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**APPENDIX C**

**OPERATION AND MAINTENANCE AGREEMENT**

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STORM WATER MANAGEMENT AGREEMENT

(DECLARATION OF STORMWATER ACCESS AND MAINTENANCE EASEMENT)

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between Ferguson Township located at 3147 Research Drive, State College, PA 16801 (hereinafter referred to as "Township") and \_\_\_\_\_ (hereinafter, whether singular or plural, referred to as "Grantor") with a mailing address of \_\_\_\_\_.

**BACKGROUND**

Grantor is the owner of the premises located at \_\_\_\_\_ in the Township of Ferguson, Centre County, Pennsylvania, as more specifically described in a deed recorded in Deed Book \_\_\_\_\_ Page \_\_\_\_\_ in the office of the Recorder of Deeds in and for Centre County, Pennsylvania, and shown on the plan for \_\_\_\_\_ prepared by \_\_\_\_\_ Drawing No. \_\_\_\_\_ dated \_\_\_\_\_, and last revised \_\_\_\_\_ (hereinafter referred to as the "Premises").

Prior to commencing regulated activities, Grantor is required under Chapter 26 of the Code of Ordinances of Township, (the "Ordinance") to file a Stormwater Management Site Plan with and obtain approval of Township. Section 704 of the Ordinance requires that Grantor's Stormwater Management Site Plan be accompanied by a Declaration of Stormwater Access and Maintenance Easement (DSAME) which identifies the ownership of and the method of administering and maintaining, all permanent storm water management facilities.

The purpose of this Agreement is to describe the ownership and maintenance responsibilities for the storm water facilities which will be installed on the premises, 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 Township with regard to these facilities.

NOW, THEREFORE, intending to be legally bound hereby and in consideration of receiving approval of the Final Plan and associated storm water management plan (hereinafter both plans are collectively referred to as the "Final Plan") from Township, Grantor, for Grantor and the heirs, successors, personal representatives and assigns of Grantor, covenant and declare as follows:

1. The storm water facilities will be owned and maintained by Grantor, his heirs, personal representatives, successors and assigns. All costs of maintenance shall be the responsibility of the Grantor, his heirs, personal representative, successors, and

assigns. No alteration of the storm water facilities is permitted without formal plan approval by the Pennsylvania Department of Environmental Protection (DEP), the Centre County Conservation District (CCCD) and the Township.

2. All drainage courses, swales, storm water inlets, pipes, conduits, detention basins and other storm water facilities shall be installed, constructed and maintained in good repair to Township standards by Grantor, his heirs, personal representatives, successors, and assigns, in conformance with the Final Plan as recorded in the Office of the Recorder of Deeds in and for Centre County, and in a manner sufficient to meet or exceed the performance standards and specifications set forth on the Final Plan as approved by Ferguson Township and recorded in the Office of the Recorder of Deeds in and for Centre County . These responsibilities shall include, but not be limited to, the following:
  - a. Lining and fertilizing vegetated channels and other areas according to the specifications of the Erosion and Sedimentation Control regulations of the CCCD.
  - 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 prevent growth of invasive species of weeds, brush or trees to allow for proper function of the facilities, stormwater storage and flow, and observation and inspection of facilities to allow for filling holes of burrowing animals in basin embankments and remediation of sinkholes.
  - 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 and at the outlet structure thus reducing their capacity.
  - e. Regular inspection of the facilities to assure proper maintenance, care and function.
  - f. All pipes, swales, inlet structures and outlet structures, and detention facilities shall be kept free of any debris or other obstruction, and
  - g. Maintained so the facilities will function in accordance with the approved stormwater basin design.
3. Grantor, for himself, his heirs, personal representatives, successors and assigns, agrees that the failure to maintain all drainage courses, swales, storm water inlets, pipes, conduits, detention basins, and other storm water management facilities in good repair to Township standards in conformance with this Agreement and Final Plan as approved by Township, and recorded in the Office of the Recorder of Deeds in and for Centre County, shall constitute a violation and shall be abatable by the Township as such in accordance with the terms of this Agreement and the Township Ordinances.
4. Grantor, for himself, his heirs, personal representatives, successors and assigns, authorize the Township, at any time and from time to time, by its authorized representatives, to enter upon the Premises to inspect the storm water facilities. Township shall not conduct any invasive inspections or testing without the approval of Grantor, which shall not be unreasonably withheld.

5. The Township, upon reasonable notice (which shall include a detailed description of all claimed deficiencies), may require that Grantor, for himself, his heirs, personal representatives, successors and assigns or any future occupant of the Premises or any part thereof, take corrective measures as may be reasonably necessary to bring the Premises into compliance with this Agreement and with the Final Plan as approved by Ferguson Township and recorded in the Office of the Recorder of Deeds in and for Centre County.
6. Upon the failure of the owner or occupier of the Premises or any part thereof to comply with the terms of this Storm Water Management Agreement or to take corrective measures following reasonable notice from the Township and opportunity to cure, the Township, through its authorized representatives, may take such corrective measures as may be reasonably necessary to bring the Premises into compliance with this Agreement and with the Final Plan as approved by the Township and recorded in the Office of the Recorder of Deeds in and for Centre County, including , but not limited to, the removal of any blockage or obstruction from drainage pipes and swales and the replacement of any pipes or outlet structures which cease to function in a capacity consistent with the approved stormwater plan accompanying the recorded Final Plan and may charge the cost thereof to Grantor, his heirs, personal representatives, successors and assigns, or any occupant of the Premises or any part thereof and, in default of such payment which continues beyond sixty (60) days from Grantor's receipt of a detailed invoice for same, may cause a lien to be imposed upon the Premises or any part thereof or against the individual property owners who are members of any Home Owner's Association or Condominium Unit Owner's Association.
7. If ownership or maintenance responsibility of the storm water facilities is to be assigned to a Home Owner's Association, Condominium Unit Owner's Association, or similar entity, the Township shall be notified prior to such assignment.
8. Grantor hereby imposes upon the Premises for the benefit of all present and future owners of the Premises or part of the Premises, the Township, and all other property owners affected by the storm water facilities, the perpetual right, privilege and easement for the draining of storm water in and through the drainage courses, swales, storm water inlets, pipes, conduits, detention basins, and other storm water facilities depicted on the plan or plans submitted to the Township or hereafter made of record and now or hereafter installed on or constructed upon the Premises and , in addition, easements of access to the storm water facilities, as described in the attached Exhibit that provides a metes and bounds description of the easement. No structures are permitted within the easement and no grading that will adversely impact the function of the stormwater facilities within the easement shall occur. Barriers, fences or other obstructions that may impede storm water flow are not permitted in the easement area.
9. Grantor for himself, his heirs, personal representatives, successors and assigns agrees to indemnify Centre County, the Township and all of its elected and appointed officials, agents, and employees (hereinafter collectively referred to as the "Indemnities") against, and hold Indemnities harmless from any and all liability, loss or damage, including attorney's fees and costs of investigation and defense, as a result of claims, demands, costs or judgments against Indemnities which arise as a result of this agreement, the design, installation, construction, or maintenance of the storm water facilities by Grantor for himself, his heirs, personal representatives, successors and assigns. In no event shall Grantor be required to indemnify the Indemnities from any

liability, loss, or damage resulting from the negligence or willful misconduct of Indemnities.

10. Grantor's personal liability under this Agreement shall cease only at such time as:
  - a. All storm water management facilities have been constructed in accordance with the specifications of the Ferguson Township Code of Ordinances and the approved Final Plan(s); and
  - b. The storm water management facilities have been inspected and approved by the engineer authorized to conduct such inspections; and
  - c. All financial security, including any maintenance security, posted by Grantor for stormwater management facilities have been released; and
  - d. The Grantor shall include in all deeds of conveyance for the Premises or any part thereof, and transferred ownership, the following language: "The aforescribed property is under and subject to a Storm Water Management Agreement(s) with Ferguson Township as recorded in the Recorder's Office of Centre County, as amended or modified from time to time, and may be subject to liens for costs associated with failure to maintain common area stormwater features". Furthermore, if the Property is part of a condominium or uniform planned community, the deed shall also contain a reference to the recording information for the applicable declaration.; and
  - e. Grantor has transferred all lots to be created from the Premises which are subject to a stormwater easement(s) to third parties, or alternatively has assigned its ownership and maintenance obligations to an association pursuant to Paragraph 7 above.

Notwithstanding the foregoing, Grantor's personal liability shall continue for any violations of this Agreement and Declaration of Easement which occurred prior to the occurrence of items (a) through (e) above, or in the event the storm water facilities were not completed, inspected, or approved as set forth in (a) through (d) herein.

11. 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.
12. This Agreement shall be binding upon the Grantor, for himself, his heirs, personal representatives, successors and assigns of Grantor, and all present and future owners of the Premises or any part thereof and shall be recorded in the Office of the Recorder of Deeds of Centre County in order to give notice to future owners of the Premises of their duties and responsibilities with respect to the storm water facilities. The Grantor shall include in all deeds of conveyance for the Premises or any part thereof, and transferred ownership, the following language: "The aforescribed property is under and subject to a Storm Water Management Agreement(s) with Ferguson Township as recorded in the Recorder's Office of Centre County, as amended or modified from time to time.

Furthermore, if the Property is part of a condominium or uniform planned community, the deed shall also contain a reference to the recording information for the applicable declaration.”

13. This Agreement may be amended only by written instrument signed on behalf of all owners of the Premises and the Township and shall be recorded in the Office of the Recorder of Deeds of Centre County. The assignment to a Home Owner’s Association, Condominium Unit Owner’s Association, or similar entity, pursuant to Section 7 above, shall not be considered an amendment to this agreement.
14. When the sense so requires, words of any gender used in this Agreement and Declaration of Easement shall be held to include the plural and vice versa.
15. In case any provision contained in this agreement is declared invalid for any reason, such invalidity shall not affect the other provisions hereof.

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

GRANTOR

TOWNSHIP

\_\_\_\_\_

\_\_\_\_\_  
Chair Board of Supervisors

\_\_\_\_\_

\_\_\_\_\_  
Secretary Board of Supervisors

COMMONWEALTH OF PENNSYLVANIA:  
COUNTY OF CENTRE:

On this the \_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me, a notary public, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and that he executed the same for the purposes therein contained.

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

\_\_\_\_\_

Notary Public

COMMONWEALTH OF PENNSYLVANIA:  
COUNTY OF CENTRE:

On this the \_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me, a notary public, the undersigned officer, personally appeared \_\_\_\_\_, Chairman of the Ferguson Township Board of Supervisors, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and that he executed the same for the purposes therein contained.

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

\_\_\_\_\_

Notary Public