

RESOLUTION NO. 29173

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DEED OF CONSERVATION EASEMENT WITH FRANK DOUGLAS STEIN, TRUSTEE, IN SUBSTANTIALLY THE FORM ATTACHED, FOR APPROXIMATELY A .33 ACRE PORTION OF 3650 FAITH ROAD, TAX PARCEL NO. 128N-C-003, WITH THIS CONVEYANCE BEING A SECTION OF THE GREENWAY TRAIL ALONG SOUTH CHICKAMAUGA CREEK, AND FURTHER AUTHORIZING THE EXECUTION OF ALL DOCUMENTS RELATED TO THE TRANSACTION WITH CLOSING FEES, FOR AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a Deed of Conservation Easement with Frank Douglas Stein, Trustee, in substantially the form attached, for approximately a .33 acre portion of 3650 Faith Road, Tax Parcel No. 128N-C-003, with this conveyance being a section of the Greenway Trail along South Chickamauga Creek, and further authorizing the execution of all documents related to the transaction with closing fees, for an amount not to exceed \$2,000.00.

ADOPTED: September 19, 2017

/mem

This Instrument Prepared By:  
**Valerie L. Malueg, Esq.**  
**City Attorney's Office**  
**100 E. 11<sup>th</sup> Street, Suite 200**  
**Chattanooga, TN 37402**

<u>Name and Address of New Owner:</u>	<u>Send Tax Bills To:</u>	<u>Map and Parcel Nos:</u>
City of Chattanooga Economic & Community Development 101 E. 11 <sup>th</sup> Street, Suite 200 Chattanooga, TN 37402	-SAME-	128N-C-003

**DEED OF CONSERVATION EASEMENT**

**THIS GRANT DEED OF CONSERVATION EASEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by **Frank Douglass Stein, Trustee of the Irrevocable Trust Agreement for the benefit of John Adam Stein dated January 18 1989** having an address at P.O. Box 5246, Chattanooga, TN 37406 (“Grantor”), in favor of **the City of Chattanooga**, a municipality of the State of Tennessee, having an address at 101 E. 11<sup>th</sup> Street, City Hall, Chattanooga, Tennessee 37402 (“Grantee”).

**WITNESSETH:**

WHEREAS, Grantor is the owner in fee simple of those certain parcels of real property in Chattanooga, Hamilton County, Tennessee, which has a street address of 3650 Faith Road (tax parcel ID 128N-C-003), Chattanooga, Tennessee, and which is more particularly described in the Deed recorded at Book GI 10497, Page 73, in the Register's Office of Hamilton County, Tennessee; and

WHEREAS, Grantor's property described above lies along South Chickamauga Creek, which possesses scenic, woodland, open space, and recreational values (“Conservation Values”) of great importance to Grantor, the people of Chattanooga and Hamilton County and the people of the State of Tennessee (the “State”); and

WHEREAS, Grantor desires to donate to Grantee certain easement rights as defined herein all within the area which is more specifically described in Exhibit A, attached hereto and made a part hereof (the “Property”);

WHEREAS, the Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 et seq. (the “Conservation Easement Act”) permits the creation of conservation easements for the protection of the State's land, water, geological, biological, historical, architectural, archaeological, cultural, and scenic resources, for the purposes of maintaining and preserving the State's natural and cultural heritage, and for assuring the maintenance of the State's natural and social diversity and health, and for encouraging the wise management of productive farm and forest land; and

WHEREAS, the preservation of the Property and the installation and maintenance of a trail along South Chickamauga Creek and over and across the Property will assist in the completion of the greenways plan identified by the National Park Service in its 1994 study “Greenways of the Southeast Tennessee River Valley”; and will provide an important opportunity for public recreation on the Property, including walking, jogging, bicycling, skating, wildlife observation, and nature study; and

WHEREAS, Chattanooga City Code, Part II, Chapter 26, Article VII., adopted on May 13, 1997, established the Greenways Advisory Board and directed that the Board work to establish greenways, and the Board has determined that this easement will be an integral component of the City of Chattanooga’s Greenways Systems; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity, and the Grantee is willing to honor such intention and protect such values in perpetuity; and

WHEREAS, Grantee is a municipality of the State of Tennessee;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Tennessee and in particular the Conservation Easement Act, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity across and over the Property set forth on Exhibit A, of the nature and character and to the extent hereinafter set forth (“Easement”). Said Easement shall run with the land.

1. Purpose. It is the purpose of this Easement to assure that the Property subject to the Easement will be retained forever in its scenic, recreational, and open space condition and to prevent any use of the Property subject to the Easement that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving public recreation and education, as are not inconsistent with the purpose of this Easement.

2. Rights and Obligations of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee, and the following obligations are assumed by Grantee, pursuant to this Deed of Conservation Easement:

(a) The right to construct and maintain boardwalks, trails, landscaping, signs and fencing, waste and recycling cans, and any benches or other boardwalk or trail amenities, within the Easement, providing, however, that Grantee shall have the affirmative obligation to remove any structure constructed by Grantee which thereafter is abandoned or which becomes dangerous to the public due to lack of appropriate use or maintenance;

(b) The right to clearly delineate and mark the Property including the Easement area as distinct from the remainder of Grantor's property by means appropriate and consistent with the Easement and its use;

(c) The right, and obligation, to preserve and protect the Conservation Values of the Property;

(d) The right to enter upon the Property, and upon Grantor's adjoining property, in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 5; provided that, if Grantee determines that entry upon Grantor's adjoining property is required to prevent, terminate, or mitigate a violation of this Easement, (i) any entry to Grantor's adjoining property shall be upon prior reasonable notice to Grantor, and (ii) Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of Grantor's adjacent property;

(e) The right, and obligation, to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use pursuant to the remedies set forth in Section 5;

(f) The right to allow public access to the Easement area as set forth on **Exhibit A** from adjoining property both upstream and downstream of the Property (but not across Grantor's adjoining property without Grantor's prior written consent) during all reasonable times for purposes such as recreational trail use and wildlife observation, provided however, that any legal liability for utilizing the easement property for these purposes shall rest solely with the Grantee, subject to any limitations on liability available to Grantee as a governmental entity, and to the extent allowed by law, Grantor shall be held harmless by the Grantee from all legal actions arising from such actions in accordance with Section 7.2; and

(g) The obligation to prevent public vehicular access to the area of the Easement. Towards such end, Grantee shall install such keyed bollard, shared lock gate or similar mechanism acceptable to Grantor, the plans for which shall be subject to Grantor's approval prior to installation.

3. Prohibited Uses. Any activity or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities on or within the area of the Easement are expressly prohibited:

(a) The construction or placement of buildings or other structures or improvements (other than trails or walkways) or the erection of commercial signs and billboards;

(b) The subdivision of the Property;

(c) Surface alteration (other than for construction of items identified in (a) above), mining, soil degradation or mineral development;

(d) Timbering, spraying with biocides or removing vegetation, other than removal of non-native, invasive species or removal of such vegetation as is needed for routine trail and landscape construction and maintenance, and for general public health and safety;

(e) Dumping of waste or debris; and

(f) Public vehicular traffic.

4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Grantor shall have the right to place one or two access gates in the fence to be constructed by Grantee pursuant to the provisions of Section 2 (a) hereinabove, for the purpose of access by Grantor's employees, agents, contractors and invitees between the trail and Grantor's adjacent property. Grantor shall have the right to drain storm water from Grantor's adjacent property over and through the Easement, in addition to the other rights reserved by the terms of this paragraph. In addition, this grant of easement is subject to all matters of record and matters of fact existing as of the date hereof. Further, Grantor reserves the right to subject the Property to the lien of any mortgage, deed of trust or other security device securing financing for the benefit of Grantor, it being understood, however, that any such financing mortgage, deed of trust or other security device would be subject to the terms of this Easement and the rights granted to Grantee hereunder.

5. Grantee's Remedies.

5.1 Notice of Violation: Corrective Action. If either Grantor or Grantee determines that a violation of the terms of this Easement has occurred or is threatened by reason of the acts, deliberate failure to act, or acquiescence of the other party, its employees, representatives, contractors, invitees or successors or assigns, such party may give written notice to the other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by such party

5.2 Injunctive Relief. If either Grantor or Grantee fails to cure the violation that is the subject of a notice pursuant to Section 5.1 above within thirty (30) days after receipt of such notice from the other party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, the party that issued such notice may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

5.3 Emergency Enforcement. If either Grantor or Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, such party may pursue its remedies under this Section 5 without prior notice to the other party or without waiting for the period provided for cure to expire.

5.4 Damages. Each party shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement; provided, however, that any such damages shall be limited to the cost of undertaking and completing any corrective action on the Property occasioned by such violation or injury in order to restore the Property, or Grantor's adjoining property, as the case may be, to its condition prior to same. Neither party shall be liable for punitive damages, lost profits, loss of use, consequential, or indirect damages accruing by reason of any such violation.

5.5 Scope of Relief. Each party's rights under this Section 5 apply equally in the event of either actual or threatened violations of the terms of this Easement. Each party agrees that the other party's remedies at law for any violation of the terms of this Easement are inadequate and that such party shall be entitled to the injunctive relief described in Section 5.2, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this Section 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

5.6 Costs of Enforcement. Except for routine and standard costs of monitoring the Property to ensure the other party's, its successors' and assigns' compliance with the terms of this Easement, all reasonable costs incurred by each party in enforcing the terms of this Easement against the other party, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the other party's violation of the terms of this Easement shall be borne by the violating party; provided, however, that if the other party ultimately prevails in any judicial enforcement action, all reasonable costs incurred by such party to defend itself shall be borne by the party which brought the enforcement action.

5.7 Forbearance. Forbearance by either party to exercise its rights under this Easement in the event of any breach of any term of this Easement by the other party shall not be

deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Easement or of any of such party's rights under this Easement. No delay or omission by either party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

5.8 Waiver of Certain Defenses. Each party hereby waives any defense of laches, estoppel, or prescription.

5.9 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent or good faith action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6. Access. Grantor does not by this Easement convey to Grantee any right to allow access to or from the Property by the general public onto the adjoining property owned by Grantor.

7. Costs and Liabilities. Grantee assumes all responsibilities and shall bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property (with the exception of existing improvements, underground or overhead utility lines, and other items which continue to be operated by or for the benefit of Grantor). Upon written notice from Grantor, Grantee shall replace any trees destroyed on Grantor's adjacent property as a result of Grantee's or the general public's activities through use of the Easement. Grantor and Grantee shall each keep the Property free of any liens arising out of any work performed for, or materials furnished to, Grantor and Grantee, respectively.

7.1 Taxes. Grantee assumes liability for all real property ad valorem taxes and special assessments imposed upon the Easement and improvements thereon, if any.

7.2 Grantee's Hold Harmless of Grantor. Up to the limits of liability established by the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 et seq., such as may exist from time to time, Grantee shall hold harmless and indemnify Grantor and its employees, officers, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantor's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring in, on, or about the Easement, regardless of cause, unless due solely to the negligence of any of Grantor's Indemnified Parties.

8. Extinguishment and Condemnation.

8.1 Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Any proceeds from the sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment shall belong to Grantor.

8.2 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor shall be entitled to the entire amount of any reward recovered on account of such taking; provided, however, that Grantee shall have the right to seek a separate award for the value of its improvements to the Property.

9. Assignment. This Easement is transferable only with the written consent of Grantor. As a condition of any transfer or assignment, in addition to any other conditions Grantor may impose, in its sole discretion, (i) any assignee must be an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under the Conservation Easement Act of 1981 (or any successor provision then applicable) or the laws of the United States, and (ii) Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out.

10. Estoppel Certificates. Upon request by either party, the other party shall within twenty (20) days execute and deliver to the requesting party, or to any party designated by the requesting party, any document, including an estoppel certificate, which certifies, to the best of the other party's knowledge, the requesting party's compliance with any obligation of such party contained in this Easement or otherwise evidences the status of this Easement as may be requested.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Frank Douglass Stein, Trustee  
P.O. Box 5246  
Chattanooga, TN 37406

Telephone: \_\_\_\_\_  
Telecopier: \_\_\_\_\_

The Grantee:

The City of Chattanooga  
101 E. 11<sup>th</sup> Street  
City Hall  
Chattanooga, TN 37402

Telephone: (423) \_\_\_\_\_  
Telecopier: (423) \_\_\_\_\_

With a Copy to:

The Trust for Public Land  
ATTN: Alex Ghio, Senior Counsel  
306 North Monroe  
Tallahassee, FL 32301  
Telephone: (850) 222-7911, ext. 32  
Telecopier: (850) 222-8909  
Email: alex.ghio@tpl.org

or to such other address as either party from time to time shall designate by written notice to the other.

12. Recordation. Grantee shall record this instrument in timely fashion in the Register's Office of Hamilton County, Tennessee and may re-record it at any time as may be required to preserve its rights in this Easement.

13. General Provisions.

13.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Tennessee.

13.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

13.3 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

13.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

13.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

13.6 Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

13.7 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," a wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

13.8 Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

13.9 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

13.10 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

**GRANTOR:**  
**Frank Douglass Stein, Trustee of the**  
**Irrevocable Trust Agreement for the**  
**benefit of John Adam Stein dated**  
**January 18 1989**

\_\_\_\_\_  
Frank Douglass Stein, Trustee

**GRANTEE:**

**THE CITY OF CHATTANOOGA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public in and for the state and county aforesaid, personally appeared Frank Douglass Stein, to me known (or proved to me on the basis of satisfactory evidence), the within named Grantor, , who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:\_\_\_\_\_

STATE OF TENNESSEE )  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for the state and county aforesaid, personally appeared \_\_\_\_\_, to me known (or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_ of **THE CITY OF CHATTANOOGA**, the within named Grantee, a municipal corporation, who acknowledged that he/she executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by him/herself as \_\_\_\_\_.

WITNESS my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:\_\_\_\_\_

STATE OF TENNESSEE    )  
COUNTY OF HAMILTON    )

I, \_\_\_\_\_, hereby swear or affirm that, to the best of my knowledge, information and belief, the actual consideration for this, transfer or value of the property transferred, whichever is greater, is \$\_\_\_\_\_, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

\_\_\_\_\_  
Affiant-Grantee

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**CONSERVATION EASEMENT LEGAL DESCRIPTION**

BEING a Conservation Easement located on the property of Frank Douglass Stein, Trustee, being Parcel Two (2) as described in Deed Book 10497, Page 73 (see page 74) in the Register's Office of Hamilton County, said property is shown on Tax Map 128N, Group "C", being Parcel 003, located at 3650 Faith Road, City of Chattanooga, Hamilton County, Tennessee, said Conservation Easement being more particularly described as follows:

COMMENCING at a fence post which marks the Northwest corner of Lot 1, Bearl Rigsby's Subdivision as shown on plat of record in Plat Book 35, Page 138, R.O.H.C.;

THENCE South 22 degrees, 40 minutes, 44 seconds West a distance of 466.75 feet to a point located on the Northern margin of Faith Road, said point marks the Northeast corner of the City of Chattanooga property as described in Deed Book 7845, Page 305, R.O.H.C., and is shown on Tax Map 128N, Group "A", being Parcel 002.01;

THENCE South 22 degrees, 40 minutes, 44 seconds West a distance of 1305.84 feet along the Eastern boundary of the City of Chattanooga to an iron rod set on the Northern margin of the Conservation Easement, located at Tennessee State Grid Coordinates of North=269,218.28 and East=2,201,215.53, coordinates based on North American Datum 1983 (NAD 83) with no datum adjustment applied to coordinates, said point also marks the POINT OF BEGINNING;

THENCE South 70 degrees, 56 minutes, 09 seconds East for a distance of 177.30 feet to an iron rod set at the point of curvature;

THENCE with a curve to the left (counterclockwise) an arc distance of 104.03 feet, having a radius of 475.00 feet, a delta angle of 12 degrees, 32 minutes, 55 seconds and a chord of South 77 degrees, 12 minutes, 36 seconds East a distance of 103.82 feet to an iron rod set at the point of tangency;

THENCE South 83 degrees, 29 minutes, 04 seconds East for a distance of 5.29 feet to an iron rod set on the Western boundary of the City of Chattanooga property as described in Deed Book 7869, Page 487, R.O.H.C., said iron and cap is also located on Western line of Section Six (6) being 5381.72 feet, more or less, Southwest of T.V.A. Monument 13-3;

THENCE South 23 degrees, 14 minutes, 31 seconds West for a distance of 52.12 feet along the Western boundary of the City of Chattanooga property to an iron rod set;

THENCE with a curve to the right (clockwise) an arc distance of 105.27 feet, having a radius of 525.00 feet, a delta angle of 11 degrees, 29 minutes, 20 seconds and a chord of North 76 degrees, 40 minutes, 49 seconds West a distance of 105.10 feet to an iron rod set at the point of tangency;

THENCE North 70 degrees, 56 minutes, 09 seconds West for a distance of 180.46 feet to an iron rod set on the Eastern boundary of the City of Chattanooga property as described in Deed Book 7845, Page 305, R.O.H.C.;

THENCE North 22 degrees, 40 minutes, 44 seconds East for a distance of 50.10 feet along the Eastern boundary of the City of Chattanooga to the POINT OF BEGINNING.

Together with and subject to any rights-of-way, easements, restrictions, ordinances, agreements, zoning and any other matters of title that may exist.

Said Conservation Easement herein described contains 0.33 acres, more or less, as shown on map of survey prepared by Barge, Waggoner, Sumner and Cannon, Inc. having project number 35531-12.