

MEETING DATE: February 23, 2017

TITLE: Authorization to Execute a Purchase Agreement for properties 650230600 and 650230700 in Victoria

RESOLUTION NUMBER: 17-014

PREPARED BY: Anna Brown

E-MAIL: abrown@minnehahacreek.org

TELEPHONE: 952-641-4522

REVIEWED BY: Administrator Counsel Program Mgr. (Name): James Wisker, Dir.
 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): Approval at February 23, 2017 Board Meeting	

PURPOSE or ACTION REQUESTED:

Authorization to execute a purchase agreement for the acquisition of the parcels 650230600 and 650230700 (“the Property” or “Wassermann West”), located in the City of Victoria.

PROJECT/PROGRAM LOCATION:

The 32 acre property is located in the City of Victoria, along the western shoreline of Lake Wassermann and west of Highway 43. See property map attached.

PROJECT TIMELINE:

February 23, 2017: Authorization to execute Purchase Agreement
February 23, 2017- May 16, 2017: Develop cooperative agreement with the City of Victoria for purposes of developing shared ownership structure, financing, and project concept design
June 16, 2017: Scheduled property closing

PROJECT/PROGRAM COST:

Fund name and number: Land Conservation 200-2004
Current budget: \$3,964,169.25
Expenditures to date: \$111,562.50
Requested amount of funding: \$875,000 for property acquisition and approximately \$20,000 for closing and related costs

PAST BOARD ACTIONS:

January 9, 2017: Authorization, in closed session, to negotiate with the landowners for acquisition.

SUMMARY:

The District has adopted the *Balanced Urban Ecology* policy as its guiding philosophy. Under this framework, the District is focused on the integration of land-use and water planning through partnership, flexibility and innovation, and through increased geographic focus in areas of high need and opportunity. The District's organizational strategy is to focus on developing high-impact capital projects that integrate non-water public investment through multijurisdictional partnership and to work to increase policy integration of land use and water to advance partnership with private development, public infrastructure, and public policy and planning.

In May of 2014, the Board formally adopted the Six Mile subwatershed as a geography of strategic planning and implementation focus. In March of 2015 the City of Victoria and the District executed a Memorandum of Understanding (MOU) which identifies the mutual value both agencies find in cooperative planning, coordination across agencies on priority water resource issues, and increasing regulatory coordination to support and foster integrated water and natural resources management. One of the priority water resource management areas identified for increased collaboration is Lake Wassermann, an impaired waterbody within the City of Victoria. Since May of 2016, the District has convened staff and policy makers from the geography as the Six Mile-Halsted Bay Planning Partnership to engage in the proactive development of a subwatershed and implementation plan which integrates identified water resource issues and natural resource areas with local planning and development projects and goals.

As planning has advanced with the Six Mile-Halsted Bay planning partnership, the District has sought to remain responsive to land use change and opportunities emerging in real time and concurrent with the formal planning process. Through routine coordination with the City of Victoria, staff from both agencies identified 32 acres of undeveloped land for sale along the Lake Wassermann shoreline. The two parcels for sale include a 22 acre wetland with 6 acres of open marsh, as well as a wooded bluff along the lake shoreline. The property's wetland is a source of phosphorus pollution to Lake Wassermann. In addition to supporting the District's public interest in protecting and enhancing high value conservation land and improving water quality on priority water bodies, the property is of interest to the City for providing public access and supporting its park, trail, and open space goals. The City's 2008 Comprehensive Plan identified this area as a key connecting piece for both local and regional trail from the northeastern properties to the newer developments south of Lake Wassermann. This acquisition presents an opportunity to codevelop a park and restoration project that achieves both agencies' strategic goals.

The MCWD Board of Managers authorized staff on January 9, 2017 to negotiate with the landowners, DM & RS Limited Partnership, on purchase price and terms, and to develop a Purchase Agreement to that effect. The drafted purchase agreement is attached herein. It includes the following provisions:

- A purchase price of \$875,000
- Earnest money down of \$10,000, applied towards the purchase price at closing
- District payment of all closing costs, tentatively with 50% repayment of those costs within the City Cooperative Agreement
- District completion of title and phase I environmental assessment work
- A scheduled closing date of June 16, 2017

In addition to outlining roles, responsibilities and timeline for all necessary property due diligence, the Agreement includes a contingency period through May 16, 2017 for the purposes of developing and adopting a cooperative agreement with the City of Victoria to develop a framework for coordinated planning on the Property and collaborative ownership and management, including a proposal wherein the City would co-fund the acquisition. The park concept and cooperative agreement will be reviewed by the City Park and Recreation Committee and City Council. The cooperative agreement with a preliminary project concept design will return to the Board of Managers within the due diligence period.

RESOLUTION

RESOLUTION NUMBER: 17-014

TITLE: **Authorization to Execute a Purchase Agreement for Properties 650230600 and 650230700 in Victoria**

WHEREAS, pursuant to Minnesota Statutes §103B.231, the District has adopted and implements a watershed management plan (WMP) that contains a Land Conservation Program to acquire fee and easement interests in key locations for the advancement of water resource goals, and to work with local units of government to implement conservation, water quality, recreation and other initiatives of public benefit on lands subject to the District's acquired interests;

WHEREAS, the Minnehaha Creek Watershed District Board of Managers has adopted a balanced urban ecology policy that recognizes the multi-sector value of integrating natural systems and land use planning; and

WHEREAS, this approach incorporates geographic focus, facilitating a greater understanding of the threats and opportunities within a system and allowing the District to develop relationships with municipalities and other partners; and

WHEREAS, on February 9, 2017, the Board of Managers approved the District's strategic direction and alignment report, stating its principal organizational strategy of:

- Developing high impact capital projects integrated with non-water initiatives through multijurisdictional partnership;
- Changing the land-use water policy environment to increase early value added partnership with private development, public infrastructure, and public policy and planning; and

WHEREAS, pursuant to Resolution 14-047 the MCWD Board of Managers has identified the Six Mile Creek subwatershed as a priority area for focusing District planning activities and coordination efforts with subwatershed partners; and

WHEREAS, on March 26, 2015 the Board authorized the District to enter a Memorandum of Understanding with the City of Victoria, outlining opportunities to collaborate and integrate mutual efforts in the realms of coordinated planning of local water and land use plans, assessment of specific water management issues, and coordinated regulatory review of water and land development; and

WHEREAS, the District is engaged in a planning process for the Six Mile-Halsted Bay subwatershed that will identify implementation strategies to achieve the District's goals of protecting and improving water quality, water quantity, ecological integrity, and thriving communities through land use and water integration;

WHEREAS, District and Victoria City staff have worked together under this planning framework to proactively identify areas for coordinated project development at the urban fringe; and

WHEREAS, District and Victoria City staff identified the Wassermann West property (the Property), consisting of 32 acres, more or less, riparian to the western shore of Wassermann Lake and presently owned by DM & RS Limited Partnership and the Minneapolis Jewish Federation, as

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

an opportunity for coordinated project development to meet strategic goals of both the District and City by improving lake water quality, protecting and enhancing riparian wetland and shoreline, and affording public access to Wassermann Lake, among other potential project benefits; and

WHEREAS the Property is identified as within a Key Conservation Area and District priority area for land rights acquisition under the WMP Land Conservation Program;

WHEREAS, the District's Land Conservation Technical Advisory Team convened on December 13, 2016, and reviewed the potential land acquisition and project framework pursuant to the District's Land Conservation procedures; and

WHEREAS, on January 9, 2017, the Board authorized staff to negotiate with the Seller for fee acquisition of the Property and develop a Purchase Agreement; and

WHEREAS, the District has obtained an appraisal of the Property, which has been reviewed by the Board of Managers, and District staff and the Sellers have drafted a Purchase Agreement and have reached agreement in principle on the terms of that agreement and a selling price of \$875,000; and

WHEREAS, The Purchase Agreement includes a contingency period between execution and closing for purposes including:

- Completing property due diligence including survey, title, and phase I environmental assessment work;
- Developing, with the City, a preliminary concept plan for the Property including environmental restoration, phosphorus treatment, and public access;
- Executing a cooperative agreement with the City of Victoria to secure formal City support for the acquisition and provide a framework for collaborative ownership and management of the Property; and

WHEREAS, pursuant to Minnesota Statutes §103B.251 and due notice as specified therein, the District held a public hearing on February 23, 2017 to receive public comment, at which time all interested parties had an opportunity to address the Board on the question of the acquisition of the Property;

WHEREAS, the Board of Managers finds that with contingencies met, the acquisition of the Property is conducive to public health and will promote the general welfare, and is in compliance with Minnesota Statutes §§103B.205 to 103B.255 and the WMP;

NOW, THEREFORE, BE IT RESOLVED that pursuant to Minnesota Statutes §103B.251 and the WMP, the acquisition of the Property is ordered, with closing subject to the terms and contingencies as stated above; and

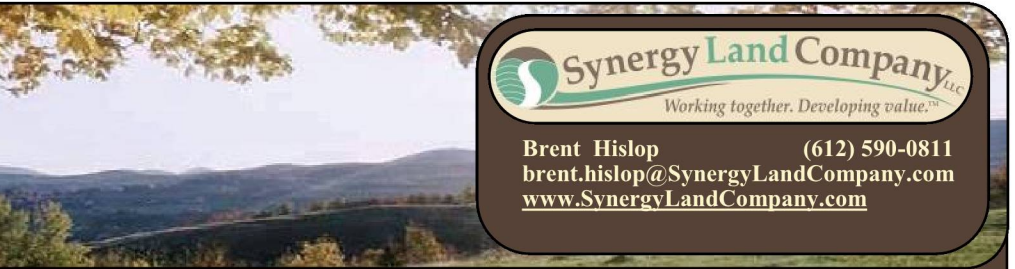
BE IT FURTHER RESOLVED that the administrator is authorized to execute, on advice and consent of counsel, the purchase agreement for the purchase in fee, at a cost not to exceed \$875,000, of the Wassermann West property, with nonsubstantive revisions to effect the purposes of the transaction as necessary; and

BE IT FURTHER RESOLVED that the administrator may take such other further actions necessary to effect the transaction pursuant to the terms of the purchase agreement, including providing for payment of such sums as are stipulated in the agreement in earnest money, closing costs and acquisition price and such administrative, consultant and other sums as are necessary for the District to assess the contingencies and otherwise fulfill its rights and obligations under the agreement; and

BE IT FINALLY RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize staff to develop and Cooperative Agreement with the City of Victoria to evaluate opportunities on the property for water quality, ecological enhancement, and public access.

Resolution Number 17-014 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

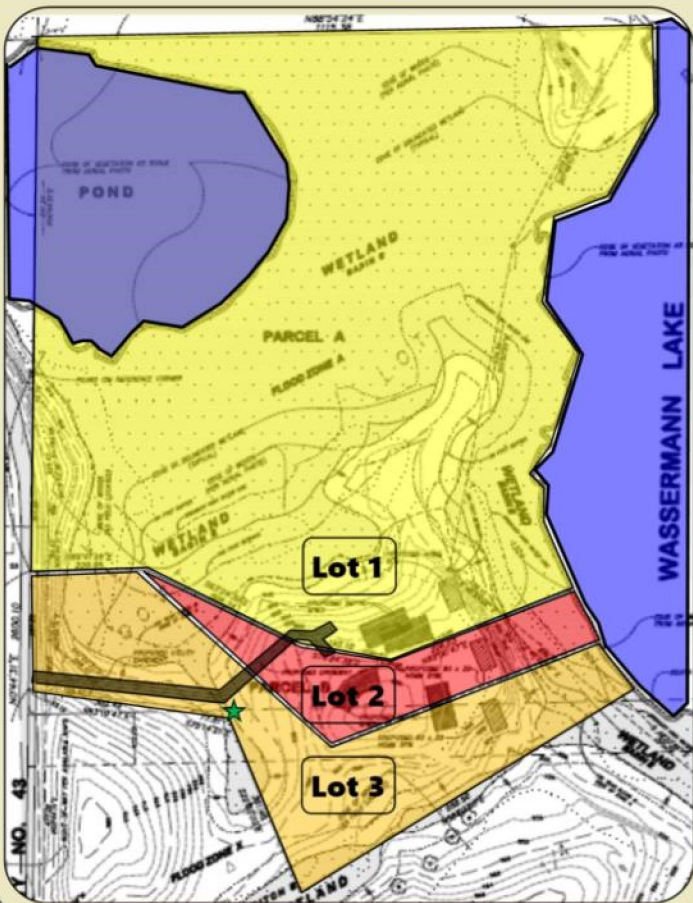


Estate-Sized Lakeshore Lots

Wassermann Lake, Victoria, MN (Approx. 9155 County Rd. 43)
A unique opportunity: lakeshore living, estate acreage, & a close-in location



- **Wassermann Lake:** This 151 acre recreational lake is 41' deep. Shorelines remain natural with minimal development. Boating, fishing, & outdoor fun.
- **Current Status:** Subdivision plan has been reviewed with the City. Owner will subdivide prior to closing. City sanitary sewer at property. Well water.
- **Victoria = Excellent Location & Access:** Victoria's convenient location supports a stable employment base & 15 minute access to the I-494 loop.
- **Recreation:** Deer Run Golf Club, Marsh Lake Hunt Club, & 3,500 ac. Park are all w/in a 3 min. drive.
- **Top-Tier Schools:** Education is a priority in Victoria — the district places among the best in MN.
- **Lot Sizes & Pricing:**
(dimensions & sizes are approx. & TBD by final survey)



	Acreage	Lakeshore	Price
Lot 1:	23.5+/- ac.	1,000+'	\$369,000
Lot 2:	2.1+/- ac.	110+/-	\$299,000
Lot 3:	4.7+/- ac.	115+/-	\$329,000

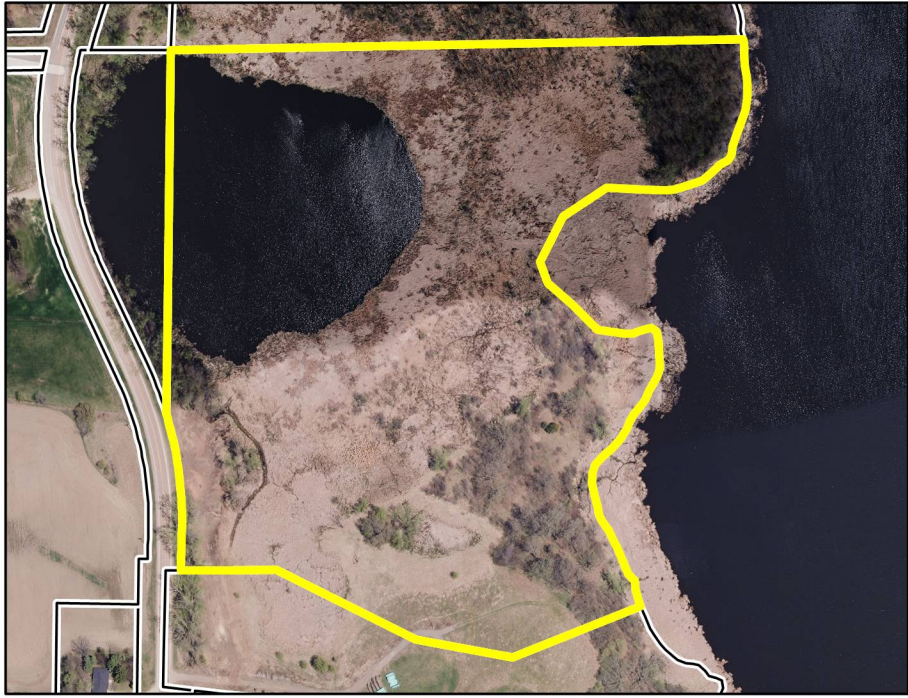


Property Card

Parcel ID Number

Taxpayer Information

Property Address



Parcel Information

Building Information

Miscellaneous Information

--	--	--	--	--

Assessor Information

Property Card

Parcel ID Number

Taxpayer Information

Property Address



Parcel Information

Building Information

Miscellaneous Information

--	--	--	--	--

Assessor Information

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of the Effective Date, DM & RS LIMITED PARTNERSHP, a Minnesota limited partnership (“**DM&RS**”) and MINNEAPOLIS JEWISH FEDERATION, a Minnesota nonprofit corporation (“**Federation**”; DM&RS and Federation are sometimes collectively referred to as “**Seller**”), and MINNEHAHA CREEK WATERSHED DISTRICT, a watershed district with purposes and powers as set forth in Minnesota Statutes Chapters 103B and 103D (“**Buyer**”).

RECITALS

A. DM&RS, as to an undivided 97% interest, and Federation, as to an undivided 3% interest, own approximately 32 acres of land in the City of Victoria, State of Minnesota, and legally described on Exhibit A attached hereto and made a part hereof (the “**Real Property**”).

B. Seller desires to sell the Real Property to Buyer, together with (i) all licenses, permits and governmental registrations, filings, authorizations and approvals relating to the Real Property (collectively, the “**Permits**”); (ii) all originals and copies of plans and surveys relating to the Real Property; and (iii) any easements, hereditaments and appurtenances to the Real Property (collectively, with the Real Property, the “**Property**”), and Buyer desires to buy the Property from Seller, all subject to and on the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Seller and Buyer agree:

1. **Sale and Purchase.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, together with and including all hereditaments, appurtenances, easements and rights of way thereunto belonging or in any way appertaining to the Property and also the right, title and interest, if any, of Seller in and to the bounding and abutting streets, alleys and highways, subject to and upon the terms and conditions of this Agreement.

2. **Purchase Price.** The purchase price for the Property is Eight Hundred Seventy-Five and 00/100 Dollars (\$875,000.00) (the “**Purchase Price**”).

Buyer understands that Seller intends to claim the sale of the Property as a charitable contribution in the form of a bargain sale as defined in Internal Revenue Code Sections 170 and 1101(b) and the regulations promulgated thereunder because Seller believes that the Property’s fair market value is greater than the Purchase Price. Within 60 days following the Closing Date, Seller shall have the Property appraised, at Sellers’ sole cost and expense. The appraisal will be provided to Buyer and Buyer agrees reasonably to cooperate with Seller in connection with Seller’s attempts to file the necessary documentation and tax forms to claim the sale of the Property as a charitable contribution. Buyer makes no representations, warranties or covenants regarding the fair market value of the Property or Seller’s ability to claim the sale of the Property as a charitable contribution.

3. **Payment of Purchase Price.**

3.1 On or before the second (2nd) business day after the Effective Date, Buyer will deposit Ten Thousand and 00/100 Dollars (\$10,000.00) as earnest money (the “**Earnest Money Deposit**”) into an interest bearing escrow account with First American Title Insurance Company (“**Title Company**”) for the benefit of Buyer and Seller. The Earnest Money Deposit is refundable, except as expressly provided in this Agreement, and will be credited, with interest, against the Purchase Price at Closing. All interest accruing on the Earnest Money Deposit shall accrue to the benefit of Buyer.

3.2 The balance of the Purchase Price will be delivered by wire transfer or other immediately available funds to the Title Company at Closing, plus or minus prorations and less credits allocable to Buyer in accordance with this Agreement.

4. **Closing.**

4.1 The closing of the sale of the Property (the “**Closing**”) shall occur on the first business day that is thirty (30) days following the later of (a) the Inspection Contingency Date; and (b) the date Seller has cured or Buyer has waived the Objections in accordance with Section 7 of this Agreement, but in no event shall the Closing be later than June 16, 2017 (the “**Closing Date**”). The Closing will occur on the Closing Date at Title Company’s offices, or such other mutually acceptable location, through an escrow established with Title Company.

4.2 At the Closing, Buyer will deliver into escrow the balance of the Purchase Price, subject to any credits or closing adjustments in accordance with this Agreement, by wire transfer or other immediately available funds. At the Closing, Buyer will also deliver into escrow a duly signed closing statement.

4.3 At the Closing, Seller will deliver the following items into escrow, duly signed and, as appropriate, acknowledged by Seller: (a) Warranty Deed for the Property (the “**Deed**”), subject only to the Permitted Exceptions (as defined in Section 7.2 below), in the form attached hereto as Exhibit B; (b) affidavit of non-foreign seller; (c) a certification by Seller that Seller’s representations and warranties set forth in Article 9 remain true and correct as if remade on the Closing Date, (d) documents evidencing Seller’s authority to consummate the transaction contemplated in this Agreement; and (e) a closing statement.

4.4 Seller and Buyer will execute and deliver any and all additional documents or instruments that are customary in Minnesota or reasonably required by Title Company.

4.5 Seller will deliver possession of the Property to Buyer on the Closing Date, including the original abstract, if any, or certificate of title and all Permits.

5. **Closing Costs.** Seller will pay all search, commitment, abstracting and other fees charged by Title Company in connection with preparation of the Title Commitment (as defined below), the costs of recording any title correction documents, the cost of recording the Deed and any deed or other transfer taxes. Buyer will pay all premiums for any Owner’s Policy of Title

Insurance, the cost of an updated Survey, and the costs of recording any documents requested by Buyer other than the Deed or title correction documents. Seller and Buyer will split any Title Company closing fee, and allocate all other closing costs according to the customary practice for similar transactions in Carver County, Minnesota. Except as provided in Section 17, each party will pay its own attorneys' fees.

6. **Closing Adjustments.** Seller shall pay all expenses of the Property relating to the period prior to the Closing Date, and Buyer shall pay all expenses of the Property relating to the period on and after the Closing Date. Expenses relating to both before and after the Closing Date will be prorated between Buyer and Seller as of the Closing Date. The Closing Date will be allocated to Buyer. Seller shall pay installments of real estate taxes due and payable in the calendar years prior to the year in which the Closing Date occurs, and Buyer shall pay all installments of real estate taxes due and payable in the calendar years after the year in which the Closing Date occurs. Installments of real estate taxes due and payable in the calendar year in which the Closing Date occurs shall be prorated as of the Closing Date on a per diem basis. Seller shall pay in full at Closing all levied, pending, assessed and due and payable special assessments as of the Effective Date or deferred or past due taxes that exist as of the Closing Date. If Seller has protested the real estate taxes on the Property and there is any tax refund, the refund (after deducting the reasonable fees and other costs directly attributable to such contest) shall be allocated between Seller and Buyer based upon the proration pursuant to this Section 6 of the taxes relating to such refund. This Section 6 will survive Closing.

7. **Title and Survey Matters.**

7.1 **Examination of Title and Survey; Objections.** Within five (5) days after the Effective Date, (a) Buyer will order, at Seller's sole cost, a commitment for an owner's policy of title insurance (the "**Title Commitment**") issued by Title Company covering the Real Property, committing to provide an ALTA Form B Owner's Title Insurance Policy with extended coverage, the deletion of the general exceptions, in the full amount of the Purchase Price, together with legible copies of all documents or instruments shown as exceptions or referred to therein (together with the Title Commitment, collectively, the "**Title Evidence**"); and (b) Buyer will order, at Buyer's sole cost, an updated ALTA survey of the Real Property (the "**Survey**"). Buyer will deliver written objections to the form and/or contents of the Title Evidence and the Survey (the "**Objections**") on or before the tenth (10th) business day after Buyer's receipt of the last of the Title Evidence and Survey but in no event later than the Inspection Contingency Date, provided, however, that Buyer shall not be obligated to object to liens or encumbrances which may be removed by the payment of money, such as mortgages, deeds of trust, judgment liens, tax liens or mechanics liens (the "**Monetary Encumbrances**"). If Buyer fails to make Objections prior to the Inspection Contingency Date, then Buyer will be deemed to have waived its right to make Objections.

7.2 **Correction of Title and Title Condition.** Seller covenants and agrees to satisfy any Monetary Encumbrances on or before the Closing Date, and to use commercially reasonable efforts to correct any Objections prior to the day immediately preceding the Closing Date (from the date of such Objections through the day immediately preceding the Closing Date, the "**Title Cure Period**"). On or before the fifth (5th) day after Seller's receipt of Buyer's

Objections, Seller will deliver written notice to Buyer advising Buyer whether Seller will cure or whether Seller refuses to cure any of the Objections. If Seller agrees to cure the Objections, then Seller shall cure the same prior to the Closing Date. If Seller has agreed to cure the Objections but fails to cure such Objections prior to Closing Date, then, Buyer may terminate this Agreement. If Seller refuses to cure any of the Objections, then, within five (5) business days after receipt of such notice of refusal from Seller, Buyer may (i) terminate this Agreement by giving written notice to Seller, or (ii) waive one or more of the Objections and proceed to Closing. If Buyer terminates this Agreement under this Section 7.2, the Earnest Money Deposit (together with any interest thereon) will be immediately refunded to Buyer and neither party shall have any further obligation under this Agreement. Buyer will take title to the Property subject to any title matters to which Buyer fails to object or waives its objection and such title matters shall be deemed "**Permitted Exceptions**".

8. **Due Diligence.**

8.1 **Records.** Within five (5) days after the Effective Date (the "**Records Delivery Date**"), Seller shall deliver to Buyer true, complete and correct copies of all documents relating to the Property in Seller's possession or reasonably available or accessible to Seller (collectively, the "**Records**"), including, without limitation: (a) any existing environmental audit, tests, reports or studies, including, without limitation, any "Transaction Sheet", Phase I environmental site assessment or Phase II environmental site assessment; (b) any geotechnical, structural, soil and engineering reports; (c) the most recent title commitment and existing survey; (d) copies of each of any Permits; (e) records and documents regarding real estate taxes and assessments; and (f) all other non-proprietary records, instruments and documents relating to the physical condition or legal status of the Property.

8.2 **Inspection; Indemnity; Inspection Contingency.**

8.2.1 **Inspection.** From and after the Effective Date and through and including Inspection Contingency Date (as defined below), Buyer, its employees, agents and/or independent contractors shall have the right to review the Records and to enter upon the Property at all reasonable times and upon reasonable prior notice to Seller to perform physical and other inspections, perform surveys, engineering studies, environmental tests (including a Phase I Environmental Assessment and, if desired by Buyer, a Phase II Environmental Assessment), soil tests, and other tests, inspections, investigations and activities as Buyer may elect (collectively, the "**Inspection**").

8.2.2 **Indemnity.** Buyer will indemnify, defend and hold harmless Seller from all liabilities incurred by Seller that arise solely as a result of the negligence or willful misconduct of Buyer in connection with the Inspection. In the event this Agreement is terminated prior to Closing, Buyer, at its sole cost and expense, shall restore the Property to the condition in which it existed prior to Buyer performing its tests and studies as set forth herein. Before conducting any on-site Inspection, Buyer will provide Seller with a certificate of liability insurance insuring Buyer and its contractors in an amount of not less than \$1,000,000.00 naming Seller as an additional insured.

8.2.3 Inspection Contingency Date. If Buyer, in its sole and absolute discretion, is not satisfied with the Property for any reason or no reason, including, without limitation, the results of the Inspection or its review of the Records, Buyer may terminate this Agreement by delivering written notice to Seller on or before 5:00 p.m. on May 16, 2017 (the “**Inspection Contingency Date**”) stating that Buyer elects to terminate this Agreement. Buyer’s failure to deliver such written notice on or before the Inspection Contingency Date will be deemed to be Buyer’s election to proceed to Closing subject to and on the terms and conditions of this Agreement, including, without limitation, satisfaction or waiver of the Additional Contingencies (as defined below). If this Agreement terminates pursuant to this Section 8.2.3, then the Earnest Money Deposit (together with any interest thereon) will be immediately refunded to Buyer and neither party shall have any further obligation under this Agreement.

8.3 Additional Contingencies.

8.3.1 Additional Contingencies. In addition to all other conditions set forth in this Agreement, Buyer’s obligations to consummate the transaction contemplated in this Agreement is contingent upon satisfaction of all of the following (individually, the “**Additional Contingency**” and collectively, the “**Additional Contingencies**”):

- (a) on the Closing Date, Seller’s representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date;
- (b) on the Closing Date, Seller is not in default under this Agreement or any other contract or agreement affecting or relating to the Property;
- (c) on or before the Inspection Contingency Date, Buyer has satisfied all public notice and project ordering requirements under Minn. Stat. §103B.251;
- (d) on or before the Inspection Contingency Date, Buyer has received an appraisal of the Property that is acceptable to Buyer in its sole discretion; and
- (e) on or before the Inspection Contingency Date, Buyer shall have entered into a cooperative agreement relating to the Property with the City of Victoria on terms and conditions acceptable to Buyer.

8.3.2 Additional Contingencies Date. If any of the Additional Contingencies described in Subsection 8.3.1 above has failed as of the date set for satisfaction thereof, then this Agreement shall be deemed automatically terminated without any further action required on the part of Buyer unless Buyer furnishes written notice to Seller on or before the applicable date that Buyer elects to proceed with the transaction. If this Agreement terminates pursuant to this Section 8.3, the Earnest Money Deposit (together with any interest thereon) will be refunded to Buyer and neither party shall have any further obligation under this Agreement. Furthermore, if Buyer terminates this Agreement due to an untruth or breach of a representation

or warranty made in Section 9 of this Agreement, DM&RS will reimburse Buyer for Buyer's reasonable actual out-of-pocket expenses incurred by Buyer in relation to this Agreement (including costs and expenses relating to the Inspection, the Environmental Review and Buyer's reasonable attorneys' fees and costs), not to exceed a total of Twenty Thousand and 00/100 Dollars (\$20,000.00).

9. **Seller's Representations and Warranties.** As an essential part of this Agreement and in order to induce Buyer to enter into this Agreement and purchase the Property, DM&RS hereby represents and warrants to Buyer that:

9.1 No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened against or affect the Seller or the Property.

9.2 No condemnation or eminent domain proceedings are now pending or contemplated against the Property.

9.3 To Seller's knowledge, the Real Property is not assessed for any public improvements heretofore made and no ordinance or hearing is now before any local governmental body which either contemplates or authorizes any public improvements, the cost of which may be assessed against the Property.

9.4 Seller has not received any notices, orders, suits, judgments or other proceedings relating to fire, building, zoning, subdivision, platting, air pollution or health violations that have not been corrected.

9.5 DM&RS owns an undivided 97% interest in the Property. Federation owns an undivided 3% interest in the Property. Seller has good and marketable fee simple title interest to the Property.

9.6 To Seller's knowledge, there are no subsurface conditions of the Property impacting the physical stability or physical condition of the Property that would materially adversely affect Buyer's intended use as a watershed/wetland or, on the upland portion, parkland.

9.7 All services or materials which have been furnished to the Property have been fully paid for or will be fully paid for prior to the Closing Date so that no lien for services or materials rendered (commonly known as mechanic's or materialmen's liens) can be asserted against the Property. The Property will on the Closing Date be free and clear of all liens, security interests, all encumbrances, leases or other restrictions or objections to title, except the Permitted Exceptions.

9.8 The Records delivered to Buyer pursuant to Section 8.1 are complete and accurate, and Seller has no knowledge of any materially false or misleading statement or fact in any of the Records.

9.9 Federation is a nonprofit corporation duly formed and in good standing in the State of Minnesota. DM&RS is a limited partnership duly formed and in good standing in the State of Minnesota. Seller has duly and validly authorized and executed this Agreement and has full power

to enter into and to perform this Agreement according to its terms and the execution and the delivery of this Agreement and the consummation of the transactions contemplated hereby will not constitute a default under any indentures, agreements, mortgages, or any other instruments to which Seller is a party, and is not in contravention of any law, order, ordinance, or regulation by which Seller is bound or subject.

9.10 Seller has not used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any Hazardous Materials on or affecting the Real Property in any manner which violates any federal, state or local law, statute, regulation, requirement, ordinance, rule or policy, and to Seller's knowledge, no prior or current owner, tenant, subtenant, occupant or licensee of the Real Property has used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any Hazardous Materials on or affecting the Real Property in any manner which violates any federal, state or local law, ordinance, rule, regulation or policy. "**Hazardous Materials**" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances 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, the Minnesota Environmental Response and Liability Act, as amended, or any other federal, state or local laws, statutes, regulations, requirements, ordinances, rules or policies.

DM&RS agrees, for any breach for which Buyer gives written notice during the one year period after the Closing, to indemnify and hold Buyer harmless from and against and to reimburse Buyer with respect to any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and costs) asserted against or incurred by Buyer by reason of or arising out of the material breach of any representation or warranty as set forth herein. Federation shall have no liability or indemnification obligations for a breach of any representation or warranty contained in this Section 9. Buyer acknowledges that it has had an opportunity to conduct due diligence with respect to the Property and in no event shall Seller have any liability to Buyer for any breach of a representation or warranty to the extent Buyer had actual knowledge of such breach on or before the Closing Date.

10. **Casualty.** If any portion of the Property is damaged or destroyed by casualty before Closing, Seller shall immediately give notice thereof to Buyer, and Buyer at its option (to be exercised within thirty (30) days after Seller's notice) may either (a) terminate this Agreement, or (b) proceed to Closing and receive at Closing a payment or an assignment of all amounts recovered or recoverable by Seller on account of insurance on the Property.

11. **Condemnation.** If eminent domain proceedings are commenced against any portion of the Property prior to Closing, Seller shall immediately give notice thereof to Buyer, and Buyer at its option (to be exercised within thirty (30) days after Seller's notice) may either (a) terminate this Agreement, or (b) proceed to Closing and receive at Closing either a credit against the Purchase Price in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing, Seller shall not designate counsel, appear in, or otherwise

act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Buyer.

12. **Assignment.** Buyer may not assign or transfer its interest in this Agreement without Seller's written consent, which consent will not be unreasonably withheld, conditioned or delayed.

13. **Brokers.** Seller represent and warrant to Buyer that Seller has not engaged the services of any broker in connection with the sale of the Property other than Synergy Land Company (“**Seller's Agent**”). Buyer represents and warrants to Seller that Buyer has not engaged the services of any broker in connection with the purchase of the Property. At Closing, Seller agrees to pay for all services rendered by Seller's Agent. Seller and Buyer each hereby agree to indemnify the other against, and hold the other harmless from, any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party with any party other than Seller's Agent.

14. **Interim Operations; Termination of Contracts.** Commencing on the Effective Date and continuing through and including the Closing Date, Seller shall (a) operate, maintain and manage the Property in the ordinary course of business in accordance with prudent, reasonable business practices, including maintenance of adequate insurance with respect to the Property (including commercial general liability insurance), and full and timely compliance with any existing mortgage and related loan documents, the Permits and all applicable laws, (b) not lease, convey or otherwise transfer any of the Property, (c) execute no contracts, leases or other agreements regarding any of the Property (including any amendment or modification of any existing mortgage and related loan documents or the Permits) without the prior consent of Buyer (which may be withheld or conditioned in Buyer's sole discretion), and (d) promptly deliver to Buyer a copy of any notice, consent, waiver, request or other communication Seller receives from any public or private entity with respect to any of the Property.

15. **Default.** In the event that:

15.1 Seller fails to consummate the transactions contemplated in this Agreement for any reason, except to the extent caused by Buyer's default or failure of Buyer to satisfy any conditions precedent to Seller's obligations set forth herein, Buyer shall be entitled to (a) enforce specific performance of this Agreement provided such action is commenced within six (6) months following such breach; or (b) cancel and terminate this Agreement and be relieved of its obligations hereunder and immediately have all of the Earnest Money Deposit (including all accrued interest thereon) returned to Buyer. No delay or omission in the exercise of any right or remedy accruing to Buyer upon any breach by Seller under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Buyer of any condition, or the breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any other condition, or of any subsequent breach of any term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Buyer shall be cumulative and not alternative. The exercise of one right, power, option, or remedy shall not bar any other right, power, option or remedy.

15.2 Buyer fails to consummate the transactions contemplated in this Agreement for any reason, except to the extent caused by Seller's default or failure of Seller to satisfy any conditions precedent to Buyer's obligations set forth herein, Seller will have the right to terminate this Agreement by giving Buyer notice of such default. If Buyer fails to cure all items of default specified in the notice that complies with Minn. Stat. §559.21 within thirty (30) days after receiving such notice, then this Agreement shall be deemed terminated and upon such termination Seller shall retain all of the Earnest Money Deposit (including all accrued interest thereon) as liquidated damages. The termination of this Agreement and the retention of the Earnest Money Deposit and accrued interest thereon shall be the sole remedy available to Seller for Buyer's failure to consummate the transaction, it being expressly understood and agreed that Buyer will not be liable for damages or specific performance.

15.3. Except as otherwise provided herein, it is the intent of Seller and Buyer that no suit for damages may be brought with respect to any aspect of the transaction contemplated herein and the sole remedies of Seller and Buyer are set out in Sections 15.1 and 15.2 above, except however, that from and after the Closing, each party shall have the right to pursue its actual damages against the other party (i) for a breach of any covenant or agreement contained herein as provided herein that is performable after or that survives any Closing (including the indemnification obligations of the parties contained this Agreement), and (ii) for a breach of any representation or warranty made by the other party in this Agreement. If the Closing does not occur, (A) each party shall have its respective rights and remedies under Sections 15.1 and 15.2, as applicable, and (B) each party shall have all available remedies against the other party for a breach of the other party's obligations contained in this Agreement that are expressly provided herein as surviving the termination of this Agreement. In no event shall either party be liable for any speculative, consequential or punitive damages.

16. **Notices.** Any notice, demand, request or other communication under this Agreement must be in writing, and shall be deemed given when it is personally delivered to the address set forth below or two (2) business days after such notice is mailed by first class mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To Seller:
DM&RS Limited Partnership
Attn: David Segal
2220 Cape Cod Place
Minnetonka, MN 55305

To Buyer:
Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345
Attn.: Mr. James Whisker and Ms. Anna
Brown

Minneapolis Jewish Federation
13100 Wayzata Blvd, Suite 200
Minnetonka, MN 55305
Attn.: _____

With copy to:

Siegel Brill P.A.
Attn: Brian Weisberg
100 Washington Avenue South,
Suite 1300
Minneapolis, MN 55401

Either party may change its address for notice purposes by giving written notice to the other party in the manner set forth in this Section.

17. **Attorneys' Fees.** In the event of any proceeding to enforce this Agreement, the non-prevailing party shall pay the reasonable attorneys' fees and costs incurred by the prevailing party.

18. **Confirming Termination.** Notwithstanding anything in this Agreement to the contrary, if this Agreement terminates for any reason, each party agrees to execute any and all documents required by applicable Minnesota Statutes.

19. **Additional Provisions.**

19.1 **Effective Date.** "Effective Date" means the date on which Seller signs the Agreement after Buyer has signed it, as shown on the signature page, but if Seller does not deliver the signed Agreement to Buyer on that day, then the Effective Date will be postponed by one day for each day Seller delays in delivering this Agreement to Buyer.

19.2 **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties relating to the transaction contemplated hereby and may not be amended, waived or discharged except by an instrument in writing executed by both parties.

19.3 **Invalidity.** If any clauses or provisions herein contained would invalidate this Agreement in whole or in part, such clauses or provisions only shall be invalid, and the remainder of this Agreement will remain in full force and effect.

19.4 **Limitation on Offer.** The preparation of the Agreement by Buyer and the submission of this Agreement for the review or execution by any party shall not be deemed to be an offer by Buyer to purchase the Property, and this Agreement shall not be binding upon Buyer unless or until it has been executed by both Seller and Buyer.

19.5 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

19.6 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19.7 **Time of Essence.** Time is of the essence of this Agreement.

19.8 **Survival.** All of the terms, conditions, covenants, representations and warranties of this Agreement will survive Closing and the delivery of the Deed for a period of twenty-four (24) months.

19.9 **Dates.** If any date, deadline or time for performance under this Agreement falls on a weekend or is a bank holiday, that date, deadline or time for performance will automatically be extended to the next day that is not on a weekend and is not a bank holiday.

19.10 **Construction.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

19.11 **Counterparts; Facsimile Signature.** This Agreement may be executed in counterparts, each of which will be deemed an original. For purposes of executing this Agreement, a facsimile of a signature will be deemed an original.

19.12 **1031 Exchange.** Seller may seek to qualify the sale of the Property as part of a tax-free exchange under Section 1031 of the Internal Revenue Code. In that regard, Buyer agrees that, upon the request of Seller, Buyer shall reasonably cooperate with Seller's attempt to qualify the sale of the Property as a tax-free exchange, provided (i) such cooperation shall be without cost, expense or liability to Buyer; (ii) Seller shall structure the transaction using an exchange agreement involving a "Qualified Intermediary" as defined in the regulations issued under Section 1031 of the Internal Revenue Code; (iii) Seller shall use commercially reasonable efforts to provide Buyer with notice of the proposed structure of the transaction and the identity and organizational form of the Qualified Intermediary and an exchange agreement or other agreements pertinent to the transaction at least fifteen (15) days prior to the Closing Date; (iv) the structure of the exchange transaction (a) shall not require Buyer to hold legal or equitable title to any property other than the Property and (b) shall be designated so that the Purchase Price thereunder is paid to Seller or Seller's designee on the Closing Date; (v) such transaction shall not change any of the dates of Seller's required performance hereunder; and (vi) nothing herein shall obligate Buyer to any action which Buyer believes, in its sole discretion, adversely affects Buyer's

tax position; does not have a reasonable basis within the law; will place Buyer in a position of possessing any legal, equitable or beneficial ownership in any real property involving the exchange other than the Property; or requires actions which cannot be reasonably accomplished in the timeframe necessary for the transaction to qualify as a tax deferred exchange under Section 1031 of the Internal Revenue Code. Buyer makes no representations or warranties that Seller's proposed transaction will qualify as a tax deferred exchange under said Section 1031 of the Internal Revenue Code and its regulations.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

Seller and Buyer have signed and delivered this Agreement as of the Effective Date.

SELLER:

BUYER:

DM & RS LIMITED PARTNERSHIP

**MINNEHAHA CREEK WATERSHED
DISTRICT**

By: _____
David Segal, General Partner

By: _____
Sherry White, MCWD Board
President

Dated: _____

Dated: _____

MINNEAPOLIS JEWISH FEDERATION

By: _____
Its: _____

Dated: _____

EXHIBIT A
LEGAL DESCRIPTION

TO BE ATTACHED

EXHIBIT B

DEED

(Top 3 inches Reserved for Recording Data)

WARRANTY DEED

Business Entity to Business Entity

eCRV number: _____

DEED TAX DUE: \$ _____

Date: _____, 201__

FOR VALUABLE CONSIDERATION, DM & RS LIMITED PARTNERSHIP, a Minnesota limited partnership and MINNEAPOLIS JEWISH FEDERATION, a nonprofit corporation under the laws of Minnesota (“**Grantor**”), hereby conveys and warrants to MINNEHAHA CREEK WATERSHED DISTRICT, a _____ (“**Grantee**”), real property in Carver County, Minnesota, described as follows:

SEE EXHIBIT A

Check here if part or all of the land is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions: Easements, restrictions and limitations of record, if any.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

DM & RS LIMITED PARTNERSHIP, a Minnesota
limited partnership

By: _____

David Segal, General Partner

Its: _____

MINNEAPOLIS JEWISH FEDERATION, a Minnesota
nonprofit corporation

By: _____

Its: _____

DRAFT

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 201__ by David Segal, General Partner of DM & RS LIMITED PARTNERSHIP, a Minnesota limited partnership, on behalf of said partnership.

(Seal, if any)

SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

Title (and Rank): _____

My commission expires: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 201__ by _____ as _____ of MINNEAPOLIS JEWISH FEDERATION, a Minnesota nonprofit corporation, on behalf of said nonprofit corporation.

(Seal, if any)

SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

Title (and Rank): _____

My commission expires: _____

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)
Dorsey & Whitney LLP (LKG)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 492-6878

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:
(include name and address of Grantee to whom tax statements should be sent)