

ENCROACHMENT AGREEMENT

This Encroachment Agreement (the “Agreement”) is made as of this ____ day of _____, 2016, by and between the city of Tonka Bay, a Minnesota municipal corporation (the “City”) and Jerry D. Martin, _____(the “Owner”).

RECITALS

A. The Owner owns the property located at 10 Crabapple Lane and which is legally described on Exhibit A attached hereto (the “Owner’s Property”); and

B. The City owns undeveloped park property at _____ which is adjacent to the Owners’ Property and which is legally described on Exhibit B attached hereto (the “Park Property”); and

C. The Owner has applied to the Lake Minnetonka Conservation District (the “LMCD”) for a variance to install a dock (the “Encroachment”) that would encroach into a portion of the Park Property (the “Encroachment Area”). A schematic drawing of the Encroachment Area is attached as Exhibit C to this Agreement and

D. The City is willing to allow the Encroachments on the Park Property subject to the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, on the basis of the premises and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

1. The City grants the Owner the right to encroach into the Encroachment Area for the sole purpose of maintaining the Encroachments. The permission granted by the City under this Agreement is limited exclusively to such

purpose. This Agreement only creates a licensee to maintain the Encroachment and does not create any interest in real property.

2. The Owner agrees to maintain in good repair the Encroachment.
3. This Agreement shall not prevent or impair the City from using the Encroachment Area for any use that it is entitled to as the fee owner of the Park Property.
4. This Agreement shall be for an indefinite term and continue until terminated by one of the parties. Either party may terminate this Agreement at any time for any reason, with or without cause, by providing prior written notice to the other at least 30 days in advance of the effective date of termination.
5. Before the effective date of termination, the Owners shall remove the Encroachment from the Encroachment Area at their sole cost and expense, and shall return the Encroachment Area to its preexisting condition or better, unless otherwise directed by the City.
6. If the Owners fail to remove the Encroachment or to return the Encroachment Area to its preexisting condition upon termination of this Agreement, the City may enter the Encroachment Area and the Owner's Property and remove the Encroachment. The Owner hereby grants the City a temporary easement for purposes of entering their Property in order to remove the Encroachment. The Owner agrees that all costs incurred by the City in removing the Encroachment, including administrative and reasonable legal costs, may be assessed against the Property up to a maximum amount of \$15,000. The Owner understands that the exact amount of the assessments cannot be determined at the present time. The Owner waives notice of hearing and hearing on the special assessments. The Owner waives all right to appeal or otherwise contest or challenge the levy of the special assessments. The Owner further agrees that any requirements of Minnesota Statutes, Chapter 429 relating to special assessments are waived to the extent that such requirements are not met.
7. The Owner shall indemnify, hold harmless and defend the City, its officials, employees, contractors and agents, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs or expenses (including reasonable attorneys' fees), arising from or in connection with or caused by any act, omission or negligence of the Owner, its contractors, licensees, invitees, agents, servants or employees in connection with the maintenance or removal of the Encroachments. In addition, the Owner shall indemnify, hold harmless and defend the City, its officials, employees, contractors and agents, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs or expenses (including reasonable attorneys' fees) caused by an injury to a member of the public caused by the Encroachment.

8. The Owner agrees not to suffer or allow any liens or claims to be placed against the City's rights to or interest in the Park Property as a result of the use of the Encroachment Area, including, without limitation, any liens for labor or materials provided for the maintenance or removal of the Encroachment.
9. Nothing contained in this Agreement shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Any claims shall be subject to the City's governmental immunity defenses and the maximum liability limits provided in Minnesota Statutes, Chapter 466.
10. This Agreement shall run with the Owner's Property. The duties and obligations of the Owner under this Agreement shall also be the duties and obligations of the Owner's successors and assigns.
11. This Agreement shall be governed by and construed and enforced in accordance with the laws of Minnesota.
12. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
13. Any modification of this Agreement shall be binding only if evidenced in writing signed by both parties.
14. Required notices to the parties to this Agreement shall be in writing, and shall either be hand delivered or mailed to the following addresses:
 - a) As to the City:
 - City of Tonka Bay
 - 4901 Manitou Road
 - Tonka Bay, MN 55331
 - Attn: City Administrator
 - b) As to the Owners:
 - Jerry D. Martin
 - 10 Crabapple Lane
 - Tonka Bay, MN 55331

or at such other address as either party may from time to time notify the other in writing.

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

CITY OF TONKA BAY

By: _____
Gerry De La Vega, Mayor

By: _____

Lindy Crawford, City Administrator-
Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____ 2016, by Gerry De La Vega and Lindy Crawford, the mayor and city administrator-clerk, respectively, of the city of Tonka Bay, a Minnesota municipal corporation, on behalf of the city.

Notary Public

OWNERS

Jerry D. Martin

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Jerry D. Martin.

Notary Seal

This document was drafted by:

Kennedy & Graven, Chartered (AMB)
470 U.S. Bank Plaza
200 South Sixth Street, Suite 470
Minneapolis, MN 55402

EXHIBIT A

Legal Description of Owner's Property

Lot 10, Crescent Beach Addition, Hennepin County, Minnesota

EXHIBIT B

Legal Description of Park Property

Commencing At Northwest Corner Of Auditor's Subdivision No 274 thence Westerly to a Point 183 Ft East of the centerline of Manitou Avenue, thence Southerly 100 Feet thence Westerly To centerline of said Avenue thence Southerly along centerline of said Avenue to a line parallel with and 579 feet North of Southerly line of Government Lot 2 thence Easterly to East line of said Lot, thence Northerly along East line of said lot to Southeast corner of Auditor's Subdivision No. 274, thence Westerly to Southwest corner thereof thence Northerly to beginning except Manitou Avenue.

