

RESOLUTION NO. 29196

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH THE UNIVERSITY OF CHATTANOOGA FOUNDATION, INC. AND THE UNIVERSITY OF TENNESSEE, ON BEHALF OF ITS CHATTANOOGA CAMPUS, IN SUBSTANTIALLY THE FORM ATTACHED, AS ACKNOWLEDGEMENT AND APPROVAL WITH REGARD TO THE GROUND LEASE AGREEMENT DATED APRIL 9, 2009, BETWEEN THE CITY OF CHATTANOOGA AND THE FIRST TEE OF CHATTANOOGA, INC. AS IT RELATES TO THE GOLF PRACTICE FACILITY LOCATED AT 2453 HICKORY VALLEY ROAD.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute an Assignment and Assumption Agreement with the University of Chattanooga Foundation, Inc. and the University of Tennessee, on behalf of its Chattanooga Campus, in substantially the form attached, as acknowledgement and approval with regard to the Ground Lease Agreement dated April 9, 2009, between the City of Chattanooga and the First Tee of Chattanooga, Inc. as it relates to the golf practice facility located at 2453 Hickory Valley Road.

ADOPTED: October 3, 2017

/mem

This Instrument Prepared by:
The University of Tennessee
Office of the General Counsel
719 Andy Holt Tower
1331 Circle Park
Knoxville, TN 37996-0170

Cross reference to:

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made as of _____, 2017 (the "Effective Date"), by and among **UNIVERSITY OF CHATTANOOGA FOUNDATION, INC.**, a Tennessee not-for-profit corporation ("Assignor"), **THE UNIVERSITY OF TENNESSEE, ON BEHALF OF ITS CHATTANOOGA CAMPUS**, an instrumentality of the State of Tennessee ("Assignee") and the **CITY OF CHATTANOOGA**, a municipal corporation of the State of Tennessee ("City").

RECITALS

- A. Assignor entered into that certain Ground Lease Agreement (the "Lease") dated April 9, 2009 with City and The First Tee of Chattanooga, Inc., a Tennessee not-for-profit corporation ("First Tee");
- B. In connection with the execution of the Lease, Assignor, Assignee, City, and First Tee entered into a Shared Use Agreement dated April 9, 2009 ("Shared Use Agreement");
- C. Assignor shall assign to Assignee all of its right, title, and interest in and to the Lease, and Assignee shall assume Assignor's obligations under the Lease; and
- D. City is a party to this Agreement for the purpose of approving the assignment of the Lease and making certain amendments to the Lease in accordance with and as described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns, transfers, conveys, and sets over to Assignee all of Assignor's right, title and interest under the Lease, as such Lease is amended by the terms of this Agreement. Assignee hereby accepts the assignment and assumes all the obligations of lessee under the Lease as if Assignee had been the original signatory thereto, with the exception of the provisions that the City specifically agrees in this document to amend.

2. Approval of Assignment and Certain Amendments. City hereby approves the assignment and assumption contemplated by this Agreement, and agrees to release Assignor from all liability and obligation under the Lease effective as of the Effective Date and look solely to Assignee as lessee under the Lease. City acknowledges that Assignee, as an instrumentality of the

State of Tennessee, cannot be bound by certain provisions of the Lease, and therefore agrees to amend the Lease, pursuant to a separate amendment, as follows:

- (a) City agrees that the Shared Use Agreement, which is referenced in Paragraphs 1, 11, 14, and 20 of the Lease, is cancelled and the Assignor and Assignee do not have any further responsibilities under the Shared Use Agreement.
- (b) The indemnification provision under Paragraph 6(c) of the Lease shall be deleted and shall not be enforceable against Assignee.

3. Representations. Assignor and the City represent and warrant to Assignee that there are no defaults under the Lease.

4. Miscellaneous. If a court of competent jurisdiction declares that any provision of this instrument or portion thereof is illegal, invalid or unenforceable, then such provision shall be modified automatically to the extent necessary to make such provision fully legal, valid or enforceable. If such court does not modify any such provision or portion thereof as contemplated herein, but instead declares it to be wholly illegal, invalid or unenforceable, then such provision or portion thereof shall be severed from this instrument, this instrument and the rights and obligations of the parties hereto shall be construed as if this instrument did not contain such severed provision or portion thereof, and this instrument otherwise shall remain in full force and effect. This instrument shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns. This Agreement shall be governed by the laws of the State of Tennessee.

[Signature Page(s) Attached]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment and Assignment Agreement as of the day and year first above written.

ASSIGNOR:

**UNIVERSITY OF CHATTANOOGA
FOUNDATION, INC.**

Date of Execution: _____

By: _____

Title: _____

ASSIGNEE:

THE UNIVERSITY OF TENNESSEE

Date of Execution: _____

By: _____

Title: _____

CITY:

CITY OF CHATTANOOGA

Date of Execution: _____

By: _____

Title: _____