

CONSERVATION EASEMENT

Grand Avenue Estates of Duluth, LLLP, a Minnesota limited liability limited partnership (the “Owner”) grants this Conservation Easement (the “**Easement**” or “**Conservation Easement**”) in favor of the **City of Duluth**, a municipal corporation under the laws of the State of Minnesota (the “**City**”) effective as of November ____, 2015 (the “**Effective Date**”).

RECITALS

- A.** The Owner is the current fee owner of the real property legally described as Outlots A and B, GRAND AVENUE ESTATES, St. Louis County, Minnesota, as shown on the plat attached as **Exhibit A** (the “**Property**”). The Property consists of two outlots which are adjacent to a proposed residential development and consist of undeveloped woods, slopes, streams and open space.
- B.** The City is a political subdivision of the State of Minnesota that is qualified to accept and hold conservation easements under Minnesota Statutes Chapter 84C and other applicable Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.
- C.** The Property possesses natural, scenic and open space qualities of significant importance to the Owner, the City and the public, including the following (the “**Conservation Values**”):
 - 1. The Property’s scenic landscape and natural character that provides excellent scenic enjoyment to the general public as well as hiking, bird watching and other passive recreational uses.
 - 2. The Property contains sustainable habitat for biologically diverse vegetation, birds and animals.
 - 3. Valued native woods exist on the Property, which includes diverse native species, trees of many age classes and structural diversity.
 - 4. The Property provides permanent wooded and open space in a residential setting.
- D.** Preservation of the Property will further the governmental policies established by the following:
 - 1. Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic or open space values of real property, assuring its availability for forest,

recreational or open space use, protecting natural resources, and maintaining or enhancing air or water quality.

2. The City's zoning ordinance requirements to permanently preserve and maintain open space. Section 50-14.7 of the City's zoning code provides that "adequate provisions shall be made for the permanent preservation and maintenance of active and passive open space" including "wetlands, floodplains, wildlife areas, steep slopes, rock outcrops, tree stands and areas unsuitable for development in their natural state."

- E.** The Owner and the City are committed to protecting and preserving the Property's Conservation Values in perpetuity and they intend on creating and implementing a conservation easement that is binding upon the current Owner and all future owners of the Property and that conveys to the City the right to protect and preserve the Property's Conservation Values for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT:

Pursuant to Minnesota law, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained herein and as an absolute and unconditional gift, Owner conveys and warrants to the City and its successors and assigns a perpetual conservation easement over the Property (the "Conservation Easement" or "Easement"). This Conservation Easement consists of the following rights, terms, and restrictions:

1. **CONSERVATION PURPOSE.** This Easement's purpose is to preserve and protect in perpetuity the Conservation Values of the Property by confining the development, management and use of the Property to activities that are consistent with the preservation of the Conservation Values, by prohibiting activities that significantly impair or interfere with the Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Conservation Easement are specifically intended to provide a significant public benefit by:

- a. Preserving a scenic landscape and natural character that provides excellent scenic enjoyment to the general public as well as hiking, bird watching and other passive recreational uses.
- b. Maintaining a sustainable habitat for biologically diverse vegetation, birds and animals.
- c. Preserving valued native woods which includes diverse native species, trees of many age classes and structural diversity.
- d. Providing permanent wooded and open space in a residential setting.
- e. Preserving the open and natural character of the Property for low-impact recreation and scenic enjoyment by the general public.

2. **PROHIBITED ACTIONS.** Any activity on or use of the Property that is inconsistent with the purposes of this Easement or which is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:

- a. **Industrial and Commercial Activities.** Any industrial or commercial use of the Property is prohibited.
 - b. **Residential Development.** Residential use or development of the Property is prohibited.
 - c. **Structures.** No structures, buildings, fences, roads, parking lots or other improvements may be placed on the Property except public utilities and trails, including paved trails or trails that have hardcover, may be installed, maintained, repaired, extended and replaced pursuant to separate easements specifically granted to the City.
 - d. **Cutting Vegetation.** Cutting of trees or vegetation is prohibited, except for the cutting or removal of trees or vegetation that are diseased or pose a threat to human life or property, as reasonably necessary to maintain permitted public utilities and trails on the Property, or as part of a forest management plan approved by the City.
 - e. **Land Surface Alteration.** Mining, drilling, exploring for or removing any minerals or fossil fuels is prohibited.
 - f. **Dumping.** Waste and unsightly or offensive material are not allowed and may not be accumulated on the Property.
 - g. **Water Courses, Ground Water.** Natural watercourses, lakes, wetlands, or other bodies of water may not be altered. In addition, water from ground or surface sources may not be diverted.
 - h. **Recreational Vehicles.** Motorized off-highway vehicles as defined in Minnesota Statutes Chapter 84 and other applicable Minnesota law, including but not limited to off-road vehicles, off-highway motorcycles, all-terrain vehicles, and snowmobiles, may not be operated on the Property except on designated public trails specifically approved by the City.
 - i. **Subdivision.** The Property may not be subdivided or partitioned. The Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.
 - j. **Signs and Billboards.** Billboards and signs are prohibited except for signs for informational or interpretive purposes, including signs stating that the Property is protected by a conservation easement and prohibiting any unauthorized entry or use.
3. **PERMITTED USES.** The Owner retains all ownership rights not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:
- a. **Right to Convey.** Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of this Conservation Easement and all subsequent owners will be bound by all obligations in this Easement.
 - b. **Recreational and Educational Uses.** The Property may be used for hiking, cross-country skiing, nature observation or study, and other similar low impact recreational and educational uses, programs and activities. Biking, skateboarding and other similar recreation is only permitted on public trails that have been paved or have hardcover for such uses.

4. **CITY'S RIGHTS.** In order to accomplish the purposes of this Easement, the City shall have the following rights:

- a. **Right to Enter.** The City has the right to enter the Property at reasonable times and in a reasonable manner to inspect the Property, monitor compliance with this Easement's terms and otherwise enforce compliance with or exercise its rights under this Easement. The City may not, however, unreasonably interfere with Owner's use and quiet enjoyment of the Property pursuant to this Easement's terms.
- b. **Right to Preserve.** The City has the right to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement.
- c. **Right to Require Restoration.** The City has the right to require the Owner to restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
- d. **Signs.** The Owner shall install and maintain metal boundary signs, with a minimum size of 6" x 6", approximately every 200 feet on the boundary lines of the Property, wherever official trails enter the Property and wherever the boundary changes direction identifying that the Property is subject to this Conservation Easement and that no land or vegetation alteration is permitted.

5. **CITY'S REMEDIES.** The City has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in a court of competent jurisdiction.

- a. **Remedies.** In enforcing this Easement, the City has the right to:
 - i. Temporary or permanent injunctive relief for any violation or threatened violation of this Easement.
 - ii. Require restoration of the Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement.
 - iii. Specific performance or declaratory relief.
 - iv. Recover damages resulting from a violation of this Easement or injury to any Conservation Values associated with the Property.

These remedies are cumulative and are available without requiring the City to prove actual damage to the Conservation Values of the Property. The City and the Owner agree that the damages created by a violation of this Easement may be determined by calculating the cost of acquiring a conservation easement over similar property. The City and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

- b. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the City's right to eventually enforce the terms of this Conservation Easement.
- c. **Acts Beyond Owner's Control.** The City may not bring an action against the Owner for modifications to the Property resulting from causes beyond Owner's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as

unintentional fires, floods, storms, natural earth movement, or Owner's well-intentioned action in response to an emergency resulting in changes to the Property. Owner has no responsibility under this Conservation Easement for such unintended modifications.

- d. **Notice and Demand.** If the City determines that Owner is in violation of this Conservation Easement, or that a violation is threatened, the City shall provide written notice to Owner identifying the violation and a reasonable opportunity to take corrective action to cure the violation and, where the Property has been injured, to restore the Property. However, if at any time the City determines in its reasonable discretion that immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if reasonable, good faith efforts to notify the Owner are unsuccessful, no written notice is required.

- e. **Failure to Act.** If, within 30 days after receiving written notice, Owner does not implement appropriate corrective measures to cure the violation, the City may bring an action at law or in equity to enforce this Easement's terms and seek remedies in accordance with Section 5(a) of this Conservation Easement.

6. **GENERAL PROVISIONS.**

- a. **Annual Inspection.** The Owner shall, at its cost, on an annual basis engage a third-party to review and inspect the Property and to provide a written certification to the Owner and the City before October 15th of each year that the Property is in compliance with this Easement's terms and conditions. The Owner shall notify the City at least 60 days before engaging the third party for the annual inspection for the City's approval of such third party, which approval shall not be unreasonably withheld, conditioned or delayed.

- b. **Warranties.** Owner represents and warrants as follows:

- i. Owner is the sole owner of the Property and has the right and ability to convey this Easement to the City.
- ii. The Property is free and clear of all encumbrances other than those subordinated to this Easement.
- iii. Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Property that is in violation of a federal, state, or local environmental law. The Owner agrees to protect and defend the City against any claims of hazardous materials contamination on the Property.

- c. **Assignment.** The City shall notify Owner of its intent to assign or transfer and provide the name and address of the proposed assignee or transferee at least 30 days prior to the proposed date of such assignment or transfer. The City may assign or transfer this Easement only to a conservation organization such as The Nature Conservancy, Minnesota Ducks Unlimited, Minnesota Land Trust, the Minnesota Department of Resources, or a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations, and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the City by this Easement. As a condition of any assignment or transfer, the City shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.

- d. **Amendment.** This Easement may be modified or amended upon written agreement by both parties. However, no amendment or modification will be allowed if, in the City's reasonable judgment, it: (i) does not further the purposes of this Easement, (ii) will materially and adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the status of the City under Section 501I(3) of the Internal Revenue Code. Any amendment or modification must be in writing and recorded in the same manner as this Easement.
- e. **Extinguishment.** Extinguishment or termination of this Easement is subject to the following:
- i. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
 - a) if unexpected change in the conditions of or surrounding the Property makes the continued use of the Property for the conservation purposes set out above impossible or impractical, or
 - b) pursuant to the proper exercise of the power of eminent domain.
 - ii. Owner recognizes that uses of the Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Property by this Easement.
 - iii. Owner and the City believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.
- f. **Notices.** Any notice or request for approval required by this Easement must be written and is subject to the following:
- i. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):
 - To Owner: Grand Avenue Estates of Duluth, LLLP
Attn: Steven Kuepers
17018 Commercial Park Road
Brainerd, MN 56401
 - To Holder: City of Duluth
Attn: City Administrator
411 West 1st Street
Duluth, MN 55802
 - ii. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.

- iii. **Content.** The notice or request for approval must include sufficient information to allow the City to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum, this would include (i) the location, nature, and scope of the proposed activity, (ii) the proposed use, design, and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Property.
- iv. **Approval.** For any activity requiring the approval of the City under the terms of this Easement, the City may withhold its approval if it determines that the proposal is inconsistent with the terms or purposes of this Easement or lacks sufficient information to allow the City to reach an informed decision. The City may condition its approval on Owner's acceptance of modifications, which would, in the City's reasonable judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.
- g. **Binding Effect.** This Conservation Easement shall run with and burden the Property in perpetuity. This Easement's terms are binding and enforceable against the Owner, all successors in title to the Property and all other parties entitled to possess or use the Property. This Easement creates a property right immediately vested in the City and its successors and assigns that cannot be terminated or extinguished except as set out herein.
- h. **Termination of Rights and Obligations.** A party's future rights and obligations under this Conservation Easement terminate upon transfer or termination of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
- i. **Real Estate Taxes.** Owner shall pay all real estate taxes and assessments levied against the Property, including any levied against the interest of the City created by this Easement. The City may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from Owner.
- j. **Ownership Costs and Liabilities.** Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Owner agrees to indemnify and hold the City harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Property or the existence of this Easement except those costs and liabilities created by any acts or omissions of the City. In accepting this Conservation Easement, the City shall have no liability or other obligation for taxes, or insurance of any kind related to the Property
- k. **Definitions.** Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner of the Property identified above and representatives, heirs, successors and assigns in title to the Property. The term "City" includes the City and its successors or assigns to its interest in this Easement.
- l. **Recording.** Owner will record this Easement in a timely manner in the official records for the county in which the Property is located.
- m. **Additional Documents.** Owner agrees to execute or provide any additional documents reasonably requested by the City to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal

description or title matter or to comply with any federal, state, or local law, rule or regulation.

- n. **Severability.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
- o. **Minnesota Law.** This Conservation Easement will be governed by the laws of the State of Minnesota, and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- p. **Entire Agreement.** This Conservation Easement sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions or understandings.

[Signature pages to follow]

ACKNOWLEDGMENT

The Owner has voluntarily executed this Conservation Easement as of November _____, 2015.

OWNER:

GRAND AVENUE ESTATES OF
DULUTH, LLLP

By: Grand Avenue Estates of Duluth, LLC
Its: General Partner

By: _____
Steven D. Kuepers
Its Chief Manager/President

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

On this ____ day of November, 2015, before me, a Notary Public within and for said County, personally appeared Steven D. Kuepers, Chief Manager/President of Grand Avenue Estates of Duluth, LLC, General Partner of Grand Avenue Estates of Duluth, LLLP, a Minnesota limited liability limited partnership, Owner, on behalf of the limited liability limited partnership.

Notary Public

THIS INSTRUMENT DRAFTED BY:
RINKE NOONAN (HAM)
1015 West St. Germain Street, Ste. 300
P.O. Box 1497
St. Cloud, MN 56302
(320) 251-6700
Our File No. 25502-0002

ACCEPTANCE

The City of Duluth, Minnesota, Holder, accepts this Conservation Easement effective as of _____, 2015.

CITY:

CITY OF DULUTH, MINNESOTA

By: _____
Its: _____

By: _____
Its: _____

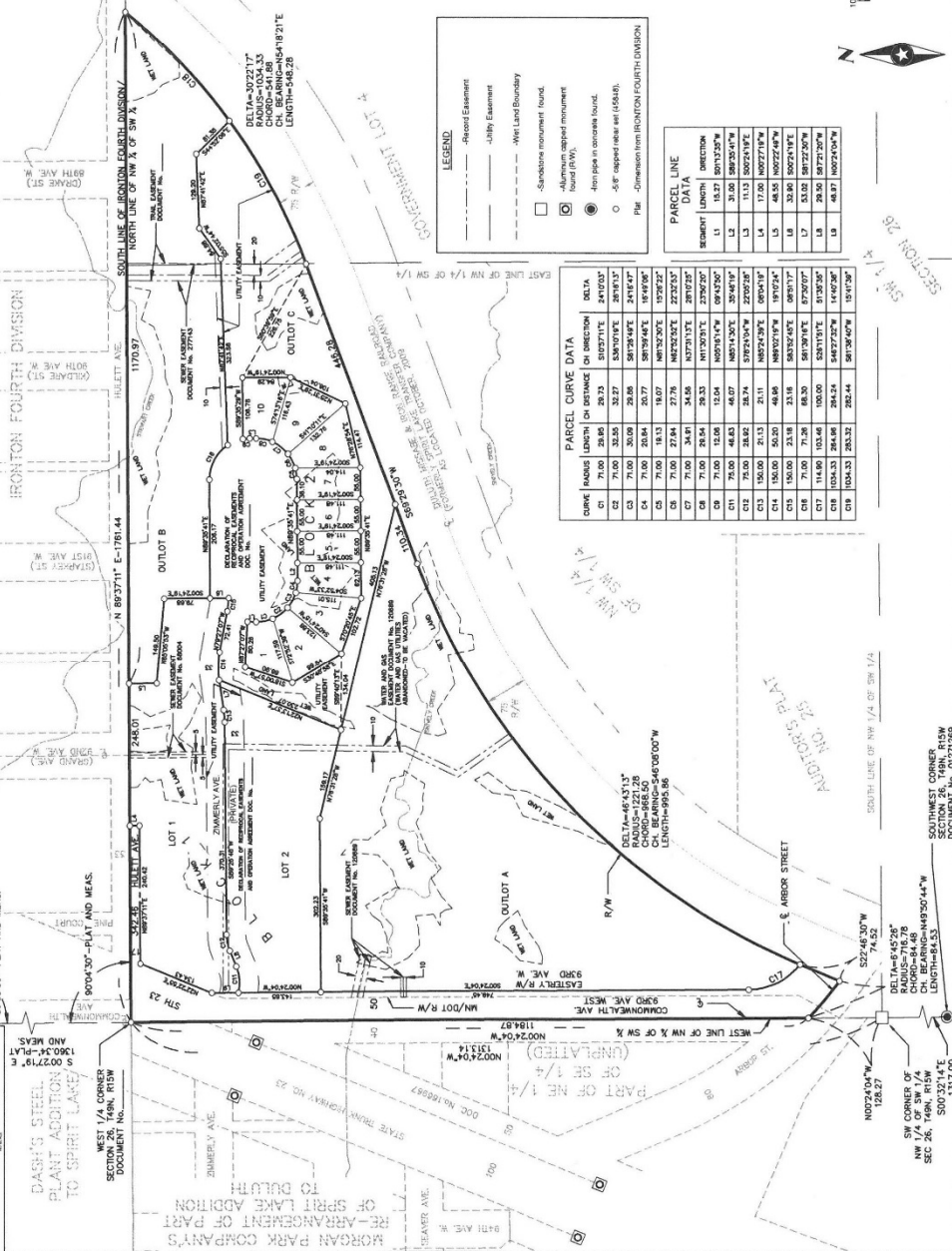
STATE OF MINNESOTA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, the _____, and by _____, the _____, of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota, on behalf of said municipal corporation, Holder.

Notary Public

After Recording Send To:	Send Tax Statements To:	This Instrument Was Drafted By:
RINKE NOONAN (ham) 1015 W. St. Germain St. P.O. Box 1497 St. Cloud, MN 56302 320-251-6700 25502-0002	Grand Avenue Estates of Duluth, LLLP 17018 Commercial Park Road Brainerd, MN 56401	RINKE NOONAN (ham) 1015 W. St. Germain St. P.O. Box 1497 St. Cloud, MN 56302 320-251-6700 25502-0002

EXHIBIT A
COPY OF PLAT
(See attached)



Registrar of Titles	Density

SEH
PHONE: 218.279.3000
418 W SUPERIOR ST STE 200
DULUTH, MN 55802-1512
www.sehinc.com