

STORMWATER MANAGEMENT

*17 Attachment 4*

Borough of Elizabethtown

**APPENDIX D**

**STORMWATER MANAGEMENT AGREEMENT  
AND DECLARATION OF EASEMENT**

**[Ord. 954, 12/19/2013]**



STORMWATER MANAGEMENT

Prepared By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Return To: Same  
Parcel ID # \_\_\_\_\_

**STORMWATER MANAGEMENT AGREEMENT  
AND DECLARATION OF EASEMENT**

**THIS AGREEMENT AND DECLARATION OF EASEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, with a mailing address at \_\_\_\_\_ (hereinafter whether singular or plural referred to as the “Grantor”), and **ELIZABETHTOWN BOROUGH**, Lancaster County, Pennsylvania, a municipal corporation duly organized under the laws of the Commonwealth of Pennsylvania, with its municipal office located at 600 South Hanover Street, Elizabethtown, Pennsylvania (hereinafter referred to as the “Borough”).

**BACKGROUND**

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

Prior to beginning construction on any subdivision or land development or Regulated Activity as defined in the Elizabethtown Borough Stormwater Management Ordinance, Grantor is required, under the Elizabethtown Borough Subdivision and Land Development Ordinance and the Elizabethtown Borough Stormwater Management Ordinance (collectively referred to as the “Ordinance”), to file a plan with Elizabethtown Borough Council. Pursuant to the Ordinance, Grantor must include stormwater management data in its subdivision and/or land development application. The 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. Drainage courses, swales, grassed waterways, stormwater inlets, pipes, conduits, detention basins, retention basins, infiltration structures and other stormwater management facilities, including Best Management Practices facilities (“BMPs”), shall be included under the term “stormwater management facilities” in this Agreement and Declaration of Easement.

The purpose of this Agreement and Declaration of Easement is to describe the ownership and maintenance responsibilities for the stormwater facilities which will be in-

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stalled on the Premises and to impose the ownership and maintenance responsibilities upon Grantor; his heirs, personal representatives and assigns and upon successor owners of the Premises, and set forth the rights of the Borough.

NOW, THEREFORE, intending to be legally bound hereby and in consideration of receiving approval of its Subdivision and/or Land Development Plan or its Stormwater Management Plan (hereinafter referred to as the "Final Plan") from Borough Council, and in consideration of receiving permits from the Borough to develop the Premises, Grantor, for Grantor and the heirs, personal representatives, successors and assigns of Grantor, covenant and declare as follows:

1. The stormwater facilities will be owned by Grantor, his heirs, personal representatives, successors and assigns.
2. All drainage courses, swales, stormwater inlets, pipes, conduits, detention basins BMPs and other stormwater facilities shall be installed, constructed and maintained by Grantor, his heirs, personal representatives, successors and assigns, in a first-class condition in conformance with the approved Final Plan, including any accompanying stormwater management plans and information, and as recorded in the Office of the Recorder of Deeds in and for Lancaster County, and in a manner sufficient to meet or exceed the performance standards and specifications set forth on the approved Final Plan, including any accompanying stormwater management plans and information, and as recorded in the Office of the Recorder of Deeds in and for Lancaster County. These responsibilities shall include, but not be limited to, the following:
  - (a) Liming, fertilizing, seeding and mulching of vegetated channels and all other unstabilized soils or areas according to the specifications in the "Erosion and Sediment Pollution Control Manual" published by the Pennsylvania Department of Environmental Protection, the Penn State Agronomy Guide, or such similar accepted standard.
  - (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 stands 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 subject to approval by the Borough.
  - (d) Removal of silt from all permanent structures which trap silt or sediment in order to keep the material from building up in grass waterways, pipes, detention or retention basins, infiltration structures, BMPs, and/or other facilities and thus reducing their capacity.
  - (e) 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.

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- (f) Regular inspection of the areas in question to assure proper maintenance and care, including but not limited to proper implementation of BMPs. **ADD ANY SPECIFIC INSPECTION REQUIREMENTS IN THE PCSM PLAN.**
- (g) Regular maintenance to insure that all pipes, swales and detention facilities shall be kept free of any debris or other obstruction. **ADD ANY SPECIFIC MAINTENANCE REQUIREMENTS IN THE PCSM PLAN.**
- (h) Regular maintenance of all facilities designed to improve water quality to insure that such facilities function in accordance with their design. **ADD ANY SPECIFIC MAINTENANCE REQUIREMENTS IN THE PCSM PLAN SUCH AS IF APPLICABLE:** Maintenance of the infiltration bed and infiltration system by mowing grass regularly over the infiltration bed; keeping the yard drains and roof drains free of debris in good repair at all times; flushing the infiltration system using a water hose at the cleanouts once every 90 days to insure the infiltration system is clear of debris; keeping the sumps in the yard inlets and downspout sumps free of debris; and inspecting the infiltration bed four times per year or after each rain event exceeding one inch.
- (i) Repair of any subsidence, including subsidence caused by sinkholes.
- (j) **IF APPLICABLE:** Replacement of displaced riprap within the outlet energy dissipater immediately after it is displaced, particularly after major storm discharge events.
- (k) **IF APPLICABLE:** Vacuum sweeping of areas of porous paving to keep surface free of sediment as needed, typically three to four times per year, and maintaining all areas of porous paving free from sealing, surfacing or repaving with nonporous materials.
- (l) **IF APPLICABLE:** Aerate areas of amended soils annually. No impervious surfaces may be placed or installed on any area of amended soils.
- (m) Removal of trash and debris on a regular basis.

***Include a statement that the approved Operations and Maintenance (O&M) Plan is attached as an exhibit if there are any requirements in addition to those in Paragraph 2. Paragraph 2 may be revised to simply incorporate an exhibit if all post-construction inspection, operations, and maintenance requirements are included on the exhibit.***

Grantor, his heirs, personal representatives, successors and assigns, shall be responsible for performing the foregoing maintenance.

***3. Grantor, his heirs, personal representatives, successors and assigns, shall be responsible for maintaining records of all inspections of and maintenance to BMPs and other stormwater management facilities. Grantor, his successors and assigns, shall be responsible to prepare all annual BMP and post-construction stormwater management facility reports detailing the actual inspection and maintenance activities which are required by the terms of any NPDES permit or other state or federal regulation or re-***

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*quirement and submit such reports to the Borough on or before DATE of each calendar year, together with any fee which the Borough may impose for the review and processing of such report. It is the responsibility of Grantor to inform successor owners of the Premises or any lot created from the Premises of this reporting requirement. The failure to submit an annual report is a violation of this Agreement. The Borough may prepare any required report and recover all costs required to prepare such report from the then-owner of the Premises or any lot created from the Premises, plus a penalty of 10% of such costs, and may file a municipal claim to secure payment of such costs.*

4. Grantor, for himself, his heirs, personal representatives, successors and assigns, agrees that the failure to maintain all drainage courses, swales, stormwater inlets, pipes, conduits, detention basins, BMPs and other stormwater management facilities in a first-class condition in conformance with this Agreement and approved Final Plan, including any accompanying stormwater management plans and information, and as recorded in the Office of the Recorder of Deeds in and for Lancaster County, shall constitute a nuisance and shall be abatable by the Borough as such.

5. Grantor, for himself, his heirs, personal representatives, 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 facilities.

6. The Borough may require that Grantor, and 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 with the approved Final Plan, including any accompanying stormwater management plans and information, and as recorded in the Office of the Recorder of Deeds in and for Lancaster County.

7. Upon the failure of the owner or occupier of the Premises or any part thereof to comply with the terms of this Stormwater Management Agreement or to take corrective measures following reasonable 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 this Agreement and with the approved Final Plan, including any accompanying stormwater management plans and information, and as recorded in the Office of the Recorder of Deeds in and for Lancaster County, including, but not limited to, the removal of any blockage or obstruction from drainage pipes, swales, detention basins and BMPs, and may charge the cost thereof to Grantor, his heirs, personal representatives, successors and assigns, or any owner of the Premises or any part thereof, and, in default of such payment, may cause a municipal lien to be imposed upon the Premises or any part thereof. Any municipal lien filed pursuant to this Agreement shall be in the amount of all costs incurred by the Borough, plus a penalty of 10% of such costs, plus the Borough's reasonable attorneys' fees.

8. The stormwater management facilities have been designed to allow a maximum impervious surface coverage

*B [if a single lot] of \_\_\_\_\_ square feet. Any proposal to add additional impervious surface coverage to the Premises will require the submission of a stormwater*

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*management plan meeting all requirements of applicable regulations in effect at the time such application is filed.*

*B [if multiple lots with the same coverage] of \_\_\_\_\_ square feet for each lot to be created from the Premises. If the owner of any lot to be created from the Premises desires to install additional impervious surface coverage, such lot owner must submit an application under the Stormwater Management Ordinance in effect at such time as the application is filed and meet all applicable stormwater management regulations.*

*B [if multiple lots with different coverage limits] as set forth in Exhibit A attached hereto and incorporated herein. If the owner of any lot to be created from the Premises desires to install additional impervious surface coverage beyond that allocated to such lot in Exhibit A, such lot owner must submit an application under the Stormwater Management Ordinance in effect at such time as the application is filed and meet all applicable stormwater management regulations.*

9. If ownership or maintenance responsibility of the stormwater management facilities is assigned to a homeowners' association, condominium unit owners' association or similar entity, the Borough shall be notified. If such association fails to properly maintain the stormwater management facilities, the Borough shall have the same rights granted to municipalities under Section 705 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, with reference to maintenance of common open space, to maintain the stormwater management facilities. Any association so formed shall enter into an agreement with the Borough recognizing its duties and the Borough's rights under this Agreement.

10. Grantor hereby imposes upon the Premises for the benefit of all present and future owners of the Premises or part of the Premises, the Borough, and all other property owners affected by the stormwater facilities, the perpetual right, privilege and easement for the draining of stormwater in and through the drainage courses, swales, stormwater inlets, pipes, conduits, detention basins, BMPs and other stormwater 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 facilities.

11. Grantor agrees to indemnify the Borough and all of its elected and appointed officials, agents and employees (hereafter collectively referred to as the "Indemnitees") against and hold Indemnitees 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 Indemnitees which arise as a result of the design, installation, construction or maintenance of the stormwater facilities.

12. 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 Subdivision and Land Development Ordinance, the Borough Stormwater Management Ordinance and the approved plans; (b) the stormwater management facilities have been inspected and approved by the Borough Engineer; (c)

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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.

13. 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 and Declaration of Easement which occurred during the period in which an owner held title.

14. 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 Stormwater Management Ordinance, the Borough Subdivision and Land Development Ordinance and this Agreement.

15. This Agreement and Declaration of Easement shall be binding upon the 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 of their duties and responsibilities with respect to the stormwater facilities. Grantor shall include a specific reference to this Agreement in any deed of conveyance for the Premises or any part thereof.

16. 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.

17. When the sense so requires, words of any gender used in this Agreement and Declaration of Easement shall be held to include any other gender, and the words in the singular number 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 above written.

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

ELIZABETHTOWN BOROUGH  
Lancaster County, Pennsylvania  
By: \_\_\_\_\_  
(Vice) President  
Borough Council

[BOROUGH SEAL]



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(Limited Liability Company Landowner\*\*\*)

(Name of Limited Liability Company)

Witnesses:

\_\_\_\_\_ By: \_\_\_\_\_  
Member

\_\_\_\_\_ By: \_\_\_\_\_  
Member

\_\_\_\_\_ By: \_\_\_\_\_  
Member

\*\*\*All members must sign.







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(CORPORATE DEVELOPER 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 corporation by \_\_\_\_ self as \_\_\_\_\_.

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

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

My commission expires:

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(LIMITED LIABILITY COMPANY LANDOWNER ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned of-  
ficer, personally appeared \_\_\_\_\_, who acknowledged themselves to  
be all of the members of \_\_\_\_\_, a limited liability company,  
and that they as such members, being authorized to do so, executed the foregoing in-  
strument for the purposes therein contained by signing the name of said limited liability  
company by themselves as such members.

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

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

My commission expires:

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**JOINDER BY MORTGAGEE**

\_\_\_\_\_ (“Mortgagee”), as holder of a certain mortgage on the premises of [NAME OF GRANTOR] within Elizabethtown Borough, Lancaster County, Pennsylvania, described in the Deed recorded \_\_\_\_\_ in/at \_\_\_\_\_, in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania, which mortgage, in the amount of \$\_\_\_\_, dated \_\_\_\_\_, and 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 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: \_\_\_\_\_  
[SEAL]

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

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(MORTGAGEE ACKNOWLEDGMENT)

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this, the \_\_\_\_ 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 \_\_\_\_\_.

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

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

My Commission Expires:

