
(Reserved for recording data)

DECLARATION OF PRIVATE
STORM WATER MAINTENANCE AGREEMENT

THIS DECLARATION is made this ____ day of _____, 2020, by Clark Development LLC, a Minnesota limited liability company, hereinafter referred to as “Declarant”;

WITNESSETH:

WHEREAS, Declarant is the fee owner of the real property described on Exhibit “A” attached hereto (collectively, the “Lots” and each individually, a “Lot”); and

WHEREAS, Declarant is in the process of constructing permanent, private on-site storm water rate control and storm water quality facilities (collectively, the “Storm Water Facilities” and each individually, a “Storm Water Facility”) on the Lots for water drainage purposes in connection with the first phase of a larger development referred to as Maywood Estates (the “Development”); and

WHEREAS, Declarant has entered into a Development Agreement dated September ____, 2020 (the “Development Agreement”) with the Rochester Township, a Township organized under the laws of the State of Minnesota (the “Township”), which includes as Exhibit “E” a Maintenance Agreement for Private Storm Water Facilities (“Exhibit E”); and

WHEREAS, Pursuant to the Development Agreement, Declarant is responsible for the costs associated with the construction, operation and maintenance of each Storm Water Facility until Declarant’s transfer of the Lot upon which the facility is located, as set forth in Exhibit E; and

WHEREAS, Simultaneously with Declarant’s transfer of a Lot, Declarant shall assign and each Lot owner shall be responsible for the costs associated with the operation and maintenance

of the Storm Water Facility located on the owner's respective Lot in accordance with Exhibit E of the Development Agreement.

NOW THEREFORE, Declarant hereby imposes and subjects the Lots to the following conditions, restrictions, reservations, and covenants:

1. Development Agreement. The terms and conditions of the Development Agreement as it pertains to the perpetual maintenance of the Storm Water Facilities, including Exhibit E, are incorporated herein by reference as though fully set forth.

2. Declarant Obligations. Prior to the transfer of a Lot, Declarant shall construct and maintain, at its own expense, the Storm Water Facilities upon the Lots as agreed upon by Declarant and the Township.

3. Transfer by Declarant to Lot Owner. Upon Declarant's transfer of an individual Lot as described and provided for in the Development Agreement, each Lot owner shall be responsible for and personally liable for the perpetual maintenance, repair and upkeep costs of the Storm Water Facility that is wholly or partially situated on its respective Lot in conformance with all of the requirements of the Maintenance Agreement for Private Storm Water Facilities. These maintenance obligations apply to Lot owners in both the Individual Lot Treatment Area and the Group Lot Treatment Area (as hereinafter defined).

4. Individual Lot Treatment Area. The Individual Lot Treatment Area includes the following Lots:

Lots 6, 7 and 8, Block 4 Mayowood Estates
(the "Individual Lot Treatment Area").

Each Lot located in the Individual Lot Treatment Area shall contain a Storm Water Facility on the Lot, which provides drainage for water and run off related to that respective Lot.

5. Group Lot Treatment Area. The Group Lot Treatment Area includes the following Lots:

Lot 15, Block 4 Mayowood Estates; and
Lots 2, 3 and 6, Block 2 Mayowood Estates
(the "Group Lot Treatment Area").

Each Lot located in the Group Treatment Area shall contain a Storm Water Facility on the Lot, which provides drainage for water and run off related to that respective Lot *and* the drainage of water and run off related to additional lots located in the Development. Notwithstanding the foregoing, each Lot owner in the Group Treatment Area shall be individually responsible for the operation and maintenance costs of the Storm Water Facility located on its Lot.

6. Breach. In the event required maintenance of the Storm Water Facilities, as determined by the Township, is not performed, the Township shall provide written notice of the non-compliance to the Lot owner(s). If the non-compliance is not cured within 30 days after receipt

of said notice, the Township may access the Lot and perform maintenance to the Storm Water Facilities. All associated costs will be invoiced to the Lot owner(s). In the event a Lot owner(s) becomes delinquent in payment of its obligations for maintenance performed by the Township or its agent, the Township is authorized to certify the unpaid charges with the Olmsted County Auditor for collections with property taxes for the delinquent Lot(s) with said collection being for a period of one (1) year at an interest rate of 7.5%. Declarant, its successors and assigns, hereby waives its right to notice of and a hearing prior to certification of the obligations under the terms of this Declaration and further waives all rights to contest or file an appeal of the charges or certification thereof in a court of law.

7. Termination of Declaration. Declarant hereby acknowledges that this Declaration can only be terminated in writing by the Township, and if said Declaration is terminated, the Declarant, its successors or assigns will be notified in writing by the Township of said termination.

8. Rights of Successors and Duration. The covenants, restrictions and provisions of this Declaration:

- a. create an equitable servitude upon the respective Lots;
- b. constitute covenants running with the land;
- c. shall bind every person or entity having any fee, leasehold or other interest in or encumbrance on any Lot at any time; and
- d. shall continue in full force and effect perpetually.

9. Modification. No amendment, change or addition to this Declaration shall be effective unless in writing signed by the respective owners of each Lot.

10. Waiver. No waiver of any breach of the easements, rights, obligations, covenants or provisions herein shall be construed or constitute a waiver of any breach, or waiver or consent to further or succeeding breaches of the same or any other provision hereof.

11. Construction. This Declaration shall be construed and enforced in accordance with the laws of the State of Minnesota.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day
and year first above written.

CLARK DEVELOPMENT LLC

By _____
Edward D. Clark
Its Manager

STATE OF MINNESOTA)
) SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Edward D. Clark, the Manager of Clark Development LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Dunlap & Seeger, P.A.
Attorneys at Law
30 Third Street SE, Suite 400
P.O. Box 549
Rochester, MN 55903-0549
(507) 288-9111

EXHIBIT A

The following real property located in Olmsted County, Minnesota, described as follows:

Lots 2, 3, and 6, Block 2, Mayowood Estates.

Lots 6, 7, 8 and 15, Block 4, Mayowood Estates.

CONSENT OF MORTGAGEE

The undersigned, Premier Bank Rochester, a banking corporation under the laws of Minnesota, being the holder of that certain Mortgage dated July 14, 2020, and recorded July 14, 2020, as Document No. A-1504768, hereby consents to the attached Declaration of Private Storm Water Maintenance Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be executed this _____ day of _____, 2020.

Premier Bank Rochester

By _____

Its _____

STATE OF MINNESOTA)

) SS

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the _____ of Premier Bank Rochester, a banking corporation under the laws of Minnesota, on behalf of the corporation.

Notary Public