

Prepared by/Return to:

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Buckley, Brion, McGuire & Morris LLP
118 W. Market Street, Suite 300
West Chester, PA 19382

UPI No. - _____

**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____,
20____, by and between _____ [ENTITY],
(hereinafter the “Landowner”), and BIRMINGHAM TOWNSHIP, Chester County,
Pennsylvania (hereinafter the “Township”);

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, at Deed Book _____ and Page _____, having a UPI No. of _____ (hereinafter “Property”); and

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

WHEREAS, the Stormwater Best Management Practices (herein after BMP(s)) and Conveyances Operations and Maintenance Plan approved by the Township (hereinafter referred to as the “O&M Plan”) for the Property, which is attached hereto as **Exhibit “A”** and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

WHEREAS, the Township and the Landowner, for itself and its administrators, executors, successors, heirs, 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 stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

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

BMP – “Best Management Practice” –Those activities, facilities, designs, measures, or procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Township’s Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design,

bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devices, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs identified in the O&M Plan are permanent appurtenances to the Property; and

Conveyance – As specifically identified in the O&M Plan, a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The conveyances identified in the O&M Plan are permanent appurtenances to the Property; and

WHEREAS, the Township requires, through the implementation of the O&M Plan, that stormwater management BMPs and conveyances, as required by said O&M Plan and the Township’s Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors in interest, heirs, and assigns.

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 foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.

2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the final design plans and specifications as approved by the Township which are identified as follows:

Titled _____,

Dated_____ Last revised _____.

3. The Landowner shall inspect, operate and maintain the BMP(s) and Conveyance(s) as shown on the O&M Plan in good working order acceptable to the Township and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan. The notes from the O & M Plan which establish the specific instruction and maintenance requirements are attached hereto as **Exhibit “B”** and made a part hereof.

4. The Landowner hereby grants permission to the Township, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and Conveyance(s) whenever it deems necessary to determine compliance with this Agreement, the O&M Plan and the Township’s Stormwater Management Ordinance. Whenever possible, the Township shall notify the Landowner prior to entering the Property.

5. The Township intends to inspect the BMP(s) and Conveyance(s) a minimum of once every two (2) years to determine if they continue to function as required and designed.

6. The Landowner acknowledges that, per the Township's Stormwater Ordinance, it is unlawful, without written approval of the Township, to:

- a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or Conveyance that is constructed as part of the approved O&M Plan;
- b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or Conveyance;
- c. Allow the BMP or Conveyance to exist in a condition which does not conform to the approved O&M Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, swimming pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or Conveyance.

7. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Township, the Landowner shall be in violation of this Agreement and the Stormwater Ordinance, and the Landowner agrees that the Township or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and Conveyance(s). 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.

8. In the event that 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 thirty (30) days of delivery of an invoice from the Township. Failure of the Landowner to make prompt payment to the Township may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and Conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

10. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Township, its employees, agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and Conveyance(s) either by the Landowner or Township. In the event that a claim is asserted or threatened against the Township, its employees, agents or designated representatives, the Township shall notify the Landowner, and the Landowner shall defend, at its own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Township, or, at the request of the Township, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the Township. If any judgment or claims against the Township's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Township, including attorneys, regarding said damages, judgments or claims.

11. The Township may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a court of competent jurisdiction. Recovery by the Township shall include its reasonable attorney's fees and costs incurred in seeking relief under this Agreement.

12. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Township of its rights of enforcement hereunder.

13. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.

14. This Agreement shall inure to the benefit of and be binding upon, the Township and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.

15. This Agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, at Landowner's expense and shall constitute a covenant running with the Property, in perpetuity.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

LANDOWNER

[ENTITY]:

Witness/Attest

BY: _____
Name:
Title:

Attest:

BIRMINGHAM TOWNSHIP

Quina Nelling, Secretary

BY: _____
Name:
Title: Chairman, Board of Supervisors

COMMONWEALTH OF PENNSYLVANIA:

ss

COUNTY OF CHESTER

:

On this ____ day of _____, 20__ , before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of Birmingham Township, and that he as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF CHESTER

:

On this ____ day of _____, 20__ , before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of _____, and that he as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

My Commission Expires: