

REAL ESTATE DONATION AGREEMENT

BY THIS REAL ESTATE DONATION AGREEMENT, ("**Agreement**") effective on the date last signed by the parties ("**Effective Date**"), by and between Pringle Square North LLC, an Oregon limited liability company, and, Minto Island Greenway LLC, an Oregon limited liability company (collectively the "**Donor**") and the City of Salem, an Oregon municipal corporation ("**Recipient**"). Donor and Recipient shall be referred to herein jointly as the "**Parties**" and severally as a "**Party**."

RECITALS:

- A. Donor wishes to donate, and Recipient wishes to obtain from Donor, that certain real property commonly known as the Creek Parcel and Slough Parcels, which are more specifically described below.
- B. Recipient is willing to receive the donated property, access and property rights, and all improvements from Donor, subject to the terms and conditions set forth herein, and Donor is willing to donate the donated property, access and property rights, and all improvements to Recipient as described herein.
- C. Donor intends for this donation to be a charitable donation pursuant to Section 170(a) of the Internal Revenue Code, as amended.

AGREEMENT:

NOW, THEREFORE, the Parties do hereby mutually covenant and agree as follows:

1 Donation of Property. Donor hereby agrees to assign, donate and convey to Recipient the Donation Property, in reliance upon both the representations of Recipient and on the terms and conditions set forth herein, the real property, access and property rights, and all improvements thereto which are located in the City of Salem, Marion County, Oregon, and are more particularly described in Exhibit A, attached hereto and incorporated herein, (the "**Donation Property**").

2 Donation Value. The valuation of the donation will be based pursuant to an appraisal by Powell Banz Valuation, (the "**Donation Value**").

3 Earnest Money. Not applicable to this Agreement.

4 Environmental Review and Assessment. Donor to provide to Recipient any and all environmental data and information related to the Donation Property.

5 Recipient's Conditions.

5.1 Environmental Contingency. Recipient will initiate a Phase I and a Phase II Environmental Assessment of the Donation Property. Donor acknowledges that Recipient will be negotiating with the Oregon Department of Environmental Quality (DEQ) to obtain a Prospective Purchaser Agreement (PPA) in regard to purchase of the Donation Property, which may also include the Recipient performing environmental testing (together constituting "the Investigation"). If the Investigation results indicate environmental liability issues that are unacceptable to Recipient, or if Recipient is unable to agree upon the final form of a PPA with DEQ to be recorded at Closing, then Recipient may, on written notice to Donor, terminate this Agreement and it shall be null and void for all purposes. If such written notice to terminate is not given to Donor on or before Closing, this condition shall be deemed waived by Recipient for all purposes.

5.2 Inspection Contingencies.

5.2.1 Inspection Expenses. All costs and expenses of the Investigation will be paid by Recipient when due, regardless of whether this transaction closes. Recipient shall not allow any materialmen's liens or other encumbrances on the Donation Property.

5.2.2 Inspection Indemnity. Except for any liability or costs to Donor related to any environmental condition existing on, or caused by contaminants on the Donation Property prior to the Investigation of the Donation Property, Recipient will indemnify, defend, and hold harmless Donor from and against any and all costs, losses, damages, expenses, liabilities, actions, liens, or claims to the extent they arise from any activities on or about the Donation Property by Recipient or any agent, employee, contractor, or invitee of Recipient at or after the time of the Investigation, even if in part due to the prior acts or omissions of Donor. Notwithstanding the above, Recipient shall not be liable to Donor, nor shall be required to indemnify, defend or hold harmless Donor for any costs, losses, damages, expenses, liabilities, actions, liens, or claims arising from any environmental contamination existing prior to Recipient's inspection of the Donation Property and due diligence undertaken pursuant to this Agreement.

5.2.3 Confidentiality Requirements. Recipient will use and disclose information it obtains about the Donation Property solely in connection with its acceptance evaluation. Unless and until it acquires the Donation Property, Recipient will not disclose any such information to any third party except (a) DEQ, permitted assignees, successors, and the Recipient's property and environmental

consultants, and lawyers; (b) to any court of competent jurisdiction in connection with any mediation, arbitration, or litigation in connection with this Agreement; (c) as to any information that is otherwise a matter of public record, or as Recipient may be required by law, including Oregon public records law.

6 Donor's Conditions. This section is intentionally deleted.

7 Title Insurance.

7.1 **Title Report.** Within thirty (30) days after the Effective Date, Donor will order a preliminary title report from the Escrow Agent with respect to the Donation Property (the "***Title Report***"). The Title Report will be accompanied by the most legible copies available of all special exceptions listed therein. Recipient will have thirty (30) days after its receipt of the Title Report and copies in which to notify Donor in writing of Recipient's disapproval of any exceptions shown in the Title Report. Any special assessments shown on the Title Report that are objected to by Recipient will be included in Recipient's notice. In the event of any disapproval, Donor will notify Recipient in writing within fifteen (15) business days after Recipient's notification as to whether Donor agrees to remove any of the exceptions so disapproved, and upon delivering the notice, Donor will have until the Closing Date described in Section 15 to cause the exceptions that Donor has agreed to remove to be removed of record and from the Title Report. Recipient will be deemed to have accepted all title exceptions to which it has not timely objected.

7.2 **Rescission of Agreement—Title Defects.** If Donor elects not to eliminate any title exception disapproved by Recipient, Recipient may elect to cancel this Agreement by written notice to Donor given on or before thirty (30) business days after Donor's notification of the election. If Recipient does not elect to cancel this Agreement, Recipient's objections to the disapproved exceptions that Donor elected not to eliminate are deemed waived and the Donation Property will be conveyed to the Recipient with such defects. The foregoing notwithstanding, Donor agrees that it will cause all trust deed liens or monetary encumbrances against the Donation Property that are not accepted by Recipient to be released of record by the Closing Date. If Recipient fails to give timely notice to Donor of termination under this paragraph, then Recipient's right of termination will be deemed waived. Said title insurance policy shall be in the amount of the Donation Value. Donor shall bear the cost of title insurance. Any extended title coverage shall be paid by Recipient.

8 Temporary Construction and Access Easement. This section is intentionally deleted.

9 Risk of Loss. All risk of loss, injury, damage or condemnation of the Donation Property shall be transferred from Donor to Recipient at the time of Closing. If the Donation Property is partially destroyed or partially condemned at any time prior to Closing and that portion of the Donation Property destroyed or condemned constitutes a material part of this transaction, or if the Donation Property is totally destroyed or condemned, either party may terminate this Agreement without liability or obligation to the other party. All insurance proceeds and condemnation awards, received by or accruing to Donor by reason of such loss, injury, damage, or taking, shall be for the account of Donor. If the Donation Property is partially destroyed or condemned and the loss or condemnation is immaterial, the transaction shall be closed and the proceeds of all insurance and all condemnation proceeds shall accrue to Recipient.

10 Taxes and Assessments: Closing Costs. Real estate and personal property taxes, if any, and all utilities shall be prorated between the Parties as of the date of Closing. Donor shall pay one-half of any closing fees, including escrow fees. Recording Fees, transfer taxes and assessments, deed stamps and one-half of any closing fees, including escrow fees, shall be paid by Recipient. Each Party shall pay its own attorney fees and other expenses incurred.

11 Title Documents.

11.1 **Deed.** Donor agrees to execute and deliver to Recipient a statutory warranty deed conveying title to the Donation Property, subject to the accepted title exceptions of record, as well as the restrictive covenant described below in Section 11.2.

11.2 **Restrictive Covenant Regarding Use.** A Declaration of Restrictive Covenant will be agreed to by both Parties, if and as is required by Recipient's PPA with DEQ. Such restriction shall run with the land. Recipient's acceptance of the Declaration of Restrictive Covenant is an inducement for Donor to enter into this Agreement and shall be recorded as provided in the PPA. If no PPA is to be recorded on a parcel, the Parties will negotiate in good faith regarding the appropriate restrictions based on the Investigation.

12 Possession. Recipient shall be entitled to possession of the Donation Property at Closing.

13 As Is Donation.

13.1 **Limitation of Representations and Warranties.** The representations and warranties in this Agreement, if any, shall be limited to the actual knowledge of the undersigned below with no duty of inquiry. The Parties further agree that any claim or action based on breach of this Agreement, including, but not limited to,

misrepresentation or material omission, shall occur within six (6) months of the Closing Date.

13.2 Acceptance of Donation Property. The Donation Property is being sold “**AS IS – WITH ALL FAULTS AND DEFECTS,**” if any, including any and all environmental conditions identified in the Investigation as described in Section 5.1 of this Agreement. The Donation Property is being sold without recourse, and no representations, warranties, guarantees, promises, statements, estimates, of any nature whatsoever, whether oral or written, expressed or implied, have been made by Donor, or any agent of Donor, including but not limited to, the physical condition of the Donation Property, latent defects, patent defects, personal property, use, drainage, pests, zoning and land use restrictions, title, habitability, suitability, fitness, merchantability, size, compliance with building codes, government laws, rules and regulations, availability of utility rights or the existence of hazardous substances, wetlands, easements or encroachments, whether or not disclosed by inspection. Recipient shall look solely to the Title Company issuing said policy for any claim or damage in any way relating to the title to the Donation Property, including, but not limited to, any liens, encumbrances, encroachments or assessments.

DONOR ALSO EXPRESSLY DISCLAIMS, AND RECIPIENT WAIVES, ANY AND ALL IMPLIED AND EXPRESS WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF HABITABILITY FOR ANY AND ALL DEFECTS IN DESIGN OR CONSTRUCTION OF THE DONATION PROPERTY. RECIPIENT HAS READ, UNDERSTANDS AND AGREES TO THE DISCLAIMER OF ALL WARRANTIES.

RECIPIENT FURTHER WAIVES ANY AND ALL DISCLOSURES, REPRESENTATIONS AND WARRANTIES ALLOWED OR REQUIRED UNDER APPLICABLE LAW, TO THE EXTENT ALLOWED BY APPLICABLE LAW.

13.3 Waiver of Claims. The Parties acknowledge that the Closing of the Donation Property is conditioned upon Recipient’s inspection of the Donation Property and completion of the Investigation, to Recipient’s satisfaction, unless Recipient chooses to expressly waive some part of the Investigation in writing. Recipient shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Donation Property. Recipient is hereby instructed to complete all inspections, investigations and due diligence regarding any aspect of or relating to the Donation Property that Recipient deems necessary or desirable, to Recipient’s satisfaction, in order to be fully informed prior to the Closing of the sale of the Donation Property or to otherwise protect Recipient’s interest. In the event that Recipient has completed all such due diligence to its satisfaction, Recipient shall execute an addendum prior to the Closing of the donation of the Donation Property waiving all contingencies, including any such inspection contingency, and accepting the condition and all other aspects relating to the

Donation Property, without right to rescind or set aside the sale of the Donation Property. Recipient acknowledges that Recipient is not relying and will not rely upon any statements or representations of any person with respect to the Donation Property, or of any other matter affecting or relating to the Donation Property. Recipient will instead rely solely on such investigations, examinations, and inspection as Recipient may choose to make prior to the expiration of the inspection contingency set forth in this Agreement. Recipient further acknowledges that any agent of Donor is not authorized to make representations upon which Recipient may rely.

13.4 **Acknowledgment.** Recipient understands, acknowledges and agrees that the representation, disclosures and warranty exclusions set forth above were a specifically negotiated basis for the donation.

13.5 **Limited Disclosure.** Donor has disclosed to Recipient certain documents and statements that are more particularly enumerated in Section 4 above, which are incorporated herein by this reference.

13.6 **Cooperation.** Donor agrees to cooperate in good faith if and as requested by Recipient related to any and all third-party claims arising or connected to the Property or costs incurred by Recipient related to the PPA, including without limitation, costs of the Investigation of the Donation Property.

14 Indemnification.

14.1 **Donor's Indemnification.** Donor shall indemnify and hold Recipient harmless from and against:

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14.2.1 Except as otherwise provided in this Agreement, any and all obligations relating to Donor's ownership of the Donation Property which exist as of the Closing Date;

14.2.2 Any and all damage, loss or liability resulting from any misrepresentation of a material fact, breach of warranty or nonfulfillment of any agreement on the part of Donor under this Agreement or from any misrepresentations in any certificate furnished or to be furnished to Recipient hereunder; and,

14.2.3 Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to the foregoing.

For purposes of Section 14, an obligation shall be deemed to "exist" as of the Closing Date if it relates to events which occurred prior to the Closing Date even if it is not asserted until after the Closing Date.

14.3 **Recipient's Indemnification.** Recipient shall indemnify and hold Donor harmless from and against:

14.3.1 Except as otherwise provided in this Agreement, any and all obligations relating to Donor's ownership of the Donation Property from and after the Closing Date;

14.3.2 Any and all damage, loss or liability resulting from any misrepresentation of the material fact, breach of warranty or nonfulfillment of any agreement on the part of Recipient under this Agreement or from any misrepresentations in any certificate furnished or to be furnished to Donor hereunder;

14.3.3 Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to the foregoing.

15 Closing. The term “*Closing*” as used in this Agreement means the donation of the Donation Property from Donor to Recipient by Donor delivering to Recipient the warranty deed and title insurance policy. Unless otherwise agreed by the Parties, or the Agreement is terminated pursuant Sections 5 and 6, Closing shall take place at the earliest date possible, but no later than 60 days after all portions of the Donation Property receive final PPA, or other liability protections, from DEQ. This transaction shall be closed through an escrow that is to be held by First American Title Insurance Company (“Title Company”). Each Party shall execute and deliver on a timely basis all escrow instructions, deeds, declaration of restrictive covenants, and other documents reasonably necessary to close this transaction.

16 Statutory Warning (ORS 93.040(2)). THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

17 Brokers. Donor and Recipient warrant to each other that no person or entity of any sort is entitled to any commission, broker fees, finder fees, or other payment.

18 Default. In the event that either Party fails to close this transaction when and as required hereby, the other Party’s sole remedy is to terminate this Agreement, in which case this Agreement shall be null and void.

19 Assignment.

19.1 Neither this Agreement nor any rights arising under it may be assigned or mortgaged by Recipient without the prior written consent of Donor, and any

attempt to transfer this Agreement or any rights or interests arising hereunder, by operation of law or otherwise, without such consent shall be void and of no force and effect.

19.2 The rights and obligations arising under this Agreement shall run with the land and shall be binding on the Parties' successors and assigns. In the event Donor sells, conveys, or otherwise transfers fee title to the Donation Property, or interest therein, to a third party, Donor shall assign its rights and obligations arising under this Agreement to that party contemporaneously with that sale, conveyance, or transfer.

20 Modification. No part of this Agreement may be modified without the express written consent of both Parties.

21 Notices. Any notice or demand required or permitted to be given under the terms of this Agreement shall be deemed duly given or made if given by any of the following methods:

- a. Deposited in the US mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectfully addressed as follows:

To Donor:	Pringle Square North LLC Minto Island Greenway LLC Attention: Jason Tokarski 201 Ferry St. SE, Suite 400 Salem, OR 97301
With a Copy to:	Saalfeld Griggs PC Attn: Mark D. Shipman, Attorney PO Box 470 Salem, OR 97308
To Recipient:	City of Salem Attn: Real Property Services Manager 350 Commercial St. NE Salem, OR 97301
With a Copy to:	City of Salem, City Attorney's Office 555 Liberty St, SE, Rm. 205 Salem, OR 97301

- b. Sent to the above addresses via an established national overnight delivery service (such as Federal Express), charges prepaid, or
- c. Sent via any electronic communications method, provided the sender obtains written confirmation of receipt of the communication by the electronic communication equipment at the office of the addressee listed above.

22 Enforcement and Attorney's Fees. In the event a suit or other action is instituted to enforce any of the terms or obligations under this Agreement, each party shall bear the costs of its respective attorney's fees.

23 Integration. This Agreement contains the entire agreement between the parties concerning the subject hereof, including all oral understandings and agreements, and there are no collateral understandings or agreements or representations or warranties not expressly included herein.

24 Counterparts, Electronic Transmission and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile, email transmission or other means of electronic transmission of any signed original document, and retransmission shall be the same as delivery of an original. The Parties agree that this transaction may be conducted and closed by electronic means in accordance with the provisions of the Uniform Electronic Transactions Act ("UETA") as codified in ORS Chapter 84. At the request of either Party, the Parties shall confirm electronically transmitted original signatures or electronic signatures by signing an original document and providing the signed original to the requesting Party.

25 Recording. Neither this Agreement nor any copy hereof shall be recorded without the express written consent of Donor.

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

DONOR:
PRINGLE SQUARE NORTH LLC

By: _____
Lawrence E. Tokarski, President of
MWIC Pringle Corporation, Manager
of Pringle Square North LLC

DATE: _____

MINTO ISLAND GREENWAY LLC

By: _____
Lawrence E. Tokarski, President of
MWIC Pringle Corporation, Manager
of Pringle Square North LLC

DATE: _____

RECIPIENT:
CITY OF SALEM

By: _____
Steve Powers, City Manager

DATE: _____

EXHIBIT A
LEGAL DESCRIPTION

TBD