

STORMWATER MANAGEMENT EASEMENT AND ESCROW FUND AGREEMENT

Block(s) _____, Lot(s) _____

Township of Ocean, Monmouth County, N.J.

STORMWATER MANAGEMENT EASEMENT AND ESCROW FUND AGREEMENT made this _____ day of _____, _____, by and between _____ Owners of lands designated as Block(s) _____, Lot(s) _____ upon sheet(s) _____ of the Tax Map of the Township of Ocean (hereinafter designated as "OWNERS") and the Township of Ocean, a Municipal Corporation in the State of New Jersey (hereinafter designated as "TOWNSHIP").

WITNESSETH:

WHEREAS the TOWNSHIP of Ocean seeks to protect its constituent lands and residents and/or properties downstream therefrom, against adverse impacts of increased runoff and/or degraded water quality resulting from development within its borders; and,

WHEREAS OWNERS and/or their Agents have proposed a development plan for this property which, if constructed, will substantially increase impervious coverage upon the land; and,

WHEREAS OWNERS have proposed to mitigate the impacts of their development via a Stormwater Management Plan under which OWNERS and/or their successors in title shall install, operate and maintain, in perpetuity, Stormwater Management Measures detailed upon, or within, the following design/support documents:

- i. PLANS - - list all plans, author(s), dates, latest revision date
- ii. list all CALCULATIONS / DRAINAGE REPORTS, author(s), dates, latest revision date
- iii. identify the MAINTENANCE MANUAL FOR STORMWATER MANAGEMENT MEASURES by title - list all author(s), dates, latest revision date

copies of which are appended hereto; and,

WHEREAS OWNERS' Stormwater Management Plan has been reviewed by members of the TOWNSHIP's Professional Staff which members have recorded no exception, thereto; and,

WHEREAS (if applicable) OWNERS' development plan has been approved by the Planning / Zoning Board of the TOWNSHIP of Ocean in connection with the matter of a _____ which approval was memorialized by Resolution granting _____ and which Resolution was adopted by the ___ Board on ____ and a copy of which is appended hereto; and,

WHEREAS installation of improvements which are a part of OWNERS' Stormwater Management Plan will create, on the part of OWNERS and/or their successors in title, a long-term obligation to ensure the integrity, function and effect of said improvements,

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each of the parties hereto, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. The TOWNSHIP of Ocean accepts no responsibility or obligation, of any kind, for the design, function, operation, maintenance and/or consequence of OWNERS' Development Plan and/or its included Stormwater Management Plan.
2. OWNERS shall have sole, total and perpetual obligation and responsibility for the preservation, inspection, operation, maintenance and/or effect of onsite stormwater management improvements.
3. The TOWNSHIP of Ocean, its employees, agents, servants and/or assigns shall have the right and privilege, but no obligation, to enter upon this property, unannounced, during normal TOWNSHIP business hours for the purpose of inspecting installed stormwater management improvements
4. OWNER shall, within fourteen (14) days of delivery of written deficiency notification from the TOWNSHIP stating that some part, or all, of the onsite stormwater management improvements need(s) repair or replacement or that the stormwater management system is not functioning as designed and/or providing the effect purported to be attainable by the design/support documents,
 - (a) cause the entire system to be thoroughly inspected by a qualified professional;
 - (b) provide the Township, in writing, with the identification, credentials and written evaluation of the inspector;
 - (c) repair and replace, or cause to be repaired and replaced, any or all elements of the stormwater management system requiring repair or replacement; and,
 - (d) restore the function(s) of the stormwater management system to the level purported to be attainable by its design/support documents.
5. If, 30 days subsequent to the TOWNSHIP's written deficiency notification to OWNERS (as described in '4' above), the onsite stormwater management system has not been inspected and repaired and/or its function completely restored, the TOWNSHIP of Ocean, its employees, agents, servants and/or assigns shall have the right and privilege, but no obligation, to enter upon this property, unannounced, during normal Township business hours for the purpose of effecting necessary repairs, replacements and/or restoration of function. Further, the TOWNSHIP shall have the right to charge OWNER(s) for the cost of such work, the charge being levied in the form of a special property tax assessment.
6. At any time when the physical operation of some part, or all, of the stormwater management system is not functioning as designed and/or its operation is not providing the effect purported to be attainable by the design/support documents and the result of such circumstance is adverse to any offsite land or improvement, the TOWNSHIP of Ocean, its employees, agents, servants and/or assigns shall have the right and privilege, but no obligation, to enter upon this property, unannounced, for the purpose of effecting necessary repairs, replacements and/or restoration of function. Further, the Township shall have the right to charge Owner(s) for the cost of such work the charge being levied in the form of a special property tax assessment.
7. OWNER(s) shall not install, and/or the TOWNSHIP of Ocean shall not be responsible for:
 - (a) any subsurface or otherwise concealed object located onsite and within six (6) feet of any element of the stormwater management system; and/or,

- (b) any other onsite object which obstructs access to, or the ability to work upon or replace, any element of the stormwater management system.
8. OWNER shall fund and maintain, and the TOWNSHIP of Ocean shall hold, a BALANCE of ESCROW monies equal in amount (ESCROW PRINCIPAL) to the estimated cost of two (2) annual TOWNSHIP inspections of the onsite stormwater management system plus the estimated cost of one year's routine maintenance as set forth in the Maintenance Manual for the Stormwater Management System appended hereto, these cost estimates and ESCROW PRINCIPAL being adjusted for all years of the life of this Agreement, beyond the first, in accordance with 'b' below. The following shall apply to the payment and/or disposition of ESCROW monies:
- (a) OWNER shall deposit ESCROW money with the Township in the amount required to raise its current ESCROW BALANCE to equal the required ESCROW PRINCIPAL for the forthcoming calendar year on, or before, January 31 of each calendar year of the life of this AGREEMENT. Additionally, OWNER shall deposit ESCROW money with the Township within thirty (30) days of notification by the TOWNSHIP, that its ESCROW BALANCE requires supplementation to be brought to the full value of the ESCROW PRINCIPAL for the present calendar year.
- (b) The amount of the ESCROW BALANCE to be maintained (ESCROW PRINCIPAL) during any calendar year shall be adjusted annually, in January of the year, by multiplying the ESCROW PRINCIPAL of the prior calendar year by a multiplier equal to the greater of either:
- 1.03 or the ratio: $(CPI-W_{Nov} / CPI-W_{Nov-12})$
- where CPI-W is the Consumer Price Index for urban wage earners and clerical workers in the New York-Northern NJ-Long Island (i.e., NY-NJ-CT-PA) area published by the Bureau of Labor Statistics of the U.S. Department of Labor and the subscript "Nov" indicates the index for the November immediately prior to the adjustment while the subscript "Nov-12" indicates the index for the December fourteen (14) months prior to the adjustment.
- (c) Escrow monies of OWNER may be used by the TOWNSHIP to pay or reimburse itself, its agents and/or its assigns, for any loss, cost or expense incurred in connection with actions authorized and taken under the terms of this AGREEMENT.
9. OWNERS further covenant with the TOWNSHIP as follows:
- (a) That the said OWNER has good and marketable title to the premises (if applicable: detailed in Schedule "A" attached hereto and made a part hereof) and has the right to convey this easement;
- (b) That the TOWNSHIP shall quietly enjoy this easement without disturbance and interference;
- (c) That this easement is free and clear from encumbrances.
10. This grant and easement shall at all times be deemed to be, and shall be, a continuing covenant running with the land and shall be binding upon and in favor of the successors and assigns of the respective parties hereto.
11. The TOWNSHIP shall not be liable for any action taken or omitted by it in good faith and reasonably believed by it to be authorized, hereby, or with the rights or powers conferred upon it

hereunder, nor for action taken or omitted by it in good faith, and in accordance with advice of counsel (which counsel may be of the TOWNSHIP's own choosing), and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind except for its own willful misconduct or gross negligence.

- 12. OWNER agrees to indemnify the TOWNSHIP and its employees, directors, officers and agents and hold each harmless against any and all liabilities incurred by it hereunder as a consequence of such party's action, and to indemnify the TOWNSHIP and hold it harmless against any claims, costs, payments, and expenses (including the fees and expenses of counsel) and all liabilities incurred by it in connection with the performance of its duties hereunder and them hereunder.
- 13. All notices and other communications under this AGREEMENT shall be in writing and shall be deemed given when delivered personally, on the next Business Day after delivery to a recognized overnight courier or mailed first class (postage prepaid) or when sent by facsimile to the parties (which facsimile copy shall be followed, in the case of notices or other communications sent to the TOWNSHIP, by delivery of the original) at the following addresses (or to such other address as a party may have specified by notice given to the other parties pursuant to this provision):

_____ Township of Ocean
c/o Andrew Brannen
399 Monmouth Road
Oakhurst NJ 07755
Facsimile – 732-531-5286

- 14. This Agreement and the rights and obligations hereunder of parties hereto may not be assigned except with the prior written consent of the other parties hereto. This Agreement shall be binding upon and inure to the benefit of each party's respective successors and permitted assigns. Except as expressly provided herein, no other person shall acquire or have any rights under or by virtue of this Agreement.
- 15. This Agreement may not be amended, supplemented or otherwise modified without the prior written consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESS:

_____ (Corporate Name)

_____, Managing Member

_____ Date

ATTEST:

Clerk, Township of Ocean
Vincent Buttiglieri

_____ Date

Mayor, Township of Ocean
William R. Larkin

_____ Date

STATE OF NEW JERSEY
COUNTY OF MONMOUTH SS:

BE IT REMEMBERED that on this _____ day of _____, 20____, before me, the subscriber Notary Public of the State of New Jersey has personally appeared who, being duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the _____ of the corporation named in the within instrument; that _____ is the _____, authorized said instrument was signed and delivered by said _____ as and for the voluntary act and deed of said corporation, in the presence of deponent, who thereupon subscribed his name hereto as attesting witness.

Sworn and subscribed before
me on the date aforesaid.

Notary

SEAL