

EAST FALLOWFIELD TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

STORM WATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Maintenance Agreement") is executed the _____ day of _____ 20__, by and between MARTHA PENNINGTON and PAMELA A. MYERS ("Owner") and LEONA R. CREEKMUR ("Applicant") and EAST FALLOWFIELD TOWNSHIP ("Township").

BACKGROUND

A. The Applicant is niece of the Owner of a certain tract of ground located in East Fallowfield Township, Chester County, Pennsylvania (the "Property") on which Applicant intends to develop two single-family dwellings on two newly subdivided lots (the "Development") in accordance with a plan known as Final Subdivision Plan Leona Creekmur prepared for the Applicant by Lake Roeder Hillard & Associates/Berger & Hayes, dated April 17, 2008 and last revised July 26, 2008 (the "Plan"). Sheets 1 and 3 of the Plan were recorded in the Office of the Recorder of Deeds in Chester County, Pennsylvania in Plan Book 18667 Page 1 on the 21st day of May 2009.

B. The Plan depicts the construction of certain buildings and improvements, including the installation of certain storm water management facilities, including but not limited to components to control the quality of stormwater discharge, as depicted on Sheet 4 of the Plan. The Owner is required to and intends to install and maintain the storm water management facilities in accordance with the Plan and the conditions of approval adopted by the Board of Supervisors.

C. Section 405 of the Township Storm Management Ordinance requires the Owner to enter into a maintenance agreement requiring that the owner of storm water management facilities be responsible for proper maintenance during and after development of all required storm water management facilities required by the Plan.

D. Owner desires to execute and record this Maintenance Agreement in order to satisfy its obligations under Section 405 referred to above.

GRANTS AND TERMS

NOW, THEREFORE, the Owner, for itself, its successors-in-interest, successors-in-title, grantees and assigns, for good and valuable consideration, the receipt and sufficiency whereof being hereby acknowledged, and intending to be legally bound hereby, hereby covenants, declares, agrees, confirms and provides as follows:

1) Incorporation of Background. Background Paragraphs A through D herein above are incorporated as part of the terms of this Maintenance Agreement.

2) Maintenance and Replacement. Owner his/its successors, grantees and assigns to the property (collectively hereinafter "Owner") shall continuously and perpetually maintain the storm water management facilities in accordance with the conditions of approval, the Plan, and with manufacturers specifications, including but not limited to:

- a) All materials collected by the storm water management facilities, including but not limited to oil and sediment, shall be disposed of in accordance with PaDEP, EPA and any other applicable regulations. The annual report shall include a list of all materials disposed and certification of regulatory compliance with disposal requirements.
- b) Should a storm water management facility not function properly, the Township shall be notified in writing within 10 days of the discovery of the malfunction and the proposed maintenance, repairs or modifications necessary to resolve the malfunction. All maintenance, repairs or modifications shall be made in accordance with the specifications of the manufacturer or designer of the device. If a repair or modification is made not within manufacturer or designer's specifications, said repair or modification shall be approved in writing by the manufacturer or designer, and a copy of the approval shall be filed with the Township. The maintenance, repair, or modification maintenance must be completed within 30 days of discovery of the malfunction, or immediately upon discovery if the malfunction poses a threat to the public health or safety
- c) The Township reserves the right to require additional devices (such as an oil absorbent hydrophobic boom, etc.) if the facilities as designed do not function to assure the quality of the stormwater leaving the storm water management facility.

3. Prohibition of Alteration or Removal. The Owner shall not alter or remove any storm water management facilities depicted on the Plan unless prior written approval is obtained from the Township.

4. Default; Cure. In the event Owner fails to comply with the terms of this Maintenance Agreement, Township shall send written notice to Owner specifying the areas of noncompliance ("Deficiencies") and the steps that must be taken to comply. In the event Owner does not comply with the terms of the notice within 30 days of the date thereof, or diligently pursue compliance in circumstances where compliance is not possible within 30 days due to weather conditions or otherwise, Township shall have the right, but not the obligation, to enforce this Maintenance Agreement at law or in equity, and/or to enter upon the Property and correct the Deficiencies, and collect the cost thereof from Owner by municipal lien against the Property or otherwise.

5. Use and Occupancy Permit. The requirements of this Maintenance Agreement are part of the conditions for issuance of the Township Use and Occupancy Permit for the development depicted on the Plan and the Property and it is the Owner's responsibility to comply with the requirements of this Maintenance Agreement. Should the Owner fail to comply, the Township reserves the right to revoke the Use and Occupancy Permit after providing the Deficiency notice and cure period as set forth in Paragraph 4 herein above.

6. Entry on Premises. The Owner hereby grants permission to the Township, its authorized agents and employees, upon presentation of proper identification, to enter upon the Property at reasonable times and to inspect the storm water management facilities whenever the Township deem necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. All reasonable costs for said inspection shall be borne by the Owner and payable to the Township.

7. Township Remedial Measures. In the event that the Owner fail to maintain the storm water management facilities in accordance with conditions of approval, the Plan, and with manufacturer's specification, the Township may enter upon the Property and take such necessary and prudent action to maintain said storm water management facilities and to charge the costs of the maintenance and/or repairs to the Owner. This provision shall not be construed as to allow the Township to erect any structure of a permanent nature on the land of the Owner, outside of any easement belonging to the Township. 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.

8. Payment of Township Costs. In the event that 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 on account of the Owner's failure to perform such work, the Owner shall reimburse the Township upon demand, within thirty (30) days of receipt of invoice thereof, for all costs incurred by the Township hereunder. If not paid within said 30-day period, the Township may enter a lien against the Property in the amount of such costs, or may proceed to recover its costs through proceedings in equity or at law.

9. Indemnification. The Owner shall indemnify the Township and its agents and employees against any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the Township for the construction, presence, existence or maintenance of the storm water management facilities by the Owner. In the event that a claim is asserted against the Township, its agents or employees, the Township shall promptly notify the Owner and Owner shall defend at Owner own expense, any suit based on such claim. If any judgment or claim against the Township, its agents, or employees shall be allowed, the Owner, Owner's successors, and assigns shall pay all costs and expenses in connection therewith.

10. Emergencies. In the event of an emergency or the occurrence of special or unusual circumstances or situations, the Township may enter the Property, if the Owner is not immediately available, without notification or identification, to inspect and perform necessary maintenance and repairs, if needed, when the health, safety, or welfare of the citizens is at jeopardy. However, the Township shall notify the Owner of any inspection, maintenance, or repair undertaken within five (5) days of the activity. The Owner shall reimburse the Township for its costs and if the costs are not paid by the Owner, the Township may utilize the remedies set forth in Paragraph 8 above.

11. Covenants Running With The Land; Successors and Assigns Bound. This Maintenance Agreement and the provisions hereof (1) shall run with the land, and be appurtenant to title to the Property and every portion thereof; and (2) shall be binding upon and inure to the benefit of the Owner, and each and all of its respective successors and assigns, and successors in title to the Property and every portion thereof. Any and all conveyances, leases or encumbrances of any part of the Property shall be subject to the provisions hereof.

12. Recording. This Agreement shall be recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania.

13. Notices. Any notice required to be given by the Township to Owner under the terms of this Maintenance Agreement shall be sufficiently given if sent by United States certified mail, return receipt requested, postage prepaid, addressed to the then owner of the Property and to the address as set forth in the records for the Property maintained by the Chester County Board of Assessment.

14. Miscellaneous Provisions.

a) Severability. If any provision of this Maintenance Agreement shall to any extent be invalid or unenforceable, the remainder of this Maintenance Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Maintenance Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.


b) Amendment. This Maintenance Agreement may not be amended except by written instrument signed and acknowledged by the Owner, its successors and assigns, and Township and recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania.

c) Governing Laws. This Maintenance Agreement shall be construed and governed by the laws of the Commonwealth of Pennsylvania.


d) Integration. This Maintenance Agreement sets forth the entire agreement between the Owner and Township with respect to the subject matter hereof.

IN WITNESS WHEREOF, being duly authorized and empowered to do so, the Owner, Applicant and Township have duly executed and delivered this Agreement as of the date and year first above written.

SEALED AND DELIVERED
IN THE PRESENCE OF APPLICANT AND OWNER:

By: 
Martha Pennington, Owner

By: 
Leona R. Creekmur, Applicant

By: 
Pamela A. Myers, Owner

East Fallowfield Township executes this Maintenance Agreement to acknowledge its rights and obligations set forth above

EAST FALLOWFIELD TOWNSHIP

Attest: _____
Denise Miller,
Township Secretary

By: _____
George Broadbent, Chairman
Board of Supervisors

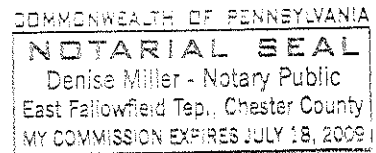
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CHESTER :

On this, the 1st day of July, 2009, before, the undersigned notary public, personally appeared MARTHA PENNINGTON and PAMELA A. MYERS who acknowledged themselves to be the Owner of the properties therein addressed and as such they did sign the foregoing instrument for the purposes therein contained.

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

Denise Miller
Notary Public :

(Notarial Seal)



My Commission Expires: July 18, 2009

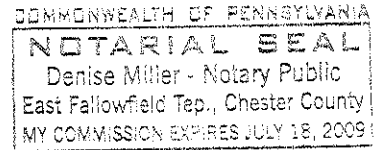
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CHESTER :

On this, the 1st day of July, 2009, before, the undersigned notary public, personally appeared LEONA R. CREEKMUR who acknowledged herself to be the Applicant for the properties therein addressed and as such they did sign the foregoing instrument for the purposes therein contained.

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

Denise Miller
Notary Public

(Notarial Seal)



My Commission Expires: July 18, 2009

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF CHESTER :

On this, the _____ day of _____, 20__, before, the undersigned notary public, personally appeared GEORGE BROADBENT who acknowledged himself to be the Chairman of the Board of Supervisors of East Fallowfield Township and as such he did sign the foregoing instrument on the Township's behalf for the purposes therein contained.

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

Notary Public

(Notarial Seal)

My Commission Expires