[maintain 4" top margin]

DECLARATION

 **THIS DECLARATION** is made this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , [description] (Declarant), in favor of the Brown’s Creek Watershed District, a body with purposes and powers pursuant to Minnesota Statutes chapters 103B and 103D (BCWD).

# RECITALS

 **WHEREAS**, Declarant is the owner of real property within the [City/Township] of \_\_\_\_\_\_\_\_\_, Washington County, Minnesota, platted and legally described as:

[legal description]

(the Property) and no one other than Declarant and [NAME(S) OF ADDITIONAL PARTIES HOLDING RECORDED INTERESTS (E.G., A MORTGAGE) IN THE PROPERTY; EACH MUST COMPLETE A Consent and Subordination], has any right, title or legal interest in the Property; and

 **WHEREAS**, the Property constitutes the entirety of the land to which BCWD permit no. \_\_\_\_\_\_\_\_ applies; and

 **WHEREAS**, Declarant desires to subject the Property to certain conditions and restrictions related to maintenance of facilities and site conditions required by the BCWD as a condition of issuance of permit no. \_\_\_\_\_\_\_\_\_ for the mutual benefit of the BCWD and Declarant.

 **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 as specified below and on the scaled site plan for the Property attached hereto and incorporated herein as Exhibit A will be maintained in perpetuity as follows:

1. **Buffers**. The following activities are prohibited within buffer area:

(a) Creating impervious cover.

(b) Excavating fill or placing fill or debris, except for temporary placement of fill or debris pursuant to duly-permitted work in the associated watercourse, in compliance with all conditions of the permit, and in compliance with the following:

(i) Compliance with BCWD erosion-control requirements, as articulated in BCWD Rule 3.0 – Erosion Control, irrespective of the area or volume of earth to be disturbed.

(ii) Buffer zones and the location and extent of vegetation disturbance must be delineated on a BCWD-approved erosion control plan.

(iii) Alterations must be designed and conducted to ensure only the smallest amount of disturbed ground is exposed for the shortest time possible. Mulches or similar materials must be used for temporary soil coverage and permanent native vegetation established as soon as possible.

(iv) Fill or excavated material may not be placed to create an unstable slope.

(v) When construction, land-altering activity, fill or excavation activity occurs within the outer zone, the boundary between the outer and middle zones must be demarcated with siltation or other fencing to prevent disturbance of vegetation within the middle zone. When construction, land-altering, fill or excavation activity occurs within the middle zone, the boundary between the middle and streamside zones must be demarcated with siltation or other fencing to prevent disturbance of vegetation within the streamside zone.

 (c) Altering vegetation, except for (i) vegetative enhancements, as approved in writing by BCWD; and (ii) the removal of invasive exotic species or of trees for disease control or revegetation. A tree larger than six inches in diameter at a point two feet above the ground may be removed only on written authorization from BCWD on a determination that the function of the buffer will not be diminished. In the middle zone of the buffer, as designated on Exhibit A, dead trees, limbs or branches may be removed from the buffer for any reason and without separate specific BCWD approval.

(d) Applying phosphorus-containing fertilizers, except on written authorization from BCWD on a determination that phosphorus application is appropriate and will not injure the waterbody.

(e) Locating roads or utilities, except pursuant to a crossing of the associated watercourse in accordance with a BCWD permit. Structures and appurtenances associated with the road or utility must not be located within the streamside zone unless no feasible alternative exists. Outlet, flood control and stormwater treatment facilities may be located within the zone if so approved by BCWD in writing.

(f) The Outer Zone, as shown on Exhibit A, only following restrictions apply:

(i) No impervious cover may be created.

(ii) Fill may or excavation, except in accordance with the provisions of subsection 1(b) above and other applicable law.

(g) Permanent buffer monuments must be maintained in the locations shown on Exhibit A.

1. **Stormwater Facilities.** The stormwater management facilities shown and labeled in Exhibit A and identified below must be maintained as follows:

[list stormwater management facilities]

(the Facilities).

1. **Stormwater retention and treatment basins.** All stormwater retention and treatment basin(s) must be inspected at least once a year to determine that basin retention and treatment characteristics are adequate. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by ½ of its original design volume. Based on this inspection, if a stormwater basin is identified for sediment cleanout, the basin shall be restored to its original design contours and vegetated state within one year of the inspection date.
2. **Grit chambers, sump catch basins, sump manholes, outlet structures, culverts, outfall structures and other stormwater facilities.** All 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.
3. **Volume control facilities and contributing drainage areas.** 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 practice, 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 half 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 conditions with no erosion. Maintenance techniques used must protect the infiltration capacity of the practice by limiting soil compaction to the greatest extent possible (e.g., by using low-impact earth-moving equipment).
4. **Rain gardens.** Rain gardens must be kept clean of excess sediment and debris. Healthy plant growth must be maintained in the rain gardens by removing dead vegetation in the spring of each year.
5. **Pervious pavers and pervious concrete.** 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 dry, encrusted sediment as necessary; and broken units that impair the structural integrity of the surface must be replaced. If water stands for an extended period, base materials must be replaced.
6. **Underground storage chambers.** 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 half of its original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be cleared of any flow impediments.
7. **Swales and Pervious Areas.** Swales and pervious areas must be preserved in perpetuity in a pervious, vegetated state.
8. **Drainage and flowage.** Construction of any obstruction materially impeding stormwater flow to a stormwater facility or facilities is prohibited.
9. **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.
10. **Non-phosphorus Fertilizer**. The use of fertilizers containing phosphorus is prohibited on the Property. Only fertilizers that do not contain phosphorus may be applied thereon.
11. **Street Sweeping.** All public and community streets, ways and parking areas within the Property will be swept at least twice each year, in the spring following snowmelt and in the fall after leaf fall.
12. **Written Report.** Property owner will submit to the BCWD annually a brief written report that describes the maintenance activities performed under this Declaration, including dates, locations of inspections and the maintenance activities performed.
13. **“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.
14. **Violation.** BCWD 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 for a violation of this declaration.
15. **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:**

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

[name, and company and representative capacity, if applicable]

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

[name, and company and representative capacity, if applicable]

**STATE OF MINNESOTA )**

 **)ss.**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_ )**

 The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

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

 Notary Public

This instrument was drafted by:

**CONSENT AND SUBORDINATION**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Minnesota corporation, the holder of a [type of security or other legal interest in the property] dated \_\_\_\_\_\_\_\_\_, 20\_\_, filed for record with the County [Recorder/Registrar] of Washington 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 will be subordinated thereto.

 **IN WITNESS WHEREOF**, \_\_\_\_\_\_\_\_\_\_, a Minnesota corporation, has caused this consent and subordination to be executed this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_.

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

 a Minnesota corporation

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

 Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**STATE OF MINNESOTA )**

 **) ss.**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_ )**

 The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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

 Notary Public