

RESOLUTION NO. 32224

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN ENCROACHMENT, INDEMNITY, AND HOLD HARMLESS AGREEMENT WITH BRAINERD MISSION CEMETERY, IN SUBSTANTIALLY THE FORM ATTACHED, TO ALLOW BRAINERD MISSION CEMETERY TO INSTALL A FENCE ON THE CEMETERY PROPERTY WITH THE FENCE ENCROACHING ONTO PROPERTY OWNED BY THE CITY OF CHATTANOOGA.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into an Encroachment, Indemnity, and Hold Harmless Agreement with Brainerd Mission Cemetery, in substantially the form attached, to allow Brainerd Mission Cemetery to install a fence on the cemetery property with the fence encroaching onto property owned by the City of Chattanooga.

ADOPTED: September 17, 2024

/mem

Prepared by and return to:
Valerie L. Malueg, Esq.
Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

ENCROACHMENT, INDEMNITY AND HOLD HARMLESS AGREEMENT

This ENCROACHMENT, INDEMNITY AND HOLD HARMLESS AGREEMENT (the “Agreement”) is entered into and effective the _____ day of _____, 2024 by and between the **CITY OF CHATTANOOGA** (the “City”) and **BRAINERD MISSION CEMETERY** (the “Cemetery”).

WHEREAS, the City owns certain real property located at 943 Eastgate Loop, Chattanooga, Tennessee 37411 bearing Tax Map Number 157M-A-017.02 and more particularly described in deed recorded in the Register’s Office of Hamilton County, Tennessee, Book 9628, Page 984 (the City “Property”); and

WHEREAS, the Cemetery owns certain real property located at 935 Eastgate Loop, bearing Tax Map Number 157M-A-013 and more particularly described in deed recorded in the Register’s Office of Hamilton County, Tennessee, Book 6723, Page 351 (the “Cemetery Property”).

WHEREAS, the Cemetery intends to install a fence on the Cemetery property which will encroach onto the City Property; and

WHEREAS, the Quitclaim Deed recorded in Book 9628, Page 984, Register of Deeds Office for Hamilton County, Tennessee, from Brainerd Village Shopping Center, LLC to the City conveying title of the property to the City contains a deed restriction that the City Property shall only be used for such permitted uses set forth therein; and

WHEREAS, the City is requiring the Cemetery to indemnify the City for any matters relating to such location of the fence as shown on **Exhibit A** onto the City Property; and

WHEREAS, Brainerd Village Shopping Center has consented to the installation of the fence on the Property as set forth on **Exhibit B**.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable considerations, the parties agree as follows:

1. The City hereby acknowledges, agrees, and permits the Cemetery, or its assigns, to install a fence as depicted on **Exhibit A** (the "Permitted Improvement"), subject to the terms and conditions of this Agreement. The fence will encroach an amount not to exceed forty (40) feet along the shared property line of the Cemetery Property and the City Property to the northwest of the Cemetery, and an amount not to exceed ten (10) feet along the shared property line to the northeast of the Cemetery, as shown on **Exhibit A**.
2. The Cemetery shall keep the Permitted Improvement in good repair and shall comply with all City ordinances related to fences. The City shall have no responsibility to maintain the fence.
3. The City shall not be liable for the repair or replacement of the Permitted Improvement in the event that it is moved, damaged, or destroyed. The Cemetery shall be responsible for any costs associated with the removal of the Permitted Improvement encroaching onto the Property.
4. The Permitted Improvement shall not adversely affect drainage or create debris buildup.
5. The City may, in its sole discretion, terminate this Agreement at any time by giving the Cemetery or the then owner of the Cemetery Property thirty (30) days' advance written notice, except that no notice period will be required in the case of an emergency condition as determined solely by the City, and the Agreement may then be terminated immediately. The Cemetery shall remove the Permitted Improvement as of the effective date of the termination of this Agreement. If the Cemetery fails to do so, the City may remove the Permitted Improvement and charge the cost of removal back to the Cemetery for reimbursement.

6. Indemnity by the Cemetery. The Cemetery hereby agrees that it shall indemnify, defend, and hold harmless the City, its successors and assigns, agents, officials, representatives, employees, contractors, and licensees, from any expense the City incurs from the installation of the Permitted Improvement as depicted on **Exhibit A** and Cemetery's, or its agents, representatives,' officers' and invitees' use of the proposed new gate entrance, including such costs or expenses related to Cemetery's use of the Permitted Improvement or such damage to the Permitted Improvement existing on the City Property. The Cemetery further agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officials, representatives, employees, contractors, and licensees, from any and all liability, claims, damages, expenses, including attorney's fees and litigation costs, resulting from, or arising out of the removal or alteration of the Permitted Improvement encroaching onto the City Property as deemed necessary by the City.

7. Cemetery shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Cemetery against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.

It is the Cemetery's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the insurance provisions. Certificates must specifically cite the following provision:

City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the Commercial General Liability policy.

8. The Cemetery understands and agrees that if the City or any agent, officer, employee, or contractor removes, damages, or alters the Permitted Improvement, that the Cemetery is fully responsible for the repair and/or replacement of the Permitted Improvement. The Cemetery further understands and agrees that if Cemetery damages or causes damages to the City Property then the Cemetery is fully responsible for the immediate repair of the City Property.
9. Survival. The right of indemnification pursuant to this Agreement shall survive any applicable statute of limitation, if any. If the City seeks indemnification under this Agreement, it shall provide the Cemetery with written notice which reasonably sets forth, in light of the information then known to the City, a description of the estimate (if then reasonable to make) of the amount involved in such claim.

This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. The above authorization to allow such encroachment over and upon the City Property and the rights granted herein shall constitute covenants running with the land.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the Cemetery and the duly authorized representative of Chattanooga as of the date first written above.

GRANTOR

CITY OF CHATTANOOGA, TENNESSEE

By: _____
RICHARD J. BEELAND
Administrator of Economic Development

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a notary public of the state and county aforesaid, personally appeared Richard J. Beeland, of whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who upon oath acknowledged himself to be the Administrator of Economic Development of CITY OF CHATTANOOGA, the within named bargainer, a corporation, and that he as such Administrator of Economic Development, executed the foregoing for purposed contained therein, by signing the name of Richard J. Beeland by himself as the Administrator of Economic Development.

WITNESS my hand and seal this _____ day of _____, 2024.

Notary Public

My commission expires: _____

WITNESSES:

GRANTEE

The Chickamauga Chapter of the Daughters of the American Revolution

By: _____

Martha Gayle Burrows, Regent Chickamauga Chapter NSDAR

Date: _____

The Nancy Ward Chapter of the Daughters of the American Revolution

By: _____

Natalie Davis, Regent Nancy Ward NSDAR

Date: _____

The Judge David Campbell Chapter of the Daughters of the American Revolution

By: _____

Jennifer Thomas, Regent Judge David Campbell Chapter NSDAR

Date: _____

The Chief John Ross Chapter of the Daughters of the American Revolution

By: _____

Jennifer Sawyer Harvey, Regent Chief John Ross Chapter NSDAR

Date: _____

The Moccasin Bend Chapter of the Daughters of the American Revolution

By: _____

Carolyn Caulkins, Regent Moccasin Bend Chapter NSDAR

Date: _____

The John Sevier Chapter of the Sons of the American Revolution

By: _____

Cliff Kent, President John Sevier Chapter TNSSAR

Date: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared **Martha Gayle Burrows**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **Regent of the Chickamauga Chapter of The Daughters of the American Revolution**, owner of one-sixth undivided interest in real estate located in City of Chattanooga, known as BRAINERD MISSION CEMETERY, a Tennessee corporation, and that she as such Regent, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the Chickamauga Chapter of The Daughters of the American Revolution.

WITNESS my hand and seal, at office in *Hamilton County* Tennessee, this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared **Natalie Davis**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **Regent of the Nancy Ward Chapter of The Daughters of the American Revolution**, owner of one-sixth undivided interest in real estate located in City of Chattanooga, known as BRAINERD MISSION CEMETERY, a Tennessee corporation, and that she as such Regent, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the Nancy Ward Chapter of The Daughters of the American Revolution.

WITNESS my hand and seal, at office in *Hamilton County* Tennessee, this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared **Jennifer Thomas**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **Regent of the Judge David Campbell Chapter of The Daughters of the American Revolution**, owner of one-sixth undivided interest in real estate located in City of Chattanooga, known as BRAINERD MISSION CEMETERY, a Tennessee corporation, and that she as such Regent, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the Judge David Campbell Chapter of The Daughters of the American Revolution.

WITNESS my hand and seal, at office in *Hamilton County* Tennessee, this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared **Jennifer Sawyer Harvey**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **Regent of the Chief John Ross Chapter of The Daughters of the American Revolution**, owner of one-sixth undivided interest in real estate located in City of Chattanooga, known as BRAINERD MISSION CEMETERY, a Tennessee corporation, and that she as such Regent, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the Chief John Ross Chapter of The Daughters of the American Revolution.

WITNESS my hand and seal, at office in *Hamilton County* Tennessee, this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared **Carolyn Caulkins**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **Regent of the Moccasin Bend Chapter of The Daughters of the American Revolution**, owner of one-sixth undivided interest in real estate located in City of Chattanooga, known as BRAINERD MISSION CEMETERY, a Tennessee corporation, and that she as such Regent, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the Moccasin Bend Chapter of The Daughters of the American Revolution.

WITNESS my hand and seal, at office in *Hamilton County* Tennessee, this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared **Cliff Kent**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the **President of the John Sevier Chapter of the Sons of the American Revolution**, owner of one-sixth undivided interest in real estate located in City of Chattanooga, known as BRAINERD MISSION CEMETERY, a Tennessee corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the John Sevier Chapter of the Sons of the American Revolution.

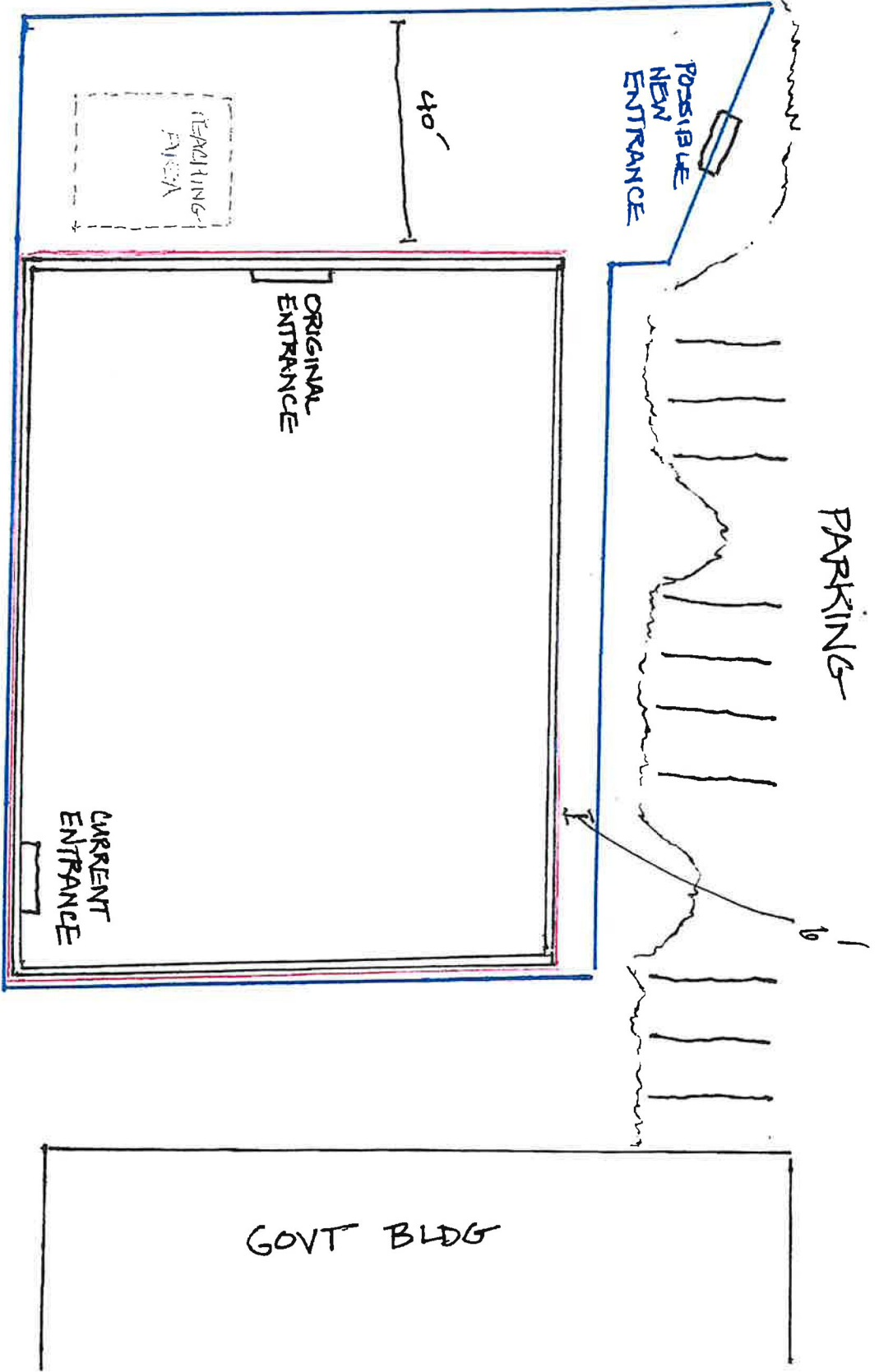
WITNESS my hand and seal, at office in *Hamilton County* Tennessee, this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

EXHIBIT A
Permitted Improvement

Commercial Building



Proposed area of encroachment from
Brainerd Mission Cemetery (TMN 157M-A-013)
onto city-owned TMN 157M-017.01.

- == STONE WALL
- CURRENT FENCE
- NEW FENCE

EXHIBIT B

CONSENT OF BRAINERD VILLAGE SHOPPING CENTER, LLC

Brainerd Village Shopping Center, LLC, a Tennessee limited liability company, hereby consents to the installation of a fence by Brainerd Mission Cemetery on the City Property described on **Exhibit A** and declares that the installation of such fence does not constitute an improper use of the City Property and does not violate the deed restrictions contained in Book 9628, Page 984, Register of Deeds Office for Hamilton County, Tennessee.

BRAINERD VILLAGE SHOPPING CENTER,
LLC

By: _____

Printed Name: _____

Its: _____