

DRAINAGE CODE
{COMMUNITY NAME}, DELAWARE

ORDINANCE NO. XX-XX

AN ORDINANCE BY THE [community's governing body] AMENDING THE {name of community} CODE OF ORDINANCES TO ADOPT A NEW DRAINAGE CODE COMPLIMENTARY TO AND CONSISTENT WITH {name of community} STORMWATER MANAGEMENT STANDARDS; TO PROVIDE FOR APPLICABILITY; REPEALER; AND AN EFFECTIVE DATE.

WHEREAS, the [COMMUNITY'S GOVERNING BODY] has the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, [COMMUNITY NAME] recognizes that proper drainage and systems by which to manage, convey, and maintain proper drainage can reduce flooding, slow runoff velocities, reduce or eliminate erosion and sedimentation, minimize impacts on public facilities used to transport runoff, improve infiltration and groundwater recharge, reduce pollution to our waterways, and improve aquatic habitat; and

WHEREAS, [COMMUNITY NAME] is empowered to regulate drainage and stormwater runoff as designated by the Delaware DNREC by the authority of Title 7 of Delaware Administrative Code Natural Resources and Environmental Control, Chapter 5101 Sediment and Stormwater Regulations; and

WHEREAS, [COMMUNITY NAME] intends to comply with the provisions of 29 Del. C. §§9501-9506 of the Real Property Acquisition Act (RPAA): and

WHEREAS, in 2011 the General Assembly passed and the Governor signed Senate Bill 64 into law in response to concerns about Delaware's vulnerability to flooding and drainage challenges, and [COMMUNITY NAME] proposes to adopt selected standards recommended by the Floodplain and Drainage Advisory Committee, including standards to address drainage easements, drainage obstructions, drainage conveyance systems, lot grading for proper drainage, topographic plan requirements, and plan submission requirements for as-built plans (post-construction verification documents).

NOW, THEREFORE, BE IT ORDAINED by the [COMMUNITY'S GOVERNING BODY] of [COMMUNITY NAME] that the following drainage code regulations are hereby adopted.

SECTION 1. DRAINAGE CODE

ARTICLE 1.0 GENERAL PROVISIONS

1.1 Findings

The [COMMUNITY'S GOVERNING BODY] finds that:

Inadequate management of runoff resulting from land disturbance and development throughout a watershed increases flooding, contributes to erosion and sedimentation, overtaxes the capacity of streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces infiltration and groundwater recharge, increases nonpoint source pollution to waterways, impacts aquatic habitat, and threatens public health and safety.

A comprehensive program of proper drainage controls, including minimization of impacts of new development, redevelopment, and other earth disturbance activities causing runoff and erosion and loss of natural infiltration, is fundamental to the public health, safety, and general welfare of the people of [COMMUNITY NAME] and all of the people of the State of Delaware.

1.2 Statement of Purpose

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life, health and welfare;
- (B) Encourage the utilization of appropriate drainage controls and management techniques in order to prevent or minimize impacts to adjacent properties;
- (C) Minimize impacts to and overloading of storm sewer systems;
- (D) Maintain natural drainage;
- (E) Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development with inadequate drainage controls;
- (F) Sustain or improve the natural hydrologic characteristics and water quality of groundwater and surface waters;
- (G) Maintain the natural hydrologic regime of developed areas and areas undergoing development;
- (H) Protect adjacent and downgradient lands from the adverse impacts of drainage;
- (I) Provide proper long-term operation and maintenance of all drainage conveyance systems that are implemented within [COMMUNITY NAME]; and
- (J) Provide performance standards and design criteria to: adequately convey the minimum 10-year storm event, address blockages of drainage conveyance systems, provide adequate drainage away from buildings, require the submission of topographic plans to ensure proper drainage, provide adequate easements for the permanent protection

and maintenance of drainage conveyance systems, and provide as-built plans (post-construction verification documents).

1.3 Abrogation and Greater Restrictions

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or easement, but the land subject to such interests shall also be governed by these regulations.

1.4 Interpretation

In the interpretation and application of these regulations, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body;
- (C) Deemed neither to limit nor repeal any other powers granted under state statutes; and
- (D) Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence, where more restrictive.

1.5 Warning and Disclaimer of Liability

The degree of protection and proper management of drainage conveyance systems required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. These regulations shall not create liability on the part of [COMMUNITY NAME], any officer or employee thereof, for any conveyance or flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

1.6 Severability

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

ARTICLE 2.0 DEFINITIONS

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

Adverse Impact: A negative impact resulting from a construction or development activity. The negative may include, but is not limited to, increased risk of flooding; degradation of water quality; increased sedimentation; reduced groundwater recharge; negative impacts on aquatic habitat; or threatened public health and safety.

As-Built Plans: Engineering or Site plans or drawings that document the actual locations, dimensions and elevations of the improvements, and building components, and changes made to the original design plans. Also referred to as “Post Construction Verification Documents.”

Drainage Conveyance System: An artificial or natural waterway or low-lying stretch of land that gathers and conveys stormwater or runoff, and is generally vegetated for soil stabilization, stormwater pollutant removal, and infiltration.

Drainage Easement: A right of use granted by a property owner/owner of the system to allow a grantee (municipality) the use of the designated portion of land for drainage purposes.

Earth Disturbance: A construction or other human activity which disturbs the surface of the land, including, but not limited to, clearing and grubbing; grading; excavations; embankments; road maintenance; land development; building construction; and the moving, depositing, stockpiling, or storing of soil, rock, or earth materials.

Infiltration: Movement of surface water into the soil.

Lot Grading: 1. (noun) The slope of a lot, usually of natural ground, a road, or a channel, specified in percent and shown on plans. 2. (verb) To finish the surface of a lot, a roadbed, the top of an embankment, or the bottom of an excavation.

Obstruction: A blockage that impedes the flow of water through a drainage conveyance system.

New Development: Any Regulated Activity involving placement or construction of new Impervious Surface or grading over existing pervious land areas not classified as Redevelopment as defined in this Ordinance.

Post Construction Verification Documents: Engineering or Site plans or drawings that document the actual locations, dimensions and elevations of the improvements, and building components, and changes made to the original design plans. Also referred to as “As-Built Plans.”

Redevelopment: Any Regulated Activity that involves demolition, removal, reconstruction, or replacement of existing Impervious Surface(s).

ARTICLE 3.0 DRAINAGE STANDARDS

Applicants proposing new development, redevelopment, and other earth disturbance activities shall comply with the standards contained in this article, in accordance with the Code of Ordinances of [\[COMMUNITY NAME\]](#).

3.1 Lot Grading

- (A) Lot grading shall be undertaken to ensure adequate drainage away from buildings and accessory structures without creating an adverse impact to adjacent structures or lands.
- (B) Prior to any lot or bulk grading, applicants shall review the natural and/or existing drainage patterns on the site and, where feasible, integrate site development activity in a manner that takes advantage of the existing and/or natural drainage patterns. Existing and/or natural drainage patterns shall be considered both in the subdivision planning process and the building permit process.

3.2 Drainage Conveyance Systems

- (A) Drainage conveyance systems shall be designed to convey at least the 10-year storm event.
- (B) Maintenance of Drainage Conveyance Systems. It shall be the responsibility of the property owner/owner of the system to maintain all drainage conveyance systems in a manner consistent with the as-built plans (post construction verification documents) on record with [COMMUNITY NAME] and Article 5 herein. In the event such maintenance is not adequately performed, [COMMUNITY NAME] has the right, but not the responsibility, to fine the property owner/owner of the system and/or enter the property and correct the situation. Where [COMMUNITY NAME] performs the needed maintenance or repairs, the costs of remediation shall be borne by the property owner/owner of the system as assessed by [COMMUNITY NAME]. Fees paid as fines will be used to offset the costs of remediation. In the event assessed fees are not paid within a reasonable time period, [COMMUNITY NAME] may place a lien on the property in the amount of the remediation costs.

3.3 Drainage Obstructions

- (A) Obstruction of any drainage conveyance system shall be prohibited; furthermore, no person shall place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into any drainage conveyance system, or within a drainage easement, that would limit or alter the functioning of the conveyance system. Property owners/owners of the system shall be responsible for monitoring drainage conveyances within the drainage easement and removing blockages that impede runoff and storm flows. Where drainage conveyance systems are held in common, it shall be the responsibility of the maintenance corporation or homeowners association to monitor and maintain the drainage conveyance structures in working order.

(B) In the event a dispute arises regarding the nature of an obstruction and its removal, [COMMUNITY NAME] shall engage the services of a reputable third party mediation firm to resolve said dispute and assist in deciding on an appropriate course of action. Costs of mediation shall be borne by the parties entered into the dispute. Possible actions include assessment of the impacts of the blockage, removal of the blockage, and fines where cause is warranted. Superior Court action will be considered if an agreement cannot be reached.

ARTICLE 4.0 PLAN REQUIREMENTS

4.1 Topographic Plan

(A) A topographic plan shall be submitted for all construction activity and/or building permits greater than 5,000 square feet (or a square footage as determined appropriate by [COMMUNITY NAME]).

(B) Plans shall include, at a minimum, finished floor elevations and grading to a point of positive conveyance.

(C) Finished floor elevations shall be higher than the road elevation unless (1) adequate drainage away from structures is provided, (2) mechanical systems are adequately protected, and (3) no adverse impacts to adjacent structures can be demonstrated.

(D) A topographic plan shall contain, but not be limited to, the following:

- (1) Topographical information with elevations to verify the location of all ridges, streams, etc. (one-foot contour intervals within the project's boundaries; for slopes greater than fifteen percent (15%), five (5)-foot contours are acceptable);
- (2) Existing and/or natural drainage patterns affecting the subject property;
- (3) Notes pertaining to and locations of existing standing water, areas of heavy seepage, springs, wetlands, streams, and hydrologically sensitive areas;
- (4) General type of soils with Hydrologic Soil Group noted;
- (5) Details of site grading;
- (6) Finished floor elevations, road elevations, and ground elevations that indicate drainage flows away from structures;

- (7) A grading plan, including all areas of disturbance, of the subject activity. The total area of disturbance shall be noted in square feet and acres;
- (8) A delineation of the pathways of all concentrated flow (that is, flow other than overland sheet flow); and
- (9) A north arrow, submission date, scale and revision dates as applicable shall be included on each page of all plans submitted.

4.2 As-Built Plans (Post-Construction Verification Documents)

- (A) As-built plans (post construction verification documents) shall be required for all new construction and/or building permits greater than 5,000 sq. ft. consistent with an approved topographic plan and final site plan. Information to be shown shall include, at a minimum, post-construction topography, floor elevations, road elevations, driveway and parking elevations, drainage and/or conveyance systems and a sufficient number of ground elevations to clearly demonstrate adequate drainage away from structures, protection of mechanical systems, and no adverse impacts to adjacent structures or lands.
- (B) The plan scale shall be consistent with the scale of the topographic plan and comply with the plan submission requirements of [COMMUNITY NAME].
- (C) The plan shall contain an explanation of any discrepancies or variations from the approved site plan and/or topographic plan, other related approved construction plans, calculations and specifications (and approved revisions thereto).
- (D) All areas of the site must be stabilized prior to submittal of the as-built plan.
- (E) After receipt of the as-built plan by [COMMUNITY NAME], [COMMUNITY NAME] or its designee may review the as-built plan for consistency with final approved site plan, other related approved construction plans, and subsequent approved revisions thereto, as well as actual conditions at the site.
- (F) Final occupancy permit(s) or use permit(s) or other final approval to use or operate the constructed improvement may not be issued by [COMMUNITY NAME] until the final as-built plan has been accepted.
- (G) All or portions of the final as-built plan shall be recorded if required by [COMMUNITY NAME].

(A) A plan sheet(s) or map(s) showing the Drainage Conveyance System and which shall include, but not be limited to:

- (1) Property(ies) identification (owner name and address; and property address and/or lot and/or tax parcel number, etc.), property boundaries and tax parcel number of the land parcel on which the Drainage Conveyance System is located.
- (2) Name, address, phone number, date prepared, signature and seal of the Licensed Professional responsible for preparation of the plan sheet or map.
- (3) Clear identification of the location, dimensions, and function of the Drainage Conveyance System covered by the O&M Plan.
- (4) The location of the Drainage Conveyance System relative to roadways, property boundaries, or other identifiable landmarks and existing natural drainage features such as streams, lakes, ponds, or other bodies of water within the immediate vicinity of, or receiving discharge from, the Drainage Conveyance System.
- (5) Delineation of the land area, structures, impervious surfaces draining to and from the Drainage Conveyance System.
- (6) Representative elevations and/or topographic contours at intervals of one (1) foot, or other as acceptable to the [COMMUNITY NAME] Engineer.
- (7) Other features including FEMA floodplain and floodway boundaries, sinkholes, etc. located within the immediate proximity of the Drainage Conveyance System.
- (8) Locations of areas of vegetation to be managed or preserved that function as part of the Drainage Conveyance System.
- (9) The locations of all surface and subsurface utilities, on-lot waste water facilities, sanitary sewers, and water lines within twenty (20) feet of the Drainage Conveyance System.
- (10) The following as it pertains to the easements established for the Drainage Conveyance System:
 - (a) Boundaries delineated with bearings and distances shown that encompass the Drainage Conveyance System and that include a 10-foot perimeter area surrounding these features and sufficient vehicular ingress to and egress from a public right-of-way and roadway;

- (b) Labels specifying the type and purpose of the easement and who it benefits; and
 - (c) Labels with reference to any corresponding easement, covenant, deed restriction or other document to be recorded.
 - (11) The plan sheet or map shall be prepared at sufficient scale for municipal review, and ultimately for the use by the person responsible for operation and maintenance, and shall also be prepared at a legible scale that meets the requirements for recordation along with (and as an attachment to) the O&M Agreement and O&M Plan at the [COUNTY NAME] Office of the Recorder of Deeds.
- (B) The following information shall be included in the O&M Plan and written in a manner consistent with the knowledge and understanding of the person who will be responsible for the maintenance activities:
 - (1) The name and address of the following:
 - (a) Property(ies) on which the Drainage Conveyance System is located;
 - (b) Owner of the property;
 - (ci) Owner of the Drainage Conveyance System and who is responsible for implementation of the O&M Plan;
 - (d) Person responsible for maintaining adequate liability insurance and payment of taxes; and
 - (e) Person preparing the O&M Plan.
 - (2) A description of the Drainage Conveyance System and how it is intended to function.
 - (3) A description of actions necessary to operate, inspect, and maintain the Drainage Conveyance System, including but not limited to:
 - (a) Lawn care, vegetation maintenance, landscaping and planting;
 - (b) Clean out of accumulated debris and sediment (including from grates, trash racks, inlets, etc.); and
 - (c) Other anticipated periodic maintenance and repair.
 - (4) The following statement shall be included:

“The Landowner acknowledges that, per the provisions of the [COMMUNITY NAME] Drainage Code, it is unlawful to modify, remove, fill, landscape, alter or impair the effectiveness of, or place any structure, other vegetation, yard waste, brush cuttings, or other waste or debris into any permanent Drainage Conveyance System described in this O&M Plan or to allow the Drainage Conveyance System to exist in a condition which does not conform to this O&M Plan, without written approval from [COMMUNITY NAME].”

- 5) Inspection and maintenance schedules.
 - 6) Explanation of the purpose and limitations of the easement associated with the Drainage Conveyance System that is to be recorded against the property.
- (C) A statement that the Drainage Conveyance System may not be used by the owner or others for any purpose other than its intended drainage control function.
- (D) A statement that establishes a reasonable time frame for remedy of deficiencies found by the owner during their inspections.

5.3 Drainage Easements

- (A) Provision of permanent drainage easements. Drainage easements shall be provided for the permanent protection and/or maintenance of all drainage conveyance systems within any proposed subdivision and shall comply with the provisions of 29 Del. C. §§9501-9506 of the Real Property Acquisition Act (RPAA). The easement area shall include the drainage conveyance system and a minimum ten (10) feet from the centerline of pipe, top of bank, and catchbasins in order to allow sufficient access for maintenance and repair equipment/vehicles. Right of entry and access for [COMMUNITY NAME] for inspection and enforcement purposes shall be provided, as shall right of entry and access for the person owning the conveyance system when that person is not [COMMUNITY NAME] and is different from the owner of the property on which the conveyance system is located.
- (B) Maintenance responsibilities. It shall be the responsibility of the property owner/owner of the system to maintain open access to the eased area and to all drainage conveyance systems. Screening or buffering eased areas shall be permitted provided sufficient access is maintained and any buffering or screening does not impede the functioning of the drainage conveyance system. It shall be the responsibility of the property owner/owner of the system to maintain all drainage conveyance systems in a manner consistent with the as-built plans (post construction verification documents) on record with [COMMUNITY NAME] or as otherwise required in the O&M Plan. In the event such maintenance is not adequately

performed, [COMMUNITY NAME] has the right, but not the responsibility, to fine the property owner/owner of the system and/or enter the property and correct the situation. Where [COMMUNITY NAME] performs the needed maintenance or repairs, the costs of remediation shall be borne by the property owner/owner of the system as assessed by [COMMUNITY NAME]. Fees paid as fines will be used to offset the costs of remediation. In the event assessed fees are not paid within a reasonable time period and sufficient due process is exercised, [COMMUNITY NAME] may place a lien on the property in the amount of the remediation costs.

ARTICLE 6.0 ENFORCEMENT

6.1 Compliance Required

- (A) No development, redevelopment, and other earth disturbance activities shall hereafter be undertaken without full compliance with these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations.

- (B) Failure to comply with these regulations or obtain a permit as required shall be a violation of these regulations and shall be punishable in accordance with Section 6.3.

- (C) Permits issued on the basis of plans and applications approved by [COMMUNITY NAME] authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that is contrary to that authorized shall be deemed a violation of these regulations.

6.2 Notice of Violation

[INSERT REFERENCE TO OTHER ORDINANCE WITH PROCEDURES]

6.3 Violations and Penalties

[INSERT REFERENCE TO OTHER ORDINANCE WITH PROCEDURES]

SECTION 2. APPLICABILITY

For the purposes of jurisdictional applicability, this ordinance shall apply in [COMMUNITY NAME]. This ordinance shall apply to all new development, redevelopment, and other earth disturbance activities and shall further apply, as warranted, to the proper operation and management of drainage conveyance systems as of the adopted date of this ordinance.

SECTION 3. INCLUSION INTO THE CODE OF ORDINANCES

It is the intent of the [COMMUNITY'S GOVERNING BODY] that the provisions of this ordinance shall become and be made a part of the [COMMUNITY NAME] Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 4. EFFECTIVE DATE

This ordinance shall take effect on _____

PASSED on first reading _____.

PASSED and ADOPTED in regular session, with a quorum present and voting, by the [COMMUNITY'S GOVERNING BODY], upon second and final reading this _____ , 2014.

This ordinance shall take effect on _____

Date Ordinance Adopted: _____

Ordinance Number: _____

Signature of Community Official: _____

Title: _____

Appendix ____
Sample Operation and Maintenance Agreement

Note: This agreement between the Municipality and the property owner/owner of the Drainage Conveyance System is intended to designate who will be responsible for the inspection, operation and maintenance of such systems.

**DRAINAGE CONVEYANCE SYSTEM
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, (hereinafter the “Property owner/owner of the system”), and _____, _____ County, Delaware, (hereinafter “Municipality”);

WITNESSETH

WHEREAS, the Property owner/owner of the system is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of _____ County, Delaware, at Deed Book _____ and Page _____, (hereinafter “Property”); and

WHEREAS, the Property owner/owner of the system is proceeding to build and develop the Property; and

WHEREAS, the Drainage Conveyance System Operations and Maintenance Plan approved by the Municipality (hereinafter referred to as the “O&M 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 BMP(s) and conveyances; and

WHEREAS, the Municipality and the Property owner/owner of the system, for itself and 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 stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this agreement, the following definitions shall apply:

Drainage Conveyance System – An artificial or natural waterway or low-lying stretch of land that gathers and conveys stormwater or runoff, and is generally vegetated for soil stabilization, stormwater pollutant removal, and infiltration.

The Drainage Conveyance System identified in the O&M Plan are permanent appurtenances to the Property; and

WHEREAS, the Municipality requires, through the implementation of the O&M Plan, that the Drainage Conveyance System, as required by said O&M Plan, the Municipality’s Drainage Code, and the Municipality’s Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Property owner/owner of the system, its administrators, executors, successors in interest, heirs, and assigns.

NOW, 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 as if fully set forth in the body of this Agreement.
2. The Property owner/owner of the system shall construct the Drainage Conveyance System in accordance with the final design plans and specifications as approved by the Municipality _____(title of approved plans) _____(date).
3. The Property owner/owner of the system shall inspect, operate and maintain the Drainage Conveyance System as shown on the O&M Plan in good working order acceptable to the Municipality and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan.
4. The Property owner/owner of the system hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the Drainage Conveyance System whenever it deems necessary for compliance with this Agreement, the O&M Plan, the Municipality's Drainage Code, and the Municipality's Stormwater Management Ordinance. Whenever possible, the Municipality shall notify the Property owner/owner of the system prior to entering the Property.
5. The Municipality intends to inspect the Drainage Conveyance System at a minimum of once every [_____] years to determine if they continue to function as required.
6. The Property owner/owner of the system acknowledges that, per the Municipality's Drainage Code and Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:
 - a. Modify, remove, fill, landscape, alter or impair the effectiveness of any Drainage Conveyance System that is constructed as part of the approved O&M Plan;
 - b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a Drainage Conveyance System that would limit or alter the functioning of the Drainage Conveyance System;
 - c. Allow the Drainage Conveyance System to exist in a condition which does not conform to the approved O&M 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 Drainage Conveyance System.
7. In the event that the Property owner/owner of the system fails to operate and maintain the Drainage Conveyance System as shown on the O&M Plan in good working order acceptable to

the Municipality, the Property owner/owner of the system shall be in violation of this Agreement, and the Property owner/owner of the system 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 Drainage Code or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said Drainage Conveyance System. 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.

8. In the event that 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 Property owner/owner of the system shall reimburse the Municipality for all expenses (direct and indirect) incurred within [_____] days of delivery of an invoice from the Municipality. Failure of the Property owner/owner of the system 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 Property owner/owner of the system.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the Drainage Conveyance System by the Property owner/owner of the system; 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. In the event a dispute arises regarding the terms of this agreement, the parties may engage the services of a reputable third party mediation firm to resolve said dispute and assist in deciding on an appropriate course of action.

10. The Property owner/owner of the system, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Municipality's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the Drainage Conveyance System either by the Property owner/owner of the system 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 Property owner/owner of the system, and the Property owner/owner of the system shall defend, at his own expense, any claim, suit, action or proceeding, or any 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's employees, agents or designated representatives shall be allowed, the Property owner/owner of the system shall pay all damages, judgments or claims and any costs and

expenses incurred by the Municipality, including attorneys, regarding said damages, judgments or claims.

11. The Municipality may enforce this Agreement in accordance with its Drainage Code and Stormwater Ordinance, at law or in equity, against the Property owner/owner of the system 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 attorney's fees and costs incurred in seeking relief under this Agreement.

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

13. The Property owner/owner of the system shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the Drainage Conveyance System prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Property owner/owner of the system and must comply with all components of this Agreement.

14. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Property owner/owner of the system, 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 _____ County, Delaware, and shall constitute a covenant running with the Property, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the Municipality:

(SEAL)

For the Property owner/owner of the system:

ATTEST:

_____ (Town, City)

County of _____, Delaware

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)