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March 26, 2012

By Electronic Mail

Hon. Jaclyn A. Brillling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

**Re: Case 12-W- - Joint Petition of Saratoga Water Services, Inc., and
Thomas P. Deveno and Thomas J. Farone for a Declaratory Ruling Concerning the
Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga
County**

Dear Secretary Brillling:

Enclosed for filing with the Commission, please find the original of the Petition filed on behalf of Saratoga Water Services Inc. and Thomas P. Deveno and Thomas J. Farone, in the above-captioned matter.

The SEQRA Full Environmental Assessment Form, SAPA form and Method of Service form are all enclosed.

Thank you for your consideration of this matter.

Respectfully submitted,

Saratoga Water Services, Inc. and
Thomas P. Deveno and Thomas J. Farone

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

cc: Alexander Mackay (by electronic mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 12-W- - Joint Petition of Saratoga Water Services, Inc., and Thomas P. Deveno and Thomas J. Farone for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County

PETITION

In accordance with 16 NYCRR Section 8.2, Saratoga Water Services, Inc. and Thomas P. Deveno and Thomas P. Farone (collectively “Petitioner”) through their counsel, hereby jointly petition the New York State Public Service Commission (“PSC” or “Commission”) for the issuance of a Declaratory Ruling, and in support thereof respectfully show as follows:

PARTIES

1. Saratoga Water Services, Inc. (Saratoga or Company), is a New York transportation corporation providing water utility service in the towns of Malta and Stillwater in Saratoga County, State of New York.

2. Thomas P. Deveno and Thomas J. Farone (“Developer”), are engaged in a real estate subdivision and development of 75 residential properties and 5 commercial properties known as “Cramer Road Cluster Subdivision” located in the Town of Malta, Saratoga County New York (“Project”).

DECLARATORY RULING

3. Petitioner respectfully requests that the Commission issue a Declaratory Ruling finding and declaring that: (a) the terms and conditions of a certain “Agreement For The Provision of Water Service”, dated December 29, 2011 (“Agreement”) are in the public interest; (b) that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement, would serve the public interest; (c) that waiving the Company’s tariff provisions to the extent they are inconsistent with the terms of said Agreement, is justified and consistent with the public interest; (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502, to the extent they are inconsistent with the Agreement, is justified and consistent with the public interest; and (e) that approval of the terms of the Agreement and issuance of the requested waivers, would be granted at such time when an application for such relief is presented to the Commission after all required governmental approvals have been issued

FACTUAL RECITATION

4. Developer has applied to and requested that Saratoga provide water service to the Project located in the Town of Malta, Saratoga County, New York.

5. The proposed Project does not lie within Saratoga’s service territory as approved and authorized by New York State Department of Environmental Conservation (“DEC”) or prescribed by and included within Saratoga’s Schedule of Water Service filed with the Commission.

6. Although Saratoga is under no legal obligation to provide water service to customers residing outside of its approved service territory, the Company is nonetheless willing to undertake all actions necessary, including, but not limited to, construction of storage plant to supply and provide water service to the Project, subject to terms and conditions which serve the public interest and conform to established Commission policy.

7. After arms-length negotiations between Developer and Saratoga, the parties have executed an Agreement which enables the Project to obtain vital water service while protecting the interests of ratepayers. It is that Agreement which is the subject of this Petition. A copy of the Agreement is annexed hereto as Exhibit "1", and made a part hereof.

TERMS OF THE AGREEMENT

8. The Agreement obligates Developer to construct at its own cost and expense, all of the necessary water supply infrastructure within the Project, and the connection to Saratoga's system. The construction and installation of these facilities must conform to all applicable law, rules and regulations, and is subject to the approval of Saratoga.

9. Thereafter, Developer will convey to Saratoga full right, title and interest to the water facilities which it has constructed. Saratoga will not be required to provide any financial remuneration for these facilities.

10. To provide service, Saratoga will need to construct and install additional facilities to its distribution system to meet the incremental demands arising from the supply of water

service to the Project. Developer has agreed to provide to Saratoga the sum of \$24,025 as a contribution to the cost of constructing these additional water facilities.

11. The Agreement is expressly contingent upon approval of all of the terms and conditions by the Commission and other agencies and governmental bodies having jurisdiction over the actions contemplated therein.

12. Any parties or individuals that become customers of the Company as a result of the extension of service will be subject to the Company's rules, regulations, terms of service and rates as filed with and approved by the Commission.

THE COMMISSION SHOULD ISSUE THE DECLARATORY RULING

13. The terms of the Agreement are clearly in the public interest and should be viewed favorably by the Commission. The terms thereof provide a suitable compromise between Developer's need to obtain service for its real estate Project and the Company's desire to insure that the public interest is properly served and that the interests of ratepayers are protected.

14. The financial costs associated with providing service will be borne entirely by Developer, rather than the utility or its ratepayers. All of the water facilities constructed by Developer will have to comply with all applicable regulations and will be subject to the utility's oversight and approval.

15. Through extension of Saratoga's system and the provision of service to additional customers, ratepayers will be further benefited as Saratoga will be able to recover its fixed costs over a larger base of customers. Expansion of Saratoga's service territory and customer base in

the manner contemplated in the Agreement allows ratepayers to obtain the benefits of larger utility sales without the attendant risks or costs associated with expansion of utility facilities.

16. As the terms of the Agreement differ from those contained in the Company's tariff and the provisions of 16 N.Y.C.R.R. Part 501 and 502, it is also necessary to obtain a waiver from the provisions thereof in order to consummate and implement the terms of this Agreement.

17. Petitioners seek the issuance of the Declaratory Ruling by the Commission prior to submitting an application and obtaining the necessary authorization from DEC. The public interest will be served if the Commission acts positively upon the Petitioners' request.

18. To provide service to the Project, Saratoga will need to extend its service territory beyond the boundaries currently approved by the PSC and DEC. Prior to taking such actions, the utility, as well as its shareholders and ratepayers, must first determine whether the Agreement and its terms and conditions are viewed with favor by the Commission. As expressly set forth in the Agreement, the Company's willingness to undertake the added risks and burdens associated with the expansion of its service territory is conditioned upon the approval by the PSC of the terms and conditions set forth in the Agreement which were arrived at through arms-length negotiations (Exhibit 1, Section IV- Governmental Approvals).

19. The achievement of these goals would be undermined if Petitioner were first directed to seek approval from DEC without first receiving any formal indication from the Commission of whether it views the Agreement with favor. Once the application before DEC is acted upon by that agency, Saratoga, based upon existing law, will be deemed to have made a commitment to serve the new area covered by the Project. When the commitment to serve is

established, Saratoga, as a public utility, will be obligated to provide service to the Project and will be subject to the terms and conditions governing rates and charges for water service established by the PSC, regardless of whether they are consistent with the specific provisions of the Agreement entered into by the Company and Developer. Thus, even if the Commission were to subsequently reject the terms of the Agreement, Saratoga would still be obligated to serve the Project pursuant to terms that differed from those contained in the Agreement. It would be unfair to place Saratoga in such a position of uncertainty, especially as it has no legal obligation to provide service outside of its existing service territory in the first instance (*Crescent Estates Water Company, Inc. v. Public Service Com'n of the State*, 77 N. Y. 2d [1991]), and it has agreed to provide service solely as an accommodation to Developer which views the supply of service from Saratoga as its most feasible and economic water supply option. Such a result would also be unjust and unreasonable, for it may compel a utility to extend its service territory under conditions which were never contemplated nor agreed to by the affected parties.

20. Moreover, failure to issue the Declaratory Ruling would undermine the Commission's stated goal of integrating the small water utility industry by enhancing the ability of larger, more financially stable water companies to acquire smaller companies, and to expand their service territory to provide water service to customers presently served by smaller companies. (Case 93-W-0962- Proceeding on Motion of the Commission to Establish a Policy to Provide Incentives for the Acquisition and Merger of Small Water Utilities - Statement of Policy On Acquisition Incentive Mechanisms For Small Water Companies, [issued August 8, 1994]). The management and shareholders of smaller water companies must be assured that expansion of their service territory will neither be compelled nor forced to occur under conditions which were never contemplated nor desired by such companies.

21. The interests of ratepayers are fully protected by granting Petitioner's request. If the Commission deems any of the proposed terms and conditions codified in the Agreement to be unreasonable, it has the authority to so indicate in the Declaratory Ruling. Ratepayers will not have to bear any rates, charges or other conditions of service which the Commission deems to be unreasonable or inappropriate.

22. The relief requested herein is also consistent with previous rulings of the Commission. See, e.g., the *Declaratory Ruling on Provision of Water Service* issued on May 30, 2008 in Case 07-W-1445 – Joint Petition of Saratoga Water Services, Inc. and Thomas J. Farone & Son, Inc. for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County; Declaratory Ruling on Provision of Water Service issued on January 23, 2008 and *Order* issued July 16, 2009 in Case 07-W-0886 – Joint Petition of Saratoga Water Services, Inc. and Visionary Park, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga

County; Declaratory Ruling issued on May 31, 2007 in Case 07-W-0169- Joint Petition of Saratoga Water Services, Inc., and Albany Partners, LLC Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County; Declaratory Ruling issued on December 11, 2006 and Order issued on July 16, 2009 in Case 06-W-0943 – Joint Petition of Saratoga Water Services, Inc. and Luther Forest Technology Campus-EDC for a Declaratory Ruling Concerning the Provision of Water Service to Proposed Project in the Town of Malta, Saratoga County ; Declaratory Ruling issued on April 30, 2004 in Case 03-W-1736 – Joint Petition of Saratoga Water Services, Inc. and Maldel, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Subdivision in the Town of Malta Saratoga County; Declaratory Ruling issued on October 7, 2004 in Case 04-W-0765 – Joint Petition of Saratoga Water Services, Inc., and the New York State Research and Project Authority for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County; Declaratory Ruling issued on August 4, 2005 in Case 05-W-0239 - Joint Petition of Saratoga Water Services, Inc., and the Enclave at Malta, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County; Declaratory Ruling issued on September 2, 2004 in Case 04-W-0065 - Joint Petition of Saratoga Water Services, Inc., and Albany Partners, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County; and the Declaratory Ruling issued on June 3, 2006 in Case 05-W-0192 - Joint Petition of Saratoga Water Services, Inc., and Boss Enterprises of Saratoga, LLC Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County; Case 09-W-0598 - Joint Petition of Saratoga Water Services, Inc. and KO-HO Realty, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project

in the Town of Malta, Saratoga County, *Declaratory Ruling On Provision Of Water service* (issued November 20, 2009); Case 09-W-0643 - Joint Petition of Saratoga Water Services, Inc. and CDP 3 Silos, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County, *Declaratory Ruling On The Provision Of Water Service* (issued February 18, 2010); Case 09-W-0641 - Joint Petition of Saratoga Water Services, Inc. and Malta Properties 1, LLC for a Declaratory Ruling Concerning the Provision of Water Service to a Proposed Project in the Town of Malta, Saratoga County, *Declaratory Ruling On The Provision Of Water Service* (issued January 22, 2010)

WHEREFORE, it is respectfully requested that the Commission grant the relief requested herein in its entirety.

Respectfully submitted,

Saratoga Water Services, Inc.
and Thomas P. Deveno and Thomas J. Farone

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

Dated: Cedarhurst, New York
March 26, 2012

STATE OF NEW YORK)
)
 COUNTY OF SARATOGA)

ss.: PERSONAL ACKNOWLEDGMENT

On the 15th day of December, in the year 2011, before me, the undersigned, personally appeared Thomas P. Deveno, 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 acknowledged 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.

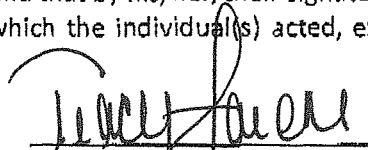

 Notary Public

EDWARD J. GROGAN
 Notary Public, State of New York
 No. 02GR1681826
 Qualified in Saratoga County
 Commission Expires April 30, 2015

STATE OF NEW YORK)
)
 COUNTY OF SARATOGA)

ss.: PERSONAL ACKNOWLEDGMENT

On the 19th day of December, in the year 2011, before me, the undersigned, personally appeared Thomas J. Farone, 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 acknowledged 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.

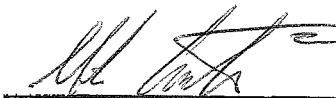

 Notary Public

STATE OF NEW YORK)
)
 COUNTY OF SARATOGA)

ss.: CORPORATE ACKNOWLEDGMENT

TRACY J. FARONE
 NOTARY PUBLIC - STATE OF NEW YORK
 NO. 01-FA6066177
 QUALIFIED IN SARATOGA COUNTY
 MY COMMISSION EXPIRES 11-13-2013

On the 29th day of December, 2010, before me personally came Alexander L. Mackay, to me known, who, being by me duly sworn, did depose and say that he resides in the Town of Stillwater, that he is the President of Saratoga Water Services, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that his seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.


 Notary Public

MICHAEL LOMAESTRO III
 NOTARY PUBLIC STATE OF NEW YORK
 LIC. #01LO6180262
 COMM. EXP. 7/21/12
 COMMISSIONED IN SARATOGA COUNTY

Exhibit “1”

AGREEMENT FOR THE PROVISION OF WATER SERVICE

This AGREEMENT made this 29th day of December, 2011, by and between SARATOGA WATER SERVICES, INC., a domestic corporation with its principal office at P.O. Box 2109, Malta, New York 12020 (hereinafter "Saratoga"), and Thomas P. Deveno and Thomas J. Farone (hereinafter "Applicant") with a principal office at 2591 Route 9, Malta, New York, 12020.

WITNESSETH

WHEREAS, Applicant has applied to and requested Saratoga to undertake all actions necessary, including, but not limited to, construction of storage and extension of service territory, to supply and provide adequate water service to a certain plot or tract of land located in the Town of Malta, Saratoga County, more particularly described in Exhibit "A", annexed hereto and made a part hereof; and

WHEREAS, the Applicant intends and has proposed to construct and create a real estate subdivision of 75 residential properties and 5 commercial properties known as Cramer Road Cluster Subdivision, on the above-referenced property described in Exhibit "A"; and

WHEREAS, the proposed subdivision development is located on property outside of and contiguous to Saratoga's service territory as approved and authorized by the New York State Department of Environmental Conservation (hereinafter "DEC") and outside the service territory prescribed by and included within Saratoga's schedule of water service filed with the New York State Public Service Commission (hereinafter "PSC"); and

WHEREAS, in order to provide safe and adequate service, it will be necessary to install an offsite 10" waterline extension, appurtenances and service lines to maintain system flow and quality.

WHEREAS, Saratoga and the Applicant acknowledge, understand and agree that Saratoga is

not under any obligation of law nor in any other manner required to provide water service to the plot or tract of land described above, or to any person or any dwelling or building constructed thereon; and

WHEREAS, Saratoga is only willing to provide adequate water service pursuant to and in accordance with the terms and conditions subsequently enumerated in this Agreement; and

WHEREAS, to provide adequate water service it will be necessary for Saratoga to acquire distribution mains, water facilities and construct additional facilities; and

WHEREAS, Saratoga will require a financial contribution to offset the incremental cost of constructing additional facilities; and

WHEREAS, the addition of new customers to the system will benefit existing customers by expanding the revenue base; and

WHEREAS, Applicant, in good faith and at arms-length, acknowledges and agrees that provision of water services by Saratoga pursuant to the terms and conditions of this Agreement is superior to any alternate method of obtaining water service.

**NOW, IN CONSIDERATION OF THE COVENANTS, OBLIGATIONS,
TERMS AND CONDITIONS CONTAINED HEREIN, IT IS
MUTUALLY AGREED AS FOLLOWS:**

I. PROVISION OF WATER SERVICE

The Applicant does hereby request and Saratoga does hereby agree to provide adequate water service to the tenants and/or owners of the premises constructed as part of the project located in the area as more particularly described, bounded and depicted in Exhibit "A", in accordance with the terms and conditions set forth below.

II. **CONSTRUCTION OF MAINS AND FACILITIES BY APPLICANT**

A. **Construction By Applicant.** The Applicant shall construct at its cost and expense the necessary mains, services, facilities, appurtenances and service lines within the geographical boundary of the Cramer Road Cluster Subdivision and the offsite waterline extension, and the connection to Saratoga's water distribution line (hereafter "water facilities") at Malta New York, all in accordance with the plans and specifications annexed hereto as Exhibit "B" (sheets 1 and 2), and any amendment thereto agreed to in writing by the Applicant and Saratoga. All waterline facilities and appurtenances depicted as Exhibit "B" shall be completed and in service prior to service being provided to Cramer Road Cluster Subdivision.

B. **Compliance with Government Regulations.** The construction of the water facilities described in paragraph II(A) shall in all respects comply and be completed in accordance with all applicable laws, rules, regulations, statutes and ordinances promulgated by or under the jurisdiction of any local, state, or federal governmental body. It shall be the sole obligation of the Applicant to secure and obtain at its cost and expense, all necessary local, state, and federal approvals associated with or related to the aforesaid construction of water facilities.

C. **Inspection and Approval By Saratoga.**

(1) All construction of water facilities shall be subject to inspection and approval by Saratoga, its engineering agent, or designated representative. Saratoga shall be provided with 24 hours notice prior to the initiation of any construction activity. Such notice may be given in writing or verbally by directly contacting Alexander Mackay, President of Saratoga or Jean N. Marcotte, Vice-President of Saratoga.

(2) A final inspection of the mains and facilities shall be conducted by Saratoga within (7) days of receipt of written notification from the Applicant that the construction of the water facilities set forth in paragraph II(A) above, has been completed. The Applicant or its representative shall be present at said final inspection. The Applicant shall be required to complete any and all modifications,

corrections or revisions which Saratoga, in its sole discretion, deems necessary as a result of said final inspection, and notice in writing of such modification, correction or revision shall be either personally delivered or mailed to Applicant within twenty (20) days of the final inspection.

D. Conveyance of Water Facilities

(1) After completion of the aforesaid construction, Applicant shall furnish an appropriate instrument of conveyance sufficient to vest in Saratoga subject to no prior liens or encumbrances good and marketable title to the water facilities constructed by Applicant. Said instrument shall be duly prepared, signed and acknowledged by Applicant. The form and content of said instrument is annexed hereto as Exhibit "C" and made a part hereof. All costs associated with the preparation and filing of said instruments shall be paid by Applicant. The date on which said conveyance is completed shall hereinafter be referred to as the "date of conveyance". The date of conveyance shall take place within sixty (60) days after receipt of all final regulatory and governmental approvals as more particularly detailed on Exhibit "D", annexed hereto and made a part hereof, or within 60 days of completion of aforesaid construction, whichever comes last.

(2) Applicant shall on the date of conveyance set forth in subdivision (D)(1) above, furnish all easements and rights-of-way free and clear of all liens, encumbrances, mortgages and easements, as necessary and appropriate for the (a) provision and operation of water service; (b) the extension, construction, maintenance, repair, operation and improvement of mains, facilities, services, appurtenances and service lines; and (c) the right of ingress and egress. The form and content of said easements and rights-of-way are set forth on Exhibit "E", annexed hereto and made a part hereof.

(3) Conveyance of any portion of all of the real property located in the Cramer Road Cluster Subdivision, as more particularly described in Exhibit "A", shall be made subject and subordinate to Saratoga's ownership of the mains and facilities described in Paragraph II(D)(1) above, the

easements and rights-of-way set forth in Paragraph II(D)(2) above and the water rights conveyed to Saratoga pursuant to II(D)(3) above, and the deeds of conveyance shall be in such form and content which, in all respects, are satisfactory to Saratoga.

(4) Applicant shall be obligated to convey good and marketable title to all necessary water facilities even where said facilities are located on real property not owned by the Applicant. Applicant shall be obligated to furnish all necessary and appropriate easements and rights-of-way necessary for the provision of water service, even where they affect real property not owned by the Applicant.

E. **Insurance, Identification and Release.** The Applicant shall obtain and maintain liability insurance in the amount of One Million Dollars (\$1,000,000.00) to protect against all claims for personal, property, and bodily injuries and damages related to or arising out of the construction and installation of the water facilities by the Applicant. Saratoga shall be named as an insured party under this policy as of the date of conveyance. A copy of the insurance policy, with Saratoga named as an insured party under this policy as of the date of conveyance, shall be provided to Saratoga on or before the date of conveyance. The Applicant hereby agrees to indemnify and hold harmless Saratoga from any and all liability or claims for injuries and damages of any kind whatsoever related to, arising out of or in any way connected with the construction and installation of water facilities by the Applicant.

F. **Ownership of Water Facilities.** The water facilities installed by Applicant pursuant to this Agreement, shall, after the conveyance thereof and compliance by Applicant with all terms and conditions of this Agreement, be and remain the sole property of Saratoga. Saratoga shall have the right, at its sole discretion, and in accordance with all federal, state and local laws, rules and regulations, to make further extensions and to service other individuals or parties, without obligation to make any refund to the Applicant, as long as such extension or service does not prevent Saratoga from meeting the Applicant's water needs, as determined by law.

G. **Guarantee of Workmanship.** The Applicant hereby guarantees all workmanship and materials related to the water facilities for a period of one year from the date of conveyance of the water facilities to Saratoga. The Applicant shall assign to Saratoga all of its right, title and interest to any and all warranties applicable to the facilities conveyed to Saratoga by the Applicant.

III. **CONSTRUCTION OF FACILITIES BY SARATOGA**

A. **Facilities Constructed By Saratoga.** To provide water service to the Cramer Road Cluster Subdivision, Saratoga will construct and install certain additional water facilities to its distribution system as more particularly set forth on Exhibit "F", annexed hereto and made a part hereof. These facilities shall remain the sole property of Saratoga and Saratoga shall have the right at its sole discretion and in conformance with all applicable laws, rules and regulations, to make further extensions and to service other individuals or parties, without obligation to make any refund to Applicant.

B. **Financial Contribution.**

(1) As the construction of said facilities is or will be needed to provide water service to the Cramer Road Cluster Subdivision, the Applicant hereby also agrees to convey and provide to Saratoga the sum of \$24,025 (Twenty Four Thousand Twenty Five Dollars) as a contribution (hereinafter "Financial Contribution") to the cost of constructing said facilities. Such Financial Contribution shall be made by cash or certified or bank check, or a letter of credit in a form satisfactory to Saratoga, and personally delivered to Alexander Mackay, President of Saratoga. Payment shall be in made in full on or before thirty (30) days following receipt of Public Service Commission Declaratory Ruling. Past due amounts are subject to a finance charge of 1.5% per month (Annual Percentage Rate of 18%).

IV. **GOVERNMENTAL APPROVALS**

A. **Necessary Approvals.** This Agreement is expressly contingent upon approval of all

the terms and conditions of this Agreement and any related financing, by the governmental authorities set forth on Exhibit "D", and final approval for the Cramer Road Cluster Subdivision, from all governmental authorities having jurisdiction thereover including, without limitations, the Town of Malta Planning Board. In the event that either one or all of these governmental authorities fails to approve all of the terms and conditions of this Agreement for any reason whatsoever, or the request for a franchise is rejected, this Agreement and all the terms and conditions contained therein, shall be null and void and unenforceable, Saratoga shall have no obligation to provide water service to the parcel of land described in Exhibit "A", applicants financial contribution shall be returned to the applicant, and neither party shall have any claim against the other for any costs, expenses or liabilities incurred or arising out of this Agreement.

B. **Filing of Joint Petition.** Subsequent to execution and delivery of this Agreement, Saratoga and Applicant shall prepare a Joint Petition to be filed with the PSC seeking, inter alia: 1) approval of all of the terms and conditions of this Agreement; and 2) a waiver of Saratoga's tariff and the provisions of 16 NYCRR Part 501 and 502. The disapproval by the PSC of any one of these matters shall cause this Agreement to be rendered null and void and unenforceable.

Upon receipt of written approval by the PSC of all the matters raised in the Joint Petition, Saratoga will then submit the necessary applications to the DEC and DOH for extension of its service area to provide water service and extend water facilities to the real estate development to be constructed by the Applicant as set forth in this Agreement.

V. **LIMITATION OF SERVICE**

It is acknowledged and agreed that upon compliance by the parties with the terms of this Agreement, water service to Applicant or any person located on the property described in Exhibit "A" shall only be provided by Saratoga, and that neither the Applicant nor any other person shall provide or offer to provide water service to the Applicant or any person located on the property described in Exhibit "A", unless

specifically so requested in writing by Saratoga. For purposes of this section, the term "person" shall mean any individual, firm, partnership, corporation, city, town, village, municipal corporation, public-benefit corporation, public authority, or any political subdivision of the State of New York.

VI. **PSC RULES AND REGULATIONS**

It is understood that any person as defined in Paragraph VI who becomes a customer of Saratoga, as a result of this extension of water service by Saratoga, will be subject to Saratoga's rules, regulations, terms of service and rates as filed with and approved by the PSC.

VII. **REPRESENTATIONS**

A. **Ownership of Real Property.** The Applicant represents that it has the authority to execute this Agreement and commit the Applicant to accept the obligations and terms and conditions contained herein, to the real property more particularly described in exhibit "A", and shall convey good and marketable title to all water facilities to be installed by the applicant even where said facilities are located on property not owned by applicant.

B. **No Prior Conveyance.** The Applicant represents that it has not conveyed any right, interest or title to any portion of the real property or to any source of water of whatever kind, nature, or description, located within the real property more particular described in Exhibit "A" and will not convey such right, interest, or title except in conformance with paragraph II(D)(4) of this Agreement.

VIII. **MODIFICATION AND ASSIGNMENT**

No change or modification of this Agreement shall be valid unless the same be in writing and signed by each party hereto. This Agreement may be assigned if such assignment is made pursuant to the requirements of a loan or security agreement with a bona fide lender, otherwise, this Agreement may not be assigned without the written approval of Saratoga, which shall not be unreasonably withheld.

IX. **SITUS**

This Agreement is entered into in the State of New York and for all purposes shall be interpreted under the laws of such State.

X. **SERVICE OF NOTICE**

Service of written notice, as permitted under this Agreement, shall be accomplished by mailing such written notice by certified mail, return receipt requested to:

Applicant: Thomas P. Deveno
Thomas J. Farone
2591 Route 9
Malta, N.Y. 12020

Saratoga: Alexander L. Mackay, President
Saratoga Water Services, Inc.
P.O. Box 2109
Malta, N.Y. 12020

XI. **FORCE MAJEURE**

No party shall be liable for the failure to comply with the terms of this Agreement if such failure is due to strikes, accidents, line breakage, flood, condemnation proceedings, legal proceedings, acts of God or other causes beyond its reasonable control.

XII. **HEADINGS**


The heading referring to contents of paragraphs of this Agreement are inserted for the convenience of the parties and are in no way to be considered as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.


XIII. **PARTIES BOUND**

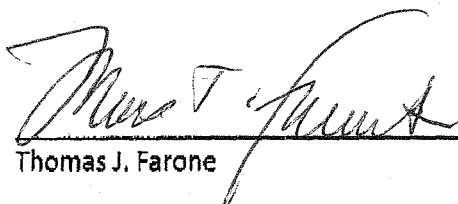
This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, legal representatives, successors, and assigns,

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as
of the day and year first above written.

SARATOGA WATER SERVICES, INC.

By: 
Alexander L. Mackay, President

By: 
Thomas P. Deveno

By: 
Thomas J. Farone

- Exhibit A - Map of property or deed of property
- Exhibit B - Engineering of water mains, hydrants, services, etc
- Exhibit C - Bill of Sale
- Exhibit D - List of governmental approvals
 - NYS DOH
 - NYS PSC
 - NYS DEC
- Exhibit E - Easements for any mains or services
- Exhibit F - Facilities to be constructed by SWS Inc.

X

EXHIBIT A



Land of
RODNER
Book 92 of Deeds at Page 1040

Land of
VAN SICKLE
Book 1382 of Deeds at Page 114
(See Map Reference No. 1)

Land of
MERCER
Book 1472 of Deeds at Page 477

Land of
THIBEAULT
Book 1387 of Deeds at Page 854
(See Map Reference No. 2)

Land of
THIBEAULT
Book 1427 of Deeds at Page 224
(See Map Reference No. 2)

Land of
STANLEY
Book 1320 of Deeds at Page 478

Land of
TOWN OF MALTA
Book 1382 of Deeds at Page 114
(See Map Reference No. 1)

Land of
TOWN OF MALTA

78.7 ACRES

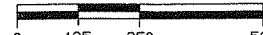
- NOTES:
1. THIS MAP IS A REPRODUCTION OF THE ORIGINAL MAP AS SUBMITTED TO THE TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK, AND IS NOT A SURVEY. IT IS NOT TO BE USED AS A BASIS FOR ANY LEGAL ACTION OR AS A BASIS FOR ANY CLAIM OF TITLE OR INTEREST IN ANY REAL ESTATE.
 2. THE TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK, IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS MAP.
 3. THE TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK, IS NOT RESPONSIBLE FOR ANY CLAIMS OF TITLE OR INTEREST IN ANY REAL ESTATE.
 4. THE TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK, IS NOT RESPONSIBLE FOR ANY CLAIMS OF TITLE OR INTEREST IN ANY REAL ESTATE.
 5. THE TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK, IS NOT RESPONSIBLE FOR ANY CLAIMS OF TITLE OR INTEREST IN ANY REAL ESTATE.
 6. THE TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK, IS NOT RESPONSIBLE FOR ANY CLAIMS OF TITLE OR INTEREST IN ANY REAL ESTATE.

CRAMER ROAD RESIDENTIAL CLUSTER SUBDIVISION
TOWN OF MALTA, SHERIFF'S OFFICE, NEW YORK

LANSING
ENGINEERING
7 HEMPSTADT AVE. SUITE 200
ELIZABETH, NJ 07208
(908) 329-8800

OVERALL PARCEL BOUNDARY PLAN

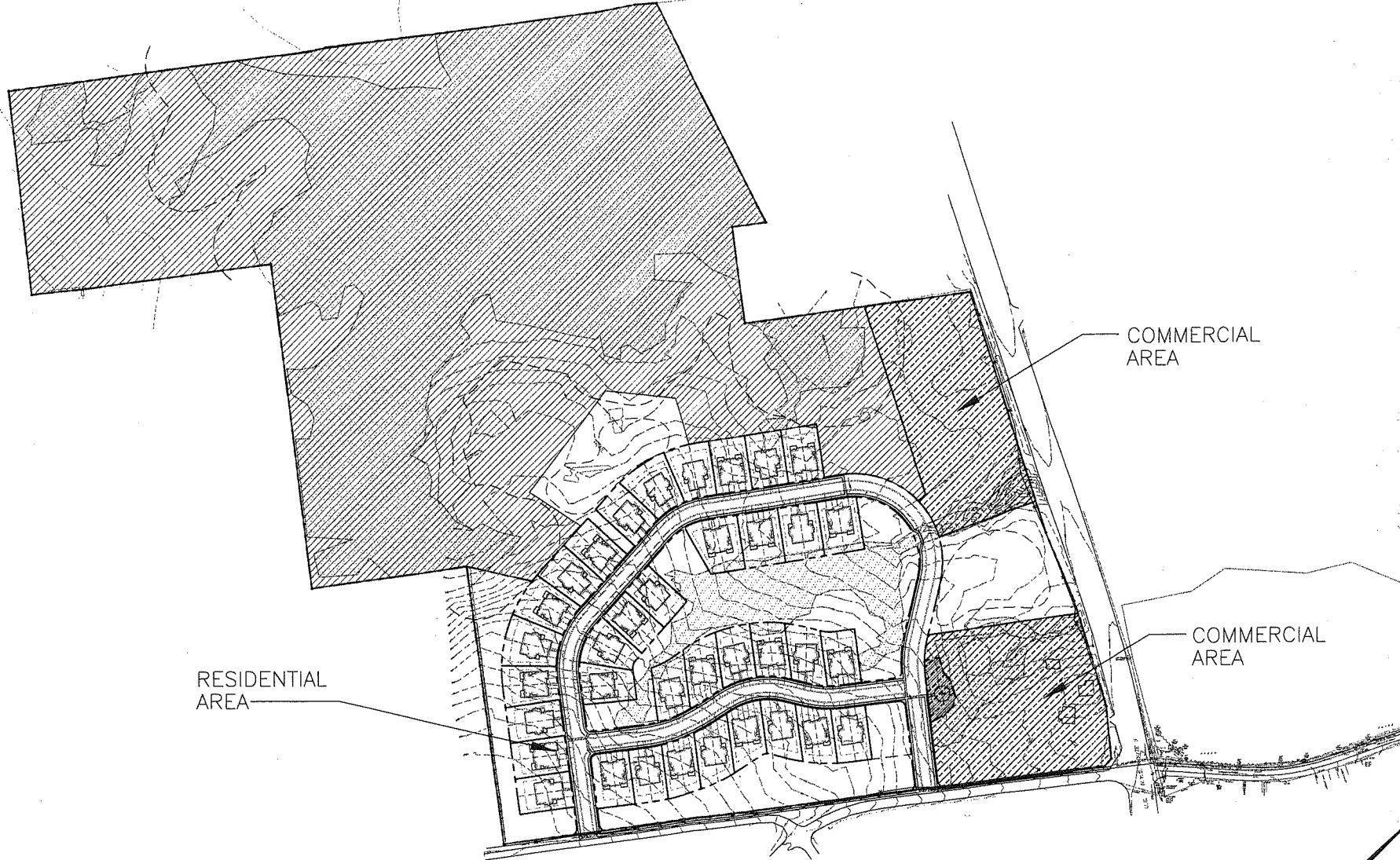
SCALE IN FEET



OVERALL PARCEL
BOUNDARY PLAN

PROJ. NO. 354.00 RP-1

Exhibit B1



RESIDENTIAL
AREA

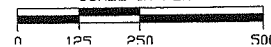
COMMERCIAL
AREA

COMMERCIAL
AREA

1

RESIDENTIAL AND COMMERCIAL AREAS

SCALE IN FEET



CRAMER ROAD RESIDENTIAL CLUSTER SUBDIVISION
TOWN OF MCLITA, SANDUSKY COUNTY, NEW YORK

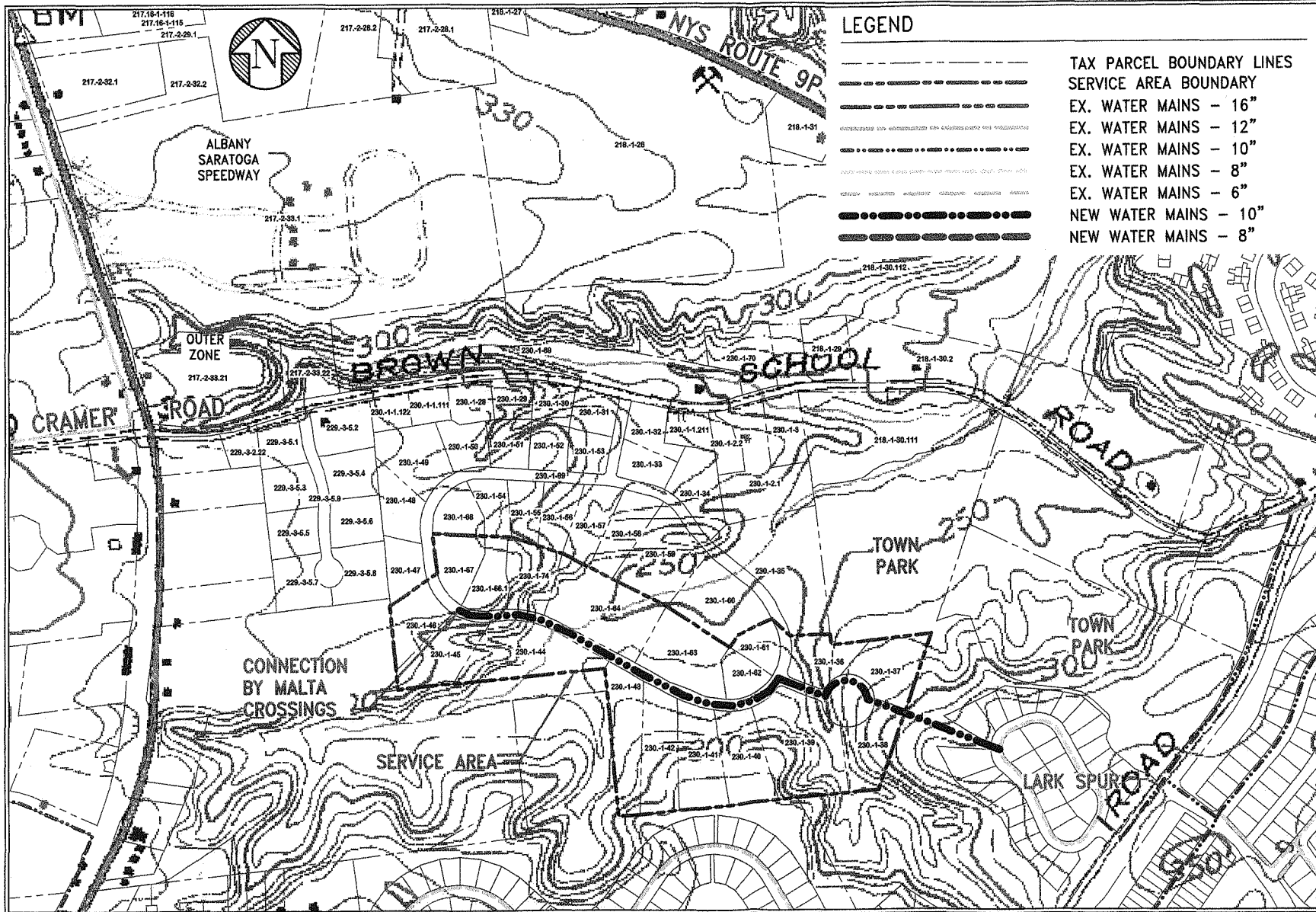
LANSING
ENGINEERING

RESIDENTIAL AND
COMMERCIAL PLAN

PROJ. NO. 354.00
SCALE: AS SHOWN

RC-1

EXHIBIT B



LEGEND

- TAX PARCEL BOUNDARY LINES
- SERVICE AREA BOUNDARY
- EX. WATER MAINS - 16"
- EX. WATER MAINS - 12"
- EX. WATER MAINS - 10"
- EX. WATER MAINS - 8"
- EX. WATER MAINS - 6"
- NEW WATER MAINS - 10"
- NEW WATER MAINS - 8"



SARATOGA WATER SERVICES INC.
LOOPING PLAN
SARATOGA COUNTY NEW YORK STATE

UNAUTHORIZED ALTERATION AND/OR ADDITION TO THIS DOCUMENT AND/OR UNAUTHORIZED USE OR REUSE OF THIS DOCUMENT ON A PROJECT OTHER THAN THAT INDICATED ON THIS DOCUMENT IS A VIOLATION OF THE NEW YORK STATE EDUCATION LAW AND THE CONTRACT FOR PROFESSIONAL SERVICES AND IS THEREFORE PROHIBITED.

Project Number	2007079
Drawn By	MKS
Designed By	MDH
Checked By	MDH
Date	01/06/12
Scale	1"=500'
File Name	2007079.LP
Sheet Title	LOOPING PLAN
Sheet No.	LP

EXHIBIT C

EXHIBIT C

BILL OF SALE AND ASSIGNMENT

TO

SARATOGA WATER SERVICES, INC.

KNOW ALL MEN BY THESE PRESENTS, that

Thomas P. Deveno and Thomas J. Farone, hereinafter referred to as the ASeller@ for TEN (\$10.00) DOLLARS to it in hand paid by SARATOGA WATER SERVICES, INC., having an address at P.O. Box 2109, Malta, New York, 12020, hereinafter referred to as the "Purchaser", and other good and valuable consideration the receipt whereof is hereby acknowledged, has bargained and sold and by these presents does hereby grant, bargain, sell, transfer, convey and assign to the Purchaser and its successors and assigns all of the Seller's right, title and interest in and to those of Seller's capital assets and property, free of all encumbrances and liens, identified and set forth with particularity in Attachment "1" annexed hereto and made a part thereof.

TO HAVE AND TO HOLD the same unto Purchaser and its successors and assigns forever;

And the Seller, for itself and its successors and assigns, does hereby covenant and agree to and with the Purchaser, to warrant and defend the sale, transfer and assignment of said Assets hereby sold, transferred and conveyed unto Purchaser and its successors and assigns against all and every person and persons whomsoever.

IN WITNESS WHEREOF, the seller has caused these presents to be executed by its duly authorized officer and its seal to be affixed the ____ day of ____.

ATTACHMENT "1"

List of Water Facilities Constructed by Applicant
and Conveyed to Saratoga

EXHIBIT D

List of final governmental and regulatory approvals:

- 1.) NYS Public Service Commission;
- 2.) NYS Department of Environmental Conservation;
- 3.) NYS Department of Health;
- 4.) NYS Department of Transportation;

EXHIBIT E

EXHIBIT E

THIS INDENTURE, made the _____ day of _____, _____ by and between _____, hereinafter called the AGrantor@ , and SARATOGA WATER SERVICES, INC., a Transportation corporation, organized and existing under the laws of the State of New York, with its principal office at P.O. Box 2109, Malta, New York, hereinafter referred to as the AGrantee@.

W I T N E S S E T H

That the Grantor, in consideration of One Dollar (\$1.00) and other good and valuable consideration paid by the Grantee, the receipt whereof is hereby acknowledged, has granted and released and does hereby grant and release to the Grantee, its successors and assigns, free and clear of all liens, encumbrances, mortgages and easements, the following unobstructed perpetual rights and easements upon, under, over and across a certain tract of parcel of property, located in the Town of Malta, County of Saratoga, as more particularly described in Schedule "A" hereof, which is annexed hereto and made a part hereof ("Easement Area"):

(A) to install, maintain, repair, replace, remove, construct, operate, monitor, improve and extend mains , facilities, services, pipes, lines, wells, conduits, pumping stations, fencing and any and all other equipment or machinery which Grantee deems appropriate for the proper functioning and operation of its water system, and/or to provide safe and adequate water service; (B) to install, construct, repair and maintain protection and control measures to protect the safety and adequacy of the water service; (C) ingress, egress and access to, under, over and across the Easement Area; and (D) to excavate the land in the Easement Area and to enter upon the Easement Area with such equipment machinery and personnel as Grantee may deem necessary, at such reasonable times as may be required and, except in the case of an emergency, upon five (5) days prior written notice to the grantor, such notice being deemed given when mailed; however Grantee shall promptly, upon completion of any work in the Easement Area, restore the land, at its sole cost and expense, as nearly as possible to the conditions existing immediately prior to the performance of any such work.

Grantor further agrees that, in the event additional easements which would burden the Easement Area shall be necessary in order to facilitate the provision of water service by Grantee, the Grantor shall grant such easements provided, however, that any easement rights so granted shall be exercised with full regard for the safety and preservation of any improvements now or hereafter located on the Easement Area so as to minimize the disturbance of the Easement Area and the use thereof. Such additional easements shall be superior to the liens of any mortgages encumbering any of the lands burdened by such easements.

All right, title and interest to any service line, wells, pipes, conduits or any other material or equipment or water facilities installed in the Easement Area pursuant to the easements and rights-of-way granted herein shall remain solely with the Grantee.

The easements and rights-of-way granted herein shall run with the land and shall be binding upon the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year
first above written.

By: Thomas P. Deveno
Thomas P. Deveno

By: Tomas J. Farone
Tomas J. Farone

SARATOGA WATER SERVICES, INC.

By: Alexander L. Mackay, Pres.
Alexander L. Mackay, Pres.

STATE OF NEW YORK)
)
COUNTY OF SARATOGA) ss.: PERSONAL ACKNOWLEDGMENT

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared Thomas P. Deveno, 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 acknowledged 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.

Notary Public

STATE OF NEW YORK)
)
COUNTY OF SARATOGA) ss.: PERSONAL ACKNOWLEDGMENT

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared Thomas J. Farone, 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 acknowledged 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.

Notary Public

STATE OF NEW YORK)
)
COUNTY OF SARATOGA) ss.: CORPORATE ACKNOWLEDGMENT

On the _____ day of _____, 2010, before me personally came Alexander L. Mackay, to me known, who, being by me duly sworn, did depose and say that he resides in the Town of Stillwater, that he is the President of Saratoga Water Services, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that his seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

EXHIBIT F

EXHIBIT F

WATER FACILITIES TO BE CONSTRUCTED
BY SARATOGA

Interconnection facilities including:

Projected Cost:

3.3% Storage Capacity

\$ 24,025

Total \$ 24,025

Notice of Proposed Rule Making

Submitting Agency

TEXT/SUBSTANCE AND ATTACHMENTS SUBMITTED: ☐ E-MAIL (nysregister@dos.state.ny.us)
☐ DISK

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

-
1. A. ☒ *Proposed action:* Saratoga Water Services, Inc. and Thomas P. Deveno and Thomas J. Farone have petitioned the Commission for the issuance of a Declaratory Ruling regarding the provision of water service
 - B. ☐ This is a consensus rule making. A statement is attached setting forth agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
 - C. ☐ This rule was previously proposed as a consensus rule making under I.D. No. _____. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
 - D. ☐ This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).
 2. *Statutory authority under which the rule is proposed:* Public Service Law, Section 4 (1), 20 (1) and 89-b
 3. *Subject of the rule:* The subject of the proposed rule whether a proposed agreement for the provision of water service by Saratoga Water Services to a development in the Town of Malta, Saratoga County is in the public interest.
 4. *Purpose of the rule:* The purpose of the proposed rule is whether the Commission should issue a declaratory ruling regarding the provision of water service.
 5. *Public hearings* (check box and complete as applicable):
☐ A public hearing is not scheduled. (SKIP TO ITEM 8)

- ☐ A public hearing is required by law and is scheduled below.
☐ A public hearing is not required by law, but is scheduled below.

Time: *Date:* *Location:*

_____	_____	_____
_____	_____	_____
_____	_____	_____

6. *Interpreter services (check only if a public hearing is scheduled):*
☐ Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.
7. *Accessibility (check appropriate box only if a public hearing is scheduled):*
☐ All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
☐ Attached is list of public hearing locations that are not reasonably accessible to persons with a mobility impairment. An optional explanation is submitted regarding the nonaccessibility of one or more hearing sites.
8. *Terms of rule (SELECT ONE SECTION):*
A. ☐ The full text of the rule is attached since it is under 2,000 words.
B. ☐ A summary of the rule is attached since the full text of the rule is over 2,000 words.
 ☐ Full text is posted at the following State website: _____
 ☐ Full text is not posted on a State website.
 ☐ Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA §102(2)(a)(ii).
C. ☐ Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].
9. *The text of the rule and any required statements and analyses may be obtained from:*
Agency contact _____
Agency Name _____
Office address _____
Telephone _____ E-mail: _____
10. *Submit data, views or arguments to (complete only if different than previously named agency contact):*
Agency contact _____
Agency Name _____
Office address _____
Telephone _____ E-mail: _____

11. *Public comment will be received until:*
- ☐ 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it is under 2000 words or full text of rule has been posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making].
- ☐ 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is been posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making].
- ☐ 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or full text is not posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making].
- ☐ Other: (*specify*) _____
12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.
13. *Expiration date* (check only if applicable):
- ☐ This proposal will not expire in 365 days because it is for a “rate making” as defined in SAPA §102(2)(a)(ii).
14. *Additional matter required by statute:*
- ☐ Yes (include material required by statute).
- ☐ No additional material required by statute.
15. *Regulatory Agenda* (The **Division of Housing and Community Renewal; Workers’ compensation Board**; and the departments of **Agriculture and Markets, Banking, Education, Environmental Conservation, Family Assistance, Health, Insurance, Labor, Motor Vehicles and State** and other department specified by the Governor or his designee *must complete this item*. If your agency has an optional agenda published, that should also be indicated below):
- ☐ This action was a Regulatory Agenda item in the first January issue of the _____ (year) *Register*.
- ☐ This action was a Regulatory Agenda item in the last June issue of the _____ (year) *Register*.
- ☐ This action was not under consideration at the time this agency’s Regulatory Agenda was submitted for publication in the *Register*.
- ☐ Not applicable.
16. **5-Year Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- ☐ Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a decision of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
- ☐ Attached is an assessment of public comments received by the agency in response to the listing of the rule in the regulatory agenda.
- ☐ As assessment of public comments is not attached because no comments were received.
- ☐ Not applicable.

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

- A. The attached RIS contains:
 - ☐ The full text of the RIS.
 - ☐ A summary of the RIS.
 - ☐ A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.
- B. A RIS **is not attached**, because this rule is:
 - ☐ subject to a consolidated RIS printed in the *Register* under I.D. No. _____; issue date: _____.
 - ☐ exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - ☐ exempt, as defined in SAPA §102(11) [Consensus Rule Making].
- C. A **statement is attached** claiming exemption pursuant to SAPA 202-a (technical amendment).

18. **Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached RFA contains:
 - ☐ The full text of the RFA.
 - ☐ A summary of the RFA.
 - ☐ A consolidated RFA, because this rule is one of a series of closely related rules.
- B. ☐ A **statement is attached** explaining why a RFA not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon

which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

- C. A RFA is **not attached**, because this rule:
- ☐ is subject to a consolidated RFA printed in the *Register* under I.D. No. _____; issue date: _____.
 - ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - ☐ is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. ***Rural Area Flexibility Analysis (RAFA)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached RAFA contains:
- ☐ The full text of the RAFA.
 - ☐ A summary of the RAFA.
 - ☐ A consolidated RAFA, because this rule is one of a series of closely related rules.
- B. ☐ A **statement is attached** explaining why a RAFA not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.
- C. A RAFA is **not attached**, because this rule:
- ☐ is subject to a consolidated RAFA printed in the *Register* under I.D. No. _____; issue date: _____.
 - ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - ☐ is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. ***Job Impact Statement (JIS)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached JIS contains:
- ☐ The full text of the JIS.
 - ☐ A summary of the JIS.
 - ☐ A consolidated JIS, because this rule is one of a series of closely related rules.
- B. ☐ A **statement is attached** explaining why a JIS not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon

which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.
[] A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

- C. A JIS is **not attached**, because this rule:
- [] is subject to a consolidated JIS printed in the *Register* under I.D. No. _____; issue date: _____.
 - [] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - [] is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name _____ Signature _____

Address _____

Telephone _____ E-Mail _____

Date _____

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. **Collate the original notice and attachments** as: (1) from; (2) text or summary of rule; and, *if any*, (3) regulatory impact statement, (4) regulatory flexibility analysis for small businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement. Submit the originals, as collected and **ONE copy of that collated set**.
3. **Mail or hand deliver hard copy of rule making package to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001.
4. **E-mail text/substance and attachments to:** nysregister@dos.state.ny.us or attach a disk containing the text/substance and required material.

Summary of Proposed Rule

The Commission is considering a Petition in which Saratoga Water Services, Inc. (“Saratoga”) and Thomas P. Deveno and Thomas J. Farone seek issuance of a Declaratory Ruling finding and declaring that : (a) the terms and conditions of a certain “Agreement For The Provision of Water Service”, dated December 29, 2011 (“Agreement”) are in the public interest; (b) that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement, would serve the public interest; (c) that waiving Saratoga’s tariff provisions to the extent they are inconsistent with the terms of said Agreement, would be justified and consistent with the public interest; (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502, to the extent they are inconsistent with the Agreement, would be justified and consistent with the public interest; and (e) that approval of the terms of the Agreement and issuance of the requested waivers, would be granted at such time when an application for such relief is presented to the Commission after all required governmental approvals have been issued.

For Water System
617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project:

☐

Part 1

☐

Part 2

☐

Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- ☐ A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a **negative declaration will be prepared.**
- ☐ B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.***
- ☐ C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared.**

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Name of Action

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

Date

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Thomas P. Deveno and Thomas J. Farone

Location of Action (include Street Address, Municipality and County)

The project is located at the Northwest intersection of Cramer Road and Route 9 and Larkspur and Little Drive Extension in the Town of Malta, Saratoga County, NY.

Name of Applicant/Sponsor Saratoga Water Services, Inc. and Thomas P. Deveno and Thomas J. Farone

Address P.O. Box 2109

City/PO Malta State NY Zip Code 12020

Business Telephone c/o Usher Fogel, Esq. (516) 374-8400 x108

Name of Owner (if different) _____

Address _____

City/PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Approval of terms of water system extension agreement by NYSPSC; waiver by NYSPSC of applicability of water company tariffs and 16 NYCRR 501&502 to a water system extension. Includes the construction of 8" watermain (approximately 3,760 feet) and appurtenances to serve the proposed Cramer Road project and 10" watermain (approximately 3,200 feet) and appurtenances at the Larkspur and Little Drive Extension.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: ☐ Urban ☐ Industrial ☐ Commercial ☐ Residential (suburban) ☒ Rural (non-farm)
☒ Forest ☐ Agriculture ☒ Other Lawn

2. Total acreage of project area: 3.3 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>1.8</u> acres	<u> </u> acres
Forested	<u>0.3</u> acres	<u> </u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u> </u> acres	<u> </u> acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u> </u> acres	<u> </u> acres
Water Surface Area	<u> </u> acres	<u> </u> acres
Unvegetated (Rock, earth or fill)	<u> </u> acres	<u> </u> acres
Roads, buildings and other paved surfaces	<u> </u> acres	<u> </u> acres
Other (Indicate type) <u>Lawn</u>	<u>1.2</u> acres	<u>3.3</u> acres

3. What is predominant soil type(s) on project site?

- a. Soil drainage: ☒ Well drained 25 % of site ☒ Moderately well drained 25 % of site.
☒ Poorly drained 50 % of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? N/A acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? ☐ Yes ☒ No

- a. What is depth to bedrock 5'+ (in feet)

5. Approximate percentage of proposed project site with slopes:

- ☒ 0-10% 95 % ☒ 10- 15% 5 % ☐ 15% or greater %

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☐ Yes ☒ No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☒ No

8. What is the depth of the water table? 0-15 (in feet)

9. Is site located over a primary, principal, or sole source aquifer? ☒ Yes ☐ No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☒ No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☒ No

According to:

Richard Hisert, PhD., 2004

Identify each species:

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

☐ Yes ☒ No

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

☐ Yes ☒ No

If yes, explain:

14. Does the present site include scenic views known to be important to the community?

☐ Yes ☒ No

15. Streams within or contiguous to project area:

Unnamed stream across US Route 9 near southwest corner of site.

- a. Name of Stream and name of River to which it is tributary

Saratoga Lake, Drummond Creek

16. Lakes, ponds, wetland areas within or contiguous to project area:

N/A

- b. Size (in acres):

N/A

17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If YES, does sufficient capacity exist to allow connection? ☒ Yes ☐ No
- b. If YES, will improvements be necessary to allow connection? ☒ Yes ☐ No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☒ No
20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☒ No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).

- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: 1.32 (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. 5.1 %
- f. Number of off-street parking spaces existing N/A; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A
- h. If residential: Number and type of housing units:
- | | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> |
| Ultimately | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> | <u>N/A</u> |
- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.

2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 0 tons/cubic yards.

3. Will disturbed areas be reclaimed ☒ Yes ☐ No ☐ N/A

- a. If yes, for what intended purpose is the site being reclaimed?

Lawn

- b. Will topsoil be stockpiled for reclamation? ☒ Yes ☐ No
- c. Will upper subsoil be stockpiled for reclamation? ☒ Yes ☐ No

4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 0 acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

☐ Yes ☒ No

6. If single phase project: Anticipated period of construction: 3 months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? ☐ Yes ☐ No

8. Will blasting occur during construction? ☐ Yes ☒ No

9. Number of jobs generated: during construction 10; after project is complete 0

10. Number of jobs eliminated by this project 0

11. Will project require relocation of any projects or facilities? ☐ Yes ☒ No

If yes, explain:

12. Is surface liquid waste disposal involved? ☐ Yes ☒ No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? ☐ Yes ☒ No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☒ No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? ☐ Yes ☒ No

16. Will the project generate solid waste? ☐ Yes ☒ No

a. If yes, what is the amount per month? _____ tons

b. If yes, will an existing solid waste facility be used? ☐ Yes ☐ No

c. If yes, give name _____; location _____

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☐ No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? ☐ Yes ☒ No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? ☐ Yes ☒ No

19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☒ No

20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☒ No

21. Will project result in an increase in energy use? ☐ Yes ☒ No

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity 2,073 gallons/minute.

23. Total anticipated water usage per day 24,025 gallons/day.

24. Does project involve Local, State or Federal funding? ☐ Yes ☒ No

If yes, explain:

25. Approvals Required:

		Type	Submittal Date
City, Town, Village Board	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____
City, Town, Village Planning Board	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____
City, Town Zoning Board	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____
City, County Health Department	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____
Other Local Agencies	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____
Other Regional Agencies	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____
State Agencies	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>NYSPSC - Approval of</u>	<u>pending</u>
		<u>terms and waivers</u>	
		_____	_____
		_____	_____
Federal Agencies	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
		_____	_____
		_____	_____

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? ☐ Yes ☒ No

If Yes, indicate decision required:

<input type="checkbox"/> Zoning amendment	<input type="checkbox"/> Zoning variance	<input type="checkbox"/> New/revision of master plan	<input type="checkbox"/> Subdivision
<input type="checkbox"/> Site plan	<input type="checkbox"/> Special use permit	<input type="checkbox"/> Resource management plan	<input type="checkbox"/> Other

2. What is the zoning classification(s) of the site?

N/A

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

N/A

4. What is the proposed zoning of the site?

N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? ☐ Yes ☐ No

N/A

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Commercial, vacant, and residential

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? ☒ Yes ☐ No

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

- a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

☐ Yes ☒ No

a. If yes, is existing capacity sufficient to handle projected demand?

☐ Yes ☐ No

12. Will the proposed action result in the generation of traffic significantly above present levels?

☐ Yes ☒ No

a. If yes, is the existing road network adequate to handle the additional traffic.

☐ Yes ☐ No

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Saratoga Water Services, Inc. & Thomas P. Deveno and Thomas J. Farone

Date 3-16-12

Signature x

Thomas P. Deveno

x

Thomas J. Farone

Title

Alexander Mackay, SWS, Inc.

Thomas P. Deveno

Thomas J. Farone

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

Notes and Sources of Information for
FULL ENVIRONMENTAL ASSESSMENT FORM

A. SITE DESCRIPTION

3. & 4. Source: Soil Survey of Saratoga County, New York (USDA Natural Resources Conservation Service).
5. Source: USGS, Round Lake, N.Y. Quad. Map
6. Source: NY State Historic Preservation Office GIS – Public Access
7. Source: NY State Historic Preservation Office GIS – Pubic Access
8. Source: Soil Survey of Saratoga County, New York (USDA Natural Resources Conservation Service).
9. Source: U.S.G.S., Potential Yields of Wells in Unconsolidated Aquifers in Upstate New York, Hudson Mohawk Sheet, by Edward F. Bugliosi, Ruth A. Trudell & George D. Casey (1987). The site is located above a principal unconfined aquifer, 10 to 100 gallons per minute. The aquifer is characterized by sand and gravel with saturated zone generally less than 10 feet thick or thicker but with less permeable silty sand and gravel. Principal aquifers are known to be highly productive or whose geology suggests abundant potential water supply, but which are not intensively used as sources of water supply by major municipal systems at the present time. The site is not located above a primary aquifer. Primary aquifers are highly productive and presently utilized as sources of water supply by major municipal water supply systems.
11. Source: New York State Department of Environmental Conservation website <http://www.dec.ny.gov/imsmaps/ERM/viewer.htm> - Environmental Resource Mapper
12. Source: USGS, Round Lake, N.Y. Quad. Map
14. Source: USGS, Round Lake, N.Y. Quad. Map
15. &
16. Source: Saratoga County GIS site
17. Note: Saratoga Water Services, Inc. will construct and install additional facilities on its distribution system to accommodate the new mains to be paid by Tom Deveno and Thomas J. Farone.
18. Source: Saratoga County online GIS.
19. Source: NYSDEC, Online List of Critical Environmental Areas in Saratoga County.
20. Source: NYSDEC, Spill Incidents Database; NYSDEC, Environmental Site Remediation Database; NYSDEC, Bulk Storage Database.

B. PROJECT DESCRIPTION

- 1.(e) The total length of the water main in the system is 25.89 miles
- 4. & 5. Source: Aerial Photo (Google Maps).
- 8. Source: Soil Survey of Saratoga County, New York (USDA Natural Resources Conservation Service).
- 15. Note: Saratoga County GIS site
- 20. Note: Ordinary machinery noise is expected during construction.
- 22. Total permitted Saratoga Water Services well capacity is 2,073 gpm with 342 gpm from Knapp Road Wellfield and 1731 gpm from Cold Spring Wellfield.
- 23. Contract calculations for the water use at the proposed development.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

METHOD OF SERVICE FORM

This form should be filed with all new petitions and applications that require action by the Commission. It will allow us to serve you with the Commission decision using the method you select.

Name:	<u>usher fogel</u>
Your Company/Organization:	<u>Office of Usher Fogel</u>
Mailing Address:	<u>557 Central Avenue, Suite 4A, cedarhurst,</u> <u>N. Y. 1516</u>
Company/Organization you represent, if different from above:	<u>Saratoga Water Services, Inc.</u>
E-Mail Address:	<u>ufogel@aol.com</u>
Case/Matter # (if known)	_____

If you consent to receive Commission-issued orders electronically, you will receive all Commission-issued documents electronically. If you do not consent to receive Commission-issued orders electronically, you will receive all Commission-issued documents by mail.

Check the box(es) in A or B, below:

A.

☒ I am authorized by the party I represent to grant consent to receive electronic-only service of Commission-issued orders, AND

☒ I, on behalf of myself or the party I represent, knowingly waive the right specified in Public Service Law §23(1) to be served personally or by mail with orders that affect me or the party I represent and consent to receive service of Commission-issued orders by electronic means only. This consent remains in effect until revoked.

B

☐ I do not consent to receive electronic service and instead request that the DPS mail Commission-issued document(s) to me.

Signature: <u>Usher Fogel</u>	Date: <u>3.26.12</u>
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Please note that this form applies to this filing only.

To the extent possible, please file this form in .pdf format.