

**STORMWATER FACILITIES MAINTENANCE AGREEMENT  
AND RESTRICTIVE COVENANT**

This Stormwater Facilities Maintenance Agreement and Restrictive Covenant (this "**Maintenance Agreement and Restrictive Covenant**") is made this 12 day of 2016, 2016, 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 Candace Gordon & Timothy W McClellan, the current property owner(s) at 220 Sunrise Avenue, Tonka Bay, Minnesota 55331, (the "**Owner**" or "**Candace Gordon & Timothy W McClellan**"). The City and Owner are sometimes collectively referred to hereafter as the "**Parties**".

**RECITALS**

**WHEREAS**, Candace Gordon & Timothy W McClellan are the owners of fee title or a substantial beneficial interest in certain real property commonly described as 220 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 July 21, 2015 prepared by Rogue Arc, LLC. 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:**

Candace Gordon & Timothy W McClellan  
220 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.

SIGNATURE LINES

OWNER:

By:

Candace Gordon

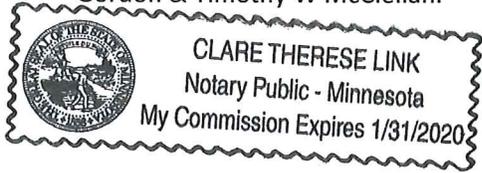
By:

Timothy W McClellan

ACKNOWLEDGEMENT

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

This instrument was acknowledged before me on 1-5, 2016, by Candace Gordon & Timothy W McClellan.



(stamp)

Clare Therese Link  
(signature of notarial officer)

My commission expires: 1-31-2020

**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 \_\_\_\_\_, 2016, 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 \_\_\_\_\_, 2016, 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: 220 Sunrise Avenue  
PID: 21-117-23-13-0003  
Municipality: Tonka Bay  
Legal Description: I.C. Seeley and N.F. Griswold's Amendment and First Addition to Minnetonka Lake Park, Lot 45

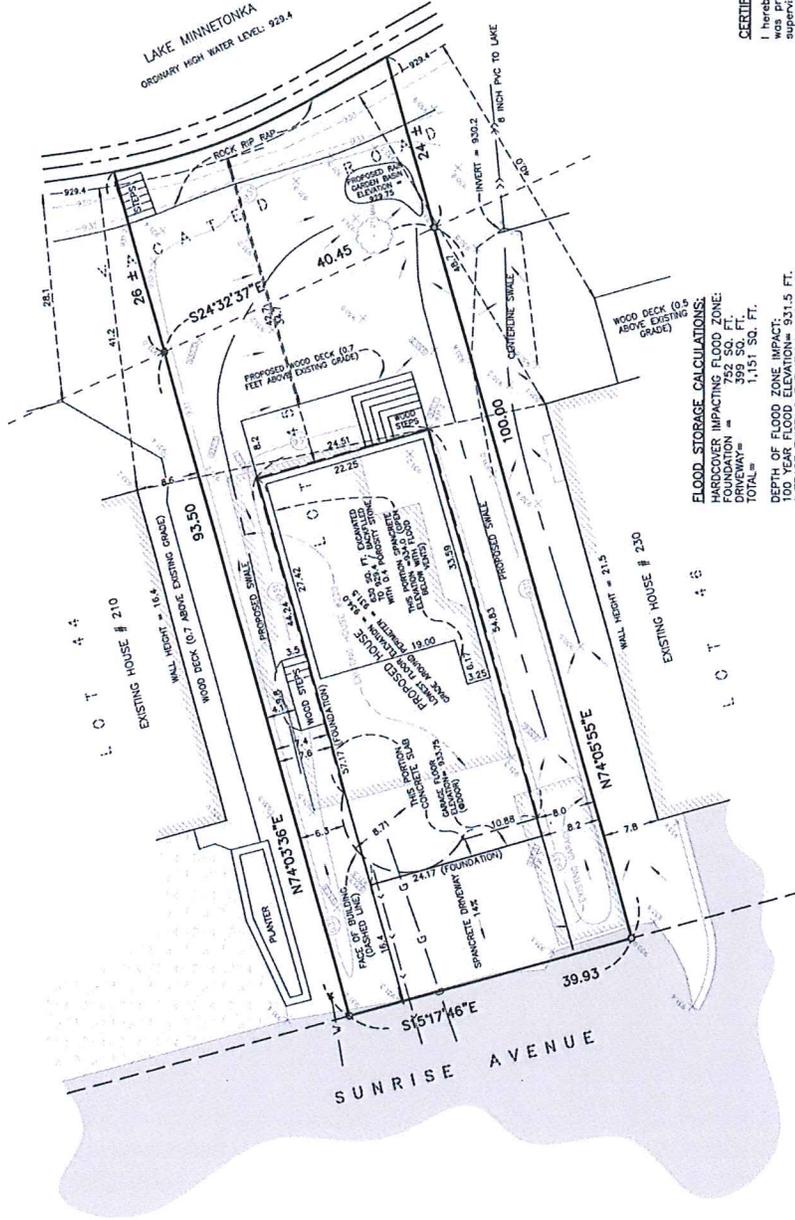
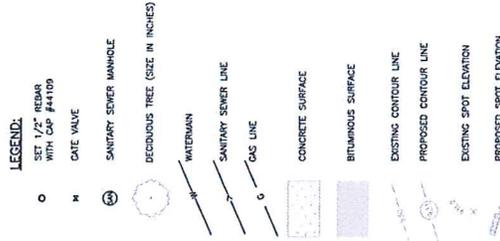
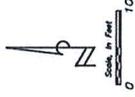
**EXHIBIT B**

**APPROVED DETENTION SYSTEM PLAN**

**CERTIFICATE OF SURVEY**

**LEGAL DESCRIPTION:**  
 LOT 45, 1/4 SEC. 16, T. 115N. R. 10E, S. 1/4, GRISWOLD'S  
 TRACT, HENNEPIN COUNTY, MINNESOTA

**PREPARED FOR:**  
 TIM MCCLELLAN  
 220 SUNRISE AVENUE  
 TONKA BAY, MN 55331



**EXISTING HARDCOVER CALCULATIONS:**  
 PER ADVANCE SURVEYING AND ENGINEERING CO. SURVEY DATED 2-19-2015  
 TOTAL: 1,931 SQ. FT. OR 41.2%

**PROPOSED HARDCOVER CALCULATIONS:**  
 PROPOSED HOUSE: 1,392 SQ. FT.  
 DRIVEWAY: 404 SQ. FT.  
 TOTAL: 1,796 SQ. FT. OR 38.1%

**FLOOR AREA RATIO:** 56.9 %

**FLOOD STORAGE CALCULATIONS:**  
 HARDSHORE IMPACTING FLOOD ZONE  
 PROPOSED DRIVEWAY = 395 SQ. FT.  
 DRIVEWAY = 1,151 SQ. FT.  
 TOTAL = 1,546 SQ. FT.

**DEPTH OF FLOOD ZONE IMPACT:**  
 100 YEAR FLOOD ELEVATION = 931.5 FT.  
 AVERAGE EXISTING ELEVATION = 931.1 FT.  
 DIFFERENCE = 0.4 FT.

**VOLUME OF IMPACT:** 1.151 X 0.4 = 460.4 CU. FT.

**PORTION OF OPEN FOUNDATION:** 630 SQ. FT.  
 AVERAGE EXISTING ELEVATION = 932.4 FT.  
 BOTTOM OF EXCAVATION = 932.4 FT.  
 DIFFERENCE = EXCAVATION = 0.0 X 1.7 = 1,071 CU. FT.  
 VOLUME OF COMPRESSION: 0.21 X 1,071 = 224.9 CU. FT.  
 (EXCAVATION BACKFILLED WITH 0.4 PROPOSYT STONE)

**NOTES:**

- 1) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE INSURANCE COMMITMENT.
- 2) P.L.D.: 27-117-23-13-0003
- 3) PARCEL AREA: 4,684 SQ. FT (ABOVE ORDINARY HIGH WATER LINE)
- 4) BEARING BASIS IS ASSUMED.
- 5) ELEVATION DATUM: NGVD 29
- 6) BENCHMARK: RIM OF MANHOLE AS SHOWN ON DRAWING, ELEVATION = 931.16
- 7) DATE OF FIELDWORK: 4-28-2015

**CERTIFICATION:**  
 I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the state of Minnesota.

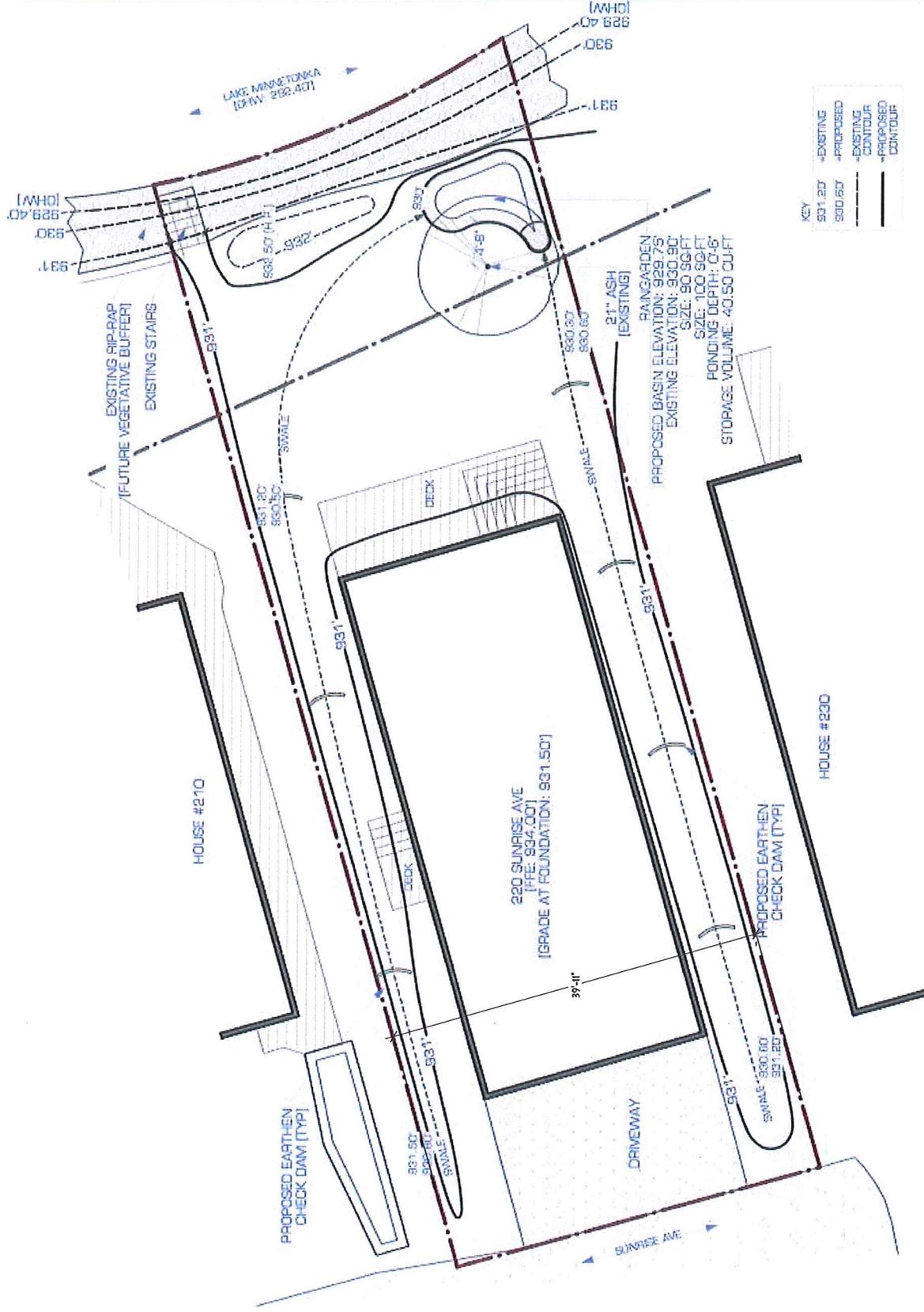
*Thomas W. Van Neste*  
 Thomas W. Van Neste, Minnesota Professional Surveyor #44109

JOB # 2015013  
 DRAWN BY: TWIN  
 SCALE: 1" = 10 FEET  
 ISSUED: 4-30-2015  
 REV: 11-16-2015

**VAN NESTE SURVEYING**  
 PROFESSIONAL SURVEYING SERVICES  
 85 HENNEPIN COUNTY ROAD 131  
 TONKA BAY, MN 55331  
 PHONE (952) 689-3025 TOLL-FREE FAX (866) 473-0120  
 WWW.VANNESTESURVEYING.COM

**Proposed Survey**

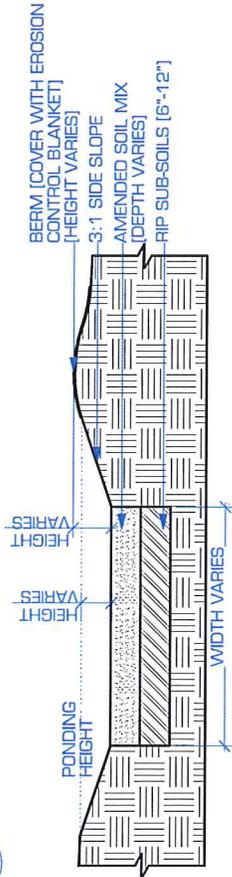
<b>Rogue Arc, LLC</b> Design & Build www.rogue-arc.com 917-580-1808	<b>PROJECT:</b> TIMOTHY MCLELLAN 612-787-6416 tmclellan1@msi.com	<b>LOCATION:</b> 220 SUNRISE AVE TONKA BAY, MN 55331	<b>DESIGNER:</b> JL <b>DATE:</b> 7/21/15 <b>REVISION:</b> <b>REVISION:</b> <b>REVISION:</b> <b>REVISION:</b> <b>CHECKED BY:</b> JL	<b>NOTES:</b> NO STOCK PILES ALLOWED IN RAINGARDEN AREA USE TRACK EQUIPMENT ONLY	<b>SCALE:</b> 1" = 10'-0"	<b>SHORELAND IMPACT &amp; GRADING PLAN</b>	<b>L1.0</b>
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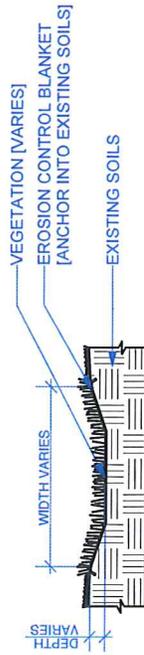
**KEY**

-	EXISTING
-	PROPOSED
---	EXISTING CONTOUR
---	PROPOSED CONTOUR

1 RAINGARDEN SECTION [TYP]  
Scale: 1/2" = 1'-0"



2 GRASS/VEGETATED SWALE [TYP]  
Scale: 1/2" = 1'-0"



**RAINGARDEN AND VEGETATED SWALE MAINTENANCE**

- WATERING**  
-WATER WEEKLY WITH 1" OF WATER IF IT HAS NOT RAINED
- WEEDING**  
-LEAVE THE PLANT TAGS IN THE GARDEN TO HELP IDENTIFY GOOD PLANTS FROM WEEDS (RECOMMENDED)  
-DO NOT USE LANDSCAPE FABRIC UNDERNEATH THE MULCH- THIS WILL PREVENT THE RAIN GARDEN FROM WORKING PROPERLY  
-MAINTAIN A 3" MULCH COVER TO REDUCE THE NEED FOR WATERING AND MINIMIZE WEED GROWTH  
-IF YOU ARE UNABLE TO IDENTIFY WEEDS, USE A FIELD GUIDE
- PRUNING AND REPLANTING**  
-STALKS CAN BE LEFT OVER WINTER TO ATTRACT BIRDS OR YOU CAN PRUNE IN THE FALL WHEN THE PLANTS HAVE GONE DORMANT  
-PRUNING CAN ALSO BE DONE IN SPRING AFTER THE PLANTS HAVE BEGUN TO GREEN UP  
-PLANTING CAN BE DONE AT ANY TIME BUT SPRING AND FALL ARE BEST FOR THE PLANTS  
-DIVIDING PLANTS THAT HAVE BECOME TOO LARGE CAN BE DONE IN THE FALL
- MULCHING**  
-ADD MULCH IN SPRING EACH YEAR OR TWICE TO KEEP A 3" LAYER. THIS HELPS REDUCE THE AMOUNT OF WEEDING AND WATERING NEEDED
- ADDITIONAL TASKS**  
-REGULARLY CLEAR THE INLET OF ACCUMULATED LEAVES, SEDIMENT AND TRASH  
-EXCEPT FOR TIME SPENT DOING REGULAR MAINTENANCE, AVOID WALKING IN THE BASIN OF THE GARDEN TO PREVENT SOIL COMPACTION

Rogue Arc, LLC  
Design & Build  
www.rogue-arc.com  
612-560-1808

PROJECT:  
TIMOTHY MCLELLAN  
612-787-6416  
tmclellan@me.com

LOCATION:  
220 SUNRISE AVE  
TONKA BAY, MN 55331

DESIGNER: JL  
DATE: 7/21/15  
REVISION:  
REVISION:  
REVISION:  
REVISION:  
CHECKED BY: JL

NOTES:  
NO STOCK PILES ALLOWED  
IN RAINGARDEN AREA  
USE TRACK EQUIPMENT ONLY

20'-0"

SCALE: 1" = 10'-0"

SHORELAND IMPACT &  
GRADING DETAILS/NOTES

L1.1



*The Minnehaha Creek Watershed District is committed to a leadership role in protecting, improving and managing the surface waters and affiliated groundwater resources within the District, including their relationships to the ecosystems of which they are an integral part. We achieve our mission through regulation, capital projects, education, cooperative endeavors, and other programs based on sound science, innovative thinking, an informed and engaged constituency, and the cost effective use of public funds.*

August 26, 2015

Candice Gordon & Tim McClellan  
220 Sunrise Ave.  
Tonka Bay, MN 55331

RE: **Notice of Conditional Approval** for MCWD Permit Application **No. 15-396**,  
220 Sunrise Ave., Tonka Bay

Dear Ms. Gordon & Mr. McClellan:

Thank you for submitting an application for Minnehaha Creek Watershed District permit for Erosion Control and Floodplain Alteration located at 220 Sunrise Ave. in the City of Tonka Bay. The public comment period has expired and the review of this application has concluded and the Minnehaha Creek Watershed District has determined the above mentioned permit application to be complete. Therefore, the application is approved with the following conditions:

- o Reimbursement of mailing fees (please see attached invoice);
- o Submission of an as-built survey upon completion of the project.

**Once the above mentioned materials have been submitted and all permit conditions have been met staff will issue the permit.** You are reminded that work on the project cannot begin until the permit has been issued. The approval expires one year from the date of this letter. If final municipal approval of the project results in changes to the project you must submit revised plans to the MCWD for review.

Please contact me at (952) 641-4518 or [tdietrich@minnehahacreek.org](mailto:tdietrich@minnehahacreek.org) if you have any questions or concerns.

Respectfully,

Tom Dietrich  
Permit & Compliance Coordinator



The Minnehaha Creek Watershed District is committed to a leadership role in protecting, improving and managing the surface waters and affiliated groundwater resources within the District, including their relationships to the ecosystems of which they are an integral part. We achieve our mission through regulation, capital projects, education, cooperative endeavors, and other programs based on sound science, innovative thinking, an informed and engaged constituency, and the cost effective use of public funds.

Pursuant to Minnesota Statutes Chapter 103D, and on the basis of statements and information contained in the permit application, correspondence, plans, maps, and all other supporting data submitted by the applicant, and made a part hereof by reference, PERMISSION IS HEREBY GRANTED to the applicant named below for use and development of land in the Minnehaha Creek Watershed District.

Issued to: Candace Gordon and Tim McClellan	Permit No: 15-396
Location: 220 Sunrise Avenue, Tonka Bay	
Purpose: Erosion Control and Floodplain Alteration	
Date of Issuance: 9/3/15	Date of Expiration: 9/3/16

By Order of the Board of Managers  
  
Tom Dietrich  
District Technician

This permit is not transferable without District approval, and is valid to the date of expiration. No activity is authorized beyond the expiration date. If the permittee requires more time to complete the project, an application for renewal of the permit must be received by the District at least 30 days before expiration.

The applicant is responsible for compliance with all District Rules and for the action of their representatives, contractors, and employees.

- Conditions:** Project to be completed as described in plans submitted to the MCWD office July 27, 2015 according to the provisions of this permit.
- **Submit an as-built survey upon project completion**
  - Properly install and maintain all required erosion control measures until the disturbed areas are re-stabilized
  - Notify MCWD in writing upon completing installation of perimeter and sedimentation controls
  - When the site is re-stabilized and the MCWD staff has performed a final inspection, all silt fences must be removed

(Statement concerning fees for inspections, violations, etc... on following page)



**Inspection/Analysis/Monitoring Fees**

The Minnehaha Creek Watershed District is committed to a leadership role in protecting, improving and managing the surface waters and affiliated groundwater resources within the District, including their relationships to the ecosystems of which they are an integral part. We achieve our mission through regulation, capital projects, education, cooperative endeavors, and other programs based on sound science, innovative thinking, an informed and engaged constituency, and the cost effective use of public funds.

A site inspection and monitoring by District staff will be performed where the activity involves:

- a commercial/industrial/multi-family residential development
- a single family residential development greater than 5 acres or of any size if within the Minnehaha Creek subwatershed
- any alteration of a floodplain or wetland
- dredging within the beds, banks or shores of any protected water or wetland
- a violation
- any project which in the judgment of the District staff should be inspected due to project location, scope, or construction techniques

In these cases, the applicant shall pay to the District a fee equal to the actual costs of field inspection of the work, including investigation of the area affected by the work, analysis of the work, and any subsequent monitoring of the work, which in the case of a violation shall be at least \$35.

**Standard Fee Schedule**

District professional staff	\$ 65.51*
District interns	\$ 40.35*
District clerical staff	\$ 46.69*
Consulting Senior Engineer	\$ contracted rate
Consulting Engineer/Technician	\$ contracted rate
District Counsel	\$ contracted rate
Application fee	\$ 10.00
Copy costs	\$ .25 + actual staff time
Color copy costs	\$ 1.00 + actual staff time

\* Hourly