

Prepared By: Morgan, Hallgren, Crosswell & Kane, P.C.
700 N. Duke St. P. O. Box 4686
Lancaster, PA 17604-4686
(717)-299-5251
Return To: Same
Parcel ID # _____

HOLDING TANK AGREEMENT

THIS HOLDING TANK AGREEMENT made and entered into this _____ day of _____, 20____, by and between _____, residing at or with a mailing address of _____, Pennsylvania (hereinafter whether one or more referred to as "Landowner"), and the **TOWNSHIP OF WEST EARL**, Lancaster County, Pennsylvania, a second class township under the laws of the Commonwealth of Pennsylvania with municipal offices at 157 West Metzler Road, Brownstown, Pennsylvania 17508 (hereinafter referred to as "Township").

BACKGROUND:

Landowner is the record owner of a tract of land identified as Lancaster County Tax Account _____ in West Earl Township, Lancaster County, Pennsylvania, as more fully described in a deed recorded in the Office of the Recorder of Deeds in and for Lancaster County, Pennsylvania, in Deed or Record Book _____, Volume _____, Page _____, or at Document No. _____ (the "Property"). Landowner proposes to develop the Property as shown on a plan entitled _____, prepared by _____, Drawing No. _____, dated _____, 20____.

In order for Landowner to develop the Property, Landowner has applied to Township for a permit under the Pennsylvania Sewage Facilities Act, 35 P.S. §750.1 et seq., to install, maintain, operate and use a holding tank for sewage collection at the Property. The soil conditions on the Property are such that conventional on-lot sewage disposal methods are unfeasible, and the Property is located in an area which is planned to be served by public sewer service in the future.

The Township has jurisdiction over properties maintaining holding tanks within West Earl Township, Lancaster County, Pennsylvania, and has enacted regulations governing installation and use of holding tanks, which regulations are codified in Chapter 138 of the West Earl Township Code of Ordinances (the "Holding Tank Ordinance"). In order not to deprive Landowner of the use of the Property, Township is willing to issue Landowner a holding tank permit subject to approval by

the Pennsylvania Department of Environmental Protection (the "DEP"), upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the parties do agree as follows:

1. Prior to the installation and use of the sewage holding tank, Landowner shall obtain, or shall determine that the Township has obtained on Landowner's behalf, all approvals and permits from such governmental agencies as may be necessary including, but not limited to, a revision to the Official Sewage Plan for West Earl Township and a holding tank permit.

2. The holding tank to be installed on the Property must meet the design standards set forth in Chapter 73 of Title 25 of the Pennsylvania Code and shall be approved as to conformity with said standards and as to installation on the Property by the Sewage Enforcement Officer for the Township.

3. Landowner shall deliver to the Township copies of all pertinent permits necessary to fulfill the objects of this Agreement.

4. Landowner shall meet all requirements of the Holding Tank Ordinance for the installation, maintenance and removal of the holding tank.

5. Landowner shall procure and maintain continuously a contract with a hauler (the "Hauler") having a current permit from the DEP authorizing the collection, transportation and disposal of the holding tank's contents. Landowner shall furnish the Township with the name of the hauler and the disposal site for said sewage.

6. Landowner shall provide, or shall require the Hauler to provide, the Township with copies of all invoices detailing the dates and quantities of the sewage removed from the holding tank installed on the Property. Landowner shall be ultimately responsible to insure that copies of all invoices are provided to the Township.

7. Landowner shall permit the Sewage Enforcement Officer or other authorized representative of the Township to inspect the holding tank installed on the Property at reasonable times. Landowner expressly acknowledges that the Holding Tank Ordinance requires inspection of all holding tanks annually and that Landowner shall pay the current fee imposed by the Township for the annual inspection of the holding tank.

8. Landowner hereby agrees to indemnify and hold harmless the Township, its officials and agents, from all liability, claims, demands, actions or causes of action whatsoever, either in law or equity, arising from or in any way incidental to or resulting from the undertakings of the Landowner herein, including, but not limited to, any activities of the hauler of Landowner in performing the obligations set forth herein.

9. If Landowner fails in the due performance of any of Landowner's obligations hereunder, whether directly performed by Landowner or delegated to a third party by agreement, the Township shall give Landowner five (5) days' written notice thereof, and if said default is not corrected within such period of time, the Township may pursue all rights and remedies against Landowner as may be available to it either in law or equity, including those available to the Township under the Holding Tank Ordinance.

10. In the event the Township is required to undertake the maintenance of said holding tank or the collection, transportation and disposal of sewage collected therein, Landowner agrees to pay to the Township the cost of such maintenance, collection, transportation and disposal together with a penalty equal to ten (10%) percent of said cost. If the amount of security the Township holds in accordance with Paragraph 11 of this Agreement is insufficient to reimburse the Township for all such costs and penalties, the Township shall have the right to immediately file a municipal claim against the Property in the amount of all such costs and penalties and all attorneys' fees incurred in the preparation and filing of such municipal claim to secure payment of such sums and shall additionally be entitled to collect such sums by any method authorized by law.

11. (a) Landowner shall either deposit in escrow with the Township the sum of _____ Dollars (\$ _____) or deliver to the Township a Federal or Commonwealth chartered lending institution irrevocable letter of credit in such amount in a form acceptable to the Township Solicitor as security for property maintenance of the holding tank and collection and disposal of its contents. Township shall have the right, without prior written notice to Landowner, to draw upon said escrow account or letter of credit to maintain the tank or empty its contents at any time such action is necessary in the sole opinion of the Township.

(b) Township shall have the right upon thirty (30) days' written notice to demand the escrow or letter of credit to be increased to such additional amount as it deems necessary to provide sufficient security for the proper maintenance of the holding tank.

(c) If at any time the Township is required to draw on the escrow fund or the letter of credit, Landowner shall, upon ten (10) days' written notice, provide Township with such funds or a new letter of credit, as the case may be, as are necessary to restore the security to such amount as shall then be in effect.

12. Landowner shall cease using and shall remove or properly abandon the holding tank if public sewer service becomes available or if Landowner obtains additional land which will support the installation of an on-lot sewage disposal system.

13. Landowner shall be solely responsible for any costs incurred to obtain the permits necessary to carry out the terms of this Agreement, and in the event the Township is fined by any regulatory agency having jurisdiction for any reason whatsoever arising of the use of said holding tank, Landowner shall indemnify and hold harmless the Township from all such fines (or penalties) together with any other related costs, including reasonable attorneys' fees.

14. Landowner shall be liable for reasonable attorneys' fees incurred by the Township in connection with the enforcement of this Agreement.

15. For purposes of giving notice hereunder, notice shall be deemed given at the time of mailing in the United States mail to the addresses first set forth above.

16. Nothing in this Agreement shall be construed to waive or be in conflict with any provisions of the Pennsylvania Sewage Facilities Act or the Clean Streams Law or their corresponding regulations or other applicable laws, but shall be construed to impose additional consistent requirements.

17. Time is of the essence of this Agreement.

18. This Agreement shall not be modified except by the mutual written consent of the parties hereto.

19. This Agreement shall bind and inure to the benefit of the respective personal representatives, heirs, successors and assigns of the parties hereto.

20. This Agreement shall be recorded to give notice to future owners of the Property of the conditions imposed upon the use of the holding tank located on said Property.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first above written.

TOWNSHIP OF WEST EARL
Lancaster County, Pennsylvania

Attest: _____
(Assistant) Secretary

By: _____
(Vice) Chairman
Board of Supervisors

[TOWNSHIP SEAL]

(Individual or Husband and Wife Landowner)

Witness:

(Signature of Individual) _____ (SEAL)

(Signature of Individual) _____ (SEAL)

(Partnership Landowner)*

Witness:

(Name of Partnership)

By: _____
Partner

By: _____
Partner

By: _____
Partner

By: _____
Partner

*All partners must sign

(Corporation Landowner)

(Name of Corporation)

ATTEST:

By: _____
(Assistant) Secretary

By: _____
(Vice) President

[CORPORATE SEAL]

