

TOWNSHIP OF NORTH FAYETTE

EASEMENT ENCROACHMENT AGREEMENT

THIS AGREEMENT & RELEASE made and entered into on this 12th day of October 2022, by and between the *Township of North Fayette*, in the county of Allegheny, Pennsylvania (“Township”)

-and-

ANTHONY & KARI CALVARIO

112 Bridal Ln
Oakdale, PA 15071
(Parcel 798-M-11)
 (“Property Owner”)

WITNESSETH:

WHEREAS, Anthony & Kari Calvario (“Property Owner”) is the current Property Owner of the property located within North Fayette Township, at 112 Bridal Ln, Oakdale, PA 15071, also referred to as Allegheny County Tax Parcel I.D. No. **798-M-11**;

WHEREAS, as reflected in the above recorded Plan of Lots, the Township currently holds a Sanitary Sewer Easement(s) which traverses over, upon, and across the Property Owner’s property and in which the Township has previously constructed and maintains installed utilities currently servicing the property and other properties in the Plan;

WHEREAS, the Property Owner understands and agrees that the Township has and shall for all times hereafter reserve and retain the unfettered right to exclude any/all structures or other encroachments from within its Easement, in its sole discretion and without recourse;

WHEREAS, in spite of the foregoing, the Property Owner wishes to construct an accessory structure, specifically, a **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** over, upon and across portions of the Easement; and

WHEREAS, in order to accommodate the wishes of the Property Owner to place said structure within the Township’s Easement at their own risk and without recourse, the Township is willing to consider and agree to grant its permission to allow the Property Owner to construct a **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** over, upon and across specified portions of its Easement, at least temporarily, in consideration of and subject to the understandings, agreements, acknowledgments, conditions, and releases as set forth here in after.

NOW, THEREFORE, the Parties, for themselves, their heirs, successors, and assigns, hereby agree as follows:

1. **AUTHORIZATION TO ENCROACH:** The Township hereby grants to the Property Owner its consent and permission to construct a **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** over, upon and across specified portions of its Easement, pursuant to the terms of this Agreement & Release, and solely in the area and as depicted on Exhibit “A” and also in strict conformity with such final Building Plans and Permits as may be approved and issued hereafter by the Township and subject to all conditions thereon as may be deemed necessary and proper in the sole discretion of the Township and its Township Engineer.

2. TOWNSHIP TO APPROVE EXACT LOCATION OF THE FENCE: The Property Owner shall not commence construction of the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO**, or any like replacement of the same in the future, until the Township's Director of Community Development, or his/her designee, has approved the exact location of the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** and any associated improvements, posts, and/or any other features within the Easement, in order to assure that the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** and its associated accessories, equipment, and any related improvements are installed at a suitable horizontal distance from any buried sewer lines if determined necessary; to otherwise assure the safety and long-term integrity of said sewer easements; and to minimize the need for any future disturbances to the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** structure in the event of future Township entries into the easement for line maintenance or repair.

3. REMOVAL OF ENCROACHMENT (NON-EMERGENCIES): Upon written notice provided by the Township to the Property Owner personally, and/or by certified mail, and/or by posting of the property if the Property Owner is absent or cannot be located at the property, the Property Owner shall temporarily or permanently remove any or all of the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** from the Easement within Thirty (30) days of the date of such personal service or posting, or from the date of mailing of such notice. Such requests made to the Property Owner by the Township to remove the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** will be made pursuant to a need of the Township to use, service, and/or connect to the sewers or other utilities located throughout the Easement, and/or to access the easement for the purpose of accessing a connected Easement, and/or to maintain and facilitate the flow of surface water for drainage purposes and/or to eliminate harm or potential harm to its sewers posed by the presence of the encroachment, or for other legitimate purposes as determined in good faith by the Township in its sole discretion upon the recommendation of the Township Engineer.

4. EMERGENCIES: Notwithstanding the foregoing, in a situation deemed to be an emergency as determined by the Township it is sole discretion upon the recommendation of the Township Engineer, the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** shall be removed by the Property Owner upon lesser notice from the Township, or may be removed without any prior notice, and in either case the Property Owner shall bear all costs of demolition, relocation and/or reconstruction.

5. FAILURE TO REMOVE: In the event the Property Owner fails to remove the **FENCE WATER/ELECTRIC LINES AND CONCRETE PATIO** when required by this Agreement & Release, or at any time under emergency circumstances as provided in Paragraph 3, above, the Township shall have the right to remove the **FENCE. WATER/ ELECTRIC LINES AND CONCRETE PATIO** and the Property Owner shall reimburse the Township for the costs incurred in removing the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** within Thirty (30) days of notice thereof. All such removal costs shall be a municipal lien upon the property from the date incurred by the Township.

6. DESTRUCTION OR REMOVAL OF ENCROACHMENT: In the event of the destruction or removal of the **FENCE. WATER/ ELECTRIC LINES AND CONCRETE PATIO** the Property Owner may apply for permission to reconstruct the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** in the Easement under the then-existing regulations, which the Township may grant or deny in its sole discretion and/or subject to such terms and conditions as may be deemed necessary and proper by the Township Engineer, without appeal or other recourse.

7. TOWNSHIP RESERVATION OF RIGHTS: The Property Owner hereby acknowledges and agrees that, in granting this permission, the Township specifically reserves all rights in its Easement and that the Township has and shall continue at all times hereafter to retain the unfettered right in its sole discretion to exclude any and all structures from within its Easement, including the subject **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO**. The Property Owner further acknowledge that this Agreement & Release does not confer and the Property Owner shall never have or claim any

prescriptive, contractual or other legal right of encroachment into the Easement or any rights to maintain or reconstruct the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** or any other structure therein based on non- conforming or 'grandfathered' use of the structure.

8. **INDEMNIFICATION & RELEASE:** The Property Owner agrees to release, indemnify, defend and hold harmless the Township from any and all causes of action, damages, losses, liens, liabilities costs, expenses or claims whatsoever arising out of the construction of the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** over, upon and across the Easement and the resulting encroachment thereon or the removal therefrom. Any removal costs incurred relating to the construction and existence of the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** or its removal, shall be borne by the Property Owner, at no cost to the Township. The Property Owner waives and releases all rights, causes of action or claims against the Township, and shall hold the Township harmless against, any claims based on the construction of the **FENCE WATER/ ELECTRIC LINES AND CONCRETE PATIO** over, upon and across the Easement, or arising out of or relating to its destruction, damage, or removal by the Township.

9. **PERPETUAL OBLIGATION:** This Agreement & Release shall be binding upon all owners, successors, and assigns taking title to the property after the execution of this Agreement & Release, and this Agreement & Release shall run in perpetuity with the land.

10. **RECORDING:** This Agreement & Release shall be recorded in the public records of Allegheny County, Pennsylvania, by the Property Owner or by the Township at the Property Owner's sole expense.

11. **BREACH:** In the event that the Property Owner breaches this Agreement & Release, the Township shall have the following remedies.

- a. All remedies provided for by Pennsylvania law.
- b. Money damages for any and all damages caused by the breach.
- c. Injunctive relief.
- d. Attorney's fees incurred by the Township or its agents as a result of the breach; and
- e. Litigation expenses and court costs incurred by Township as a result of the breach.

IN WITNESS WHEREOF, the parties hereto set their hands and seals on the date first set forth above.

ATTEST:

NORTH FAYETTE TOWNSHIP:

James Mangan, Township Manager

**James Morosetti, Chairman
Township Board of Supervisors**

PROPERTY OWNER:

WITNESS

NAME

EXHIBIT "A"

to

TOWNSHIP OF NORTH FAYETTE -
ANTHONY & KARI CALVARIO
EASEMENT ENCROACHMENT AGREEMENT &
RELEASE

SURVEY DEPICTING APPROXIMATE LOCATION OF
FENCE WITHIN TOWNSHIP EASEMENT:

Located on the property of:

ANTHONY & KARI CALVARIO

112 Bridal Ln
Oakdale, PA 15071
(Parcel 798-M-11.)
("Property Owner")

ACKNOWLEDGMENT OF PROPERTY OWNER

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this, the _____ day of _____, 2022, before me, the undersigned officer, personally appeared **ANTHONY & KARI CALVARIO** known (or satisfactorily proven) to me to be the person whose name is subscribed to the within instrument, who stated that they have full authority to execute the within instrument and that they executed the same for the purposes therein contained.

Witness my hand and notarial seal this _____ day of _____, 2022.

My commission expires the _____ day of _____, 20__.

Notary Public

ACKNOWLEDGMENT OF TOWNSHIP

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this, the _____ day of _____, 2022, before me, the undersigned officer, personally appeared **James Morosetti, Chairman, North Fayette Township Board of Supervisors**, known (or satisfactorily proven) to me to be the person whose name is subscribed to the within instrument, who stated he has full authority to execute same on behalf of the Township of North Fayette and that he executed the same for the purposes therein contained.

Witness my hand and notarial seal this _____ day of _____, 2022.

My commission expires the _____ day of _____, 20__.

Notary Public