

**MEETING DATE:** August 10, 2017

**TITLE:** Authorization to sign subordination agreement

**RESOLUTION NUMBER:** 17-048

**PREPARED BY:** Renae Clark

**E-MAIL:** rclark@minnehahacreek.org

**TELEPHONE:** 952-641-0510

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name):  
 Board Committee  Engineer  Other

**WORKSHOP ACTION:**

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date):_____	<input type="checkbox"/> Refer to taskforce or committee (date):_____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): <u>Requesting approval on August 10, 2017</u>	

**PURPOSE or ACTION REQUESTED:**

Authorize the District Administrator, on advice of counsel, to sign an agreement subordinating the District's junior mortgage to an additional bank loan

**PROJECT/PROGRAM LOCATION:**

6530 County Road 26, Minnetrista, MN

**PROJECT TIMELINE:**

August 2017	Execute subordination agreement
On-going	Discussion regarding educational opportunities within event center/winery (former stable)

**PAST BOARD ACTIONS:**

March 13, 2008	RES. 08-014: Purchase of 22.48 acres along Painter Creek in Minnetrista at 6430 and 6360 County Road 26.
April 25, 2013	RES: 13-055: Resale of 5.42 acres and stable to L & P Schaper Properties LLC

**SUMMARY:**

In March 2008 as part of the Land Conservation Program the District purchased two adjoining parcels, along Painter Marsh – part of Painter Creek in Minnetrista at 6430 and 6360 County Road 26. The property was

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22.48 acres and included a 22-horse stable with indoor riding arena, single family home, garage and hay shed. At the time of purchase the land use was a commercial stable with over-grazed paddocks located within the wetland area adjacent to Painter Marsh. In 2013, the District sold the westerly 5.42 acres, including the stable, to the adjoining landowner, L & P Schaper Properties LLC (“Schaper”) and this property was combined with their 32.5 acre property currently operated as a commercial apple orchard. The remainder of the District’s property is held for conservation purposes and future restoration of Painter Marsh. The acquisition of the property by Schaper was financed, in part, by the District and this debt is evidenced by a Promissory Note and is secured by a Mortgage recorded against the entire 37.92 acres owned by Schaper. The Mortgage is currently subordinate to Schaper’s pre-existing debt from Klein Bank recorded against their 32.5 acres. The transaction also included access and conservation easements granted to the District over the 5.42 acres.

The intentions of Schaper at the time of the original transaction were to convert the stable to an event venue and winery business, expanding upon the existing apple orchard business. The original Mortgage executed at the time of the original transaction acknowledged that Schaper would seek additional debt and that the District take a subordinate position to that debt. Schaper is now obtaining additional financing from First Minnesota Bank for the expansion of the winery business that was contemplated in the 2013 transaction. In this regard, Schaper has requested that the District approve a Subordination Agreement subordinating the District’s Note and Mortgage to the new debt, which would put the District’s mortgage in a second priority position to the new debt from First Minnesota Bank. In connection with Schaper’s request for the District’s subordination to the new debt, Schaper has agreed to modifications to the existing Promissory Note and Mortgage with the District that accelerate the payment schedule and maturity date and, for clarity, remove the mortgage clause concerning District subordination to new debt, and Schaper has agreed to grant the District an expanded conservation easement over a portion of the orchard property contiguous to Painter Marsh. The easement facilitates contemplated restoration of Painter Marsh in partnership with the U.S. Army Corps of Engineers. Staff, on advice of legal counsel, is seeking Board approval of the subordination agreement conditioned upon the revisions to the existing Note and Mortgage and the grant of the conservation easement expansion.

**Attachments:**

1. Subordination Agreement
2. Mortgage Modification, First Amendment to Mortgage
3. First Amendment to Note
4. Easement Draft

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## RESOLUTION

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**RESOLUTION NUMBER:** 17-048

**TITLE:** Authorization to sign subordination agreement

WHEREAS, the District's Comprehensive Water Resources Management Plan (CWRMP) includes a Land Conservation Program;

WHEREAS, on March 13, 2008, consistent with the objectives and policy guidance of the Land Conservation Program, the Board of Mangers authorized the acquisition of fee title to the property of 6430 and 6360 County Road 26 for total consideration of \$1,550,000;

WHEREAS, the CWRMP provides that over the next ten years, the District's focus in the Painter Creek subwatershed will be on reducing the phosphorus and sediment loading to Jennings Bay and conserving the ecological integrity within the subwatershed;

WHEREAS, Painter Marsh is the location of a flood control project that the District constructed during the 1980's and the west portion of the project weir is located on the purchased property;

WHEREAS, the U.S. Army Corps of Engineers (USACE) has performed feasibility work for wetland and related water resource restoration within the Painter Creek subwatershed including Painter Marsh, and the USACE and the District are exploring opportunities to implement identified restoration work through cooperation and cost-sharing;

WHEREAS, of the District's land rights in this property, which adjoins Painter Marsh to the south along Painter Creek, enables the District to increase the water quality and wildlife habitat benefits of these projects;

WHEREAS, of the District conveyed 5.42 acres of this property to the adjacent landowner, L & P Schaper Properties LLC, including the existing horse stable, which acreage was combined with the landowner's existing tract into a single parcel, and in that transaction received a protective easement and an access easement, optimizing the preservation of conservation values identified with the original purchase of the property and capital return; and

WHEREAS, the transaction maintained the conservation intent, conservation purpose, and significant public benefit of the District's original purchase of 6430 and 6360 County Road 26, Minnetrista which include:

- Protection of a relatively natural habitat for fish, wildlife
- Elimination of polluted runoff caused by horse stabling and pasturing
- Elimination of erosion into Painter Marsh and adjacent wetlands
- Protection and enhancement of water quality in Painter Marsh and downstream Jennings Bay, Lake Minnetonka
- Enhanced opportunity for public education and outreach

WHEREAS, the District is the holder of a Note in the original principal amount of \$316,008 dated September 6, 2013, which Note has a maturity date of September 30, 2043 and is secured by a Mortgage dated the same day recorded against the property owned by L & P Schaper Properties LLC; and

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WHEREAS, in 2013, the District entered into a subordination agreement with Klein Bank whereby the District agreed to subordinate the Note and Mortgage to the existing debt from Klein Bank, and

WHEREAS, the existing debt owed to Klein Bank is being satisfied and will be replaced with new and additional debt from First Minnesota Bank which will be used, in part, to make investments in additions and modifications to the improvements located on the property, including the stable, in connection with the expansion of the apple orchard business to include a winery and event center business; and

WHEREAS, the 2013 Mortgage created a certain obligation for the District to subordinate to new debt for this purpose; and

WHEREAS, the consideration for this transaction is based on an appraisal of the property securing the District's Mortgage and other valuable consideration including an agreement to amend the Note and Mortgage to accelerate the maturity date by 10 years and provide for an accelerated payment schedule, and the expansion of the existing conservation easement that facilitates future restoration activities within Painter Marsh.

THEREFOR BE IT RESOLVED, that the Board of Managers authorizes the District Administrator, with any non-substantive revisions and on the advice of counsel, to sign the subordination agreement, First Amendment to the Note, First Amendment to Mortgage, and Conservation Easement.

Resolution Number 17-048 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: August 10, 2017.

\_\_\_\_\_  
Secretary Date: \_\_\_\_\_

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## SUBORDINATION AGREEMENT

WHEREAS, pursuant to that certain Mortgage dated September 6, 2013 and recorded September 25, 2013 as Document No. A10010041 (the "MCWD Mortgage") by L & P Schaper Properties, LLC, a Minnesota limited liability company ("Schaper"), in favor of Minnehaha Creek Watershed District, a governmental body created under Chapter 103D ("MCWD"), MCWD possesses a valid and enforceable lien against the following described real property located in the County of Hennepin, State of Minnesota to wit (the "Property"):

See Attached Legal Description

WHEREAS, Schaper, owner of the Property, has applied for a loan from First Minnesota Bank.

WHEREAS, First Minnesota Bank has indicated that it is unwilling to accept a Mortgage from Schaper upon the above Property in security for said loan unless MCWD agrees to subordinate its lien on the Property to the lien to be created by said mortgage granted to First Minnesota Bank on said Property.

NOW THEREFORE, in consideration of the premises and as an inducement to First Minnesota Bank to accept said mortgage, MCWD hereby agrees to subordinate the MCWD Mortgage to the second lien of First Minnesota Bank, against said Property, subject to a maximum mortgage of \$837,000.00 and subject to a full payoff of the current existing first mortgage, said mortgage in favor of First Minnesota Bank shall have the same validity, force and effect as if executed, delivered and recorded prior to the date of execution of the MCWD Mortgage.

Minnehaha Creek Watershed District

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

State of Minnesota

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ under the laws of \_\_\_\_\_, on behalf of the \_\_\_\_\_.

THIS INSTRUMENT WAS DRAFTED BY:

**First Minnesota Bank**  
**4625 County Road 101**  
**Minnetonka, MN 55345**

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT  
NOTARIAL STAMP OR SEAL

**THIS IS A MORTGAGE AMENDMENT, AS DEFINED IN SECTION 287.01, SUBD. 2 OF THE MINNESOTA STATUTES, AND AS SUCH IT DOES NOT SECURE A NEW OR AN INCREASED AMOUNT OF DEBT, AND NO ADDITIONAL MORTGAGE REGISTRY TAX IS DUE AND PAYABLE UPON THE RECORDING HEREOF.**

**FIRST AMENDMENT TO MORTGAGE**

THIS FIRST AMENDMENT TO MORTGAGE (this "Amendment"), is dated as of \_\_\_\_\_, 2017, made by and between L & P SCHAPER PROPERTIES, LLC, a Minnesota limited liability company ("Borrower"), and MINNEHAHA CREEK WATERSHED DISTRICT, a governmental body created under Minn. Stat. Ch. 103D ("Lender").

RECITALS:

A. Lender loaned to Borrower the original principal sum of \$316,008.00 (the "Loan") to be repaid with interest thereon, as evidenced by that certain Note executed by Borrower in favor of Lender on September 6, 2013 (the "Note"), which Note is secured by that certain Mortgage dated as of September 6, 2013 made by Borrower in favor of Lender and recorded in the office of the County Recorder for Hennepin County, Minnesota on September 25, 2013 as Document No. A10010041 (the "Mortgage"), which Mortgage encumbers the property owned by Borrower as more particularly described on Exhibit A attached hereto.

B. The Note is being amended contemporaneously herewith by that certain the First Amendment to Note (the "Amendment") to, among other things, modify the schedule of payments and Maturity Date.

D. Borrower and Lender wish to amend the Mortgage to reflect the Amendment, and to confirm that the Mortgage remains in full force and effect, as modified by this Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. All of the foregoing recitals are acknowledged by Borrower as being true and correct and shall be deemed incorporated by reference herein.
2. Amendments to Mortgage. The Mortgage is hereby amended as follows:
  - a. The Maturity Date of the Note shall be September 30, 2033.

- b. Section 1 of the Mortgage is hereby amended to delete the last sentence thereof and replace it with the following: “Borrower and Lender acknowledge that pursuant to that certain Subordination Agreement dated August \_\_\_, 2017 executed by Lender, Lender has agreed to subordinate the Mortgage and the debt evidenced by the Note to that certain loan from First Minnesota bank to Borrower in the maximum principal amount of \$837,000.00; provided, however, Lender shall have no further obligation to agree to subordinate to any new or additional financing or any instruments memorializing and/or securing such indebtedness.”

3. Acknowledgement. Borrower hereby acknowledges and confirms that capitalized terms not otherwise defined in the Mortgage shall have the meanings ascribed thereto in the Note. Borrower and Lender acknowledge and affirm that this Amendment only modifies the terms of the existing indebtedness and no new or additional credit or sums are being extended or advanced by Lender to Borrower hereunder and no new or additional indebtedness is being created hereby.

4. Ratification and Confirmation of Mortgage. This Amendment is only an amendment of the Mortgage and is not a waiver, an impairment or a novation of the same. Except as amended and modified hereby, the covenants, agreements, terms, provisions set forth in the Mortgage are unmodified and shall remain in full force and effect, as if this Amendment had not been executed or delivered; and Borrower does hereby ratify and confirm the Mortgage, as amended hereby. In all other respects not inconsistent herewith, the terms, conditions and priority of said Mortgage, as amended shall remain in full force and effect and be binding upon the parties hereto, their successors and assigns.

5. Miscellaneous. Borrower hereby represents and warrants to Lender that: (a) it has all requisite power and authority, authorizations, consents and approvals to execute, deliver and perform its obligations under this Amendment; and (b) the execution, delivery and performance by Borrower of this Amendment have been duly authorized by all necessary corporate or other organizational action, and do not and will not violate any applicable law. This Amendment constitutes a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. This Amendment may be executed in as many counterparts as may be deemed necessary or convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same instrument.

*[Signatures follow]*







## **EXHIBIT A**

### **Legal Description**

A) That part of the North 753.1 feet of the Northeast Quarter of the East 484 feet of the West 1214 feet of Section 3, Township 117 North, Range 24 West, Hennepin County, Minnesota.

AND

That part of the Northeast Quarter lying northerly of the North right of way of County Road No. 26, lying westerly of the East 903 feet of said Quarter, and easterly of the West 1214 feet of said Quarter, Section 3, Township 117 North, Range 24 West, Hennepin County, Minnesota.

B) ALSO the West 403 feet of the East 903 feet of that part of the Northeast Quarter of Section 3, Township 117 North, Range 24 West of the 5th Principal Meridian, lying North of the Northerly right of way line of County Road No. 26.

C) ALSO the West 217.5 feet of the East 500 feet of that part of the Northeast Quarter of Section 3, Township 117 North, Range 24 West of the 5th Principal Meridian, lying north of the northerly right of way line of Hennepin County Highway No. 26, Plat 33, per Document No. 4241584.

DRAFT 7/12/17

(0311724110004)

**EASEMENT**

**On the Property of L & P Schaper Properties, LLC  
Hennepin County, Minnesota**

**Legal description of burdened property:  
Attachment A**

**THIS EASEMENT is entered into by and between L & P Schaper Properties LLC (“Owner”), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.**

**WITNESS:**

**A. Owner owns in fee simple certain real property at 6480 County Road 26 located in Minnetrista, MN 55364, in Hennepin County, Minnesota (the “Burdened Property”).**

**B. The easement here conveyed is a perpetual easement: (i) to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and planting and maintaining vegetation for stabilization, water quality, habitat and aesthetic purposes and (ii) to maintain and flow water on a part of the Burdened Property.**

**THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts the Easement on the Burdened Property, as specifically set forth herein.**

**1. Easement Description. The Easement is as legally described on Attachment B hereto and as delineated on the site plan at Attachment C hereto, each incorporated herein (“Easement Area”). The Easement is established at**

elevation 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. **MCWD's Easement Rights.** Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense:

a. **Land and Vegetation Alteration.** The MCWD may modify lands within the Easement Area, including the beds of wetland and surface waters, by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Easement Area.

b. **Flowage and Flow Management.** The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. **Vegetation.** The MCWD may plant vegetation within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeded, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

d. **Signs.** The MCWD may install signs within the Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

e. **Design, Construction and Associated Rights.** For the purposes authorized in this section 2, the MCWD may occupy the Easement Area for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. **Prohibited Uses.** Owner will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. **Surface Alteration.** Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. **Soil and Water Degradation.** Owner will not engage in an activity or use within or adjacent to the Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Easement Area.

f. **Placement of Waste, Fill or Other Material.** Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. **Trees, Shrubs and Other Vegetation.** Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. **Recitations Incorporated.** All recitations are a part of this agreement.

5. **No Public Access Granted.** Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.

6. **Federal Government Use of Easement.** A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.

7. **Owner's Warranty.** Owner warrants to MCWD as follows:

a. **Authority to Convey.** Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.

b. **Pending Actions.** No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. **Liens.** No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. **Hazardous Materials.** Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and

Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. **Inspection and Enforcement.** The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. **Regulatory Authorities Not Affected.** This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. **Reserved Rights.** Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. **Property Transfer.** Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. **Taxes and Liens.** Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. **Indemnification.** The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by

Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) to the extent resulting from activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

L & P Schaper Properties, LLC  
6480 County Road 26  
Mound, MN 55364

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200



Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

**OWNER**  
L & P Schaper Properties LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Owner

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017,  
by

\_\_\_\_\_  
Notary Public

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017,  
by

\_\_\_\_\_  
Notary Public

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry Davis White, President

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2017, by Sherry Davis White as President of the Minnehaha Creek Watershed  
District.

\_\_\_\_\_  
Notary Public

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

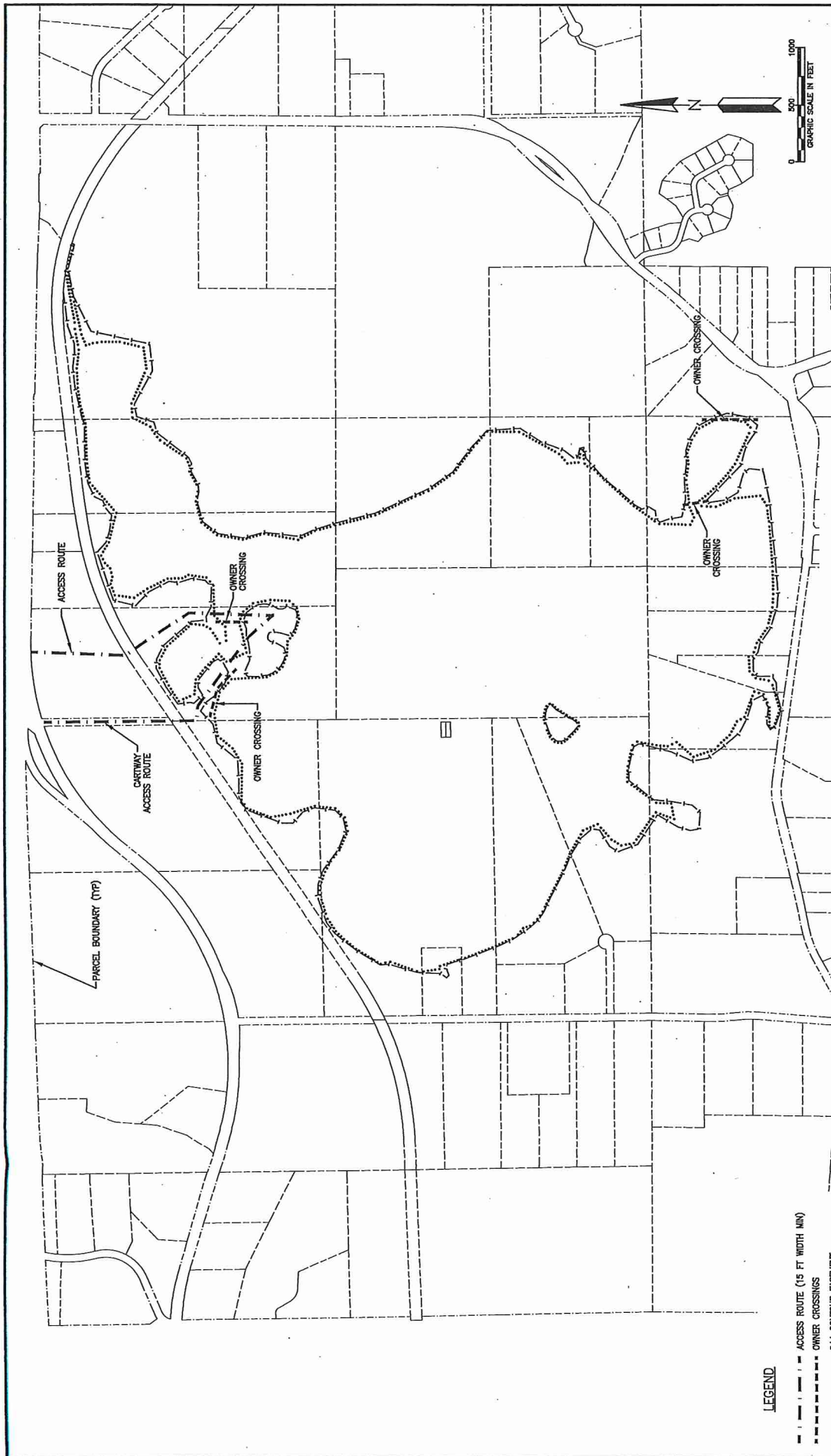
**LEGAL DESCRIPTION OF EASEMENT AREAS**

**ATTACHMENT C**

**SITE PLAN**


**DRAFT**





**LEGEND**

- ACCESS ROUTE (15 FT WIDTH MIN)
- OWNER CROSSINGS
- 844 CONTOUR EASEMENT
- 845.57 CONTOUR EASEMENT
- PARCEL BOUNDARY

 <p><b>WENCK ASSOCIATES</b> Responsive partner. Exceptional outcomes.</p>	CLIENT NAME	MINNEHAHA CREEK WATERSHED DISTRICT QUALITY OF WATER, QUALITY OF LIFE	
	PROJECT TITLE	PROPOSED PAINTER MARSH OVERALL EASEMENTS	
OWN BY (CHK'D)	MJS	PROJECT NO.	0185-0037
APP'D		SHEET NO.	ATTACHMENT C
DATE	JUNE 2016	SCALE	AS SHOWN

**FIRST AMENDMENT TO NOTE**

This FIRST AMENDMENT TO NOTE (this “Amendment”) is made and entered into as of \_\_\_\_\_, 2017, by and between L & P SCHAPER PROPERTIES, LLC, a Minnesota limited liability company (“Borrower”), and MINNEHAHA CREEK WATERSHED DISTRICT, a governmental body created under Minn. Stat. Ch. 103D (“Lender”).

**RECITALS:**

A. Lender loaned to Borrower the original principal sum of \$316,008.00 (the “Loan”) to be repaid with interest thereon, as evidenced by that certain Note executed by Borrower in favor of Lender on September 6, 2013 (the “Note”), which Note is secured by that certain Mortgage dated as of September 6, 2013 made by Borrower in favor of Lender and recorded in the office of the County Recorder for Hennepin County, Minnesota on September 25, 2013 as Document No. A10010041 (the “Mortgage”), which Mortgage encumbers the property owned by Borrower that is described in the Mortgage; and

B. Borrower and Lender desire to enter into this Amendment so as to modify the maturity date of the Note and otherwise to amend the Note in accordance with the terms of this Amendment.

C. Borrower and Lender acknowledge and affirm that this Amendment only modifies the terms of the existing indebtedness and no new or additional credit or sums are being extended or advanced by Lender to Borrower hereunder and no new or additional indebtedness is being created hereby.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agreed to be bound as follows:

1. Schedule of Payments. The schedule of payments set forth in the first paragraph of the Note are deleted and replaced with the following:

9/1/17 – 9/30/18	\$935.00
10/1/18 – 9/30/23	\$1,225.00
10/1/23 – 9/30/33	\$1,770.00

2. Definition of the Maturity Date. The definition in the Note of the term “Maturity Date” shall hereafter mean September 30, 2033, and all references in the Note to the term “Maturity Date” shall mean the Maturity Date as herein defined.

3. Definition of the Mortgage. The definition in the Note of the term “Mortgage” shall hereafter mean that certain Mortgage dated September 6, 2013, as amended by that certain

First Amendment to Mortgage of even date herewith, and all references in the Note to the term “Mortgage” shall mean the Mortgage as herein defined and the obligations evidenced thereby.

4. Ratification; Waiver. Except as herein expressly amended, each and every term, condition and provision of the Note shall remain in full force and effect, and the Note is hereby ratified, confirmed and approved by Borrower. Borrower acknowledges no defenses or offsets against Lender and waives any and all claims against Lender.

5. Counterpart Execution. This Amendment may be executed in as many counterparts as may be deemed necessary or convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same instrument.

*[Signatures follow]*





