

MAINTENANCE AGREEMENT FOR STORMWATER BASINS

THIS AGREEMENT ("Agreement") is executed as of _____, 2022, by

JSM at 1470 Shafto Road, LLC, with principal offices located at 1260 Stelton Road, Piscataway, New Jersey 08854 ("**Owner**"), to and in favor of

the **BOROUGH OF TINTON FALLS**, a municipal corporation of the State of New Jersey, having its principal office at 556 Tinton Avenue, Tinton Falls, New Jersey 07724 ("**Borough**" or "**Grantee**");

WITNESS THAT, Owner is the owner of certain real property known as Block 115, Lot 11.01 on the Official Tax Map of the Borough, more particularly described in the legal description attached hereto as Exhibit A (the "**Property**"); and

WITNESS THAT, Owner obtained final site plan approval from the Borough Planning Board adopted on 9/14/22 (the "**Resolution**"), to permit the development of a 108,700+/- square foot warehouse on the Property (collectively, the "**Project**"); and

WITNESS THAT, as a condition of approval, Owner is required to maintain the stormwater lines, basins and all appurtenances (collectively, the "**Basins**"), on the Property, as depicted on Sheet 8 of 23 of the Site Plans entitled "Preliminary/Final Site Plan for Shipping and Receiving Center," last updated on 8/15/22 (as amended from time to time, the "**Site Plan**"); and

WITNESS THAT, it is in the best interest of the general public and the welfare of the Borough, that the Basins on the Property be maintained in a good, workable and operable condition at all times.

NOW, THEREFORE, Owner, its successors and assigns, agrees as follows:

MAINTENANCE: Owner shall maintain the Basins, and all its appurtenances, in good, workable and operable condition in accordance with the Stormwater Management Operations and Maintenance Manual, prepared by Colliers Engineering and last revised on July, 2022, the cover sheet of which is attached hereto as Exhibit B, and which Report is incorporated herein by reference.

If Owner fails to comply with any promise or covenant herein, the Borough may give Owner written notice of its failure to so comply, and identify those items of the Basins that require maintenance or repair. Owner shall then have thirty (30) days from the date of receipt of the notice to cure the deficiencies or defects and bring the Basins into good, workable and operable condition in accordance with the Site Plan the Operations and Maintenance Manual, and the design specifications and capabilities, as approved. If Owner fails to cure its non-compliance with the maintenance or repair responsibilities hereunder as identified by the Borough in its written notice within thirty (30) days of receipt of the notice to do so, then the Borough may enter upon the Property for the sole purpose of correcting the deficiencies or defects noted in its notice aforesaid; and any and all costs and expenses reasonably incurred by the Borough in so doing shall be billed to and paid by Owner. If the costs and expenses so billed remain unpaid, same shall be assessed against the Owner and shall be considered and collected in the same manner as ad valorem taxes.

Notwithstanding the foregoing, if Owner fails to perform any required maintenance and repairs to the Basins that creates, in the sole opinion of the Borough, an emergent condition that threatens the health, safety or welfare of the general public, the Borough may immediately enter upon the Property to correct such condition; and any and all costs and expenses incurred by the Borough in so doing shall be billed to, and paid by, Owner. If the costs and expenses so billed remain unpaid, same shall be assessed against the Owner and shall be considered and collected in the same manner as ad valorem taxes.

NOTICES: All notices and other communications required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been duly given at the earliest of (a) five (5) business days after when mailed, if sent by registered or certified mail (return receipt requested) or (b) when delivered, if delivered personally, or by overnight mail or other commercial courier.

ENTIRE AGREEMENT: This Agreement and the Exhibits set forth the final and entire understanding of the parties, and supersede and replace all prior understandings, discussions and agreements between the parties, whether oral or written, with respect to the subject matter hereof.

INVALIDITY AND UNENFORCEABILITY: If any provision of this Agreement shall be determined by a Court of competent jurisdiction to be invalid or unenforceable in any respect for any reason, the remainder of this Agreement shall not be in any way impaired, and shall remain valid and enforceable in all respects.

MODIFICATIONS AND AMENDMENTS: No modification or amendment to this Agreement may be made without the written consent of both parties.

RECORDING: This Agreement shall be recorded in the Office of the Clerk of Monmouth County, and shall be binding upon, and inure to the benefit of, the parties hereto, and their respective successors, administrators, grantees and assigns; and shall constitute a covenant upon the Property. The covenants, conditions and restrictions set forth in this Agreement shall then run with the land.

COUNTERPARTS; This Agreement may be executed in counterparts.

IN WITNESS WHEREOF: Owner has caused this document to be signed by an authorized representative thereof as of the date written above.

Owner:

JSM at 1470 Shafto Road, LLC

By: _____

Jack Morris, Managing Member

GRANTEE:

Borough of Tinton Falls

By: _____

Name:

Title: