

**APPENDIX 11**

**STORM WATER MANAGEMENT AGREEMENT  
AND DECLARATION OF EASEMENT**

This agreement and declaration of easement made as of this day of \_\_\_\_\_, 200\_\_, by and between the Millersville Borough, Lancaster County, Pennsylvania, a Borough duly organized under the laws of the Commonwealth of Pennsylvania, with its municipal offices located at 10 Colonial Avenue, Millersville, Pennsylvania (hereinafter referred to as the “Borough”) and \_\_\_\_\_ with offices located at \_\_\_\_\_ (hereinafter referred to as “Grantor”).

Grantor is the legal and/or beneficial owner of premises located at \_\_\_\_\_ in Millersville Borough, Lancaster County, Pennsylvania, as more specifically described in a deed recorded in Record Book \_\_\_, Volume \_\_\_, Page \_\_\_, in the Office of Recorder of Deeds in and for Lancaster County, Pennsylvania, and as shown on the plan for \_\_\_\_\_, prepared by \_\_\_\_\_, Drawing No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_, last revised \_\_\_\_\_, 200\_\_, (hereinafter referred to as “Premises”).

Prior to the commencement of any development, Grantor is required under the Borough Storm Water Management Ordinance (the “Ordinance”), as codified at Chapter 26 of the Borough Code of Ordinances, to submit a Storm Water Management Site Plan and application to the Borough for approval. Article VII of the Ordinance requires that the Grantor makes provision for the ownership of, and the method of administering and maintaining, all permanent storm water management facilities. Drainage courses, swales, storm water inlets, pipes, conduits, detention basins and other storm water management facilities, including Best Management Practices (hereinafter referred to as “BMPs”), shall be included under the term of “storm water management facilities”.

The purpose of this Agreement and Declaration of Easement (hereinafter referred to as “this Agreement”) is to describe the ownership and maintenance responsibilities for the storm water management facilities that will be installed on the Premises and to impose ownership and maintenance responsibilities upon Grantor, its successors and assigns, and upon successor owners of the Premises.

Now, therefore, intending to be legally bound hereby and in consideration of receiving approval of its Storm Water Management Site Plan (hereinafter referred to as “Plan”) from the Millersville Borough Council (hereinafter referred to as “Borough Council”), and in consideration of receiving

permits from the Borough to develop the Premises, Grantor, for Grantor and the assigns and successors of Grantor, covenants and declares as follows:

1. The storm water facilities will be owned by Grantor, its successors and assigns.
2. All drainage courses, swales, storm water inlets, pipes, conduits, detention basins and other storm water management facilities, shall be installed, constructed and maintained by Grantor, its successors and assigns, in first-class condition in conformance with the Plan, as approved by Borough Council, and in a manner sufficient to meet or exceed the design standards and specification set forth on the Plan and the minimum design and maintenance standards and requirements set forth in Article III of the Ordinance. These responsibilities shall include, but not be limited to, the following:
  - (a) Liming and fertilizing vegetated channels and other areas in accordance with the *Erosion and Sediment Pollution Control Program Manual*, as prepared by the Pennsylvania Department of Environmental Protection, April 2000, as amended.
  - (b) Reestablishment of vegetation by seeding and mulching or sodding of scoured areas or areas where vegetation has not been successfully established,
  - (c) Mowing as necessary to maintain adequate strands of grass and to control weeds. Chemical weed control may be used if federal, state and local laws and regulations are met. Selection of seed mixtures shall be as approved in erosion and sediment pollution control plan and/or storm water management plan in accordance with PennDOT Publication 408, Section 800 series.
  - (d) Removal of silt and debris from all permanent structures that trap silt or sediment to keep the material from building up in grass waterways, pipes, detention or retention basins, infiltration structures or BMPs, and thus reducing their capacity to convey or store water.
  - (e) Regular inspection of storm water management facilities to assure proper implementation and maintenance of BMPs.
3. Grantor, for itself, and its successors and assigns, agrees that the failure to maintain all drainage courses, swales, storm water inlets, pipes, conduits, detention basins, BMPs and other storm water management facilities in a first-class condition in conformance with this Agreement and the Plan shall constitute a nuisance and shall be abatable by the Borough as such.
4. Grantor, for itself, its successors and assigns, authorizes the Borough or its authorized representatives, at any time and from time to time, to enter upon the Premises to inspect the storm water management facilities.
5. The Borough may require that the Grantor, its successors or assigns, or any future owner or occupier of the Premises, or any part thereof, take such corrective measures as the Borough may deem reasonably necessary to bring the Premises into Compliance with this Agreement and the Plan, as approved by the Borough Council.

6. Upon the failure of the owner or occupier of the Premises to comply with the terms of this Agreement or to take corrective measures following thirty (30) days notice from the Borough, the Borough may take such corrective measures as it deems reasonably necessary to bring the Premises into compliance with this Agreement and with the Plan, including, but not limited to, the removal of any blockage or obstruction from drainage pipes, swales and detention basins, and may charge the cost thereof to Grantor, its successors or assigns, or any owner of the Premises, and, in default of such payment, may cause a municipal lien to be imposed upon the Premises or any part thereof.

7. If ownership or maintenance responsibility of the storm water management facilities is assigned to a homeowners' association, condominium unit owners' association or similar entity, the Borough shall be notified. In the event such an association or entity has already been formed, the association or entity shall consent to and join in this Agreement. If such association or entity fails to properly maintain the storm water management facilities, the Borough shall have the same rights granted to municipalities with reference to maintenance of common space under Section 705 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247 of 1968, as amended, to maintain the storm water management facilities. Any association or entity hereinafter formed shall enter in to an agreement with the Borough recognizing its duties and the Borough's rights under this Agreement.

8. Grantor hereby imposes upon the Premises for the benefit of all present and future owners of the Premises or any part of the Premises, the Borough and all other property owners affected by the storm water management facilities, the perpetual nonexclusive right, privilege and easement for the draining of storm water in and through the drainage courses, swales, storm water inlets, pipes, conduits, detention basins, BMPs and other storm water management facilities depicted on the Plan or plans submitted to the Borough or hereafter made record and now or hereafter installed on or constructed upon the Premises and, in addition, easements of access to the storm water management facilities.

9. Grantor shall include a specific reference to this Agreement and the requirement to implement BMPs and maintain storm water management facilities in accordance with the minimum design standards and requirements set forth in the Ordinance in any deed of conveyance for the Premises or any part thereof.

10. Grantor agrees to indemnify the Borough and its elected and appointed officials, agents and employees (hereinafter collectively known as the "Indemnities") against and hold Indemnities harmless from any and all liability, loss or damage, including attorneys' fees and costs of investigation and defense, as a result of claims, demands, costs or judgments against Indemnities which arise as a result of the design, installation, construction or maintenance of the storm water management facilities.

11. The Borough may, in addition to the remedies prescribed herein, proceed with any action at law or in equity to bring about compliance with the Ordinance and this Agreement.

12. Grantor's personal liability under this Agreement shall cease at such time as (a) all storm water management facilities have been constricted in accordance with the Ordinance and the approved Plans; (b) the storm water management facilities have been inspected and approved by the Borough; (c) all financial security, including any maintenance security, posted by Grantor has been released by the Borough; and (d) Grantor has transferred all lots to be created from the Premises to third parties. Notwithstanding the foregoing, the Grantor's personal liability shall continue for any violations of this Agreement which occurred during the time that Grantor owned the Premises or any lot created from the Premises or in the event the storm water management facilities were not completed, inspected or approved as set forth in this paragraph.

13. Grantor shall, upon completion of installation of the storm water management facilities, deposit financial security with the Borough to secure the structural integrity of the storm water management facilities as well as the functioning of the storm water management facilities in accordance with the Ordinance and approved Plan. The financial security shall be in the amount of fifteen percent (15%) of the actual cost of installation of the storm water management facilities and shall have a term of not less than eighteen (18) months.

14. It is the intent of the parties to this Agreement that personal liability and maintenance obligations shall pass to subsequent title owners upon change in ownership of the Premises or any lot created from the Premises, and such subsequent owners shall assume all personal liability and maintenance obligations for the time period during which they hold title. Personal liability shall remain for any violations of this Agreement which occurred during the period in which an owner held title.

15. This Agreement shall be binding upon Grantor, its successors and assigns, and all present and future owners of the Premises, or any part thereof, and is intended to be recorded to give notice to future owners of the Premises, or any part thereof, of their duties and responsibilities with respect to the storm water management facilities.

16. This Agreement may be amended only by written instrument signed on behalf of all owners of the Premises and the Borough.

17. When the sense so requires, words of any gender used in this Storm Water Management Agreement and Declaration of Easement shall be held to include any other gender, and words in the singular shall be held to include the plural, and vice versa.

IN WITNESS WHEREOF, the undersigned have caused this Agreement and Declaration to be executed on the day and year first written above.

Borough of Millersville

By: \_\_\_\_\_  
(Vice) Chairman  
Borough Council

Attest: \_\_\_\_\_  
(Assistant) Secretary

BOROUGH SEAL

(Individual or Husband and Wife Developer)

Witness: \_\_\_\_\_

SEAL \_\_\_\_\_  
Signature of Individual

SEAL \_\_\_\_\_  
Signature of Spouse if Husband and Wife  
are Co-Developers

(If individual or spouses operate a business)  
Trading and doing business as:

(Partnership Developer\*)

(Name of Partnership)

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Partner

By: \_\_\_\_\_  
Signature of Partner

By: \_\_\_\_\_  
Signature of Partner

\* All partners must execute this Agreement. Additional signature lines should be attached if necessary.

(Corporation Developer)

(Name of Corporation)

Attest:

By: \_\_\_\_\_ By: \_\_\_\_\_  
(Assistant Secretary) (Vice) President

(CORPORATE SEAL)

(MILLERSVILLE BOROUGH ACKNOWLEDGEMENT)

COMMONWEALTH OF PENNSYLVANIA )

) SS:

COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned officer, a notary public in and for the aforesaid Commonwealth and County, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be (Vice) Chair of the Borough Council of the Borough of Millersville, Lancaster County, Pennsylvania, and that he/she, as such officer, being authorized to do so, executed the foregoing Storm Water Management Agreement and Declaration of Easement, for the purposes therein contained, by signing the name of such Borough by himself/herself as such officer.

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

\_\_\_\_\_  
Notary Public

My commission expires:

(INDIVIDUAL OR HUSBAND AND WIFE ACKNOWLEDGEMENT)

COMMONWEALTH OF PENNSYLVANIA )

) SS:

COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the subscriber, a notary public in and for the aforesaid Commonwealth and County, came the above named \_\_\_\_\_, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed on the within instrument, and acknowledged the foregoing Storm Water Management Agreement and Declaration of Easement to be his/her/their act and deed and desired the same to be recorded as such.

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

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Notary Public  
My commission expires:

(PARTNERSHIP DEVELOPER ACKNOWLEDGEMENT)

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged themselves to be partners of \_\_\_\_\_, a Pennsylvania general partnership, and that they, as such partners, being authorized to do so, executed the foregoing Storm Water Management Agreement and Declaration of Easement for the purposes therein contained by signing the name of the partnership themselves as such partners.

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

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Notary Public  
My commission expires:

(CORPORATE DEVELOPER ACKNOWLEDGEMENT)

COMMONWEALTH OF PENNSYLVANIA )

) SS:

COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that as such officer, being authorized to do so, acknowledged the foregoing Storm Water Management Agreement and Declaration of Easement for the purpose therein contained by signing the name of the corporation by himself/herself as \_\_\_\_\_.

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

\_\_\_\_\_

Notary Public

My commission expires:

JOINER BY MORTGAGEE

("Mortgagee") as holder of a certain mortgage dated \_\_\_\_\_, 200\_, and is recorded or is about to be recorded in the Recorder of Deeds Office in and for Lancaster County, Pennsylvania, as well as any other mortgages which Mortgagee may now or hereafter hold on the Premises (all such mortgages hereinafter collectively referred to as the "Mortgages"), joins in, consents to, and expressly approves the grant of easements and other rights and privileges described in the attached Storm Water Management Agreement and Declaration of Easement (the "Agreement").

The Mortgagee, for itself, its successors and assigns (which shall include any assignee of the Mortgages and any purchaser of the Premises at a sale in foreclosure of the Mortgages or otherwise), hereby covenants and agrees that the rights and privileges herein granted with respect to the Premises shall not be terminated or disturbed by reason of any foreclosure or other action which may be instituted by the Mortgagee, its successors or assigns, as a result of any default under the Mortgages or the debt of instruments that such Mortgages secure. Mortgagee by consenting to the Agreement shall not by virtue of its interest as Mortgagee be deemed to have undertaken any of the obligations of the Grantor under the Agreement, including but not limited to construction, maintenance, inspection or indemnification.

IN WITNESS WHEREOF, Mortgagee hereby joins in the execution of the Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of Mortgagee

Attest: \_\_\_\_\_ By: \_\_\_\_\_

[SEAL]

(MORTGAGEE ACKNOWLEDGEMENT)

COMMONWEALTH OF PENNSYLVANIA )

) SS:

COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that as such officer, being authorized to do so, acknowledged the foregoing Storm Water Management Agreement and Declaration of Easement for the purpose therein contained by signing the name of the Bank by himself/herself as \_\_\_\_\_.

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

\_\_\_\_\_

Notary Public

My commission expires:

Representation and Warranty Concerning Mortgages  
Affecting Proposed Development

I (We), \_\_\_\_\_ the undersigned, intending to be legally bound, represent and warrant to the Borough of Millersville that there are not presently nor will there be prior to the recording of the Storm Water Management Agreement and Declaration of Easement Agreement any mortgages affecting the property which is being developed in accordance with the subdivision and/or land development plan titled \_\_\_\_\_, prepared by \_\_\_\_\_, drawing or project number \_\_\_\_\_, dated \_\_\_\_\_, last revised \_\_\_\_\_.

The undersigned understand(s) and agree(s) that the Borough of Millersville will rely upon this statement when releasing the aforementioned subdivision and/or land development plan for recording.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature