

Prepared By: Return To: <i>Thornbury Township</i> <i>800 E. Street Road</i> <i>West Chester, PA 19382</i> <i>610-399-1425</i> UPI#: Property Street Address:	LEAVE BLANK For Recorder's Use Only
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**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND
CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, (hereinafter the "Landowner"), and Thornbury Township, Chester County, Pennsylvania, (hereinafter "Township");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of Conveyance recorded in the land records of Chester County, Pennsylvania, at Deed Book _____ and Page _____, (hereinafter "Property"); and

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

WHEREAS, the Stormwater Best Management Practices (hereinafter BMP(s)) and Conveyances Operations and Maintenance Plan OR Simplified Approach Stormwater Management Site Plan _____ (title of approved plans) approved by Thornbury Township on _____ (date) (hereinafter referred to as the "Plan") for the Property, which is attached hereto as Appendix 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, Thornbury 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 Thornbury 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” – Activities, facilities, designs, measures, or procedures as specifically identified in the Plan, used to manage stormwater impacts from Regulated Activities to provide water quality treatment, infiltration, volume reduction, and/or peak rate control, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality’s Stormwater Management Ordinance. Stormwater BMPs are commonly grouped into one (1) of two (2) broad categories or measures: “structural” or “nonstructural.” Nonstructural BMPs or measures refer to low impact development and conservation design practices used to minimize the contact of pollutants with stormwater runoff. These practices aim to limit the total volume of stormwater runoff and manage stormwater at its source by techniques such as protecting natural systems and incorporating existing landscape features. Nonstructural BMPs include, but are not limited to, the protection of sensitive and special value features such as wetlands and riparian areas, the preservation of open space while clustering and concentrating development, the reduction of impervious cover, and the disconnection of downspouts from storm sewers. Structural BMPs are those that consist of a constructed system that is designed and engineered to capture and treat stormwater runoff. Structural BMPs are those that consist of a physical system that is designed and engineered to capture and treat stormwater runoff. Structural BMPs 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, bioretention, wet ponds, permeable paving, grassed swales, riparian buffers, sand filters, detention basins, and other manufactured devices designed to mitigate stormwater impacts. The BMPs identified in the Plan are permanent appurtenances to the Property; and

Conveyance – As specifically identified in the Plan, a manmade, existing or proposed facility, feature 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 Plan are permanent appurtenances to the Property; and

WHEREAS, Thornbury Township requires, through the implementation of the Plan, that stormwater management BMPs and conveyances, as required by the Plan and Thornbury Township’s Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner or their designee.

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 stormwater management site plans and specifications OR Simplified Approach Stormwater Management Site Plan as approved by Thornbury Township in the Plan.

3. Upon completion of construction, the Landowner shall be responsible for completing final As-Built Plans of all BMPs, Conveyances, or other stormwater management facilities included in the approved stormwater management site plan as per the requirements of Section 502 of the Stormwater Management Ordinance.
4. The Landowner shall inspect, operate and maintain the BMP(s) and Conveyance(s) as shown on the Plan in good working order acceptable to Thornbury Township and in accordance with the specific inspection and maintenance requirements in the approved Plan and the current version of the Pennsylvania Stormwater BMP Manual, as amended.
5. The Landowner hereby grants permission to Thornbury 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 for compliance with this Agreement, the Plan and Thornbury Township's Stormwater Management Ordinance. Whenever possible, Thornbury Township shall notify the Landowner prior to entering the Property.
6. The Landowner shall inspect the BMP(s) and Conveyance(s) to determine if they continue to function as intended.
7. The BMP(s) and Conveyance(s) shall be inspected according to the following frequencies, at a minimum:
 - a. Annually for the first 5 years.
 - b. Once every 3 years thereafter.
 - c. During or immediately after the cessation of a 10-year or greater storm, as determined by the Township Engineer. Inspection reports for inspections during or after the cessation of a 10-year or greater storm event are only required to be submitted to Thornbury Township if requested by Thornbury Township or the Township Engineer.

Written inspection reports shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to Thornbury Township within 30 days following completion of the inspection.

Landowners must notify Thornbury Township of BMP(s) and Conveyance(s) that are no longer functioning as designed and must coordinate with Thornbury Township to determine a schedule to repair or retrofit these systems to restore designed functionality.

8. The Landowner acknowledges that, per the Thornbury Township's Stormwater Ordinance, it is unlawful, without written approval of Thornbury 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 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 Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or Conveyance.

9. In the event that the Landowner fails to operate and maintain the BMP(s) and Conveyance(s) as shown on the Plan in good working order acceptable to Thornbury Township, the Landowner shall be in violation of this Agreement, and the Landowner agrees that Thornbury 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 Thornbury 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 Thornbury Township.

10. In the event that Thornbury Township, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for inspection, labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse Thornbury Township for all expenses (direct and indirect) incurred within 30 (thirty) days of delivery of an invoice from Thornbury Township. Failure of the Landowner to make prompt payment to Thornbury Township may result in enforcement proceedings, which may include but are not limited to the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

11. 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.

12. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release Thornbury Township and 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 Thornbury Township, its employees, agents or designated representatives, Thornbury Township shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against Thornbury Township, and/or its employees, agents and representatives, or, at the request of Thornbury Township, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of Thornbury Township. If any judgment or claims against Thornbury Township or its employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by Thornbury Township, including attorneys' fees, regarding said damages, judgments or claims.

13. Thornbury 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 Thornbury Township shall include its reasonable attorneys' fees and costs incurred in seeking relief under this Agreement.

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

15. 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.

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

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

WITNESS the following signatures and seals:

ATTEST:

(SEAL)

For Thornbury Township:

(SEAL)

For the Landowner:

ATTEST:

_____ (Thornbury Township)

By Individual:

State of _____

County of _____

On this _____ day of _____, 20__ . Before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be person whose name(s) is/are subscribed to the within instrument and acknowledged that _____ executed the same for the purpose therein contains.

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

Notary Public

My commission expires:

By the Company:

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be _____ of _____, a _____, and that he/she being authorized to do so, executed the forgoing instrument for the purpose therein contained by signing the name of the Company by herself/himself as _____.

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

Notary Public

My commission expires: