

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE A WATER LINE EASEMENT AGREEMENT WITH FATD-H, LLC TO ESTABLISH A PERMANENT WATER LINE EASEMENT WITHIN A PORTION OF PROPERTY JOINTLY-OWNED BY HAMILTON COUNTY AND THE CITY OF CHATTANOOGA AT ENTERPRISE SOUTH INDUSTRIAL PARK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into and execute a water line easement agreement with FATD-H, LLC to establish a permanent water line easement within a portion of property jointly-owned by Hamilton County and the City of Chattanooga at Enterprise South Industrial Park.

ADOPTED: _____, 2013

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: September 17, 2013

Preparer: Cary Bohannon

Department: General Services

Brief Description of Purpose for Resolution/Ordinance: _____ Res./Ord. # _____ Council District # _____ 6

A RESOLUTION AUTHORIZING THE CITY MAYOR TO ENTER INTO AND EXECUTE A WATER LINE EASEMENT AGREEMENT WITH FATD-H LLC TO ESTABLISH A PERMANENT WATER LINE EASEMENT WITHIN A PORTION OF PROPERTY JOINTLY OWNED BY HAMILTON COUNTY AND THE CITY OF CHATTANOOGA AT ENTERPRISE SOUTH INDUSTRIAL PARK.

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

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)

Hamilton County has a similar resolution set to be approved by the County Commission on 09-18-13. In addition to this easement at ESIP, their resolution also includes an easement for the County's Redoubt property.

Approved by: [Signature]

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

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

Revised: 1/26/09

A RESOLUTION AUTHORIZING THE CITY MAYOR TO ENTER INTO AND EXECUTE A WATER LINE EASEMENT AGREEMENT WITH FATD-H LLC TO ESTABLISH A PERMANENT WATER LINE EASEMENT WITHIN A PORTION OF PROPERTY JOINTLY-OWNED BY HAMILTON COUNTY AND THE CITY OF CHATTANOOGA AT ENTERPRISE SOUTH INDUSTRIAL PARK.

WHEREAS, Hamilton County (County) jointly owns property with the City of Chattanooga (City) at Enterprise South Industrial Park (ESIP) identified by State Tax Map No. 130-001 (part of); and,

WHEREAS, a portion of this property is needed by FATD-H LLC (the Company) for the purpose of installing and maintaining water lines to provide fire protection service for the benefit of the American Tire Distributors, Inc. facility at ESIP; and,

WHEREAS, the Company requests that Hamilton County and the City of Chattanooga grant a permanent water line easement, being 10 (ten) feet in width, consisting of 0.16 acres (7,170 square feet), according to terms and conditions described in the attached or similar easement agreements and drawings; and,

WHEREAS, locations of said easements have been reviewed by representatives of Hamilton County and the City of Chattanooga and will not adversely affect the current or future use of the remaining property; and,

WHEREAS, it is in the best interest of Hamilton County and the City of Chattanooga to grant said easements to provide fire protection service to the American Tire Distributors, Inc. facility located within the Enterprise South Industrial Park.

NOW, THEREFORE, BE IT RESOLVED BY THIS LEGISLATIVE BODY IN SESSION ASSEMBLED:

That the City Mayor is hereby authorized to enter into and execute a Water Line Easement Agreement with FATD-H LLC to establish a permanent water line easement for the purpose of installing and maintaining water lines, within a portion of property jointly-owned by Hamilton County and the City of Chattanooga located within the Enterprise South Industrial Park, to provide fire protection service for the benefit of American Tire Distributors, Inc., according to the terms and conditions more particularly described in the attached or similar easement agreement and drawing.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

This Instrument Prepared By and Return To:
Evan A. Allison, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

<u>Grantee of Easements</u>	<u>Party Responsible for Taxes</u>	<u>Tax Map Parcel Nos.</u>
FATD-H LLC c/o Fortress Investment Group 1345 Avenue of the Americas, 46 th Floor New York, NY 10105	Same	Tax Map 130 Parcel 001 (part of)

WATER LINE EASEMENT AGREEMENT

THIS WATER LINE EASEMENT AGREEMENT (the "Agreement") is executed to be effective as of the _____ day of _____, 2013, by and between the **CITY OF CHATTANOOGA, TENNESSEE**, a municipal corporation of the State of Tennessee, and **HAMILTON COUNTY, TENNESSEE**, a political subdivision of the State of Tennessee (collectively "Grantor"), and **FATD-H LLC**, a Delaware limited liability company ("Grantee").

Background:

A. Grantor owns those certain parcels of real property located in Hamilton County, Tennessee, as described in Deed recorded in Book 5690, Page 367 in the Register's Office of Hamilton County, Tennessee (the "Burdened Property").

B. Grantee desires to have easements on, over, across and under the Burdened Property for the purpose of installing water lines for the benefit of improvements on the Grantee's property (the "Benefitted Property") and Grantor has agreed to grant such easements.

Agreement:

NOW THEREFORE, for Ten Dollars (\$10.00) and in consideration of the mutual benefits provided herein by this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree that the above recitals are true and correct and are herein incorporated, and further agree as follows:

1. Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual and permanent water line easement ("Easement") on, over, across and under the portions of the Burdened Property identified on Exhibit "A" attached hereto and made a part hereof in order to install water lines to benefit the Benefitted Property.

2. Grantee agrees that the easement rights granted herein are limited to maintaining water lines for the benefit of the Benefitted Property and that Grantee shall be solely responsible

for all costs to install, maintain, repair and replace the water lines located within the Easement unless any such repair, maintenance, or replacement is required due to the intentional misconduct of Grantor. The easement rights granted to Grantee hereby shall include a right of access on, over and across so much of the Burdened Property as is necessary for access to the Easement for purposes of installing, maintaining, repairing and replacing the water lines to be installed by Grantee within the Easement. Any such entry shall be done in a manner so as to limit the impact of such entry on the Burdened Property. Further, Grantee shall not disturb the surface of the Burdened Property except as is necessary to install and thereafter maintain, repair and replace the water lines. Any surface disturbance of the Burdened Property shall be undertaken and completed promptly in such a manner as to not adversely interfere with the use and enjoyment of the surface of the Burdened Property across which the Easement is located and any disturbance of the surface of the Burdened Property shall be immediately restored to the same or substantially similar conditions as existed prior to such disturbance.

3. Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor, its successors and assigns, and any subsequent owners of all or any portion of the Burdened Property, from all claims, causes of action, and liability, as well as all losses and costs and expenses (including but not limited to attorneys' fees) (collectively "Losses"), arising or resulting from Grantee's actions or negligence, or from Grantee's failure to adhere to the terms of this Agreement or otherwise relating to Grantee's use and enjoyment of the Easement (including but not limited to liability for attractive nuisance), except to the extent that any such Losses arise from the actions or negligence of Grantor.

4. Insurance. Grantee covenants and agrees, at all times during the term of this Easement Agreement, to maintain and keep in force comprehensive general liability insurance against all claims for personal injury, death or property damage occurring on the Easement with minimum limits of not less than \$2,000,000 per occurrence for injury to person, not less than \$2,000,000 for damage to property and not less than \$2,000,000 annual general aggregate per location. Grantor shall be listed as an additional insured on such policy and a certificate evidencing such shall be presented to Grantor not later than three (3) days from the date of this Agreement.

5. No Dedication to Public Use. This Agreement is not intended to, and shall not be construed to dedicate the Easement to the general public, nor shall this Agreement be construed to restrict the use and development of the Burdened Property, except as expressly provided herein.

6. Definition of "Owner". For purposes hereof, the term "Owner" shall mean the Owner of the Burdened Property and any and all successors and assigns of such persons as the Owner of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property, until such time, if any, that such holder of any lien or encumbrance holds fee simple title to such property.

7. Amendment. This Agreement may not be amended or modified except by written instrument signed by the Owner of the Burdened Property and Grantee and duly recorded with the Register's Office of Hamilton County, Tennessee.

8. No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by any party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

9. Binding Effect. This Agreement, and the rights and privileges herein granted, are intended to "run with the land," such that they will be binding upon and inure to the benefit of subsequent Owners of the Burdened Property and the Grantee.

10. Enforcement. The terms and provisions of this Agreement may be enforced by all rights and remedies available at law or in equity. The parties hereto agree and acknowledge that, as the rights and privileges and terms, conditions, and limitations herein contained relate to the use and enjoyment of real property, specific performance of any of the foregoing is an appropriate remedy to be afforded by any court or other forum adjudicating a dispute hereunder.

11. Governing Law. This Agreement shall be governed by and construed, interpreted and applied in accordance with the laws of the State of Tennessee.

12. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall constitute in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

13. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

GRANTOR:

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Andy Berke, Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
Jim M. Coppinger, County Mayor

GRANTEE:

FATD-H LLC, a Delaware limited liability company

By: _____
Print Name: Toshua Paer
Title: Vice President

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

Before me, _____ of the state and county mentioned, personally appeared Andy Berke with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be Mayor (or other officer authorized to execute the instrument) of **CITY OF CHATTANOOGA**, the within named bargainor, a municipal corporation of the State of Tennessee, and that such Mayor executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as Mayor.

Witness my hand and seal, at office in _____, this _____ day of _____, 2013.

Notary Public
Printed Name:

My Commission Expires:

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

Before me, _____ of the state and county mentioned, personally appeared Jim Coppinger with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be County Mayor (or other officer authorized to execute the instrument) of **HAMILTON COUNTY**, the within named bargainor, a political subdivision of the State of Tennessee, and that such County Mayor executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as County Mayor.

Witness my hand and seal, at office in _____, this _____ day of _____, 2013.

Notary Public
Printed Name:

My Commission Expires:

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On August 14, 2013 before me, Francesca Pascucci, Notary Public, personally appeared Joshua Paek, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Francesca Pascucci

(Seal)

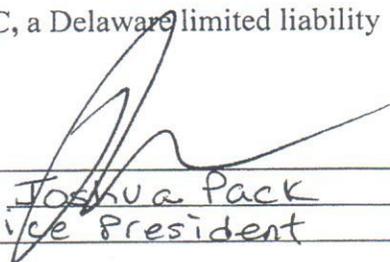
My Commission Expires: Sep 5, 2015



I, Joshua Pack, hereby swear or affirm that, to the best of my knowledge, information and belief, the actual consideration for this transfer, or the value of the property transferred, whichever is greater, is \$10.00, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

Affiant-Grantee:

FATD-H LLC, a Delaware limited liability company

By: 
Print Name: Joshua Pack
Title: Vice President

STATE OF CALIFORNIA
COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me, on this 14 day of August, 2013, by Francesca Pascucci, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Francesca Pascucci
Signature

(seal)

Notary: Francesca Pascucci
Commission No.: 1951169
Commission Expires: Sep 5, 2015



EXHIBIT "A"

WATERLINE EASEMENT TRACT 29
ENTERPRISE SOUTH INDUSTRIAL PARK NORTH OF BONNY OAKS
DRIVE

An easement for a waterline to benefit Tract 29, Enterprise South Industrial Park as shown on plat of record in Plat Book 96, Page 30 in the Register's Office of Hamilton County. Tract 29 is located at 7150 Discovery Drive, City of Chattanooga, Hamilton County, Tennessee and is currently occupied by American Tire Distributors, Tract 29 is currently owned by FATD-H LLC as described in Deed Book 9697, Page 366, R.O.H.C. said easement is ten (10) feet in width being five (5) to each side of the as- built location of the waterline, said waterline easement is located on the City of Chattanooga, Hamilton County property as described in Deed Book 5690, Page 367, R.O.H.C. the centerline of said ten (10) wide easement being more particularly described;

COMMENCING at a point where the centerline of Bonny Oaks Drive and the centerline of Volkswagen Drive intersect;

THENCE North 32 degrees, 53 minutes, 30 seconds West a distance of 182.68 feet to a point located on the Northern margin of Bonny Oaks Drive at the centerline of the ten (10) wide easement, said point is located at Tennessee State Grid Coordinates of North=268,895.7244 and East=2,223,566.8705, coordinates based on the City of Chattanooga-Hamilton County Monument Network System (CHAM System) North American Datum 1983 (NAD 83) all bearings are based on said system, all distances are horizontal ground, said location marks the POINT OF BEGINNING.

THENCE North 33 degrees, 46 minutes, 43 seconds East a distance of 37.00 feet to a point;

THENCE South 56 degrees, 45 minutes, 36 seconds East a distance of 32.00 feet to a point;

THENCE North 79 degrees, 12 minutes, 16 seconds East a distance of 63.00 feet to a point;

THENCE North 56 degrees, 11 minutes, 41 seconds East a distance of 91.00 feet to a point;

THENCE North 47 degrees, 35 minutes, 23 seconds East a distance of 131.00 feet to a point;

THENCE North 43 degrees, 18 minutes, 51 seconds East a distance of 48.00 feet to a point;

THENCE North 20 degrees, 37 minutes, 00 seconds East a distance of 206.00 feet to a point;

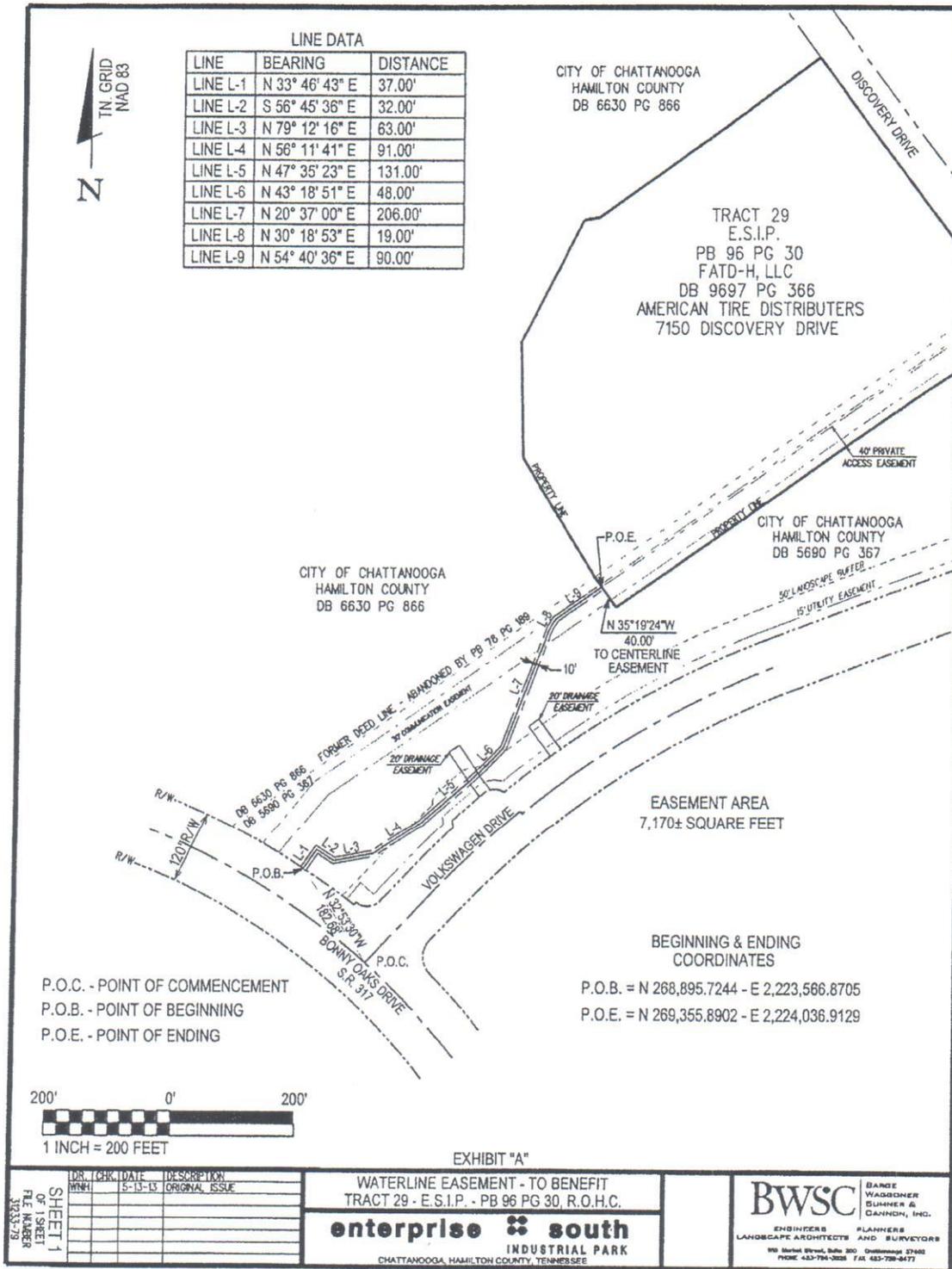
THENCE North 30 degrees, 18 minutes, 53 seconds East a distance of 19.00 feet to a point:

THENCE North 54 degrees, 40 minutes, 36 seconds East a distance of 90.00 feet to a point located on the Southwest boundary of Tract 29, said point is located at Tennessee State Grid Coordinates of N=269,355.8902 and East=2,224,036.9129 and marks the POINT OF ENDING.

Subject to any rights-of-way, easements, restrictions, ordinances, agreements, zoning and any other matters of title that may exist.

Said waterline easement herein described contains 7,170 square feet, more or less, as shown on the attached drawing Exhibit "A" prepared by Barge, Waggoner, Sumner and Cannon, Inc. having project number 31233-79.

EXHIBIT "B"





Hamilton County Board of Commissioners RESOLUTION

No. 913-23

A RESOLUTION AUTHORIZING THE COUNTY MAYOR TO ENTER INTO AND EXECUTE WATER LINE EASEMENT AGREEMENTS WITH FATD-H LLC TO ESTABLISH PERMANENT WATER LINE EASEMENTS WITHIN PORTIONS OF PROPERTY OWNED BY HAMILTON COUNTY AT THE TYNER REDOUBT RECREATION AREA AND PROPERTY JOINTLY-OWNED BY HAMILTON COUNTY AND THE CITY OF CHATTANOOGA AT ENTERPRISE SOUTH INDUSTRIAL PARK.

- WHEREAS, Hamilton County (County) owns certain property known as the Tyner Redoubt Recreation Area identified by State Tax Map No. 139-001.01, and jointly owns property with the City of Chattanooga (City) at Enterprise South Industrial Park (ESIP) identified by State Tax Map No. 130-001 (part of); and,
- WHEREAS, a portion of this property is needed by FATD-H LLC (the Company) for the purpose of installing and maintaining water lines to provide fire protection service for the benefit of the American Tire Distributors, Inc. facility at ESIP; and,
- WHEREAS, the Company requests that Hamilton County and the City of Chattanooga grant permanent water line easements, being 10 (ten) feet in width, consisting of 0.23 acres (10,140 square feet), according to terms and conditions described in the attached or similar easement agreements and drawings; and,
- WHEREAS, locations of said easements have been reviewed by representatives of Hamilton County and the City of Chattanooga and will not adversely affect the current or future use of the remaining property; and,
- WHEREAS, it is in the best interest of Hamilton County and the City of Chattanooga to grant said easements to provide fire protection service to the American Tire Distributors, Inc. facility located within the Enterprise South Industrial Park.

NOW, THEREFORE, BE IT RESOLVED BY THIS LEGISLATIVE BODY IN SESSION ASSEMBLED:

That the County Mayor is hereby authorized to enter into and execute Water Line Easement Agreements with FATD-H LLC to establish permanent water line easements for the purpose of installing and maintaining water lines, within portions of property described above, owned by Hamilton County at the Tyner Redoubt Recreation Area and on property jointly-owned by Hamilton County and the City of Chattanooga located within the Enterprise South Industrial Park, to provide fire protection service for the benefit of American Tire Distributors, Inc., according to the terms and conditions more particularly described in the attached or similar easement agreements and drawings.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

Approved: **CERTIFICATION OF ACTION**

Rejected:

Approved: *[Signature]*
County Clerk

Approved: *[Signature]*
County Mayor

Vetoed: September 18, 2013
Date



This Instrument Prepared By and Return To:
Evan A. Allison, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

<u>Grantee of Easements</u>	<u>Party Responsible for Taxes</u>	<u>Tax Map Parcel Nos.</u>
FATD-H LLC c/o Fortress Investment Group 1345 Avenue of the Americas, 46 th Floor New York, NY 10105	Same	Tax Map 139 Parcel 001.01

WATER LINE EASEMENT AGREEMENT

THIS WATER LINE EASEMENT AGREEMENT (the "Agreement") is executed to be effective as of the _____ day of _____, 2013, by and between **HAMILTON COUNTY, TENNESSEE**, a political subdivision of the State of Tennessee (collectively "Grantor"), and **FATD-H LLC**, a Delaware limited liability company ("Grantee").

Background:

A. Grantor owns those certain parcel of real property located in Hamilton County, Tennessee, as described in Deed recorded in Book 2570, Page 988 in the Register's Office of Hamilton County, Tennessee (the "Burdened Property").

B. Grantee desires to have easements on, over, across and under the Burdened Property for the purpose of installing water lines for the benefit of improvements on the Grantee's property (the "Benefitted Property") and Grantor has agreed to grant such easements.

Agreement:

NOW THEREFORE, for Ten Dollars (\$10.00) and in consideration of the mutual benefits provided herein by this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree that the above recitals are true and correct and are herein incorporated, and further agree as follows:

1. Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual and permanent water line easement ("Easement") on, over, across and under the portions of the Burdened Property identified on Exhibit "A" attached hereto and made a part hereof in order to install water lines to benefit the Benefitted Property.

2. Grantee agrees that the easement rights granted herein are limited to maintaining water lines for the benefit of the Benefitted Property and that Grantee shall be solely responsible for all costs to install, maintain, repair and replace the water lines located within the Easement

unless any such repair, maintenance, or replacement is required due to the intentional misconduct of Grantor. The easement rights granted to Grantee hereby shall include a right of access on, over and across so much of the Burdened Property as is necessary for access to the Easement for purposes of installing, maintaining, repairing and replacing the water lines to be installed by Grantee within the Easement. Any such entry shall be done in a manner so as to limit the impact of such entry on the Burdened Property. Further, Grantee shall not disturb the surface of the Burdened Property except as is necessary to install and thereafter maintain, repair and replace the water lines. Any surface disturbance of the Burdened Property shall be undertaken and completed promptly in such a manner as to not adversely interfere with the use and enjoyment of the surface of the Burdened Property across which the Easement is located and any disturbance of the surface of the Burdened Property shall be immediately restored to the same or substantially similar conditions as existed prior to such disturbance.

3. Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor, its successors and assigns, and any subsequent owners of all or any portion of the Burdened Property, from all claims, causes of action, and liability, as well as all losses and costs and expenses (including but not limited to attorneys' fees) (collectively "Losses"), arising or resulting from Grantee's actions or negligence, or from Grantee's failure to adhere to the terms of this Agreement or otherwise relating to Grantee's use and enjoyment of the Easement (including but not limited to liability for attractive nuisance), except to the extent that any such Losses arise from the actions or negligence of Grantor.

4. Insurance. Grantee covenants and agrees, at all times during the term of this Agreement, to maintain and keep in force comprehensive general liability insurance against all claims for personal injury, death or property damage occurring on the the Easement with minimum limits of not less than \$2,000,000 per occurrence for injury to person, not less than \$2,000,000 for damage to property and not less than \$2,000,000 annual general aggregate per location. Grantor shall be listed as an additional insured on such policy and a certificate evidencing such shall be presented to Grantor not later than three (3) days from the date of this Easement Agreement.

5. No Dedication to Public Use. This Agreement is not intended to, and shall not be construed to dedicate the Easement to the general public, nor shall this Agreement be construed to restrict the use and development of the Burdened Property, except as expressly provided herein.

6. Definition of "Owner". For purposes hereof, the term "Owner" shall mean the Owner of the Burdened Property and any and all successors and assigns of such persons as the Owner of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property, until such time, if any, that such holder of any lien or encumbrance holds fee simple title to such property.

7. Amendment. This Agreement may not be amended or modified except by written instrument signed by the Owner of the Burdened Property and Grantee and duly recorded with the Register's Office of Hamilton County, Tennessee.

8. No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by any party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

9. Binding Effect. This Agreement, and the rights and privileges herein granted, are intended to "run with the land," such that they will be binding upon and inure to the benefit of subsequent Owners of the Burdened Property and the Grantee.

10. Enforcement. The terms and provisions of this Agreement may be enforced by all rights and remedies available at law or in equity. The parties hereto agree and acknowledge that, as the rights and privileges and terms, conditions, and limitations herein contained relate to the use and enjoyment of real property, specific performance of any of the foregoing is an appropriate remedy to be afforded by any court or other forum adjudicating a dispute hereunder.

11. Governing Law. This Agreement shall be governed by and construed, interpreted and applied in accordance with the laws of the State of Tennessee.

12. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall constitute in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

13. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

GRANTOR:

HAMILTON COUNTY, TENNESSEE

By: _____
Jim M. Coppinger, County Mayor

GRANTEE:

FATD-H LLC, a Delaware limited liability company

By: _____
Print Name: Joshua Paek
Title: Vice President

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, _____ of the state and county mentioned, personally appeared Jim Coppinger with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be County Mayor (or other officer authorized to execute the instrument) of **HAMILTON COUNTY**, the within named bargainor, a political subdivision of the State of Tennessee, and that such County Mayor executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as County Mayor.

Witness my hand and seal, at office in _____, this ____ day of _____, 2013.

Notary Public
Printed Name:

My Commission Expires:

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On August 14, 2013 before me, Francesca Pascucci, Notary Public, personally appeared Joshua Pack, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

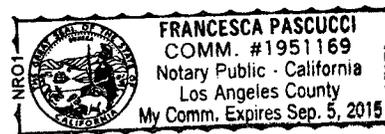
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Francesca Pascucci

(Seal)

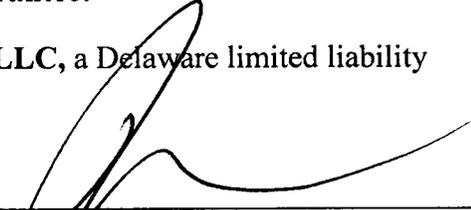
My Commission Expires: Sep 5, 2015



I, Joshua Paek, hereby swear or affirm that, to the best of my knowledge, information and belief, the actual consideration for this transfer, or the value of the property transferred, whichever is greater, is \$10.00, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

Affiant-Grantee:

FATD-H LLC, a Delaware limited liability company

By: 
Print Name: Joshua Paek
Title: Vice President

STATE OF CALIFORNIA
COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on this 14 day of August 14, 2013, by Joshua Paek, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Francesca Pascucci
Signature

(seal)

Notary: Francesca Pascucci
Commission No.: 1951169
Commission Expires: Sep 5, 2015

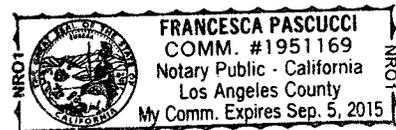


EXHIBIT "A"

**WATERLINE EASEMENT TRACT 29
ENTERPRISE SOUTH INDUSTRIAL PARK SOUTH OF BONNY OAKS
DRIVE**

An easement for a waterline to benefit Tract 29, Enterprise South Industrial Park as shown on plat of record in Plat Book 96, Page 30 in the Register's Office of Hamilton County. Tract 29 is located at 7150 Discovery Drive, City of Chattanooga, Hamilton County, Tennessee and is currently occupied by American Tire Distributors, Tract 29 is currently owned by FATD-H LLC as described in Deed Book 9697, Page 366, R.O.H.C. said easement is ten (10) feet in width being five (5) to each side of the as- built location of the waterline, said waterline easement is located on the Hamilton County property known as the Redoubt Soccer Complex described in Deed Book 2570, Page 988, R.O.H.C. and shown on Tax Map 139, Parcel 001.01, said easement being more particularly described;

COMMENCING at a point where the centerline of Bonny Oaks Drive and the centerline of Volkswagen Drive intersect;

THENCE North 72 degrees, 32 minutes, 49 seconds West a distance of 169.58 feet to a point located on the Southern margin of Bonny Oaks Drive at the Eastern side of the ten (10) wide easement, said point is located at Tennessee State Grid Coordinates of North=268,793.1917 and East=2,223,504.3017, coordinates based on the City of Chattanooga-Hamilton County Monument Network System (CHAM System) North American Datum 1983 (NAD 83) all bearings are based on said system, all distances are horizontal ground, said location marks the POINT OF BEGINNING.

THENCE South 33 degrees, 46 minutes, 43 seconds East a distance of 30.00 feet to a point;

THENCE North 56 degrees, 13 minutes, 17 seconds East a distance of 10.00 feet to a point;

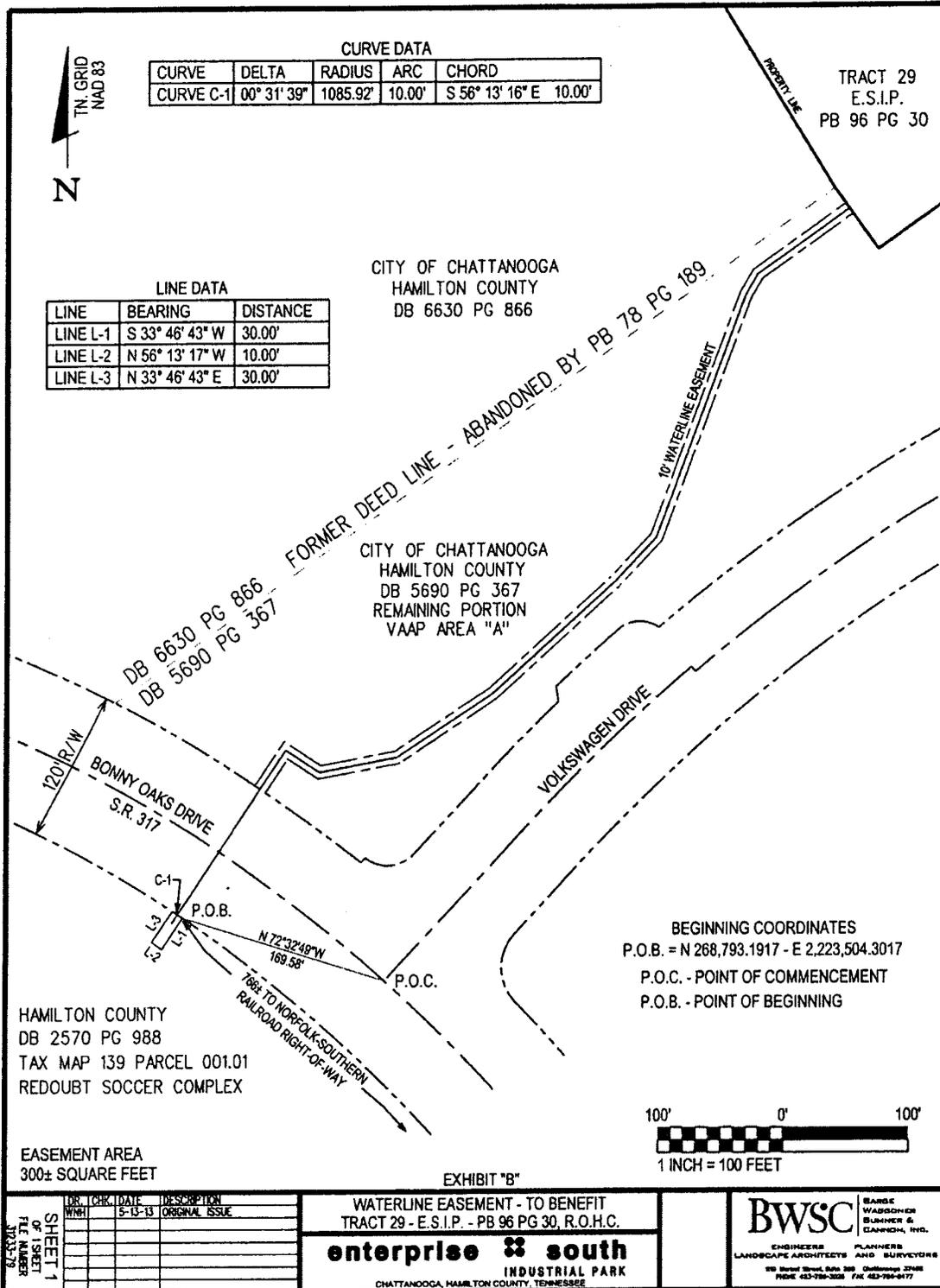
THENCE North 33 degrees, 46 minutes, 43 seconds West a distance of 30.00 feet to a point located on the Southern margin of Bonny Oaks Drive;

THENCE with a curve to the right (clockwise) along the Southern margin of Bonny Oaks Drive an arc distance of 10.00 feet, having a radius of 1085.92 feet, a delta angle of 00 degrees, 31 minutes, 39 seconds and a chord of South 56 degrees, 13 minutes, 16 seconds East a distance of 10.00 feet to the POINT OF BEGINNING. "

Subject to any rights-of-way, easements, restrictions, ordinances, agreements, zoning and any other matters of title that may exist.

Said waterline easement herein described contains 300 square feet, more or less, as shown on the attached drawing "Exhibit "B" prepared by Barge, Waggoner, Sumner and Cannon, Inc. having project number 31233-79.

EXHIBIT "B"



This Instrument Prepared By and Return To:
Evan A. Allison, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

<u>Grantee of Easements</u>	<u>Party Responsible for Taxes</u>	<u>Tax Map Parcel Nos.</u>
FATD-H LLC c/o Fortress Investment Group 1345 Avenue of the Americas, 46 th Floor New York, NY 10105	Same	Tax Map 130 Parcel 001 (part of)

WATER LINE EASEMENT AGREEMENT

THIS WATER LINE EASEMENT AGREEMENT (the "Agreement") is executed to be effective as of the _____ day of _____, 2013, by and between the **CITY OF CHATTANOOGA, TENNESSEE**, a municipal corporation of the State of Tennessee, and **HAMILTON COUNTY, TENNESSEE**, a political subdivision of the State of Tennessee (collectively "Grantor"), and **FATD-H LLC**, a Delaware limited liability company ("Grantee").

Background:

A. Grantor owns those certain parcels of real property located in Hamilton County, Tennessee, as described in Deed recorded in Book 5690, Page 367 in the Register's Office of Hamilton County, Tennessee (the "Burdened Property").

B. Grantee desires to have easements on, over, across and under the Burdened Property for the purpose of installing water lines for the benefit of improvements on the Grantee's property (the "Benefitted Property") and Grantor has agreed to grant such easements.

Agreement:

NOW THEREFORE, for Ten Dollars (\$10.00) and in consideration of the mutual benefits provided herein by this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree that the above recitals are true and correct and are herein incorporated, and further agree as follows:

1. Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual and permanent water line easement ("Easement") on, over, across and under the portions of the Burdened Property identified on Exhibit "A" attached hereto and made a part hereof in order to install water lines to benefit the Benefitted Property.

2. Grantee agrees that the easement rights granted herein are limited to maintaining water lines for the benefit of the Benefitted Property and that Grantee shall be solely responsible

for all costs to install, maintain, repair and replace the water lines located within the Easement unless any such repair, maintenance, or replacement is required due to the intentional misconduct of Grantor. The easement rights granted to Grantee hereby shall include a right of access on, over and across so much of the Burdened Property as is necessary for access to the Easement for purposes of installing, maintaining, repairing and replacing the water lines to be installed by Grantee within the Easement. Any such entry shall be done in a manner so as to limit the impact of such entry on the Burdened Property. Further, Grantee shall not disturb the surface of the Burdened Property except as is necessary to install and thereafter maintain, repair and replace the water lines. Any surface disturbance of the Burdened Property shall be undertaken and completed promptly in such a manner as to not adversely interfere with the use and enjoyment of the surface of the Burdened Property across which the Easement is located and any disturbance of the surface of the Burdened Property shall be immediately restored to the same or substantially similar conditions as existed prior to such disturbance.

3. Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor, its successors and assigns, and any subsequent owners of all or any portion of the Burdened Property, from all claims, causes of action, and liability, as well as all losses and costs and expenses (including but not limited to attorneys' fees) (collectively "Losses"), arising or resulting from Grantee's actions or negligence, or from Grantee's failure to adhere to the terms of this Agreement or otherwise relating to Grantee's use and enjoyment of the Easement (including but not limited to liability for attractive nuisance), except to the extent that any such Losses arise from the actions or negligence of Grantor.

4. Insurance. Grantee covenants and agrees, at all times during the term of this Easement Agreement, to maintain and keep in force comprehensive general liability insurance against all claims for personal injury, death or property damage occurring on the Easement with minimum limits of not less than \$2,000,000 per occurrence for injury to person, not less than \$2,000,000 for damage to property and not less than \$2,000,000 annual general aggregate per location. Grantor shall be listed as an additional insured on such policy and a certificate evidencing such shall be presented to Grantor not later than three (3) days from the date of this Agreement.

5. No Dedication to Public Use. This Agreement is not intended to, and shall not be construed to dedicate the Easement to the general public, nor shall this Agreement be construed to restrict the use and development of the Burdened Property, except as expressly provided herein.

6. Definition of "Owner". For purposes hereof, the term "Owner" shall mean the Owner of the Burdened Property and any and all successors and assigns of such persons as the Owner of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property, until such time, if any, that such holder of any lien or encumbrance holds fee simple title to such property.

7. Amendment. This Agreement may not be amended or modified except by written instrument signed by the Owner of the Burdened Property and Grantee and duly recorded with the Register's Office of Hamilton County, Tennessee.

8. No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by any party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

9. Binding Effect. This Agreement, and the rights and privileges herein granted, are intended to "run with the land," such that they will be binding upon and inure to the benefit of subsequent Owners of the Burdened Property and the Grantee.

10. Enforcement. The terms and provisions of this Agreement may be enforced by all rights and remedies available at law or in equity. The parties hereto agree and acknowledge that, as the rights and privileges and terms, conditions, and limitations herein contained relate to the use and enjoyment of real property, specific performance of any of the foregoing is an appropriate remedy to be afforded by any court or other forum adjudicating a dispute hereunder.

11. Governing Law. This Agreement shall be governed by and construed, interpreted and applied in accordance with the laws of the State of Tennessee.

12. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall constitute in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

13. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

GRANTOR:

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Andy Berke, Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
Jim M. Coppinger, County Mayor

GRANTEE:

FATD-H LLC, a Delaware limited liability company

By: _____
Print Name: Joshua Paek
Title: Vice President

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

Before me, _____ of the state and county mentioned, personally appeared Andy Berke with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be Mayor (or other officer authorized to execute the instrument) of **CITY OF CHATTANOOGA**, the within named bargainor, a municipal corporation of the State of Tennessee, and that such Mayor executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as Mayor.

Witness my hand and seal, at office in _____, this _____ day of _____, 2013.

Notary Public
Printed Name:

My Commission Expires:

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

Before me, _____ of the state and county mentioned, personally appeared Jim Coppinger with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be County Mayor (or other officer authorized to execute the instrument) of **HAMILTON COUNTY**, the within named bargainor, a political subdivision of the State of Tennessee, and that such County Mayor executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as County Mayor.

Witness my hand and seal, at office in _____, this _____ day of _____, 2013.

Notary Public
Printed Name:

My Commission Expires:

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On August 14, 2013 before me, Francesca Pasucci, Notary Public, personally appeared Joshua Paek, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

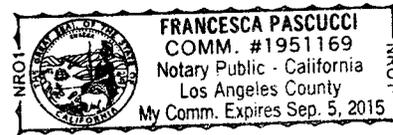
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Francesca Pasucci

(Seal)

My Commission Expires: Sep 5, 2015



I, Joshua Pack, hereby swear or affirm that, to the best of my knowledge, information and belief, the actual consideration for this transfer, or the value of the property transferred, whichever is greater, is \$10.00, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

Affiant-Grantee:

FATD-H LLC, a Delaware limited liability company

By: _____
Print Name: Joshua Pack
Title: Vice President

STATE OF CALIFORNIA
COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on this 14 day of August, 2013, by Francesca Pasucci, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Francesca Pasucci
Signature

(seal)

Notary: Francesca Pasucci
Commission No.: 1951169
Commission Expires: Sep 5, 2015



EXHIBIT "A"

**WATERLINE EASEMENT TRACT 29
ENTERPRISE SOUTH INDUSTRIAL PARK NORTH OF BONNY OAKS
DRIVE**

An easement for a waterline to benefit Tract 29, Enterprise South Industrial Park as shown on plat of record in Plat Book 96, Page 30 in the Register's Office of Hamilton County. Tract 29 is located at 7150 Discovery Drive, City of Chattanooga, Hamilton County, Tennessee and is currently occupied by American Tire Distributors, Tract 29 is currently owned by FATD-H LLC as described in Deed Book 9697, Page 366, R.O.H.C. said easement is ten (10) feet in width being five (5) to each side of the as- built location of the waterline, said waterline easement is located on the City of Chattanooga, Hamilton County property as described in Deed Book 5690, Page 367, R.O.H.C. the centerline of said ten (10) wide easement being more particularly described;

COMMENCING at a point where the centerline of Bonny Oaks Drive and the centerline of Volkswagen Drive intersect;

THENCE North 32 degrees, 53 minutes, 30 seconds West a distance of 182.68 feet to a point located on the Northern margin of Bonny Oaks Drive at the centerline of the ten (10) wide easement, said point is located at Tennessee State Grid Coordinates of North=268,895.7244 and East=2,223,566.8705, coordinates based on the City of Chattanooga-Hamilton County Monument Network System (CHAM System) North American Datum 1983 (NAD 83) all bearings are based on said system, all distances are horizontal ground, said location marks the POINT OF BEGINNING.

THENCE North 33 degrees, 46 minutes, 43 seconds East a distance of 37.00 feet to a point;

THENCE South 56 degrees, 45 minutes, 36 seconds East a distance of 32.00 feet to a point;

THENCE North 79 degrees, 12 minutes, 16 seconds East a distance of 63.00 feet to a point;

THENCE North 56 degrees, 11 minutes, 41 seconds East a distance of 91.00 feet to a point;

THENCE North 47 degrees, 35 minutes, 23 seconds East a distance of 131.00 feet to a point;

THENCE North 43 degrees, 18 minutes, 51 seconds East a distance of 48.00 feet to a point;

THENCE North 20 degrees, 37 minutes, 00 seconds East a distance of 206.00 feet to a point;

THENCE North 30 degrees, 18 minutes, 53 seconds East a distance of 19.00 feet to a point;

THENCE North 54 degrees, 40 minutes, 36 seconds East a distance of 90.00 feet to a point located on

the Southwest boundary of Tract 29, said point is located at Tennessee State Grid Coordinates of N=269,355.8902 and East=2,224,036.9129 and marks the POINT OF ENDING.

Subject to any rights-of-way, easements, restrictions, ordinances, agreements, zoning and any other matters of title that may exist.

Said waterline easement herein described contains 7,170 square feet, more or less, as shown on the attached drawing Exhibit "A" prepared by Barge, Waggoner, Sumner and Cannon, Inc. having project number 31233-79.

EXHIBIT "B"

