



MarksEngineering

42 Beeman St.
Canandaigua, NY 14424

February 18, 2022

Town of Canandaigua
5440 Routes 5 & 20 West
Canandaigua, NY 14424

RE: Sunset Ridge Estates/Lakewood Custom Homes – 3535 ST RTE 364 – TM# 98.19-1-20.100 – Planning Review Committee (PRC) Response

To Whom It May Concern:

On behalf of our client, Mr. Angelo Licciardello, we offer the following in response to PRC comments made in the letter dated 02/15/2022 from the Town of Canandaigua regarding the subject property:

1. *"Submit a letter of intent to clarify the owner(s) of the stormwater ponds, and the requirements and maintenance responsibilities of the owners of the stormwater ponds."*
See attached sample stormwater maintenance agreement. The intent is for the ponds to be held privately under private ownership the same as the corresponding lot owner. The property owner will be responsible for the maintenance.
2. *"Submit an update of the narrative of the traffic study as applicable to the current application."*
See engineer's report as submitted on 2/1/2022. For updated traffic information.
3. *"Submit a letter regarding the status of the U.S. Army Corps of Engineers permit."*
Jurisdiction determination is forthcoming from the Army Corps.
4. *"Provide elevation renderings of the homes and the property as will be seen from Canandaigua Lake."*
A presentation will be provided for Planning board. This will include rendering and other graphics. This will be submitted 10 days before the public hearing.
5. *"An sidewalk easement will be required along with State Route 364 frontage for a possible future sidewalk."*
Acknowledged.
6. *"The applicant shall provide **3 complete hard copies** of the plan. The applicant shall also submit a **PDF FILE** of the plans via e-mail to the Development Office at: devclerk@townofcanandaigua.org"*
See attached 3 hard copies for your review.

Also please find a draft copy of the shared access and maintenance agreement for private roads.

If you have any questions, please do not hesitate to contact me at the phone number provided below.

Sincerely,

Brennan Marks, P.E.
Marks Engineering, P.C.
bmmarks@marksengineering.com
www.marksengineering.com

Town of Canandaigua

5440 Route 5 & 20 West
Canandaigua, NY 14424
(585) 394-1120
Fax (585) 394-9476
Established 1789

APPENDIX: **ST - 3.0**

DATE: 2018

SCALE: N.T.S.

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STORMWATER CONTROL FACILITIES MAINTENANCE AGREEMENT

WHEREAS, the Town of Canandaigua, having an address of 5440 Routes 5 & 20 West, Canandaigua, New York 14424 (Municipality) and _____ (Facility Owner), having an address of _____ want to enter into an agreement (this "Agreement") to provide for the long term maintenance and continuation of permanent stormwater control measures approved by the Municipality for the below named project, and

WHEREAS, the Municipality and the Facility Owner desire that the permanent stormwater control measures, as detailed on the approved project plans entitled "_____", having drawing number(s) _____, prepared by _____ and last revised _____, (the "Plans"), be built in accordance with the Plans and thereafter be maintained, cleaned, repaired, replaced, and continued in perpetuity in order to ensure optimum performance of the components. Reduced size versions of the Plans are attached hereto as Exhibit A.

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 maintain the permanent stormwater control measures depicted in the Plans (as same may be amended), 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 on the Plans as necessary to ensure optimum performance of the measures to design specifications. If identified on the plans, 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 (collectively, the "Control Measures").
3. The Facility Owner shall be responsible for all expenses related to the maintenance of the Control Measures.
4. The Facility Owner shall provide for the periodic inspection of the Control Measures, not less than once in every five year period, to determine the condition and integrity of the Control Measures. The Facility Owner's obligations to inspect the Control Measures under this Section 4 shall commence upon the issuance of the first certificate of occupancy for the project depicted on the Plans. Each inspection shall be performed by a Professional Engineer, at the Facility Owner's choosing, so long as such Professional Engineer is licensed by the State of New York (the "Inspecting Engineer"). The Inspecting Engineer shall prepare and submit to the Municipality within 30 days of each inspection, a written report of the findings of his/her inspection including any recommendations necessary for the continued maintenance or repair of the Control Measures.

STANDARD SWMF MAINTENANCE AGREEMENT

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5. The Facility Owner shall grant Right of Entry to duly authorized representatives of the Town. Upon presentation of proper credentials, duly authorized representatives of the Town may enter at reasonable times upon the premises to inspect the implementation, condition or operation and maintenance of the Control Measures. Facility Owner shall allow persons working on behalf of the Town ready access to all parts of the premises for the purposes of inspecting the Control Measures. Persons working on behalf of the Town shall have the right to temporarily locate, on any stormwater facility or Control Measure in the Town, such devices as are necessary to conduct monitoring and/or sampling of the discharges from such Control Measures.

6. Except in an emergency situation, or as permitted by Section 7 below, The Facility Owner shall not authorize, undertake, or permit any material alteration, abandonment, modification, or discontinuation of the Control Measures except in accordance with written approval of the Municipality.

7. The Facility Owner shall undertake all necessary repairs, maintenance, or replacement of the Control Measures in accordance with the recommendations of the Inspecting Engineer, except to the extent such repairs, maintenance, or replacement are made necessary by the acts or omissions of the Municipality, including without limitation offsite grading. Such repair, maintenance, or replacement shall not require the approval of the Municipality. Repairs, maintenance, or replacements made necessary by the acts or omissions of the Municipality shall be undertaken by the Municipality as its cost and expense.

8. This Agreement shall be recorded in the Office of the County Clerk, County of Ontario.

9. If ever the Municipality determines that the Facility Owner has failed to maintain, clean, repair, replace, and continue the Control Measures in accordance with the Plans or has failed to undertake necessary corrective action in accordance with Section 7 above, the Municipality shall give the Facility Owner written notice of such a default. In the event the Facility Owner fails to cure such default within thirty (30) days from its receipt of such notice, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation, or maintenance of the Control Measures, to charge the Facility Owner for the reasonable expenses of such steps, and to affix such expenses as a lien against the property (including reasonable attorney fees and other administrative costs incurred in executing such a lien); provided however that if the nature of the default is such that it cannot reasonably be cured within such thirty (30) day period, then so long as the Facility Owner commences to cure such default within such thirty (30) day period, and, thereafter, diligently, in good faith and expeditiously proceeds to cure such default before the Municipality may take action under this Section 9.

10. The parties agree and acknowledge that this Agreement shall cover not only the Control Measures set forth on the Plans, but it also shall cover any alterations or modifications to the Plans that may be approved by the Municipality after the execution of this Agreement.

11. This Agreement shall be binding upon, and inure to the benefit of, the respective successors and permitted assigns of the parties. This Agreement shall not be assignable by the Municipality but may be assigned or transferred by the Facility Owner.

STANDARD SWMF MAINTENANCE AGREEMENT

(CONTINUED)

Town of Canandaigua

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12. All notices required or permitted hereunder shall be in writing and shall be sent to the parties at the following addresses:

If to the Municipality: Stormwater Program Manager
Town of Canandaigua
5440 Routes 5 & 20 West
Canandaigua, New York 14424

If to the Facility Owner: xxxx
xxxx
xxxx
xxxx

With copies to: xxxx
xxxx
xxxx
xxxx

Any such notices may be sent by: (a) certified mail, return receipt requested, or
(b) a nationally recognized overnight courier

The above addresses may be changed by written notice to the other party. Any such notices shall be deemed effective upon receipts.

12. This agreement sets forth all of the agreements, conditions, and understandings between the Municipality and the Facility Owner concerning the maintenance of the Control Measures and supersedes any and all prior agreements and understandings between the parties with respect thereto.

13. This Agreement shall be governed exclusively by the laws of the State of New York, without giving effect to choice of laws or choice of laws rules or principles.

14. Issuance of the first certificate of occupancy or certificate of compliance for the project depicted on the Plans shall be deemed an acknowledgement by the Municipality that the Control Measures have been constructed in accordance with the Plans.

15. This Agreement may be executed in several counterparts, including by facsimile, each of which shall be an original and all of which shall constitute but one and the same instrument.

16. This Agreement may not be amended, changed, modified, altered, or terminated, except by an instrument in writing, signed by the parties hereto.

17. This Agreement is effective upon full execution by both parties.

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STANDARD SWMF MAINTENANCE AGREEMENT
(CONTINUED)

Town of Canandaigua

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APPENDIX: **ST - 3.3**

DATE: 2018

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The parties have entered into this Agreement on this _____ day of _____, 2016.

MUNICIPALITY
TOWN OF CANANDAIGUA, NY

By:
Title:
Date:

FACILITY OWNER
xxxxxxx

By:
Title:
Date:

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STANDARD SWMF MAINTENANCE AGREEMENT
(CONTINUED)

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SCALE: N.T.S.

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State of New York)
County of Ontario) ss.:

On the ____ day of _____ in the year ____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

State of New York)
County of Ontario) ss.:

On the ____ day of _____ in the year ____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual taking acknowledgment

PRIVATE ROAD MAINTENANCE AGREEMENT

An Agreement made this original date of _____, 20____, applicable to the undersigned parcel owners and users,

RECITALS

WHEREAS, _____ Road (Road) is a private road situated in _____ City/Township/Village, County of _____, State of _____, and

WHEREAS, the parties desire to enter into an Agreement regarding the costs of maintenance and improvements to the Road; and

WHEREAS, it is agreed that future parcel owners or users will be bound by this agreement;

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Vehicle and Pedestrian Access Easement. The Road shall be subject to a perpetual, nonexclusive easement for ingress and egress granting access to all the parcel owners and their occupants, agents, employees, guests, services and emergency vehicles, and those individuals appointed by the Town Board to conduct semi-annual road reviews.

2. Utility Easement. The Road shall be subject to a perpetual, nonexclusive public utility easement for the purpose of permitting above and below ground public utilities to be installed and maintained.

3. Road Manager. A Road Manager shall be elected by a majority of the property owners, will serve a term as agreed to by the property owners, and can be replaced or renewed at any time by a simple majority vote of the parcel owners. The Road Manager shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain the minimum road surface standards.

4. Road Maintenance. Road maintenance and road improvements will be undertaken and made whenever necessary to maintain the road in good operating condition at all times and to insure the provision of safe access by emergency vehicles. A majority vote of all parcel owners is required for any road improvements and to accept the bid for any road improvement contract. Before authorizing expenditures for future road improvements, parcel owners will be notified by the Road Manager, cost estimates will be provided, and an agreement will be required. If any parcel owner performs improvements, maintenance, repairs or replacements without the approval of the other lot owners prior to performing such work, the lot owner performing such work shall become liable for the entire cost thereof, unless such work is deemed an emergency.

5. Parking. For the safety of the residents, no machinery, trailers, vehicles or other property may be stored or parked upon the Private Road except parking of vehicles for limited periods of time (not to exceed twelve hours).

6. Cost Sharing. Road maintenance, snowplowing and road improvement costs shall be shared on a pro-rata basis between the parcel owners sharing access to the above mentioned road.

7. Prepayment. Prepayment of maintenance, snowplowing and improvement costs will be made to the road maintenance account by each property owner. Annually, on or before a date as specified by the Road Manager, each parcel owner will contribute their pro-

rated share of the estimated annual cost for road maintenance, road improvements, and annual snow removal. The Road Manager shall send each parcel owner a two week notice of the annual payments due.

8. Definition of a Parcel/Parcel Owner. A parcel is defined as a land having a parcel identification number and having frontage on the road. Each parcel is assessed and granted (1) vote regardless of the number of owners. If a parcel is owned by more than one person, all of the owners of the parcel will collectively be referred to as the “parcel owner” for purposes of this Agreement, and will be entitled to one collective vote (i.e. each parcel represents one vote in the matters covered by this Agreement). When a parcel is being sold on a land contract, the land contract vendee shall be deemed the owner of record.

9. Future Parcels. Any additional parcels gaining access to the Private Road by way of splitting existing parcels will be bound by all terms and conditions of this agreement, and will be required to pay that portion of the maintenance, snowplowing and improvement costs incurred after the split as determined using the formula contained in Paragraph No. 6 above.

10. Snow Plowing. The Private Road shall be snowplowed so as to permit year round access. The cost shall be shared by the parcel owners as indicated in Paragraph No. 6 above.

11. Checking Account. The Road Manager shall establish and/or maintain a bank checking account with a local bank, and will prepare and distribute to the herein affected parcel owners an annual income and expense report and a year end balance sheet, accounting for all funds received and disbursed.

12. Effective Term. This Agreement shall be perpetual, and shall encumber and run with the land as long as the road remains private.

13. Binding Agreement. This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

14. Amendment. This Agreement may be amended only by a two-thirds majority consent of all parcel owners.

15. Enforcement. This Agreement may be enforced by a majority of parcel owners. If a court action or lawsuit is necessary to enforce this Agreement, the party commencing such action or lawsuit shall be entitled to reasonable attorney fees and costs, if the party prevails.

16. Disputes. If a dispute arises over any aspect of the improvements, maintenance, repair or replacement, a third party arbitrator shall be appointed to resolve the dispute. The decision of the arbitrator shall be final and binding on all of the lot owners. Contact information for local arbitrators can be obtained through the American Arbitration Association. In selecting a third party arbitrator, each lot shall be entitled to one vote, and the nominee receiving a majority of the votes shall be the arbitrator. All parties shall share in the cost of any arbitration.

17. Notices. Parcel owners under the Agreement shall be notified by mail or in person. If an address of a parcel owner is not known, a certified notice will be mailed to the address to which the parcel owner's property tax bills are sent.

18. Invalidity. Should any provision in this Agreement be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected and each term and condition shall be valid and enforceable to the extent permitted by law.

19. Other Agreements. This Private Road Maintenance Agreement replaces all previous Private Road Maintenance Agreements regarding the described Private Road.

20. Recording This Document. Original and amended copies of this document , shall be recorded and provided to the Town Clerk by the Road Manager.

Signed,

<name> <date>

<name> <date>

<name> <date>

<name> <date>

<name> <date>

<name> <date>

<name> <date>

<name> <date>

<name> <date>

<name> <date>

The foregoing instrument was acknowledged / Subscribed and sworn to before me on
_____ by _____

_____.

/s/ _____

Notary public, State of Michigan, County of _____.

My commission expires _____.

Acting in the County of _____/