

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO GRANT AND CONVEY A CONSERVATION EASEMENT UNTO THE TENNESSEE WILDLIFE RESOURCES FOUNDATION, INC., CONSISTING OF APPROXIMATELY TWENTY-SEVEN (27) ACRES ON TAX MAP NOS. 138M-A-002, 138M-C-002.01, 138M-C-003.01, 138M-C-004.01, AND 138K-J-011.01, RELATIVE TO THE FRIAR BRANCH STREAM RESTORATION PROJECT.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Administrator for the Department of Public Works to grant and convey a conservation easement unto the Tennessee Wildlife Resources Foundation, Inc., consisting of approximately twenty-seven (27) acres on Tax Map Nos. 138M-A-002, 138M-C-002.01, 138M-C-003.01, 138M-C-004.01, and 138K-J-011.01, relative to the Friar Branch Stream Restoration Project.

ADOPTED: \_\_\_\_\_, 2013

/mms

# City of Chattanooga



## Resolution Request Form

(This form is only required for resolutions requiring expenditure of City funds)

Date: July 22, 2013

Preparer: William C. Payne

Department: Public Works - Engineering

### Brief Description of Purpose for Resolution:

Resolution Number (if approved by Council): \_\_\_\_\_

A resolution authorizing the Administrator of the Department of Public Works to grant and convey a Conservation Easement consisting of approximately 27 acres on Tax Maps 138M-A-002, 138M-C-002.01, 138M-C-003.01, 138M-C-004.01 and 138K-J-011.01, unto the Tennessee Wildlife Resources Foundation, Inc., relative to the Friar Branch Stream Restoration Project.

Name of Vendor/Contractor/Grant, etc.	Tennessee Wildlife Resources Foundation, Inc.	New Contract/Project? (Yes or No)	N/A
Total project cost \$	N/A	Funds Budgeted? (YES or NO)	N/A
Total City of Chattanooga Portion \$	N/A	Provide Fund	N/A
City Amount Funded \$	N/A	Provide Cost Center	N/A
New City Funding Required \$	N/A	Proposed Funding Source if not budgeted	N/A
City's Match Percentage %	N/A	Grant Period (if applicable)	N/A

### 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

THIS INSTRUMENT PREPARED  
BY:

Suzette Peyton, Esq.  
1230 2<sup>nd</sup> Ave. S.  
Nashville, TN 37210

**NO REPRESENTATION IS  
MADE AS TO TITLE  
BY PREPARER**

MAIL TAX BILL IF ANY TO:  
PARCEL NO.

Tennessee Wildlife Resources Foundation, Inc.  
5000 Linbar Drive, Suite 275  
Nashville, TN 37211

SEND TAX BILL TO: MAP

Portions of: 138M-A-002,  
138M-C-002.01,  
138M-C-003.01,  
138M-C-004.01,  
and 138K-J-011 ←

138K J 011.01

## CONSERVATION EASEMENT

THIS Conservation Easement made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between The City of Chattanooga, Tennessee, a Tennessee nonprofit municipal corporation, ("Grantor") and the Tennessee Wildlife Resources Foundation, Inc., a Tennessee not-for-profit corporation, having an address at 5000 Linbar Drive, Suite 275 Nashville, Tennessee 37211 ("Grantee").

The purpose of this Conservation Easement is to protect wetlands, riparian areas, and surface areas within the watershed where the Property described herein is located, to the end that the waters flowing over it and the waters into which those waters flow may be preserved in quality and protected in their present uses. Grantors reserve certain rights accruing from the fee ownership of the Property, including the right to engage in, or permit others to engage in, the uses of the Property that are not inconsistent with this Conservation Easement.

### WITNESSETH

WHEREAS Grantee possesses the power and capacity to hold an interest in real property, is charitable in nature within the meaning of Section 501(c)(3) and Section 509(a)(1) or (a)(2) of the Internal Revenue Code, is a "public body" within the meaning of the Conservation Easement Act of 1981, *Tennessee Code Annotated*, § 66-9-301 *et seq.*, among other things, and is a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code in that its primary purpose is the protection, conservation, enhancement and management of Tennessee fish, aquatic and wildlife resources;

**WHEREAS**, Grantor is the sole owner in fee simple of several parcels of real property located in Hamilton County, Tennessee, collectively referred to herein as "the Property", and consisting of the following parcels:

1. **Real property** located in Hamilton County, Tennessee, which was conveyed in a deed:

To the Grantor by Hickory Valley Golf Club, Inc. by Deed dated January 10, 2008 and recorded among the land records of Hamilton County, Tennessee in Book 8566, Page 0800; and

To the Grantor by Hickory Valley Golf Club, Inc. by Deed dated January 10, 2008 and recorded among the land records of Hamilton County, Tennessee in Book 8566, Page 0804;

and is more particularly described on a plat map showing the conservation areas on **Exhibit "A."** 8/9

The parcel is also identified as being Tax Parcel Number 138M-A-002; and

2. **Real property** located in Hamilton County, Tennessee formerly owned by Guy M. Sweeney and Willie Mae Sweeney that was conveyed to the Grantor in an Order of Taking entered in the Circuit Court of Hamilton County, Tennessee on August 6, 1999 and recorded among the land records of Hamilton County, Tennessee in Book 5515, Page 504; and is more particularly described on a plat map showing the conservation area on **Exhibit "B."** 5

The parcel is also identified as being Tax Parcel Number 138M-C-002.01; and

3. **Real property** located in Hamilton County, Tennessee formerly owned by Jimmy Roden and Wilma Wheeler Roden that was conveyed to the Grantor in an Order of Taking entered in the Circuit Court of Hamilton County, Tennessee on February 2, 1998 and recorded among the land records of Hamilton County, Tennessee in Book 5515, Page 0508; and is more particularly described on a plat map showing the conservation area on **Exhibit "C."** 5

The parcel is also identified as being Tax Parcel Number 138M-C-003.01; and

4. **Real property** located in Hamilton County, Tennessee formerly owned by J. Kenneth Hutsell and Aliese Hutsell which was conveyed in a deed to the Grantor by Order of Taking entered in the Hamilton County Circuit Court on January 16, 1997 and recorded in the land records of Hamilton County, Tennessee in Book 5018 Page 0455; and is more particularly described on a plat map showing the conservation area on **Exhibit "D."** 5

The parcel is also identified as being Tax Parcel Number 138M-C-004.01; and

5. **Real property** located in Hamilton County, Tennessee which was conveyed to the Grantor by deed dated April 1, 2009 by Jeanette Love Armstrong Trust and recorded in the land records of Hamilton County, Tennessee in Book 8892 Page 756; and is more particularly described on a plat map showing the conservation area on **Exhibit "E."** 10

The parcel is also identified as being Tax Parcel Number 138K-J-011.01; and

WHEREAS Grantor and Grantee recognize that the Property possesses natural, scenic, biological and aquatic resources of great importance to Grantors and to the people of the State of Tennessee;

WHEREAS, the Tennessee Stream Mitigation Program was created to offset adverse impacts to such natural resources caused by continuing development within the State of Tennessee;

WHEREAS; the Grantor and Grantee desire and agree that the Property shall benefit from the Tennessee Stream Mitigation Program;

WHEREAS; the parties desire to enter into this Conservation Easement for Grantors to convey to Grantee, its successors, assigns, or designees, pursuant to *Tennessee Code Annotated*, § 66-9-301 *et seq.* in order to preserve, maintain, and/or enhance the present condition, use, and/or natural beauty of the Property;

NOW, THEREFORE, in consideration of the recitals and the covenants, terms, conditions and restrictions hereinafter set forth, Grantor hereby voluntarily grants and conveys a conservation easement over agreed upon portions of the Property. Grantee accepts the conservation easement on the Protected Property (defined below) in accordance with the terms of this Conservation Easement. The property subject to the Conservation Easement is more particularly described as follows:

#### EXHIBIT A CONSERVATION EASEMENT 8

BEING A PORTION OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8566, PAGE 804 AS RECORDED IN THE REGISTER'S OFFICE OF HAMILTON COUNTY, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN PROPERTY LINE OF THE SUBJECT PROPERTY WITH THE SOUTHWESTERN CORNER OF THE CORKER PROPERTY AS DESCRIBED IN DEED BOOK 1793, PAGE 42; THENCE ON A COURSE THROUGH SAID SUBJECT PROPERTY SOUTH 01 DEGREES 40 MINUTES 02 SECONDS WEST A DISTANCE OF 358.71 FEET; THENCE ALONG THE CENTER OF FRIAR BRANCH ALONG THE NORTHEASTERN PROPERTY LINE OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8892, PAGE 756 THE FOLLOWING CALLS, NORTH 38 DEGREES 04 MINUTES 34 SECONDS WEST A DISTANCE OF 193.32 FEET; THENCE NORTH 14 DEGREES 25 MINUTES 22 SECONDS WEST A DISTANCE OF 67.36 FEET; THENCE NORTH 34 DEGREES 05 MINUTES 16 SECONDS WEST A DISTANCE OF 170.60 FEET; THENCE NORTH 22 DEGREES 31 MINUTES 07 SECONDS WEST A DISTANCE OF 177.87 FEET; THENCE NORTH 17 DEGREES 07 MINUTES 08 SECONDS WEST A DISTANCE OF 69.54 FEET; THENCE NORTH 03 DEGREES 35 MINUTES 21 SECONDS EAST A DISTANCE OF 79.73 FEET; THENCE NORTH 20 DEGREES 30 MINUTES 22 SECONDS EAST A DISTANCE OF 50.68 FEET ; THENCE ALONG A PORTION OF THE SOUTHERN PROPERTY LINE OF THE

CORKER PROPERTY AS DESCRIBED IN DEED BOOK 1793, PAGE AND BEING THE CENTERLINE OF POE BRANCH THE FOLLOWING CALLS, SOUTH 54 DEGREES 57 MINUTES 57 SECONDS EAST A DISTANCE OF 65.80 FEET; THENCE SOUTH 82 DEGREES 31 MINUTES 32 SECONDS EAST A DISTANCE OF 89.17 FEET; THENCE SOUTH 57 DEGREES 14 MINUTES 51 SECONDS EAST A DISTANCE OF 66.73 FEET; THENCE SOUTH 79 DEGREES 46 MINUTES 08 SECONDS EAST A DISTANCE OF 212.45 FEET; THENCE LEAVING SAID CENTERLINE OF POE BRANCH, SOUTH 22 DEGREES 59 MINUTES 13 SECONDS WEST A DISTANCE OF 255.00 FEET TO THE POINT OF BEGINNING.

ALL CONTAINING 146,539 SQUARE FEET.

#### EXHIBIT A CONSERVATION EASEMENT 9

BEING A PORTION OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8566, PAGE 804 AS RECORDED IN THE REGISTER'S OFFICE OF HAMILTON COUNTY, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF THE SUBJECT PROPERTY ON THE WESTERN RIGHT-OF-WAY OF HICKORY VALLEY ROAD; THENCE ALONG THE NORTHERN LINE OF LOTS 10 THRU 48 AND 226, HICKORY CREEK SUBDIVISION, NORTH 68 DEGREES 38 MINUTES 46 SECONDS WEST A DISTANCE OF 1710.40 FEET; THENCE ALONG THE EASTERN LINE OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8892, PAGE 756 AND ALONG THE CENTER OF FRIAR BRANCH THE FOLLOWING CALLS, NORTH 15 DEGREES 52 MINUTES 59 SECONDS WEST A DISTANCE OF 66.27 FEET; THENCE NORTH 04 DEGREES 52 MINUTES 10 SECONDS EAST A DISTANCE OF 85.89 FEET; THENCE NORTH 05 DEGREES 54 MINUTES 34 SECONDS EAST A DISTANCE OF 30.81 FEET; THENCE ON A COURSE THROUGH SAID SUBJECT PROPERTY THE FOLLOWING CALLS, SOUTH 68 DEGREES 05 MINUTES 20 SECONDS EAST A DISTANCE OF 487.09 FEET; THENCE SOUTH 69 DEGREES 16 MINUTES 11 SECONDS EAST A DISTANCE OF 1329.36 FEET; THENCE ALONG THE WESTERN RIGHT-OF-WAY OF HICKORY VALLEY ROAD THE FOLLOWING CALLS, SOUTH 23 DEGREES 22 MINUTES 58 SECONDS WEST A DISTANCE OF 136.19 FEET; THENCE NORTH 67 DEGREES 01 MINUTES 40 SECONDS EAST A DISTANCE OF 26.68 FEET; THENCE SOUTH 23 DEGREES 01 MINUTES 33 SECONDS WEST A DISTANCE OF 39.04 FEET TO THE POINT OF BEGINNING.

ALL CONTAINING 80,578 SQUARE FEET (MORE OR LESS).

EXHIBIT B, C, D CONSERVATION EASEMENT 5

BEING A PORTION OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 5018, PAGE 455, DEED BOOK 5515, PAGE 508 AND 5515, PAGE 504 AS RECORDED IN THE REGISTER'S OFFICE OF HAMILTON COUNTY, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERN CORNER OF LOT 11, PICKETT SUBDIVISION AS RECORDED IN PLAT BOOK 19, PAGE 86 AND THE EASTERN RIGHT-OF-WAY OF HICKORY VALLEY ROAD; THENCE ALONG THE SOUTHERN LINE OF THE SWAYZE PROPERTY AS DESCRIBED IN DEED BOOK 5386, PAGE 752 THE FOLLOWING CALLS, SOUTH 75 DEGREES 04 MINUTES 00 SECONDS EAST A DISTANCE OF 419.68 FEET; THENCE NORTH 23 DEGREES 44 MINUTES 25 SECONDS EAST A DISTANCE OF 57.54 FEET; THENCE ALONG THE CENTER OF FRIAR BRANCH , BEING THE SOUTHERN LINE OF THE MIKEL PROPERTY AS DESCRIBED IN DEED BOOK 4364, PAGE 130 AND THE SPENCER PROPERTY AS DESCRIBED IN DEED BOOK 1140, PAGE 208 AND 216 THE FOLLOWING CALLS, SOUTH 44 DEGREES 07 MINUTES 07 SECONDS EAST A DISTANCE OF 83.06 FEET; THENCE SOUTH 65 DEGREES 45 MINUTES 39 SECONDS EAST A DISTANCE OF 160.82 FEET; THENCE SOUTH 46 DEGREES 50 MINUTES 56 SECONDS EAST A DISTANCE OF 54.53 FEET; THENCE SOUTH 35 DEGREES 26 MINUTES 49 SECONDS EAST A DISTANCE OF 52.51 FEET; THENCE SOUTH 73 DEGREES 24 MINUTES 47 SECONDS EAST A DISTANCE OF 114.45 FEET; THENCE ON A COURSE THROUGH SAID CITY OF CHATTANOOGA PROPERTY THE FOLLOWING CALLS, SOUTH 24 DEGREES 16 MINUTES 09 SECONDS WEST A DISTANCE OF 66.37 FEET; THENCE NORTH 70 DEGREES 08 MINUTES 35 SECONDS WEST A DISTANCE OF 863.65 FEET TO THE POINT OF BEGINNING.

ALL CONTAINING 80,578 SQUARE FEET (MORE OR LESS).

EXHIBIT E CONSERVATION EASEMENT 10

BEING A PORTION OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8892, PAGE 756 AS RECORDED IN THE REGISTER'S OFFICE OF HAMILTON COUNTY, TENNESSEE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8566, PAGE 804 AND ON THE NORTHERN LINE OF LOT 226, HICKORY CREEK TOWNHOMES AS RECORDED IN

PLAT BOOK 47, PAGE 215; THENCE ALONG SAID LOT 226, NORTH 68 DEGREES 50 MINUTES 15 SECONDS WEST A DISTANCE OF 18.89 FEET; THENCE ALONG THE WESTERN PROPERTY LINE OF LOTS 226,225,224,223,222,221,220,219,218,217,216,215,214,213,212,211 AND A PORTION LOT 210, HICKORY CREEK TOWNHOMES THE FOLLOWING CALLS, SOUTH 23 DEGREES 21 MINUTES 26 SECONDS WEST A DISTANCE OF 247.00 FEET; THENCE NORTH 65 DEGREES 55 MINUTES 13 SECONDS WEST A DISTANCE OF 16.71 FEET; THENCE SOUTH 23 DEGREES 05 MINUTES 24 SECONDS WEST A DISTANCE OF 651.02 FEET; THENCE ALONG THE EASTERN LINE OF THE ARMSRTONG PROPERTY AS DESCRIBED IN DEED BOOK 1566, PAGE 501 AND THE WESTERN LINE OF THE SUBJECT PROPERTY THE FOLLOWING CALLS, NORTH 22 DEGREES 07 MINUTES 19 SECONDS WEST A DISTANCE OF 277.15 FEET; THENCE NORTH 44 DEGREES 48 MINUTES 19 SECONDS WEST A DISTANCE OF 102.32 FEET; THENCE NORTH 20 DEGREES 31 MINUTES 30 SECONDS WEST A DISTANCE OF 317.06 FEET; THENCE NORTH 00 DEGREES 26 MINUTES 11 SECONDS WEST A DISTANCE OF 143.61 FEET; THENCE NORTH 29 DEGREES 43 MINUTES 51 SECONDS EAST A DISTANCE OF 225.24 FEET; THENCE NORTH 23 DEGREES 13 MINUTES 04 SECONDS WEST A DISTANCE OF 131.62 FEET; THENCE NORTH 17 DEGREES 40 MINUTES 27 SECONDS EAST A DISTANCE OF 115.57 FEET; THENCE NORTH 34 DEGREES 27 MINUTES 19 SECONDS WEST A DISTANCE OF 94.89 FEET; THENCE NORTH 07 DEGREES 38 MINUTES 32 SECONDS WEST A DISTANCE OF 161.55 FEET; THENCE NORTH 21 DEGREES 34 MINUTES 52 SECONDS EAST A DISTANCE OF 95.48 FEET; THENCE NORTH 29 DEGREES 59 MINUTES 12 SECONDS EAST A DISTANCE OF 266.74 FEET; THENCE NORTH 29 DEGREES 14 MINUTES 24 SECONDS EAST A DISTANCE OF 98.40 FEET; THENCE NORTH 21 DEGREES 54 MINUTES 51 SECONDS WEST A DISTANCE OF 270.95 FEET; THENCE NORTH 06 DEGREES 31 MINUTES 58 SECONDS EAST A DISTANCE OF 137.70 FEET; THENCE NORTH 65 DEGREES 11 MINUTES 26 SECONDS WEST A DISTANCE OF 61.28 FEET; THENCE NORTH 34 DEGREES 22 MINUTES 32 SECONDS WEST A DISTANCE OF 119.21 FEET; THENCE ALONG THE SOUTHERN RIGHT-OF-WAY OF STANDIFER GAP ROAD THE FOLLOWING CALLS, NORTH 24 DEGREES 53 MINUTES 06 SECONDS EAST A DISTANCE OF 62.45 FEET; THENCE ALONG A CURVE TO THE RIGHT AN ARC LENGTH OF 82.08 FEET; THENCE NORTH 59 DEGREES 06 MINUTES 21 SECONDS EAST A DISTANCE OF 12.15 FEET; THENCE ALONG THE CENTER OF FRIAR BRANCH AND THE WESTERN LINE OF THE CORKER PROPERTY AS DESCRIBED IN DEED BOOK 1793, PAGE 42 THE FOLLOWING CALLS, SOUTH 34 DEGREES 15 MINUTES 36 SECONDS EAST A DISTANCE OF 5.39 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 48 SECONDS WEST A DISTANCE OF 86.74 FEET; THENCE SOUTH 35 DEGREES 20 MINUTES 19 SECONDS EAST A DISTANCE OF 70.23 FEET; THENCE SOUTH 66 DEGREES 14 MINUTES 41 SECONDS EAST A DISTANCE OF 58.80 FEET; THENCE SOUTH 39 DEGREES 43 MINUTES 19 SECONDS EAST A DISTANCE OF 41.45 FEET; THENCE SOUTH 20 DEGREES 38 MINUTES 16 SECONDS EAST A DISTANCE OF 34.37 FEET; THENCE CONTINUING ALONG SAID CENTER OF FRIAR BRANCH AND BEING THE WESTERN LINE OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8566, PAGE 804 THE

FOLLOWING CALLS, SOUTH 20 DEGREES 30 MINUTES 22 SECONDS WEST A DISTANCE OF 50.68 FEET; THENCE SOUTH 03 DEGREES 35 MINUTES 21 SECONDS WEST A DISTANCE OF 79.73 FEET; THENCE SOUTH 17 DEGREES 07 MINUTES 08 SECONDS EAST A DISTANCE OF 69.54 FEET; THENCE SOUTH 22 DEGREES 31 MINUTES 07 SECONDS EAST A DISTANCE OF 177.87 FEET; THENCE SOUTH 34 DEGREES 05 MINUTES 16 SECONDS EAST A DISTANCE OF 170.60 FEET; THENCE SOUTH 14 DEGREES 25 MINUTES 22 SECONDS EAST A DISTANCE OF 67.36 FEET; THENCE SOUTH 38 DEGREES 04 MINUTES 34 SECONDS EAST A DISTANCE OF 193.32 FEET; THENCE ON A COURSE THROUGH SUBJECT PROPERTY THE FOLLOWING CALLS, SOUTH 01 DEGREES 40 MINUTES 02 SECONDS WEST A DISTANCE OF 72.63 FEET; THENCE SOUTH 34 DEGREES 08 MINUTES 52 SECONDS EAST A DISTANCE OF 128.80 FEET; THENCE SOUTH 29 DEGREES 04 MINUTES 06 SECONDS EAST A DISTANCE OF 129.70 FEET; THENCE ALONG SAID CENTER OF FRIAR BRANCH AND THE WESTERN LINE OF THE CITY OF CHATTANOOGA PROPERTY AS DESCRIBED IN DEED BOOK 8566, PAGE 804 THE FOLLOWING CALLS, SOUTH 00 DEGREES 58 MINUTES 09 SECONDS WEST A DISTANCE OF 101.46 FEET; THENCE SOUTH 05 DEGREES 54 MINUTES 34 SECONDS WEST A DISTANCE OF 168.78 FEET; THENCE SOUTH 04 DEGREES 29 MINUTES 47 SECONDS WEST A DISTANCE OF 85.89 FEET; THENCE SOUTH 15 DEGREES 52 MINUTES 59 SECONDS EAST A DISTANCE OF 66.19 FEET TO THE POINT OF BEGINNING.

ALL CONTAINING 871,279 SQUARE FEET.

The purpose of this Conservation Easement is: (1) to enable the Protected Property to benefit from the Tennessee Stream Mitigation Program (“TSMP”) improvements described below in Article VII in order to protect certain of the Protected Property’s natural, scenic, biological and aquatic features and characteristics; (2) to prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with these features and characteristics; and (3) to assure that there is no impairment or degradation to the quality of aquatic resources on the Protected Property after mitigation improvements are constructed on the Property under this Conservation Easement.

Upon execution of this Conservation Easement, Grantee, at its sole cost and expense, shall design, implement, construct, perform, install and, for the required period, maintain those certain stream mitigation improvements which Grantee deems reasonably necessary pursuant to the TSMP in accordance with plans and specifications developed or to be developed by Grantees in their sole discretion for that purpose.

## ARTICLE I. DURATION OF AGREEMENT

This Conservation Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that is enforceable against Grantor or Grantee shall also be enforceable against their successors and/or assigns.

## ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

**Prohibited Uses.** Any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement or applicable federal, state, or local laws, regulations and/or ordinances that is not expressly reserved is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

**Water Quality.** No activities causing or contributing to pollution or alteration of water bodies will be conducted, permitted, or allowed to continue on the Protected Property; furthermore, no activities that would materially adversely affect the water purity will be conducted, permitted, or allowed to continue, to the detriment of water purity or that materially alter natural water levels or drainage, or that materially contribute to sedimentation, or that materially alter surface water flow, in or over the Protected Property or into any surface waters adjacent thereto, or that may otherwise cause material soil degradation or erosion; nor shall any diking, dredging, draining, piping, or other activity causing any alteration to streams be conducted, permitted, or allowed to continue on the Protected Property, except activities to restore natural hydrology, or stream enhancement, as permitted by state and other appropriate authorities. There shall be no material alteration or manipulation of the streams, creeks, ponds, water courses and/or wells located on the Protected Property. Disruption of natural drainage patterns and creation of artificial drainage patterns is prohibited. Wells supporting traditional farming activities may be drilled.

**Alteration, Excavation and Fill.** Grantor reserves unto itself, its successors and assigns, the right to maintain such structures as currently exist on the Protected Property, including the right to replace, but not expand on, the same site and footprint, with like structures. There shall be no constructing of any new temporary or permanent structure or facility on or above the Protected Property. There shall be no filling, excavating, mining or drilling, removal of topsoil, sand, gravel, rock, minerals, hydrocarbons or other materials, nor any building of new roads except as expressly allowed by other provisions of this instrument, or change in the topography or surface hydrology of the Protected Property in any manner. Water lines for livestock and/or irrigation may be installed only in accordance with TSMP approved construction plans.

**Vegetation.** Grantor shall not harvest trees, shrubs or plants on the Protected Property; provided, however, the foregoing shall not prohibit Grantor from removing trees, shrubs or plants on the Protected Property if the same are lying within the Stream, are diseased or infested with pests, or where such removal or cutting is done to create nature trails or fire

breaks on the Protected Property. There shall be no use of pesticides or biocides, except to the extent necessary to eliminate non-native plants and animals in a manner consistent with generally accepted conservation management practices and standards, as set forth in a conservation management plan, and in any event, such use may not interfere with the purpose of this Conservation Easement.

**Access.** Grantor retains access to the Protected Property via existing roads and paths. Use of mechanized vehicles and/or horseback riding is permitted only on existing paths and only so long as such use does not jeopardize riparian areas. New roads, trails or pathways may be constructed only in accordance with the purposes of this Conservation Easement. Motorized recreational vehicles may not be operated off of designated roads or trails on the Protected Property. Any off-road or recreational vehicle use is prohibited other than as set forth herein.

**Agriculture.** Grantor shall not use the Protected Property for any “livestock agricultural uses.” For purposes of this Conservation Easement, “livestock agricultural uses” is defined as breeding, raising, boarding, pasturing and grazing livestock of any nature and description, row crop, haying. “Livestock” is defined cattle, horses, goats, sheep, llamas, chickens, turkeys and similar animals.

**Construction and Maintenance of the Stream Mitigation Improvements.** Nothing herein shall be interpreted or construed as prohibiting Grantor or Grantee from implementing, constructing, performing, installing and maintaining the Stream Mitigation Improvements on the Protected Property.

**Improvements.** All improvements by Grantor shall be subject to the prior written approval of the Grantee and shall be in accordance with the terms and conditions of the TSMP.

### ARTICLE III. ENFORCEMENT AND REMEDIES

A. Upon any breach of a term of this Conservation Easement by Grantor, Grantee may exercise any or all of the following remedies:

- (1) institute suits to enjoin any breach or enforce any term by temporary, and/or permanent injunction either prohibitive or mandatory, including a temporary restraining order; and
- (2) require that the Protected Property be restored promptly and substantially to the condition that existed immediately prior to any such breach.

The remedies granted herein shall be cumulative and shall be in addition to all appropriate legal proceedings and any other rights and remedies available to Grantor or Grantee as applicable at law or equity. If Grantor is found to have breached any of Grantor's obligations under this Conservation Easement, Grantor shall reimburse Grantee for any costs or expenses incurred by Grantee, including court costs and reasonable attorney's fees.

B. No failure on the part of either party to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of either party to enforce the same in the event of a subsequent breach or default.

C. Grantee, and its employees and agents, shall have the right to enter the Protected Property at reasonable times for the purpose of inspecting the Protected Property to determine whether the Grantor is complying with the terms of this Conservation Easement; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate or mitigate a suspected or actual violation of this Conservation Easement that is likely to cause material or irreparable harm, such entry shall be made upon sending prior reasonable notice to Grantor's address as set forth in Article VI.K. This right of inspection does not include access to the interior of buildings and structures located on the Protected Property. Grantee agrees to indemnify and hold Grantor harmless of any injury resulting from any such entry as more specifically set forth in Article VI.P.

#### ARTICLE IV. NO PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the public the right to enter the Protected Property for any purpose whatsoever.

#### ARTICLE V. MISCELLANEOUS

A. Grantee may assign, upon prior written notice to Grantor, its rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purpose of this Conservation Easement will be maintained; and, if any such assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth, or if the proceedings are instituted for condemnation of this Conservation Easement, the rights, including rights of enforcement, shall revert to Grantee; and if Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then Grantor, its successors or assigns, shall institute in a court of competent jurisdiction a proceeding to appoint an appropriate successor as Grantee. Any such successor shall be a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by Grantee of its rights under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the conservation purpose of this Conservation Easement.

B. In order to provide Grantee with notice of a change in ownership or other transfer of an interest in the Protected Property, Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Protected Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated.

C. Grantee agrees to hold this Conservation Easement exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

D. Termination, extinguishment, eminent domain, sale or partial sale.

(1) If circumstances arise in the future that frustrate the purpose of this Conservation Easement or render this Conservation Easement unfeasible to accomplish, this Conservation Easement may only be terminated or extinguished with respect to all or part of the Protected Property by mutual consent of the Grantor and Grantee, their successors or assigns, or by judicial proceedings in a court of competent jurisdiction in the State of Tennessee.

(2) If all or any part of the Protected Property is taken under the power of eminent domain by public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses, including attorneys' fees, reasonably incurred by the parties to this Conservation Easement in connection with such taking shall be paid out of the recovered proceeds. Grantee hereby assigns any condemnation proceeds to which it might otherwise be entitled, or which may be awarded to Grantee, to Grantor. The respective rights of Grantor and Grantee set forth in this section (D) shall be in addition to, and not in limitation of, any rights they may have at common law with respect to a modification or termination of this Conservation Easement by reason of the exercise of powers of eminent domain as aforesaid.

(3) The terms of this section (D) are subject to any applicable Tennessee or federal statutes.

E. Grantor and Grantee may jointly amend this Conservation Easement in writing. Proposed amendments will not be considered unless in the reasonable discretion of Grantee they have no material adverse effect on the conservation values. Grantor and Grantee intend that the Conservation Easement will confine the use of the Protected Property to activities that are not inconsistent with the purposes of this Conservation Easement. So long as any amendment does not have any material adverse effect on the Conservation Values, Grantee agrees to sign any and all documents necessary to give effect to any amendment.

F. This Conservation Easement shall be construed to promote the purposes of the Conservation Agreement Act of 1981, *Tennessee Code Annotated*, § 66-9-301 *et seq*, and the purpose of this Conservation Easement.

G. The terms of this Conservation Easement do not replace, abrogate or otherwise set aside any local, state or federal laws, requirements or restrictions imposing limitations on the use of the Protected Property.

H. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Conservation Easement. If any term is found to be invalid, the

remainder of the terms of this Conservation Easement, and the application of such term to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

I. Grantee shall record this instrument in a timely fashion with the Register's Office of Hamilton County, Tennessee, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

J. Grantor has provided, or shall provide, a copy of this Conservation Easement to all mortgagees, and to all beneficiaries and/or trustees of deeds of trust (collectively "Lienholders"), already affecting the Protected Property or which will affect the Protected Property prior to the recording of this Conservation Easement, and shall also provide notice to Grantee of all such Liens.

K. Any notices that either party desires or is required to give to the other shall be in writing and either served personally or sent by First Class Mail, postage prepaid, addressed as follows:

To Grantor:                   City of Chattanooga  
                                  Department of Public Works  
                                  1250 Market Street, Suite 2100,  
                                  Chattanooga, TN 37402

with a copy to:             City Attorney's Office  
                                  801 Broad Street, Suite 400  
                                  Chattanooga, TN 37402

To Grantee:                   Tennessee Wildlife Resources Foundation, Inc.  
                                  5000 Linbar Drive, Suite 265  
                                  Nashville, TN 37211

or to such other address as either party from time to time shall designate by written notice to the other.

L. In any case where the terms of this Conservation Easement require the permission, consent or approval ("Approval") of Grantee, approval shall be requested by written notice to Grantee prior to the proposed activity or use and the Approval shall not be unreasonably withheld, conditioned or delayed by the Grantee. Grantee shall consider the specific term of this Conservation Easement requiring the Approval and the purpose of this Conservation Easement. The Approval shall be deemed to have been given unless within sixty (60) days after receipt of notice Grantee mails notice to Grantor of disapproval and the reason therefore. In the event of a conflict between this paragraph and a term requiring Approval, the term requiring Approval shall prevail.

M. Grantee assumes liability for all real property ad valorem taxes and special assessments imposed upon the Conservation Easement and improvements thereon, if any.

N. Grantee assumes all responsibilities and shall bear all costs and liabilities of any kind related to carrying out the purposes of this Conservation Easement on the Protected Property (with the exception of existing Improvements, underground or overhead utility lines)

O. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

P. Grantee shall hold harmless, indemnify, and defend Grantor and its employees, officers, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantor's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring in, on, or about the Protected Property, regardless of cause, unless due solely to the negligence of any of Grantor's Indemnified Parties.

Q. Grantor shall indemnify and hold harmless Grantee up to the limits of liability established by the Tennessee Governmental Tort Act, T.C.A. § 29-20-101, *et seq.*, such as may exist from time to time, from any and all claims arising from or relating to the redirection of the stream abutting Lot Nos. 10-48 of Hickory Creek Subdivision as shown on Plats of record in Plat Book 40, page 57 and Plat Book 40, page 126, in the Register's Office of Hamilton County, Tennessee.

R. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude in perpetuity with the Protected Property.

S. The terms "Grantor" and "Grantee" wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors and assigns and the above-named Grantee and its successors and assigns.

T. A party's rights and obligations under this Conservation Easement terminate upon the party's interest in the Conservation Easement or Protected Property, except that liability for acts or omissions prior to the transfer shall survive transfer.

U. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

V. All exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference for all purposes.

W. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

#### ARTICLE VI. STREAM MITIGATION PLAN AND IMPROVEMENTS.

A. Grantor and Grantee acknowledge that Grantee has selected Grantor and the Protected Property as participants in the Tennessee Stream Mitigation Program (“TSMP”). A portion of stream entitled to benefit from the Tennessee Stream Mitigation Program is located within the Property and is in need of specific improvements to mitigate the impaired or degraded condition of the physical habitat of the stream. By executing this Conservation Easement, Grantee, at its sole cost and expense, agrees to design a mitigation plan for the stream which may include but is not limited to the following activities:

**Stream Restoration:** return the significantly degraded, disturbed, or totally altered stream, including the adjacent riparian zone and flood-prone area, to a natural stable condition based on reference conditions. Grantee may, depending upon the condition of the Protected Property, rebuild the appropriate channel pattern, profile, dimensions, and riparian zone to the extent that watershed conditions will allow.

**Bank Stabilization:** permanently stabilize the actively eroding stream banks on the Protected Property. Grantee shall re-slope vertical banks and use bio-engineering techniques that incorporate living materials, rock, and structures that reduce the erosive near-bank velocities and provide in-stream habitat, to the extent required to stabilize the stream banks on the Protected Property.

**Riparian Restoration:** replace the native riparian vegetation that has been removed from the degraded stream(s) on the Protected Property.

**Livestock Exclusion:** protect the streams on the Protected Property from unrestricted livestock access in areas where the presence of livestock has degraded the stream. Grantee may construct fences with limited-access crossings and provide Grantor with an alternative off-stream watering system to the extent required to protect the stream(s) from livestock access.

B. Stream Mitigation Improvements to be Installed by Grantee. By executing this Conservation Easement, Grantee, at its sole cost, agrees to implement, construct, perform and install any of the mitigation improvements on the Property which Grantee deems to be reasonably necessary to accomplish the mitigation purposes described in Article VI, Section A (the “Stream Mitigation Improvements”).

C. Maintenance of Stream Mitigation Improvements. For a period of 5 years upon completion of the project, Grantee shall be responsible for maintaining the Stream Mitigation Improvements in good order and repair at Grantee's sole cost. Grantor shall be responsible for maintaining stream crossings and removing debris in accordance with the original specifications for the stream mitigation. Upon the expiration of the Grantee maintenance period, Grantor shall only be responsible to maintain any livestock fencing necessary to maintain the Stream Mitigation Improvements in good order and repair at Grantor's sole cost in perpetuity. If Grantor fails to perform the maintenance obligations required pursuant to this Article VI, Grantee may elect to deem such failure a violation of the terms of this Conservation Easement and pursue any remedy available under Article III of this Conservation Easement.

D. Stream Crossings. The Grantor is responsible for all future maintenance and repair of such structures and crossings. The Grantor may repair, maintain, improve, and/or modify such crossings and structures as currently exist, including replacing but not expanding, on the same site and with the same footprint, with like structures, contingent upon the prior written consent of the Grantee.

E. Right to Maintain and Replace Existing Structures. The Grantor retains the right to access, maintain, renovate and replace the existing structure(s) as noted in the Restoration Plan in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure. Prior to beginning renovation or replacement of the existing structures, the Grantor will provide a written plan to the Grantee for review and approval. Such approval shall not be unreasonably withheld.

F. The Grantor agrees to incorporate by reference this Conservation Easement in any deed or other legal instrument whereby Grantor divests itself in any interest in all or a portion of the Protected Property, including, but not limited to, a leasehold interest. Grantor further agrees to give written notice to Grantee of any interest at least thirty (30) days prior to the date of any such transfer.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands and seals the day and year above written.

Grantor

By: \_\_\_\_\_  
Name, Title

STATE OF TENNESSEE:

COUNTY of \_\_\_\_\_:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me the subscriber, a Notary Public of the State aforesaid, personally appeared \_\_\_\_\_, \_\_\_\_\_ of the City of Chattanooga, known to me (or satisfactorily proven) to be the \_\_\_\_\_ of the City of Chattanooga, Grantor of the foregoing Conservation Easement and who took oath and stated that s/he is authorized to execute this Conservation Easement on behalf of the Grantor and acknowledged that he/she executed the same for the purposes therein contained and in my presence signed and sealed the same.

\_\_\_\_\_, Notary Public

Commission expiration:

ACCEPTED BY GRANTEE:

Grantee

BY \_\_\_\_\_  
Joey Woodard, Executive Director

I hereby swear or affirm that to the best of Affiant's knowledge, information and belief, the actual consideration for the transfer is \$0.00.

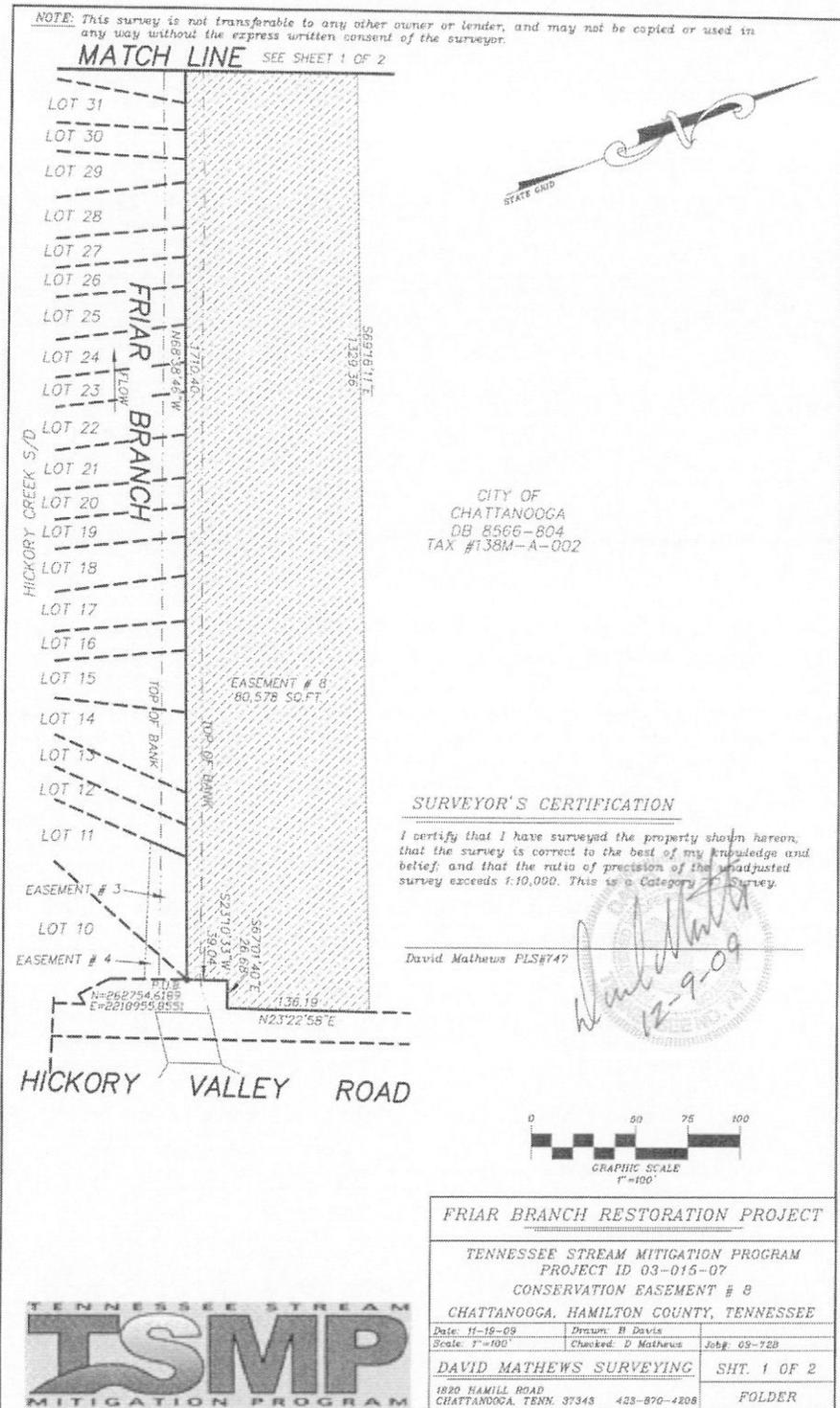
\_\_\_\_\_  
Affiant/Grantee

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC AT LARGE

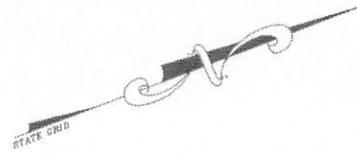
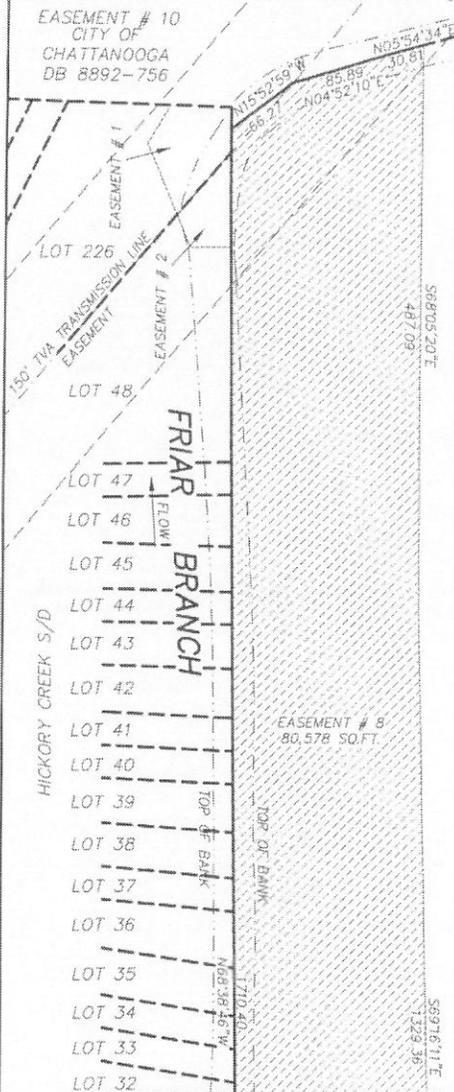
My Commission Expires: \_\_\_\_\_

# Exhibit A



NOTE: This survey is not transferable to any other owner or lender, and may not be copied or used in any way without the express written consent of the surveyor.

EASEMENT # 10  
CITY OF  
CHATTANOOGA  
DB 8892-756

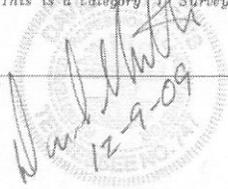


CITY OF  
CHATTANOOGA  
DB 8566-804  
TAX #136M-A-002

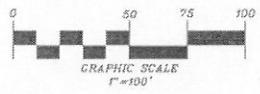
**SURVEYOR'S CERTIFICATION**

I certify that I have surveyed the property shown hereon; that the survey is correct to the best of my knowledge and belief; and that the ratio of precision of the unadjusted survey exceeds 1:10,000. This is a Category 1 Survey.

David Mathews PLS#747

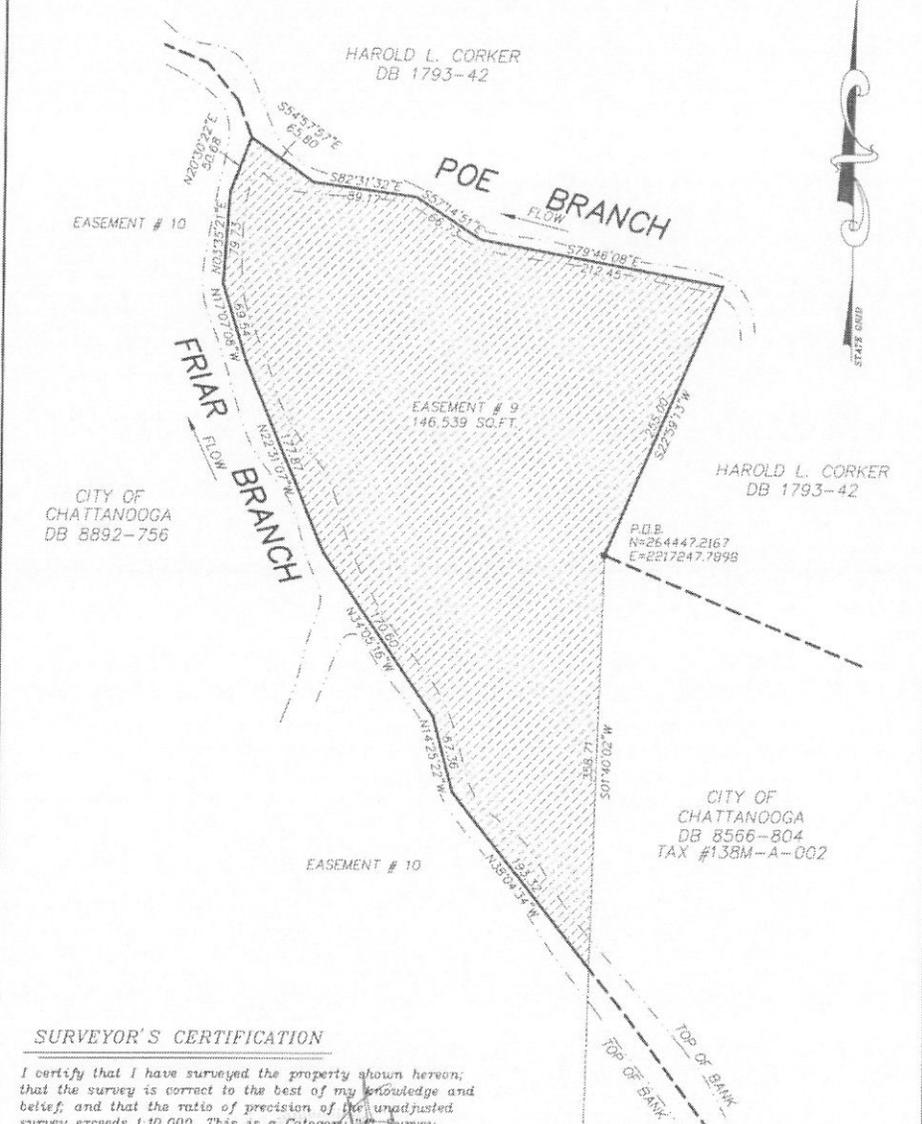


MATCH LINE SEE SHEET 1 OF 2



<b>FRIAR BRANCH RESTORATION PROJECT</b>		
TENNESSEE STREAM MITIGATION PROGRAM PROJECT ID 03-015-07 CONSERVATION EASEMENT # 8 CHATTANOOGA, HAMILTON COUNTY, TENNESSEE		
Date: 11-18-09	Drawn: B Davis	Job#: 09-728
Scale: 1"=100'	Checked: D Mathews	
<b>DAVID MATHEWS SURVEYING</b>		<b>SHT. 2 OF 2</b>
1620 HAMIL ROAD CHATTANOOGA, TENN. 37343 423-870-4208		<b>FOLDER</b>

NOTE: This survey is not transferable to any other owner or lender, and may not be copied or used in any way without the express written consent of the surveyor.

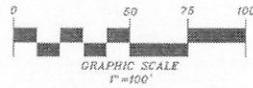


**SURVEYOR'S CERTIFICATION**

I certify that I have surveyed the property shown hereon; that the survey is correct to the best of my knowledge and belief, and that the ratio of precision of the unadjusted survey exceeds 1:10,000. This is a Category "A" survey.

David Mathews PLS#747

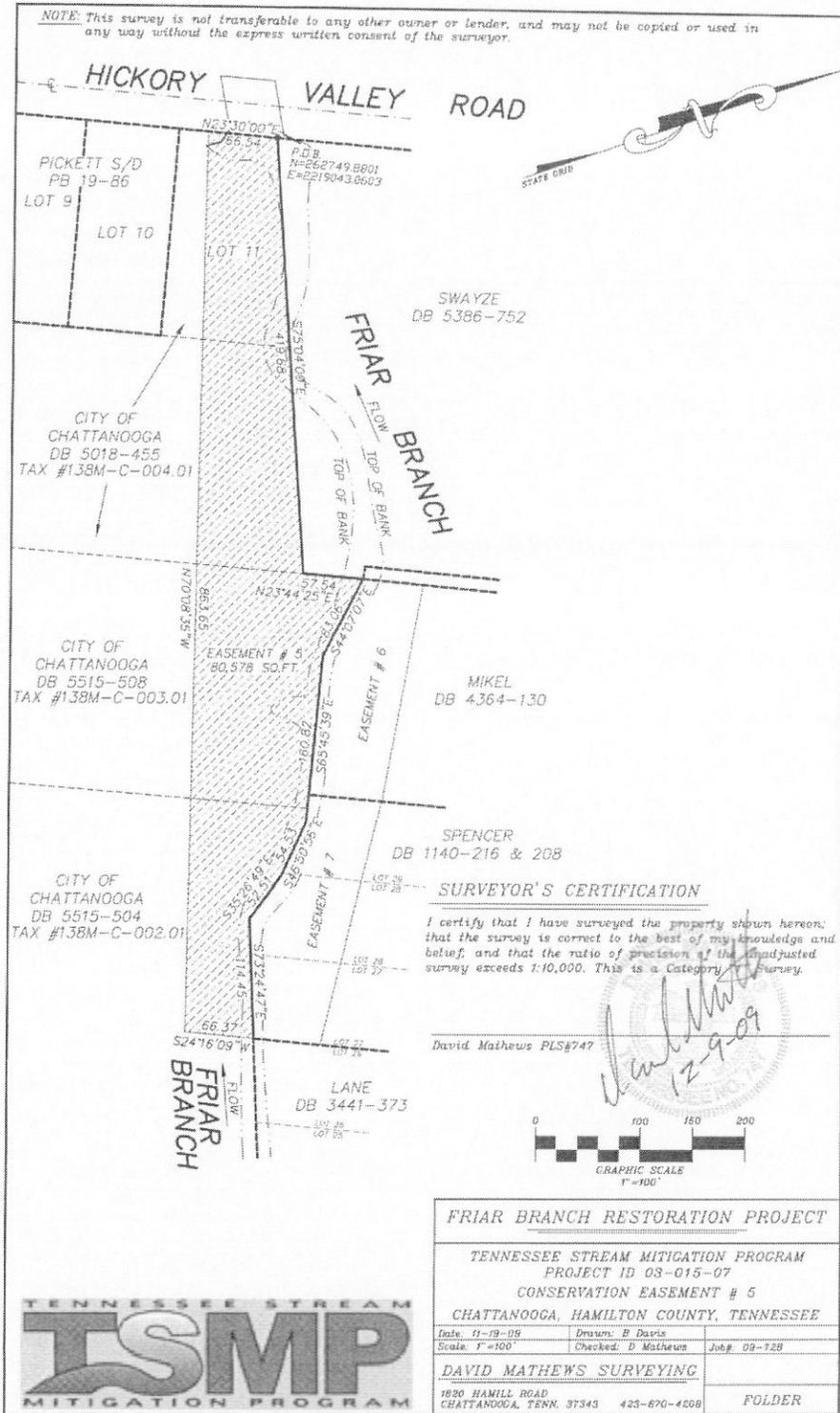
*David Mathews*  
12-9-09



**FRIAR BRANCH RESTORATION PROJECT**

TENNESSEE STREAM MITIGATION PROGRAM		
PROJECT ID 03-015-07		
CONSERVATION EASEMENT # 9		
CHATTANOOGA, HAMILTON COUNTY, TENNESSEE		
Date: 11-30-09	Drawn: B Davis	
Scale: 1"=100'	Checked: D Mathews	Job: 09-728
<b>DAVID MATHEWS SURVEYING</b>		
1930 HAMIL ROAD CHATTANOOGA, TENN. 37343 423-870-4208		FOLDER

Exhibit B, C, D



# Exhibit E

