

WEST HANOVER TOWNSHIP
DAUPHIN COUNTY, PENNSYLVANIA

ORDINANCE NO. 2019-4

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF WEST HANOVER TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, ADDING EXHIBIT XV OF CHAPTER 173 OF THE CODE OF WEST HANOVER TOWNSHIP. BE IT ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF WEST HANOVER TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, AND IT IS HEREBY ENACTED AND ORDAINED BY THE AUTHORITY OF THE SAME AS FOLLOWS:

Section 1. The following amendments are hereby added to the West Hanover Township Code of Ordinances:

ADD Bold – New Language, ~~deleted text~~

UPI # _____

Township of West Hanover

Operation and Maintenance (O & M) Agreement

Stormwater Management Best Management Practices (SWM BMPS)

INDIVIDUAL/COUPLES

THIS REVISED AGREEMENT, made and entered into this _____ day of _____, 20__ by and between _____ & _____ (hereinafter the "Landowner", whether one of more), and the TOWNSHIP OF WEST HANOVER, Dauphin County, Pennsylvania (hereinafter "Township");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Dauphin County, Pennsylvania, entered as Instrument No. _____, also being identified as Lot No. _____ on the Final Plan for _____ recorded in Dauphin County Plan Book _____, Volume _____, Pages _____, known as _____ Harrisburg, PA 17112 (hereinafter "Property").

WHEREAS, the Landowner is proceeding to build and develop on the Property; and

WHEREAS, the SWM site plan approved by the Township (hereinafter referred to as the "Plan") for the Property which is attached hereto as Appendix A and made part hereof, as approved by the Township, provides for management of Stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, the Township, and the Landowner, its successors and assigns, 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 SWM BMPs be constructed and maintained on the Property; and

WHEREAS, the Township requires, through the implementation of the SWM site plan, that Stormwater BMPs as required by said Plan and the West Hanover Township Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, successors and assigns.

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. The Landowner shall construct the BMPs in accordance with the plans and specifications identified in the SWM site plan.**
- 2. The Landowner shall own, operate and maintain the BMPs as shown on the Plan in good working order in accordance with the specific maintenance requirements noted on the approved SWM site plan.**
 - a. "Customary Maintenance" shall include, but is not limited to, the removal of trash, mowing, proper planting of grass, trimming of trees and bushes, and related and similar activities.**
 - b. If the storm water management plan includes earth disturbance in excess of one acre, Landowner shall inspect all BMP facilities on the following basis:**
 - i. At the conclusion of every ten (10) year or greater storm event occurring in the first three (3) years.**
 - ii. Once every three years thereafter.**
 - iii. 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 Township 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.

- 3. The Landowner hereby grants permission to the Township, its authorized agents, and employees, to enter upon the property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever necessary. Whenever possible, the Township shall notify the Landowner prior to entering the property.**
- 4. In the event the Landowner fails to operate and 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 the BMPs. 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. The Landowner may be subjected to the Penalties Section of the applicable Ordinance.

5. In the event the Township, pursuant to this agreement performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Township.
6. The intent and purpose of this agreement is to ensure the proper maintenance of the onsite BMPs by the Landowner; provided, however, that this agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by Stormwater runoff.
7. Landowner and Landowner's successors and assigns agree to indemnify the Township 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 storm water facilities, including, but not limited to, fines and other penalties assessed against the Township by any State or Federal agencies having jurisdiction.
8. The Township may inspect the BMPs whenever necessary to ensure their continued functioning.
9. Landowner, its successors and assigns, agree that the failure to maintain all drainage courses, swales, storm water inlets, pipes, conduits, detention basins, BMP facilities, infiltration facilities and other storm water management facilities in a first-class condition in conformance with this Agreement and the approved Plan shall constitute a nuisance and shall be abatable by the Township as such.
10. The Township's obligation associated with any Township-caused damage to the property shall be limited to the restoration of the same to its general character prior to access, and in no event shall the owner be allowed to recover any damages in excess of restoration costs from the Township.
11. Remedies:
 - a. The Township may, in addition to the remedies prescribed herein, proceed with any action at law or in equity to bring about compliance with the Ordinances and this Agreement.
 - b. Additionally and alternatively, the Township may bring an action in the Courts of the Commonwealth to collect said costs, plus ten percent (10%), plus the Township's reasonable attorneys' fees and costs in pursuit thereof.
12. The holder of any mortgage or mortgages on the Property shall join in and consent to the terms of this Agreement and, without limiting the foregoing, shall agree that the rights and privileges herein granted with respect to the Property shall not be terminated or disturbed by reason of any foreclosure or other action which may be instituted by such mortgagee or mortgagees, its or their successors and assigns, as a result of any default under the mortgage or mortgages.
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 Property or any lot created from the Property, 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, which occurred during the period in which an owner held title. Notwithstanding the foregoing, subsequent owners shall be responsible for all maintenance and restoration, even if violation of this Agreement occurred under prior owners.

14. This Agreement shall be binding upon Landowner, the successors and assigns of Landowner, and all present and future owners of the Property, or any part thereof, and is intended to be recorded in order to give notice to future owners of the Property, or any part thereof, of their duties and responsibilities with respect to the storm water management facilities.
15. This Agreement may be amended only by written instrument signed on behalf of Landowner or a successor to Landowner and the Township.
16. Landowner shall, upon completion of installation of the storm water management facilities, deposit financial security with the Township 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 design and specifications of the approved plans and any modifications required by the Township. 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.

This agreement shall be recorded at the Office of the Recorder of Deeds of Dauphin County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

[Signatures on Following Pages]

ATTEST:

BOARD OF SUPERVISORS
TOWNSHIP OF WEST HANOVER
DAUPHIN COUNTY, PENNSYLVANIA

By: _____
Print Name:
Print Title:

By: _____
Print Name:
Print Title:

COMMONWEALTH OF PENNSYLVANIA:

On this, the ____ day of _____, 20__, before me, a Notary Public, personally appeared _____, who acknowledged him/herself to be the _____ of WEST HANOVER TOWNSHIP BOARD OF SUPERVISORS, a Township of second class duly organized and existing under the laws of the Commonwealth of Pennsylvania, and that he/she being such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the Township by him/herself as officer.

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

(SEAL)

Notary Public

[Added 03 - 09-2019 by Ordinance No. 2019-4]

Section 2. Saving Clause.

That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby; nor shall any just or legal right or remedy or any character be lost, impaired or affected by this Ordinance.

Section 3. Date of Effect.

That the Secretary of West Hanover Township shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take full force and effect immediately upon final passage and approval.

ENACTED AND ORDAINED as Ordinance 2019- this 3rd day of September, 2019.

ATTEST:

WEST HANOVER TOWNSHIP
BOARD OF SUPERVISORS


Donald L. Steinmeier
Secretary


Kyle Miller
Chairman

SEAL

