

STORMWATER CONTROLS AND BEST MANAGEMENT PRACTICES OPERATIONS, MAINTENANCE AND INSPECTION AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, _____, by and (hereinafter the “Landowner”), and Penn Township, Chester County, Pennsylvania, (hereinafter “Township”);

WHEREAS, the Landowner is the owner of certain real property as recorded by deeds in the land records of Chester County, Pennsylvania, Deed Book _____ Page _____ (hereinafter “Property”), copies of which are attached hereto as *Exhibit A*.

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the Landowner has proposed a subdivision and/or land development more particularly described and depicted on certain plans entitled “_____” prepared by _____, dated _____, bearing a final revision date of _____ (hereinafter referred to as the “Plan”), which is attached hereto as *Exhibit B* and made part hereof, and the Stormwater Controls and BMP Inspection and Maintenance Plan, as required by the Penn Township Subdivision and Land Development Ordinance §414.18.J and §414.19.A, executed by the Landowner and approved by the Township (hereinafter referred to as the “BMP Plan”) for the property identified herein, which is attached hereto as *Exhibit C* and made part hereof, provides for management of stormwater within the confines of the Property through the use of Best Management Practices (BMPs); and

WHEREAS, the Township and the Landowner, his successors, and assigns agree that the health, safety, and welfare of the residents of the Township and the protection and maintenance of water quality require that on-site stormwater BMPs be constructed and maintained on the Property; and

WHEREAS, Landowner, their heirs and assigns are responsible for the construction, improvement and permanent maintenance of those improvements, changes and/or modifications described in *Exhibit B* and *Exhibit C*. The obligation commences upon construction and continues permanently thereafter; and

WHEREAS, the Township, as part of the MS4 Permit Program administered by the Pennsylvania Department of Environmental Protection, holds a permit to discharge stormwater into the local waterways. As part of this permit, the Township is responsible for overseeing a stormwater management program that reduces the discharge of pollutants to the maximum extent possible, and that satisfies the water quality requirements of the Clean Water Act. As part of the MS4 Program, the Township must perform regular inspections of stormwater BMPs to ensure proper maintenance of these facilities in order to satisfy the illicit discharge detection and elimination component of the Program; and

WHEREAS, for the purposes of this agreement, the following definitions shall apply:

- **BMP (Best Management Practice)** – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge, and to otherwise meet the purposes of the municipal Stormwater Management Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters, and detention basins.

- **Infiltration Trench** – A BMP surface structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.
- **Seepage Pit** – An underground BMP structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.
- **Rain Garden** – A BMP overlain with appropriate mulch and suitable vegetation designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or underground aquifer.
- **MS4** – Municipal Separate Storm Sewer Systems which include catch basins, curbs, gutters, ditches, man-made channels, pipes, tunnels or storm drains that discharge to the waters of the United States. Any system which moves water away from an area to a local water body, such as a BMP outlet structure.
- **MS4 Permit Program** – Stormwater Management Program required by the Environmental Protection Agency, administered by the Pennsylvania Department of Environmental Protection, which permits municipalities to discharge stormwater runoff into the waters of the United States. A Minimum Control Measure (MCM) requirement of this program includes illicit discharge detection and elimination via regular inspections of BMPs within the Township.
- **BMP Outfall** – The point of release (discharge) or potential release of stormwater leading to receiving water or the location at which specified inspection is to occur. For non-point discharge facilities (i.e. infiltration facilities), outfalls include locations of potential release such as an emergency spillway, overflow pipe or other designated control points for which inspection is believed necessary, including upstream and downstream monitoring points.

WHEREAS, the Township requires, through the implementation of the Plan, that stormwater management BMPs as required by said Plan and the Penn Township Subdivision and Land Development Ordinance be constructed and adequately operated and maintained by the Landowner, his successors, and assigns; and

WHEREAS, the Township is required, by the Pennsylvania Department of Environmental Protection to regularly inspect all stormwater management BMP Outfalls in order to maintain its permit to discharge stormwater to the waters of the United States.

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

1. All of the preceding paragraphs are included herein as if set forth originally.
2. **Maintenance of all Surface Stormwater Drainage Facilities and BMPs by Landowner, its Successors and Assigns:** The Landowner, on behalf of itself and its successors and assigns, is responsible for the installation and maintenance of the modifications, changes and/or improvements described in *Exhibit B* and *Exhibit C*. This obligation may include, but is not limited to, all mowing, maintenance, repair and replacement of all detention basins, drainage swales, BMPs described in Exhibit C and related surface stormwater facilities depicted on the Plans described above (herein attached as *Exhibit B*), all costs shall be borne by the owner or

owners of the Property where such stormwater facilities are located so that all such basins, swales, surface drainage easements and related facilities shall be kept in good working order at all times.

3. **Construction of BMP Facility by Landowner:** The Landowner shall construct BMPS in accordance with the plans and specifications identified on the Plan.
4. **Duty of Operation & Maintenance of Facility:** The Landowner shall operate and maintain the BMPs as shown on the Plan in good working order acceptable to the Township and in accordance with the specific routine inspection and maintenance requirements noted on the Plan and in the BMP Plan.
5. **Right of Entry on Premises:** The Landowner hereby grants permission to the Township, its authorized agents, and employees to enter upon the property, at reasonable times, after providing reasonable notice, and upon presentation of proper identification, to inspect the BMPs whenever it reasonably deems necessary. Whenever possible, the Township shall notify the Landowner prior to entering the property. Landowner shall reimburse Township for all costs and expenses incurred in these inspections should no funds remain in any escrow account as described hereafter. Should Township enter the Property for inspections, Township shall have the obligation to restore, replace and/or replant any trees, shrubs, improvements, and/or vegetation removed and/or disturbed to complete any inspection, repair and/or correction. Township shall have no such obligation should it enter the Property for the purpose of performing corrections as provided in this Agreement. Landowner grants Township, its successors and assigns a permanent easement and access to all areas described in *Exhibit B* and *Exhibit C* for the purpose of access, inspection and/or corrections required assuring compliance with the terms of *Exhibit B* and *Exhibit C*.
6. **Failure to Maintain:** In the event that the Landowner fails to operate and maintain the BMPs as shown on the Plan and as described in the BMP Plan, in good working order, as reasonably determined by the Township, the Township, its authorized agents, and/or employees may enter upon the Property and:
 - a. Take whatever action is deemed necessary to maintain said BMPs. This provision shall not be construed to allow the Township to erect any permanent structure on the land of the Landowner. It is expressly understood and agreed that the Township is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Township.
 - b. Require such monitoring, analysis and reporting as the Township determines necessary to assure compliance.
 - c. Order the elimination of all prohibited discharges.
 - d. Cease all violating discharges, practices, or operations.
 - e. Impose all remedies, fines and/or costs as may then exist under then current controlling Ordinances.
 - f. Require the implementation of these stormwater BMPs and/or the proper operation and maintenance of all stormwater BMPs.
 - g. Suspend or revoke any building, land development or other permit or approval for Regulated Earth Disturbance Activities issued by the Township for Non-compliance with

or failure to implement any provision of the permit and/or the Plans described in *Exhibit B* and *Exhibit C*; and/or any violation of the controlling Ordinance(s).

- h. Township shall provide ten days' written notice to correct any of the defective and/or failure as described herein, unless Township reasonably determines a risk or hazard to public health, safety and welfare exists. Should the Township reasonably determine that such risk exists Township may correct the defects immediately, and Landowner shall reimburse Township for all costs, expenses and fees incurred in such correction.
 - i. In the event Township reasonably expends any funds for work of any nature, labor, use of equipment, engagement of contractors, use of equipment, supplies, consultants, legal fees, filing fees and/or any other cost to assure compliance with *Exhibit B* and *Exhibit C*, Landowner shall reimburse Township for all sums reasonably expended by Township to assure compliance, including but not limited to all corrective measures, legal fees and an administrative fee in the amount of ten percent (10%) of any invoice.
 - j. The Township may, in addition to the remedies described in this Agreement, file an action at law and/or in equity, and all services/materials described herein are recognizable services and/or materials under the terms of the Pennsylvania Municipal Liens Law.
7. **Establishment of Stormwater Management Facility Maintenance Financial Security:** The Landowner shall, at the time of execution hereof, deposit with the Township a sum of \$_____ which is equal to fifteen (15) percent of the construction costs for stormwater management facilities, as calculated by the Landowner and approved by the Township Engineer, to establish financial security for Stormwater Management Facility Maintenance and Inspection. Said security shall stay in place for a period of five (5) years for which the funds shall be utilized for inspections and all repairs deemed necessary to maintain said BMPs, as outlined in the Plan and BMP Plan, in the event the Landowner fails to maintain. The payment of this initial sum does not reduce and/or eliminate Landowner's obligation to reimburse Township for all reasonable costs incurred by the Township at any time for the inspection and/or repair of the Facility.
8. **Reimbursement by Landowner and Right to File Liens.** In the event that the Township reasonably performs work of any nature for corrections, or reasonably expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within ten (10) days of receipt of an invoice from the Township. Failure of the Property owner to immediately reimburse the Township as required by this paragraph shall entitle the Township to draw on the Stormwater Management Facility Maintenance Financial Security and, if such Security is insufficient to pay for the costs of such work, place a lien (in any manner provided for by law) upon the Property or properties whose obligations under this Agreement were satisfied by the Township. **LANDOWNER DOES HEREBY AUTHORIZE AND EMPOWER ANY ATTORNEY OF ANY COURT OF RECORD OF PENNSYLVANIA OR OF ANY OTHER STATE TO APPEAR FOR HIM OR HER AND CONFESS JUDGMENT IN FAVOR OF PENN TOWNSHIP IN THE AMOUNT AS DETERMINED BY A AFFIDAVIT SIGNED BY THE TOWNSHIP SECRETARY AND INCURRED BY THE TOWNSHIP PURSUANT TO LANDOWNERS' FAILURE TO SATISFY THIS AGREEMENT TOGETHER WITH ALL COSTS OF SUIT AND EXPENSES.**
9. **No Waiver:** In the event the Township shall enter upon any of the areas provided for by this Agreement to perform the Property owner's obligations under this Agreement, such

performances by the Township shall not act as a waiver of the Property owner's continuing and future obligations under this Agreement.

10. **Purpose of Agreement:** The intent and purpose of this Agreement is to ensure the proper maintenance and inspection of the on-site BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

Landowner shall include the following notice to the deed of ownership for the Property described in Exhibit A, and in all deeds subsequently conveying all or any portion of the real property, a covenant binding Landowners and all successors in interest designating the responsibility for operation and maintenance of the facilities described in **Exhibit B** and **Exhibit C** as follows:

"UNDER AND SUBJECT, nevertheless, to the following conditions and restrictions: Prior to the construction of a dwelling or any other earthmoving activities, Grantee shall construct the permanent stormwater management facilities as shown on the stormwater management plans described [INSERT PLAN DATES AND REFERENCES], dated and last revised and approved by Penn Township; thereafter, the Grantee, his heirs, executors, administrators, successors and assigns ("owner"), at his or their sole cost and expense, shall operate, maintain and repair said stormwater management facilities on the lot in accordance with said plan, so that the facilities shall at all times continue to operate and function in the same manner and capacity as they were designed. In the event of the failure of the owner to comply with these conditions and restrictions, and the STORMWATER BEST MANAGEMENT PRACTICES, OPERATIONS AND MAINTENANCE AGREEMENT ("AGREEMENT") Penn Township shall have said stormwater management facilities repaired or restored as required, and the costs thereof shall be assessed to the owner; said assessment shall be a charge and a continuing lien upon the property herein, as more fully described in the AGREEMENT, and the plans described therein. Penn Township, before it may exercise this right, shall notify the owner by certified mail of its intention to take the aforementioned action, unless an emergency exists according to the terms of the AGREEMENT. The notice shall set forth in what manner the owner has neglected the operation and maintenance of or repair to the stormwater management facilities and/or comply with the terms of the AGREEMENT, and if the owner fails to correct or repair the items listed in the notice from Penn Township, then Penn Township shall exercise their rights contained in this AGREEMENT, as well as any other Statutory authority. Owner shall reimburse Township for all reasonable fees, costs and professional consultant fees incurred to satisfy all annual reports (including but not limited to DEP MS4 Reports) required by any State, Federal or Local Agency. This covenant shall run with the land."

11. **Release of Township:** The Landowner, its executors, administrators, assigns, and other successors in interest shall release the Township's employees and designated representatives 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 BMPs by the Landowner or Township except for any damages or claims resulting from the negligent or intentional acts of the Township's employees or consultants. In the event that a claim is asserted against the Township, its designated representatives, or employees, the Township shall promptly notify the Landowner, and the Landowner shall defend, at his own expense, any suit based on the claim. If any judgment or claims against the Township's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.

12. **Duty to Inspect by Township:** The Township shall inspect the BMP(s) at a minimum of once every three (3) years to ensure their continued functioning as part of the MS4 Permit Program.
13. **Establishment of Stormwater Management Facility Inspection Escrow:** The Landowner shall at the time of execution hereof, deposit with the Township a sum of \$_____ which is equal to \$_____ per BMP Outfall to establish a Stormwater Management Facility Inspection Escrow representing the reasonable estimated cost and expenses for the Township to inspect the Landowner's BMP Outfalls as part of the MS4 Permit Program once every three (3) years for a length of ten (10) years. Thereafter, Landowner shall reimburse Township for all fees, costs and expenses incurred to assure compliance and inspection as required in this Agreement. Township shall pay all cost and expenses for the inspection of the Landowner's BMP Outfalls as part of the MS4 Permit Program from said funds from time to time as necessary. In the event the fund is insufficient to reimburse Township at any time, Landowner agrees to provide additional funds within ten days written notice from Township. The MS4 Permit Program, and other controlling agency requirements may vary subsequent to the date of this Agreement. The then date of any requirements necessary for Township compliance shall determine the amount of the obligations under the terms of this Agreement.
14. **Recording of Agreement/Covenant Running with the Land:** This agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs, and any other successors in interest, in perpetuity.
15. **Required Parties.** All owners of the real property described in *Exhibit A*, and all applicants who are not owners of the land must sign this Agreement. All responsibility and obligations contained herein shall be joint and/or several. The Agreement is not complete and no permit will be issued until the Landowner provides proof of recording with the Office of Recorder of Deeds, West Chester, Chester County, PA, and delivers a certified recorded copy to the Township.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and date first above written:

ATTEST:

PENN TOWNSHIP:

By: _____

Name:

Title:

By: _____

Name:

Title:

LANDOWNER:

By: _____

Name:

Title:

By: _____

Name:

Title:

STATE OF _____ :
: ss.
COUNTY OF _____ :

On this _____ day of _____, _____, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer(s), personally appeared _____, who acknowledged him/herself/themselves to be the _____ of PENN TOWNSHIP, a Township of _____ class, and that he/she/they as such officer(s), being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Township by him/herself/themselves as such officer(s).

In Witness Whereof, I hereunto set my hand and official seal.

_____[SEAL]
Notary Public

My Commission Expires:

Exhibit A
Deeds

Exhibit B
Subdivision or Land Development Plan

Exhibit C
BMP Plan