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UPI NO. 62-1-36-E

**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND
CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 20th day of February, 2019, by and between LONGWOOD GARDENS, INC, (hereinafter the "Landowner"), and Kennett Township, Chester County, Pennsylvania, (hereinafter "Municipality");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as shown on a plan entitled, "Longwood Gardens Nursery Greenhouse Preliminary/Final Land Development Plan" (the "Plans") prepared by Pennoni Associates, Inc., consisting of forty-six (46) sheets, dated June 8, 2018, last revised January 9, 2019 (hereinafter "Property"); and

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the Municipality and the Landowner, 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, the Landowner has proposed a Regulated Activity (as defined by the Kennett Township Stormwater Management Ordinance) more particularly described and depicted on certain plans entitled Overall Post

Construction Stormwater Management Plan and Post Construction Stormwater Management Plan dated June 8, 2018, latest revision January 9, 2019 (hereinafter referred to as the "Stormwater Management Site Plan") which are attached hereto as **Exhibit A** and made part hereof, and which include the Stormwater BMP and Conveyances Operation and Maintenance Plan, as required by the Kennett Township Stormwater Management Ordinance, executed by the Landowner and approved by the Township (hereinafter referred to as the "O&M Plan"); and

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

BMP – "Best Management Practice" –Those activities, facilities, designs, measures, or procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality's Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devices, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs identified in the O&M Plan are permanent appurtenances to the Property; and

Conveyance – As specifically identified in the O&M 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, stream channels, and like facilities or features. The conveyances 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 stormwater management BMPs and conveyances, as required by said O&M Plan and the Municipality's Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, 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 Landowner shall construct the BMP(s) and conveyance(s) in accordance with the Stormwater Management Site Plan as approved by the Municipality.
3. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) 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 Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway or easement as may be established by the Stormwater Management Site Plan approved by the Municipality, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the O&M Plan and the Municipality's Stormwater Management 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 approved O&M 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 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 BMP or conveyance.
6. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality, the Municipality shall send written notice to Landowner, specifying the areas of non-compliance and the steps that must

be taken to comply. In the event Landowner does not comply with the terms of the notice within 30 days of the date thereof, or diligently pursue compliance in circumstances where compliance is not possible within 30 days due to weather conditions or otherwise, 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) and conveyance(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 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 Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within thirty (30) 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.

8. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; 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.

9. The Landowner, 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 BMP(s) and conveyance(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 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,

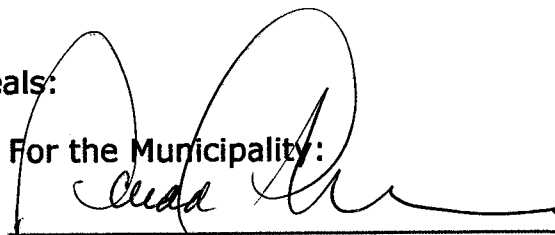
provides proof of recording with the Office of the Recorder of Deeds of Chester County, PA, and delivers a certified recorded copy to the Municipality.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)


For the Municipality:



A handwritten signature in cursive script, appearing to read "Clara R.", is written over a horizontal line.

(SEAL)

For the Landowner:

By: 
Name: Dennis R Fisher
Title: CFO

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, regarding said damages, judgments 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 attorney's 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.

14. This agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, its administrators, executors, assigns, heirs, and any other successors in interest, in perpetuity until such time that the Municipality may approve different BMPs than those depicted on the Plan. In the event of such approval this Agreement shall be deemed to have been extinguished and terminated without need for further written documentation evidencing same. This Agreement is not complete and no permit will be issued until the Landowner

EXHIBIT "A"

Post Construction Stormwater Management Plan

County of Chester, Pennsylvania

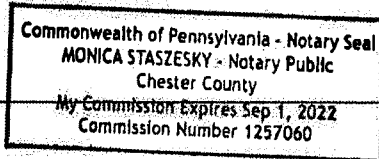
I, Monica Staszsky, a Notary Public in and for the County and State aforesaid, whose commission expires on the 1st day of September, 2022, do hereby certify that Dennis Fisher whose name(s) is/are signed to the foregoing Agreement bearing date of the 20th day of February, 2019, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS 20th day of February, 2019.

Monica Staszsky

NOTARY PUBLIC

(SEAL)



County of Chester, Pennsylvania

I, Michael OBrien, a Notary Public in and for the County and State aforesaid, whose commission expires on the 29 day of December, 2021, do hereby certify that Scudder Stevens whose name(s) is/are signed to the foregoing Agreement bearing date of the 20 day of February, 2019, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS 26 day of February, 2019.



NOTARY PUBLIC

(SEAL)

Commonwealth of Pennsylvania - Notary Seal MICHAEL C. O'BRIEN, Notary Public Chester County My Commission Expires December 29, 2021 Commission Number 1324427

