

LAND DONATION AGREEMENT

THIS LAND DONATION AGREEMENT (“Donation Agreement”) is made and entered into by and between **CITY OF DOUGLAS**, an Arizona municipality (“**Donee**”), and **James Gary W & Shelley James Judy Living Family Trust** (“**Donor**”), and is effective as of _____, 2024 (“**Effective Date**”). The Donation referred to in this Agreement is a contribution of certain parcels of land to the City of Douglas.

1. Definitions

1.1. **Real Property.** Donor wishes to donate to Donee certain real property, consisting of parcel 409-06-018N located in the City of Douglas (“**City**”), County of Cochise (“**County**”), Arizona 85607, and more particularly described on **Exhibit A** attached hereto, together with all rights, privileges, rights of way and easements appurtenant to each such premises, including, without limitation, any easements, rights of way or other interests in, on, or under any land, highway, alley, street (the “**Land**”), together with Donor’s right, title and interest, if any, in (i) any improvements located on the Land (the “**Improvements**”), (ii) any intangible and other property now or hereafter owned by Donor and used in the ownership or operation of the Land and Improvements, including, without limitation, any plans and specifications, permits, licenses, approvals, guaranties, warranties, all pre-paid water fees and water meters, and all other pre-paid utility fees, to include pre-paid Water Portions of Impact Fees, and deposits and other rights relating to the ownership, use or operation of the Land (collectively, the “**Intangible Property**”); and (iii) all those contracts and agreements relating to the Land (the “**Contracts**”) (collectively, the “**Property**”).

1.2. **Closing Date.** The term “**Closing Date,**” “**Close of Escrow**” or “**Closing**” shall be the date the Deed is recorded in the Official Records of the County, which date shall be no later than thirty (30) days after the expiration of the Agreement Inspection Period (defined below) or 30 days after Council’s final approval, subject to the satisfaction of all conditions set forth in Sections 3 and 5, below. The parties may, by mutual written agreement, extend the Closing Date.

1.3. **Contract Period.** The term “**Contract Period**” shall mean the period from the Effective Date of this Donation Agreement through and including the Closing Date.

1.4. **Agreement Inspection Period.** The term “**Agreement Inspection Period**” shall mean sixty (60) business days from the later of (i) the Effective Date, or (ii) the date Donee receives the last document required to be provided to Donee under Section 3 by or at the request of Donor.

1.5. **Title Company.** The term “**Title Company**” shall mean Pioneer Title Agency, 1065 F Avenue, Suite 6, Douglas, Arizona 85607.

1.6. **Preliminary Report.** The term “**Preliminary Report**” shall mean the preliminary title report with respect to the land component of the Property prepared by the Title Company.

2. Donation

2.1. **Donation.** Donor agrees to transfer all of its rights, title, and interest in the Property to Donee free and clear of rights of first refusal, other agreements, and other encumbrances of any kind (except to which Donee consents to in writing), and Donee agrees to accept the Property from Donor upon all of the terms, covenants, and conditions set forth in this Donation Agreement (the "Donation").

2.2. **Donation Terms.** Donor shall pay the amount owed for all Cochise County Property Taxes due and accrued up to the Closing Date on the Land described in Section 1.1

2.3. **Value of Donation.** Donor hereby represents that the value of the Property being donated is Fifty Four Thousand, Two Hundred Eighty and 16/100 Dollars (\$54,280.16) for the parcel with a total area of 0.94 acres.

3. Feasibility and Title Conditions to Donation

3.1 **Determination of Feasibility.** On or before the expiration of the Agreement Inspection Period, Donee may conduct such due diligence investigations and engineering, environmental and feasibility studies (including, without limitation, traffic, utilities, drainage, geotechnical, soils, environmental, architectural, historical, marketing, engineering, and financial investigations, tests, and studies) as Donee deems necessary to determine whether or not the Property is suitable to Donee in Donee's sole and absolute discretion. Donee and its employees, agents and subcontractors shall have the right of access to the Property at any time prior to the Closing for the purpose of conducting such investigations, inspections and studies. Donee shall pay all costs and expenses incurred to conduct the investigations, inspections and studies. Donor agrees to make available to Donee within three (3) days of the Effective Date any relevant soil analysis, transportation studies, air quality studies, environmental studies, government approvals and other documents related to the Property in the possession of Donor in order to assist Donee's evaluation, including, without limitation, the following matters:

- A. copies of all leases, easements, encumbrances, permits, approvals, maps agreements, covenants, rules or restrictions relating to the Property, its use or ability to be developed, and/or the availability of utilities, including water, electricity, gas, sewer and telephone, including As-built drawings for same, and any notices of violation of any code, statute, ordinance or regulation applicable to the Property currently in Donor's possession or control or obtained by Donor prior to Close of Escrow;
- B. all information available to Donor regarding the fees, dues, assessments or other charges to which the Property is or will be subject;
- C. copies in Donor's possession or control, or obtained prior to Close of Escrow of:
 - i. any reports, studies or other written information regarding the environmental, geologic, seismic or archaeological condition of the

Property, including, without limitation, any study, report or other written information relating to the presence of asbestos, polychlorinated biphenyl's (PCB's) or other Hazardous Materials;

- ii. any reports, studies or other written material relating to the Property prepared by civil engineers; and
- iii. any reports, studies or other written material relating to the feasibility of economic or physical development of the Property

(collectively, "**Property Documents**").

If Donee does not consummate the acquisition of the Property pursuant to this Donation Agreement for any reason, Donee shall promptly return to Donor the Property Documents. In the event Donee or its agents, contractors or representatives materially alter the condition of the Property while conducting due diligence investigations, Donee further agrees to restore any damage to the Property directly caused by the conduct of any such investigations

3.2 **Approval of Title.** Donor shall cause Title Company to furnish to Donee, within five (5) business days of the Effective Date, a Preliminary Report and commitment for issuance of an owner's policy of title insurance covering the Property in an amount equal to the Donation Value, together with certified copies of all instruments reflected as exceptions therein which may be applicable to or enforceable against the Property. Donee may at its sole option obtain an ALTA Survey of the Property. The ALTA Survey and any surveys of the Property Donor provides to Donee shall be referred to as the "**Surveys.**" Donee shall complete its review of the Preliminary Report and Surveys before the expiration of the Agreement Inspection Period. Any objections by Donee to any item contained in the Preliminary Report shall be referred to as the "**Title Objections.**" Any objections by Donee to any item on the Surveys shall be referred to as "**Survey Objections.**" Donee shall provide Donor with written notice of any Title Objections or Survey Objections within fifteen (15) business days after receipt of the Preliminary Report and copies of all documents referenced therein. Donor shall have five (5) business days within which to provide Donee with written notice of Donor's election to remove or cure any such Title Objections or Survey Objections. Donor's failure to notify Donee within such five (5) business day period as to any Title Objections or Survey Objections shall be deemed an election by Donor not to remove or cure the same. If Donor notifies or is deemed to have notified Donee that Donor shall not remove or cure any Title Objections or Survey Objections, Donee may thereafter elect to: (i) terminate this Donation Agreement; or (ii) provide written waiver of any Title Objections or Survey Objections and proceed to Closing subject to abatement as may be agreed by the parties in writing. Notwithstanding anything contained herein to the contrary, Donor shall be required to remove any mortgage, deed of trust, mechanic's lien, delinquent tax lien, judgment lien or other monetary encumbrance or lien shown in the Preliminary Report as an exception to title not created by Donee, each deemed a Title Objection, no later than the Closing Date and the waiver of claims for damages contained herein shall not apply to any claim due to failure to remove such monetary encumbrance or lien. Should Donee proceed with the purchase of the Property, Donee may elect to have an ALTA extended owner's policy of title insurance issued at Closing.

3.3 **Termination.** The conditions set forth in Sections 3.1, 3.2 and are solely for the benefit of Donee and may be waived only by Donee. Donee shall at all times have the right to waive any such condition. If Donee determines that each of the conditions set forth in Sections 3.1, 3.2 and have been satisfied, Donee shall deliver to Donor prior to the expiration of the Agreement Inspection Period, written notice of approval (“**Notice of Approval**”). Notwithstanding anything to the contrary contained herein, if, for any reason, Donee determines that, in Donee’s sole and absolute discretion, it will not accept the Property, Donee may terminate this Donation Agreement by delivering written notice of cancellation (the “**Notice of Cancellation**”) to Donor, with no further obligation or liability whatsoever under this Donation Agreement. Donee’s failure to deliver a Notice of Approval or Notice of Cancellation shall constitute Donee’s election not to proceed with the acceptance of the Property.

4. Covenants, Representations, and Warranties

4.1 Donor’s Warranties and Representations. Donor makes the following representations and warranties, and agrees to the following covenants and obligations for the benefit of Donee which shall be true and applicable as of and survive the Closing Date as provided herein:

(a) Donor has full right, power and lawful authority to enter into and carry out the terms and provisions of this Donation Agreement and to execute and deliver all documents which are contemplated by this Donation Agreement and all actions of Donor necessary to confer such power and authority upon the persons executing this Donation Agreement and all documents which are contemplated by this Donation Agreement on behalf of Donor have been taken.

(b) All requisite action has been taken by Donor in connection with the entering into this Donation Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby, and any required consent of any partner, member, director, officer, shareholder, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body or other party has been obtained as may be required.

(c) This Donation Agreement and all documents required hereby to be executed by Donor constitute valid and legally binding obligations of Donor, enforceable against Donor in accordance with their terms (except to the extent that enforcement may be affected by laws relating to bankruptcy, reorganization, insolvency, or creditors’ rights and by the availability of injunctive relief, specific performance, or other equitable remedies).

(d) Neither the execution and delivery of this Donation Agreement by Donor, nor the consummation by Donor of the transaction herein contemplated, will conflict with or result in a breach of any of the terms, conditions, or provisions of any statute or administrative regulation, or of any order, writ, injunction, judgment, or decree of any court, any governmental authority, or of any arbitration award, in each case applicable to Donor.

(e) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers, or otherwise.

(f) All taxes, liens and other encumbrances have been or will be paid by Donor at or prior to Closing.

(g) There are no condemnations, or other proceedings or litigation pending or, to the best of Donor's knowledge, threatened against Donor or any basis therefor that arises out of the ownership of or any other matter relating to any part of the Property or that might detrimentally affect the value or the use or operation of the Property for its intended purpose or the ability of Donor to perform its obligations under this Donation Agreement. During the Contract Period, Donor shall notify Donee promptly in writing of any such litigation of which Donor becomes aware.

(h) Donor has no knowledge (direct or indirect) of any material, physical, or mechanical defects relating to the Property, and has no knowledge of the location and nature of any underground storage tanks or similar activities, buried trash or foreign materials, disposal areas or other sites of this sort on the Property, whether these sites are visible from the surface of the land or not.

(i) Donor represents and warrants that Donor has not, nor does Donor have any knowledge of any actual or alleged use, placement, storage, discharge or release of any hazardous or toxic wastes or substances as defined or regulated under federal, state, or local laws ("Hazardous Substances") on or under the Property nor any action or proceeding related thereto, nor, to the best of Donor's knowledge, have any Hazardous Substances at any time been used, placed, stored, discharged, or released on the Property by any third party. To Donor's knowledge, the Property is not in violation, nor has Donor received any notice of any investigation for violation, of any federal, state or local law, ordinance or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under or about the Property including, but not limited to, soil and groundwater conditions. Donor hereby assigns to Donee as of the Close of Escrow all claims, counterclaims, defenses or actions, whether at common law, or pursuant to any other applicable federal or state or other laws which Donor may have against any third parties relating to the existence of any Hazardous Substance in, at, on, under or about the Property. Donor agrees that Donee or its agents or contractors may, without liability to Donee, make all disclosures and file all reports which are required by law with respect to discovery of Hazardous Substances as a result of investigations conducted by Donee, its agents or contractors.

(j) Donor has not received written notice from any governmental agency that the Property is in violation of applicable hazardous materials laws. Donor has delivered to Donee copies of any environmental assessment reports in Donor's possession and of written information relating to the presence of wetlands on the Property. Donee shall have the right to conduct an independent investigation of the presence of hazardous materials and of wetlands on the Property.

(k) Donor has not received and has no knowledge of any written notice from any city, county, municipality, or other governmental authority or agency of zoning, building, fire, health code, or any other violations of applicable laws, ordinances, or regulations pertaining to the Property that have not been previously corrected.

(l) Donor represents that neither the execution by it of this Donation Agreement nor the consummation of this Donation: will constitute a violation or breach by Donor of any contract or other instrument to which it is a party, or to which Donor is subject, or by which any of Donor's assets or properties may be affected, or any judgment, order, writ, injunction or decree issued against or imposed upon Donor; or will result in a violation of any applicable law, order, rule or regulation of any governmental authority.

(m) Donor shall not commit or suffer to be committed any waste in or upon the Property. Waste shall include, but not be limited to, any injury to the Property which renders it in a condition materially different from its condition at the date of this Donation Agreement. Donor shall permit no dumping of any material on the Property, and in the event, such occurs with or without Donor's permission, Donor shall remove same prior to Close of Escrow.

(n) Donor represents and warrants that the Property will not at the Close of Escrow be encumbered by any obligation, written or oral, or recorded or unrecorded mechanic's liens, to pay or reimburse any party for the design, analysis, engineering, testing, legal fees, or construction of improvements for the benefit of the Property, which Donor has incurred up to the Close of Escrow. Donor agrees to promptly pay all consultants retained by Donor.

(o) Except as specified herein, Donor shall not cause title to the Property to become further encumbered or clouded after the date of this Donation Agreement without Donee's written consent.

(p) Neither the Donor nor its members are a party to a bankruptcy proceeding, and if any such proceeding arises prior to the Close of Escrow, Donor will provide notice to Donee, whereupon Donee shall have the right to terminate this Donation Agreement without liability to Donor or any other party and Donee shall be entitled to a full refund of any sums deposited with the Escrow Holder.

(q) Donor will deliver to Donee, good and marketable title to the Property. Donor has not alienated, encumbered, transferred, leased, assigned or otherwise conveyed its interest in the Property or any portion thereof, except as set forth in the Preliminary Report, nor has Donor entered into any agreement to do so, nor shall Donor do so prior to the Close of Escrow.

(r) To Donor's knowledge at Close of Escrow there are no easements, encumbrances, encroachments or other clouds on title to the Property which would adversely affect Donee's Intended Use or marketability of the Property.

(s) Donor represents and warrants that no party other than Donee has any right to acquire the Property (by contract, option, or otherwise).

(t) Donor represents and warrants that from the Effective Date and continuing during the period the Donation Agreement remains in effect, Donor shall not directly or indirectly, through any representative or otherwise, market, solicit, or entertain offers from, negotiate with, or in any manner encourage, discuss, accept, or consider any proposal of any other person relating to the sale

of the Property, in whole or in part, whether through direct purchase, merger, consolidation, or other business combination.

(u) Donor is not, and will not be at the time of Close of Escrow, a foreign person as defined in Section 1445 of the Internal Revenue Code of 1986, as amended; and Donor shall deliver to Donee at Closing a non-foreign person affidavit to that effect.

(v) The representations and warranties of Donor set forth in this Donation Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Donor contained in this Donation Agreement, are conditions precedent to the Close of Escrow. Donor shall notify Donee immediately of any facts or circumstances that are contrary to the foregoing representations and warranties contained in this Subsection 4.1. Donor's representations and warranties under this Subsection 4.1 shall survive Closing and delivery of the Deed (as defined below).

4.2 Donor's Covenants. Donor hereby covenants and agrees to allow Donee, its agents, employees, representatives, and contractors reasonable access to and entry upon the Property during the Contract Period, without further notice, to enter upon and, at Donee's expense, commence due diligence inspections, studies, testing, investigations, or evaluations of the Property, including as set forth in Section 3 of this Donation Agreement. Donee agrees that in making any physical or environmental inspections of the Property, Donee will restore promptly any physical damage caused by the inspections.

4.3 Donee's Warranties and Representations. Donee hereby represents and warrants to Donor that: (a) as of the Closing Date Donee shall have, full power and lawful authority to enter into and carry out the terms and conditions of this Donation Agreement and to execute and deliver all documents which are contemplated by this Donation Agreement; (b) all actions necessary to confer such power and authority upon the persons executing this Donation Agreement and all documents which are contemplated by this Donation Agreement to be executed on behalf of Donee or its assignee have been taken; and (c) this Donation Agreement constitutes a valid and legally binding obligation of Donee, enforceable against Donee in accordance with its terms (except to the extent that enforcement may be affected by laws relating to bankruptcy, reorganization, insolvency, or creditors' rights and by the availability of injunctive relief, specific performance, or other equitable remedies).

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Donee contained in this Donation Agreement, are conditions precedent to the Close of Escrow. Donee shall notify Donor immediately of any facts or circumstances that are contrary to the foregoing representations and warranties contained in this Subsection 4.3.

5. Conditions Precedent

5.1 Conditions. Notwithstanding anything in this Donation Agreement to the contrary, Donee's obligation to accept the Property shall be subject to and contingent upon the satisfaction or waiver of the following conditions precedent:

- (1) Donor shall have performed each and every undertaking hereunder;
- (2) Each and every representation and warranty made by Donor shall have been true and correct as of the date this Donation Agreement is made and entered into, and shall be true and correct in all material respects as if originally made on and as of the Closing Date;
- (3) No suit, proceeding, or investigation shall have been commenced or threatened by any governmental authority or private person on any grounds to restrain, enjoin, hinder, or to seek material damages on account of the consummation of the transaction contemplated hereby, and no order, ruling, decision, or judgment shall have been issued with the same effect;
- (4) Preliminary approval of all licenses, rights-of-way, and easements;
- (5) Donee's review and approval, prior to the expiration of the Agreement Inspection Period, of the condition of title to the Property;
- (6) Donee's review and approval, prior to the expiration of the Agreement Inspection Period, of the Property Documents;
- (7) Donee's inspection and approval, prior to the expiration of the Agreement Inspection Period, of the physical and environmental condition of the Property;
- (8) Donee's satisfaction that the Property is properly zoned for Donee's Intended Use;
- (9) Donee's satisfaction with any other information obtained through its due diligence of the Property;
- (10) Donee's receipt of all required approvals and consents authorizing the purchase of the Property in accordance with the terms of this Donation Agreement;
- (11) The Title Company issuing a policy of title insurance of Donee's choice insuring title on the Property in the amount of the Donation Value, subject only to the conditions of record appearing on the Preliminary Report which are not disapproved by Donee;
- (12) There being no material, adverse change in the Property or access thereto after expiration of the Agreement Inspection Period and prior to Closing.
- (13) Donor has obtained all required consents and approvals from City and/or all other agencies or entities as necessary for the sale and transfer of property to Donee.

5.2 Failure or Waiver of Conditions Precedent. In the event any of the conditions set forth in Subsection 5.1 are not fulfilled or waived, then Donee may terminate this Donation Agreement and, upon such termination, all rights and obligations hereunder of each party (other than the indemnification obligations of either party provided hereunder) shall cease. Donee may, at its election, at any time or times on or before the date specified for the satisfaction of the condition, waive in writing the benefit of any of the conditions set forth in Subsection 5.1.

6. Escrow and Closing

6.1 Closing Date. The Closing shall occur on the Closing Date, as defined above.

6.2 Escrow Arrangements. The consummation of the donation contemplated by this Donation Agreement shall take place through an escrow at the Title Company (“**Escrow Holder**”).

6.3 Terms of Escrow. The Closing and consummation of this escrow shall be subject to and in accordance with the following terms and conditions.

A. Donor shall deposit a fully executed copy of this Donation Agreement with Escrow Holder as escrow instructions, with any amendments or additional instructions which shall be in writing and signed by both parties, that may be needed from time to time by Escrow Holder for purposes of performing its functions under this Donation Agreement. Escrow Holder is hereby appointed and designated to act as such and is authorized and instructed to deliver, pursuant to the terms and conditions of this Donation Agreement, the documents and money to be deposited into escrow as hereinafter provided, with the terms and conditions contained herein to apply to such escrow. Donor and Donee hereby agree that each shall, during the escrow period, execute any and all documents and perform any and all acts reasonably necessary or appropriate to consummate the purchase and sale pursuant to the terms set forth in this Donation Agreement.

- B. Donor shall deposit into escrow, on or before Close of Escrow:
- (i) an executed Warranty Deed (“Deed”) in a form acceptable to Donee and in recordable form conveying the Property transferred and accepted hereunder; and
 - (ii) such other executed documents or easements as may be necessary to carry out the terms set forth in this Donation Agreement.

C. Donee shall execute and deposit into escrow, on or before the Closing Date, any documents required to consummate the transfer and acceptance pursuant to the terms set forth in this Donation Agreement.

D. Escrow Holder shall cause to be drafted any other documents to be recorded or signed by the parties as may be necessary to carry out the terms set forth in this Donation Agreement.

E. On or before Closing, Donor shall cause Escrow Holder to issue a policy of title insurance of Donee’s choice insuring title on the Property, subject only to the conditions of record appearing on the Preliminary Report which are not disapproved by Donee and matters

revealed by the ALTA survey, if any. The title policy shall have liability limits of not less than the Donation Value referenced in Section 2, above.

F. In the event that the Closing does not occur at the time and in the manner provided in this Donation Agreement because of the default of one of the parties, the non-defaulting party has the right to cancel this escrow by written notice to the defaulting party and to the Escrow Holder. The defaulting party shall pay all costs of cancellation. If the Closing does not take place for any reason other than a default by one of the parties, the parties shall each pay one-half of the escrow fees and the parties shall be released from any and all obligations (except for those which survive Closing) under this Donation Agreement.

7. **ESCROW CHARGES.**

7.1 **Donor's Charges.** Escrow Holder shall charge and collect from the Donor at Closing the following:

- A. One-half of the escrow charges and all of the recording fees for the Deed;
- B. Unless otherwise specifically provided for herein, any taxes and special assessment bonds on the Property for any prior years and the current fiscal year, which taxes for the current fiscal year shall be pro-rated between the Donor and the Donee as of the Closing Date, with the Donor paying the pro-rata portion prior to the Closing Date; and
- C. All other costs and expenses shall be allocated between Donee and Donor in accordance with the customary practice in the County for transactions of this type.

7.2 **Donee's Charges.** Escrow Holder shall charge and collect from the Donee at Closing the following:

- A. One-half of the escrow charges;
- B. All other costs and expenses shall be allocated between Donee and Donor in accordance with the customary practice in the County for transactions of this type.

7.3 **Escrow Holder Authorization.** Donor and Donee hereby authorize Escrow Holder to insert the Closing Date as the execution date of the Deed at Closing. The Escrow Holder is further authorized to insert the Closing Date and to fill in the blank spaces in any and all documents and instruments delivered to it, so long as it is done in conformity with this Donation Agreement and any amendments or additional escrow instructions.

7.4 **Closing Duties of Escrow Holder.** At the Close of Escrow, as hereinafter defined, Escrow Holder shall:

- A. record the Deed and any other appropriate documents with the County Recorder's office;

B. deliver to Donee the title policy as provided herein and other instruments conveying title to the Property; and

D. deliver to Donor and Donee certified copies of recorded documents and any other relevant documents.

7.5 **Conditions to Closing.** All conditions precedent set forth in this Donation Agreement have been satisfied or waived by Donor or Donee, as applicable.

7.6 **Filing of Reports.** Title Company shall be solely responsible for the timely filing of any reports or returns required pursuant to the applicable provisions of the Internal Revenue Code, and any similar reports or returns required under any state or local laws, in connection with the closing of the transaction contemplated in this Donation Agreement.

7.7 **Conduct Prior to the Closing.** Donor and Donee shall have the following rights and obligations during the Contract Period:

A. Donor and Donee shall make commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper, or advisable to consummate the transaction contemplated hereby as soon as practicable;

B. Donor and Donee shall promptly give the other party written notice of the existence or occurrence of any condition that would make any representation or warranty herein contained of either party untrue or which might reasonably be expected to prevent the consummation of the transaction contemplated hereby; and

C. No party shall intentionally perform any act or intentionally omit to perform any act which, if performed or omitted, would prevent or excuse the performance of this Donation Agreement by any party hereto or which would result in any representation or warranty herein contained of said party being untrue in any material respect as if originally made on and as of the Closing Date.

7.8 **Prorations.**

A. Unless otherwise specifically provided for herein, assessments, taxes, utilities, rents, insurance, interest, and other recurring expenses or charges relating to the Property, if any, shall be prorated between Donor and Donee as of the Closing Date. All such items attributable to the period through and including the Closing Date shall be credited to Donor. All such items attributable to the period following the Closing Date shall be credited to Donee. Donor shall be credited in escrow with any refundable deposits.

B. All monthly prorations shall be calculated on actual days of the applicable month and all annual prorations shall be calculated based on a 365-day year. Donor and Donee shall cooperate to prepare on or before the Closing Date a schedule of prorations as complete and accurate as reasonably possible. All prorations which can be liquidated accurately or reasonably estimated as of the Closing Date shall be made in escrow on the Closing Date. All other prorations and adjustments to initial estimated prorations shall be made by Donee and Donor with due

diligence and cooperation within thirty (30) calendar days following the Closing Date, or such later time as may be required to obtain necessary information for proration. Any net credit due one party from the other as a result of such post-closing prorations and adjustments shall be paid by the other in cash immediately upon the parties' written agreement to a final schedule of post-closing prorations and adjustments.

7.9 **Other Closing Costs.** Donor shall bear the cost of all governmental documentary transfer or transfer taxes or fees due on the transfer of the Property and of a standard owner's policy of title insurance in favor of Donee, in the amount of the Donation Value. The cost of deletions from the owner's policy of any standard exceptions, as well as the cost of any other affirmative coverages and endorsements, including any additional premium for Donee's ALTA extended owner's title insurance policy, shall be borne by Donee. All escrow and other title fees charged by Title Company will be divided equally between Donee and Donor. All other closing costs shall be paid in accordance with the custom in the County. Except as otherwise set forth in Section 8.7, Donor and Donee each shall pay the fees and expenses of their respective legal counsel, accountants, and other consultants or advisors incurred in connection with this transaction.

7.10 **Insurance.** Any of Donor's existing blanket fire and extended coverage insurance policies or any other insurance policies, as they affect the Property, shall be canceled as of the Closing Date, and Donor shall receive any premium refund due thereon.

8. **MISCELLANEOUS.**

8.1 **Assignment and Modifications.** This Donation Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment without consent is void and not merely voidable. Notwithstanding the foregoing, upon written notice to the other party, either party may assign this Donation Agreement or any right or obligation hereunder to an affiliate or subsidiary of the party or to an entity formed out of consolidation, acquisition, or merger with such party; provided that the surviving entity agrees to assume all the assigning party's liability and obligations under this Donation Agreement. Modifications or changes to this Donation Agreement must be in writing, signed by both parties. No oral statements or representations subsequent to the execution hereof by either party are binding on the other party, and neither party shall have the right to rely on such oral statements or representations.

8.2 **Notices.** All notices, documents, or statements required to be given pursuant to this Donation Agreement must be in writing, signed by an authorized representative of the respective party and: (i) personally delivered; (ii) deposited in the United States mail, registered, or certified return receipt requested, postage prepaid; or (iii) sent by Federal Express or similar nationally recognized overnight courier service, and addressed as follows:

For Donee: Ana Urquijo
 City Manager
 425 10th Street
 Douglas, AZ 85607
 Telephone: (520) 417-7303

Email: Ana.Urquijo@douglasaz.gov

For Donor: JAMES GARY W & SHELLEY JAMES JUDY L FAM TRUST
Attn: Judy Shelley-James
PO Box 831
Douglas, AZ 85607
Telephone: (520) 364-8551
Email: douglasdieselaz@hotmail.com

For Escrow Holder: Pioneer Title Agency
Attn: Candy Romo, Branch Manager
1065 F Avenue, Suite 6
Douglas, Arizona 85607
Telephone: (520) 364-4123 Fax: (520) 364-4890
Email: Candy.Romo@ptaaz.com

The foregoing addresses may be changed from time to time by written notice. All notices under this provision shall be deemed received upon the earlier of actual receipt or three (3) business days following mailing.

8.3 **Time.** Time is of the essence of every provision contained in this Donation Agreement.

8.4 **Future Cooperation.** Each party shall, at the request of the other, at any time, execute and deliver to the requesting party all such further instruments as may be reasonably necessary or appropriate in order to effectuate the purpose and intent of this Donation Agreement.

8.5 **Access and Possession.** Possession of the Property shall be delivered to Donee on the Closing Date, and Donor shall not enter into any leases that would survive the Close of Escrow. However, after execution hereof, Donee may enter upon the Property for the purpose of performing any engineering, surveying, environmental investigations, studies, soils testing, or other physical investigation of the land. Donee agrees to indemnify and hold Donor harmless from all liability, claims, costs, and expense, except such as might accrue from the mere discovery of Hazardous Substances, as a direct result from Donee's activities on the Property prior to Close of Escrow.

8.6 **Incorporation by Reference.** All of the exhibits attached to this Donation Agreement or referred to herein and all documents in the nature of such exhibits, are by this reference incorporated in and made a part of this Donation Agreement.

8.7 **Attorneys' Fees.** If either party commences an action against the other to interpret or enforce any of the terms of this Donation Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

8.8 **Construction.** The parties acknowledge that each party and its legal counsel (if deemed appropriate by each party) have reviewed this Donation Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not

be employed in the interpretation of this Donation Agreement or any amendments or exhibits hereto. The parties have equal bargaining power and intend the plain meaning of the provisions herein.

8.9 **No Merger.** The provisions of this Donation Agreement shall not merge with the delivery of the Deed but shall, except as otherwise provided in this Donation Agreement, survive the Close of Escrow.

8.10 **Governing Law.** The parties agree that this Donation Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Arizona.

8.13 **Commission.** Each party hereby represents and warrants unto the other that it has not acted through or with, engaged, or introduced into the transactions contemplated hereby, any broker, agent, or finder who would be entitled to a commission or fee upon the execution of this Donation Agreement and/or Closing hereunder. Each party shall indemnify and hold harmless the other, respectively, of and from any and all other liability, cost and expense, including reasonable attorneys' fees, incurred or suffered as a result of breach of the aforesaid warranty by the indemnifying party. The indemnification obligations set forth in this Section 8.13 shall survive termination of this Agreement or Closing without limitation as to time.

8.14 **Third Party Beneficiary Rights.** This Donation Agreement is not intended to create, any third-party beneficiary rights in any person not a party hereto.

8.15 **Default.** In the event of any default hereunder by Donor, Donee shall have the right to either cancel this Donation Agreement or to enforce this Donation Agreement by an action for damages or specific performance, or both, or to such other appropriate remedy as may be available.

8.16 **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS), AS A RESULT OF PERFORMANCE OR FAILURE TO PERFORM UNDER THIS DONATION AGREEMENT, EVEN IF THE PARTY IS INFORMED OF THEIR POSSIBILITY. Nothing in this Donation Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Donation Agreement on any persons other than the parties to the Donation Agreement and their respective successors and assigns, nor is anything in this Donation Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to the Donation Agreement, nor shall any provision give any third person the right of subrogation or action over any party to the Donation Agreement.

8.17 **Headings.** Section titles, headings, or captions contained in this Donation Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Donation Agreement or the intent of any provision herein.

8.18 **Severability.** The invalidity of any provision of this Donation Agreement or portion of a provision shall not affect the validity of any other provision of this Donation Agreement or the remaining portion of the applicable provision.

8.19 **Non-Waiver.** The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants, or conditions of this Donation Agreement, to exercise any right or privilege in this Donation Agreement conferred, or the waiver by said party of any breach of any of the terms, covenants, or conditions of this Donation Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights, or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

8.20 **Confidentiality.** Donee and Donor shall keep any negotiations and communications between the parties regarding the potential donation or donation of the Property confidential, and shall not disclose any matter related to such negotiations and communications to any third party without the prior written consent of the other party, except as required by law or by any regulatory, state, or federal government authority (including any court) or on a “need to know” basis to either party’s attorneys, accountants, or similar consultants if such attorneys, accountants, or similar consultants agree to keep such negotiations, communications, and related matters confidential. This confidentiality provision shall apply throughout the Agreement Inspection Period and through the Close of Escrow.

8.21 **Relationship of Parties.** Nothing in this Donation Agreement shall be construed to create any partnership, joint venture, or agency as between the parties. The relationship of the parties hereunder shall be that of independent parties. Neither party is intended to have, nor shall either party represent to any other person that it has, any power, right, or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party, except as expressly required or authorized by this Donation Agreement, or as otherwise permitted in writing.

8.22 **Entire Agreement.** This Donation Agreement and all exhibits, when executed, contain the entire understanding of the parties and supersede any and all other written or oral understanding.

8.23 **Counterparts.** This Donation Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatories to the same counterpart.

8.24 **Successors.** This Donation Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

8.25 **No Recordation.** Neither this Donation Agreement nor any notice thereof shall be recorded in the County’s official records.

8.26 **Days of Week.** If any date for performance herein falls on a Saturday, Sunday or legal holiday, pursuant to the laws of the State of Arizona or United States, the time for such performance shall be extended to 5:00 p.m. on the next business day.

8.27 **Time and Manner of Approval.** On each occasion when a party is given the right of approval or consent pursuant to this Donation Agreement, unless specified otherwise, the approving party shall have five (5) business days to approve or disapprove after delivery of the item to be approved, which approval shall not be unreasonably withheld.

8.28 **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY ARISING OUT OF THIS DONATION AGREEMENT.

8.29 **Use of Gender.** As used in this Donation Agreement, the masculine, feminine, or neuter gender, or the singular or plural number, shall each be considered to include the others whenever the context so indicates.

IN WITNESS WHEREOF AND INTENDING TO BE BOUND, the parties have executed this Donation Agreement as of the date set forth above.

“Donee”

“Donor”

CITY OF DOUGLAS

JUDY L. SHELLEY- JAMES

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

EXHIBIT "A"

PARCEL 409-06-018N

Legal Description

That portion of the Northwest¼ of Section 13, Township 24 South, Range 27 East of the Gila and Salt River Meridian, Cochise County, Arizona, being more particularly described as follows;

Commencing at the West ¼ corner of said Section 13;
Thence North 89° 53' 27" East a distance of 788.24 feet to the Point of the Beginning;

Thence North 17° 03' 33" East (M) a distance of 459.10 feet;
Thence North 89° 34' 00" East (M) a distance of 399.13 feet;
Thence North 89° 36' 03" East (M) a distance of 117 .98 feet;
Thence South 17° 14' 24" West (M) a distance of 39.94 feet;

Thence South 89° 48' 45" West (M) a distance of 111.19 feet;
Thence South 16° 36' 27" West (M) a distance of 36.64 feet;
Thence South 89° 58' 16" West (M) a distance of 385.48 feet (M);
Thence South 16° 55' 57" West (M) a distance of 281.51 feet;
Thence South 14° 52' 14" West (M) a distance of 103.06 feet;
Thence South 89° 58' 35" West a distance of 24.32 feet to the Point of Beginning.

