

8/28/12

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO A LEASE AGREEMENT WITH DIBBLE DABBLE DEVELOPMENT, LLC FOR THE LEASE OF REAL PROPERTY LOCATED AT 717 WEST BELL AVENUE TO BE USED AS A PARKING AREA BY THE GENERAL PUBLIC IN ORDER TO ACCESS RECREATIONAL TRAILS ON STRINGER'S RIDGE FOR A NOMINAL FEE OF ONE DOLLAR (\$1.00) PER YEAR.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation to enter into a Lease Agreement with Dibble Dabble Development, LLC for the lease of real property located at 717 West Bell Avenue to be used as a parking area by the general public in order to access recreational trails on Stringer's Ridge for a nominal fee of \$1.00 per year.

ADOPTED: _____, 2012

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: July 10, 2012

Preparer: Wanda Eckstein

Department: Parks & Recreation

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # _____ Council District # _____

A resolution is needed authorizing the Administrator of the Department of Parks and Recreation to enter into an agreement with Dibble Dabble Development, LLC for the lease of real property located at 717 West Bell Avenue, Chattanooga, Tennessee to be used as a parking area by the general public in order to access recreational trails on Stringer's Ridge for a nominal fee of \$1.00 per year.

Name of Vendor/Contractor/Grant, etc. _____
Total project cost \$ _____
Total City of Chattanooga Portion \$ _____
City Amount Funded \$ _____
New City Funding Required \$ _____
City's Match Percentage % _____

New Contract/Project? (Yes or No) _____
Funds Budgeted? (YES or NO) _____
Provide Fund _____
Provide Cost Center _____
Proposed Funding Source if not budgeted _____
Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
\$ _____	_____
\$ _____	_____
\$ _____	_____

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

LEASE AGREEMENT

THIS Lease Agreement ("Lease") is made to be effective this ____ day of _____, 2012, by and between **Dibble Dabble Development, LLC** ("Lessor") and the **City of Chattanooga**, a municipal corporation organized and existing under the laws of the State of Tennessee ("Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of certain real property located at 901 Cherokee Boulevard (the "Cherokee Boulevard Property") and 717 W. Bell Avenue, Chattanooga, TN 37405 (the "Bell Avenue Property") (collectively, the "Property"); and

WHEREAS, Lessor desires to lease a portion of the Bell Avenue Property to Lessee, consisting of approximately **6,134.16** square feet as shown in the cross-hatched area on **Exhibit "A"** attached hereto (the "Leased Premises"); and

WHEREAS, Lessor desires to lease the Leased Premises for certain uses and activities more particularly specified herein;

NOW, THEREFORE, for and in consideration of the mutual obligations, promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **LEASED PREMISES.** Lessor leases to Lessee the Leased Premises as more particularly shown in the cross-hatched area on **Exhibit "A."**

2. **USE OF PREMISES.** It is expressly agreed to and understood by the parties that the Leased Premises shall be used as a parking area by the general public in order to access recreational trails on Stringer's Ridge.

3. **TERM.** The term of this Lease shall be for a period of forty (40) years, beginning on _____, 2012 (the "Effective Date") and ending on the same day forty (40) years from the Effective Date, with such rights of termination as may be expressly set forth herein. Should the Lessee occupy the Leased Premises beyond the term of this Lease, such occupancy shall in no event be year-to-year unless expressly provided by Lessor in writing.

4. **LEASE PAYMENTS.** Lessee shall, during the term of this Lease, pay to Lessor an annual rent of One and 00/100 (\$1.00) Dollar per year, payable on January 30th of each year. All rentals payable by Lessee to Lessor under this Lease shall be paid to Lessor at the address designated in Paragraph 23.

5. **IMPROVEMENTS.** Lessee or its assigns shall make certain improvements to the Leased Premises as set forth on **Exhibit "B,"** a copy of which is attached hereto and incorporated herein by reference (the "Improvements"), describing the Improvements to be made by Lessee at its sole expense, and Lessee agrees to perform the work and make the Improvements in the Leased Premises as set forth in Exhibit "B." Lessee acknowledges that it

has not received and Lessor has not made any warranty, express or implied, as to the condition of the Leased Premises. Other than the contemplated improvements outlined on Exhibit "B", Lessee shall not make any additional improvements or alterations to the Leased Premises without the Lessor's prior written approval.

6. ACCESS. Lessor, its employees, agents, representatives and invitees shall have access to, over or through the Leased Premises.

7. UTILITIES. Lessee shall pay for all utilities that are used exclusively for the general public and not by any others, including Lessor or its invitees.

8. TAXES, FEES, OR OTHER ASSESSMENTS. Lessor shall be responsible for payment of all real property taxes, water quality fees, and other assessments imposed on the Leased Premises.

9. TERMINATION. If the Lessee ceases to use the Leased Premises for the purpose set forth in Paragraph 2 above, this Lease shall terminate upon written notice by Lessor. Lessee may terminate this Lease at any time upon giving Lessor written notice of its intention to terminate the Lease, and said notice shall be received at least sixty (60) days prior to the termination date.

10. TERMINATION AND HOLDING OVER. Upon termination of this Lease or at the expiration of the term or any extension thereof, Lessee shall surrender the Leased Premises to Lessor. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty (30) days following the expiration of the term hereof or any extension thereof, including removal of all personal property.

11. RIGHT TO ENTER. The Lessor shall have the right to enter into and upon the Leased Premises or any part thereof for the purpose of examining the same, or making such repairs, additions, or observations as may be necessary for the safety, comfort and preservation thereof.

12. MAINTENANCE AND REPAIRS

Lessor will maintain the Leased Premises in a good, safe and orderly condition and make any repairs to the Leased Premises that it deems necessary. Notwithstanding anything contained in this Paragraph 12, Lessee shall pay for the cost of any repairs/repaving of the parking area exceeding the sum of \$1,000 per year that Lessee deems necessary.

13. LIABILITY. It is agreed that the Lessor shall not be liable for any loss, damage or injury to property or person from any source whatsoever upon the Leased Premises as the rental is made on the basis of the Lessees, invitees and visitors assuming for themselves such risks. Lessor shall not be liable for any property or valuables destroyed, damaged, lost, stolen, taken or missing from the Leased Premises except those which are resulting from or caused by the Lessor's agents, employees or invitees. Any property placed on or left upon the Leased Premises by Lessee is maintained strictly at Lessee's own risk, provided that Lessor shall not

damage same. Any property Lessor places on the Leased Premises is placed there at its own risk.

Lessee, in further consideration for the grant of the Lease herein conveyed, hereby covenants and agrees to take all reasonable steps and precautions to prevent injuries to persons and property occurring on the Leased Premises or arising from events occurring thereon. To the extent provided for under the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101, *et seq*, Lessee shall be liable for any and all claims and causes of action arising from the negligence of its employees for damages to person or property arising from the use by Lessee or the public of the Leased Premises herein conveyed. Lessor shall be solely liable for any and all claims and causes of action arising from the negligence of its employees and for damages to person or property arising from the use of the Leased Premises herein conveyed. Lessee shall have no obligation to maintain, repair or monitor the use of any facilities or equipment owned by Lessor and situated on the Leased Premises.

14. CERTIFICATE OF SELF INSURANCE. The parties acknowledge that Lessee is self-insured in accordance with the Tennessee Governmental Tort Liability Act, which establishes the limits of liability for governmental entities in the State of Tennessee and will, therefore, not be required to maintain general liability insurance. A copy of the Lessee's Certificate of Self Insurance is attached hereto as **Exhibit "C."**

15. ASSIGNMENT AND SUBLETTING. The Lessee shall neither assign this Lease nor sublease the Leased Premises in whole or part without the written consent of the Lessor, which consent shall not be unreasonably withheld by Lessor. The Lessee shall not be obligated to take any action to remove anyone on the Leased Premises except those that are there with Lessee's express consent or holding over after the consent has been removed.

16. DEFAULTS.

A. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- (i) Abandonment of the Leased Premises, except for causes of force majeure, as defined in Paragraph 17; and
- (ii) Any attempted assignment, transfer, or sublease in violation of Paragraph 15 above;

B. Failure to pay rent as provided for herein or failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. Lessor shall give written notice to Lessee of such default and if Lessee does not cure any rent default within ten (10) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Lessee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then Lessor may terminate this Lease on not less than five (5) days' written notice to Lessee, and on the date

specified in said notice the term of this Lease shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor.

17. FORCE MAJEURE. The parties shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond the party's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services, or financing or through acts of God.

18. MISCELLANEOUS PROVISIONS.

A. Lessee agrees that no entrances or exits to and from the Leased Premises shall be blocked or obstructed at any time.

B. The parties hereto hereby represent, warrant and confirm that before executing this Lease they fully informed themselves of the terms, covenants, contents and effects hereof and that no promise or representation of any kind has been made other than is expressly stated herein, that they fully understand the considerations and covenants agreed to herein by the parties.

19. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between the parties pertaining to the Leased Premises and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendments of this Lease shall be binding unless executed in writing by the parties.

20. APPLICABLE LAW. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Tennessee.

21. SEVERABILITY. If any provision of this Lease is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Lease shall not be affected thereby.

22. NON-DISCRIMINATION. The parties agree to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law while leasing the Leased Premises. The parties agree not to discriminate against any employee, agent, or invitee on the basis of race, color, religion, sex, age or national origin. The parties further agree to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

23. NOTICES. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, to the addresses and parties as follows:

Lessee	Lessor
City of Chattanooga General Services Division	Dibble Dabble Development, LLC Attn: Real Property Manager

100 East 11 th Street, Suite 101 Chattanooga, TN 37402	
Fax (423) 757-5079	
With a copy to: City Attorney 100 East 11 th Street, Suite 200 Chattanooga, TN 37402	

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives as of the dates set forth in their respective acknowledgments.

CITY OF CHATTANOOGA, TENNESSEE
DEPARTMENT OF PARKS AND RECREATION

By: _____
LAWRENCE A. ZEHNDER, Administrator
Date: _____

DIBBLE DABBLE DEVELOPMENT, LLC

By: _____
Printed Name/Title: _____
Date: _____

Exhibit A

6,134.16 Square Feet in Cross Hatched Area

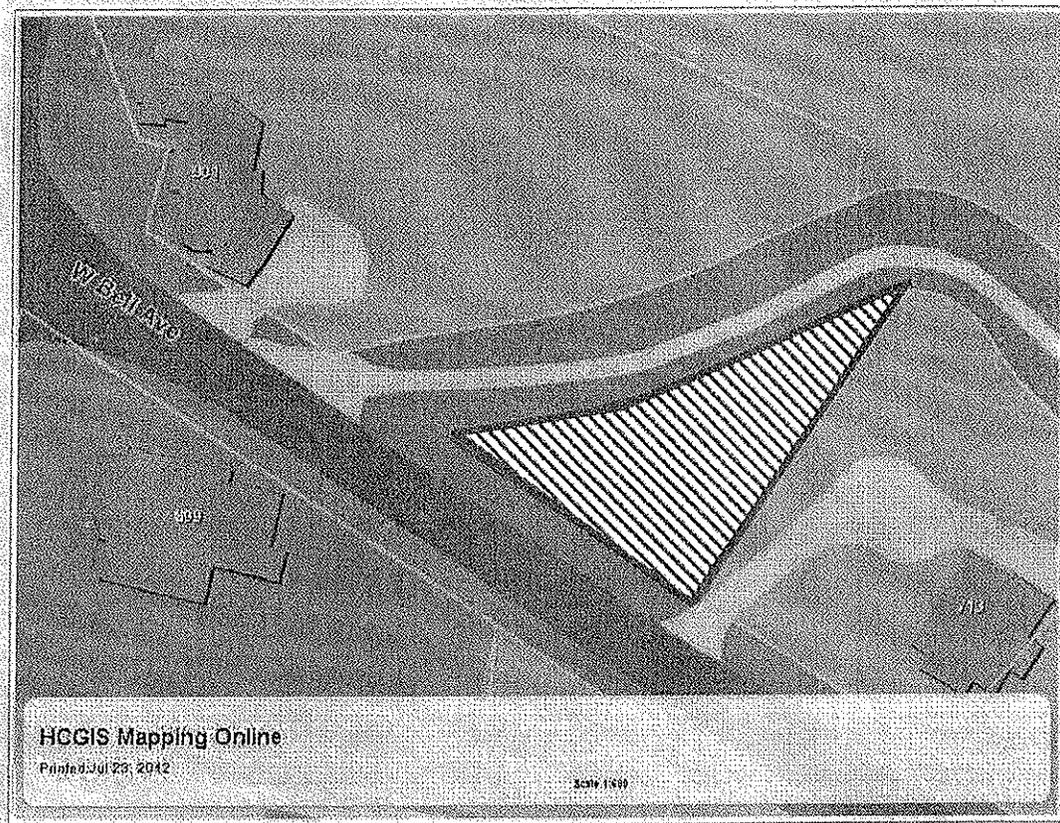
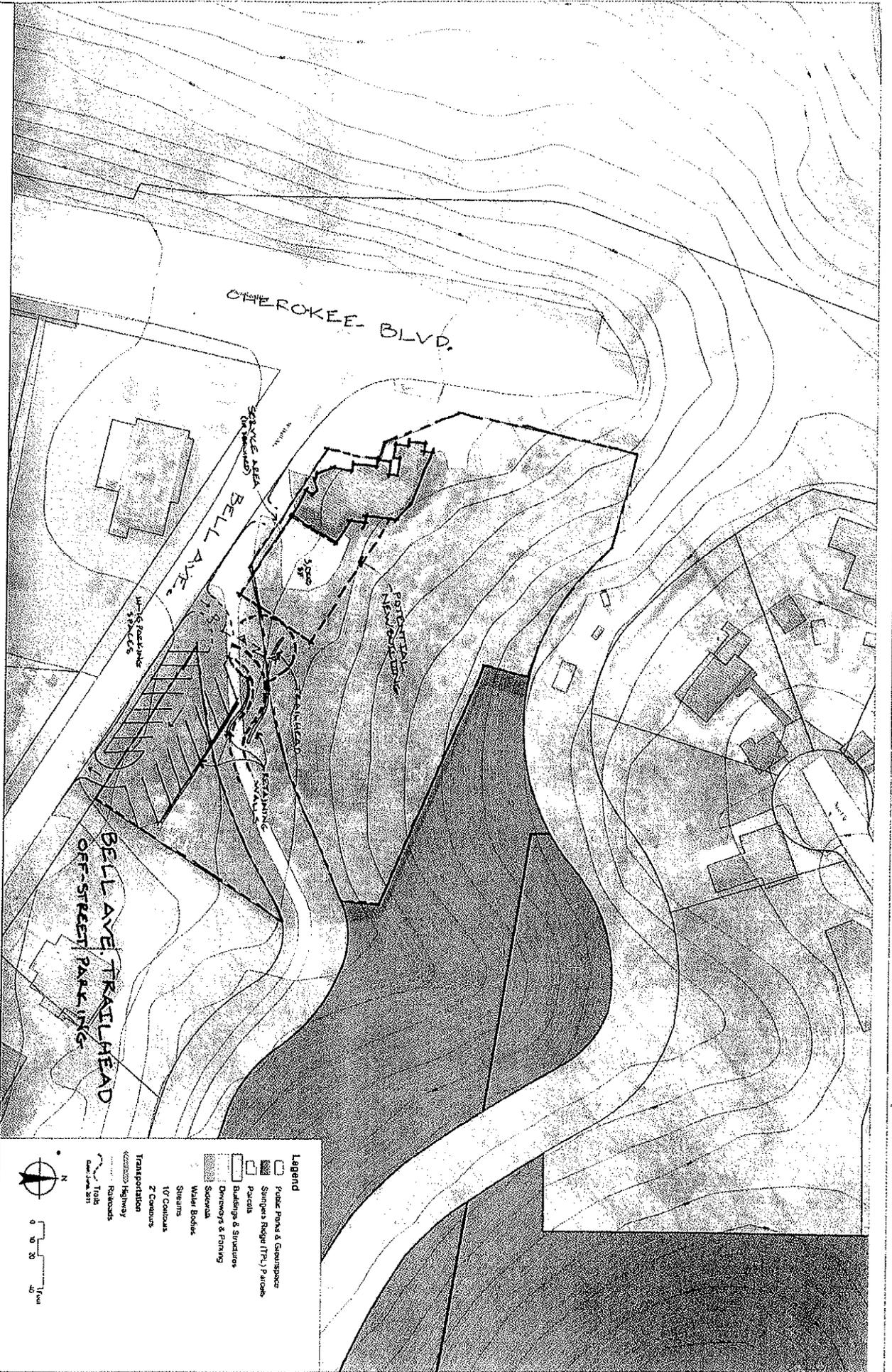


Exhibit "B"

Along with the attached drawing the following materials and expectations will be used to guide this project:

- Clearing, rough grading, gravel or other approved pervious surface and final grading;
- Contractor will make efforts to use existing large rocks and formations to enhance the trailhead so that new materials and any new retaining walls will be limited;

Planning Study for
Moccasin Bend Gateway & Stringers Ridge



JONES JONES
 ARCHITECTS
 LANDSCAPE ARCHITECTS
 PLANNERS

City of Chattanooga
Employee Benefits Division

CERTIFICATE OF SELF-INSURANCE

This is to certify that the City of Chattanooga Government is a self-insurer in accordance with the Tennessee Governmental Tort Liability Act.

The funded Self-Insurance Plan is established under the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-403, et. seq., which establishes the limits of liability for governmental entities in the State of Tennessee. For all claims against a self-insuring governmental entity, the Act establishes a maximum limit of liability of Three Hundred Thousand (\$300,000.00) Dollars for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and Seven Hundred Thousand (\$700,000.00) Dollars for bodily injury or death of all persons in any one (1) accident, occurrence or act, and One Hundred Thousand (\$100,000) Dollars for injury or destruction of property of others in any one (1) accident, occurrence or act. The provisions of the above limits shall apply to any action arising on or after July 1, 2007.

By: Madeline Green
Madeline Green
Director of Risk Management and Insurance

