

17 Attachment 27

Borough of Elizabethtown

APPENDIX NO. 27

**STORMWATER MANAGEMENT AGREEMENT
AND DECLARATION OF EASEMENT**

THIS AGREEMENT AND DECLARATION OF EASEMENT made as of this _____ day of _____, 20____, by and between _____ of _____ (hereinafter referred to as the "Grantor"), and the BOROUGH OF ELIZABETHTOWN, Lancaster County, Pennsylvania, a borough duly organized under the laws of the Commonwealth of Pennsylvania, with its municipal offices located at Rosehill Avenue, Elizabethtown, Pennsylvania (hereinafter referred to as the "Borough").

BACKGROUND.

Grantor is the owner of premises located at _____, in the Borough of Elizabethtown Borough, Lancaster County, Pennsylvania, as more specifically described in a deed recorded in Record Book _____, Volume _____, Page _____, in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania, as shown on the plan for _____, prepared by _____, Drawing No. _____, dated _____, last revised _____, and designated as Lancaster County Planning Commission File No. _____ (hereinafter referred to as the "Premises").

Prior to the commencement of any development, Grantor is required, under the Borough of Elizabethtown Stormwater Management Ordinance (hereinafter referred to as the Stormwater Ordinance), to file a stormwater management plan with the Borough and obtain approval of the stormwater management plan from Borough Council. Pursuant to the Stormwater Ordinance, Grantor must include stormwater management data in its subdivision application. Section 503 of this Stormwater Ordinance requires that Grantor's plan reflect and/or be accompanied with supporting documentation which identifies the ownership of, and the method of administering and maintaining, all permanent stormwater management facilities.

Prior to the commencement of any development, Grantor additionally is required, under the Borough of Elizabethtown Subdivision and Land Development Ordinance (hereinafter referred to as the "Subdivision Ordinance"), to file a final plan with the Borough and obtain approval of the final plan from Borough Council. Pursuant to the Subdivision Ordinance, Grantor must include stormwater management data in its subdivision application. The Subdivision Ordinance requires that Grantor's final plan reflect and/or be accompanied with supporting documentation which identifies the ownership of, and the method of administering and maintaining, all permanent stormwater management facilities.

The purpose of this Agreement and Declaration of Easement is to describe the ownership and maintenance responsibilities for the stormwater facilities which will be installed on the Premises and to impose the ownership and maintenance responsibilities upon Grantor, its successors and assigns and upon successor owners of the Premises, and set forth the rights of the Borough.

WATER

NOW, THEREFORE, intending to be legally bound hereby and in consideration of receiving approval of its Stormwater Management Plan (hereinafter referred to as the “Plan”) from the Council of the Borough of Elizabethtown, 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 stormwater facilities will be owned by Grantor, its successors and assigns.
2. All drainage courses, swales, stormwater inlets, pipes, conduits, detention basins, retention basins, BMP facilities, infiltration facilities and other stormwater management facilities shall be installed, constructed and maintained by Grantor, its successors and assigns, in a first-class condition in conformance with the Plan, as approved by the Council of the Borough of Elizabethtown, and in a manner sufficient to meet or exceed the design standards and specifications set forth on the Plan. These responsibilities shall include but not be limited to the following:

A. During development (temporary)

1. Removal of silt from sediment traps when the volume is reduced from 2,000 cubic feet per tributary acre to 1,300 cubic feet per tributary acre (35%) as per the PADEP March 2000 E & S Pollution Control Manual, as amended; and sediment basins when volume is reduced from 7,000 cubic feet per tributary acre to 5,000 cubic feet per tributary acre (28%) as per the PADEP March 2000 E & S Pollution Control Manual, as amended;
2. Periodic maintenance (after each storm event) of temporary control facilities such as replacement of straw bale dikes, straw filters, silt fence, or similar measures;
3. Establishment or reestablishment of vegetation by seeding and mulching or sodding of scoured areas or areas where vegetation has not successfully been established;
4. Installation of necessary controls to correct unforeseen problems caused by storm events within design frequencies; and
5. The applicant shall be responsible for removal of all temporary measures and installation of permanent measures upon completion of the project.

B. Maintenance after physical completion (permanent)

1. Liming and fertilizing vegetated channels and other areas according to the specifications in the “Penn State Agronomy Guide.”
2. Reestablishment of vegetation by seeding and mulching or sodding of scoured areas or areas where vegetation has not been successfully established.
3. 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.

(17, STORMWATER MANAGEMENT)

4. Removal of silt from all permanent structures which trap silt or sediment in order to keep the material from building up in grass waterways and thus reducing their capacity to convey stormwater.
5. Regular inspection of the areas in question to assure proper maintenance and care.
6. Removal of silt from all permanent drainage structures, in particular BMPs, in order to maintain the design storage volumes. Regular programs shall be established and maintained.
7. Maintenance of all facilities designed to improve water quality to insure that such facilities function in accordance with their design.
8. Repair any subsidence, including subsidence caused by sinkholes.
9. If the stormwater management plan includes earth disturbance in excess of one acre, the landowner shall inspect all BMP facilities on the following basis:
 - a. Annually for the first five years.
 - b. Once every three years thereafter.
 - c. During or immediately after the cessation of a 100-year or greater storm event.

The entity conducting the inspection shall submit a report to the Borough regarding the condition of the BMPs and recommending repairs, if needed, and a schedule for completion of such repairs. The landowner shall implement all necessary repairs in accordance with the submitted schedule.

10. Grantor, for itself, its successors and assigns, agrees that the failure to maintain all drainage courses, swales, stormwater inlets, pipes conduits, detention basins, retention basins, BMP facilities, infiltration facilities and other stormwater 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.
11. Grantor, for itself, its successors and assigns, authorizes the Borough, at any time and from time to time, by its authorized representatives, to enter upon the Premises to inspect the stormwater management facilities.
12. The Borough may require the Grantor, its successors or assigns, or any future owner or occupier of the Premises, or any part thereof, to take such corrective measures as the Borough may deem reasonably necessary to bring the Premises into compliance with this Agreement and with the Plan, as approved by the Council of Elizabethtown Borough.
13. Upon the failure of the owner or occupier of the Premises to comply with the terms of this Stormwater Management Agreement or to take correc-

tive measures following 30 days' notice from the Borough, the Borough, through its authorized representatives, may take such corrective measures as it deems reasonably necessary to bring the Premises into compliance with the Agreement and with the Plan, including but not limited to the removal of any blockage or obstruction from drainage pipes, swales and detention basins, retention basins, BMP facilities, or infiltration facilities, 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 part thereof.

14. If ownership or maintenance responsibility of the stormwater management facilities is assigned to homeowners' association, condominium unit owners' association, or similar entity, the Borough shall be notified. In that event, such an association or entity shall consent to and join in the Agreement. If such association or entity fails to properly maintain the stormwater management facilities, the Borough shall have the same rights granted to municipalities with reference to maintenance of common open space under Section 705 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, or any future amendment thereof, to maintain the stormwater management facilities. Any association or entity hereinafter formed shall enter into an agreement with the Borough recognizing its duties and the Borough rights under this Agreement.
15. 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 stormwater management facilities, the perpetual nonexclusive right, privilege and easement for the draining of stormwater in and through the drainage courses, swales, stormwater inlets, pipes, conduits, detention basins and other stormwater management facilities depicted on the plan or plans submitted to the Borough or hereafter made of record and now or hereafter installed on or constructed upon the Premises and, in addition, easements of access to the stormwater management facilities.
16. Grantor shall include a specific reference to this Stormwater Management Agreement and Declaration of Easement in any deed of conveyance for the Premises or any part thereof.
17. Grantor agrees to indemnify the Borough and all of its elected and appointed officials, agents, and employees (hereinafter collectively referred to as the "Indemnitees") against and hold Indemnitees harmless from any and all liability, loss or damage, including attorneys' fees and cost of investigation and defense, as a result of claims, demands, costs or judgments against Indemnitees which arise as a result of the design, installation, construction or maintenance of the stormwater management facilities.
18. 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 Borough of Elizabethtown Stormwater Management Ordinance and this Agreement.

(17, STORMWATER MANAGEMENT)

19. Grantor's personal liability under this Agreement shall cease at such time as (a) all stormwater management facilities have been constructed in accordance with the specifications of the Borough of Elizabethtown Stormwater Management Ordinance and the approved plans; (b) the stormwater management facilities have been inspected and approved by the Borough Engineer; (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, Grantor's personal liability shall continue for any violations of this Agreement and Declaration of Easement which occurred during the time that Grantor owned the Premises or any lot created from the Premises or in the event the stormwater management facilities were not completed, inspected or approved as set forth in (a) through (c) herein.
20. 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 all violations of this Agreement and Declaration of Easement which occurred during the period in which an owner held title.
21. This Agreement and Declaration of Easement shall be binding upon Grantor, the successors and assigns of Grantor, and all present and future owners of the Premises, or any part thereof, and is intended to be recorded in order to give notice to future owners of the Premises, or any part thereof, of their duties and responsibilities with respect to the stormwater management facilities.
22. This Agreement and Declaration of Easement may be amended only by written instrument signed on behalf of all owners of the Premises and the Borough.
23. When the sense so requires, words of any gender used in this Stormwater Management Agreement and Declaration of Easement shall be held to include any other gender, and words in the singular number shall be held to include the plural, and vice versa.

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

BOROUGH OF ELIZABETHTOWN

By: _____
(Vice) President
Borough Council

Attest: _____
(Assistant) Manager

WATER

(Individual Developer)

WITNESS:

(Seal)

(Signature of Individual)

Trading and doing business as:

(Partnership Developer*)

(Name of Partnership)

WITNESS:

By: Partner (Seal)

By: Partner (Seal)

By: Partner (Seal)

By: Partner (Seal)

*All Partners must execute this Agreement

WATER

(Corporation Developer)

(Name of Corporation)

ATTEST:

By:
(Assistant) Secretary

By:
(Vice) President

[CORPORATE SEAL]

(BOROUGH ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF LANCASTER) SS:

On this ____ day of _____, 20____, before me, the undersigned officer, a Notary Public in and for the aforesaid Commonwealth and County, personally appeared _____, who acknowledged _____ self to be (Vice) President of Borough Council of Elizabethtown, Lancaster County, Pennsylvania, and that he/she, as such officer, being authorized to do so, executed the foregoing Stormwater Management Agreement and Declaration of Easement, for the purposes therein contained, by signing the name of such Borough by _____ self as such officer.

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

Notary Public

My commission expires:

WATER

(INDIVIDUAL DEVELOPER ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA)
) **SS:**
COUNTY OF LANCASTER)

On this ____ day of _____, 20____, before me, the subscriber, a Notary Public in and for the aforesaid Commonwealth and County, came the above-named _____, known to me (satisfactorily proven) to be the person whose name is subscribed on the within instrument and acknowledged the foregoing Stormwater Management Agreement and Declaration of Easement to be ____ act and deed and desired the same to be recorded as such.

Witness my hand and notarial seal.

Notary Public

My commission expires:

(PARTNERSHIP DEVELOPER ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF LANCASTER) SS:

On this ____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged themselves to be all of the partners of_____, a general partnership, and that they, as such partners, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the partnership by themselves as such partners.

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

Notary Public

My commission expires:

WATER

(CORPORATE DEVELOPER ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF LANCASTER) SS:

On this ____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged ____ self to be the _____ of _____, a corporation, and that as such officer being authorized to do so, acknowledged the foregoing instrument for the purpose therein contained, by signing the name of the corporation by _____ self as _____.

Notary Public

My commission expires:

CONSENT AND JOINDER BY MORTGAGEE

_____ (“Mortgagee”) as holder of a certain mortgage on the within-described Premises, which mortgage, in the amount of \$_____, 20____, 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 Stormwater 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 and assigns, as a result of any default under the Mortgages or the debt instruments that such Mortgages secure. Mortgagee by consenting to the Agreement shall not be virtue of its interest as Mortgagee by deemed to have undertaken any of the obligations of the Grantor under the Agreement, including but limited to construction, maintenance, inspection or indemnification.

IN WITNESS WHEREOF, Mortgagee hereby consents and joins in the execution of the Agreement as of this _____ day of _____, 20____.

(Name of Mortgagee)

ATTEST:

By:

[SEAL]

WATER

CONSENT AND JOINDER OF HOMEOWNERS' ASSOCIATION

The undersigned hereby consents to and joins in the attached Stormwater Management Agreement and Declaration of Easement (the “Agreement”). The undersigned shall maintain all stormwater management facilities in accordance with the terms and provisions of the Agreement and in accordance with any separate Declaration of Restrictions. The undersigned specifically agrees that the Borough shall have the rights referred to in Paragraph 13 of the Agreement.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, hereby consents to and joins in the Agreement.

(Name of Homeowners' Association or similar entity)

Attest:
(Assistant) Secretary

By: _____
(Vice) President

[SEAL]

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF LANCASTER) SS:

On this _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged _____ self to be the _____ of _____, a nonprofit corporation, and that as such officer being authorized to do so, acknowledged the foregoing instrument for the purpose therein contained, by signing the name of the corporation _____ self as _____.

Notary Public

My commission expires:

(MORTGAGEE ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF LANCASTER)

On this ____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged ____ self to be the _____ of _____, a corporation, and that as such officer being authorized to do so, acknowledged the foregoing instrument for the purpose therein contained, by signing the name of the Bank by _____ self as _____.

Notary Public

My commission expires: