

Appendix C

East Hanover Township - Stormwater Management

Best Management Practices (BMP) Operation and Maintenance (O&M) Agreement

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between {name of owner/equitable owner} _____, (hereinafter the "Landowner"), and, East Hanover Township; Pennsylvania, (hereinafter "Municipality");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Lebanon County, Pennsylvania, Deed Book _____ at Page, (hereinafter "Property").

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

WHEREAS, the Subdivision/Land Development/Stormwater Management (SWM) Site Plan (hereinafter "Plan") for _____ which is expressly made a part hereof, as approved or to be approved by East Hanover Township, provides for management of stormwater within the confines of the Property; and

WHEREAS, the SWM BMP Operation and Maintenance Plan (hereinafter referred to as the "O&M Plan") approved by East Hanover Township for the property identified herein, which is attached hereto as Exhibit A and made part hereof, as approved by the Municipality, provides for management of stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, East Hanover Township and the Landowner, his successors and assigns agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site SWM Best Management Practices (BMPs) be constructed and maintained on the Property: and

WHEREAS, East Hanover Township requires, that stormwater management facilities-as shown on the Plan be constructed and adequately maintained by the Landowner, his successors and assigns; and

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

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

1. The stormwater management BMPs shall be constructed by the Landowner, his successors and assigns, in accordance with the terms, conditions and specifications identified in the subdivision/land development/SWM Site Plan.

2. The Landowner, his successors and assigns, shall operate and maintain the stormwater management BMPs as shown on the subdivision/land development/SWM Site Plan in good working condition in accordance with the specific operation and maintenance requirements noted in the approved O&M Plan.

3. The Landowner, his successors and assigns, hereby grants permission to East Hanover Township and the East Hanover Township Engineer, his authorized agents and employees, upon presentation of proper identification, to enter upon the Property at reasonable times, and to inspect the SWM BMPs whenever deemed necessary. Whenever possible, East Hanover Township or the East Hanover Township Engineer shall notify the Landowner prior to entering the Property. The purpose of the inspection is to assure safe and proper functioning of the SWM BMPs. The inspection shall cover the entire facilities, pipes, berms, outlet structures, pond areas, access roads, etc. When inspections are conducted, East Hanover Township and/or the East Hanover Township Engineer shall give the Landowner, his successors and assigns, copies of the inspection report with findings and evaluations. At a minimum, this agreement grants East Hanover Township and/or the East Hanover Township Engineer the right to perform inspections in accordance with the following schedule:

- Annually for the first 5 years after the construction of the storm water facilities,
- Once every 3 years thereafter, or
- During or immediately upon the cessation of a 10 year or greater precipitation event.

4. All reasonable costs for said inspections shall be borne by the Landowner and payable to the inspecting agency.

5. The owner shall convey to East Hanover Township easements and/or rights-of-way to assure access for periodic inspections by East Hanover Township and maintenance, if required.

6. In the event the Landowner, his successors and assigns, fails to maintain the SWM BMPs in good working condition acceptable to East Hanover Township, or its representatives, may enter upon the Property and take such necessary and prudent action to maintain said SWM BMPs and to charge the costs of the maintenance and/or repairs to the Landowner, his successors and assigns. This provision shall not be construed as to allow East Hanover Township to erect any structure of a permanent nature on the land of the Landowner, outside of any easement belonging to the Township. 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 Municipality.

7. The Landowner, his successors and assigns, will perform maintenance in accordance with the maintenance schedule for the SWM BMPs including sediment removal as outlined on the approved schedule and/or Subdivision/Land Development/SWM Site Plan.
8. In the event East Hanover 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 account of the Landowner's or his successors' and assigns' failure to perform such work, the Landowner, his successors and assigns, shall reimburse the Township upon demand, within 10 days of receipt of invoice thereof, for all costs incurred by the Township hereunder. If not paid within said 10-day period, the Township may enter a lien against the property in the amount of such costs, or may proceed to recover his costs through proceedings in equity or at law as authorized under the applicable provisions of the Pennsylvania Municipal Code.
9. The Landowner, his successors and assigns, shall indemnify East Hanover Township and its agents and employees against any and all damages, accidents, casualties, occurrences or claims, which might arise or be asserted against East Hanover Township for the construction, presence, existence or maintenance of the stormwater management facilities by the Landowner, his successors and assigns.
10. In the event a claim is asserted against East Hanover Township, its agents or employees, the Township shall promptly notify the Landowner, his successors and assigns, and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the Township, its agents or employees shall be allowed, the Landowner, his successors and assigns shall pay all costs and expenses in connection therewith.
11. In the advent of an emergency or the occurrence of special or unusual circumstances or situations, East Hanover Township may enter the Property, if the Landowner is not immediately available, without notification or identification, to inspect and perform necessary maintenance and repairs if needed, when the health, safety or welfare of the citizens is at jeopardy. However, East Hanover Township shall notify the landowner of any inspection, maintenance, or repair undertaken within 5 days of the activity. The Landowner shall reimburse the agency undertaking the inspections, maintenance or repairs for any associated costs.
12. 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 affect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
13. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release East Hanover Township Engineer 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 BMP(s) by the Landowner, or East Hanover Township.

This Agreement shall be recorded among the land records of East Hanover Township, 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.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the East Hanover Township:

(SEAL)

For the Landowner:

I, _____ a Notary Public in and for the County and State aforesaid, whose commission expires on the _____ day of _____ 20____ do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 20____, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 20____.

NOTARY PUBLIC

(SEAL)