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**MEMORANDUM**

**To:** Mayor and City Council

**From:** Brent Walker

**Date:** September 26, 2011

**Subject:** **Approval of Lease Agreement for the Donaldson Family Cemetery.**

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**ITEM DESCRIPTION**

Approval of the Donaldson Family Cemetery Lease.

**BACKGROUND**

In June of 2010 the City of Dunwoody purchased the Donaldson-Chesnut Farm from DeKalb County to be part of our park system. The farm's adjoining family cemetery was not included in this purchase as it was still owned by the Donaldson family. Recently, Mr. Fred Donaldson contacted City staff and expressed a desire to transfer the cemetery to the City.

A lease has been created to this effect with a clause providing that the property be maintained to the minimum standards as specified by the International Property Maintenance Code which dictates that all exterior property areas be kept clean, safe and in a sanitary condition. Staff is prepared to provide proper maintenance to the cemetery as part of the general maintenance to the park property to address these concerns from the Donaldson family.

**RECOMMENDED ACTION**

Lease of this property to the City will ensure that it remains intact as a family cemetery and maintains its historical significance to the Donaldson Chesnut Farm. Staff respectfully requests that Council approve the property lease and authorize staff to take the appropriate actions necessary to complete the transaction.



STATE OF GEORGIA  
CITY OF DUNWOODY

LEASE AGREEMENT

THIS AGREEMENT by and between the **City of Dunwoody, Georgia**, a municipal body politic and corporate, hereinafter designated "Lessee," and Fred Hayden Donaldson, 4420 Highway 166, Douglasville, Georgia 30135, hereinafter designated "Lessor."

WITNESSETH:

WHEREAS, Lessor owns that parcel of land lying and being in Land Lot 352 of the 18<sup>th</sup> District, DeKalb County, Georgia, and more particularly described with DeKalb County parcel identification number 18-352-01-010, being the Donaldson Family Cemetery (hereinafter designated as "Property"); and

WHEREAS, the undersigned Lessee desires to lease the Property from Lessor in order to utilize the Property as part of its use of the adjacent Donaldson Chestnut Farm for recreational and historical use.

NOW, THEREFORE, the parties hereto agree as follows:

1. Lessor does hereby lease to Lessee the Property at a cost of \$1 per year to be paid to Lessor on the first day of each year of occupancy.
2. This Agreement, beginning on January 1, 2012 is for an initial term of one (1) year. This Agreement shall terminate absolutely and without further obligation on the part of the City on December 31, 2012 and on December 31<sup>st</sup> of each succeeding and renewed year, as required by O.C.G.A. § 36-60-12, as amended, unless terminated earlier in accordance with the termination provisions of the Agreement. This Agreement may be automatically renewed on an annual basis for an additional twelve-month term, for a total term not to exceed fifty (50) years, upon the same terms and conditions, as provided for in this Agreement, unless previously terminated within sixty (60) days prior to the conclusion of the initial or any renewal Term. This Agreement will terminate absolutely on December 31, 2062.
3. Either party shall have the right to terminate this Agreement for any reason at any time during the original term of this lease or any extension or renewal thereof by giving written notice to the Lessee of its intention to terminate at least sixty (60) days prior to the effective date of termination. Lessor reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time Lessee fails or refuses to fulfill the terms and conditions set forth herein. Lessee, upon termination of this Agreement or any renewal thereof, or cancellation thereof by Lessor, shall vacate and deliver up the Space peaceably, quietly, and in good order and condition.

4. For the purpose of this Agreement, all notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States Mail, postage prepaid, certified, and addressed as follows:
  - (a) LESSOR: Fred Hayden Donaldson  
4420 Highway 166  
Douglasville, Georgia 30135
  - (b) LESSEE: City of Dunwoody  
41 Perimeter Center E  
Suite 250  
Dunwoody, Georgia 30346  
Attention: Parks & Recreation
5. Lessee does hereby designate the Parks & Recreation Department as its representative in all matters pertaining to this lease. All requests and issues arising from use of the Property described herein should be addressed to the Parks & Recreation Department through its Parks Manager.
6. Lessee agrees to install and maintain a fence that surrounds the Property and maintain a double gate on each end of the Property to allow family access. Lessee further agrees and shall be responsible for maintaining the Property to the minimum standards as specified by the International Property Maintenance Code as adopted by the City of Dunwoody, and as further amended in the future. Lessee's maintenance responsibilities are a material provisions of this Agreement and Lessor may, upon ten (10) days' written notice and an opportunity to cure, terminated this Agreement unilaterally as a result of Lessee's failure to comply with these obligations.
7. Lessee shall not assign this Agreement nor sublet the Space or any part thereof, without the written consent of Lessor.
8. Lessee shall at all times exonerate, indemnify, and save harmless the Lessor, to the extent provided by law, from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation, and actions, based upon or arising out of damage or injury (including death) to persons or property (i) caused by, or (ii) sustained on the Space in connection with the performance of this Agreement or any extension or renewal thereof or conditions created thereby and shall assume and pay for, without cost to the Lessor, the defense of any and all claims, litigation and actions, suffered through any act or omission of the Lessee, or anyone directly or indirectly employed by or under the supervision of any of them, or in any way arising out of the use and occupancy of the space.
9. Except as otherwise consented to in writing by Lessor, Lessee shall maintain in force during the life of this Agreement or any extension or renewal thereof comprehensive general public liability and property damage insurance, in the minimum amount of \$100,000.00 with respect to each person, and in the sum of \$300,000.00 with respect to each accident or occurrence,

and in the sum of \$100,000.00 for injury or damage to property, and Lessor shall be named as an additional insured under such policy or policies of insurance.

10. Both parties agree that the provisions of this Agreement or any extension or renewal thereof, are not intended to be nor should they be construed as in any way creating or establishing a relationship between the parties hereto other than that of Landlord and Tenant, and at all times during the term of this Agreement or any extension or renewal thereof, Lessee is to be and shall remain as an independent contractor.
11. Lessee shall have the right to use the Property during all Terms of this Agreement for any recreational and parks purpose in conjunction with its ownership and operation of the adjacent Donaldson Chestnut Farm, to conduct any historical or otherwise parks and recreation-based programming in accordance with its rules, regulations and procedures.
12. Lessor shall be responsible for maintenance of all grave stones on the cemetery and Lessee shall not have any responsibility for maintenance of same. The Parties agree that this Property may be used for future burials by Lessor so long as Lessor gives the Lessee at least 72-hours notice of an impending funeral/burial and Lessee has the right to reasonably request that said services be conducted at a certain time of day.
13. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
14. This Agreement shall be deemed to have been made and performed in the City of Dunwoody, Georgia. For the purpose of the venue, all suits or causes of actions arising out of this Agreement shall be brought in the appropriate courts within DeKalb County, Georgia.
15. Any amendment or modification of this Agreement shall be set forth in writing as an Amendment to this Agreement, duly executed by the parties, but shall not become effective until thirty (30) days after the execution and delivery of such writing.
16. Lessee shall at the termination of this Agreement or any extension or renewal thereof surrender up the Space in good order and condition, reasonable use and ordinary wear and thereof expected. Lessor shall be entitled to all rights and remedies provided by law including, without limitation, the dispossessory rights and remedies provided in O.C.G.A. § 44-7-60, *et seq.*
17. Should any provision or term of this Agreement be determined by a court of competent jurisdiction to be unenforceable, all other provisions and terms shall remain in full force and effect.
18. This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendment or modification of this Agreement shall be enforceable unless approved in writing by either Party.

- 19. Without regard to any designation made by the person or entity entering this Agreement, the City of Dunwoody considers all information submitted in response to the Agreement to be a public record that will be disclosed upon request pursuant to the Georgia Open Records Act O.C.G.A. § 50-18-70 *et seq.*, unless a court order is obtained to the contrary.
- 20. The headings of sections and paragraphs, if any, to the extent used herein are for convenience and reference only, and in no way define, limit or describe the scope or intent of any provision hereof, and therefore will not be used in construing or interpreting the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LESSOR: Fred Hayden Donaldson**

**LESSEE: City of Dunwoody, Georgia**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City Manager  
City of Dunwoody, Georgia

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney Signature