

## DONATION AGREEMENT

This Real Property Donation Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Ronald Kroll and Jennifer Kroll, married to each other ("Donor") and the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City").

### RECITALS

WHEREAS, Donor owns certain real property in St. Louis County, Minnesota, legally described as:

Lots 1- 4, Block 78, WEST DULUTH SIXTH DIVISION,

together with any and all improvements located thereon and all privileges, rights, easements appurtenant thereto (the "Property").

WHEREAS, upon completion of certain conditions precedent, the Donor wishes to donate the Property to City and City wishes to accept the donation, and the parties wish to specify the terms and conditions of the donation.

NOW THEREFORE, the Parties agree as follows:

1. Donation of Property. Donor agrees to gift to the City the Property by donation on the terms and conditions set forth in this Agreement. The City shall not be obligated to accept the deed to the Property if the City Council fails to approve this transaction or if the City does not approve of the title or condition of the Property.
2. Disclosures to Seller. This donation is **voluntary**. If Donor does not wish to donate the Property to the City, the City will not acquire the property. The City will not use the power of eminent domain to acquire the Property. The estimated market value of the property assessed for taxes payable in 2015 is \$120,100. The City makes no representation as to the property's fair market value. Donor understands that Donor has the right to obtain an appraisal and waives any obligation by the City to obtain an appraisal.
3. Tax Consequences. Donor understands and acknowledges that the City makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Donor will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code.
4. Closing. The Parties shall open an escrow with Consolidated Title and Abstract in Duluth, Minnesota ("Escrow Holder") for the purpose of closing the conveyance of the Property. Donor shall deliver to Escrow Holder a Warranty Deed in a form approved by the City transferring good and marketable fee simple title to the Property from Donor to the City. Escrow Holder shall hold the Deed until the City accepts the gift by delivering written notice to Escrow Holder. In the event the City does not deliver written notice to Escrow Holder of its intent to accept the gift within 30 days after escrow is opened (unless further extended by the Parties in writing), this Agreement shall automatically terminate and the Parties shall be relieved from any further obligations to each other.
5. Fees. Real estate taxes on the statement shall be prorated as of the close of escrow based upon the latest available tax statement. Donor will be responsible for the payment of the cost of recording the Deed, any real estate transfer tax or conveyance fees, any costs of the Escrow Agent, and any other costs and expenses required to effectuate the transfer contemplated by this Agreement. Donor will deposit funds with the Escrow

Holder in an amount deemed by the Escrow Holder to cover the real estate taxes and costs Donor is responsible for under this Agreement.

6. Title. Donor shall provide, at Donor's expense, an updated title commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property to City to be issued by a title company acceptable to City ("Title Commitment"). The premium for a title insurance policy, if City elects to obtain title insurance, shall be paid by the City. Donor shall convey marketable title to the Property to the City subject only to the following title exceptions:

- A. Reservations of minerals or mineral rights by the State of Minnesota, if any;
- B. Building and zoning laws, ordinances, state and federal regulations;
- C. Any other matters consented to by Buyer in writing ("Permitted Exceptions").

7. Right to Inspect Property. In addition to examining the Title Commitment, as part of its due diligence, the City may require and/or conduct inspections, tests, and studies with respect to the physical and environmental condition of the Property. The City and its consultants, agents, engineers, inspectors, contractors, and employees must be given reasonable access to the Property for the purpose of performing such due diligence. If the City determines, in its sole discretion, that the physical or environmental condition of the Property is unacceptable to the City, the City may elect to terminate this Agreement in which case the City shall have no obligation to accept title to the Property.

8. Donor Representations. Donor represents the following:

a. Authorization. Donor has the full power and authority to enter into this Agreement and to convey title to the Property in accordance with this Agreement. No consent or authorization from any other person, entity or government agency is required for Donor to enter into and perform Donor's obligations under this Agreement except as has already been obtained. The execution of the Agreement will not constitute a breach or default under any agreement to which Donor is bound and/or to which the Property is subject.

b. Title to Property. Donor has good and marketable title to the Property. Donor has no actual knowledge of any unrecorded or undisclosed legal or equitable interest in the Property owned or claimed by anyone other than Donor. Donor has no knowledge that anyone will, at the closing, have any right to possession of the Property. There are no unsatisfied mechanics' or materialmen's lien rights on the Property. No assessment lien encumbers the Property.

c. Legal / Other Proceedings. There is no suit, action, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened litigation against the Donor which could affect Donor's title to the Property. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Donor or Donor's interest in the Property, nor are any such proceedings contemplated by Donor.

d. Hazardous Materials. The Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to the environmental conditions on, under, or about the Property, including but not limited to soil and groundwater conditions. There are no environmental hazards on, under, or about the Property, including but not limited to soil and groundwater conditions. Neither Donor nor any third party has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Property or transported to or from the Property any

flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials.

Each of the above representations is material and is relied upon by the City. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

9. Additional Documents. Donor and City shall execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings.

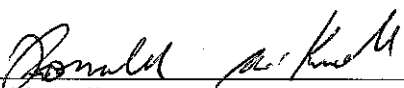
11. No Merger. This Agreement, each provision of it, and all warranties and representations in this Agreement shall survive the Closing and shall not merge in any instrument conveying title to the City. All representations, warranties, agreements, and obligations of the Parties shall survive Closing.


12. Waiver. The failure of either Party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated below.

Dated: October 28, 2015.

**DONOR:**

  
\_\_\_\_\_  
Ronald Kroll

  
\_\_\_\_\_  
Jennifer Kroll

**CITY OF DULUTH:**

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

Attest: \_\_\_\_\_  
Its City Clerk

Date Attested: \_\_\_\_\_, 2015

Countersigned:

By: \_\_\_\_\_  
Its Auditor

Approved as to form:

By: \_\_\_\_\_  
Its City Attorney