Appendix A.3
Simplified Approach – Stormwater Best Management Practices Operation, Maintenance, and Inspection Plan and Agreement

It is the Landowner's responsibility to properly maintain BMPs. It is also the Landowner's responsibility to inform any future buyers of the function, operation, and maintenance needed for any BMPs on the property prior to the purchase of the property. The following maintenance agreement outlines the inspection and maintenance required for each type of BMP, the responsibilities of the Landowner, and the rights of the Municipality in regards to inspection and enforcement of the maintenance requirements.

The Operation, Maintenance and Inspection Plan and Agreement must be signed, notarized and submitted to the Municipality. Following approval and signature by the Municipality, the Landowner must have the Agreement recorded at the Chester County Office of the Recorder of Deeds, so that the Agreement will be applicable to future landowners.

STORMWATER BEST MANAGEMENT PRACTICES OPERATION, MAINTENANCE, AND INSPECTION PLAN AND AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20___, by and between _____, (hereinafter the "Landowner"), and _____(City, Borough, Township), Chester County, Pennsylvania, (hereinafter "Municipality").

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, at Deed Book _____ and Page _____, (hereinafter "Property"); and

WHEREAS, the Landowner recognizes that the stormwater management best management practices or BMPs (hereinafter referred to as "BMP" or "BMP(s)") located on the Property at

_____

_____ (address of Property where BMP is located) must be inspected and maintained; and

WHEREAS, the Municipality and the Landowner, for itself and for its administrators, executors, successors, heirs, 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 BMP(s) 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 ground water recharge and to otherwise meet the purposes of the Municipality's Stormwater Management Ordinance,

including, but not limited to infiltration trenches, dry wells, bioretention, rain gardens, permeable paving, rain barrels and cisterns, etc. The BMP(s) are permanent appurtenances to the Property; and

Conveyance – As specifically identified in the Simplified Stormwater Management Site Plan (herein after "Plan"), a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, and like facilities or features. The conveyances identified in the Plan are permanent appurtenances to the Property; and

WHEREAS, the Municipality requires that the BMP(s) and conveyances as shown on Plan and in accordance with the sizing calculations found on the Simplified Method Worksheet (herein after "Worksheet") be constructed by the Landowner; the BMP(s) shall further be maintained by the Landowner, its administrators, executors, successors, heirs, and assigns in accordance with the associated operation and maintenance requirements included herein. The Plan and Worksheet are attached hereto and incorporated herein together as Exhibit "A" hereto; and

WHEREAS, the Municipality requires that stormwater management BMP(s) be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors, heirs, and assigns, in accordance with the following maintenance requirements:

NOTE TO EDITOR:
Retain the type of BMP(s) from the following list that applies to this Property and delete any of the following BMP(s) listed below that do not apply. You may also add a BMP not listed and provide its maintenance requirement, if needed.

1. Infiltration Trenches

a. At least twice a year and after significant rainfall events the Landowner is to inspect the infiltration trench and remove any accumulated debris, sediment and invasive vegetation.
b. Vegetation along the surface of an infiltration trench is to be maintained in good condition, and any bare spots are to be re-vegetated as soon as possible.
c. Vehicles are not to be parked or driven on an infiltration trench, and care is to be taken to avoid excessive compaction by mowers.

d. Any debris, such as leaves blocking flow from reaching an infiltration trench, is to be routinely removed.

2. Bioretention/Rain Garden

a. Any debris, such as leaves blocking flow from reaching a bioretention/rain garden, is to be routinely removed.

b. Pruning and weeding are required as needed including removal of invasive species, especially while vegetation is being established for a bioretention/rain garden.

c. Mulch cover is to be maintained in a bioretention/rain garden, re-spread and replaced as needed to prevent erosion, reduce weed growth and assist with plant survival, without restricting the infiltration of stormwater.

d. At least twice a year the Landowner is to inspect the bioretention/rain garden for sediment buildup, ground cover and vegetative conditions and make any repairs as needed.

e. Watering is required as needed, including during periods of extended dry weather and drought.

f. Trees and shrubs in a bioretention/rain garden are to be inspected at least twice per year by the Landowner to evaluate their health. If they are in poor health they are to be replaced.

3. Dry Wells

a. Dry wells are to be inspected by the landowner at least four (4) times a year and after significant rainfalls, and debris, trash, sediment, and any other waste material need to be removed and disposed of at suitable disposal or recycling sites and in compliance with local, state, and federal waste regulations.

b. For dry wells, gutters are to be regularly cleaned out and ensure that proper connections are maintained to facilitate the effectiveness of the dry well.

c. The filter screen for downspouts or roof gutters which intercepts roof runoff and conveys it to the dry well must be cleaned and replaced as necessary.

d. Dry wells that are damaged are to be fixed or replaced within two (2) weeks of being damaged.

e. If an intermediate sump box exists in conjunction with a dry well, it must be cleaned out at least once per year.

4. Rain Barrels and Cisterns

a. Rain Barrels and Cisterns are to be cleared of debris routinely at least every three (3) months and after significant storms to allow stormwater from gutters to enter them.

b. Gutters that directly convey rain water to dry wells, rain barrels, and cisterns are to be routinely cleared of trash and debris at least every three (3) months and after significant rainfall events.
c. Rain Barrels and cisterns should be routinely emptied to allow for storage of additional rain water.
d. Overflow outlets from rain barrels and cisterns must be kept free and clear of debris.
e. Rain Barrels and cisterns that are damaged are to be fixed or replaced within two (2) weeks of being damaged.

N**OW, THEREFORE**, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement and obligations of the Landowner as if fully set forth in the body of this Agreement.

2. The Landowner shall construct the BMP(s) in accordance with the specifications identified in the Plan and Worksheet.

3. The Landowner shall inspect, 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 inspection and maintenance requirements outlined in this Agreement.

4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from the public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary for compliance with this Agreement and the Municipality's Stormwater Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property.

5. The Landowner acknowledges that, per the Municipality's Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:

a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is constructed as part of the Plan;
b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;
c. Allow the BMP or conveyance to exist in a condition which does not conform to the Plan or this Agreement; and

d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals and automotive fluids to directly or indirectly enter any BMP or conveyance.

6. 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 Landowner shall be in violation of this Agreement and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). 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.

7. 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 [_____] days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

NOTE TO EDITOR: Municipality must insert appropriate number of days. Municipality may, at its option, delete the language requiring Landowner to reimburse the Municipality.

8. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, however, 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.

9. The Landowner, its executors, administrators, assigns, heirs, and other successors in interests, hereby release and shall release the Municipality, its employees, agents and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Municipality and/or its said employees, agents or representatives, arising out of the construction, presence, existence, or maintenance of the BMP(s) either by the Landowner or Municipality. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall notify the Landowner and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or threatened claim, suit, action or proceeding against the Municipality or, at the request of the Municipality, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the

Municipality. If any judgment or claims against the Municipality, its employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorneys fees, regarding said damages, judgment or claims.

10. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties,

damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorneys fees and costs incurred in seeking relief under this Agreement.

11. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.

12. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.

13. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.

This Agreement shall be recorded at the Office of the Recorder of Deeds of the County of Chester, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, in perpetuity.

(SEAL) For the Landowner:

_____

ATTEST:

_____ (City, Borough, Township)
County of Chester, Pennsylvania

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 _____, 20__.

_____ _____

NOTARY PUBLIC **(SEAL)**

ATTEST:

WITNESS the following signatures and seals:

(SEAL) For the Municipality:

_____

ATTEST:

_____ (City, Borough, Township)
County of Chester, Pennsylvania

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 _____, 20__.

_____ _____

NOTARY PUBLIC **(SEAL)**