

LAND EXCHANGE AGREEMENT

This Purchase Agreement (the "Agreement") is made this 8th day of January, 2016 by and between the **CITY OF ORONO**, a Minnesota municipal corporation ("City") and **JACOB J. BARKLEY and MAUREEN L. BARKLEY**, husband and wife ("Barkleys").

RECITALS

A. City is the fee owner of certain real property, situated in Hennepin County, Minnesota and described on "Exhibit A" hereto ("City Land").

B. The Barkleys are the fee owners of certain real property consisting of three parcels, situated in Hennepin County, Minnesota and described on "Exhibit B" hereto ("Barkley Land"):

Parcel 1 is a residential parcel ("Residence Parcel")

Parcel 2 is a dock parcel ("Dock Parcel")

Parcel 3 is a remnant ("Remnant Parcel")

C. Whereas the Barkleys desire to acquire the City Land for additional dock area;

D. The Barkleys agree to convey the Remnant Parcel and other consideration to the City in exchange for the City Land.

The City Land and Remnant Parcel are collectively referred to hereunder as "Properties."

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SALE AND PURCHASE OF REAL PROPERTY. In consideration of the agreements herein contained, the City agrees that it will convey the City Land to the Barkleys. Concurrently, the Barkleys agree that they will convey to City the Remnant Parcel.

2. PURCHASE PRICE. In addition to the conveyance of the Remnant Parcel, Barkleys will pay to the City for conveyance of the City Land Twenty-Five Thousand and no/100 Dollars (\$25,000.00), which the Barkleys shall pay in cash on the Closing Date.

3. ENVIRONMENTAL ASSESSMENT. As soon as possible after the execution hereof, the City and the Barkleys shall have the right, if they desire, at their own expense to inspect the respective properties of the other party being exchanged for the purpose of determining whether or not there are any environmental conditions that affect the parcel to be acquired. If the environmental inspection reveals any environmental conditions that are unsatisfactory to the respective party, said party may elect either of the following options:

(a) Terminate this Agreement as provided by statute; or



- (b) Proceed with the terms of this Agreement by waiving the contingency relating to the environmental condition.

4. PHYSICAL INSPECTION. The City and the Barkleys shall each have the right from time to time prior to the Closing, to enter upon the respective property being exchanged, to examine the same and the condition thereof and to conduct such surveys and to make such engineering and other inspections, tests and studies as they determine to be reasonably necessary for their use of the property. All physical inspections shall be at the sole cost and expense of the party making the same. The City and Barkleys will conduct all examinations and surveys of the respective properties in a manner that will not harm or damage the respective properties so that it cannot be restored to its prior condition or cause any claim adverse to either party, and will restore the respective properties to the condition they were in prior to any such examination, immediately after conducting said examination. The Barkleys and the City shall indemnify, defend, and hold harmless each other from any and all claims for injury or death to persons, damage to property or other losses or damages or claims, including, in each instance, reasonable attorneys' fees and litigation costs, arising out of the action of any person or firm entering upon the respective properties, which indemnity will survey the Closing and the termination of this Agreement without the Closing having occurred.

5. TITLE EXAMINATION. Title Examination will be conducted as follows:

(a) Title Evidence. The City and the Barkleys will, as soon as possible after the date of this Agreement, furnish the following (collectively, "Title Evidence") to the other party for the property being transferred by them under this Agreement:

(i) Title Commitment. A Commitment for Title Insurance for the respective properties including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments.

(ii) Title Objections. The City and the Barkleys shall have 10 business days after receipt of the Title Commitment from the other party to provide the other party with a copy of the Commitment and written objections. The City and the Barkleys shall be deemed to have waived any title objections not made within the 10-day period above, except that this shall not operate as a waiver of either party's covenant to deliver a Warranty Deed under this Agreement.

(iii) Title Corrections and Title Remedies. The City and the Barkleys shall have 60 days from receipt of written title objections by the other party to make title marketable for their respective property. Upon receipt of title objections, each party shall, within ten (10) business days, to notify the other of their intention to make title marketable within the 60-day period. Liens or encumbrances for liquidated amounts that can be released by payment or escrow from proceeds of closing shall not delay the closing. Cure of the defects by either party shall be reasonable, diligent and prompt. Pending correction of title, all payments required herein and the Closing shall be postponed.

Handwritten signature and initials MB.

(b) If notice is given and either party makes title marketable, then upon presentation to the other party of documentation establishing that title has been made marketable, and if not objected to in the same time and manner as the original title objections, the closing shall take place within ten (10) business days or on the scheduled Closing Date, whichever is later.

(c) If notice is given and either party proceeds in good faith to make title marketable but the 60 day period expires without title being made marketable, the other party may declare this Agreement void by notice, neither party shall be liable for damages hereunder to the other.

(d) If either party does not give notice of intention to make title marketable, or if notice is given but the 60 day period expires without title being made marketable due to the other party's failure to proceed in good faith, the exclusive remedy is rescission of this Agreement by notice as provided herein.

(e) If title is marketable, or is made marketable as provided herein, and either party defaults in any of the agreements herein, the other party's exclusive remedy is to cancel this Agreement as provided by statute and retain all payments made hereunder as liquidated damages.

6. CLOSING. Each transaction is contingent upon the successful closing of the other transaction. Unless terminated earlier or extended as provided herein, the date for closing the sale and purchase of the Properties (the "Closing") shall be on a date mutually agreed to by the parties but not later than March 31, 2016 (the "Closing Date"). The Closing shall take place at the offices of a title company mutually agreed upon by the parties (the "Title Company"), or such other location as mutually agreed upon by the parties and may be completed through escrow of closing documents and funds with the Title Company.

7. BARKLEYS' CLOSING OBLIGATIONS. On the Closing Date, the Barkleys shall execute and deliver to City:

(a) The duly executed limited warranty deed to the Remnant Parcel conveying title to the City free and clear of all liens and encumbrances except the following items (allowable encumbrances):

- (i) Building and zoning laws, ordinances, state and federal statutes or other governmental regulations;
- (ii) Real estate taxes for which the City is responsible;
- (iii) Those items approved by the City pursuant to Section 5; and
- (iv) Reservation of any minerals or mineral rights in the State of Minnesota.

(b) A customary affidavit that there are no unsatisfied judgments of record, no actions pending in any state or federal courts, no tax liens, and no bankruptcy proceeding filed against the Barkleys, and no labor or materials have been furnished to the Remnant Parcel for which payment has not been made, and that to the best of the Barkleys' knowledge there are no unrecorded interests relating to the Remnant Parcel.

(c) Such other documents required under Section 12(a).

(d) Such other documents as may be reasonably required by the Title Company.

8. CITY'S CLOSING OBLIGATIONS. On the Closing Date, the City shall execute and deliver to the Barkleys:

(a) The duly executed limited warranty deed to the City Land conveying title to the Barkleys free and clear of all liens and encumbrances except the following items (allowable encumbrances):

(i) Building and zoning laws, ordinances, state and federal statutes or other governmental regulations;

(ii) Real estate taxes for which the Barkleys are responsible;

(iii) Those items approved by the Barkleys pursuant to Section 5; and

(iv) Reservation of any minerals or mineral rights in the State of Minnesota.

(b) A customary affidavit that there are no unsatisfied judgments of record, no actions pending in any state or federal courts, no tax liens, and no bankruptcy proceeding filed against City, and no labor or materials have been furnished to the City Land for which payment has not been made, and that to the best of City's knowledge there are no unrecorded interests relating to the City Land.

(c) Such other documents as may be reasonably required by the Title Company.

9. PRORATIONS. The City and the Barkleys agree to the following prorations and allocation of costs regarding this Agreement:

(a) **Title Commitment.** Each party will be responsible for the costs associated with providing a title commitment for the parcel that the party is conveying. If a party desires a title policy for the parcel the party is acquiring, that cost shall be assigned to the party acquiring the property.

(b) **Deed Tax.** Each party shall be responsible for payment of the deed tax for the property that the party is conveying.



(c) **Real Estate Taxes and Special Assessments.**

(i) **City Land.** General real estate taxes payable in the years prior to the year of closing and installments of special assessments will be paid by the City. General real estate taxes payable in the year of closing, if any, shall be pro rated by the City and the Barkleys as of the Closing Date on a per diem basis based upon a calendar year. The City shall pay on or before the Closing Date all pending special assessments that are due prior to the Closing. The City shall pay at Closing any deferred real estate taxes or special assessments payment of which is required as a result of the closing of this Agreement. The Barkleys shall pay real estate taxes due and payable in the year following closing and thereafter.

(ii) **Remnant Parcel.** General real estate taxes payable in the years prior to the year of closing and installments of special will be paid by the Barkleys. General real estate taxes payable in the year of closing, if any, shall be pro rated by the Barkleys and the City as of the Closing Date on a per diem basis based upon a calendar year. The Barkleys shall pay on or before the Closing Date all pending special assessments that are due prior to the Closing. Barkleys shall pay at Closing any deferred real estate taxes or special assessments payment of which is required as a result of the closing of this Agreement. The City shall pay real estate taxes due and payable in the year following closing and thereafter.

(d) **Recording Costs.** Each party will pay the cost of recording all documents necessary to place record title to the property the party is conveying in the condition warranted by the parties in this Agreement. Each party will pay the cost of recording the deed for the property that that the party is acquiring.

10. CITY'S COVENANTS, REPRESENTATIONS AND WARRANTIES. The City hereby covenants, represents and warrants to the Barkleys, as of the date of this Agreement and as of the Closing Date, as follows:

(a) **No Breach.** The consummation of the transactions contemplated by this Agreement will not constitute a default or result in the breach of any term or provision of any contract or agreement to which the City is a party so as to adversely affect the consummation of such transactions.

(b) **Authority.** The execution, delivery and performance of this Agreement by the City has been authorized and approved by the City, and the person executing this Agreement on behalf of the City has full authority to bind the City to the terms hereof.

(c) **No Actions.** There is no action, suit, legal proceeding, investigation, condemnation or other proceeding pending or threatened against the City which may adversely affect the consummation of the transactions contemplated by this Agreement or affecting any portion of the City Land, in any court, before any arbitrator of any kind or before or by any governmental body.

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(d) **Liens.** All work which has been performed in, on or about the City Land or materials furnished thereto by the City or the City's contractors which might, in any circumstances, give rise to a mechanic's or materialman's lien has been paid for or all necessary waivers of right to a mechanic's or materialman's lien have been obtained.

(e) **Wells.** The City certifies that the City does not know of any "Wells" on the described City Land within the meaning of Minn. Stat. Chapter 103I, except as disclosed herein. This representation is intended to satisfy the requirements of that statute.

(f) **Title to City Land.** The City owns the City Land, free and clear of all encumbrances.

(g) **Environmental Laws.** To the best of the City's knowledge, no toxic or hazardous substances or wastes, pollutants or contaminants (as defined in applicable federal or state laws or local ordinances) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the City Land, nor has any activity been undertaken on the City Land that would cause or contribute to (i) the City Land to become a treatment, storage or disposal facility as defined in any federal or state law or local ordinance, (ii) a release or threatened release of toxic or hazardous substances or wastes, pollutants or contaminants, from the City Land as prohibited by any federal or state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under any federal or state law or local ordinance. To the best of the City's knowledge, there are no toxic or hazardous substances or wastes, pollutants or contaminants or other environmental conditions in or on the City Land that may support a claim or cause of action under federal or state law or local ordinances or other environmental regulatory requirements. To the best of the City's knowledge, no part of the City Land is a "Wetland", as defined by law. The City will disclose to the Barkleys all environmental reports and studies with respect to the City Land which are in the City's possession or control.

(h) **Storage Tanks.** To the best of the City's knowledge, there are no above- ground or underground tanks in or about the City Land. To the extent such storage tanks exist, each will be duly registered with all appropriate regulatory and governmental bodies and will be removed or brought into compliance with applicable federal, state and local statutes, regulations, ordinances and other regulatory requirements at the City's expense.

The City will indemnify the Barkleys, their heirs, successors and assigns, against, and will hold the Barkleys, their heirs, successors and assigns, harmless from, any expenses or damages, including reasonable attorneys' fees, that the Barkleys incur because of the breach of any of the above representations and warranties, whether such breach is discovered before or after closing. Consummation of this Agreement by the Barkleys with knowledge of any such breach by the City will not constitute a waiver or release by the Barkleys of any claims due to such breach. Nevertheless, any claim that the City has breached a representation or warranty must be in writing and must be given by the Barkleys within two years of the Closing Date or be deemed waived.



11. THE BARKLEYS' COVENANTS, REPRESENTATIONS AND WARRANTIES. The Barkleys hereby covenant, represent and warrant to the City, as of the date of this Agreement and as of the Closing Date, as follows:

- (a) **No Breach.** The consummation of the transactions contemplated by this Agreement will not constitute a default or result in the breach of any term or provision of any contract or agreement to which the Barkleys are a party so as to adversely affect the consummation of such transactions.
- (b) **No Actions.** There is no action, suit, legal proceeding, investigation, condemnation or other proceeding pending or threatened against the Barkleys which may adversely affect the consummation of the transactions contemplated by this Agreement or affecting any portion of the Remnant Parcel, in any court, before any arbitrator of any kind or before or by any governmental body.
- (c) **Liens.** All work which has been performed in, on or about the Remnant Land or materials furnished thereto by the Barkleys or their contractors which might, in any circumstances, give rise to a mechanic's or materialman's lien has been paid for or all necessary waivers of right to a mechanic's or materialman's lien have been obtained.
- (d) **Wells.** The Barkleys certify that they do not know of any "Wells" on the described Remnant Parcel within the meaning of Minn. Stat. Chapter 103I, except as disclosed herein. This representation is intended to satisfy the requirements of that statute.
- (e) **Title to Remnant Parcel.** The Barkleys own the Remnant Parcel, free and clear of all encumbrances, excepting any mortgages, the lien of which will be removed from the Remnant Parcel on or before the Closing Date, and further excepting any public highway rights, if any.
- (f) **Environmental Laws.** To the best of the Barkleys' knowledge, no toxic or hazardous substances or wastes, pollutants or contaminants (as defined in applicable federal or state laws or local ordinances) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Remnant Parcel, nor has any activity been undertaken on the Remnant Parcel that would cause or contribute to (i) the Remnant Parcel to become a treatment, storage or disposal facility as defined in any federal or state law or local ordinance, (ii) a release or threatened release of toxic or hazardous substances or wastes, pollutants or contaminants, from the Remnant Parcel as prohibited by any federal or state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under any federal or state law or local ordinance. To the best of the Barkleys' knowledge, there are no toxic or hazardous substances or wastes, pollutants or contaminants or other environmental conditions in or on the Remnant Parcel that may support a claim or cause of action under federal or state law or local ordinances or other environmental regulatory requirements. To the best of the Barkleys' knowledge, no part of the Remnant Parcel is a "Wetland", as defined by law. The Barkleys will disclose to



the City all environmental reports and studies with respect to the Remnant Parcel which are in the Barkleys' possession or control.

(g) **Storage Tanks.** To the best of the Barkleys' knowledge, there are no above ground tanks in or about the Remnant Parcel. To the extent such storage tanks exist, each will be duly registered with all appropriate regulatory and governmental bodies and will be removed or brought into compliance with applicable federal, state and local statutes, regulations, ordinances and other regulatory requirements at the Barkleys' expense. To the best of the Barkleys' knowledge there are no underground storage tanks on the Remnant Parcel.

The Barkleys will indemnify the City, the City's successors and assigns, against, and will hold the City, the City's successors and assigns, harmless from, any expenses or damages, including reasonable attorneys' fees, that the City incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after closing. Consummation of this Agreement by the City with knowledge of any such breach by the Barkleys will not constitute a waiver or release by the City of any claims due to such breach. Nevertheless, any claim that the Barkleys have breached a representation or warranty must be in writing and must be given by the City within two years of the Closing Date or be deemed waived.

12. CONTINGENCIES.

(a) **City's Contingencies.** The obligations of the City under this Agreement are expressly contingent upon each of the following (the "City's Contingencies"):

(i) The City shall have determined on or before the Closing Date, that it is satisfied, in its sole discretion, with the results of any environmental/soil investigations and tests of the Remnant Parcel conducted by the City, the costs of which shall be the responsibility of the City. By executing this Agreement, the Barkleys hereby authorize the City, its contractors, and agents to enter upon the Remnant Parcel for purposes of conducting environmental, engineering and soil tests.

(ii) The City shall have determined on or before the Closing Date, that it is satisfied, in its sole discretion, with the title to the Remnant Parcel.

(iii) All of the covenants, representations, and warranties made by the Barkleys shall be true and correct as of the Closing Date.

(iv) The Barkleys' submitting, on a form provided by the City, the necessary document for combining the City Land, Dock Parcel and Residence Parcel under a single tax parcel, to be submitted at closing.

(v) The Barkleys granting an easement over the City Land and Dock Parcel in substantially the form attached hereto as "Exhibit C", to be recorded at closing ("Scenic Easement").

(vi) The Barkleys granting an appurtenant easement for the benefit of the property located at 3620 Eileen Street for access and a dock in substantially the form attached hereto as "Exhibit D", to be recorded at closing ("Dock Easement").

If the City's Contingencies have not been satisfied on or before the Closing Date, then the City may, at the City's option, terminate this Agreement by giving notice to the Barkleys on or before the Closing Date. The contingencies set forth in this section are for the sole and exclusive benefit of the City, and the City shall have the right to waive the contingencies by giving notice to the Barkleys.

(b) **The Barkleys' Contingencies.** The obligations of the Barkleys under this Agreement are expressly contingent upon each of the following (the "Barkleys' Contingencies"):

(i) The Barkleys shall have determined on or before the Closing Date, that they are satisfied, in their sole discretion, with the results of any environmental/soil investigations and tests of the City Land conducted by the Barkleys, the costs of which shall be the responsibility of the Barkleys. By executing this Agreement, the City hereby authorizes the Barkleys, their contractors, and agents to enter upon the City Land for purposes of conducting environmental, engineering and soil tests.

(ii) The Barkleys shall have determined on or before the Closing Date, that they are satisfied, in their sole discretion, with the title to the City Land.

(iii) All of the covenants, representations, and warranties made by the City shall be true and correct as of the Closing Date.

If Barkleys' Contingencies have not been satisfied on or before the Closing Date, then the Barkleys may, at the Barkleys' option, terminate this Agreement by giving notice to the City on or before the Closing Date. The contingencies set forth in this section are for the sole and exclusive benefit of the Barkleys, and the Barkleys shall have the right to waive the contingencies by giving notice to the City.

13. MISCELLANEOUS.

(a) **No Partnership or Joint Venture.** Nothing in this Agreement shall be interpreted as creating a partnership or joint venture among the parties.

(b) **No Broker Commissions.** Each party represents and warrants to the other parties that there is no broker involved in this transaction with whom the warranting party has negotiated or to whom the warranting party has agreed to pay a broker commission. Each party agrees to indemnify the other parties for any and all claims for brokerage commissions or finders' fees in connection with negotiations for the purchase and sale of



the Properties arising out of any alleged agreement or commitment or negotiation by the indemnifying party.

(c) **No Merger.** The provisions of this Agreement shall not be merged into any instruments or conveyance delivered at Closing, and the parties shall be bound accordingly.

(d) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement among the parties and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment shall not be effective unless it shall be set forth in writing and executed by the parties or their respective successors or assigns.

(e) **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

(f) **Notice.** Any notice, demand, request or other communication which may or shall be given or served by the parties shall be deemed to have been given or served on the date the same is deposited in the United States Mail, registered or certified, postage prepaid; delivered by a nationally recognized overnight delivery company, or actually received by the recipient and addressed as follows:

(i) If to City: City Administrator
City of Orono
P.O. Box 66
Crystal Bay, MN 55323-0066

(ii) If to the Barkleys: 3640 Bayside Road
Long Lake, MN 55356

(g) **Headings.** The headings of the sections and subsections of this Agreement are for convenience of reference only and does not form a part hereof, and in no way interpret or construe such sections and subsections.

(h) **Survival of Covenants, Representations, Warranties and Agreements.** All covenants, representations, warranties and agreements contained herein shall survive the closing. Nevertheless, any claim that either party has breached a representation or warranty must be in writing and must be given by the non-breaching party within two years of the Closing Date or be deemed waived.

(i) **Governing Law.** This Agreement shall be governed by the laws of the State of Minnesota.

(j) **Counterpart signatures.** The parties agree that this Agreement may be executed in two or more counterparts, all of which when taken together shall comprise one and the same instrument. Each party agrees that the other party may rely upon facsimile copies



of the signatures of such party.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date written above.

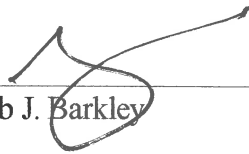
[Signature Page for City]

CITY OF ORONO

By: 
Lili Tod McMillan, Mayor

By: 
Jessica Loftus, City Administrator

[Signature Page for the Barkleys]



Jacob J. Barkley



Maureen L. Barkley

EXHIBIT A

Legal Description of the City Land

Lot 2, Block 3, Bay View Park, Hennepin County, Minnesota.

EXHIBIT B

Legal Description of Barkley Land

Parcel 1 ("Residence Parcel")

Lot 1, Block 1, Riedel Company Stubbs Bay Addition, Hennepin County, Minnesota.

Parcel 2 ("Dock Parcel")

Lot 1, Block 3, Bay View Park, Hennepin County, Minnesota, which lies Southerly of a line 33 feet Southerly of, measured at right angles to and parallel with a line hereinafter referred to as "Line A", said "Line A" being described as follows; Commencing at the Northeast corner of the Northwest Quarter of Section 5, Township 117 North, Range 23 West of the 5th Principal Meridian; thence South along the East line of said Northwest Quarter a distance of 1400.28 feet; thence deflecting left 64 degrees 30 minutes a distance of 143.32 feet to the point of beginning of said "Line A"; thence deflecting right 180 degrees along said "Line A" a distance of 100 feet; thence along a tangential curve to the left having a radius of 500 feet and central angle of 22 degrees 30 minutes a distance of 196.35 feet; thence Westerly tangent to said curve to the West line of the Northeast Quarter of the Southeast Quarter of said Northwest Quarter, and there ending.

Parcel 3 ("Remnant Parcel")

Lot 16, Block 1, Bay View Park, Hennepin County, Minnesota which lies Southerly of a line 33 feet Southerly of, measured at right angles to and parallel with a line hereinafter referred to as "Line A", said "Line A" being described as follows: Commencing at the Northeast corner of the Northwest Quarter of Section 5, Township 117 North, Range 23 West of the 5th Principal Meridian; thence South along the East line of said Northwest Quarter a distance of 1400.28 feet; thence deflecting left 64 degrees 30 minutes a distance of 143.32 feet to the point of beginning of said "line A"; thence deflecting right 180 degrees along said "Line A" a distance of 100 feet; thence along a tangential curve to the left having a radius of 500 feet and central angle of 22 degrees 30 minutes a distance of 196.35 feet; thence Westerly tangent to said curve to the West line of the Northeast Quarter of the Southeast Quarter of said Northwest Quarter, and there ending.

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