

§247 – APPENDIX A

STORMWATER OPERATION & MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____,
by and between _____ (hereinafter the “Landowner(s)”),
of _____ (Landowner’s current address), and

PERKIOMEN TOWNSHIP, Montgomery County, Pennsylvania (hereinafter “Township”);

WITNESSETH:

WHEREAS, the Landowner owns real property located at _____
_____ (address), the Deed to which is
recorded in the Montgomery County Recorder of Deeds’ Office in Deed Book _____, Page _____, and
identified by the Board of Assessment as Tax Parcel Number _____,
(hereinafter “Property”); and

WHEREAS, the Landowner has proposed to build and develop the Property; and

WHEREAS, the Township, and the Landowner agree that the health, safety, and welfare of the
residents of the Township and the protection and maintenance of water quality require that on-site
Stormwater Management Facilities and BMPs be constructed and maintained on the Property; and

WHEREAS, the Township requires, through the implementation of the Perkiomen Township
Stormwater Management Ordinance of 2022, that Stormwater Management Facilities and BMPs as
required by said Stormwater Management Site Plan(s) and Stormwater Management Operation and
Maintenance (O&M) Plan(s) be constructed and adequately operated and maintained by the Landowner, in
perpetuity; and

WHEREAS, the Stormwater Management Site Plans and Stormwater Management Operation
and Maintenance Plans prepared by _____ (engineer firm) last revised
_____ (date) were approved by the Board of Supervisors of Perkiomen Township
on _____ (date) (hereinafter referred to as the “O&M Plans”), which are
attached hereto, made part hereof, and marked as Appendix A which provides for, inter alia, management
of stormwater within the confines of the Property through the use of Stormwater Management Facilities
and BMPs; and

WHEREAS, the Township requires the posting of financial security to ensure completion of the
required project improvements, and, the submission of “As-Built” plans prepared by a Pennsylvania
registered surveyor or professional engineer; and

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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. For purposes of this Agreement, the term “Stormwater Management Facilities” used herein shall include any structure, natural or man-made, that, due to its condition, design or construction, conveys, stores or otherwise affects stormwater runoff. Typical stormwater management facilities include, but are not limited to, detention and retention basins, open channels, storm sewers, pipes, inlets and infiltration facilities; and
2. For purposes of this Agreement, the term Best Management Practices (herein after referred to as “BMPs”) which including 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 Township’s Stormwater Management Ordinance. Stormwater BMPs are commonly grouped into one of two broad categories or measures: “structural” or “non-structural.”; (1) non-structural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff; whereas (2) 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, 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, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the project site; and
3. The Landowner, at Landowner’s sole expense, shall construct the Stormwater Management Facilities and BMPs in accordance with the Perkiomen Township Stormwater Management Ordinance of 2022, and Stormwater Management Site Plan(s) and Stormwater Management Operation and Maintenance (O&M) Plan(s) approved by the Township (hereinafter referred to as the “O&M Plans”) for the property identified herein. The specific Stormwater Management Facilities and BMPs for this Project are identified on the document attached hereto, made part hereof, and marked Exhibit “A”.
4. The Landowner, at Landowner’s sole expense, shall maintain all of the Stormwater Management Facilities, BMPs and improvements referred to in Paragraph 3 above in good working condition, in accordance with the specific operation and maintenance requirements noted on the approved O&M Plans, or as otherwise required in writing by the Township, so that they always perform their design functions.
5. The Landowner, or the owner’s designee (i.e., privately hired engineers or qualified professional), at Landowner’s sole expense, shall inspect all Stormwater Management Facilities and BMPs installed under this Ordinance according to the following frequencies, at a minimum, to ensure the BMPs, facilities and/or structures continue to function as intended:
(Select based on criteria: (Criteria 1) – Development by an individual homeowner, on a single lot, with stormwater management facilities and BMPs which are located entirely within their property boundaries and which only serve their individual property; (Criteria 2) Any other type of Development)

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(Criteria 1)

- Within 30 days of receiving a written Township request for inspection, unless a greater period of time is agreed to by the Township.

or

(Criteria 2)

- Annually for the first 5 years after the construction of the stormwater facilities.
- Once every 3 years thereafter.
- During or immediately after the cessation of a 10-year or greater storm.
- Within 30 days of receiving a written Township request for inspection, unless a greater period of time is agreed to by the Township.

A written inspection report with photos 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 all stormwater management facilities and BMPs, or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to Perkiomen Township within 30 days following completion of the inspection. The Township shall have the right, but not the obligation to, track the required written inspection reports.

6. If the Landowner fails to produce a requested inspection report, the Township may enter the property, perform an inspection of the stormwater management facilities and BMPs, and prepare an inspection report. When inspections are conducted by the Township, the Township shall give the Landowner a copy of the inspection report with findings and evaluations. The Landowner shall reimburse the Township within 30-days of receiving such invoice thereof, for all reasonable and necessary costs incurred by the Township hereunder. If the Township is not reimbursed for the necessary costs incurred within said 30-day period, the Township may proceed to recover same through proceedings in law or equity, or by any other means or proceeding available to the Township and/or authorized under the provisions of the Second-Class Township Code.
7. In the event the Landowner fails to inspect, operate, or maintain the BMPs per paragraph 2, the Township or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMPs, at the sole expense of Landowner. 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. The Landowner hereby grants and conveys to the Township a blanket easement over the entire property for access at such limited times as the Township reasonably deems necessary, to inspect, operate, maintain, or repair the Stormwater Management Facilities, BMPs, erosion and sedimentation management facilities, and other improvements. The purpose of the inspection is to ensure safe and proper function of the facilities and the condition of all adjacent areas, all pursuant to the provisions of the Stormwater Management Ordinance. The Township shall have the right, but not the obligation, to conduct such inspections, operations, maintenance, or repairs. When inspections are conducted, the Township shall give the Landowner copies of the inspection report with findings and evaluations.
9. In the event the Township, pursuant to this Agreement, performs work or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like due to the Landowner's failure to perform such work, the Landowner shall reimburse the Township, within 30 days of receipt of invoice thereof, for all reasonable and necessary costs incurred by the

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Township hereunder. If not paid within said 30-day period, the Township may proceed to recover same through proceedings in law or equity, or by any other means or proceeding available to the Township and/or authorized under the provisions of the Second-Class Township Code.

10. The Landowner, and its successors and/or assigns, shall indemnify the Township and its agents, professional consultants, and employees from and against any and all damages, accidents, casualties, occurrences or claims that might arise or be asserted against the Township, or its agents, workmen, or contractors, for the construction, presence, existence, inspection, repair, or maintenance of the stormwater management facilities by the Township.
11. In the event a claim is asserted against the Township, its agents, professional consultants, or employees, the Township shall promptly notify the Landowner, who shall defend, at its own expense, any suit based on such claim. If any judgment or claims against the Township shall be allowed, the Landowner shall pay all costs and expenses in connection therewith. The Township, in its sole discretion, may require the Landowner to provide a general liability insurance policy in an amount deemed sufficient to the Township naming the Township as an additional insured.
12. In the event of an emergency or the occurrence of special or unusual circumstances or situations, the Township may enter the property, if the Landowner 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. Otherwise, the Township shall notify the Landowner of any inspection, maintenance, or repair to be undertaken at least five days prior to the commencement of any such activity.
13. The Landowner acknowledges that the Stormwater Management Facilities and BMPs are permanent fixtures that cannot be altered or removed; and the Landowner shall not place any structure, fill, landscaping or vegetation into any Stormwater Management Facility or BMP which would limit or alter the function of the facility, structure, or BMP, unless a revised plan is submitted and approved by the Township. Such revised plan shall be recorded with a new Stormwater Operation & Maintenance Agreement, prior to any alteration being implemented.
14. To ensure completion of all of the required improvements, the Landowner has, contemporaneously with or prior to execution of this Agreement, provided the Township with financial security in the form of a _____ (i.e., cash deposit, letter of credit, etc.). Landowner shall, at his own cost and expenses, do the work and install the improvements described on the Plan in accordance with the requirements of the Township Engineer. The total amount of financial security provided is _____ Dollars (\$ _____), which includes _____ Dollars (\$ _____), for the Township Engineer's construction observation and administration costs. A copy of the Township Engineer's construction cost breakdown is attached as Exhibit B.
15. Landowner agrees to pay all expenses incurred by the Township for the services of the Township Solicitor including, without limitation, preparation and/or review of this Agreement, Deeds or other documents of title, Releases if required, Easements, Rights-of-Way, or any other legal documents required to carry out the terms of this Agreement and the terms of all applicable Township Ordinances. Landowner shall also pay the fees and costs charged by the Township, including those for the Township Engineer, in accordance with the Township's fee schedule and all other applicable Township Ordinances.

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16. Before proceeding with any of the improvements, the Landowner shall give at least seventy-two (72) hour notice to the Township Engineer so that arrangements can be made for the inspection of the work as it progresses.
17. When Landowner has completed the aforesaid improvements, Landowner shall notify the Township in writing of the completion and shall send a copy thereof to the Township Engineer. The Township shall approve or reject said improvements. Rejection shall be accompanied by a written statement indicating the reason therefor. The Township shall authorize the release of the cash escrow fund upon recommendation of the Township Engineer and after payment of all outstanding invoices owed to the Township.
18. Before the Township issues a Use and Occupancy Permit, Landowner shall submit an "As-Built" plan prepared and signed by a registered Professional Land Surveyor and/or Professional Engineer. The "As-Built" plan shall show the location of the building(s), the property corner monuments with elevations, rain leaders, utility line locations, building envelope, walkways, driveways, decks, patios, easements, steep slopes, floodplain, riparian corridor, the stormwater management facilities and associated construction details with elevations, the final grade elevations, landscape features (e.g. including walls), and any other information that may be deemed necessary by the Township which shall be consistent with what is shown on the approved plan. The plan shall also contain a chart for each lot listing how much impervious area each stormwater management facility was designed to handle and how much impervious area has been installed to date. In all other respects, the Property shall be developed in accordance with the original approved plan.
19. This Agreement shall be recorded at the Montgomery County, Pennsylvania, Recorder of Deeds Office, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, in perpetuity.
20. The provisions of this Agreement shall be binding upon the Landowner, as well as Landowner's heirs, administrators, executors, successors and/or assigns, in perpetuity. Landowner agrees to provide a copy of this Stormwater Operation & Maintenance Agreement to its successors and/or assigns and agrees to incorporate a reference to the terms of this Agreement in any future deed of conveyance. The failure of Landowner to perform any act required by this paragraph shall not impair the validity of the Agreement, limit its enforceability in any way, or impair any portion of the Stormwater Facilities Operation and Maintenance requirements or responsibilities.
21. For purposes of this Agreement, the term "Township" shall include the Township and all of its employees, professional consultants, agents, workmen and/or contractors.
22. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site stormwater management facilities and BMPs by the Landowner, at Landowner's sole expense; provided, that this Agreement shall not be deemed to create any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto, by and through their authorized representatives, have executed this Agreement the day and year first above written.

LANDOWNERS:

By: (Print) _____

(Sign) _____
(Owner)

By: (Print) _____

(Sign) _____
(Owner)

Attest: (print) _____

(Sign) _____

(date) _____
(Witness)

PERKIOMEN TOWNSHIP

By: (Print) _____

(Sign) _____
(Board of Supervisors, Chairperson)

Attest: (print) _____

(Sign) _____

(date) _____
(Township Secretary)

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COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF _____ :

On this _____ day of _____, 20____, before me, a Notary Public in and for the County and State aforesaid, personally appeared _____ and _____, who acknowledged themselves to be the _____ and _____, respectively, of _____, that they are the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same for the purposes therein contained, and desire the same be recorded.

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

Notary Public

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF MONTGOMERY :

On this ___ day of _____, 20____, before me, a Notary Public, personally appeared _____ (Board of Supervisors, Chairperson) and _____ (Township Secretary), who acknowledged themselves to be the Chairperson of the Board of Supervisors of Perkiomen Township and the Township Manager of Perkiomen Township, respectively, that they are the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same for the purposes therein contained, and desire the same be recorded.

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

Notary Public