

**STORMWATER FACILITIES MAINTENANCE AGREEMENT  
AND RESTRICTIVE COVENANT**

This Stormwater Facilities Maintenance Agreement and Restrictive Covenant (this "**Maintenance Agreement and Restrictive Covenant**") is made this 27 day of OCT, 2015, by and between the City of Tonka Bay, a Minnesota municipal corporation, having its principal offices at 4901 Manitou Road, Tonka Bay, Minnesota 55331 (the "**City**"), and Robert L Steele & Suzanne M Steele, the current property owner(s) at 160 Sunrise Avenue, Tonka Bay, Minnesota 55331, (the "**Owner**" or "**Robert L Steele & Suzanne M Steele**"). The City and Owner are sometimes collectively referred to hereafter as the "**Parties**".

**RECITALS**

**WHEREAS**, Robert L Steele & Suzanne M Steele are the owners of fee title or a substantial beneficial interest in certain real property commonly described as 160 Sunrise Avenue, in the City of Tonka Bay, Hennepin County, Minnesota (the "**Property**") and legally described in Exhibit A, attached hereto and incorporated herein by this reference; and

**WHEREAS**, in connection with the Owner's proposed development of the Property, the City has required and the Owner has agreed to construct a stormwater collection and stormwater quality treatment system (the "**Detention System**"); and

**WHEREAS**, such Detention System is described in the plan dated October 22, 2015 prepared by Gronberg & Associates, Inc. for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference ("**Detention System Plan**"); and

**WHEREAS**, as a condition of project approval, the parties have entered into this Maintenance Agreement and Restrictive Covenant, in order to ensure that the Detention System will be constructed and maintained in accordance with the approved plans and the City's development standards;

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**TERMS**

**Section 1. Construction and Maintenance.** Owner agrees to construct and maintain a stormwater collection and detention system on the Property, as shown on the Detention System Plan. Owner agrees to maintain and preserve the Detention System in keeping with governmental standards until such time as the City, its successors or assigns, reasonably determines that the Detention System requires modification or enhancement to properly attenuate stormwater collection and retention at the Property.

**Section 2. No Modification or Removal.** No part of the Detention System shall be dismantled, revised, altered, or removed, except as necessary for maintenance, repair, or replacement, or to meet prevailing governmental standards for stormwater attenuation at the Property.

**Section 3. Access.** The City shall have the right to ingress and egress over those portions of the Property described in Exhibit A in order to access the Detention System for inspection and to reasonably monitor system performance, operational flows, or defects. Except in the case of emergencies, the City agrees to limit its inspection rights to normal business hours.

**Section 4. Reporting.** The Owner shall be responsible for inspecting and maintaining the stormwater treatment and conveyance system, at minimum, on an annual basis. The Owner shall provide a letter to the City Engineer, by September 1<sup>st</sup> of each year, stating that inspection and maintenance have been completed (the "**Inspection Report**").

**Section 5. Repairs, Failure of Owner to Maintain.** If at any time the City Engineer does not receive the Inspection Report, and the City determines that maintenance or repair work is required to be performed on the Detention System, the City Engineer or his/her designee shall give written notice to the Owner of the system deficiency(ies). The City Engineer shall also set a reasonable time in which the Owner shall cause to have performed the necessary repairs. If the repair or maintenance required by the City Engineer is not completed within the time set by him/her, the City may perform the required maintenance and/or repair, all at the Owner's expense. Written notice will be sent to the Owner, stating the City's intention to perform such repair or maintenance, and such work will not commence until at least 15 days after such notice is mailed, except in situations of emergency. If, within the sole discretion of the City Engineer, there exists an imminent or present danger to the Detention System, the City's facilities, or the public health and safety, such 15-day period will be waived and maintenance and/or repair work will begin immediately.

**Section 6. Cost of Repairs and/or Maintenance.** The Owner shall assume all responsibility for the cost of any maintenance and repairs to the Detention System, including all associated engineer's fees, attorney's fees and administrative costs. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest at the then-current legal rate, as liquidated damages.

**Section 7. Notice to City of Repairs and/or Maintenance.** The Owner is hereby required to obtain written approval from the City Engineer prior to performing any repairs, modifications, or alterations to the Detention System.

**Section 8. Rights Subject to Permits and Approvals.** The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Maintenance Agreement and Restrictive Covenant.

**Section 9. Terms Run with the Property.** The terms of this Maintenance Agreement and Restrictive Covenant are intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

**Section 10. Notice.** All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt of three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

**To the City:**

City Administrator  
City of Tonka bay  
4901 Manitou Road  
Tonka Bay, MN 55331

And

City Engineer  
City of Tonka bay  
4901 Manitou Road  
Tonka Bay, MN 55331

**To the Owner:**

Robert L Steele & Suzanne M Steele  
160 Sunrise Avenue  
Tonka Bay, Minnesota 55331

**Section 11. Severability.** Any invalidity, in whole or in part, of any provision of this Maintenance Agreement and Restrictive Covenant shall not affect the validity of any other provision.

**Section 12. Waiver.** No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

**Section 13. Integration.** This Maintenance Agreement and Restrictive Covenant constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

**Section 14. Modification.** This Agreement may be terminated, amended or modified only by recording with the County Recorder for Hennepin County, Minnesota, a document executed by the parties (or their respective successors and assigns) representing their unanimous consent to such amendment or modification. This consent may require City Council action.



**CITY OF TONKA BAY:**

By: \_\_\_\_\_  
Gerry De La Vega, Mayor

By: \_\_\_\_\_  
Lindy Crawford, City Administrator

**ACKNOWLEDGEMENT**

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF HENNEPIN        )

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Gerry De La Vega, Mayor of the City of Tonka Bay, a Minnesota municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
(signature of notarial officer)

My commission expires: \_\_\_\_\_

(stamp)

**ACKNOWLEDGEMENT**

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF HENNEPIN        )

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Lindy Crawford, City Administrator of the City of Tonka Bay, a Minnesota municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
(signature of notarial officer)

My commission expires: \_\_\_\_\_

(stamp)

**THIS INSTRUMENT WAS DRAFTED BY:**  
Justin Messner, PE – City Engineer  
WSB & Associates, Inc.  
477 Temperance Street  
St. Paul, MN 55101

**EXHIBIT A**

**LEGAL DESCRIPTION**

Street Address: 160 Sunrise Avenue  
PID: 21-117-23-24-0058  
Municipality: Tonka Bay  
Legal Description: I.C. Seeley and N.F. Griswold's Amendment and First Addition to  
Minnetonka Lake Park, Lot 39

**EXHIBIT B**

**APPROVED DETENTION SYSTEM PLAN**



GRONBERG & ASSOCIATES, INC.

SURVEYING, ENGINEERING AND LAND PLANNING

445 N. WILLOW DRIVE

LONG LAKE, MINNESOTA 55356

952-473-4141

FAX: 952-473-4435

ROBERT STEELE

RAIN GARDEN CALCULATIONS

October 22, 2015

EAST RAIN GARDEN

Existing hardcover running to rain garden = 714 SF

1" runoff over 714 SF = 60 C.F. required

Rain garden volume

<u>ELEV(FT)</u>	<u>AREA(SF)</u>	<u>VOL(CF)</u>
932.5	175	
		> 66
932.0	90	

WEST RAIN GARDENS

Existing & proposed hardcover running to both west rain gardens = 1179 SF

1" runoff over 1179 SF = 98 C.F. of volume required

NW rain garden

SW rain garden

<u>ELEV(FT)</u>	<u>AREA(SF)</u>	<u>VOL(CF)</u>	<u>ELEV(FT)</u>	<u>AREA(SF)</u>	<u>VOL(CF)</u>
932.0	140		932.0	130	
		> 50			> 49
931.5	90		931.5	65	

Total = 99 CF



**Remodel of 160 Sunrise Avenue, Tonka Bay, Minnesota; Robert Steele-“Narrative”**

- a. “The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.”

**In regards to this remodel, and in addressing each item below from here on out the “drawings” shall refer to the updated survey provided by Gronberg & Associates.**

**The remaining impervious surfaces will be slightly sloped in a way for the storm water to drain away from the structure and into the depression gardens shown on either side of the existing driveway and also on the front or lake side of the property. Use of rain gutters and down spouts in conjunction with drain tile will also direct storm water away towards the slope of the depression gardens.**

- b. “Storm water treatment measures including, but not limited to, sediment basins (debris basins), desilting basins or silt traps, installation of debris guards, and microsilt basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and Minnehaha Creek Watershed District on projects where applicable.”

**As shown on the “drawings,” silt fencing will be utilized on all four sides of the property, excluding the existing driveway which will consist of rock to eliminate the movement of soil onto the roadway. The existing driveway will be used as the construction entrance. By adding in the depression gardens on both the front and rear sides of the property, any storm water that incurs will drain away from the house but not into the roadway or the lake, but rather into the garden depressions to be absorbed by the vegetation that will be planted within.**

- c. “Projects shall be analyzed by the City in terms of provisions for maintenance and enhancement of landscape features, change in the natural condition of the soil, removal of trees, grade courses and marshes. The la shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting as many trees as possible which are proposed to be removed.”

**With regards to this remodel, there shall be minimal changes made to the grade and slope of the property except those involving the storm water to flow into the depression gardens. Drain tile shall be installed around the new concrete footings to eliminate any water from penetrating into the home. There are to be no removal of any existing trees within the property, and any tree located on the property will have a protective fence surrounding it equal to 1 foot per 1 inch of width on that tree measured at breast height, or 4 foot 6 inches from grade.**

- d. "Projects shall be analyzed by the City in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which façade and roof materials minimize the appearance and blend the structure into the Shoreland and vegetation."

**Building materials used for this remodel will remain as close to natural surrounding materials as possible. Wood grain siding will be used for the siding. All soffit, fascia, and trims will be painted white. Roofing will be a neutral colored shingles.**

### WATER RESOURCE PERMIT APPLICATION FORM

Use this form to notify/apply to the Minnehaha Creek Watershed District (MCWD) of a proposed project or work which may fall within their jurisdiction. Fill out this form completely and submit with your site plan, maps, etc. to the MCWD at:  
15320 Minnetonka Blvd. Minnetonka, MN 55345.

Keep a copy for your records.

**YOU MUST OBTAIN ALL REQUIRED AUTHORIZATIONS BEFORE BEGINNING WORK.**

1. Name of each property owner: Robert Steele  
Mailing Address: 160 Sunrise Ave. City: Tonka Bay State: MN Zip: 55331  
Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

2. Property Owner Representative Information (not required) (licensed contractor, architect, engineer, etc...)  
Business Name: 4 Square Builders Inc. Representative Name: Prston Fox  
Business Address: 2718 9th St. East City: Glencoe State: MN Zip: 55336  
Email Address: 4square@embargoemail.com Phone: 320-864-6183 Fax: \_\_\_\_\_

3. Project Address: 160 Sunrise Ave. City: Tonka Bay  
State: MN Zip: 55331 Qtr Section(s): \_\_\_\_\_ Section(s): \_\_\_\_\_ Township(s): \_\_\_\_\_ Range(s): \_\_\_\_\_  
Lot: 039 Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_ PID: 27-117-23-24-0058

4. Size of project parcel (square feet or acres): 41600 Square feet 41.7 out (21.7)  
Area of disturbance (square feet): 708 ft<sup>2</sup> Volume of excavation/fill (cubic yards): 20 fill back  
Area of existing impervious surface: 1650 ft<sup>2</sup> (35,871) Area of proposed impervious surface: 1893 ft<sup>2</sup> (41,151)  
Length of shoreline affected (feet): None Waterbody (& bay if applicable): Echo Bay, Gideon Bay

5. Type of permit being applied for (Check all that apply):  
 EROSION CONTROL  WATERBODY CROSSINGS/STRUCTURES  
 FLOODPLAIN ALTERATION  STORMWATER MANAGEMENT  
 WETLAND PROTECTION  APPROPRIATIONS  
 DREDGING  ILLICIT DISCHARGE  
 SHORELINE/STREAMBANK STABILIZATION

6. Project purpose (Check all that apply):  
 SINGLE FAMILY HOME (Remodel)  MULTI FAMILY RESIDENTIAL (apartments)  
 ROAD CONSTRUCTION  COMMERCIAL or INSTITUTIONAL  
 UTILITIES  SUBDIVISIONS (include number of lots)  
 DREDGING  LANDSCAPING (pools, berms, etc.)  
 SHORELINE/STREAMBANK STABILIZATION  OTHER (DESCRIBE): \_\_\_\_\_

7. NPDES/SDS General Stormwater Permit Number (if applicable): \_\_\_\_\_

8. Waterbody receiving runoff from site: Minnetonka Lake

9. Project Timeline: Start Date: Nov. 20, 2015 Completion Date: June 1, 2016

Permits have been applied for: City  County  MN Pollution Control Agency  DNR  COE   
Permits have been received: City  County  MN Pollution Control Agency  DNR  COE

By signing below, I hereby request a permit to authorize the activities described herein. I certify that I am familiar with MCWD Rules and that the proposed activity will be conducted in compliance with these Rules. I am familiar with the information contained in this application and, to the best of my knowledge and belief, all information is true, complete and accurate. I understand that proceeding with work before all required authorizations are obtained may be subject to federal, state and/or local administrative, civil and/or criminal penalties.

X Robert Steele  
Signature of Each Property Owner Robert Steele

10/23/2015  
Date

**Erosion Control Supplemental Information**

**Final Stabilization** will be provided with (seed, sod, etc): sod  
and 6 inches of topsoil will be added/replaced prior to final stabilization.

**Concrete Washout:** Location of concrete washout  
 Off site     Indicated on site plans     Other (description):     Contained on truck:

**Vegetation:** Protective fencing will be installed as necessary so as to exclude all fill and equipment from the drip line or critical root zone, whichever is greater, of all vegetation to be retained.  
 Yes     Not Applicable     Other (description):

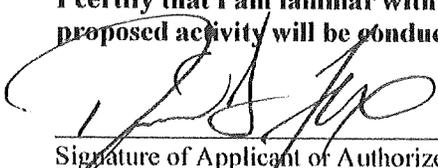
**Inspections:** An erosion control inspection plan is required for all projects. The inspection requirements are as follows:

- 1) *The individual identified as being responsible for implementing the erosion control plan must routinely inspect the construction site once every seven days during active construction and within 24 hours after a rainfall event greater than 0.5 inches in 24 hours.*
- 2) *All inspections and maintenance conducted during construction must be recorded in writing and these records must be retained with the erosion control plan and made available at the District's request within 24 hours. Records of each inspection and maintenance activity shall include:*
  - i. *Date and time of inspections;*
  - ii. *Name of person conducting inspections;*
  - iii. *Findings of inspections, including recommendations for corrective actions;*
  - iv. *Corrective actions taken (including dates, times and party completing maintenance activities); and*
  - v. *Date and amount of all rainfall events greater than 0.5 inches in 24 hours.*

Provide the following information for the primary individual responsible for implementing the erosion control plan:

Name Preston Fox  
Organization 4 Square Builders, Inc.  
Phone 320-864-6183    Alternate Phone 320-583-8712  
Email 4square@emburgmail.com

**I certify that I am familiar with the requirements of the MCWD Erosion Control Rule and that the proposed activity will be conducted in compliance with this rule.**

  
\_\_\_\_\_  
Signature of Applicant or Authorized Agent

10/21/15  
\_\_\_\_\_  
Date

## Application Checklist for Erosion Control Permit

To meet the permit application requirements of the Minnehaha Creek Watershed District's (MCWD) Erosion Control Rule, please refer to the following checklist and submit the required materials. This checklist is intended primarily as a guide for smaller projects such as single family homes. Additional materials may be required. See the complete Erosion Control Rule text for more details.

- A \$10.00 application fee payable to MCWD. Checks, Visa or Mastercard accepted.
- A completed Water Resource Permit Application Form with signatures (scanned or faxed signatures are acceptable).
- A site plan (11"x17" in size or smaller) that shows the following (see example):
  - Site property lines.
  - Existing and proposed elevation contours sufficient to show drainage on and adjacent to the site.
  - The site location in relation to surrounding roads, steep slopes, significant geographic features, buildings and other structures.
  - Identification and location of all water features and facilities on-site and within 1000 feet of the area to be disturbed including any lake, stream or wetland; any natural or artificial water diversion or detention area; any surface or subsurface drainage facility or stormwater conveyance; and any storm sewer catch basin within 100 feet and down-gradient of the area to be disturbed.
  - Identification of all receiving waterbodies and/or stormwater conveyance systems to which the site discharges.
  - Location of trees and vegetation to be retained (with required protective fencing noted).
  - Existing 100 year flood elevation, if applicable.
  - NA  Location of proposed grading or other land-disturbing activity and location of stockpiles. OFFSITE - HAUL AWAY
  - Quantities of soil or earth material to be removed, or stored on site, and area of land to be disturbed.
  - Location of on-site concrete washout area (if applicable - Impervious liner must be used and indicated on the site plan). *conc washed taken back to plant*
- Locations of proposed runoff control, erosion prevention, sediment control and temporary and permanent soil stabilization measures, including:
  - Perimeter control along all roads and trails (SILT FENCE)
  - Perimeter control at the bottom of all slopes leading off site or toward water resources.
  - NA  Perimeter control and/or cover around/on all large stockpiles. (None on site)
  - Crushed rock or existing paved construction entrance.

### NOTE:

- ✚ All erosion and sediment control measures must be in place before any land disturbing activity begins.
- ✚ Silt fence must be trenched in six inches and installed correctly (see figure).
- ✚ A permanent stabilization plan that states the following (can be written on site plan):
- ✚ Addition of at least 6" of topsoil to all disturbed areas.
- ✚ Method for establishing permanent vegetative cover (on the supplemental form).

### Please Note:

- ❖ Financial assurance is required for projects disturbing more than one acre.
- ❖ MCWD must be notified prior to any site dewatering.
- ❖ The permittee may be required to implement additional sediment/erosion control measures upon request from MCWD staff if at any time after the permit is issued, it is considered necessary for compliance with the Erosion Control Rule.