

ZONING

247 Attachment 2

Town of Pendleton

**Appendix B**

**Sample Stormwater Control Facility Maintenance Agreement**

**[Amended 6-13-2022 by L.L. No. 2-2022]**

Whereas, the Town of Pendleton ("Town") and the owner of the stormwater control facility ("Facility Owner") wish to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Town for the below named project, and

Whereas, the Town 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.

Therefore, the Town and the Facility Owner agree as follows:

1. This agreement binds the Town and the Facility Owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The Facility Owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. 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.
4. The Facility Owner shall provide for the periodic inspection of the stormwater control measures, not less than once every five years, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Town within 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.
5. The Facility Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuance of the stormwater control measures except in accordance with written approval of the Town.
6. The Facility Owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Town or in accordance with the recommendations of the inspecting engineer.
7. The Facility Owner shall provide to the Town within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of a bond, letter of credit or escrow account.
8. This agreement shall be recorded in the Office of the County Clerk, County of Niagara together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to \_\_\_\_\_.
9. If ever the Town determines that the Facility Owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Town or by the inspecting engineer, the Town is authorized 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.
10. This agreement is effective \_\_\_\_\_.