

**STORMWATER FACILITIES MAINTENANCE AGREEMENT
AND RESTRICTIVE COVENANT**

This Stormwater Facilities Maintenance Agreement and Restrictive Covenant (this "**Maintenance Agreement and Restrictive Covenant**") is made this ____ day of _____, 2012, 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 Chris P. Schmidt and Alison A. Schmidt, individuals currently residing at 5560 Manitou Road, Shorewood, Minnesota 55331, (the "**Owner**" or "**Schmidt**"). The City and Owner are sometimes collectively referred to hereafter as the "**Parties**".

R E C I T A L S

WHEREAS, Schmidt is the owner of fee title or a substantial beneficial interest in certain real property commonly described as 45 West Point 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 storm water collection and detention system (the "**Detention System**"); and

WHEREAS, such detention system is described in the Shoreland Impact Plan dated October 26, 2012 and shown on the proposed Site Survey and Landscape Plan dated October 24, 2012 prepared by the architecture firm of Eskuche Associates, LLC. for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference ("**Detention System Drawing**"); 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:

T E R M S

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 Drawing. Owner agrees to maintain and preserve the Detention System in keeping with manufacturer specification and 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 1st 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 Engineer
City of Tonka bay
4901 Manitou Road
Tonka Bay, MN 55331

To the Owner:

Chris P. Schmidt and Alison A. Schmidt
45 West Point Avenue
Tonka Bay, MN 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 registering with the Registrar of Titles for Hennepin County, Minnesota, a document executed by the parties (or their respective successors and assigns) representing their

EXHIBIT A

LEGAL DESCRIPTION

Street Address: 45 West Point Avenue
PID: 22-117-23-32-0016
Municipality: Tonka Bay
Addition: WEST POINT
Legal Description: THE SOUTHERLY 75 FEET OF LOT 9, WEST POINT,
HENNEPIN COUNTY, MINNESOTA

EXHIBIT B

APPROVED DETENTION SYSTEM PLAN

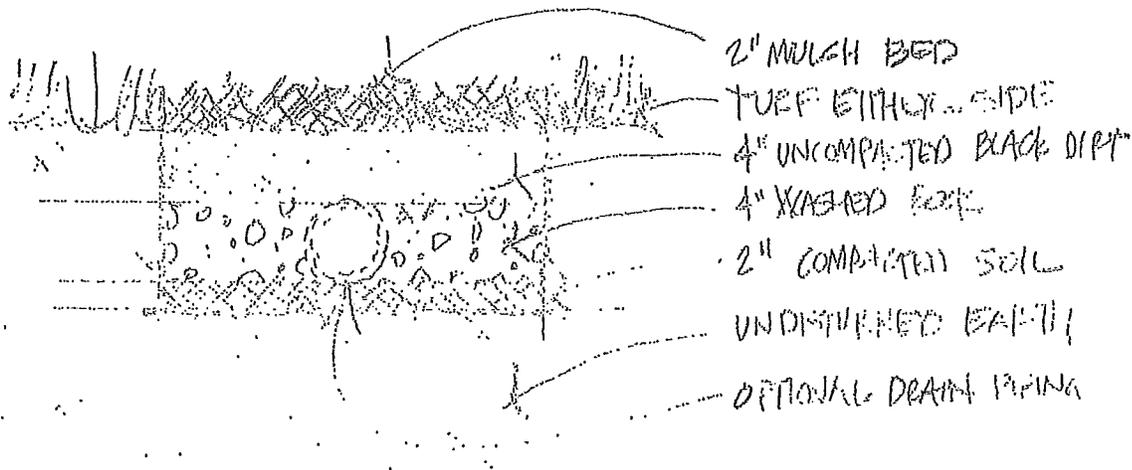
October 26th, 2012
Shoreland Impact Plan
45 West Point Avenue
Tonka Bay, Minnesota 55331

This proposal for a replacement home with attached garage is located on Lake Minnetonka and falls within the shoreland zoning district. The shoreland ordinance states that, where appropriate and where practices are in place for the treatment of storm water, impervious surface coverage of between thirty-six (36) percent to forty-five (45) percent may be allowed. This proposal of 43.4% impervious area falls within this criteria. This proposal reduces the existing impervious area of 45.8% by 2.4%. This reduction allows additional natural drainage and management of storm water on the site. Please refer to the proposed site plan for existing and proposed hardcover calculations and site conditions. Great care has been taken to improve upon the existing site conditions and impact on the shoreland area. The following summary describes the plan proposed to reduce shoreland impact as illustrated by the attached Landscape/Site plan and drawing below.

The property has minimal topographic pitch. This provides for a greatly reduced impact on the lake, allowing more time for absorption and filtration. The proposed home is .7' lower than the existing, decreasing the slope of the yard which further improves the absorption.

The proposed residence has less impervious surface and therefore, less impact than exists today. Today, there are multiple structures and large expanses of uninterrupted paved areas causing concentrated drainage flow. The proposed impervious surfaces are distributed to allow more space for drainage, not just decreased area.

To address storm water, care was taken to design special mulch planting beds. These beds will treat and contain storm water. They provide far more than just an attractive buffer in which shrubs and native plantings can reside. They have a unique soil/granular stratification that both helps with plant survival, but also has water holding capacity for severe rain events. A sample illustration of this mulch bed is shown below:



Due to the flatness of the site, there is little need for erosion control measures even for large scale rain events. The positioning and size of the mulch beds further reduces that need. During construction, siltation fencing will be positioned at the perimeter of the construction area which will manage storm water and maintain the site during construction.

There are only three trees on the site that will be impacted by construction of the proposed residence. Two of them are within the building envelope. They are located near the center of the property making this nearly unavoidable. This proposal provides for three Maple trees to replace these. Two of the three replacement trees will line the roadway. This will provide long term shade, color and beauty to the roadway which has a significant concentration of impervious surface and building structures. In addition, there is a dying Birch tree on the lake facing side of the yard. This will also be replaced with a native species Maple. To protect the existing site conditions, the remaining tree, which is not within the construction area will be protected from construction with orange protection fencing.

The proposed exterior materials on the house are natural. There is a combination of Stone, Natural stained cedar siding and warm, medium grey and brown accent colors. This will be in harmony with the mulch and plantings as well as the turf yard and compliment the shoreland view.

The Schmidt's have invested months designing, engineering, and carefully planning out the improvement of this property. Great care has been illustrated to mitigate shoreland runoff. The applicant has worked with the city's planning department diligently and on multiple occasions in a sincere effort to comply with its ordinances and codes. As a result of those meetings and discussions, this shoreland impact plan addresses all of the criteria outlined in section 1070.16 of the city code and supports the overall objective of the Shoreland district.

Thank you for your consideration.

Sincerely,
Peter Eskuche, AIA
Project Architect



Adam Burrington, Project Manager
18318 Minnetonka Boulevard
Deephaven, MN 55391
O: 952.544.3844 M: 612.799.8005
www.eskuche.com

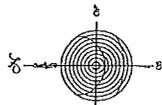
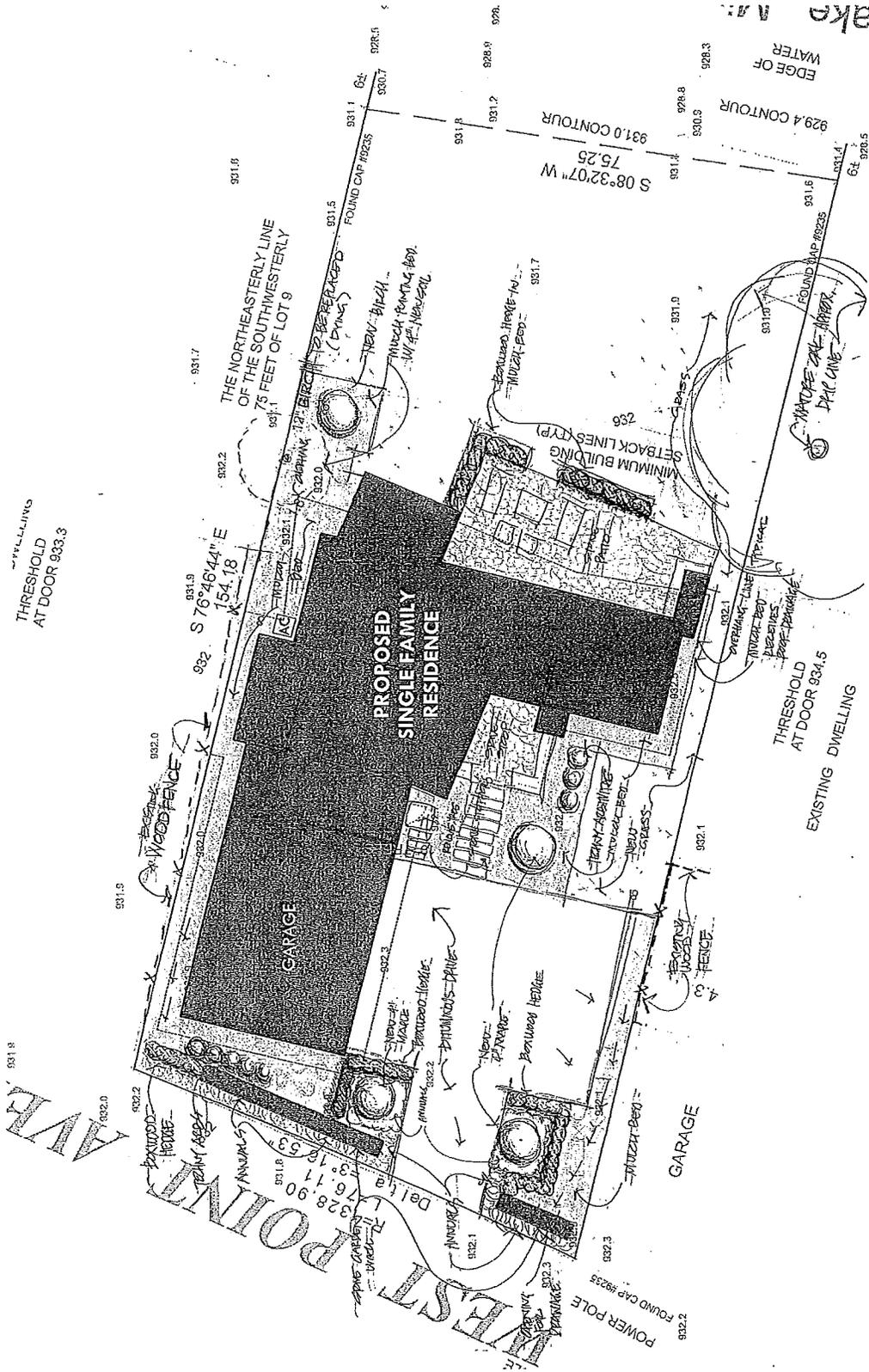
WEST POINT RESIDENCE

VARIANCE
APPLICATION
SET

24 October 2012

ESKUICHE
ARCHITECTURE

COPYRIGHT 2012



**PROPOSED
LANDSCAPE PLAN**
1/16" = 1'-0"

SITE ENGINEERING
PROVIDED BY:
ADVANCE SURVEYING &
ENGINEERING CO.
5300 S. HWY 101
MINNETONKA MN 55345

WEST POINT

RESIDENCE

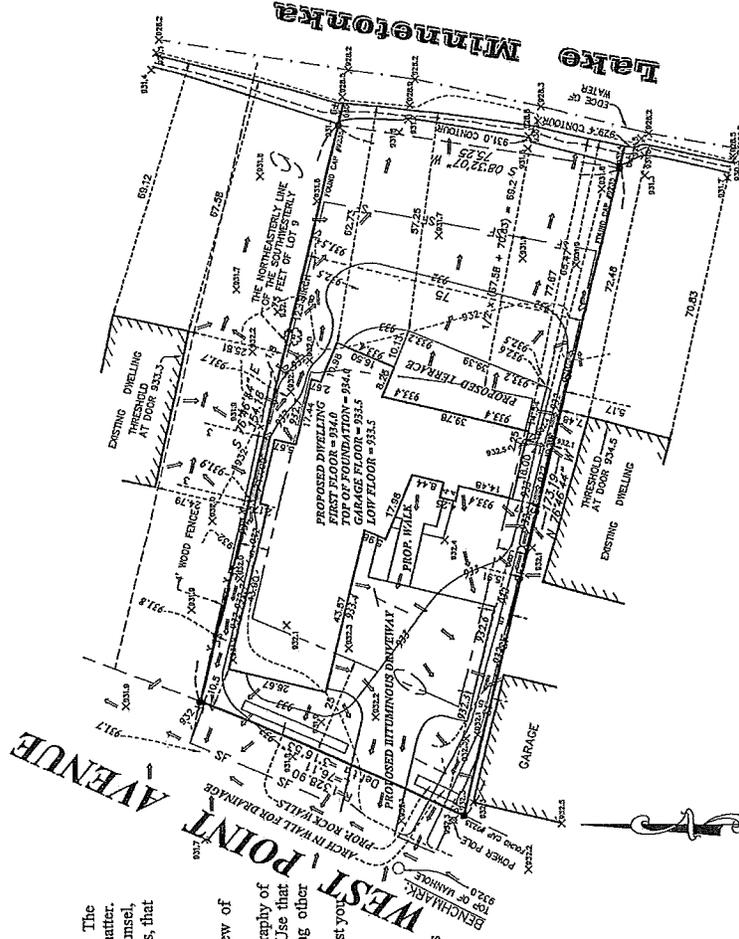
VARIANCE APPLICATION SET

24 October 2012

ESKUJOHE
ARCHITECTURE

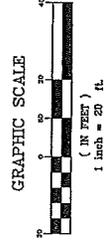
COPYRIGHT 2012

- LEGEND**
- DENOTES EXISTING SPOT ELEVATION
 - DENOTES PROPOSED SPOT ELEVATION
 - DENOTES EXISTING CONTOUR LINE
 - DENOTES PROPOSED CONTOUR LINE
 - DENOTES PROPOSED STORM FLOW
 - DENOTES PROPOSED SILT FENCE



PROPOSED SITE SURVEY NOT TO SCALE

120612 10 18 2012 A JP



120612 22/11/23 SCHMIDT, ALLISON
ADVANCE SURVEYING & ENGINEERING CO.
5300 S. Hwy. No. 101 Minnetonka, MN 55345 Phone (952) 474 7964 Fax (952) 225 0502
www.advvsur.com

SURVEY FOR: **ALLISON SCHMIDT**

SURVEYED: July, 2002
REVISED: September 19, 2012 to show topography. DRAFTED: July 15, 2012
REVISED: October 18, 2012 to show proposed dwelling, related improvements, grading, drainage and erosion control, proposed hardcover tabulation.

LEGAL DESCRIPTION:
The southwesterly 75 feet of Lot 9, WEST POINT, Hennepin County, Minnesota.

- SCOPE OF WORK:**
- Showing the length and direction of boundary lines of the above legal description. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct, and that any matters of record, such as easements, that you wish shown on the survey, have been shown.
 - Showing the location of existing improvements we deemed important.
 - Setting new monuments or verifying old monuments to mark the corners of the property.
 - Showing and tabulating hard cover and area of the lot for your review and for the review of such governmental agencies as may have jurisdiction over hard cover requirements.
 - Showing elevations on the site at selected locations to give some indication of the topography of the site. The elevations shown relate only to the benchmark provided on this survey. Use that benchmark and check at least one other feature shown on the map when determining other elevations for use on this site.
 - While we show the building setback lines per the City of Tonka Bay's web site, we suggest you show this survey to the appropriate city officials to be sure that the setback lines are shown correctly. Do this BEFORE you use this survey to design anything for this site.

STANDARD SYMBOLS & CONVENTIONS:
"●" Denotes 1/2" ID pipe with plastic plug bearing State License Number 9235, set, unless otherwise noted.

CERTIFICATION:
I hereby certify that this plan, specification, report or survey was prepared by me or under my direct supervision and that I am a licensed Professional Engineer and Professional Surveyor under the laws of the State of Minnesota.

James H. Parker
James H. Parker P.E. & P.S. No. 9235

EXISTING HARDCOVER		PROPOSED HARDCOVER	
House	1,742 Sq. Ft.	Garage	3,016 Sq. Ft.
Deck	882 Sq. Ft.	Driveway	882 Sq. Ft.
Ret. Walls	1,053 Sq. Ft.	Ret. Walls	1,103 Sq. Ft.
Driveway	423 Sq. Ft.	Driveway	423 Sq. Ft.
Driveway	38 Sq. Ft.	Driveway	38 Sq. Ft.
Driveway	5,840 Sq. Ft.	Driveway	5,840 Sq. Ft.
Driveway	12,769 Sq. Ft.	Driveway	12,769 Sq. Ft.
AREA OF LOT TO CHW	45.8%	AREA OF LOT TO CHW	45.4%
PERCENTAGE OF HARDCOVER TO LOT		PERCENTAGE OF HARDCOVER TO LOT	