

OPERATION AND MAINTENANCE AGREEMENT
STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, (hereinafter the “Landowner”), and Derry Township, Dauphin County, Pennsylvania, (hereinafter “Township”);

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Dauphin County, Pennsylvania, Deed Book _____ at Page _____ or Instrument No. _____, (hereinafter “Property”).

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

WHEREAS, the SWM Site Plan approved by the Township (hereinafter referred to as the “Plan”) for the property identified herein, which is attached hereto as Appendix A and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, the Township, and the Landowner, and/or their 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 SWM BMPs be constructed and maintained on the Property; and

WHEREAS, the Township requires, through the implementation of the SWM Site Plan, that stormwater BMPs as required by said Plan and the Township Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, successors and assigns.

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. The Landowner shall construct the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
2. The Landowner shall operate and maintain the BMPs as shown on the Plan in good working order acceptable to the Township in accordance with the specific maintenance requirements noted on the approved SWM Site Plan.
3. The Landowner hereby grants permission to the Township, its authorized agents, and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMPs whenever it deems necessary. Whenever possible, the Township shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMPs per paragraph 2, the Township or its representatives may enter upon the property and take whatever action is deemed necessary to maintain said BMPs. 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. The Landowner may be subjected to the Penalties Section of the applicable Ordinance.

5. In the event the Township, 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, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Township.
6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
7. The Landowner, its executors, administrators, assigns, and other successors in interests shall release the Township 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. 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.
8. The Township may inspect the BMPs whenever necessary to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of Dauphin 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 interests, in perpetuity.

WITNESS the following signatures and seals:

For the Township:

James N. Negley, Manager (SEAL)

Commonwealth of Pennsylvania)
County of Dauphin)

On the _____ day of _____, 20____, before me a Notary Public, the undersigned officer, personally appeared James N. Negley, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

(SEAL)

For the Landowner:

Commonwealth of Pennsylvania)
County of _____)

On the _____ day of _____, 20____, before me a Notary Public, the undersigned officer, personally appeared _____ and _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

(SEAL)