[MAINTAIN 4” MARGIN]

DECLARATION

**THIS DECLARATION** (Declaration) is made this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 201\_, by and INSERT name of PERMITTEE ], a(n) [INSERT DESCRIPTION OF PERMITTEE (e.g. “a Minnesota limited liability company”or“individual”] (Declarant) in favor of the Minnehaha Creek Watershed District (MCWD), a special purpose local unit of government with purposes and powers pursuant to Minnesota Statutes Chapters 103B and 103D.

# RECITALS

**WHEREAS** Declarant owns real property within the City of [NAME OF CITY], [CARVER/HENNEPIN] County, Minnesota, platted and legally described as:

[INSERT LEGAL DESCRIPTION]

(the Property) and no one other than Declarant, [NAME HERE ANY PARTY OTHER THAN DECLARANT (FEE TITLE OWNER) HOLDING AN OWNERSHIP INTEREST IN THE PROPERTY AND ATTACH A COMPLETED CONSENT AND SUBORDINATION FROM EACH], has any right, title or interest in the Property; and

**WHEREAS**, the Property constitutes the entirety of the land to which MCWD Permit # \_\_\_\_\_ applies; and

**WHEREAS**, the Declarant desires to subject the Property to certain conditions and restrictions imposed by the MCWD as a condition to issuance of Permit # \_\_\_\_\_ for the mutual benefit of the MCWD and the owners of the Property.

**NOW, THEREFORE,** Declarant makes this Declaration and hereby declares that this Declaration shall constitute covenants to run with the Property in perpetuity, and further declares that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, all of which shall be binding on all persons owning or acquiring any right, title or interest in the Property, and their heirs, successors, personal representatives and assigns. All features requiring maintenance identified on the scaled site plan for the Property attached hereto and incorporated herein as Attachment A will be maintained in perpetuity in accordance with as follows:

[DELETE INAPPLICABLE SECTIONS BELOW]

1. WETLAND BUFFER AREAS
   1. Buffer vegetation will not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities, or other actions to maintain or improve buffer quality, each as approved by MCWD staff in writing. Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface will be placed within a buffer, except that construction of a trail or path of no more than 4 feet in width to provide riparian access through the buffer is acceptable. No fill, debris or other material will be excavated from or placed within a buffer.
   2. Permanent wetland buffer monuments will be maintained in the locations shown on the approved site plan. Language shall indicate the purpose of the buffer, restrictions, and the name and phone number of the Minnehaha Creek Watershed District.
2. WATERBODY CROSSINGS & STRUCTURES
   1. Crossings and structures in contact with the bed or bank of a waterbody will be inspected at least once a year and maintained in good repair in perpetuity to ensure continuing adequate hydraulic and navigational capacity is retained in accordance with approved plans, to ensure no net increase in the flood stage beyond that achieved by the approved plans, to prevent adverse effects on water quality, changes to the existing flowline/gradient and increased scour, erosion or sedimentation, and to minimize the potential for obstruction of the waterbody.
3. STORMWATER FACILITIES

[DELETE INAPPLICABLE SUBSECTIONS BELOW]

* 1. **Stormwater retention and treatment basin(s)**. Stormwater retention and treatment basin(s) must be inspected at least once a year to determine if the basin’s retention and treatment characteristics are adequate and continue to perform per design. Culverts and outfall structures must be inspected at least annually and kept clear of any obstructions or sediment accumulation. Sediment accumulation must be measured by a method accurate to within one vertical foot. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent of its original design volume. Based on this inspection, if the stormwater basin(s) is identified for sediment cleanout, the basin(s) will be restored to its original design contours and vegetation in disturbed areas restored within one year of the inspection date.
  2. **Raingardens, infiltration basins and filtration basins**. Raingardens, infiltration basins and filtration basins will be inspected annually to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.
  3. **Iron-enhanced sand filters.** Iron-enhanced sand media must be inspected every three years to determine if the iron’s binding capacity has been reached. The phosphorus binding capacity of the iron-sand bed is exhausted and must be replaced to the original specifications when the total-phosphorus-to-total-iron ratio exceeds 5 milligrams of phosphorus per 1 gram of elemental iron or when the total phosphorus at the outlet of the iron-sand filter consistently exceeds 60 to 70 micrograms per liter.
  4. **Vegetated swales.** Vegetated swales may mowed for public safety, but otherwise must remain free from vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures unless approved within the permit, or any other alteration that impedes function.
  5. **Pervious pavement and permeable pavers**. Pervious pavement or pavers will be inspected at least one per year after a major storm event and otherwise annually to ensure continuing performance per design. Surface openings will be vacuumed at least annually at the end of winter in dry weather to remove dry, encrusted sediment as necessary. Broken units that impair the structural integrity of the surface will be replaced. If water stands for an extended period of time, the base materials will be removed and replaced.
  6. **Underground storage facilities.** Underground storage facilities will be inspected at least annually to ensure continuing performance per design. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of the original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be kept clear of any flow impediments.
  7. **Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes will be inspected in the spring, summer and fall of each year. All sediment and debris will be removed as needed such that the stormwater facilities operate as designed and permitted.
  8. **Reuse systems**. Runoff-management systems relying on capture and reuse of stormwater (e.g., for irrigation) must be operated and maintained in accordance with terms of permit approval and the manufacturer’s or installer’s specifications for any proprietary equipment.
  9. **Proprietary stormwater facilities.** Proprietary stormwater facilities will be inspected at least annually and maintained as specified or recommended by the manufacturer and/or installer as described in Attachment X [FOR DECLARATIONS--Attach maintenance SPECIFICATIONS from manufacturer as attachment X. FOR AGREEMENTS, DELETE UNDERLINED SECTION AND SAVE SPECIFIC MAINTNENACE LANGUAGE PROVIDED BY APPLICANT IN PERMIT FILE].
  10. **Reporting.** The Declarant will submit to the MCWD annually abrief written report that describes stormwater facility maintenance activities performed under this declaration, including dates, locations of inspections and the maintenance activities performed.

1. **Violation.** Both the Declarant and a subsequent property owner are liable to the MCWD for performance under this Declaration, and the MCWD may seek any remedy in law or equity against the Declarant as long as the declarant owns the Property and thereafter against the property owner to enforce the Declaration.
2. **“Property owner”** as used in this Declaration means the owner of the property on which is located the facilities to which the obligations herein apply.
3. **Recitals.** The recitals set forth above are expressly incorporated herein.

**IN WITNESS WHEREOF**, the undersigned has executed this instrument the day and year first set forth.

**DECLARANT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(print name)*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(title)* of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(company or organization)* [DELETE SECTION HIGHLIGHTED IN BLUE IF SIGNING IN AN INDIVIDUAL CAPACITY; INCLUDE COMPLETED SECTION IN BLUE FOR ACKNOWLEDGEMENT IN A REPRESENTATIVE CAPACITY, E.G., AS AN OFFICER OF A COMPANY)]

|  |  |  |
| --- | --- | --- |
| State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |  |
| County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |  |
| This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_ *(date)* by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(name(s) of person(s))* as\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(type of authority, e.g., officer, trustee, etc.)* of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(name of party on behalf of whom the instrument was executed)*. (DELETE SECTION HIGHLIGHTED IN BLUE FOR ACKNOWLEDGEMENT IN AN INDIVIDUAL CAPACITY; INCLUDE COMPLETED SECTION IN BLUE FOR ACKNOWLEDGEMENT IN A REPRESENTATIVE CAPACITY, E.G., AS AN OFFICER OF A COMPANY) |  | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature of notarial officer) |  | | |
| (Stamp) |  | | |
|  |  | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title (and Rank) |  | | |
| My commission expires: |  | | |

This Instrument Was Drafted By:

[INSERT NAME AND ADDRESS OF WHOEVER FILLED OUT THE TEMPLATE]

**CONSENT and NON-DISTURBANCE**

**Legal description of Subject Property:**

[insert]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Minnesota

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the current holder and owner of a Mortgage, made and subscribed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and filed for record on [insert date], as Document No. \_\_\_\_\_\_\_\_\_\_\_\_\_, in the Office of the County Recorder, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Minnesota.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereby consents to the attached Declaration executed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to the Minnehaha Creek Watershed District, and joins in the execution hereof solely as lien holder and hereby agrees that in the event of the foreclosure of the Mortgage, or other sale of the Subject Property described in said Mortgage under judicial or non-judicial proceedings, the same shall be sold subject to said Declaration.

Signed and executed this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[insert name and title]

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [insert title] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument and who acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, as the act and deed of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public