

**STORMWATER BEST MANAGEMENT PRACTICES
OPERATIONS AND MAINTENANCE AGREEMENT**

**THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATIONS
AND MAINTENANCE AGREEMENT** ("Agreement") is made and entered into this

____ day of _____, 20____, by and between _____

of _____

(hereinafter collectively the "Landowner") and New Garden Township, Chester County, Pennsylvania (hereinafter "Township").

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property as recorded by deed[s] in the land records of Chester County, Pennsylvania, Deed Book _____, Page _____ (tax parcel numbers _____); and

WHEREAS, the Landowner desires to develop and improve the Property for _____ under a certain Land Development Plan [Subdivision Plan] entitled, "_____" dated _____, which Final Land Development Plan [Subdivision Plan] was conditionally approved by the Board of Supervisors of New Garden Township on the ____ day of _____, 20____, and which contains the conditions of approval which have been specifically agreed to, accepted by the Landowner, and hereinafter called the "_____"; and

WHEREAS, the Stormwater BMP Operations and Maintenance Plan for the _____ approved by the Township, as identified in the preceding paragraph, for the Property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Township (hereinafter referred to as the "Plan"), provides for management of stormwater within the confines of the Property through the use of Best Management Practices (hereinafter the "BMPs"); and

WHEREAS, the Township and the Landowner, its [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 stormwater Best Management Practices be constructed and maintained on the Property; 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 Township 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; and

WHEREAS, the Township requires, through the implementation of the Plan, that stormwater management BMPs as required by said Plan and the Township Stormwater Management Ordinance be constructed and adequately operated and maintained by the

Landowner, its [their] successors and assigns, as set forth in this Agreement; and

WHEREAS, the Landowner agrees that it [they], and [their] its successors and assigns, are responsible for the operation and maintenance of all of the BMPs depicted on the Plan and described in the Stormwater Management O & M Notes and Responsibilities notes listed on the Plan (the "BMPs"); and

WHEREAS, the BMPs include, but are not limited to, underground infiltration basin, grass swales, etc. as identified on the Plan.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The Background/Recitals set forth above are incorporated herein as though fully set forth herein at length.
2. The BMPs shall be constructed by Landowner in strict accordance with the plans and specifications described in, and made a part of the Plan.
3. The Landowner shall operate and maintain the BMPs as shown on the Plan in good working order acceptable to the Township and in strict conformance with the specific maintenance requirements described in, and made a part of the Plan.
4. 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 by contacting in person or by written notification the manager of the _____ . The Landowner or its [their] designated representative shall have the right to

accompany the Township on such inspection. The Landowner shall be provided with a written copy of all inspection reports and reports of deficiencies in the operation and maintenance of the BMPs and the required corrective action.

5. In the event the Landowner fails to operate or maintain the BMPs as shown on the Plan in good working order acceptable to the Township, and fails to cure the deficiency within five (5) days of notice of the same, the Township or its representatives may enter upon the Property and take whatever action is deemed reasonably necessary to correct any deficiencies related to the said BMPs, and, thereafter, properly maintain said BMPs. This provision shall not be construed to allow the Township to erect any permanent structure on the Property. It is expressly understood and agreed that the Township is under no obligation to maintain and/or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Township.

6. 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 on the BMPs, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within ten (10) days of receipt of a letter/ correspondence which confirms and itemizes all costs, expenses, and fees.

7. The intent and purpose of this Agreement is to ensure the proper maintenance and operation of the BMPs by the Landowner in strict conformance with the Plan.

8. The Landowner, [their] its executors, administrators, successors and assigns, shall release and hold harmless the Township, its officials, employees and authorized representatives from any and all damages, accidents, casualties, occurrences, suits, penalties, actions and/or claims which might arise or be asserted against said Township, officials, employees and/or 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 officials, employees, or authorized representatives, then the Township shall give Landowner prompt written notice of an event which would trigger Landowner's defense obligations. Township shall be required to reasonably cooperate with Landowner and to mitigate its damages. Landowner shall have the right to control the defense and settlement of any such claims, including the selection of legal counsel. Landowner shall have no obligation to indemnify, defend or hold the Township harmless with respect to the intentional misconduct or gross negligence of the Township. The foregoing is not intended to be, and shall not be construed as an express or implied waiver of protection or expansion of liability under any statutes or laws intended to limit or eliminate municipal liability (including, without limitation, the Municipal Tort Claims Act). The Landowner shall defend, at their and its own expense, any suit based on the claim. If any judgment or claim against the Township, its officials, employees or authorized representatives shall be allowed, the Landowner shall immediately pay any and all costs and expenses to fully satisfy and resolve said judgment and/or claim.

9. This Agreement may be executed in counterparts.

10. In the event there is a breach of this Agreement by the Landowner, then Landowner shall reimburse the Township for all costs and expenses, including reasonable attorney's fees, which the Township incurs in enforcing the terms of this Agreement.

11. 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, [their] its successors and assigns, in perpetuity.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first set forth above.

NEW GARDEN TOWNSHIP

ATTEST:

BY: _____
Township Secretary

BY: _____
Name:
Title:

(Township Seal)

[_____]

ATTEST:

BY: _____

BY: _____
Name:
Title

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
 : ss
COUNTY OF CHESTER :

AND NOW, this day of , 20___, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of the Board of Supervisors of New Garden Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:_____

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
 : ss
COUNTY OF CHESTER :

AND NOW, this day of , 20___, before me, the undersigned officer, personally appeared _____, who acknowledged himself[herself] to be the _____ of _____, and that he, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:_____

Appendix A
Stormwater BMP Operations and Maintenance Plan