

Record and Return to:

Carl W. Ewald, Esq.  
Law Offices of Robert W. Scott, P.C.  
205 North Monroe Street  
Media, PA 19063

Folio No.: 35-00-01199-00

**STORMWATER CONTROLS AND  
BEST MANAGEMENT PRACTICES  
OPERATIONS AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT**, made and entered into this 18<sup>th</sup> day of August, 2022, by and between **M & M REALTY HOLDING, LLC**, a Pennsylvania limited liability company with an address of 22 Little Lane, Media, PA 19063 (hereinafter the "Landowner") and **UPPER PROVIDENCE TOWNSHIP**, 935 North Providence Road, Media, Pennsylvania 19063, Delaware County, Pennsylvania (hereinafter "Municipality").

**WITNESSETH:**

**WHEREAS**, the Landowner has filed an Application with Municipality for approval of a Land Development Plan for certain property located at South Orange Street and Weldon Road, Upper Providence Township, Delaware County, Pennsylvania (hereinafter "Property").

**WHEREAS**, the Landowner is proceeding to improve the Property; and

**WHEREAS**, the Municipality has updated its Stormwater Management Ordinance to comply with the mandates of the Pennsylvania Department of Environmental Protection, which mandates include the need for Best Management Practices (BMPs) and an Operations and Maintenance Plan; and

**WHEREAS**, for the purposes of this Agreement, the definitions set forth in the Municipality Stormwater Management Ordinance shall apply; and

**WHEREAS**, the Stormwater Controls and BMP Operations and Maintenance Plan approved by Municipality (hereinafter referred to as the "Plan") for the Property, which is attached hereto as Appendix A and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMPs; and

**WHEREAS**, Municipality and the Landowner, its 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 BMP's be constructed and maintained on the Property; and

**WHEREAS**, Municipality requires, through the implementation of the Plan, that stormwater management BMP's as required by said Plan and the Municipality Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, its successors and assigns.

**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 BMP's shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.

2. The Landowner, its successors and assigns, shall operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to Municipality and in accordance with the specific maintenance requirements noted on the Plan.

3. The Landowner, its successors and assigns, hereby grant permission to 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, Municipality shall notify the Landowner, its successors and assigns, prior to entering the Property.

4. In the event that the Landowner, its successors or assigns, fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to Municipality, 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 Municipality to erect any permanent structure on Property. It is expressly understood and agreed that 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 Municipality.

5. In the event that 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, its successors and assigns, shall reimburse Municipality for all expenses (direct and indirect) incurred within ten (10) days of receipt of an invoice from Municipality, and if Landowner fails to timely reimburse Municipality therefor, Municipality shall be entitled to recover any amounts by filing a municipal lien under the Municipal Claims Act.

6. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) by the Landowner, its successors and assigns; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on 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 interest shall release Municipality, its employees and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said Municipality, its employees and representatives

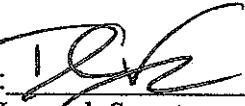
from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner, its successors and assigns, or Municipality. In the event that a claim is asserted against Municipality, its designated representatives, or employees, Municipality shall promptly notify the Landowner, its successors and assigns, and the Landowner, its successors and assigns, shall defend, at their own expense, any suit based on the claim. If any judgment or claims against Municipality, its employees or designated representatives shall be allowed, the Landowner, its successors and assigns, shall pay all costs and expenses regarding said judgment or claim.

8. Landowner, its successors and assigns, shall have a registered professional engineer, or someone acting under their direction inspect the BMP(s) at a minimum of once every year for the first five years and once every three (3) years thereafter as well as during or immediately after the cessation of a 100-year or greater storm event. Within one month following completion of such inspection, the entity conducting the inspection shall submit a report to the Municipality documenting the condition of the BMP(s) and recommending necessary repairs, if any. Landowner, its successors and assigns, will complete any needed repairs within one month after issuance of such report.

9. This Agreement shall be recorded at the Office of the Recorder of Deeds of Delaware County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude and shall be binding on the Landowner, its successors and assigns, in perpetuity.

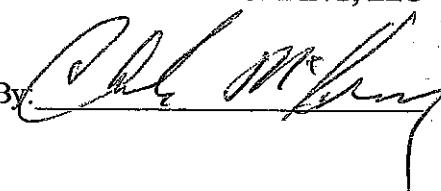
IN WITNESS WHEREOF, the said parties have hereunto set their hands and/or corporate seals, duly attested the day and year aforesaid.

TOWNSHIP OF UPPER PROVIDENCE

Attest:   
Don Vymazal, Secretary

By:   
Elgin Akarsoy, Chairman

DEVELOPER:  
M & M REALTY HOLDING, LLC

By: 

COMMONWEALTH OF PENNSYLVANIA

: ss

COUNTY OF

This record was acknowledged before me on 18<sup>th</sup>, 2022, by Elgin Akarsoy, who represents that he/she is authorized to act, as Council Chairman of Upper Providence Township.

*Kimberley A. McCloskey*  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
KIMBERLEY A. McCLOSKEY, Notary Public  
Delaware County  
My Commission Expires September 1, 2025  
Commission Number 126426

My commission expires: 9-1-2025

COMMONWEALTH OF PENNSYLVANIA

: ss

COUNTY OF

This record was acknowledged before me on August 15, 2022, by Charles McKenna, who represents that he/she is authorized to act, as member of M & M Realty Holding, LLC, a Pennsylvania limited liability company.

*Jessica Yam*  
Notary Public

My commission expires: 8/29/2023

Commonwealth of Pennsylvania - Notary Seal  
Jessica Yam, Notary Public  
Delaware County  
My commission expires August 29, 2023  
Commission number 1264237  
Member, Pennsylvania Association of Notaries

## APPENDIX A

Sheet C-\_\_\_\_ - Post Construction Stormwater Maintenance Plan prepared by Linn Architects,  
dated July 1, 2019, last revised August 5, 2019 attached hereto and made part hereof.