

WATER

26 Attachment 5

Borough of Emmaus

**Appendix E**  
**Stormwater Best Management Practices**  
**Operations and Maintenance Agreement**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_, 200\_\_\_\_, by and between \_\_\_\_\_, (hereinafter the "Landowner"), and \_\_\_\_\_, \_\_\_\_\_ County, Pennsylvania, (hereinafter "municipality");

**WITNESSETH**

**WHEREAS**, the Landowner is the owner of certain real property as recorded by deed in the land records of \_\_\_\_\_ County, Pennsylvania, Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, (hereinafter "Property").

**WHEREAS**, the Stormwater Management BMP Operations and Maintenance Plan approved by the municipality (hereinafter referred to as the "Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the municipality, proved for management of stormwater within the confines of the Property through the use of Best Management Practices (BMP's); and

**WHEREAS**, the municipality, and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the municipality and the protection and maintenance of water quality require that on-site stormwater Best Management Practices be constructed and maintained on the Property; and

**WHEREAS**, for the purposes of this agreement, the following definitions 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 Municipal Stormwater Management Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters and detention basins.
- Infiltration Trench - A BMP surface structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.
- Seepage Pit - An underground BMP structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.

## EMMAUS CODE

- Rain Garden - A BMP overlain with appropriate mulch and suitable vegetation designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or underground aquifer, and

**WHEREAS**, the municipality requires, through the implementation of the Plan, that stormwater management BMPs as required by said Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, his successors and assigns. And

**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 BMPs shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.
2. The Landowner shall operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the municipality and in accordance with the specific maintenance requirements noted on the Plan.
3. The Landowner hereby grants permission to the municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. Whenever possible, the municipality shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the municipality, the municipality or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). This provision shall not be construed to allow the municipality to erect any permanent structure on the land of the Landowner. It is expressly understood and agreed that the municipality 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 municipality.
5. In the event the municipality, 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 municipality for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the municipality *and if not timely paid, a municipal lien shall be placed upon the premises for 110% of the invoice amount, plus statutorily allowed fees, expenses and costs.*
6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, how-

WATER

ever, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

- 7. The Landowner, its executors, administrators, assigns, and other successors in interests, hereby release and hold harmless the municipality's employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or municipality. In the event that a claim is asserted against the municipality, its designated representatives or employees, the municipality shall promptly notify the Landowner and the Landowner shall defend, at his own expense, any suit based on the claim. If any judgment or claims against the municipality's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.
- 8. The municipality shall inspect the BMP(s) as necessary to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of \_\_\_\_\_ 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.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the municipality:

\_\_\_\_\_

(SEAL)

For the Landowner:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_ (City, Borough, Township)

County of \_\_\_\_\_, Pennsylvania

EMMAUS CODE

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, whose commission expires on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, do hereby certify that \_\_\_\_\_ whose name(s) is/are signed to the foregoing Agreement bearing date of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(SEAL)