

Long Form - This Agreement should be used for plans submitted with
Subdivision and Land Development Applications.

UPI No.
(Parcel Number)

Address
[Street Address, Municipality]

**STORMWATER OPERATION AND MAINTENANCE
AND RIGHT-OF-WAY AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____,
20____, by and among _____ [Developer],
its/his/her successors, heirs, personal representatives and assigns, including any homeowners
association or the owners of any subdivided lots (“Landowner”), and **Jefferson Borough**, York
County; Pennsylvania.

W I T N E S S E T H

WHEREAS, the Landowner is the owner of real property located in _____
Borough, York County, as more fully described in the land records of York County,
Pennsylvania, at Deed Book _____, Page _____, UPI No. _____, with a
street address of _____ (the “Property”).

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

WHEREAS, the Subdivision/Land Development Plan (“Subdivision Plan”) for the _____
_____ [Name of Subdivision] which is expressly made a part hereof, as
approved or to be approved by the Borough and recorded in part with the land records of York
County, Pennsylvania, provides for the management of stormwater within the confines of the
Property pursuant to a SWM Site Plan (the “SWM Site Plan”); and

WHEREAS, the SWM Site Plan includes a SWM Operation and Maintenance Plan
approved by the Borough (the “O&M Plan”) for the Property, [which is attached hereto as
**Appendix A and made a part hereof/which is on file at the Borough offices and made a part
hereof**] which provides for the establishment, operation and maintenance of SWM facilities and
BMPs; and

WHEREAS, the Borough and the Landowner agree that the health, safety and welfare of
the residents of the Borough and the protection and maintenance of water quality require that
SWM facilities be established, constructed and maintained on the Property; and

WHEREAS, the Borough requires, through the implementation of the Borough’s
Stormwater Management Ordinance, Ordinance No. 2012-01 (the “Stormwater Ordinance”), that
SWM facilities and BMPs as required by the SWM Site Plan and the Stormwater Ordinance be
established, constructed and adequately operated and maintained by the Landowner in accordance
with the O&M Plan.

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:

Section 1. Unless otherwise defined in this Agreement, the terms used herein shall have the meaning given to them in the Stormwater Ordinance, as amended.

Section 2. The Landowner shall establish and/or construct the SWM facilities and BMPs in accordance with the terms, conditions and specifications identified in the SWM Site Plan. Except when expressly allowed by the Stormwater Ordinance, the Landowner shall not alter, modify, replace, relocate or in any way interfere with any SWM facilities or BMPs without the prior written permission of the Borough.

Section 3. The Landowner shall adequately maintain the SWM facilities and BMPs shown on the SWM Site Plan in good working order in accordance with the specific O&M requirements set forth in the O&M Plan. This includes all swales, pipes, channels built to convey and control stormwater, as well as all SWM BMP structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate O&M is defined as good working condition, acceptable to the Borough, so those facilities are performing their design functions and not having any adverse effects on water quality or adjoining or nearby roads, structures or properties. Adequate O&M will not be demonstrated merely by strict compliance with the SWM Site Plan or O&M Plan where the SWM Site Plan and O&M Plan are inadequate for stormwater management in the field.

Section 4. The Landowner hereby grants permission to the Borough, its authorized agents and employees, to enter upon the Property at reasonable times and to inspect the SWM facilities and BMPs whenever the Borough deems necessary. The purpose of the inspection is to assure safe and proper functioning of the SWM facilities and BMPs. The inspection shall cover the entire SWM facilities, BMPs, swales, outlet structures, pond areas, access roads, etc. Whenever possible, the Borough shall notify the Landowner prior to entering the Property.

Section 5. The Borough may inspect the SWM facilities and BMPs annually for the first 5 years, and every third year thereafter, to ensure continued functioning. The Borough may inspect the SWM facilities and BMPs at more or less frequent intervals, and at other times as set out in the Stormwater Ordinance, as amended from time to time.

Section 6. When inspections are conducted, the Borough shall give the Landowner, if requested, copies of the inspection report with findings and evaluations. All reasonable costs for inspections of SWM facilities and BMPs shall be borne by the Landowner and payable to the Borough.

Section 7. In the event the Landowner fails to maintain the SWM facilities and/or BMPs, in accordance with Section 3, the Borough or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain the SWM facilities and BMPs. It is expressly understood and agreed that the Borough is under no obligation to maintain or repair said SWM facilities and BMPs and in no event shall this Agreement be construed to impose any such obligation on the Borough.

Section 8. The Landowner hereby conveys to the Borough easements and/or rights-of-way to assure access for periodic inspections by the Borough and repair of the SWM facilities and BMPs, if necessary, as set forth more specifically in Appendix [A/B]. The Landowner shall not plant in, construct on or otherwise alter the right-of-way granted herein in any way that interferes or impedes the Borough's access.

Section 9. In the event the Borough, 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 shall reimburse the Borough upon demand, within 30 days of receipt of invoice thereof, for all costs, including engineer and attorney fees, incurred by the Borough hereunder. If not paid within said 30-day period, the Borough may enter a municipal 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 provisions of the Municipal Claims and Tax Lien Act, 53 P.S. § 7101 *et seq.*

Section 10. The Landowner shall indemnify the Borough, its agents and employees, against any and all damages, accidents, casualties, occurrences, claims and costs, including engineering and attorney fees, which might arise or be asserted against the Borough for the construction, presence, existence or maintenance and operation or lack thereof of the SWM facilities and BMPs by the Landowner.

Section 11. In the event a claim is asserted against the Borough, its agents or employees, the Borough shall promptly notify the Landowner and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the Borough, its agents or employees, are allowed, the Landowner shall pay all costs and expenses (including attorney fees) in connection therewith.

Section 12. The Landowner shall release the Borough, its supervisors, employees, officers, agents and representatives, from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said persons from the construction, presence, existence or maintenance of the SWM facilities and BMPs by Landowner or Borough.

Section 13. In the event Landowner's obligations under this Agreement will be assigned or transferred to a successor owner (whether to a developer or individual lot owners, or to a homeowners' association, condominium association or similar form of cooperative ownership), the Landowner's obligations under this Agreement shall become joint and several obligations of the successors and assigns.

Section 14. The Borough disclaims all liability for design, construction, installation or operation defects. The grant of a permit or approval of a subdivision and/or land development plan shall not constitute a representation, guarantee, or warranty of any kind or liability upon the Borough, its officials, or employees.

Section 15. None of the conditions or covenants contained in this Agreement shall be deemed a waiver of Borough's rights or immunities granted by statute. Such immunities shall not relieve the Landowner of the duty to defend or hold Borough harmless from claims arising out of conduct of the Landowner initiated pursuant to the terms of this Agreement.

Section 16. Should any provision of this Agreement be interpreted to conflict with the Stormwater Ordinance, as amended or superseded, the provisions and requirements of the Stormwater Ordinance shall control interpretation. Should any provision of this Agreement be determined by a court to be unenforceable, such provision of this Agreement shall be deemed to be void; provided, however, the balance of the Agreement shall remain in full force and effect.

Section 17. This Agreement shall be recorded in the land records of York County, Pennsylvania and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, its/his/her successors, receivers, heirs, personal representatives and assigns, in perpetuity. Landowner will reference this Agreement and recording information in any deeds transferring or conveying the Property or any subdivided outparcels thereof.

Section 18. A violation or breach of this Agreement shall be deemed a violation of the Stormwater Ordinance, as amended, which shall be subject to all remedies and enforcement set forth therein. Landowner shall be responsible for all costs of enforcement (including attorney fees) of this Agreement, which costs shall be reimbursed to the Borough upon demand within 30 days of the receipt of an invoice thereof. All invoiced amounts due under this Agreement for administration, maintenance, enforcement or otherwise that remain unpaid after 30 days from the date of invoice shall be assessed interest at the rate of 12% per annum until paid in full.

Section 19. This Agreement may only be amended by a written amendment executed by the party against whom enforcement is sought.

ATTEST/WITNESS:

_____ BOROUGH

, Secretary

, President

[DEVELOPER]

By: _____, General Partner

Name:

Title:

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF YORK :

On this the ____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the President of _____ Borough Council, organized and existing under the laws of Pennsylvania, and that he as such President, being authorized to do so, executed the foregoing document for the purposes therein contained by signing the name of the Borough by himself as President.

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

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF YORK :

On this the ____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, _____, on behalf of _____, a _____ limited partnership, who executes this document and acknowledges he is authorized to do so 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