

## **DISCLAIMER**

This document is a sample Instrument for the Declaration of Restrictions and Covenants (Instrument). Use of this template is not mandatory, but it is strongly recommended. The language included in this document serves as acceptable baseline terms and conditions for purposes of 25 Pa. Code §102.8(m)(2). The availability of this document does not constitute legal, accounting or tax advice. Not all Instruments necessarily follow the same format and should be tailored for their particular purpose. Formally completed Instruments are intended to be recorded, enforceable, legal documents. All persons considering the use of this Instrument to meet the requirements of 25 Pa. Code §102.8(m)(2) should obtain the services of an attorney, licensed to practice law in the Commonwealth of Pennsylvania.

### **Instructions:**

- In this sample instrument, the grantor is the property owner, and the grantee is the person responsible for the implementation of the approved O&M Plan for the PCSM BMPs located on the property.
- Therefore, if the property owner and the person responsible for the implementation of the approved O&M Plan for the PCSM BMPs are the same person, the grantor and grantee would be the same person who would sign the instrument as both grantor and grantee.
- **The Commonwealth of Pennsylvania Department of Environmental Protection should not be listed as the grantee.**

**INSTRUMENT FOR THE DECLARATION OF RESTRICTIONS AND COVENANTS**

This Instrument for the Declaration of Restrictions and Covenants (Instrument) is being made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (the “Grantor”), having an address of \_\_\_\_\_ and \_\_\_\_\_ the “Grantee”), having an address of \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, Grantor is the owner of certain land situated in \_\_\_\_\_ Township/Borough, \_\_\_\_\_ County, Pennsylvania, containing +/- \_\_\_\_\_ acres and being designated as \_\_\_\_\_ on that certain Subdivision Plan recorded in \_\_\_\_\_ County Plot Book Volume \_\_\_\_\_, Page \_\_\_\_\_, and being \_\_\_\_\_ County Tax Parcel #/ Uniform Parcel Identifier \_\_\_\_\_, and being more particularly described in that certain Deed recorded to \_\_\_\_\_ County Instrument No. \_\_\_\_\_ (the “Property”);

WHEREAS, Grantor has agreed to provide this Instrument to protect the Property;

WHEREAS, the Property is included within the boundary of an Individual National Pollution Discharge Elimination System (NPDES) Permit for Discharges of Stormwater Associated with Construction Activities, the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities (PAG-02), an Erosion and Sediment Control Permit (ESCP), or an Erosion and Sediment Control General Permit (ESCGP) for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities (Permit No. \_\_\_\_\_) which identifies certain Post Construction Stormwater Management Best Management Practices (PCSM BMPs) located on the Property;

WHEREAS, the documents attached to this Instrument and incorporated herein shall include: record drawings/as-builts or the approved PCSM Plan ( if record drawings/as-builts are not yet available), attached hereto as Appendix A; all applicable landowner notices, attached hereto as Appendix B; the long-term Operation and Maintenance Plan (O&M Plan), attached hereto as Appendix C; and, any Operation and Maintenance Agreements (O&M Agreements) between the permittee and the party responsible for implementation of the O&M Plan, attached hereto as Appendix D;

WHEREAS, Grantee has agreed to be responsible for implementation of the approved O&M Plan for the PCSM BMPs located on the Property as described in the O&M Plan, which agreement is attached hereto as Appendix D, and incorporated herein;

WHEREAS, Grantor has agreed to provide for necessary access, to applicable parties, related to long-term operation and maintenance of the PCSM BMPs;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions hereinafter set forth in this Instrument, and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor provides and files this Instrument:

1. Purpose. The purpose of this Instrument is to provide notice and to ensure the operation and maintenance, and necessary access for operation and maintenance of the PCSM BMPs on the Property and to prevent the use or development of the Property in any manner that may impair or conflict with the operation and maintenance of the PCSM BMPs. Per 25 Pa. Code §102.8(m)(2), this Instrument identifies the PCSM BMP(s), provides for the necessary access related to long-term operation and maintenance of the PCSM BMP(s) and provides notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.

2. Declaration of Restrictions and Covenants. Grantor hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to this Instrument which shall run with the land and be binding on all heirs, successors, assigns, occupiers, and lessees.

3. Perpetual Duration. The provisions of this Instrument shall remain in effect in perpetuity, shall be deemed covenants running with the land regardless of ownership or use, and be binding upon all subsequent property owner(s); and the personal representatives, heirs, successors, or assigns of the Grantor.

4. Reserved Rights. Grantor reserves and accepts unto itself and the personal representatives, heirs, successors, or assigns of the Grantor, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not inconsistent with the purpose of this Instrument.

5. Subsequent Transfers. The terms of this Instrument shall be incorporated by reference into any deed or other legal instrument by which Grantor divests itself by sale, exchange, devise or gift of all or any portion of the Property. Failure of Grantor to perform any act required by this Instrument shall not impair the validity of this Instrument or limit its enforceability in any way. Upon valid sale or transfer of Grantor's ownership interest to a successor or assign and notice as required by this paragraph, Grantor shall be released from any responsibility for any violation of the terms of this Instrument caused by Grantor's successors or assigns or any third party which occurs subsequent to such sale or transfer.

6. Recordation. Grantor shall record this Instrument in the Official Records of \_\_\_\_\_ County, Pennsylvania. Grantor shall pay all recording costs necessary to record this Instrument in the public records.

7. Notices. All notices, consents, approvals or other communications required under the provisions of this Instrument shall be in writing and shall be deemed properly given if hand delivered, sent by a nationally recognized overnight courier, or sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest, at the address most recently provided.

8. Access Provisions. The party responsible for the implementation of the O&M Plan may enter the Property upon reasonable notice, in a reasonable manner and at reasonable times for purposes of implementation of the O&M Plan.

9. Miscellaneous Provisions.

(a) Severability. If any provision of this Instrument or the application of it to any person or circumstance is found to be invalid, the remainder of the provisions of this Instrument and the application of the provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected by the invalid provision.

(b) Amendment. This Instrument shall not be amended, terminated or in any way modified by the Grantor without the express prior written approval of the Commonwealth of Pennsylvania Department of Environmental Protection (Department). After receiving approval from the Department, the Grantor shall record any such amendment, termination or modification of this Instrument as described in Paragraph 6, above.

(c) Controlling Law. The interpretation and performance of this Instrument shall be governed by the laws of the Commonwealth of Pennsylvania.

(d) Captions. The captions in this Instrument have been inserted solely for convenience of reference and are not a part of this Instrument and shall have no effect upon construction or interpretation.

(e) Rights of the Department. The rights of the Department shall be preserved under the laws of the Commonwealth of Pennsylvania, and include, but not be limited to, the following:

- (i) To identify, to preserve and to protect in perpetuity the PCSM BMPs in a manner consistent with the O&M Plan.
- (ii) To enter upon the Property in a reasonable manner and at reasonable intervals and times for the purpose of monitoring compliance with this Instrument.
- (iii) To proceed at law or in equity to enforce the provisions of this Instrument, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.
- (iv) To approve or disapprove a request for an amendment submitted under Paragraph 9(b), above.

