REAL ESTATE DONATION AGREEMENT

This REAL ESTATE DONATION AGREEMENT (**"Agreement"**) is entered into effective as of the _____ day of _____, 2020 (the "Effective Date") by and between WASHINGTON CITY, a Utah Municipal Corporation, (hereinafter **"the City"** or **"City**), and D & G PROPERTY HOLDINGS LLC, (hereinafter the **"Donor"**). (City and Donor may be referred to individually as **"Party"** or collectively as **"Parties"** in this Agreement).

RECITALS

Donor is the owner of real property consisting of 5.91 acres of vacant unimproved land from a larger parcel totaling 20.00 acres. located at approximately 1000 East 3650 South, Washington City, Utah, Washington County Assessor's Parcel W-5-2-36-322, (the **"Property"** or **"Donor's Property"**).

The City has adopted the Parks & Recreation Master Plan & Impact Fee Facilities Plan that includes a proposed park in the vicinity of the Donor's Property.

The City has desired to obtain Donor's Property for the benefit of the residents of Washington City (and the surrounding area) to be included in a larger plan to construct a park and to add to the beauty of the surrounding area and the enjoyment of the community and visitors to the area.

Donor wishes to donate (for no compensation, the Donor's Property to the City, **"as is"** and **"where is"**, which donation the City desires to accept.

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

ARTICLE 1. DONATION OF PROPERTY TO CITY

Donor agrees to donate, transfer, convey, and assign to the City for no compensation, and City agrees to accept from Donor, on and subject to the terms and conditions herein set forth, the following:

1.1. Real Property. That certain real property located at approximately 1000 East 3650 South, Washington City, Utah 84780, Washington County Assessor's Parcel W-5-2-36-322 and more particularly described on "EXHIBIT A--PROPERTY LEGAL DESCRIPTION," attached hereto and incorporated herein by this reference, together with all rights, titles and interests appurtenant thereto, and located therein, excluding any and all water rights and water shares appurtenant thereto or arising therefrom, if any, (collectively, the **"Real Property"**);

1.2. The Property (or Donor's Property). The term Real Property, is herein collectively called the **"Property"** or **"Donor's Property"**. All of the Property shall be conveyed, assigned, and transferred to City **"as is"** and **"where is"** at the Settlement (as defined below), free and clear of all liens, claims, and encumbrances, except for the **"Permitted Encumbrances"** as (as defined below).

ARTICLE 2. VALUE OF DONOR'S PROPERTY

The Donor is conveying and gifting the Property (for no compensation in return) to the City. The appraised value of the Property, based upon appraisal which would list the market value of the Property as THIRTY-FIVE THOUSAND AND NO/100 U.S. DOLLARS ($35,000.00) (the "Property Value"). In acknowledgement and recognition of the Property Value of Donor's gifting to the City, the City shall provide Donor with written documentation of the donation and its value. To the extent that further documentation is requested by Donor to satisfy or comply with IRS or other governmental agency requirements or requests—City shall provide documentation in a timely manner.

ARTICLE 3. DONOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Donor hereby represents with City as follows:

3.1. Good and Marketable Title. Donor has and at Settlement will transfer and convey to City good and indefeasible title in fee simple to the Property, and such conveyance shall be **"as is"** and **"where is"**.

3.2. Leases. As of the Effective Date, there are no leases, rental agreements, or other agreements with any tenants or other third parties for use or lease of the Property
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3.3. Capacity; Consent; No Violation of Agreements. Donor has the right, power, legal capacity and authority to enter into this Agreement and to convey the Property to the City.

3.4. Limitation of Warranties. Donor has made no representations, warranties or guaranties, whether oral, written or implied to city as to the quality, condition, merchantability, suitability or fitness of the property for any of city's purposes or intended uses whatsoever, accordingly, excepting warranties expressly set forth herein, at closing city takes the property **"As Is"**.

ARTICLE 4. DELIVERY OF TITLE COMMITMENT BY ESCROW AGENT

Prior to the City Council's approval of this Agreement (or as soon after as determined by City) the City has the right (and Donor has no responsibility to obtain or provide to City) to obtain a standard owner's title commitment for insurance (the **"Title Commitment"**). If requested/ordered by City, the Escrow Agent shall deliver to City, at City's sole expense, prior to the **"Closing"** a standard owner's title commitment for insurance (the **"Title Commitment"**) issued by the Title Company, setting forth the status of the title of the Real Property and Improvements and all encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, and all other matters of record affecting the Real Property and the Improvements. (City may, at its sole cost and expense, obtain an extended policy of title insurance for the Property.)

ARTICLE 5. CITY'S REVIEW OF TITLE

City shall have the right, within twenty (20) days after receipt of the Title Commitment, to object in writing to any liens, encumbrances or any other matter reflected by the Title

Commitment (hereafter called **"Objection Notice"**). All liens, encumbrances or other matters to which City so objects are hereinafter referred to as the **"City's Title Objections"**. If no Objection Notice is given by the end of such twenty (20) day period, then it shall be deemed that all matters reflected in the Title Commitment are **"Permitted Encumbrances"**. Notwithstanding the foregoing, Donor shall in all events cure or remove on or before the Settlement Date any and all (i) liens, encumbrances, judgments or other exceptions to title for monetary amounts owed or claimed to be owed by Donor (with Donor having the right to apply the Purchase Price or a portion thereof at Settlement for such purpose), (ii) rights of first refusal and other property rights and interests created by, under or through Donor, and (iii) exceptions or encumbrances to title that are voluntarily created by, under or through Donor after the Effective Date without City's consent.

ARTICLE 6. CITY'S RIGHT OF INSPECTION

6.1. Inspection Rights. City acknowledges that it is City's responsibility to inspect, investigate and review the physical and environmental condition of the Real Property and Improvements to determine to its satisfaction the condition of the Real Property and Improvements for its own purposes

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6.2. Completion of Inspections. Donor and City agree that by the Settlement (as defined below), City will have had the opportunity to fully investigate the Property and will have satisfied itself of the condition of the Property.

6.3. Access Rights. City's right of inspection includes the right of City, its contractors and representatives to access and enter upon the Property to investigate the structural, electrical and mechanical condition of the Improvements on the Real Property and to make such other studies, tests, analyses and reports (collectively, the **"Reports"**) desired by City.

6.4. Conduct of Inspections. In connection with City's entry onto the Property for inspections, City shall not cause damage or injury to the Property located thereon, and City shall repair any material damage or injury to the Property resulting from City's investigation, inspection and testing of the Property and shall return the Property to its original condition existing prior to City's inspections, whether or not the sale contemplated by this Agreement closes.

6.5. Indemnification for Material Damages Caused During the Inspections. City shall indemnify, defend and hold harmless Donor from and against all verifiable and material injuries, losses, liens, claims, demands, judgments, liabilities, damages, costs and expenses sustained by Donor which result from or arise out of or in connection with any entry, inspection, test or study conducted by City (or City's representatives); provided, however, in no event shall City be obligated to indemnify, defend or hold harmless Donor on account of (i) the negligence or misconduct of Donor (or Donor's representatives) or (ii) any damage Donor may incur because of any information or knowledge discovered by City with respect to its investigation of the Property. Notwithstanding any provision of this Agreement to the contrary, this indemnity shall survive the Settlement and any termination of this Agreement.

ARTICLE 7. ONGOING EXPENSES/OPERATIONS AFTER THE EFFECTIVE DATE

From the Effective Date through the Settlement/Closing Date:

7.1. Utilities, Leases, Service Contracts and License Agreements. Donor will perform its material obligations under any applicable Leases, Service Contracts and/or License Agreements, if any, including costs and expenses associated with utility services to the Property and other customary costs and expenses associated with the ownership and occupancy of such residential property. All utilities and services, if any, will be paid in full by City up to the date of Closing. Thereafter, all utilities and services shall be the responsibility of City and shall be transferred into City's name as of the day of Closing. Each party holds the other harmless on all obligations for utilities and services.

7.2. New Leases or Contracts. Donor will not enter into any leases or contracts that will be an obligation affecting the Property subsequent to the Settlement Date, except those that are terminable without cause and without the payment of any termination penalty on not more than thirty (30) days' prior notice.

ARTICLE 8. CLOSING/SETTLEMENT

The closing or settlement ("Settlement") of the donation of the Property shall occur as soon as possible following approval of this agreement by the City Council, unless extended by written agreement of the Parties. Settlement shall occur at the offices of the Title Company. The date of Settlement shall be referred to herein as the **"Settlement Date"**. At Settlement, the following mutually concurrent conditions to Settlement shall occur:

8.1. City's Deliveries. City shall deliver or cause to be delivered to Donor:

(a) Miscellaneous Items. Any items or documents referred to herein or affecting the conveyance of the Property that may be reasonably requested by Donor or Title Company or that may be necessary to carry out the purpose and intent of this Agreement.

8.2. Donor's Deliveries. Donor shall deliver or cause to be delivered to City the following:

(a) Deed. A warranty deed in form and substance acceptable to City (the "Deed"), fully executed and acknowledged by Donor;

(b) Bill of Sale. As applicable to effectuate the conveyance of applicable Personal Property to be conveyed to City from Donor (consistent with Section 1.3 or otherwise), a Bill of Sale in a standard and acceptable form to City fully executed by Donor;

(c) Conveyance or Transfer Tax Forms or Returns. Such conveyance or transfer tax forms or returns, if any, as are required to be delivered or signed by Donor by applicable state and local law in connection with the conveyance of the Property;

(d) Other Items and Documents. Any other items or documents referred to herein or affecting the conveyance and sale of the Property that may be reasonably requested by City or the Title Company or that may be necessary to carry out the purpose and intent of this Agreement.

ARTICLE 9. PRORATIONS AND CLOSING COSTS

At Settlement, City shall be responsible for all closing costs related to this donation and this agreement, including real property taxes and assessments, Closing costs and recording costs shall NOT be prorated between the City and Donor, rather City shall be responsible for all recording and closing costs (in addition to City's responsibility for payment for the Title Policy, as referred to herein). The provisions of this Section shall survive the Settlement.

ARTICLE 10. NOTICES

All notices provided or permitted under this Agreement must be in writing and may be served by: (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid, and registered or certified with return receipt requested; (ii) delivering the same in person to such Party; (iii) overnight delivery by a reputable carrier, such as Federal Express; or (iv) facsimile copy transmission showing confirmation of receipt (with the original sent by United States mail to the address below, provided that any failure to receive such mail shall not affect this notice). Notice given in accordance herewith shall be effective upon receipt (or rejection) at the address of the addressee. For purposes of notice, the addresses of the Parties shall be follows:

To City:	To Donor:
Washington City Recorder	D & G PROPERTY HOLDINGS LLC
111 North 100 East	1413 S SANDHILL DR
Washington, Utah 84780	WASHINGTON, UT 84780
Copy To:	Copy To:
Washington City Manager	
111 North 100 East	
Washington, Utah 84780	

Either Party hereto may change its address for notice by giving ten (10) days prior written notice thereof to the other Party in accordance with the procedure for notices.

ARTICLE 11. ASSIGNMENT

This Agreement may not be assigned to any party without the prior written consent of the other Party hereto. Any assignment or attempted assignment not in compliance with this paragraph or approved in writing by both Parties shall be a default hereunder and shall be null and void and shall vest no rights in the purported assignee.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1. Entire Agreement. This Agreement, together with the Exhibits hereto, constitutes the entire agreement between Donor and City, and supersedes all other agreements between

the Parties on the subject matter hereof. There are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Property other than those herein set forth. No subsequent agreement shall be binding upon Donor or City unless in writing and signed by both Donor and City.

12.2. Headings. The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may not be considered in interpreting the provisions of this Agreement.

12.3. Binding Effect. All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors, and assigns of all Parties hereto. This Agreement is for the sole benefit of City and Donor, and no third parties are intended to be beneficiaries hereof.

12.4. Time of Essence. Time is of the essence of this Agreement.

12.5. Severability of Provisions. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation, which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

12.6. Counterparts. This Agreement may be executed by signing in counterparts of this instrument. The execution by all of the Parties hereto by each signing a counterpart of this instrument shall constitute a valid execution and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument. Facsimile or electronically-scanned signatures shall bind the Party transmitting such signature to the same extent as an original.

12.7. Applicable Law: Construction. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Utah. This Agreement shall be construed according to its fair meaning and not strictly for or against Donor or City, as if both Donor and City had prepared it.

12.8. Business Day. If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday, or legal holiday, then the final day of the period or the date of performance shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

12.9. Escrow Instructions. This Agreement shall constitute Escrow Agent's escrow instructions.

12.10. Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the Party making the waiver. Either Party may waive any provisions of

this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

12.11. No Joint Venture or Third-Party Beneficiaries. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Donor or City.

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IN WITNESS WHEREOF, City and Donor have each executed this Agreement to be effective as of the Effective Date, _____.

CITY:

WASHINGTON CITY

By:_____
KENNETH F. NEILSON, Mayor

ATTEST:

BY:_____
DANICE B. BULLOCH, MMC, City Recorder

DONOR:

D & G PROPERTY HOLDINGS LLC

BY:_____
[NAME & TITLE]

STATE OF UTAH)
: SS.
COUNTY OF WASHINGTON)

On the _____ day of _____, 2020 before me, the undersigned notary, personally appeared KENNETH F. NEILSON and DANICE B. BULLOCH, the Mayor and Recorder of Washington City, a Utah municipality, who duly acknowledged to and before me that they executed the foregoing instrument for and on behalf of Washington City.

_____
Notary Public

STATE OF UTAH)
: SS.
COUNTY OF WASHINGTON)

On the ___day of November 2019, before me, the undersigned notary, personally appeared [DONOR NAME] who duly acknowledged to and before me that he/she/they executed the foregoing instrument.

_____
Notary Public

ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement as its escrow instructions and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Escrow Agent acknowledges its receipt of a fully executed original of this Agreement as of the date set forth underneath its signature below.

SOUTHERN UTAH TITLE COMPANY

_____

By:

_____

Print Name & Title