

APPENDIX D

STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT

**Stormwater Management Facilities
Operation and Maintenance Agreement**

THIS AGREEMENT, made and entered into this ____ day of _____, 20____,
by and between _____, (hereinafter the “Owner”), and Worcester
Township, Montgomery County; Pennsylvania, (hereinafter “Township”);

WITNESSETH

WHEREAS, the Owner is the owner of certain real property located in Worcester Township,
Montgomery County, Pennsylvania (TMP # _____ as recorded by deed in the land
records of Montgomery County, Pennsylvania, Deed Book _____ at Page _____) (hereinafter
“Property”), on which it intends to develop _____
(hereinafter “Development”) in accordance with a plan titled _____,
dated _____, 20____, and last revised _____, 20____ (hereinafter
“Plan”). The Plan is attached to this agreement and marked “Exhibit A”; and

WHEREAS, for the purposes of this agreement, the following definition shall apply: “Best
Management Practices” (hereinafter “BMPs”) - Activities, facilities, designs, measures, or procedures
used to manage stormwater impacts from regulated activities, to meet state water quality requirements, to
promote groundwater recharge, and to otherwise meet the purposes of the Worcester Township
Stormwater Management Ordinance. Stormwater BMPs are commonly grouped into one of two
categories: “structural” or “nonstructural.” Nonstructural BMPs or measures refer to operational and/or
behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff
whereas structural BMPs or measures are those that consist of a physical device or practice that is
installed to capture and treat stormwater runoff. Structural BMPs include but are not limited to retention
ponds and constructed wetlands, underground treatment systems, infiltration facilities, filter strips, low
impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers,
rain gardens, sand filters, detention basins, and manufactured devices. Structural stormwater BMPs are
permanent appurtenances to the project site; and

WHEREAS, Township and Owner agree that the health, safety, and welfare of the residents of
the Township require that on-site stormwater management facilities/BMPs (hereinafter “Stormwater
Management Facilities”) be constructed and maintained on the Property; and

WHEREAS, Township requires, through the implementation of the Stormwater Management Site
Plan (hereinafter “Plan”) as approved by Township, that Stormwater Management Facilities as required

by the Plan and Worcester Township Stormwater Management Ordinance be constructed and adequately operated and maintained by Owner, and replaced at the end of the facility's lifespan; and

WHEREAS, Owner is required to and intends to install and maintain the Stormwater Management Facilities in accordance with the Plan and the conditions of approval by Worcester Township; and

WHEREAS, Owner is proceeding to build and develop the Property with certain improvements, including the installation of certain Stormwater Management Facilities, including but not limited to components to control the quantity and quality of stormwater discharge within the confines of the Property, all as depicted on the Plan.

NOW, THEREFORE, in consideration of the foregoing premises, Owner, for itself, its successors-in-interest, successors-in-title, grantees and assigns, intending to be legally bound hereby, hereby covenants, declares, agrees, confirms and provides as follows:

1. Inspection, Maintenance and Replacement. Owner shall continuously and perpetually inspect, maintain and/or replace the Stormwater Management Facilities in accordance with the conditions of project approval, the Plan, and with manufacturer's specifications. In addition, Owner shall do the following:
 - A. Twelve (12) months after the Stormwater Management Facilities are accepted by Township as complete, Owner will inspect same in accordance with Sections 1.B.1 through 1.B.5, below, as applicable.
 - B. Routine maintenance shall be performed after a major rainfall event of 4.75 inches of rainfall or more in a 24-hour period (equivalent of a 10-year frequency storm) as follows:
 - (1) Runoff collection inlets, drains, gutters and downspouts shall be kept clear of accumulated debris such as leaves, grass clippings, sticks and trash.
 - (2) Outflow control structures shall be inspected to ensure they are free and clear of debris and are structurally intact. Any debris shall be cleared immediately. If structural failures or leaks exist, Owner shall contact Township immediately to report the problem, receive instructions on how to correct the problem and schedule an inspection for the necessary repair work. Surface stormwater management basins shall drain and return to normal conditions within 12 hours of the termination of the rainfall event.
 - (3) The basin Impoundment devices (earthen berms, dams, or wet pond edges) shall be inspected for structural integrity, leaks and proper stabilization (adequate vegetation). If structural failures or leaks exist, Owner shall contact Township immediately to report the problem, receive instructions on how to correct the problem and schedule an inspection for the necessary repair work.
 - (4) Impoundment areas shall be inspected for debris, accumulated sediments and inadequate vegetation/erosion. All sediments and debris shall be removed promptly and the impoundment area shall be maintained in a stable condition (adequate vegetation or other permanent surface stabilization).
 - (5) Runoff collection inlets located close to and within underground infiltration/seepage beds/basins shall be inspected. The standing water in an

underground basin shall drain in 48 hours or less. If collection inlets within the underground bed/basin do not drain, Owner shall contact Township immediately to report such a problem, receive instructions on how to correct the problem and schedule an inspection for the necessary repair work.

- C. At least once every three (3) years, Owner shall perform a complete inspection of Stormwater Management Facilities. This inspection shall occur immediately following a significant rainfall event and shall include, at a minimum, monitoring of stormwater impoundment areas (underground and surface basins) to confirm that the system is draining and returning to normal conditions in less than 48 hours for underground basins and 12 hours for surface basins. The date, time and corresponding total rainfall amount shall be documented as part of the inspection.
 - D. Owner shall all submit inspection reports to the Township, including a description of the inspections and maintenance activities performed during the required inspection term. If the Stormwater Management Facilities malfunctioned during the inspection term, the report shall include photographic evidence of the malfunction and subsequent repair. The report shall be submitted to the Township not later than February 1st of the year following the end of the three (3) year inspection term.
 - E. All materials collected by the Stormwater Management Facilities, including but not limited to oil and sediment, shall be disposed of in accordance with PADEP, US EPA and any other applicable regulations. The inspection report to be submitted at the end of each three (3) year inspection term shall include a list of all materials disposed and certification of regulatory compliance with disposal requirements, where applicable.
 - F. If a Stormwater Management Facility malfunctions, Township shall be notified in writing within 10 days of the discovery of the malfunction. All maintenance, repairs or modifications shall be made in accordance with the specifications of the manufacturer or designer of the structure and as shown on the Plan. If a repair or modification is not made pursuant to manufacturer or designer's specifications and/or Plan, said repair or modification shall be approved in writing by the manufacturer or designer and Township. The maintenance and repair of malfunctioning facilities shall be completed within 30 days of discovery of the malfunction, or immediately upon discovery if the malfunction poses a threat to the public health or safety as determined by Township.
 - G. Township reserves the right to require the installation of additional SWM structures if the facilities as designed do not function properly, to insure that the Stormwater Management Facility(s) conforms to the intent of the Plan approved by Township.
2. Prohibition of Alteration or Removal. Owner shall not alter or remove any Stormwater Management Facility depicted on the Plan unless prior written approval is obtained from Township.
 3. Township Inspection. Owner hereby grants permission to Township, its authorized agents and employees, to enter upon the Property at reasonable times and upon presentation of proper identification, to inspect the Stormwater Management Facilities whenever necessary. Whenever possible, Township shall notify Owner prior to entering the Property.

4. Fees & Securities. Owner hereby agrees to pay any fee established by the Township to provide for the reviews and other inspections conducted by the Township Engineer, and the Owner agrees to post any required securities permitted under Township Code or other law.
5. Failure to Maintain Facilities. In the event that Owner fails to operate and maintain the Stormwater Management Facilities as shown on the Plan in good working order acceptable to Township, Township or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said facilities. This provision shall not be construed to allow Township to erect any permanent structure on Owner's Property. It is expressly understood and agreed that Township is under no obligation to maintain or repair the Stormwater Management Facilities, and in no event shall this Agreement be construed to impose any such obligation on Township.
6. Township Maintenance Reimbursement. In the event that 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, Owner shall reimburse Township for all such expenses (direct and indirect) incurred within thirty (30) calendar days of receipt of invoice from Township. If the Township is not reimbursed the Township is authorized to register a lien against the property for the amount to be reimbursed plus all associated legal and other costs.
7. Liability. 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 from the Property.
8. Township Indemnification. Owner, its heirs, executors, administrators, and assigns, hereby releases Township, its employees and designated representatives, from all damages, casualties, occurrences or claims (including reasonable attorneys' fees) arising from the construction, presence, existence, or maintenance of the Stormwater Management Facilities by Owner or Township, unless caused by the negligence or malfeasance of Township, its employees or designated representatives.
9. Default; Cure. In the event that Owner fails to comply with the terms of this Agreement, Township shall send written notice to Owner specifying the areas of noncompliance ("Deficiencies") and the steps that must be taken to comply. In the event that Owner does not comply with the terms of the notice within 30 days of the date thereof, or diligently pursue compliance in circumstances where compliance is not possible within 30, Township shall have the right, but not the obligation, to enforce this Agreement at law or in equity, and/or to enter upon the Property and correct the Deficiencies, and collect the cost thereof from Owner by municipal lien against the Property or otherwise.
10. Use and Occupancy Permit. The requirements of this Agreement are part of the conditions for issuance of Township's Use and Occupancy Permit for the improvements depicted on the Plan. Should Owner fail to comply with the requirements of this Agreement, Township reserves the right to revoke the Use and Occupancy Permit after providing the Deficiencies notice and after the cure period as set forth in Paragraph 4 above.
11. Covenants Running With the Land; Successors and Assigns Bound. This Agreement and the provisions hereof (1) shall run with the land, and be appurtenant to title to the Property and every portion thereof; and (2) shall be binding upon and inure to the benefit of Owner, and each and all of its respective heirs, successors and assigns, and successors in title to the Property and every portion thereof. Any and all conveyances, leases or encumbrances of any part of the Property shall be subject to the provisions hereof.

12. Recording. This Agreement shall be recorded in the Office of the Recorder of Deeds of Montgomery County, Pennsylvania.

13. Notices; Entry. Any notice required to be given by Township to Owner under the terms of this Agreement shall be sufficiently given if sent by United States certified mail, return receipt requested, postage prepaid, addressed to the then owner of the Property and to the address as set forth in the records for the Property maintained by the Montgomery County Board of Assessment. In the event of an emergency or the occurrence of special or unusual circumstances or situations, Township may enter the Property, if the Owner 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 in jeopardy. Township shall notify Owner of any such inspection, maintenance, or repair undertaken within five days of the activity. Owner shall reimburse Township for its costs.

14. Future Dedication of Stormwater Management Facilities. Worcester Township reserves the right, but is not required, to accept the ownership of any or all of the Stormwater Management Facilities shown on the Plan at any time, pursuant to Section 129-38 of Chapter 129 (Stormwater Management Ordinance) of the Worcester Township Code.

15. Miscellaneous Provisions.
 - A. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

 - B. Amendment. This Agreement may not be amended except by written instrument signed and acknowledged by Owner, and Township and recorded in the Office of the Recorder of Deeds of Montgomery County, Pennsylvania.

 - C. Governing Laws. This Agreement shall be construed and governed by the laws of the Commonwealth of Pennsylvania.

 - D. Integration. This Agreement sets forth the entire agreement between Owner and Township with respect to the subject matter hereof.

IN WITNESS WHEREOF, being duly authorized and empowered to do so, Owner and Township have duly executed and delivered this Agreement as of the date and year first above written.

WITNESS:

OWNER:

For Owner

By: _____
Owner

OWNER:

By: _____
Owner

Worcester Township executes this Agreement to acknowledge its rights and obligations set forth above.

(SEAL)

WORCESTER TOWNSHIP:

By: _____
Township Manager

Attest: _____

COMMONWEALTH OF PENNSYLVANIA :
 : ss
COUNTY OF MONTGOMERY :

On this, the _____ day of _____, 20____, before, the undersigned
notary public, personally appeared _____ and
_____ who acknowledged themselves to be the owner(s),
respectively, of _____ and as such
they did sign the foregoing instrument for the purposes therein contained.

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

(Notarial Seal)

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
 : ss
COUNTY OF MONTGOMERY :

On this, the _____ day of _____, 20____, before, the undersigned notary public, personally appeared _____ who acknowledged himself/herself to be the Manager of Worcester Township, Montgomery County, Pennsylvania, and as such he/she did sign the foregoing instrument on behalf of Worcester Township, for the purposes therein contained.

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

(Notarial Seal)

Notary Public

My Commission Expires: