

**INDEMNITY AGREEMENT FOR APPLICATION FOR
HIGHWAY OCCUPANCY PERMIT CONCERNING
SUBSURFACE STORMWATER FACILITIES**

THIS AGREEMENT made and entered into this _____ day of _____, 20____
by and between:

_____, a _____
_____ Company with an address of _____
_____, Pennsylvania, _____, party of the first part,
hereinafter called "Landowner"

AND

LOWER ALLEN TOWNSHIP, a Township of the first class with
an address of 2233 Gettysburg Road, Camp Hill Pennsylvania, 17011,
party of the second part, hereinafter called "Township"

WHEREAS, Landowner is the owner of a certain parcel of property situate in
_____ County, Pennsylvania, as is evidenced by a deed of record in the Office
of the Recorder of Deeds of _____ County, Pennsylvania, as Instrument No.
_____, hereinafter referred to as the "Property";

WHEREAS, Landowner desires to develop the Property;

WHEREAS, Landowner desires to utilize the state highway public right-of-way for storm
water management in the development of the Property;

WHEREAS, Landowner's storm water management efforts must utilize subsurface
means or facilities;

WHEREAS, the Pennsylvania Department of Transportation ("PennDOT") in
accordance with Section 421 of the Pennsylvania State Highway Law, 36 P.S. § 670-421 has
adopted a policy requiring any application for a Highway Occupancy Permit (a "HOP") for
subsurface stormwater management to be submitted by the Township of the property to be
developed either as applicant or co-applicant;

WHEREAS, this same PennDOT policy directs that any HOP permit issued concerning subsurface storm water management shall include conditions that the drainage installed shall be the primary responsibility of the Township and that any co-applicant is responsible for providing funding to the Township to offset future maintenance, repair, replacement and reconstruction costs associated with the subsurface storm water management facilities installed under the HOP;

WHEREAS, Landowner and Township agree that, at the option of the Township, either (a) the Township, or (b) the Township and the Landowner, shall file an application for an HOP for the Property; and

WHEREAS, Landowner and Township now desire, through this Agreement, to allocate the rights and responsibilities between each other for the, repair, replacement and reconstruction cost of the subsurface storm water management facilities constructed should PennDOT issue the applied for HOP and to provide for the Landowner's indemnification of the Township for any and all liability related to the matters set forth in this Agreement.

WHEREAS, upon execution of this Agreement it shall be recorded in the Office of the Recorder of Deeds of Cumberland County, Pennsylvania for the Property at

_____.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and further intending to be legally bound thereby, the parties hereto agree as follows:

The foregoing recitals are incorporated herein and made a part hereof

ARTICLE I PLANNING, CONSTRUCTION, AND MAINTENANCE RESPONSIBILITIES

1.01. Landowner agrees to be responsible, at its own cost and expense, for the design of the subsurface storm water facilities and the preparation and submission of the application to PennDOT for the associated HOP.

1.02. Landowner agrees that any design of such facilities shall comply with all applicable building and other codes, industry standards, and laws.

1.03. Landowner agrees that the Township, or its engineer, shall have the right to review and make changes to the proposed design of the subsurface storm water facilities and to the proposed application for the associated HOP before submission to PennDOT. Landowner agrees to reimburse the Township for reasonable costs of the Township's review of the designs and application.

1.04. Upon receipt of the HOP, Landowner agrees to construct the subsurface storm water facilities in accordance with any and all approvals required and received from the Township and otherwise to construct these facilities in accordance with all applicable building codes, industry standards, and laws.

1.05. Landowner agrees to be responsible, at its own cost and expense, for regularly maintaining or replacing the installed subsurface storm water facilities as necessary or when the Township or PennDOT determines that maintenance or replacement is necessary.

1.06. To the full extent permitted by law, Landowner shall indemnify, defend and hold harmless the Township and its professional advisors, agents, servants, workmen and employees from and against all suits, claims, actions, damages, losses and expenses, including, but not limited to, attorneys' fees, and all suits, claims, actions, workers' compensation claims, damages, losses and expenses brought by any third parties, and/or employees of Landowner or contractors and subcontractors of Landowner, and for all costs or liability to which the Township may be held responsible, and for any injury or alleged injury to the person or property of another resulting from negligence or carelessness arising out of or resulting from the construction, operation, or failure of the subsurface storm water facilities that are the subject of the HOP.

1.07. In the event Landowner shall neglect, fail or refuse to maintain or replace the installed subsurface storm water facilities as necessary or when the Township or PennDOT determines that maintenance or replacement is necessary, then the Township may correct said deficiencies and Landowner shall be required to reimburse Township for all costs of said corrections, including administration, attorney and engineering fees, together with any additional payment authorized by law. Said costs may be collected by the Township from Landowner by an action in assumpsits or as otherwise permitted by law.

ARTICLE II LANDOWNER'S SECURITY

2.01. At the sole discretion of the Township, Landowner shall be required to provide security for its construction, maintenance, and indemnity obligations concerning the subsurface storm water facilities in the form of (a) a deposit of funds into an Escrow Account maintained by the Township or (b) the posting of a construction and maintenance bond in a form and amount satisfactory to the Township.

2.02. Escrow Account. (check if this section is applicable_).

(A) Landowner agrees to place into an escrow account, for the sole benefit of the Township, as escrow agent, the initial sum of _____ (\$__ Dollars; said monies to be held in the Township's name alone, as escrowee, in an interest bearing segregated account not co-mingled with its general fund (but which may be part of a shared escrow fund as determined by the Township), for the exclusive purposes hereinafter set forth (the "Stormwater Maintenance Escrow Account"). Receipt of the amount of\$ _ will be acknowledged by the Township when so deposited. The Stormwater Maintenance Escrow Account shall be maintained by the Township for the particular development project in which the stormwater facilities are included.

(B) Landowner agrees that the Stormwater Maintenance Escrow Account shall be used to reimburse the Township for any and all expenses, fees and charges incurred by the Township for maintenance, repair, replacement, or reconstruction of the

subsurface storm water facilities that are the subject of the HOP. The Township shall be permitted to utilize the funds in the Stormwater Maintenance Escrow Account to pay for maintenance, repair, replacement, or reconstruction of the subsurface storm water facilities only after the Township has notified Landowner in writing of the need to perform maintenance, repair, replacement, or reconstruction of the subsurface storm water facilities. Landowner shall have at least 10 days from the date of the Notice to begin such action on the subsurface storm water facilities or otherwise provide the Township with a response adequate to the Township.

(C) The balance of the Stormwater Maintenance Escrow Account shall at no time be in an amount of less than _____ percent of the original amount, or _____ (\$ -----Dollars ("Minimum Balance")).In the event that the balance of the Stormwater Maintenance Escrow Account falls below the Minimum Balance, the Township shall require that the Landowner deposit in the Escrow Account, within ten (10) business days after receipt of the Notice of Deficiency from the Township, the difference between the then current balance and the original escrow amount. At its sole discretion, the Township shall review the Stormwater Maintenance Escrow Account on a periodic basis and may require a reasonable increase in the Minimum Balance by the Landowner, after taking into account all relevant factors, including inflation, estimated maintenance, repair, replacement and reconstruction costs, the financial condition of the Landowner, and any material alteration of the property serviced by the subsurface stormwater facilities.

(D) The Township shall have the sole discretion when, or if, the funds in the Stormwater Maintenance Escrow Account are released to the Landowner.

2.03. Bond (check if this section is applicable_).

(A) Landowner shall cause to be issued a bond or bonds ("Bond"), issued by an acceptable surety authorized to do business in the Commonwealth of Pennsylvania, and executed by the Landowner, in the amount of _____ naming the Township as obligee, and certifying that the Landowner will complete and maintain (including repair, replacement and reconstruction if necessary) the surface storm water facilities that are the subject of the HOP.

(B) Landowner agrees that the Bond shall be utilized for maintenance, repair, replacement and reconstruction of the subsurface storm water facilities only if after 10 days written notice to Landowner by the Township of the need to maintain, repair, replace or reconstruct those facilities, Landowner has failed to address the matters contained in the Notice to the satisfaction of the Township.

(C) The Township shall review the Bond on a periodic basis and may require a reasonable increase in the amount of the Bond after taking into account all relevant factors, including inflation, estimated maintenance, repair, replacement and reconstruction costs, the financial condition of the Landowner, and any material alteration of the property serviced by the subsurface stormwater facilities.

(D) The Township shall have the sole discretion to decide when, or if, the Bond is released.

ARTICLE III GENERAL TERMS

3.01. This Agreement shall be binding upon the successors and assigns of the Landowner and the Township.

3.02. Any notice to be given hereunder shall be deemed given when personally delivered to the party to receive such notice, or when mailed postage prepaid, by registered or certified mail at the following address:

LOWER ALLEN TOWNSHIP, with an address of
2233 Gettysburg Road, Camp Hill, Pennsylvania, 17011

Landowner with an address of

3.03. This agreement will be interpreted according to the laws of the Commonwealth of Pennsylvania.

3.04. This agreement represents the entire understanding of the parties with respect to the subject matter of this agreement and supersedes all prior agreements, contracts, understandings, negotiations and other arrangements between the parties.

3.05. This agreement may be amended, modified or supplemented only by the written agreement between the parties, which shall be duly recorded in the Office of the Recorder of Deed of _____ County, Pennsylvania.

3.06. This agreement and all rights under it will be binding on and inure to the benefit of and be enforceable by the successors and assignees of the Landowner.

3.07. Landowner shall promptly notify the Township of any material changes in ownership of Landowner and provide any information about that change in ownership reasonably required by the Township.

3.08. Landowner and Township agree that this Agreement may be recorded in the Recorder of Deeds' office (or other appropriate government office for records reflecting title to real property) of the county where the real property at issue is located. This recording shall be evidence of the obligations of the parties concerning the real property.

_____(SEAL)
Notary Public

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CUMBERLAND)

On this, the _____ day of _____, 20____, before me, the undersigned officer, personally appeared Jennifer M. Caron, President of the Board of Commissioners of Lower Allen Township, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESSETH WHEREOF, I hereunto set my hand and seal.

_____(SEAL)
Notary Public