

RESOLUTION NO. 24-040
Riley-Purgatory-Bluff Creek Watershed District
Board of Managers

Authorizing execution of cost share agreement with Minnesota Creekview Townhomes Association for the installation of a native habitat restoration project.

Manager _____ offered the following resolution and moved its adoption, seconded by
Manager _____:

WHEREAS Riley-Purgatory-Bluff Creek Watershed District's 2018 10-Year Watershed Management Plan identifies and allocates funding to implement a cost-share program to provide incentives for BMPs;

WHEREAS RPBCWD staff reviewed the application for the proposed habitat restoration and determined the project would meet RPBCWD goals to minimize the negative impacts of erosion and sedimentation, to minimize pollutant loading to water resources, and to promote infiltration to reduce runoff, improve water quality, and promote aquifer recharge.

NOW THEREFORE BE IT RESOLVED that the RPBCWD Board of Managers authorizes the administrator, with advice of counsel, to enter the attached contract with Minnesota Creekview Townhomes Association, substantially in the form of the attached, for a project cost not to exceed \$11,444.03 and three years of professional maintenance costs not to exceed \$2,025 as finalized with such nonsubstantive changes as are necessary to implement the intent of the managers.

The question was on the adoption of the resolution and there were _____ yeas and _____ nays as follows:

Yea Nay Abstain Absent

CRAFTON
DUEVEL
KOCH
PEDERSEN
ZIEGLER

Upon vote, the president declared the resolution _____.

Dated: June 5, 2024.

* * * * *

I, Tom Duevel, secretary of the Riley-Purgatory-Bluff Creek Watershed District, hereby certifies that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof, and further that the resolution is in full force and effect on this date, and Resolution 24-040 has not been modified, amended or rescinded since its adoption.

IN TESTIMONY WHEREOF, I set my hand this _____ day of _____, 2024

Tom Duevel, Secretary

MEMORANDUM

TO: Board of Managers
FROM: Eleanor Mahon
DATE: May 30, 2024
RE: Stewardship Grant Application for Minnesota Creekview Townhomes Association, Minnetonka

Minnesota Creekview Townhomes Association is located in the Purgatory Creek watershed northeast of the junction of Highway 101 and County Road 62 (see map).

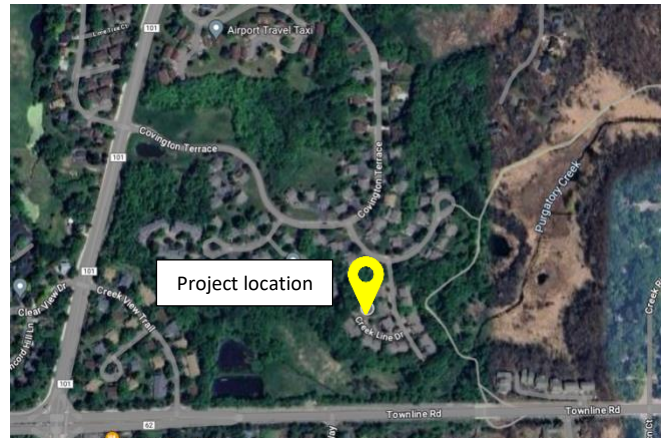
The applicant is proposing to install a 2,500-square-foot native habitat restoration on an eroded hillside.

The project will be installed by The Davey Tree Expert Company, a professional landscaping company in the Twin Cities. The association also intends to have professional maintenance performed on the project site by Davey.

Project installation cost is \$15,258.70 and includes site preparation, a one-time mulch application for soil protection, and installation of 565 native plants. The plant list includes 16 species including grasses, sedges, shrubs and forbs with bloom times distributed throughout the growing season. **A 75% cost share for installation is \$11,444.03.**

If installed in summer 2024, project maintenance will begin the same year with weekly visual reviews during regular HOA property maintenance, and at least 2 site maintenance visits per year. The 3-year professional maintenance contract is **\$2,700.00. A 75% cost share for professional maintenance is \$2,025.**

Total cost award for this project would be **\$13,469.03.**



**Exhibit A
Agreement**

DRAFT

RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT
Cost-Share Funding Agreement
Minnesota Creekview Townhomes Association

LOCATION: **6106 Creek Line Dr, Minnetonka, MN 55345**
PARCEL PIN: **3111722430153**

This cost-share agreement, for support of water resource protection and education through the Riley-Purgatory-Bluff Creek Watershed District Cost-Share Program, is entered into between the Riley-Purgatory-Bluff Creek Watershed District, a public body with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (RPBCWD), and Minnesota Creekview Townhomes Association (Owner), a private Minnesota nonprofit corporation and fee title owner of property described above (referred to collectively herein as “the Property”).

RPBCWD has determined that it will contribute cost-share funding for implementation of water resources-conservation practices in conjunction with a project that Owner has undertaken to install a 2,500-square-foot native habitat restoration. RPBCWD has determined the amount of funding that it will contribute to the design and implementation of the planting on the basis of the water-quality improvement, public education and demonstration benefits that will be realized. RPBCWD commits to reimburse Owner in accordance with the terms of this agreement.

1. Scope of Work

Owner will provide for installation of a native habitat restoration on the Property (the Project) in substantial conformance with the site plan, design and budget attached to and incorporated into this agreement as Exhibit A. To the extent there is any real or perceived conflict between a term of this agreement and Exhibit A, the terms of this agreement will prevail. On completion of installation of the Project, Owner must submit to RPBCWD a report that includes a narrative describing the installation of the Project, a description of and receipts documenting eligible costs incurred and in-kind contributions, a description of any changes made to the Project design and photographs documenting installation (Project Report). A final Project Report must be submitted to RPBCWD within 30 days of the completion of installation.

2. Contractor

Owner will select a contractor or contractors for the Project or install the Project itself, and Owner will ensure installation of the Project in substantial conformity with Exhibit A. In contracting for installation of the Project, Owner will ensure that no person is excluded from full employment rights or participation in or benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public-assistance status or national origin, and that no person protected by applicable federal or state laws, rules or regulations against discrimination is subject to discrimination.

3. Reimbursement

When RPBCWD has inspected the Project to confirm functionality and implementation in material conformity with Exhibit A and received from Owner:

- a. documentation that the maintenance declaration required by section 5 of this agreement has been filed for recordation; and
- b. an invoice and receipts documenting the Project costs, along with any completed reimbursement forms required by RPBCWD,

RPBCWD will reimburse Owner 75 percent or \$11,444.03, whichever is less, of Owner's eligible costs to design and install the Project. Reimbursement under this agreement of design and installation costs for the Project will not exceed a total of \$ 11,444.03.

RPBCWD, on receipt and approval of documentation (including receipts) and confirmation by RPBCWD of maintenance in substantial conformity with Exhibit B, will reimburse Owner 75 percent or \$2,025, whichever is less, of Owner's eligible costs of contracted qualified professional maintenance of the Project during the three years following Project installation. Reimbursement under this agreement for three years of professional maintenance of Project will not exceed a total of \$2,025.

RPBCWD will reimburse Owner within 45 days of receipt of the invoices and required accompanying documentation described above, unless the RPBCWD finds that the Project does not meet standards described herein for reimbursement, in which case RPBCWD will provide an explanation to Owner sufficient for Owner to timely cure the deficiency.

RPBCWD has determined that partial performance of obligations under section 1 of this agreement may confer no or limited benefit on RPBCWD. As a result:

- a. RPBCWD may withhold 10 percent of any reimbursement under this section 3 until RPBCWD has confirmed substantial completion of the Project; and
- b. if implementation, including vegetation establishment where specified, of the Project is not substantially completed in material conformance with the approved plans and specifications within two (2) years of the date this agreement is fully executed, subject to delays outside of Owner's control, RPBCWD will not be obligated to provide reimbursement to Owner under this agreement and may declare this agreement rescinded and no longer of effect. Notwithstanding, the parties will consult before RPBCWD elects to deny reimbursement or rescind the agreement.

4. Right of Access

Owner will permit RPBCWD representatives to enter the Property at reasonable times to inspect the work, ensure compliance with this agreement and monitor or take samples for the purposes of assessing the installation or performance of the Project and compliance with the terms of this agreement. If RPBCWD finds that an obligation under this agreement is not being met, it will provide 30 days' written notice and opportunity to cure, and thereafter may declare this agreement void. Owner will reimburse RPBCWD for all costs incurred in the exercise of this authority, including reasonable engineering, legal and other contract costs.

5. Maintenance

Exhibit B, a draft maintenance declaration for the Project, is attached to and incorporated into this agreement. The attached declaration requires Owner and its successors in interest to inspect and maintain the Project in accordance with Exhibit B. Within 30 days of the certification of completion of the Project by RPBCWD, Owner will complete a draft maintenance declaration materially conforming to Exhibit B and submit to RPBCWD for approval. After RPBCWD approves the declaration, Owner must execute and file the completed declaration with the county recorder or registrar, as appropriate, within 30 days, and submit documentation of recordation to RPBCWD. RPBCWD and its representatives may enter the Property at reasonable times to inspect the condition of the Project and confirm proper maintenance.

6. Acknowledgment and Publicity

Owner will cooperate with RPBCWD to seek publicity and media coverage of the Project, and to allow members of the public periodically to enter the Property to view the Project in the company of an RPBCWD representative. Owner will permit RPBCWD, at its cost and discretion, to place reasonable signage on Owner's property informing the general public about the Project and RPBCWD's cost-share program.

7. Independent Relationship; Indemnification

RPBCWD's role under this agreement is solely to provide funds to support the Project, in recognition of the maintenance, demonstration and dissemination of knowledge about innovative approaches to stormwater management. RPBCWD's review of design, plans and specifications notwithstanding, RPBCWD has no authority to select, nor has it had any role in selecting, the design, means, method or manner of performing any work or the person or firm who will perform the work necessary to implement the Project. Owner acts independently and selects the means, method and manner of implementing the Project. Review of any plans, specifications, design or installation by RPBCWD or its representative is solely for the purpose of establishing accountability for RPBCWD funds expended. Neither Owner nor Owner's contractor acts as the agent or representative of RPBCWD in any manner.

Owner will hold RPBCWD, its officers, board members, employees and agents harmless, and will defend and indemnify RPBCWD, with respect to all actions, costs, damages and liabilities of any nature arising from: (a) Owner's negligent or otherwise wrongful act or omission, or breach of to the degree that they are the result of Owner's, a subcontractor's or an assignee's negligence or the result of other action or inaction by Owner, a subcontractor or an assignee that is the basis for Owner, the subcontractor's or the assignee's liability in law or equity.

8. Remedies; Immunities

Only contractual remedies are available for a party's failure to fulfill the terms of this agreement. Notwithstanding any other term of this agreement, the District waives no immunities in tort. No action or inaction of a party under this agreement creates a duty of care for the benefit of any third party. This agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party.

9. Effective Date; Termination; Survival of Obligations; Authority

This agreement is effective when fully executed by all parties and expires 5 years thereafter. RPBCWD retains the right to void this agreement if the Project is not certified as substantially complete by June 7, 2025. RPBCWD may grant a request to extend the construction-completion period based on satisfactory explanation and documentation of the need for an extension. Upon issuance by RPBCWD of notice of RPBCWD's determination to void this agreement, Owner will not receive any further reimbursement for work subject to this agreement, unless RPBCWD extends the implementation-completion period.

All obligations that have come into being before termination, specifically including obligations under paragraphs 4, 5 and 6 will survive expiration.

Owner represents and covenants with RPBCWD that Owner is the only owner of fee title to the Property and is the sole possessor of the right to enter this agreement and convey the rights to use the Property described herein. Owner further warrants that there are no unrecorded mortgages, contracts for deed or other encumbrances that would impair Owner's ability to fulfill its obligations under this agreement. Further Owner represents and covenants that the individual executing the agreement on behalf of Owner is duly authorized to bind Owner to fulfill the obligations herein. Owner indemnifies RPBCWD and holds RPBCWD harmless for any breach of the provisions of this paragraph.

10. Compliance With Laws

Owner is responsible to secure all permits and comply with all other legal requirements applicable to the Project.

11. Notices

Any written communication required under this agreement shall be addressed to the other party as follows:

To RPBCWD:

Administrator
Riley Purgatory Bluff Creek Watershed District
18681 Lake Drive East
Chanhassen, MN 55317

To Owner:

Minnesota Creekview Townhomes Association
Attn: Bettie Halverson
6106 Creek Line Drive
Minnetonka, MN 55345

12. Waiver

RPBCWD's failure to insist on the performance of any obligation under this agreement does not waive its right in the future to insist on strict performance of that or any other obligation.

Notwithstanding any other term of this agreement, RPBCWD waives no immunities in tort. This agreement creates no rights in and waives no immunities with respect to any third party or a party to this agreement.

13. Venue and Jurisdiction

The agreement will be construed under and governed by the laws of the State of Minnesota. The appropriate venue and jurisdiction for any legal action hereunder will be Hennepin County, Minnesota.

{Signature page follows.}

DRAFT

Intending to be bound, the parties hereto execute and deliver this agreement.

Minnesota Creekview Townhomes Association

Date:

Bettie Halverson

Its Vice President

RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT

By _____

Date _____

Terry Jeffery

Administrator

DRAFT

Exhibit A
Site Design, Plans and Native Plant List

DRAFT



Proposal

Davey Landscape

Client Name: MN Creekview Townhomes
Project Name: 2024 HILLSIDE LANDSCAPE PROJECT
Jobsite Address: 6106 Creek Line Road Minnetonka, MN 55345 **Billing Address:** 6106 Creek Line Road Minnetonka, MN 55345
Estimate ID: EST4383174
Date: Feb 13, 2024

MN Creekview,

THANK YOU for allowing Davey Landscape to quote your 2024 HILLSIDE project.

Please review the proposal and scope of work.

If you have any questions or thoughts please contact me at:

651-332-9988

or

jeff.allen1@davey.com

Jeff Allen

2024 HILLSIDE WITH PLUGS	\$15,258.70
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To install your 2024 HILLSIDE PROJECT WITH NATIVE PLANTS WILL INCLUDE:

- Removal of lawn on hillside
- Disposal of lawn
- No soil will be removed
- Will cultivate 6" of existing soil with rakes and drag behind rake for Dingo
- Plantings of said plants
- Location of plants will be done with the plan in mind
- Specific locations of plants will TBD on site
- Create natural edge around the perimeter to hold in wood mulch
- Spread natural shredded wood mulch with no fabric between plants

1	EA	Hillside removal of lawn and prep of soil	Hillside removal of lawn and prep of soil	\$4,863.20
1	Hours	Planting of perennials, shrubs and trees	Planting of perennials, shrubs and trees	\$4,863.20
1	Hours	Spreading of wood mulch	Spreading of wood mulch	\$2,431.60
1	Each	Delivery Fee for plants	Delivery Fee for plants	\$293.49
1	Each	Delivery Fee for wood mulch	Delivery Fee for wood mulch	\$293.49
1	Each	Disposal Fee of turf	Disposal Fee of turf	\$220.12

2	Each	BETULA NIG RIVER BIRCH #25 CLP -	Spring season	\$320.00
12	Each	Chokeberry, Black (Aronia melanocarpa)- #3 Cont.	Spring season	\$216.00
5	Each	GRAY DOGWOOD (Cornus racemosa) #5	Spring season	\$100.00
5	Each	NANNYBERRY (Viburnum lentago) #5	Spring season	\$105.00
13	Each	Winterberry, (Ilex verticillata)- #2 Cont.	Summer Season	\$253.50
8	Each	Columbine (Aquilegia canadensis) - 6" pack of plugs	Spring Season	\$95.60
8	Each	Midland Shooting Star (Dodecathean meadia) 6" pack of plugs	Spring Season	\$95.60
8	Each	PRAIRIE BLAZING STAR (Liatris pycnostachya) 6" pack of plugs	Summer Season	\$95.60
8	Each	Prairie Coneflower (Ratibida columnifera) -6" pack of plugs	Summer Season	\$95.60
8	Each	BLACK EYED SUSAN (Rudbeckia hirta) 6" pack of plugs	Summer Season	\$95.60
8	Each	Indian Grass (Sorghastrum nutans) -6" pack of plugs	Summer Season	\$95.60
8	Each	Little Blue Stem (Schizachyrium scoparium) - 6" pack of plugs	Fall Season	\$95.60
8	Each	Sky Blue Aster (Symphyatrichum oolentangiense) 6" pack of plugs	Fall Season	\$95.60
8	Each	Zig Zag Goldenrod (Solidago flexicaulis) 6" pack of plugs	Fall Season	\$95.60
8	Each	Blue Stemmed Goldenrod (Solidago caesia) 6" pack of plugs	Fall Season	\$95.60
8	Each	Showy Goldenrod Solidago speciosa)- 6" pack of plugs	Fall Season	\$95.60
15	YDs	Natural (no dye shredded) Wood Mulch - YD	Natural (no dye shredded) Wood Mulch - YD	\$247.50
Subtotal				\$15,258.70
Taxes				\$0.00
Estimate Total				\$15,258.70

Notes:

- Proposal is based upon the design submitted by Davey in this proposal.
- Proposal prices are firm for 60 days.
- Proposal prices are based on a 2024 installation.
- Davey requires at least two (2) weeks notice prior to commencing work.
- Proposal is based on work being completed in one (1) mobilization.

- Proposal is based on access to all areas by machine, i.e., backhoe, and/or skid steer loader, etc. unless noted otherwise. Davey is not responsible for damage to sidewalks, driveways, landscaping or other structures that cannot be reasonably avoided or if client declines to pay for precautionary measures including, but not limited to, planking or other protective covering.
- Proposal based on condition that job site is substantially ready for Davey mobilization.
- Proposal is based on all planting and/or turf areas being free of construction materials and debris prior to commencement of this scope of work.
- Proposal is based on the following conditions related to utilities: Davey will contact utility marking services prior to commencement of work to mark major utility lines. Client or client's authorized agent is responsible for marking and/or providing "As Built" drawings for other miscellaneous site utilities and structures, i.e., site lighting, irrigation system, etc. Davey shall not be liable for damage to or resulting from subsurface utilities and/or structure not properly identified or disclosed. In addition, any hand digging as required due to these utility obstructions will be at an additional charge.
- Proposal is based on condition that there are no major subsurface obstructions, including but not limited to, unforeseen rock, hardpan, clay pan, water, contaminated soil and/or other miscellaneous construction debris, which would interfere with the performance of Davey's scope of work. If said obstructions are encountered, removal and or disposal of same, if required, will be at an additional charge.
- Proposal does not include removal and/or hauling of miscellaneous site debris other than material generated by Davey operations.
- Davey is not responsible for loss or damage to existing structures and/or other site features by actions and/or conditions beyond our control, including, but not limited to, Acts of God, weather, vandalism, etc. during construction.

Warranty:

- Proposal is based on actual plant count quantities per plans in lieu of plant quantities listed on the plant list.
- Proposal includes initial watering only of all newly installed plant material.
- Warranty periods are as follows: (a) one growing season for trees, shrubs, and evergreens (b) 30 days for vines, ground covers, roses, perennials, and wildflowers. All plant warranties commence upon date of substantial completion, with a one-time replacement policy, with plants of same size as installed initially. Davey warranty is limited to materials and workmanship and does not cover loss or damage by actions and/or conditions that are the responsibility of another party or are beyond Davey's control. To qualify for the

limited warranty, plantings must be maintained properly by owner, including proper watering. All qualifying plant material to be covered once, to the original purchaser, to grow through the warranty period provided (a) the account was paid when due; (b) the purchaser has cared for and watered the plant material in a responsible manner; (c) plant failure was reported during the warranty period when occurrence is noted; (d) proof of purchase is noted; (e) an employee from Davey Tree & Landscape has diagnosed the problem and determined it to be covered under warranty guidelines.

- Proposal based on planting being performed during normal planting season. Proposal does not include summer dig or overwintering charges, if required.
- Proposal does not include plant maintenance.
- Because of the watering requirements of sod, seeding and bare root stock, no warranty is expressed for these items.
- Davey Landscape makes no warranty on weed removal. Weed seed is spread naturally by wind, birds and animals. When watered the seeds will germinate and grow in any type of material including rock and wood mulched beds. To keep weeds at a minimum Client may apply a weed inhibitor, such as Preen, to minimize weed growth. When weeds appear Client can remove entire weed using a weed puller or a small shovel. If any part of the weed remains the weed will return.
- Hardscapes are warrantied for 1 year workmanship from date of purchase. This includes materials covered by manufacturers' warranty.

Terms:

- Upon acceptance, Davey's proposal shall be incorporated in and made part of this contract.
- Payment is net 30 days with 1.5%/month interest charge on all past due invoices.
- Due to escalating petroleum costs which have affected our fertilizer and fuel costs, a fuel surcharge will be added to the invoiced amount. Currently that surcharge is set at 1.6% and will be adjusted – up or down- based on the national average cost of gas
- Along with your signed authorization, Davey requires a deposit of 50% of the total contract price prior to the commencement of this project. 25% at project midpoint and final payment upon completion.
- Additional services not included in the original contract must be approved in writing by an authorized representative before Davey can proceed. Program costs do not include applicable sales tax.
 - Design fee is to be collected up front, prior to any design work being completed.
 - Design fee is at the discretion of the designer for the project
 - Design fee (as decided by the designer) will only be eligible for retro-application to the invoice if no less than 50% of the dollar

- value of the proposed work is completed
- upon payment of design fee in full, Davey Landscape releases intellectual property rights of the design to the client.

Estimate authorized by: _____
Company Representative

Signature Date: _____

Estimate approved by: _____
Customer Representative

Signature Date: _____

Job Site: _____

Customer: _____

Contact: _____ Email: _____

Operations Mgr: _____ Email: _____

Super. / Crew Lead: _____ Email: _____

Inspected By: _____ Email: _____

Customer Attendee: _____ Email: _____

Davey Attendee: _____ Email: _____

QSA Reference

Number: 31439

This QSA Date: 2/13/2024

Prior QSA Date: _____

Next QSA Date: _____

Supporting Photos and Drawings

Photo / Drawing 5 and notes



Blue circle shows location of proposed work.

Photo / Drawing 6 and notes



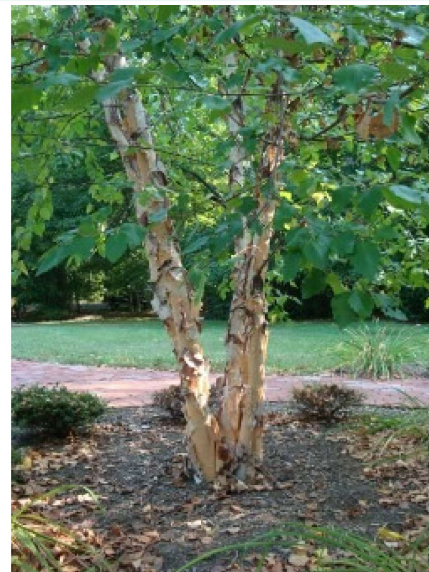
Blue outline shows area of proposed work.

Photo / Drawing 7 and notes



Please see hardcopy plan for more details

Photo / Drawing 8 and notes



RIVER BIRCH - This shade tree has highly symmetrical branching and upright pyramidal to upright oval form.

QSA Reference

Number: 31439
 This QSA Date: 2/13/2024
 Prior QSA Date:
 Next QSA Date:

Job Site:
 Customer:
 Contact: Email:
 Operations Mgr: Email:
 Super. / Crew Lead: Email:
 Inspected By: Email:
 Customer Attendee: Email:
 Davey Attendee: Email:

Supporting Photos and Drawings

Photo / Drawing 9 and notes



BLACK CHOKECHERRY - 6' x 6' In spring, it has showy white flower clusters and in autumn, leaves change from green to vibrant tones of red, orange and purple

Photo / Drawing 10 and notes



GRAY DOGWOOD - 6' x 6' white flowers with gray bark

Photo / Drawing 11 and notes



COLUMBINE - 2' x 2" has striking red and yellow rocket-shaped blossoms that bloomed from mid-May to mid-June.

Photo / Drawing 12 and notes



SHOOTING STAR - 2' x 2' delicate nodding blooms that seem to fly upward and away from the pointed red and yellow flower center, resembling a shooting star

QUALITY SITE ASSESSMENT REPORT

Job Site: _____

Customer: _____

Contact: _____ Email: _____

Operations Mgr: _____ Email: _____

Super. / Crew Lead: _____ Email: _____

Inspected By: _____ Email: _____

Customer Attendee: _____ Email: _____

Davey Attendee: _____ Email: _____

QSA Reference

Number: 31439 _____

This QSA Date: 2/13/2024 _____

Prior QSA Date: _____

Next QSA Date: _____

Supporting Photos and Drawings

Photo / Drawing 13 and notes



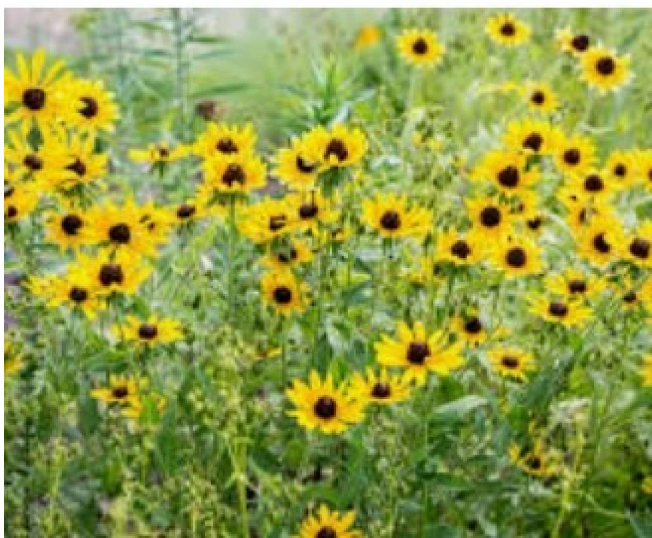
BLAZING STAR - 2' x 2' has a spectacular spike of tightly bunched lavender flower that begin blooming at the top and work their way down

Photo / Drawing 14 and notes



PRAIRIE CONEFLOWER - 3' x 2' Upright perennial with yellow flowers

Photo / Drawing 15 and notes



BLACK EYE SUSAN - 2' x 2' All have daisy-like flowers with sultry dark 'eyes' and brightly-colored petals which emanate pure joy

Photo / Drawing 16 and notes



LITTLE BLUE STEM 2' x 2' - has silvery-blue stems (particularly at the base) and leaves, making it an attractive addition to the landscape

QSA Reference

Number: 31439
 This QSA Date: 2/13/2024
 Prior QSA Date: _____
 Next QSA Date: _____

Job Site: _____
 Customer: _____
 Contact: _____ Email: _____
 Operations Mgr: _____ Email: _____
 Super. / Crew Lead: _____ Email: _____
 Inspected By: _____ Email: _____
 Customer Attendee: _____ Email: _____
 Davey Attendee: _____ Email: _____

Supporting Photos and Drawings

Photo / Drawing 17 and notes



SKY BLUE ASTER - 2' X 2' has multi-branching stems are topped with a flurry of blue-lavender flowers with yellow centers

Photo / Drawing 18 and notes



ZIG ZAG GOLDENROD - 3' x 2' produces clusters of bright yellow flowers in late summer and fall on stems that are zigzagging

Photo / Drawing 19 and notes



WINTERBERRY - 6' X 6' Clusters of small, white flowers in early to mid-summer with red berries that hang on during winter giving interest year round

Photo / Drawing 20 and notes



NANYBERRY - 6' x 6' has showy white flowers in May, followed by burgundy leaf color and dark blue berries in autumn

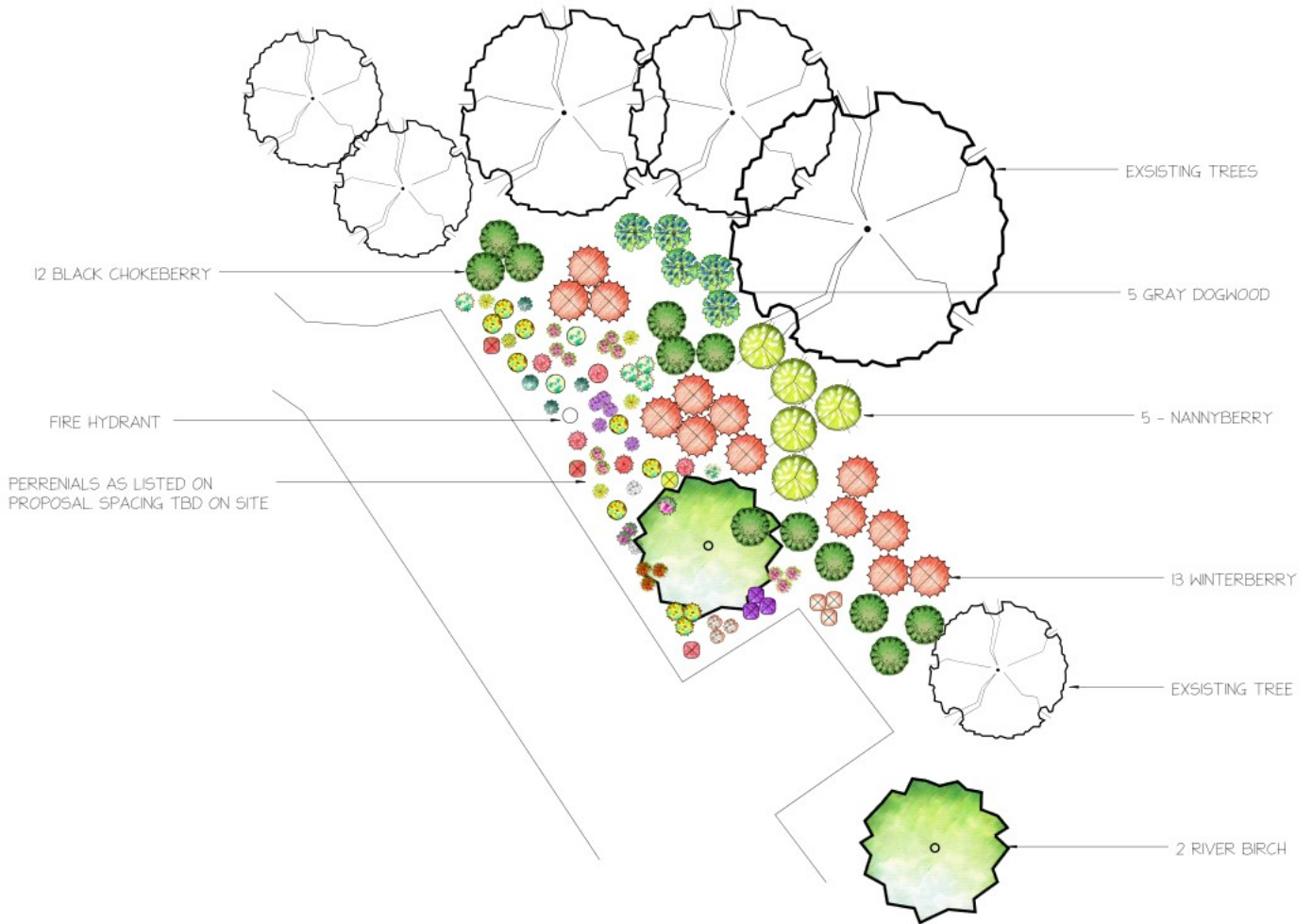


Exhibit B
Maintenance Declaration

DRAFT

DECLARATION

THIS DECLARATION is made this _____ day of _____, 20__, by _____, Minnesota Creekview Townhomes Association, a private Minnesota nonprofit corporation (Declarant) in favor of the Riley-Purgatory-Bluff Creek Watershed District, a special purposes local unit of government with purposes and powers pursuant to Minnesota Statutes chapters 103B and 103D (RPBCWD).

RECITALS

WHEREAS Declarant is the fee title owner of real property within the City of Minnetonka, Hennepin County, Minnesota, platted and legally described as:

PID 3111722430153

(referred to collectively herein as “the Property”) and no one other than Declarant has any right, title or legal interest in the Property; and

WHEREAS Declarant and the Riley-Purgatory-Bluff Creek Watershed District have executed a cost-share agreement for the construction and maintenance of features shown in the site plan and design attached hereto and incorporated herein as Attachment 1 for water resource protection demonstration and education purposes (the Project); and

WHEREAS Declarant desires to subject the Property to certain conditions and restrictions imposed by RPBCWD as a condition of participation in the RPBCWD cost-share program, including maintenance for 10 years from the date of certification of completion of installation of the Project, and the RPBCWD’s for the mutual benefit of the RPBCWD and the Declarant.

WHEREAS Declarant assumes the obligations hereunder to induce RPBCWD to enter into the cost-share agreement, and agrees that there is valuable consideration for its obligations, and that this instrument is legally binding;

NOW THEREFORE Declarant makes this declaration and hereby declares that this declaration constitutes covenants to run with the Property, and further declares that the Property will be owned, used, occupied, and conveyed subject to the covenants, restrictions, easements, charges and liens set forth in this declaration for 10 years from **June 7, 2024**, all of which are

binding on all persons owning or acquiring any right, title or interest in the Property and their heirs, successors, personal representatives and assigns.

1. **Maintenance Obligation.** Owner will maintain the Project in accordance with the maintenance plan & schedule attached hereto and incorporated herein as Attachment 2.
2. **Termination.** The property owner's obligations hereunder will terminate on **June 7, 2034.**
3. **Owner.** "Owner" as used in this declaration and Attachment 2 means the Declarant(s) and any other or subsequent owner of the Property or portion thereof on which is located the Project to which the obligations herein apply.
4. **Authority.** Owner represents and covenants that the individual executing the Declaration on behalf of Owner is duly authorized to bind Owner to fulfill the obligations herein. Owner indemnifies RPBCWD and holds RPBCWD harmless for any breach of the provisions of this paragraph.
5. **Recitals.** The recitals set forth above are expressly incorporated herein.
6. **Amendment.** No amendment or vacation of this declaration will be valid without the signature of an authorized RPBCWD representative and the Declarant.

IN WITNESS WHEREOF, the undersigned executes this instrument the day and year first set forth.

Declarant

By: _____ Date: _____
Bettie Halverson, Vice President, Minnesota Creekview Townhomes Association

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ [and _____], as _____.

Notary Public

**Attachment 1
Maintenance Plan**

DRAFT

HABITAT RESTORATION maintenance plan for MN Creekview townhomes.

Ecologically Friendly Maintenance is planned - **YES**

There is no fungicides, no insecticides, minimize herbicide use, limit fertilizer, limit watering to establishment period, provide soft landings under trees, and leave plant material in place.

Native vegetation establishment and maintenance plan provided. How will site be maintained in the future? **The site will be visual review weekly when Davey Landscape mows the property plus walk throughs done by the Davey Account manager twice a year with the president of the HOA.**

An estimate cost of yearly maintenance will be \$900.00 per year. This includes hand weeding the area and adding perennials where there is empty space is.

Jeff Allen

Account Manager for Davey Landscape

651-332-9988

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Attachment 2 Maintenance Plan & Schedule

Native Vegetation Restoration Areas. Native vegetation restoration areas described in the site plan and design attached as Attachment 1 to this declaration must be maintained as follows:

- a. The restoration will be maintained for at least 10 years free from mowing and other vegetative disturbance except as specified herein, fertilizer application, yard or other waste disposal, the placement of structures, or any other alteration that impedes the function of the prairie restoration in protecting water quality, shading riparian edge areas, moderating flow into an adjacent wetland or waterbody or providing habitat.
- b. The restoration will be maintained using ecologically friendly practices including:
 - i. No use of fungicides or insecticides unless approved by RPBCWD staff.
 - ii. Herbicide may be used to control non-native or invasive plants if user follows label instructions and applies carefully to limit exposure to non-target species.
 - iii. Only natural fertilizers such as compost will be used.
 - iv. At least some dead plant material will be left in place to provide wildlife habitat and to provide natural mulch for soil protection.
- c.
- d. As feasible under applicable city, county or other code, upland plantings will be subject to annual controlled burning to eliminate invasive species by a qualified professional every three to five years; where burning is not feasible, upland plantings will be mowed to control invasive species. Invasive vegetation will be destroyed by spot treatment; herbaceous vegetation 24 inches tall or more will be mowed to a height of 16 inches.
- e. Upland plantings will be replaced and seeded areas will be reseeded as necessary each spring to maintain ecological health and function and in accordance with a written proposal or plan prepared by the Owner and approved by RPBCWD staff.

Reporting. Owner will submit to the RPBCWD annually following completion of the Project described in the site plan and design attached as Exhibit 1 a brief written report that describes the maintenance activities performed under the declaration to which this exhibit is attached, including dates, locations of inspection, maintenance activities performed and photographs of the Project.