[MAINTAIN 4” MARGIN]

DECLARATION

 **THIS DECLARATION** (Declaration) is made this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by [NAME AND DESCRIPTION OF PROPERTY OWNERS; INCLUDE MARITAL STATUS OF INDIVIDUALS], (Declarant) in favor of the Nine Mile Creek Watershed District, a special purposes local unit of government with purposes and powers pursuant to Minnesota Statutes chapters 103B and 103D (NMCWD).

# RECITALS

 **WHEREAS** Declarant owns real property within the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Hennepin County, Minnesota, platted and legally described as:

[INSERT LEGAL DESCRIPTION]

(the Property) and no one other than Declarant [and 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 legal interest in the Property; and

 **WHEREAS** the Property constitutes the entirety of the land to which Nine Mile Creek Watershed District (NMCWD) permit no. \_\_\_\_\_\_\_\_\_ applies; and

 **WHEREAS** Declarant desires to subject the Property to certain conditions, obligations and restrictions imposed by the NMCWD as a condition on issuance of permit no. \_\_\_\_\_\_\_\_\_\_ for the mutual benefit of the NMCWD and the owners of the Property.

 **NOW, THEREFORE,** Declarant makes this Declaration and hereby declares that this Declaration constitutes covenants to run with the Property in perpetuity, and is 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 and labeled on the scaled site plan for the Property – attached hereto and incorporated herein as Exhibit A – will be maintained in perpetuity as follows:

[DELETE SECTIONS AND/OR SUBSECTIONS FOLLOWING THAT ARE NOT NEEDED]

1. **Wetland Buffer**. Buffer on wetlands as delineated on Exhibit A, must be planted and established (as necessary) and maintained in perpetuity in accordance with the following:
	1. Buffer area that is not vegetated at the time of or is disturbed during construction authorized by permit \_\_\_\_\_\_\_\_ (see Exhibit A) must be planted with native vegetation and maintained to retain natural resources and ecological value. Wetland buffer areas that are vegetated and not disturbed must be preserved and managed in a naturalized condition to encourage growth of native vegetation and eliminate invasive species.
	2. Buffer vegetation must not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for:
		1. periodic cutting or burning that promotes the health of the buffer,
		2. actions to address disease or invasive species,
		3. mowing for purposes of public safety,
		4. temporary disturbance for placement or repair of buried utilities, or
		5. other actions to maintain or improve buffer quality, each as approved by the NMCWD in advance in writing.

Pesticides and herbicides may be used only in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface may be placed within a buffer. No fill, debris or other material may be excavated from or placed within a buffer. Boardwalks and trails designed for nonmotorized use and stormwater management facilities may be located within a buffer area upon approval of the NMCWD.

* 1. The permanent, free-standing markers designating the buffer area at the locations shown and labeled in Exhibit A must be maintained in good condition befitting their function.
1. **Stormwater Facilities**. The stormwater management facilities shown and labeled in Exhibit A must be maintained as follows:
	1. All stormwater *retention, detention and treatment basins* (labeled in Exhibit A) must be inspected at least once a year to determine that basin retention and treatment characteristics remain adequate for the intended purposes. A treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent or dry storage volume by 25 percent of its original design volume. Based on this inspection, if a stormwater basin requires sediment cleanout, the basin will be restored to its original design contours and vegetated state within one year of the inspection date. A log of the dates, conditions and results of the inspections conducted in accordance with the schedule, as well as corrective actions taken in response to inspection results and results of these corrective actions, must kept onsite and made available to the District and its designated agents with reasonable notice during normal business hours.
	2. *Volume control facilities and contributing drainage areas* must be inspected every three months during the operational period (between spring snowmelt and first substantial snowfall) and monitored after rainfall events of 1 inch or more to ensure that the contributing drainage area is clear of litter and debris, inflow pipes and overflow spillways are clear, inlet areas are clean, undesirable vegetation is removed and there is no erosion impairing or threatening to impair the function of a facility. If sediment has accumulated in a infiltration feature, within 30 days of inspection deposited sediments must be removed, the infiltration capacity of the underlying soils must be restored, and any surface disturbance must be stabilized. Inspection must ensure that sediment traps and forebays are trapping sediment and that more than 50 percent of the storage volume remains, the contributing drainage area is stable (i.e., no erosion is observed), and inlets and outlet/overflow spillways are in good condition with no erosion. Maintenance techniques used must protect the infiltration capacity of the facility by limiting soil compaction to the greatest extent possible (e.g., by using low-impact earth-moving equipment).
		1. In addition, *rain gardens* must be kept clean of excess sediment and debris. Healthy plant growth must be maintained in rain gardens by removing dead vegetation in the spring of each year, and the top two to five inches of media must be removed and replaced every three to five years so as not to impede filtration of sediment and oils.
	3. *Pervious pavers and pervious concrete* must be inspected at least once each year after a major storm and otherwise annually; surface openings must be vacuumed in dry weather to remove any dry, encrusted sediment; and broken units that impair the structural integrity of the surface must be replaced. If water stands in the facility for an extended period, base materials must be replaced.
	4. *Swales and pervious* *areas* must be preserved in perpetuity in a pervious, vegetated state.
	5. *Underground storage chambers* must be inspected at least once a year to ensure that adequate storage capacity remains. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of its original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be cleared of any flow impediments.
	6. *Proprietary systems and facilities* must be maintained in accordance with the manufacturer and installer specifications and recommendations attached to and hereby incorporated into this declaration as terms hereof.
	7. *Grit chambers, sump catch basins, sump manholes, outlet structures, culverts, outfall structures and other stormwater facilities for which maintenance requirements are not otherwise specified herein* must be inspected in the spring, summer and fall of each year. Within 30 days of the inspection date, all accumulated sediment and debris must be removed such that each stormwater facility operates as designed and permitted. Contributing drainage areas must be kept clear of litter and vegetative debris, inflow pipes and overflow spillways kept clear, inlet areas kept clean, and undesirable vegetation removed. Erosion impairing the function or integrity of the facilities, if any, will be corrected, and any structural damage impairing or threatening to impair the function of the facilities must be repaired.
2. **Waterbody Crossings.** The waterbody crossing(s) labeled and shown in Exhibit A must be maintained in good repair at all times to ensure no material degradation from designed hydraulic and navigational capacity; to assure no net increase in the flood stage on adjacent property; to prevent adverse effects to 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. **Street Sweeping**. Declarant must sweep all public and community streets, ways and parking areas within the Property, as delineated in Exhibit A, at least twice each year, in the spring following snowmelt and in the fall after leaf fall.
4. **Violation**. NMCWD may seek any remedy in law or equity against Declarant as long as Declarant owns the Property and thereafter against the property owner for a violation of this declaration.
5. **“Property owner”** as used in this declaration means the owner of the Property or a lot or outlot of record within the Property to which a maintenance obligation herein applies.
6. **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.

*(Signature page follows.)*

**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) |  |
| [NOTARY SIGNATURE BLOCK & STAMP] |  |
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|  |  |

This Instrument Was Drafted By:

[INSERT NAME AND ADDRESS OF WHOEVER COMPLETED THE TEMPLATE ON BEHALF OF PERMIT APPLCIANT; THIS SECTION MAY NOT BE FILLED OUT WITH “Nine Mile Creek Watershed District.”]

**CONSENT AND SUBORDINATION**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Minnesota corporation, the holder of a [TYPE OF SECURITY, e.g., mortgage] dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, filed for record with the [Recorder/Registrar] of Hennepin County, Minnesota on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Document No. \_\_\_\_\_\_, hereby consents to the recording of the attached Declaration and agrees that its rights in the property affected by the Declaration must be subordinated thereto.

 **IN WITNESS WHEREOF**, \_\_\_\_\_\_\_\_\_\_, a Minnesota corporation, has caused this consent and subordination to be executed this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 201\_\_.

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

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(company or organization)*

|  |  |
| --- | --- |
| 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).*

|  |  |
| --- | --- |
|  |  |
| [NOTARY SIGNATURE BLOCK & STAMP] |  |

**EXHIBIT A**

Scaled Site Plan