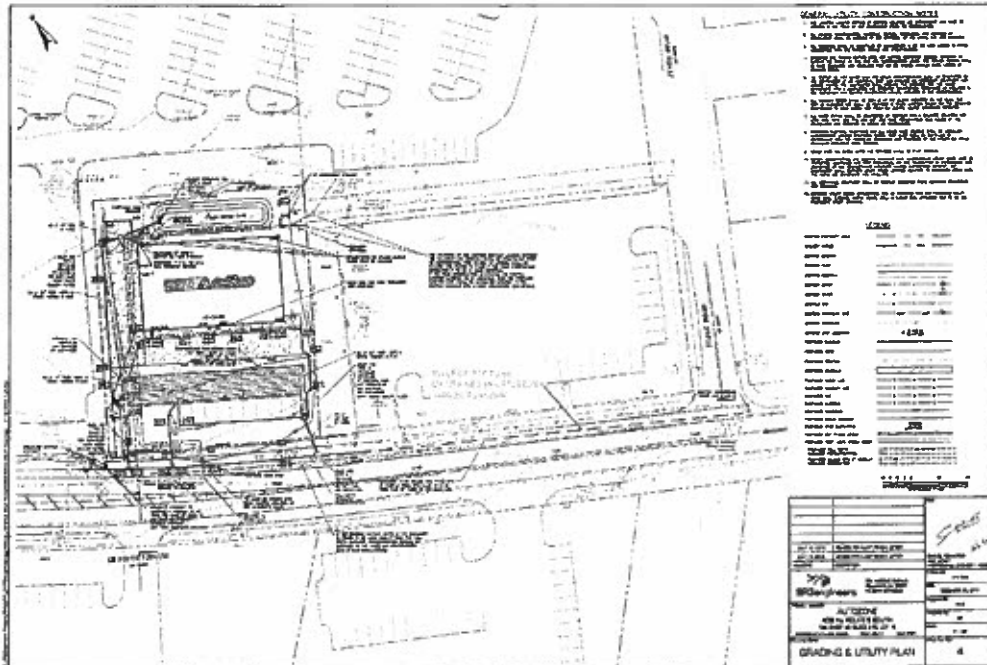
COUNTY OF \_\_\_\_\_ :

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the subscriber, a notary public, personally appeared Carl Wright who, I am satisfied, is the person who signed the within instrument as Authorized Member of AZ Tuckerton, LLC, the limited liability company named therein, and he thereupon acknowledged that the said instrument made by the said limited liability company, was signed and delivered by him as such Member and is the voluntary act and deed of the limited liability company, made by virtue of authority from its Members.

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NOTARY PUBLIC

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**Exhibit "A"**  
 Storm Water Pipe Maintenance Agreement  
 between A2 Yachamco, LLC ("Developer")  
 and Township of Little Egg Harbor ("Township")  
 Block 275, Lot 12  
 804 N. Route 7 South  
 Little Egg Harbor Township, New Jersey  
 Dated \_\_\_\_\_ 2018

August 21, 2018

Mr. Paul Menz  
New Jersey Department of Transportation  
Operations Permits Office  
1035 Parkway Avenue  
Trenton, NJ 08625-0600

RE: Minor Access Application – AZ Tuckerton, LLC  
409 NJ Route 9 South (MP: 61.85)  
Block 276, Lot 12  
Little Egg Harbor Township, Ocean County, NJ  
Applications No.: A-9-C-14480-2018

Dear Mr. Menz,

This letter is to confirm that the Township of Little Egg Harbor will be responsible for the maintenance of the 305 linear feet of 15" RCP proposed by the above reference project within the Right-of-Way of NJ Route 9 and delineated on the attached exhibit. Maintenance responsibilities include any work reasonably necessary to keep the noted pipe in good working order and condition (i.e. inspections, cleaning, repair of damage caused by regular wear and tear, etc.). The Township of Little Egg Harbor reserves the right to assign maintenance and repair responsibilities to another entity as they see fit (e.g. a Contractor who damages the pipe during an excavation, an entity that has generated runoff that fills or clogs the pipe, etc.).

Executed By:

Name	<i>Ray Gormley</i>
Title	<i>Mayor</i>
Contact Information (Address & Phone)	<i>665 Radio Rd. Little Egg Harbor, NJ. 08087</i>
Signature	<i>[Signature]</i>
Date	<i>9/13/18</i>

Notarized By: