

Return to:

Blakinger, Byler, & Thomas, P.C.
28 Penn Square
Lancaster, PA 17603
(717) – 299 – 1100

Parcel ID Number: _____

**STORM WATER MANAGEMENT AGREEMENT
AND DECLARATION OF EASEMENT
FOR NON-DEDICATED FACILITIES**

THIS AGREEMENT AND DECLARATION OF EASEMENT made this ____ day of _____, _____ by and between _____, of _____ (hereinafter collectively referred to as “OWNER”) and the TOWNSHIP OF LEACOCK, as a second class township of Lancaster Country, Pennsylvania, with a municipal office located at 3545 West Newport Road, P.O. Box 558, Intercourse, Pennsylvania. (Hereinafter referred to as the “TOWNSHIP”)

BACKGROUND

OWNER is the owner of a _____-acre, more or less, tract of land located along _____ in the Township of Leacock, Lancaster County, Pennsylvania, as more specifically described in a deed recorded at Instrument No. _____, in the Office of the Recorder of Deeds in and for Lancaster Country, Pennsylvania (the “Premises”), and identified as Lancaster County Tax Assessment No. _____, and such tract is shown on a subdivision of land development plan prepared for OWNER by _____, dated, Project Number _____, last revised on _____, _____. (The “Plan”)

Prior to the commencement of any development upon the Premises, OWNER is required under Leacock Township Storm Water Management Ordinance (the “Ordinance”) to submit a storm water management plan to the Township and to obtain the approval of the storm water management plan for the Board of Supervisors. The Ordinance requires that OWNER make provision for the ownership of, and the method of administering and maintaining, all permanent storm water management facilities.

The Plan must describe areas devoted to the collection of drainage of storm water, as well as certain storm water management facilities, as required by the Ordinance. These areas (hereinafter collectively the “Storm Water Facilities”) shall be the areas described on the plan.

The purpose of the Storm Water Management Agreement and Declaration of Easement (the “Agreement”) is to describe the ownership and maintenance responsibilities for the Storm Water Facilities and the erosion and sedimentation control facilities which will be installed on the Premises and to impose the ownership and maintenance responsibilities upon OWNER and upon successor owners of the Premises, and to set forth the rights of the TOWNSHIP.

NOW THEREFORE, intending to legally bound hereby, and in consideration of receiving approval of its Plan from the Board of Supervisors of Leacock Township (the “Board of Supervisors”) and permits the TOWNSHIP to develop the Premises, the OWNER covenants and declares as follows:

1. The Storm Water Facilities shall be owned, maintained, and operated by the OWNER and shall be completed by OWNER within one (1) year of the date fixed on the Storm Water Management Permit.

2. OWNER agrees to pay the costs of any and all plan reviews and construction inspections performed by TOWNSHIP or its consulting engineer and will deposit with the TOWNSHIP, at the time of execution of the Agreement, cash in an amount sufficient to pay the plan review and construction inspection costs. The amount of this deposit will be determined by the TOWNSHIP, in its sole discretion, and will be based upon an estimate of the plan review and inspection costs made by the TOWNSHIP's consulting engineer. In this case, the consulting engineer has estimated the amount to be \$_____.

3. In addition to forgoing, the TOWNSHIP may require the OWNER to furnish financial security in an amount equal to 100% of the approved estimated construction costs to assure proper completion of the Storm Water Facilities, prior to, and as a condition of, receiving a Storm Water Permit. The amount of financial security required for the installation and construction of the Storm Water Facilities for this project is \$_____. The financial security shall take one of the following three (3) forms:

- a. Cash payment to be maintained by the TOWNSHIP in an interest bearing account;
- b. Irrevocable Letter-of-Credit issued by a federal or state chartered bank; or
- c. Surety bond issued by corporate surety approved by the TOWNSHIP.

The financial security shall be released to the OWNER only after satisfactory completion or final inspection of improvements and payment of any outstanding review and inspection fees owed to the TOWNSHIP.

4. All drainage courses, swales, storm water inlets, pipes, conduits, detention basins and other Storm Water Facilities shall be installed, constructed and maintained by OWNER, in conformance with the recorded Plan, as approved by the Board of

Supervisors, and in a manner sufficient to meet or exceed design standards and specifications set forth on the Plan. The OWNER's responsibilities to install and maintain Storm Water Facilities shall include, but not be limited to, the following:

- a. Limiting and fertilizing vegetated channels and other areas according to the specifications in the "Erosion and Sedimentation Pollution Program Manual" of the Department of Environmental Protection;
 - b. Reestablishing vegetation by seeding and mulching and use of erosion matting or sodding of scoured areas or areas where vegetation has not been successfully established;
 - c. Mowing as necessary to maintain adequate strands of grass and controlling weeds with the use of chemical weed control, provided federal, state, and local laws and regulations are met;
 - d. Removing silt from all permanent structures which trap silt or sediment in order to keep the material from building up in grass waterways and this reducing their capacity;
 - e. Regularly inspecting the areas in question to assure proper maintenance and care; including but not limited to proper implementation of BMPs; and
 - f. Maintaining all pipes, swales and detention facilities such that they shall be kept free of any debris or other obstructions.
5. OWNER agrees that the failure to maintain all drainage courses, swales, storm water inlets, pipes, conduits, detention basins, BMPs and other storm water management facilities related to the operation of the Storm Water Facilities in conformance with this Agreement and Plan, as approved by the Board of Supervisors, 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 TOWNSHIP as such.

6. OWNER authorizes 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.
7. The TOWNSHIP may require that OWNER, or any future owner or occupier of the Premises or any part thereof, take such corrective measures as the TOWNSHIP may deem reasonably necessary to bring the Premises into compliance with this Agreement and with the recorded Plan, as approved by the Board of Supervisors.
8. Upon the failure of the OWNER or any other owner or occupier of the Premises, or any part thereof, to comply with the terms of this Agreement or to take corrective measure a following reasonable written notice from the TOWNSHIP, i.e. ten (10) business days from date of issuance, the TOWNSHIP, 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 Plan, 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 OWNER or any owner of the Premises or any part thereof. In default of such payment, TOWNSHIP may cause a municipal lien claim to be imposed upon Premises or any part thereof. A municipal lien claim filed pursuant to this Agreement shall be in the amount of all costs incurred by the TOWNSHIP, plus a penalty of ten percent (10%) of such costs and the TOWNSHIP's reasonable attorneys' fees. The previously mentioned ten (10) day notice shall not be required

if, in the opinion of the TOWNSHIP, immediate corrective action is necessary.

Furthermore, the ten (10) day notice shall be properly served upon OWNER if sent by first-class mail.

9. Notices and other communications between the parties sent hereunder will be sent as follows:

a. If to OWNER addressed to:

b. If to the TOWNSHIP addressed to:

Leacock Township
3545 West Newport Road
P.O. Box 558
Intercourse, PA 17534

With a copy to:
Frank P. Mincarelli, Solicitor
Blakinger, Byler & Thomas, P.C.
28 Penn Square
Lancaster, PA 17603

10. If ownership or maintenance responsibility of the Storm Water Facilities is to be assigned to a homeowners' association, condominium unit owners' association or similar entity, the TOWNSHIP shall be notified. In the event such as association or entity has already been formed, the association of or entity shall consent to and join in this Agreement. If such association or entity fails to properly maintain the Storm Water Facilities, the TOWNSHIP shall have the same rights granted to the municipalities with reference to maintenance of common open space under Section 705 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, or any future amendment thereof, to maintain the Storm Water Facilities.

Any association or entity hereafter formed shall enter into an agreement with the TOWNSHIP recognizing its duties and the TOWNSHIP's rights under this Agreement.

11. By the recording of this Agreement and the Plan, OWNER hereby creates drainage easements as shown on the Plan. The drainage easements granted herein may not be enlarged beyond the capacity of the existing facilities described herein. The course by which storm water runoff crosses any lot located within the Premises may be altered by the owner of that lot at any time in accordance with sound engineering practices and subject to obtaining any required TOWNSHIP approvals or permits.
12. OWNER hereby declares and imposes upon the Premises for the benefit of all present and future owners of the Premises or part thereof, the TOWNSHIP, and all other property owners affected by the Storm Water Facilities, (a) the nonexclusive perpetual right, privilege and easement for the draining of storm water in and through the drainage courses, swales, storm water inlet, pipes, conduits, detention basins, BMPs, and other Storm Water Facilities depicted on the Plan, or hereafter installed or constructed upon the Premises, and (b) the nonexclusive perpetual right, privilege, easement and right of way for all ingress, egress, and regress across the Premises on order to access the Storm Water Facilities.
13. OWNER shall include a specific reference to this Storm Water Management Agreement and Declaration of Easement in any deed of conveyance for the Premises or any part thereof.
14. OWNER agrees to indemnify the TOWNSHIP and all of its elected and appointed officials, agents and employees (hereafter collectively referred to as the "Indemnities") against, and to hold Indemnities harmless from, any and all liability,

loss or damage, including reasonable attorneys' fees and the costs of investigation and defense, as a result of claims, demands, costs or judgments against Indemnities, which arise as a result of the design, installation, construction, maintenance or operation of the Storm Water Facilities.

15. It is the intent of the parties of this Agreement that maintenance obligations shall pass to subsequent title holders upon change in ownership of the Premises, or any lot created from the Premises, and such subsequent owners shall assume all maintenance and operation obligations for the time period during which they hold the title. Liability for violating this Agreement shall survive the conveyance of Premises, or any part thereof, to a third party.
16. The TOWNSHIP may, in addition to remedies prescribed herein, proceed with any action of law or in equity to bring about compliance with the Ordinances and this Agreement.
17. This agreement shall be binding upon, and shall insure to the benefit of, the OWNER, their heirs, personal representatives and assigns, 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 responsibilities with respect to the Storm Water Facilities. OWNER shall include a specific reference to this Agreement in any deed of conveyance for the Premises of any part thereof.
18. The Agreement may be amended only by written instrument signed by all then-current owners of the Premises, and any lots subdivided therefrom, and by the TOWNSHIP.

19. Words of either gender used in this Storm Water Management Agreement and Declaration of Easement shall be held to include the other gender, and words in the singular number shall be held to include the plural, and vice versa.

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

WITNESS:

OWNER

ATTEST:

LEACOCK TOWNSHIP

(Asst.) Secretary

By: _____
(Vice) Chairman

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

Notary Public