

APPENDICES

Appendix A

Stormwater Controls and Best Management Practices Operations and Maintenance Agreement.

Prepared by:

Return to:

Premises:

PIN:

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

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between _____, with an address of _____, _____, _____, _____ (hereinafter called the “Landowner”) and the BOROUGH OF WYOMISSING, Berks County, Pennsylvania (hereinafter “Municipality”);

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Berks County, Pennsylvania, Deed Book / Instrument Number _____ identified as Property Identification Number (PIN) _____ (hereinafter “Property”); and

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

WHEREAS, the Post Construction Stormwater Management Plan as part of Landowner’s _____ Final Land Development Plan, prepared by _____, dated _____, last revised _____, Plan No. _____ located on a tract consisting of _____ acres, located at the intersection of _____ and _____ in the Borough of Wyomissing which was approved by the Municipality (hereinafter referred to as the “Plan”) for the property identified herein, provides for management of stormwater within the confines of the Property through the use of Best Management Practices (BMPs); and

WHEREAS, the Municipality and the Landowner, and their 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 stormwater BMPs be constructed and maintained on the Property as exhibited on the Plan; 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 Municipal Stormwater Management Ordinance, including but not limited to:

- Infiltration Trench – A linear stormwater BMP consisting of a continuously perforated pipe at a minimum slope in a stone-filled trench intended to promote recharge of stormwater into the soil.
- Seepage Pit – A subsurface storage facility that temporarily stores and infiltrates stormwater runoff from the roofs of structures.
- Rain Garden – An excavated shallow surface depression planted with specially selected native vegetation to capture, treat and/or infiltrate stormwater runoff.
- Detention Basin – An impoundment that stores and controls the discharge rate of stormwater runoff.
- Infiltration Basin – A shallow impoundment that stores and infiltrates stormwater runoff over a level, uncompacted area with relatively permeable soils.
- Vegetated Roof – A veneer of vegetation that is grown on and covers an otherwise conventional flat or pitched roof ($\leq 30^\circ$ slope), endowing the roof with hydrologic characteristics that more closely match surface vegetation.
- Pervious Pavement – A permeable surface paving course underlain by a uniformly-graded stone bed which provides temporary storage for discharge rate control and/or infiltration of storm water runoff.
- Wet Pond – An impoundment that includes a substantial permanent pool for water quality treatment and additional capacity above the permanent pool for temporary runoff storage.
- Constructed Wetland – A shallow marsh system planted with emergent vegetation designed to treat stormwater runoff.
- Soil Amendment – The process of improving disturbed soils and low organic soils by restoring soil porosity and adding a soil amendment, such as compost, for the purpose of reestablishing the soil’s long-term capacity for stormwater infiltration and pollutant removal.
- Capture and Reuse – A wide variety of water storage techniques designed to capture precipitation, temporarily store and reuse the water for a variety of applications.
- Vegetated Swale - A broad, shallow, trapezoidal or parabolic channel, densely planted

with a variety of trees, shrubs, and/or grasses designed to attenuate and/or infiltrate runoff volume from adjacent impervious surfaces, allowing some pollutants to settle out in the process. Check dams may be used to further enhance attenuation and infiltration opportunities in steeper slopes.

- Grassed Swale – A relatively broad, shallow channel, densely planted with grass, designed to convey stormwater runoff and in some cases to attenuate and/or infiltrate runoff volume from adjacent impervious surfaces, allowing some pollutants to settle out in the process. Check dams may be used to further enhance attenuation and infiltration opportunities in steeper slopes.

WHEREAS, the Municipality requires, through the implementation of the Plan, that stormwater management BMPs as required by said Plan and the municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner or Lessee, their 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 Recitals and terms and conditions as therein set forth, shall specifically be made part of this Agreement.
2. The BMPs shall be constructed by the Lessee in accordance with the plans and specifications identified in the Plan.
3. The Landowner shall operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality and in accordance with the specific maintenance requirements noted on the Plan.
4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property. Upon entry on to the Property, the Municipality hereby releases and holds harmless Landowner from any personal injury or property damage resulting from inspection of the BMP(s) except for those damages caused by the negligence of Landowner, or Landowner's authorized agents.
5. All reasonable costs for said inspections shall be borne by the Landowner and payable to the Municipality pursuant to a fee schedule established from time to time by the Borough Council of the Borough of Wyomissing. Notwithstanding the immediately preceding sentence, Landowner and Municipality have estimated the cost of said inspections during the ten (10) year inspection period to be _____ and ___/100 Dollars (\$_____.____), which shall be paid by Landowner in advance, in consideration of the cost of such inspections, upon execution of this Agreement. Any reasonable amounts due beyond this estimated amount shall be the sole responsibility of the Landowner.

6. The Landowner hereby conveys to the Municipality easements and/or rights-of-ways of such dimensions as are reasonably necessary for access for periodic inspections by the Municipality and maintenance, if required.
7. In the event the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality, the Municipality or its representatives may, but is not required to, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). Prior to Municipality entering the Property to maintain BMP(s), Municipality shall endeavor to give Landowner at least 30 days advance written notice, except in the case of a threat to health or safety in the judgment of the Municipality, or where required by State or Federal laws or regulations imposing a duty on the Municipality to take action. This provision shall not be construed to allow the Municipality to erect any permanent structure on the land of the Landowner. It is expressly understood and agreed that the Municipality 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.
8. In the event the Municipality, 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 Municipality for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Municipality. The Landowner shall be responsible for payment of Municipality's expenses. In the event of a dispute regarding costs incurred by the Municipality in performing said work, the procedures set forth in the Pennsylvania Municipalities Planning Code, Section 510(g) shall be followed.
9. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) 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.
10. The Landowner, their assigns, and other successors in interests, shall release the Municipality's employees and designated representatives 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 Municipality, with the exception of negligence or misconduct by the Municipality or its agents. In the event that a claim is asserted against the Municipality, its designated representatives or employees, the Municipality shall promptly notify the Landowner and the Landowner shall defend, at their own expense, any suit based on the claim but not those claims resulting for the negligence or misconduct of the Municipality or its agents. If any judgment or claims against the Municipality's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.
11. The Municipality shall inspect the BMP(s) at a minimum of once every three years to ensure their continued functioning.

12. The following Post Construction Stormwater Best Management Practices (BMP) have been provided for this project:

- a. _____
- b. _____
- c. _____

This Agreement shall be recorded at the Office of the Recorder of Deeds of Berks County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, their assigns, and any other successors in interest, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(Seal)

LANDOWNER:

By: _____
Signature

Print Name

Title

(Seal)

BOROUGH OF WYOMISSING

By: _____

Print Name

President of Borough Council

Attest: _____

Print Name

Secretary

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this, the _____ day of _____, 20____, before me, the subscriber, a Notary Public, personally appeared _____, who acknowledged him/herself to be the _____ of _____, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the entity by himself/herself as such officer.

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

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this, the _____ day of _____, 20____, before me, the subscriber, a Notary Public, personally appeared _____, who acknowledged himself to be the President of the Borough Council of Wyomissing Borough, and that he as such President, being authorized to do so, executed the foregoing instrument 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

My Commission Expires: