

TOWNSHIP OF LOWER MACUNGIE

Lehigh County, Pennsylvania

RESOLUTION NO. 2022-71

(Duly Adopted October 20, 2022)

RESOLUTION GRANTING AUTHORITY TO THE TOWNSHIP OF LOWER MACUNGIE, LEHIGH COUNTY, PENNSYLVANIA, TO ENTER INTO A STORMWATER BEST MANAGEMENT PRACTICES, OPERATIONS, AND MAINTENANCE DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS TO CONSTRUCT, OPERATE AND MAINTAIN A POST CONSTRUCTION STORMWATER MANAGEMENT PLAN AND BEST MANAGEMENT PRACTICES AT THE BRANDYWINE VILLAGE SWALE PROPERTIES

WHEREAS, the Pennsylvania Department of Environmental Protection (“PaDEP”) issued a National Pollutant Discharge Elimination System (“NPDES”) permit to Lower Macungie Township on September 20, 2022, approving the post construction stormwater management/best management practices plan for the Brandywine Village Swale reconstruction, operation and maintenance; and,

WHEREAS, PaDEP, as part of the NPDES permit and applicable regulations, requires the Township to execute and record a Declaration of Covenants, Easements and Restrictions to Construct, Operate and Maintain a Post Construction Stormwater Management Plan at the Brandywine Village Swale, in perpetuity; and,

WHEREAS, the Declaration of Covenants, Easements and Restrictions to Construct, Operate and Maintain a Post Construction Stormwater Management Plan is attached hereto, marked Exhibit “A,” and incorporated by reference as if set forth in full; and,

WHEREAS, the Lower Macungie Township Board of Commissioners desires to authorize the President of the Board of Commissioners to execute such Declaration of Covenants, Easements and Restrictions to Construct, Operate and Maintain a Post Construction Stormwater Management Plan, and to record same with the Lehigh County Recorder of Deeds.


NOW, THEREFORE, BE IT ADOPTED AND RESOLVED that the Board of Commissioners of the Township of Lower Macungie Township hereby resolves as follows:

- 1) The foregoing recitals are incorporated herein by reference as if set forth in full.

- 2) The Board of Commissioners hereby authorizes Brian P. Higgins, President of the Lower Macungie Township Board of Commissioners, to execute the Declaration of Covenants, Easements and Restrictions to Construct, Operate and Maintain a Post Construction Stormwater Management Plan on behalf of the Township and to take all actions necessary, related, or convenient to record same with the Recorder of Deeds of Lehigh County.

DULY ADOPTED this 20th day of October 2022, by the Board of Commissioners of Lower Macungie Township, in lawful session duly assembled.

LOWER MACUNGIE TOWNSHIP
BOARD OF COMMISSIONERS



Brian P. Higgins, President

Attest:



Renea Flexer, Secretary



Prepared by and Return To:

**David J. Brooman, Esquire
High Swartz LLP
40 East Airy Street
Norristown, PA 19404**

**Parcel No.: 547444598031
547444731598**

**STORMWATER BEST MANAGEMENT PRACTICES,
OPERATIONS, AND MAINTENANCE DECLARATION OF
COVENANTS EASEMENTS AND RESTRICTIONS**

This Declaration, is made and dated the ____ day of October 2022, by the Township of Lower Macungie, a First Class Township of the Commonwealth of Pennsylvania, having a mailing address of 3400 Brookside Drive, Macungie, Pennsylvania 18062 (hereinafter referred to as “Township”).

WITNESSETH

WHEREAS, Township is in title to property commonly known as the Brandywine Village Swale, located at 6271 Sauerkraut Lane and 2481 Mill Creek Road, Macungie, Pennsylvania 18062, which parcel of real estate is referred to as County Tax Parcel Nos. 547444598031 and 547444731598 (hereinafter the “Property”); and

WHEREAS, the Township desires to reconstruct and restore the Brandywine Village Swale; and

WHEREAS, the Pennsylvania Department of Environmental Protection issued National Pollutant Discharge Elimination System Permit No. PAD390244 on September 20, 2022, authorizing the work; and

WHEREAS, the Post Construction Stormwater Management Plan and the Post Construction Stormwater Management Details, both prepared by CKS Engineers, sheet numbers

7 & 8 of 8, dated May 5, 2022, last revised September 7, 2022 (hereinafter the “PCSM Plan”), which PCSM Plan is attached hereto as Appendix A and made part hereof, provides for the management of stormwater facilities and best management practices (hereinafter “BMPs”) within the confines of the Property; and

WHEREAS, for any property containing a PCSM BMP, PaDEP requires the permittee record an instrument with the recorder of deeds which assures disclosure of the PCSM BMP and the related obligations in the ordinary course of a title search of the property, and which provides notice that the responsibility for long-term operation and maintenance of the PCSM BMP is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees; and

WHEREAS, Township, its successors and assigns, recognizes that the health, safety, and welfare of the residents of the Township and the protection and maintenance of water quality and infiltration require that on-site stormwater management facilities on the Property, and off-site storm sewers, be properly constructed, operated, and maintained; and

WHEREAS, for the purposes of this Covenant, the following definition shall apply:

- **BMP** – “Best Management Practice;” activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Township Stormwater Management Code, including but not limited to landscape restoration, filter strips, rip rap, grassed swales, vegetated channel, Karst geology area maintenance and forested buffers.

WHEREAS, the Township requires, through the implementation of the PCSM Plan, that stormwater management facilities as required by said plan and the Township’s Stormwater Management Code, be constructed and adequately operated and maintained by the Township, its successors, and assigns.

NOW, THEREFORE, the Township declares that the Property hereinabove described and any part thereof, is and shall hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, easements and restrictions hereinafter set forth, all of which shall run with the land and shall be binding upon all parties having or acquiring any interest whatsoever in the Property or any part thereof, until such time that the Township may approve a different development scheme for the Property or different stormwater management facilities than those depicted on the PCSM Plan for the Property:

1. The WHEREAS clauses are incorporated by reference as if fully set forth herein.
2. The stormwater management facilities and BMPs shall be constructed by the Township in accordance with the PCSM Plan and specifications identified in the PCSM Plan.
3. The Township, at the conclusion of construction, shall have a report prepared by a qualified Professional Engineer certifying that the stormwater management facilities and BMPs were constructed in accordance with the approved PCSM Plan.
4. The Township shall operate and maintain the stormwater management facilities and BMPs as shown on the PCSM Plan in good working order and in accordance with the specific maintenance requirements noted on the PCSM Plan.
5. The Township shall have a report prepared by an independent qualified Professional Engineer with experience in stormwater management and best management practices every two years certifying that the stormwater management system has been inspected and is functioning as designed, or that the stormwater management system requires maintenance or repairs, including the recommended maintenance or repairs and the schedule for completion.
6. The intent and purpose of this Declaration is to ensure the proper maintenance of the on-site stormwater management facilities and BMPs by the Township; provided, however, that

this Declaration shall not be deemed to create or effect any additional liability of the Township for damage alleged to result from or be caused by stormwater runoff.

7. Nothing contained in this Declaration shall confer a third party beneficiary right of action upon any person whatsoever and nothing set forth in this entire agreement shall be construed so as to confer upon any person or entity other than the parties any right of action either under this Declaration or in any manner whatsoever.
8. This Declaration shall be recorded at the Office of the Recorder of Deeds of Lehigh County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Township, its successors and assigns, until such time as the Township may approve a different development scheme for the Property or different stormwater management facilities than those depicted on the PCSM Plan for the Property. In the event of such approval, this Declaration shall be deemed to have been extinguished and terminated without need for further written documentation evidencing same.
9. This Declaration may not be modified, amended, or abrogated except with the express written permission of the Township.
10. This Declaration shall be specifically referenced in any deed conveying all or part of the property to a successor in interest.

IN WITNESS WHEREOF, Township of Lower Macungie, intending to be legally bound, has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

ATTEST:

TOWNSHIP OF LOWER MACUNGIE

Renea Flexer, Secretary

By: _____
Brian P. Higgins, President

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :

:

COUNTY OF LEHIGH :

:

On this _____ day of October 2022, before me, the undersigned officer, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Brian P. Higgins, and that as the President of the Board of Commissioners of Lower Macungie Township, being authorized to do so, executed the foregoing instrument for the purposes contained in it by signing on behalf of the entity.

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

Notary Public

My Commission Expires:

APPENDIX A

PCSM PLAN AND PCSM DETAILS

**Dated May 2, 2022, last revised
September 7, 2022**

