

RESOLUTION NO. 29254

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE TRUST FOR PUBLIC LAND, SUBJECT TO ACCEPTANCE IN THE BROWNFIELD VOLUNTARY PROGRAM, FOR THE ACCEPTANCE OF 1.1 MILES OF THE FORMER CSX, INC. RAILROAD CORRIDOR COMMENCING AT THE SOUTHSIDE PARK IN ALTON PARK NEAR CENTRAL AVENUE AND CONTINUING TO THE TENNESSEE RIVERWALK NEAR W. 33RD STREET AND ST. ELMO AVENUE, FOR A TOTAL CONVEYANCE OF APPROXIMATELY 9.88 ACRES, FOR THE PURPOSE OF A PAVED MULTI-USE TRAIL AND TO AUTHORIZE THE EXECUTION OF ALL DOCUMENTS RELATED TO THE ACCEPTANCE OF THE PROPERTY, WITH CLOSING FEES AND REIMBURSABLES, FOR AN AMOUNT NOT TO EXCEED THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into a donation agreement, in substantially the form attached, with the Trust for Public Land, subject to acceptance in the Brownfield Voluntary Program, for the acceptance of 1.1 miles of the former CSX, Inc. railroad corridor commencing at the Southside Park in Alton Park near Central Avenue and continuing to the Tennessee Riverwalk near W. 33rd Street and St. Elmo Avenue, for a total conveyance of approximately 9.88 acres, for the purpose of a paved multi-use trail and to authorize the execution of all documents related to the acceptance of the property, with closing fees and reimbursables, for an amount not to exceed \$35,000.00.

ADOPTED: November 28, 2017

/mem

DONATION AGREEMENT

THIS DONATION AGREEMENT (the “Agreement”) is made this ____ day of _____, 2017 by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit corporation, having an address of 202 Tremont Street, Chattanooga, TN 37405 (“Donor”), and the **CITY OF CHATTANOOGA**, a Tennessee municipal corporation, having an address of 101 E. 11th Street, Chattanooga, TN 37402 (“Donee”).

RECITALS:

A. Donor represents and Donee acknowledges that Donor has a binding Purchase and Sale Agreement (the “PSA”) for certain real property currently owned by CSX Transportation (“CSXT”) in Hamilton County, Tennessee and more particularly described in Exhibit “A” attached hereto and made a part hereof, (the “Property”), containing 8.94 acres, more or less. Donor desires to donate to Donee the Property as a charitable contribution within the meaning of Section 170(c) of the Internal Revenue Code of 1986, as amended, for the public benefit of the Donee and its citizens and Donee desires to accept such donation from Donor.

B. The parties desire to set forth the terms and conditions of the donation in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Donation.**

i. For and in consideration of the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donee’s material reliance on this Agreement, and contingent upon Donor obtaining fee title ownership to the Property, Donor agrees to grant and convey to Donee the Property described on **Exhibit “A”**. Donee shall not be obligated to accept the Property if (a) the donation of the Property is not consummated under this Agreement because of Donor’s failure, refusal or inability to perform any of its obligations under this Agreement; (b) Donee elects to terminate this Agreement because any of Donor’s representations or warranties cease to be true prior to Closing (hereinafter defined); (c) Donee elects to terminate this Agreement because Donor is unable to remove a title exception objected to by Donee; (d) Donee elects not to close by reason of damage to the Property in accordance with Paragraph 10 of this Agreement; (e) Donee elects to terminate this Agreement in accordance with Paragraph 9 of this Agreement because of unacceptable environmental or other conditions on the Property; (f) the Property has not been accepted into the Brownfield Voluntary Oversight and Assistance Program by the State of Tennessee, Department of Environment & Conservation, Division of Remediation; or (g) Donee elects to terminate this Agreement in accordance with Paragraph 14 of this Agreement if the city council of Donee fails to approve the transaction.

ii. The parties agree that a reasonable estimate of the value of the donated property is SIX HUNDRED THOUSAND AND 00/100 Dollars (\$600,000.00). Donor will not elect to claim tax benefits associated with the donated property as the Donor is a not-for-profit

organization. Donor warrants that Donee made no representations, warranties or guarantees relating to tax implications of such donation.

iii. Donor represents and Donee acknowledges that the Property is currently owned by CSX Transportation, Inc. (“CSXT”) and Donor’s obligation to donate the Property is conditioned on Donor acquiring fee simple title from CSXT.

2. **Inspection Period.** From the effective date of this Agreement through November 30, 2017 shall constitute Donee’s “Inspection Period.” Donor has provided Donee, a survey of the Property, a title commitment for the Property and a Phase 1 and Phase 2 Environmental Site Assessment for the Property (collectively, the “Due Diligence”). During the Inspection Period Donee may review the Due Diligence and perform such additional inspections and due diligence Donee requires in order to complete this transaction. If Donee requires access to the Property during this time Donee shall provide notice ten days in advance of such access such that Donor may notify CSXT of such activity on the Property.

3. **Closing.** The donation of the Property by Donor (the “Closing”) shall take place on or before December 31, 2017 provided that Donee has not elected to extend or terminate this Agreement pursuant to the terms hereof. Donee’s obligation to accept title to the Property shall be contingent on Donor’s performance of all of its duties and obligations hereunder.

4. **Title.** Donor shall convey the Property to Donee by executing and delivering to Donee a Quitclaim deed to the Property (the “Deed”) conveying all of Donor’s right, title and interest in and to the Property to Donee but shall be expressly subject to those items identified in this Section 4(a), 5(b) and 5(c) below and any other items identified and accepted by Donee pursuant to this Section; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Donee assumes and agrees to pay; all matters that would be revealed by the Survey, or by a visual inspection of the Premises; and the items or matters identified in this Section . The provisions of this Section shall survive Closing;

- a) The Deed shall contain one or more restrictive covenants, reading substantially as follows, to run with title to the Premises, and to be binding upon Donee, Donee’s legal representatives and assigns, or corporate successors and assigns, or anyone claiming title to or holding the Property through Donee:

“Grantee acknowledges that the Premises conveyed hereunder has been historically used for railroad industrial operations and is being conveyed for use only as a recreational trail. Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not use the Premises for any purpose other than a recreational trail and related infrastructure improvements and that the Premises will not be used for (a) any residential purpose of any kind or nature (residential use shall be defined broadly to include, without limitation, any use of the Premises by individuals or families for purposes of personal living, dwelling, or overnight accommodations, whether such uses are in single family residences, apartments, duplexes, or other multiple residential dwellings, trailers, trailer parks, camping sites, motels, hotels, or any other dwelling use of any kind), (b) any public or private school, day

care, or any organized long-term or short-term child care of any kind, or (c) any agricultural purpose that results in, or could potentially result in, the human consumption of crops or livestock raised on the property (agricultural purpose shall be defined broadly to include, without limitation, activities such as food crop production, dairy farming, livestock breeding and keeping, and cultivation of grazing land that would ultimately produce, or lead to the production of, a product that could be consumed by a human). By acceptance of this deed, Grantee further covenants that it, its successors, heirs, legal representatives or assigns shall not use the groundwater underneath the Premises for human consumption, irrigation, or other purposes. Notwithstanding the above, Grantee, by the acceptance hereof, hereby covenants and agrees that the Property shall not be developed for recreational use prior to: 1) Grantor (CSXT) receiving and approving a Soil Management and Capping Plan, which such approval shall not be unreasonably withheld or delayed by CSXT and; 2) execution of a Third Party Claims and Release Agreement between Grantor (CSXT) and the City of Chattanooga, whereby the City of Chattanooga will agree to release Grantor (CSXT) with respect to the environmental condition of the Property to the extent allowable under applicable law.”

- b) Donor has disclosed and Donee acknowledges that CSXT has excepted and reserved unto itself, the following easements, rights and interest:

“EXCEPTING unto Grantor (CSXT) the ownership of all railroad tracks and other track material (including switches and signals), hereinafter “the Track”, within or on the Premises; and RESERVING unto Grantor a railroad easement over the Premises, for the continued location, maintenance, use, repair, replacement and removal of the Track, TOGETHER WITH the right of ingress and egress to and from the Track until removal. Said reserved railroad easement shall automatically terminate and all title in the Premises vest in Grantee upon cessation of use and removal of the Track by Grantor. Grantor shall remove the Track, other than ballast, at its expense, within one hundred eighty (180) days after Closing. Thereafter, Grantor’s interest in the Track shall cease and the Grantor shall not have access to the Premises for purposes of removing the Track.”

- c) Donor has disclosed and Donee acknowledges that the Property is currently subject to the following leases, licenses, easements, occupancies and/or limitations (which may or may not be of record):
 - (i) Leases
 - (a) No known leases
 - (ii) Licenses
 - (a) Pipeline Agreement dated 04/26/1984 with City of Chattanooga
 - (b) Pipeline Agreement dated 04/25/1958 with Chattanooga Gas Co
 - (c) Pipeline Agreement dated 10/07/1959 with Chattanooga, TN
 - (d) Pipeline Agreement dated 09/16/1971 with City of Chattanooga
 - (e) Pipeline Agreement dated 06/04/1977 with Southern Wood Piedmont Co
 - (f) Pipeline Agreement dated 09/25/1978 with City of Chattanooga
 - (g) Pipeline Agreement dated 06/20/1980 with Chattanooga Gas Co
 - (h) Pipeline Agreement dated 09/01/1924 with Chattanooga, TN

- (i) Pipeline Agreement dated 02/01/1926 with Chattanooga Gas Co
- (j) Pipeline Agreement dated 07/31/1954 with Chattanooga Gas Co
- (k) Pipeline Agreement dated 07/27/1945 with Crane Company
- (l) Pipeline Agreement dated 08/20/1945 with Chattanooga Gas Co
- (iii) Other Occupancies or Limitations
 - (a) None
- (iv) Easements
 - (a) Signboard Easement dated 09/11/1988 with CBS Outdoor, Inc.
 - (b) Wireline Easement dated 09/05/1941 with Electric Power Board (3)
 - (c) Wireline Easement dated 08/25/1971 with Chattanooga Electric Power Board
 - (d) Railway Crossing Easement dated 03/09/1917 with Norfolk Southern Corporation

Prior to the closing between Donor and CSXT, Item (iv) (a) shall be converted to a recorded easement, including electric utility access and ingress/egress to the signboard facility by CSXT executing and recording an easement to CBS Outdoor, Inc.

At Closing, Donor shall assign to Donee, and Donee shall assume, Donor's right, title and interest in all items identified by Section 4(c), or which are subsequently discovered by Donor and CSXT, unless canceled or otherwise terminated, at or prior to Closing. However, if such item is applicable to an area greater than the Property, the Donee shall be included as party to a partial assignment of the item(s), which may be executed after Closing.

- d) Donee shall be under no obligation to accept the Deed from Donor if Donee, in its examination of title to the Property, determines that it is subject to liens, encumbrances or other matters of title other than (a) the lien of ad valorem property taxes for the year in which the Closing occurs, which taxes are not yet due and payable; (b) exceptions listed on a title commitment (the "Title Commitment") issued by a national title insurance company, which exceptions are accepted by Donee in writing; and (c) any other matters approved by Donee in writing. Provided, however, Donee covenants and agrees that the items contained in sections 4(a), 4(b) and 4(c) above shall not be deemed objections to Donee accepting title to the Property.
- e) Donor shall obtain at its expense either a title report or a Title Commitment from a national title insurance company reasonably acceptable to Donee, reflecting good and marketable fee simple title to the Property in Donor. Donee shall examine the title report/Title Commitment and shall furnish to Donor at least ten (10) days prior to the end of the Inspection Period a written statement of any objections to matters of title. Matters reflected by the survey of the Property provided by Donor to Donee pursuant to Paragraph 6 below may be treated as title defects and referenced in the above-referenced title objection letter, provided that de

minimis encroachments on the property shall not be deemed title objections. Donor may, but shall not be obligated to, cure any such title or survey objections. Following Donee's initial title examination, Donee shall have until the end of the Inspection Period to re-examine title to the Property and to give Donor notice of any additional objections disclosed by such re-examination, which were not filed and indexed of record on the date of Donee's initial examination. If all of the stated title and survey objections are not cured or satisfied by the date set for Closing, Donee may, at its option:

- i. waive the title objections and proceed to Closing; or
- ii. terminate this Agreement prior to the end of the Inspection Period, and, except as may expressly be provided herein to the contrary, Donor and Donee shall have no further rights or obligations under this Agreement.

Donor agrees to provide to Donee and the title insurer all routine or otherwise available documents necessary or desirable to confirm Donor's title to and authorization to convey the Property, and to provide Donee an ALTA Form B-1970, as amended, owner's title insurance policy with respect to the Property, with all standard exceptions to coverage deleted therefrom.

5. **Donor's Promise not to Further Encumber.** From and after the date hereof, Donor shall not do any of the following without the prior written consent of Donee: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Property; (b) cause or permit any lien, encumbrance, mortgage, security deed, deed of trust, right, restriction or easement to be placed upon the Property; (c) permit any mortgage, security deed, deed of trust or other lien or encumbrance to be foreclosed upon due to Donor's actions or omissions, including failure to make any required payment(s); or (d) convey any interest in the Property, including but not limited to conveyances of title and transfers of development rights.

6. **Survey.** Donor has provided to Donee a survey of the Property prepared by a Tennessee registered surveyor, which survey is certified to Donor, Donee and Donee's title insurer. The legal description drawn from the survey shall serve as the legal description for the Property, as set forth in the Deed.

7. **Donor's Representations and Covenants.** Donor represents and covenants as follows:

- i. Donor has or will have good and marketable, fee simple title to the Property, and has full power and authority to enter into this Agreement and at the time of closing to consummate the transactions contemplated hereby in accordance with the terms of this Agreement;

- ii. No one other than Donor will be in possession of, or have any right of possession of, any portion of the Property at the Closing other than those interests identified in

Section 4(c) above and any interests associated with encroachments which may be reflected in the survey;

iii. To the best of Donor's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened against Donor, which could affect Donor's title to the Property or any portion thereof, affect the value of the Property or any portion thereof, affect Donor's duties and obligations under this Agreement or subject an owner of the Property, or any portion thereof, to liability;

iv. To the best of Donor's knowledge, but without conducting any investigation, there are no:

(i) Uncured notices from any governmental agency notifying Donor or its predecessor in ownership of the Property which might result in any lien upon or claim against the Property or any portion thereof, or which specify any violation of law, ordinance, rule, regulation, covenant or restriction which might affect the Property or any portion thereof;

(ii) Actual or impending mechanics' or materialmen's' or similar liens against the Property or any portion thereof;

v. To the best of Donor's knowledge the execution of this Agreement will not constitute a breach or default under any agreement by which Donor is bound and/or to which the Property is subject;

vi. Donor has delivered to Donee copies of all notices, correspondence, reports and other documents that Donor has received from or sent to any regulatory or enforcement agency concerning hazardous substances on the Property, and copies of all reports of investigations concerning Hazardous Substances on the Property prepared by any person and in the possession or control of Donor. Donor agrees to promptly deliver to Donee copies of all such documents received subsequent to the date hereof through and including the Closing; and

vii. To the best of Donor's knowledge the Property is not presently subject to, encumbered by, or conveyed under any mortgage, deed of trust, deed to secure debt, security deed, or other debt or financing instrument, and Donor shall not convey any interest in or otherwise encumber or subject the Property to any such debt or financing instrument prior to the consummation of the Closing under this Agreement.

Each of the above representations and covenants is material to and is relied upon by Donee. Each of the above representations shall be deemed to have been made as of the date hereof and as of the Closing. Donor shall indemnify, defend and hold harmless Donee, its officers, directors, employees, agents, successors and assigns from and against any and all expense, loss, liability, fine, penalty, damages and claims, including Donee's reasonable attorneys' and consultants' fees and costs, arising from or relating to the breach of any of Donor's warranties, representations and covenants. This indemnification obligation shall survive the Closing and the delivery of the instruments of conveyance.

If, before the conveyance to Donee, Donor discovers any information or facts that would materially change the foregoing warranties and representations, Donor shall immediately give notice to Donee of those facts and information. If any of the foregoing warranties and representations cease to be true before the conveyance to Donee, Donor shall be obligated to remedy the problem before the Closing. If the problem is not remedied before the date of conveyance to Donee, then Donee may elect either to (a) terminate this Agreement, in which case Donee shall have no obligation to accept title to the Property, or (b) accept title to the Property and close, in which case Donor shall donate the Property to Donee pursuant to the terms hereof. Donee's election in this regard shall not constitute a waiver of Donee's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or at equity.

8. **Donee's Covenants and Acknowledgements.** Donee makes the following representations and Covenants:

a) Donee acknowledges that Donor makes no guarantee, representation or warranty regarding the physical or environmental condition of the Property, and Donor expressly disclaims any and all obligation and liability to Donee regarding any defects which may exist with respect to the condition of the Property, and Donee covenants not to bring any claim, suit or action against Donor in connection with, or resulting from the environmental condition of the Property.

b) Provided Donee does not elect to terminate this Agreement as provided herein, or fails to terminate after receipt of test results, Donee covenants and agrees to take the Property "as is" at Closing; assumes all risks associated with the environmental condition of the Property, regardless of the cause or date of origin of such condition; and releases all rights or claims against Donor relating to such condition or for any costs of remediation or cure of any environmental condition.

c) Donee acknowledges that the Property has been used for railroad operations. Donor has represented to CSX that it intends to convey the Property to Donee to develop the Property for use as a recreational trail (the "Intended Use"). Donor has provided Donee with a Phase 1 and Phase 2 environmental site assessment ("Phase I and II Audit") performed to the Minimum Sampling Requirements set forth in Exhibit "C". Donor shall pay for the Phase 1 and Phase 2 Audit and Donee shall reimburse Donor for the cost of the Phase 1 and Phase 2 Audit at the time of closing. If environmental contamination of the Property is revealed by the Phase 1 and Phase 2 Audit in an amount and/or concentration beyond the minimum acceptable levels established by current applicable governmental authorities and applicable to the use of the Property for a Recreational Trail, or, if Donee is unwilling to accept the environmental condition of the Property as a result of such tests or assessments, Donee's sole and exclusive remedy shall be to terminate this Agreement. Under no circumstances shall Donor be required to correct, remedy or cure any condition or environmental contamination of the Property.

9. **Remedies Upon Default.** In the event Donor defaults in the performance of any of Donor's obligations under this Agreement, Donee's sole remedy shall be the right of specific performance against Donor. In the event Donee defaults in the performance of any of its

obligations under this Agreement, Donor shall have the right to any remedy provided in this Agreement or by law or equity, except Donor shall not have the right to sue Donee for damages.

10. **Right to Inspect the Property.** During the term of this Agreement, Donee, through its employees and agents, may enter upon the Property in order to conduct such survey, appraisal, environmental, physical, engineering, feasibility studies and other inspections and investigations as Donee deems appropriate in an effort to determine whether or not to proceed with the Closing of this transaction. Subject to the provisions of T.C.A. sections 29-20-101 *et seq.*, Donee shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to property caused by any activities conducted by Donee on the herein described property, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of Donor. If Donee requires access to the Property during this time, Donee shall provide notice five (5) days in advance of such access such that Donor may notify CSXT of such activity on the Property.

11. **Risk of Loss.** All risk of loss shall remain with Donor until the Closing. Donor shall maintain the Property in its present condition pending Closing and shall not make or permit any changes in or upon the Property except with Donee's advance written consent. In the event the Property is destroyed or damaged prior to Closing, such that the Property is, in the sole discretion of Donee, no longer suitable for Donee's public purposes, Donee shall have the right, by notice given to Donor as provided in Paragraph 12 below, to terminate this Agreement, and, except as may be provided expressly to the contrary herein, Donor and Donee shall have no further rights, obligations or duties under this Agreement. Donor agrees that upon Closing, all improvements, if any, located on the Property shall be in the same order and condition as on the date of this Agreement, except for reasonable wear and tear, and Donor shall maintain in full force a policy of all-risk hazard insurance, insuring against loss of or damage to said improvements.

12. **Notices.** All notices pertaining to this Agreement shall be in writing, delivered to the parties hereto personally by hand, by United States mail, certified or registered, with return receipt requested, by telecopier (provided a confirmation copy is sent via another mode) or courier service at the addresses set forth in the introductory paragraph of this Agreement. All notices shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

13. **Prorations and Fees.** Real property taxes on the Property shall be prorated as of the Closing date. If the amount of such taxes for the current year cannot reasonably be determined, the apportionment shall be based at Closing upon the amount of such taxes for the prior year and shall be readjusted when the amount of tax is finally determined. From and after the Closing, the Property will be exempt from payment of real property taxes for the time period in which Donee owns the Property. Water quality fees assessed for the year 2016 (regardless of when due and payable) shall be prorated as of the Closing. Special assessments levied prior to the Closing shall be the responsibility of Donor. The provision contained in this paragraph shall survive the Closing and shall not be merged into the Deed. Any documentary tax or real property transfer tax arising out of the conveyance of the Property, the premium for the title insurance policy, and any other fees and charges shall be paid by Donee.

14. **No Agents or Brokers.** Each party hereto represents to the other that it has not discussed the transactions contemplated in this Agreement with any real estate broker, agent or salesman so as to create any legal right or entitlement to claim a real estate commission or similar fee with respect to the conveyance of the Property to Donee. Donor and Donee (to the extent permitted under the Tennessee Governmental Tort Liability Act) hereby indemnify each other against, and agree to hold each other harmless from, any and all claims, loss, liability, cost, and expenses (including reasonable attorneys' fees) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to this Agreement or the conveyance of the Property. The foregoing indemnities shall survive the termination or consummation of this Agreement.

15. **Approval.** This Agreement is contingent upon review and approval by the Chattanooga City Council.

16. **Time of the Essence.** Time is of the essence of this Agreement.

17. **Possession.** Possession of the Property shall be transferred to Donee at Closing.

18. **Binding on Successors.** This Agreement shall be binding not only upon the parties hereto but also upon their personal representatives, assigns, and other successors in interest. Donee, with Donor's prior written consent, which shall not be unreasonably withheld or delayed, may assign its rights under this Agreement to another charitable organization or to a governmental entity, in which case Donee shall be released in full from all duties and obligations hereunder, provided Donee's assignee agrees in writing to assume such duties and obligations.

19. **Additional Documents.** Donor and Donee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

20. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between Donor and Donee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

21. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

22. **No Merger.** The obligations contained in this Agreement, except for those specifically discharged at Closing, shall survive the Closing.

23. **Headings; Rules of Construction.** The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each

of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

24. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.

25. **No Waiver**. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any party hereto may waive the benefit of any provision, contingency or condition for its benefit contained in this Agreement.

26. **Effective Date**. The effective date of this Agreement shall be the latter date of the execution dates below.

27. **Choice of Law**. The validity, construction, interpretation, and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the state of Tennessee.

28. **Miscellaneous**. In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

[SIGNATURE PAGES FOLLOW]

IN WITNESS of the foregoing provisions, the Donor, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONOR:

THE TRUST FOR PUBLIC LAND, a California nonprofit corporation

By: _____

Title: _____

Execution Date: _____

IN WITNESS of the foregoing provisions, the Donee, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONEE:

CITY OF CHATTANOOGA, a Tennessee
municipal corporation

By: _____

Title: _____

Execution Date: _____

EXHIBIT "A"

Tract 1

A tract of land situated in the City of Chattanooga, Hamilton County, Tennessee. Said tract of land being hereafter referred to as the Tract 1 - CSX Railway and being more particularly described as follows:

Beginning at a point intersecting the eastern right-of-way line of St. Elmo Avenue having a variable width and the northern right-of-way line of the CSX Railway having a variable right-of-way width, point being located 30 feet north from the centerline of the aforementioned CSX Railway railroad track, point also being the southwestern most corner of the Cindy R. Grant property as described in Deed Book 2720, Page 626 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and eastern right-of-way line of the aforementioned St. Elmo Avenue, with and along the northern right-of-way line of the aforementioned CSX Railway having a chord bearing of South 67 degrees, 30 minutes, 11 seconds East, and passing through an iron rod found at the intersection of the eastern right-of-way line of Broad Street having a right-of-way width of 80 feet and the northern right-of-way line of the aforementioned CSX Railway, point also being located at the southwestern corner of the Lookout Mountain Suites, LLC property as described in Deed Book 8322, Page 295 in the Register's Office of Hamilton County, Tennessee, a distance of 332.05 feet, also passing through an iron rod found at the intersection of the eastern right-of-way line of Williams Street having a right-of-way width of 50 feet and the northern right-of-way line of the aforementioned CSX Railway, point also being located at the southwestern corner of the Chattanooga Christian School, Inc. property as described in Deed Book 9392, Page 817 in the Register's Office of Hamilton County, Tennessee a distance of 977.07 feet, for a total distance of 2,827.59 feet to a point intersecting the western right-of-way line of Alton Park Boulevard having a right-of-way width of 100 feet and the northern right-of-way line of the aforementioned CSX Railway, point also being the southeastern corner of the Alton Park Properties, LLC as described in Deed Book 4673, Page 426 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and western right-of-way line of the aforementioned Alton Park Boulevard, South 78 degrees, 45 minutes, 51 seconds East, 102.42 feet to a point intersecting the eastern right-of-way line of the aforementioned Alton Park Boulevard and the northern right-of-way line of the aforementioned CSX Railway, point being located 50 feet north from the centerline of the aforementioned CSX Railway railroad track, point also being the southwestern corner of the R & D Properties property described in Deed Book 4964, Page 114 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and eastern right-of-way line of the aforementioned Alton Park Boulevard, with and along the northern right-of-way line of the aforementioned CSX Railway, South 67 degrees 30 minutes, 11 seconds East, 216.52 feet to a point intersecting the northern right-of-way line of the aforementioned CSX Railway and the western right-of-way line of CSX Railway, having a right-of-way width of 35 feet; thence, leaving said point and crossing the 35 foot right-of-way of the aforementioned CSX Railway, South 51 degrees, 14 minutes, 57 seconds East, 35.73 feet to a point located 40 feet north from the centerline of aforementioned CSX Railway railroad track; thence, with and along the northern right-of-way line of the aforementioned CSX Railway, South 67 degrees, 30 minutes, 11 seconds East, 561.32 feet to a point; thence, South 22 degrees, 29 minutes, 49 seconds West, 24.36 feet to a point; thence, with and along the northern right-of-way line of the aforementioned CSX Railway, continuing with a distance of 30 feet north of the centerline of the railroad track, in a curve to the right having a radius of 1,156.40 feet, a curve

length of 603.27 feet, and being subtended by a chord bearing of South 45 degrees, 06 minutes, 07 seconds East, 596.45 feet to a point; thence, in a curve to the right having a radius of 1,225.76 feet, a curve length of 308.08 feet, and being subtended by a chord bearing of South 22 degrees, 57 minutes, 23 seconds East, 307.27 feet to a point; thence, in a curve to the right having a radius of 923.07 feet, a curve length of 123.72 feet, and being subtended by a chord bearing of South 11 degrees, 54 minutes, 59 seconds East, 123.62 feet to a point; thence, in a curve to the right having a radius of 368,484.14 feet, a curve length of 70.14 feet, and being subtended by a chord bearing of South 8 degrees, 04 minutes, 56 seconds East, 70.14 feet to a point; thence, in a curve to the right having a radius of 574.91 feet, a curve length of 79.18 feet, and being subtended by a chord bearing of South 04 degrees, 08 minutes, 31 seconds East, 79.12 feet to a point; thence, in a curve to the right having a radius of 2,077.47 feet, a curve length of 113.04 feet, and being subtended by a chord bearing of South 1 degrees, 21 minutes, 45 seconds West, 113.02 feet to a point; thence, South 87 degrees, 04 minutes, 43 seconds East, 15.00 feet to a point located 45 feet from the centerline of the aforementioned CSX Railway railroad track; thence, continuing with and along the eastern right-of-way line of the aforementioned CSX Railway, 45 feet from the centerline of the railroad track, in a curve to the right having a radius of 2,185.90 feet, a curve length of 129.29 feet, and being subtended by a chord bearing of South 4 degrees, 41 minutes, 29 seconds West, 129.27 feet to a point; thence, in a curve to the right having a radius of 80,287.23 feet, a curve length of 212.04 feet, and being subtended by a chord bearing of South 06 degrees, 27 minutes, 42 seconds West, 212.04 feet to a point; thence, South 06 degrees, 32 minutes, 14 seconds West, 1,241.40 feet to a point; thence, crossing the aforementioned CSX right-of-way, North 83 degrees, 27 minutes, 46 seconds West, 75 feet to a point located 30 feet from the centerline of the aforementioned CSX railroad track, point also being located along the eastern property line of the Chattanooga Housing Authority property as described in Deed Book 1043, Page 223 in the Register's Office of Hamilton County, Tennessee, point also being located along the western right-of-way line of the aforementioned CSX Railway; thence, continuing with and along the western right-of-way line of the aforementioned CSX Railway, North 06 degrees, 31 minutes, 34 seconds East, 1,453.34 feet to a point located along the eastern property line of the Alton Place 2009, LP property as described in Deed Book 9577, Page 358 in the Register's Office of Hamilton County, Tennessee; thence, in a curve to the left having a radius of 2,017.47 feet, a curve length of 234.43 feet, and being subtended by a chord bearing of North 03 degrees, 07 minutes, 58 seconds East, 234.30 feet to a point; thence, in a curve to the left having a radius of 514.91 feet, a curve length of 70.93 feet, and being subtended by a chord bearing of North 04 degrees, 08 minutes, 32 seconds West, 70.87 feet to a point; thence, North 08 degrees, 04 minutes, 56 seconds West, 70.14 feet to a point; thence, in a curve to the left having a radius of 864.36 feet, a curve length of 115.69 feet, and being subtended by a chord bearing of North 11 degree, 54 minutes, 59 seconds West, 115.60 feet to a point; thence, in a curve left having a radius of 1,164.85 feet, a curve length of 292.99 feet, and being subtended by a chord bearing of North 22 degrees, 57 minutes, 23 seconds West, 292.22 feet to a point; thence, in a curve to the left having a radius of 1,076.50 feet, a curve length of 508.43 feet, and being subtended by a chord bearing of North 43 degrees, 34 minutes, 00 seconds West, 503.72 feet to a point located in the center line of West 33rd Street, having a right-of-way width of 50 feet; thence, North 22 degrees, 29 minutes, 49 seconds East, 25.00 feet to a point located along the northern right-of-way line of the aforementioned West 33rd Street, point also being located along the southern right-of-way line of the aforementioned CSX Railway; thence, with and along the northern right-of-way line of the aforementioned West 33rd Street and the southern right-of-way line of the aforementioned CSX Railway, North 67 degrees, 30 minutes, 11 seconds West, 3,748.90 feet to

a point; thence, crossing the right-of-way of the aforementioned CSX Railway, North 22 degrees, 29 minutes, 49 seconds East, 60.00 feet to the POINT OF BEGINNING.

Said tract of land herein described contains 430,411.30 Sq.Ft. or 9.88 Acres.

Less and Except

A tract of land situated in the City of Chattanooga, Hamilton County, Tennessee. Said tract of land being hereafter referred to as the Less and Except Tract and being more particularly described as follows:

Commencing at a point intersecting the eastern right-of-way line of Alton Park Boulevard having a right-of-way width of 100 feet and the northern right-of-way line of The CSX Railway having a variable right-of-way width, point being located 50 feet from the centerline of the CSX Railway railroad track, point also being the southwestern corner of the R & D Properties property described in Deed Book 4964, Page 114 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and eastern right-of-way line of the aforementioned Alton Park Boulevard, with and along the northern right-of-way line of the aforementioned CSX Railway, South 67 degrees 30 minutes, 11 seconds East, 216.52 feet to a point intersecting the northern right-of-way line of the aforementioned CSX Railway and the western right-of-way line of CSX Railway, having a right-of-way width of 35 feet; thence, leaving said point and crossing the 35 foot right-of-way of the aforementioned CSX Railway, South 51 degrees, 14 minutes, 57 seconds East, 35.73 feet to a point located 40 feet north from the centerline of aforementioned CSX Railway railroad track; thence, with and along the northern right-of-way line of the aforementioned CSX Railway, South 67 degrees, 30 minutes, 11 seconds East, 269.85 feet to a point intersecting the northern right-of-way line of the Norfolk Southern Railway having a variable right-of-way width and the northern right-of-way line of the aforementioned CSX Railway, point also known as the POINT OF BEGINNING; thence, continuing with and along the northern right-of-way line of the aforementioned CSX Railway, South 67 degrees, 30 minutes, 11 seconds East, 144.00 feet to a point intersecting the southern right-of-way line of the aforementioned Norfolk Southern Railway and the northern right-of-way line of the aforementioned CSX Railway; thence, leaving the northern right-of-way line of the aforementioned CSX Railway, South 68 degrees, 30 minutes, 52 seconds West, 100.80 feet to a point intersecting the southern right-of-way line of the aforementioned Norfolk Southern Railway and the southern right-of-way line of the aforementioned CSX Railway, point also being located along the northern right-of-way line of West 33rd Street having a right-of-way width of 50 feet; thence, with and along the northern right-of-way line of the aforementioned West 33rd Street and the southern right-of-way line of the aforementioned CSX Railway, North 67 degrees, 30 minutes, 11 seconds West, 144.00 feet to a point intersecting the northern right-of-way line of the aforementioned Norfolk Southern Railway and the southern right-of-way line of the aforementioned CSX Railway; thence, leaving the northern right-of-way of the aforementioned West 33rd Street, North 68 degrees, 30 minutes, 52 seconds East, 100.80 feet to the POINT OF BEGINNING.

Said tract of land herein described contains 10,080.09 Sq.Ft. or 0.23 Acres.

EXHIBIT “B”

[Permitted Encumbrances]