

STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT
770 JOHN JAMES AUDUBON PARKWAY - TOWN OF AMHERST

WHEREAS, the TOWN OF AMHERST ("*Municipality*") with an address of 5583 Main Street, Williamsville, New York 14221 and **Parcel 2 Muir Woods Owner LLC**, having an address of 1301 S Capital of TX Hwy, Austin, TX (hereinafter "*Facility Owner*"), wants to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the development of 770 John James Audubon Parkway (the "*Project Site*") in the Town of Amherst as a commercial development (the "*Project*") in accordance with the Site Plan as approved by the Town of Amherst Planning Board on _____; and

WHEREAS, the Municipality and the Facility Owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components; and

WHEREAS, the Storm Water Pollution Prevention Plan ("*SWPPP*") for the Project as prepared by Carmina Wood Design ("*CWD*") was approved by the Town of Amherst Engineering Department subject to conditions on _____;

THEREFORE, the Municipality and the facility owner agree as follows:

1. This Agreement binds the Municipality and the Facility Owner, its successors and assigns, to the operation and maintenance of all private stormwater control facilities and treatment systems depicted in the approved project plans for the Project to be constructed on the Project Site, as prepared by CWD. A legal description of the Project Site is attached as **Schedule "A"** and a copy of the approved project plans and related documentation prepared by CWD are attached as **Schedule "B"** of this Agreement. Full size copies of the approved engineered plans for the Project are available at the Town of Amherst Planning Department.

2. The Facility Owner shall maintain, clean, repair, replace and continue the private stormwater control measures depicted on the approved Site Plan as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes culverts, separators, soil absorption devices, retention ponds, and detention ponds.

3. In the event that the Facility Owner ceases operation, it agrees that before ceasing said operation that it shall assure that its obligations under the Stormwater Control Maintenance Agreement are transferred to a valuable and legal entity which would take over all of such responsibilities.

4. The Facility Owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.

5. The Facility Owner shall arrange and pay for the periodic inspection of the stormwater control measures, not less than once in every five (5) year period, to determine the condition and integrity of the measures. Such inspection shall be performed by an appropriately certified stormwater inspector. The inspector shall prepare and submit to the Municipality within thirty (30) days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.

6. The Facility Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures on the Project Site except in accordance with the written approval of the Municipality.

7. The Facility Owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Municipality or in accordance with the recommendation of the inspector.

8. This Agreement shall be recorded in the Office of the County Clerk, County of Erie and shall be included in any offering plan and/or prospectus approved for the Project.

9. If ever the Municipality determines that the Facility Owner has failed to construct or maintain the stormwater control measures in accordance with the approved Site Plan or has failed to undertake corrective action specified by the Municipality or by the inspector, the Municipality is authorized upon written notice to the Facility Owner to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property if the Facility Owner fails to reimburse the Municipality for such documented expenses incurred by the Municipality with thirty (30) days receiving an invoice for such documented expenses incurred by the Municipality.

10. This Agreement is effective as of the date it has been recorded with the Erie County Clerk's Office.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURE(S) ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have the full legal authority to execute this Stormwater Control Facility Maintenance Agreement.

Signature: _____
Print Name:

STATE OF NEW YORK)
 ss:
COUNTY OF ERIE)

On this ____ day of _____, 2026, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public