

RESOLUTION NO. 29421

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO PROPERTY EXCHANGE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH HIGHLAND PARK COMMONS, INC. AND AUTHORIZING PAYMENT IN THE AMOUNT OF FIFTY THOUSAND DOLLARS (\$50,000.00) TO HIGHLAND PARK COMMONS, INC.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized to execute the First Amendment to Property Exchange Agreement, in substantially the form attached, with Highland Park Commons, Inc., and authorizing payment in the amount of \$50,000.00 to Highland Park Commons, Inc.

The \$50,000.00 payment is in lieu of the requirement to pay for the construction of the parking lot.

ADOPTED: April 24, 2018

/mem

FIRST AMENDMENT TO PROPERTY EXCHANGE AGREEMENT

This First Amendment to Property Exchange Agreement ("First Amendment") is made and entered into as of the ____ day of _____, 2018, by and between the City of Chattanooga ("City") and Highland Park Commons, Inc. ("HPC") (collectively, the "Parties"). The Parties agree as follows:

RECITALS

- A. The Parties entered into that certain Property Exchange Agreement dated May 17, 2016 (the "Agreement").
- B. The Parties now wish to amend the Agreement as provided herein.

AMENDMENT

1. The Parties acknowledge that since the original execution of the Agreement on May 17, 2016, the HPC Properties have been conveyed to the City, and the City has undertaken the construction thereon of its new fire hall. The City has also completed a re-platting of both the HPC Properties and the City Property as defined in the Agreement, as such new plat is filed in Plat Book 106, Page 46, in the Register's Office of Hamilton County, Tennessee (the "New Plat"). On the New Plat, the lot lines of former Lots 22, 24, 26, 28, and Lot 30 have been abandoned and these Lots consolidated into one Lot, designated as "Lot 30" on the New Plat. Similarly, on the New Plat, the lot lines of former Lots 32 and 34 have been abandoned and have been consolidated into one lot, designated as "Lot 34" on the New Plat. The Parties further agree that the parcel identified as Lot 34 on the New Plat is deemed the "City Property" under the Agreement and this First Amendment, and is the property to be conveyed by the City to HPC upon the completion of the requirements set forth in Paragraph 10.(a)(ii) of the Agreement, as modified with this Amendment.

2. Paragraph 8(c)(v) of the Agreement is hereby deleted in its entirety and replaced with the following:

Except for the existence of certain Hazardous Substances as identified in a Phase I environmental assessment and an Asbestos NESHAP Inspection obtained by the City and shared with both parties, previous or ongoing production, use, treatment, storage, transportation, or disposal of any Hazardous Substance on the City Property nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the City Property or into or upon ground or surface water at the City Property, and no Hazardous Substance is now or ever has been stored on the City Property in underground tanks, pits or surface impoundments. For purposes of this Agreement, "Hazardous Substance" shall have the meaning set forth at 42 U.S.C. Section 9601(14), as well as the meaning(s) set forth in any applicable state law or regulation.

3. Paragraph 10.(a)(ii) of the Agreement is hereby deleted in its entirety and replaced with the following:

10.(a)(ii) **Special Warranty Deed to HPC.** Fee simple title to the City Property shall be conveyed by City to HPC by special warranty deed placed in escrow with Jones Raulston Title Insurance Agency, Inc., which shall be transferred to HPC upon the completion of the following:

- a. The City's construction and occupancy of a new fire station on Lots 22, 24, 26, 28 and 30;
- b. HPC's demolition and removal of a portion of the existing building and pavement on a portion of the former Lot 30, at its sole expense except as set forth in 10.(a)(ii)(c) below. The area of demolition is identified as the ambulance bay addition at the rear of the Property and as further depicted on **Exhibit F**, attached hereto and incorporated herein by reference. HPC agrees to execute a Right of Entry in substantially the form attached as **Exhibit G** before commencement of the demolition;
- c. Payment by City to HPC in the amount of Fifty Thousand and No/100 Dollars (\$50,000) toward the costs of the wall demolition and remodeling of the old fire station located on lots 30, 32 and 34 (as combined and redesignated as "Lot 34" under the New Plat);
- d. Upon completion of the demolition by HPC of the old wall and construction of the new wall as specified in the preceding subparagraph b., the New Plat will be further amended by the City, at its sole cost and expense, so that the boundary line between Lot 30 and Lot 34 on the New Plat will be precisely established on the outside edge of the reconstructed wall as completed by HPC. Upon completion and recording of these revisions to the New Plat to relocate the boundary line between Lot 30 and Lot 34, the obligations for boundary line adjustments between the two Parties shall be satisfied and completed;
- e. Upon completion of the modifications to the New Plat as described in the preceding subparagraph d., the Special Warranty Deed as held in escrow will be modified to reflect the corrected reference to "Lot 34", so that the Special Warranty Deed will convey to HPC Lot 34 with the final corrected boundaries, and the correct dividing line between Lot 34 and Lot 30; and

4. Paragraph 13 of the Agreement is hereby deleted in its entirety and replaced with the following:

"AS IS" Sale; No Representations. City and HPC agree that each party shall purchase the Exchange Properties **"AS IS**, that is, in its condition as of the Effective Date of this Agreement. HPC and City make no warranties or representations concerning the condition of the Exchange Properties in any respect, but acknowledge that City will not be required to transfer title to the City Property and HPC will not be required to take title and possession of the City Property until both parties have fulfilled their respective obligations under Paragraph 10(a)(ii).

NO OTHER AMENDMENTS

Except as expressly amended herein, the Agreement shall remain in full force and effect.

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

CITY OF CHATTANOOGA

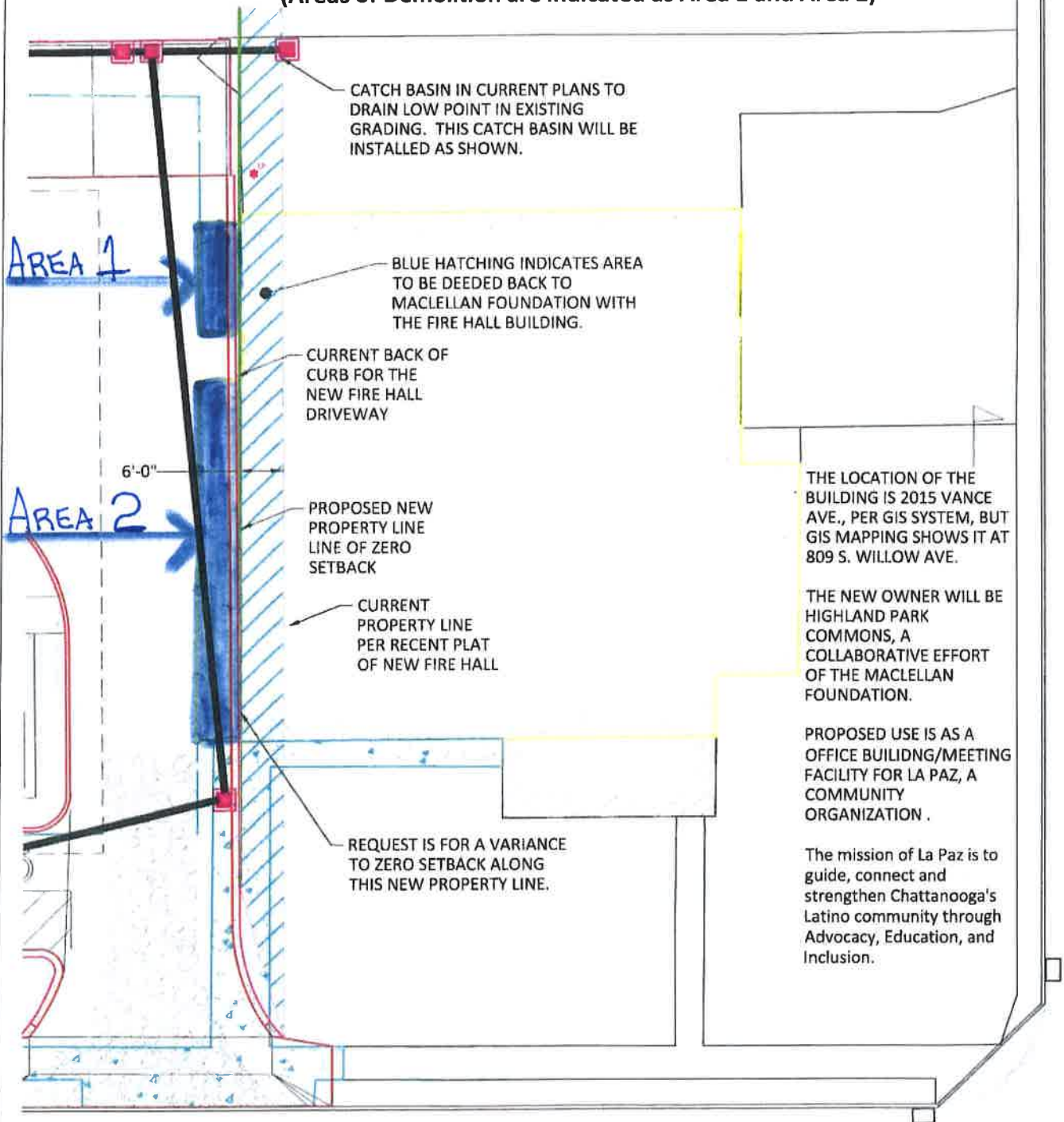
HIGHLAND PARK COMMONS, INC.

By: _____
ANDY BERKE, Mayor

By: _____
CHARLES W. PHILLIPS, President

EXHIBIT "F"

(Areas of Demolition are indicated as Area 1 and Area 2)



S. WILLOW STREET

THE LOCATION OF THE BUILDING IS 2015 VANCE AVE., PER GIS SYSTEM, BUT GIS MAPPING SHOWS IT AT 809 S. WILLOW AVE.

THE NEW OWNER WILL BE HIGHLAND PARK COMMONS, A COLLABORATIVE EFFORT OF THE MACLELLAN FOUNDATION.

PROPOSED USE IS AS A OFFICE BUILDING/MEETING FACILITY FOR LA PAZ, A COMMUNITY ORGANIZATION .

The mission of La Paz is to guide, connect and strengthen Chattanooga's Latino community through Advocacy, Education, and Inclusion.

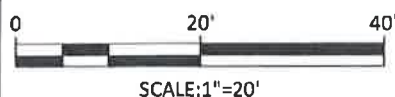
VANCE AVENUE

(D)

CITY OF CHATTANOOGA – FIRE HALL #5
 2015 VANCE AVE.
 (809 S. WILLOW AVE.)
 CHATTANOOGA, TN 37404
 EXHIBIT 2 FOR ZERO SETBACK VARIANCE

MAP-GROUP-PARCEL
 1460 V 006

PREPARED BY AND FOR
 CITY OF CHATTANOOGA



DATE: 12/21/2017

REVISED: 01/30/2018

RE: SD2018-D13 Variance

RIGHT OF ENTRY AND REMOVAL AGREEMENT

This Right of Entry Agreement ("Right of Entry and Removal Agreement") ("Agreement") is entered into this ____ day of _____, 2018, by and between the City of Chattanooga ("City") and Highland Park Commons, Inc., a Tennessee nonprofit corporation ("HPC").

RECITALS

WHEREAS, City is the owner of certain real property located at 809 S. Willow Street, in Chattanooga, Hamilton County, Tennessee, and more particularly described as Lots 30, 32, and 34, Payne's Subdivision, as shown by plat recorded in Plat Book 1, Page 16, Register's Office of Hamilton County; and

WHEREAS, Lots 32 and 34 have been consolidated into revised Lot 34 on a new subdivision plat, recorded at Plat Book P3 106, Page 46, in the Register's Office of Hamilton County, Tennessee; and

WHEREAS, the City is obligated to convey the revised Lot 34 to HPC pursuant to the terms of a Property Exchange Agreement between the parties dated May 17, 2016; and

WHEREAS, the completion of the transfer of revised Lot 34 to HPC has been delayed by agreement of the parties while certain related construction of a new fire hall by the City on adjoining property is completed; and

WHEREAS, HPC desires to obtain City's permission to enter onto the original Lot 30 and revised Lot 34 (collectively, herein the "Property"), on a temporary basis, for the purposes of demolishing and removing a portion of the existing building and pavement located on the original Lot 30 of the Property, and for reconstructing a new building wall in a new location several feet further east on the Property, in order to facilitate the completion by the City of its

paving of the parking lot and driveway area for the adjoining new fire hall under construction;
and

WHEREAS, the parties desire to enter into this Agreement whereby the City will allow HPC to enter the Property, on a temporary basis, for the purpose as stated above; and

WHEREAS, City desires to grant HPC the temporary, non-exclusive use of the Property, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and HPC agree as follows:

1. **Right of Entry.** The City hereby grants to HPC and its agents, employees, and contractors the temporary right to enter onto the Property for the purposes as stated above and for no other purpose.

2. **Term.** The term of this Agreement shall automatically terminate on December 31, 2018 unless earlier terminated as provided herein. The term may be extended by written notice to HPC in the sole and absolute discretion of the City. The right to enter the Property is subordinate to all prior or future rights and obligations of City in the Property, except that the City shall grant no rights inconsistent with the reasonable exercise by HPC of its rights under this Agreement. This Agreement shall also automatically terminate upon the conveyance by the City to HPC of the ownership of the portions of the Property covered by the Property Exchange Agreement.

3. **Property Condition.** HPC hereby acknowledges and agrees that City, by email dated March 21, 2016, has communicated to HPC, through its employees and other representatives, the presence of Hazardous Substances (as hereinafter defined) presently existing in the improvements located on the Property. City hereby represents that it has given to HPC all

EXHIBIT "G"

Page 3 of 10

documentation that it has in its possession related to such Hazardous Substances. Accordingly, HPC hereby acknowledges that certain environmental issues encumber the improvements located on the Property. For purposes of this Agreement, "Hazardous Substance" shall have the meaning set forth at 42 U.S.C. Section 9601(14), as well as the meaning(s) set forth in any applicable state law or regulation.

4. **Liens.** HPC shall not permit to be placed against the Property or any part thereof, any design professionals', mechanics', materialmen's, contractors', or subcontractors' liens with regard to HPC's actions upon the Property. HPC agrees to hold the City harmless for any loss or expense, including reasonable attorney's fees and costs, arising from any such liens which might be filed against the Property.

5. **Compliance with Laws/Permits.** HPC shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statutes, orders, ordinances, rules, regulations, plans, policies, and decrees. Without limiting the generality of the foregoing, HPC, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities HPC desires to conduct or have conducted pursuant to this Agreement.

6. **Inspection.** The City and its representatives, employees, agents or independent contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify HPC's compliance with the terms and conditions of this Agreement.

7. **No Real Property Interest.** It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee, license or other

interest in the Property to HPC. This Agreement is not exclusive and the City specifically reserves the right to grant other rights of entry within the vicinity of the Property.

8. **Indemnification; Liability and Workers' Compensation Insurance.**

HPC hereby agrees to indemnify City, its officials, officers, agents, and employees and save it harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to property, including civil rights actions, to any person or for any cause whatsoever during the term of this Agreement and any extension thereof to the extent caused by any act or omission of HPC, its agents, employees, invitees, contractors or assigns. HPC further agrees to defend, pay all costs of defense, including reasonable attorney's fees, and/or any judgment or cost for any claim or suit brought against City as a result of any claim brought against HPC, its agents, employees, invitees, contractors, or assignees for HPC's temporary use of the Property for the above-stated purposes. In the event that HPC hires a third-party contractor or agent to conduct physical and other inspections or perform the demolition and/or reconstruction work proposed to be done in accordance with the terms and conditions of this Agreement, HPC hereby agrees that it shall cause such third-party contractor or agent to indemnify both City and HPC, their respective officials, officers, agents and employees against and hold harmless from any and all claims, demands, causes of action, cost or expenses, including reasonable attorneys' fees and costs, for loss of or damage to the Property, and injury or death, including civil rights actions, to any person or for any cause whatsoever during the term of this Agreement and any extension thereof to the extent caused by the actions of such third-party contractor or agent. This indemnification shall survive the expiration or sooner termination of this Agreement.

EXHIBIT "G"
Page 5 of 10

HPC shall maintain at all times during the term of this Agreement, and any extensions, renewals, or holdovers, public liability insurance for the protection of City and HPC. The public liability insurance policy shall have limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) for injury to and/or death of any single person in a single occurrence and not less than ONE MILLION DOLLARS (\$1,000,000.00) for injury to and/or death of more than person in a single occurrence, and not less than ONE MILLION DOLLARS (\$1,000,000.00) for damage to property in a single occurrence. HPC agrees to provide the insurance policy at its sole expense. HPC shall provide City evidence of coverage by a signed Certificate of Insurance that shows the coverage to be in effect prior to entering the Property, and the City will be provided with a 30-day written notice prior to cancellation of the policy. The Certificate of Insurance shall indicate that the insurance is placed with an insurer rated AX or better by A.M. Best's Rating Guide or as approved by the City's Risk Managers. HPC shall include City as additional insured on all insurance. HPC also agrees to maintain at all times during the term of this Entry and any extensions, renewals or holdovers, workers' compensation insurance covering all employees with statutory limits in compliance with all applicable state and federal law. In the event that HPC hires a third-party contractor or agent to perform any of the work contemplated by this Agreement, HPC hereby agrees that it shall cause such third-party contractor or agent to comply with the insurance requirements set forth in this Paragraph 8.

9. **Approval/Consent.** Each party hereby represents to the other that all approvals and consents have been obtained authorizing the execution of this Agreement by such parties.

10. **Termination.** This Agreement may be terminated at any time by either party upon thirty (30) days' prior notice in writing to be served upon the other party.

11. **Demolition and Removal of Building Materials.** HPC shall, at its sole cost and expense, properly remove all building materials, rubbish and debris from the Property in accordance with all federal, state and local laws. Waste material, rubbish and/or debris shall not be allowed to accumulate outside the building or in the vicinity, but shall be removed from the Property as soon as practicable. After the improvements located on the Property have been demolished and removed, all depressions shall be filled with clean fill dirt and leveled to grade. HPC agrees to perform the demolition work in such a manner that will not disrupt the necessary fire services provided by the Chattanooga Fire Department's Fire Station 5. HPC shall include the obligations set forth in this Paragraph 11 in any contract with a third-party contractor or agent performing the demolition work.

12. **Notices.** Any notices, requests, and demands, or other communications required or committed under this Agreement shall be in writing and shall be effective upon receipt, if served personally, if sent by first class mail, registered or certified, postage prepaid, or if sent by a national recognized overnight delivery service, paid by the sending party and addressed as follows:

City:

City of Chattanooga
Attn: Real Property of ECD
101 E. 11th Street, G4
Chattanooga, TN 37402

With a copy to:

Office of the City Attorney
100 East 11th Street, Suite 200
Chattanooga, TN 37402

HPC:

Highland Park Commons, Inc.
Attn: Dr. Charles Phillips
c/o The Maclellan Foundation
820 Broad Street
Chattanooga, TN 37402

With a copy to:

Miller & Martin
Attn: Allen L. McCallie
Volunteer Building, Suite 1200
832 Georgia Avenue
Chattanooga, TN 37402

Any party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this paragraph.

13. **Continuing Liability.** No termination of this Agreement shall release HPC from any liability or obligation hereunder resulting from any acts, omissions or events prior to the termination of this Agreement.

14. **Attorney's Fees.** In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorney's fees.

15. **Severability.** If any provision of this Agreement becomes or is found to be illegal or unenforceable for any reason, such provision must first be modified to the extent necessary to make this Agreement legal and enforceable and only then, if necessary, severed from the remainder of the Agreement so as to allow the remainder of this Agreement to remain in full force and effect.

16. **Miscellaneous Provisions.**

- a. City and HPC acknowledge and agree that the terms and conditions set forth herein constitute the complete and entire agreement between them

EXHIBIT "G"
Page 8 of 10

concerning this Agreement and no other agreements, representations or warranties have been made by or between them other than as set forth herein.

- b. This Agreement may not be modified except by a document in writing. This Agreement is binding upon, and enforceable by the parties hereto and their respective successors and assigns.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS]**

EXHIBIT "G"

Page 9 of 10

IN WITNESS WHEREOF, City and HPC have set their hands by and through their respective duly authorized representative as of the date first above stated.

City of Chattanooga

By: _____
DONNA C. WILLIAMS, Administrator of ECD

Highland Park Commons, Inc.

By: _____
CHARLES W. PHILLIPS, President

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public, personally appeared Charles W. Phillips, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President for Highland Park Commons, Inc., being authorized so to do, executed and attested the foregoing instrument for the purpose therein contained by signing the name and on behalf of each corporation.

WITNESS, my Hand and Seal at Chattanooga, Hamilton County, Tennessee, this _____ day of _____, 2018.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT "G"
Page 10 of 10

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public, personally appeared Donna C. Williams, Administrator of Economic and Community Development of the City of Chattanooga, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that she is authorized by the City of Chattanooga to execute this instrument on behalf of the City of Chattanooga.

WITNESS my hand, at office, this ____ day of _____, 2018.

NOTARY PUBLIC

My Commission Expires: _____