

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A DEED OF CONSERVATION EASEMENT TO HAMILTON
COUNTY ON TAX MAP NO. 145J-A-005 AS PART OF THE
PLANNED RIVERWALK EXTENSION AND AS APPROVED
BY THE PLANNING COMMISSION ON DECEMBER 9, 2013,
BY RESOLUTION MR-2013-159.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
TENNESSEE, That it is hereby authorizing the Mayor to execute a deed of conservation
easement to Hamilton County on Tax Map No. 145J-A-005 as part of the planned Riverwalk
extension and as approved by the Planning Commission on December 9, 2013, by Resolution
MR-2013-159. This easement for the Riverwalk extension will not impact use of the site for a
pump station.

ADOPTED: _____, 2013

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: December 16, 2013

Preparer: Cary Bohannon

Department: General Services

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District # 7

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DEED OF CONSERVATION EASEMENT TO HAMILTON COUNTY ON PARCEL 145J-A-005 AS PART OF THE PLANNED RIVERWALK EXTENSION AND AS APPROVED BY THE PLANNING COMMISSION ON 12-09-03 BY RESOLUTION MR-2013-159.

Name of Vendor/Contractor/Grant, etc.	_____ N/A	New Contract/Project? (Yes or No)	_____ NO
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)	_____

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)

This easement for the Riverwalk extension will not impact use of the site for a pump station.

Approved by:  _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

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

Revised: 1/26/09

MR-2013-159 City of Chattanooga
December 9, 2013

RESOLUTION

WHEREAS, City of Chattanooga Real Property Office/Gail Hart petitioned the Chattanooga-Hamilton County Regional Planning Commission to recommend to the Members of the City Council of the City of Chattanooga to grant approval of a Mandatory Referral pursuant to T.C.A. 13-4-104 for a Conservation Easement for property located within the 500 Block of W. 19th Street.

A conservation easement as shown on Exhibit Drawing Downtown Riverwalk - Phase 1 & 2 by Barge, Waggoner, Sumner, and Cannon, Inc. and identified as drawing number RW-026, dated 07/08/2013. Tax Map 145J-A-005 (part) as shown on the attached map.

AND WHEREAS, the Planning Commission held a public hearing on this petition on December 9, 2013,

AND WHEREAS, the Planning Commission heard and considered all statements favoring the petition,

AND WHEREAS, no one was present in opposition to the petition,

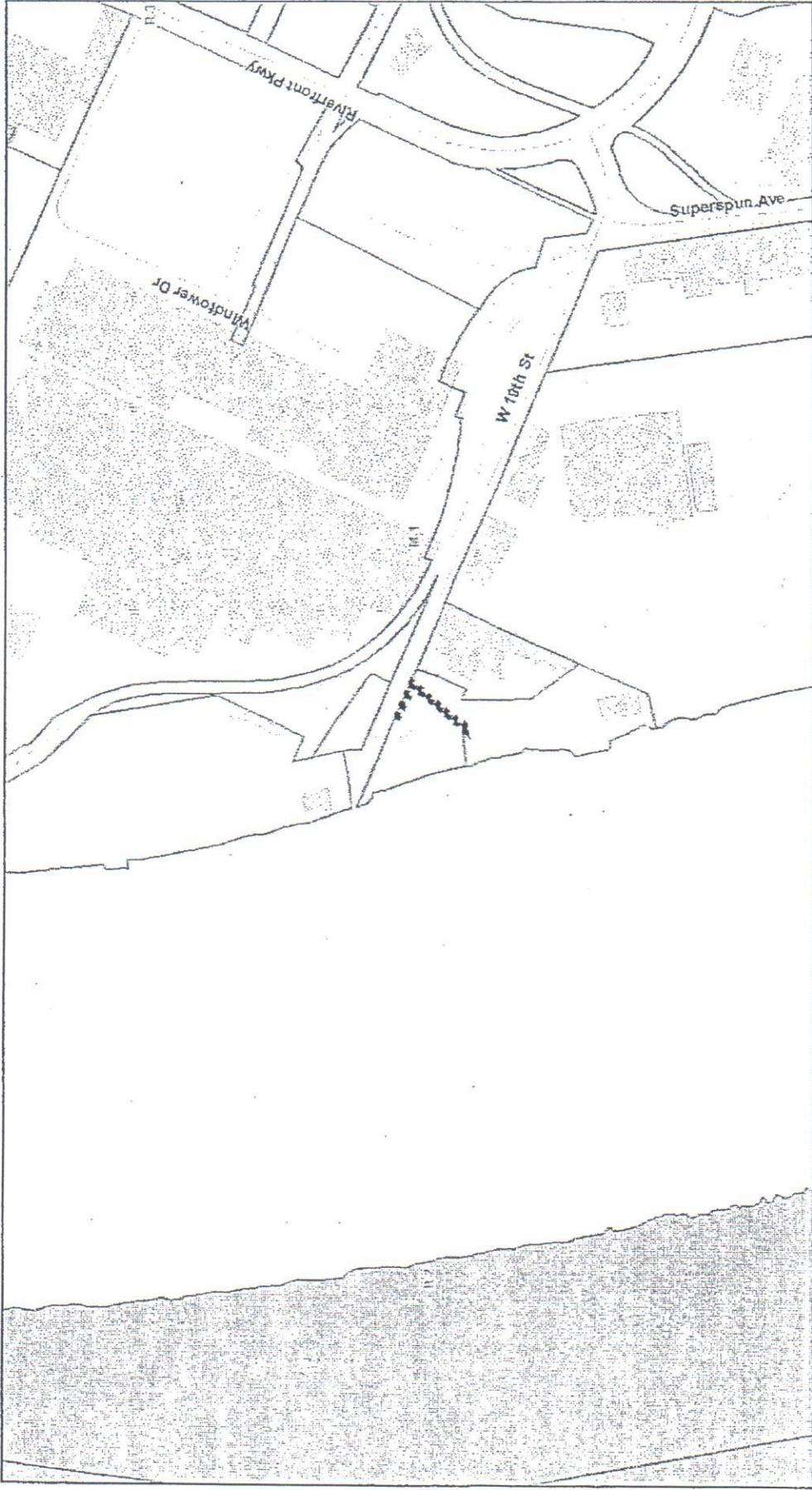
AND WHEREAS, the Planning Commission has studied the petition in relation to existing zoning and land use and potential patterns of development.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission, on December 9, 2013, recommended to the Members of the City Council of the City of Chattanooga that this petition for a Mandatory Referral to granting a Conservation Easement for a Pump Station be approved.

Respectfully submitted,



John Bridger
Secretary



MR 2013-159 Conservation Easement

PLANNING COMMISSION RECOMMENDATION FOR CASE NO. MR-2013-159: Approve



350 ft



Chattanooga-Hamilton County Regional Planning Agency

This Instrument Prepared By:
Hamilton County Government
c/o Engineering Department
1250 Market Street Suite 3050
Chattanooga, TN 37402

<u>Name and Address of Easement Grantee:</u>	<u>Send Tax Bills To:</u>	<u>Map and Parcel No:</u>
County of Hamilton c/o Hamilton County Real Property ATTN: Paul Parker 4 th Floor Mayfield Annex 123 East 7 th Street Chattanooga, TN 37402	-SAME-	145J A 005

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (the "Easement") is made this ____ day of _____, 2013, by **CITY OF CHATTANOOGA, TENNESSEE**, a Tennessee municipal corporation (herein called "Grantor," which term shall include its principals, parents, affiliates, heirs, representatives, successors and assigns), in favor of **HAMILTON COUNTY, TENNESSEE**, a political subdivision of the State of Tennessee, having an address of: c/o Mr. Paul Parker, Real Property, 4th Floor Mayfield Annex, 123 East 7th Street, Chattanooga, Tennessee 37402 (hereinafter collectively referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of real property located near the south bank of the Tennessee River along W 19th Street in downtown Chattanooga, Hamilton County, Tennessee, which is more particularly described in the Deed recorded at Deed Book 1109, Page 0260, in the Register's Office of Hamilton County, Tennessee (the "Property"); and

WHEREAS, the portion of the Property which lies near the bank of the Tennessee River possesses open space and recreational values, together with scenic views overlooking the Tennessee River, the forested ridges of Lookout Mountain, Elder Mountain, and the northern portions of Moccasin Bend National Park ("Conservation Values") of great importance to Grantor, the people of Chattanooga and Hamilton County, and the people of the State of Tennessee (the "State"); and

WHEREAS, the Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 *et seq.* (the "Conservation Easement Act"), permits the creation of conservation easements for the protection of the State's land, water, geological, biological, historical, architectural, archaeological, cultural, and scenic resources, for the purposes of maintaining and preserving the State's natural and cultural heritage, and for assuring the maintenance of the State's natural and social diversity and health, and for encouraging the wise management of productive farm and forest land; and

WHEREAS, Grantee desires to construct and maintain a public recreational trail, linear park, and related landscaping and amenities across portions of the Property, and to link such trail with adjoining properties in furtherance of the construction of the Tennessee RiverPark along the banks of the Tennessee River in Chattanooga and Hamilton County; and

WHEREAS, the installation and maintenance of the public recreational trail over and across that portion of the Property described in attached legal description document for the permanent easement along with the Exhibit Drawing RW-026, Pages 1-2, for City of Chattanooga, by Barge Waggoner Sumner & Cannon, Inc, dated July 8, 2013, attached hereto and made a part hereof, will assist in furthering the expansion of the City of Chattanooga's and Hamilton County's Tennessee RiverPark and provide an important opportunity for public recreational uses on the Property, including walking, jogging, bicycling, wildlife observation, and nature study; and

WHEREAS, the park and recreational development of the portions of the Property described in attached legal description document for the permanent easement along with the Exhibit Drawing RW-026, Pages 1-2, for City of Chattanooga, by Barge Waggoner Sumner & Cannon, Inc, dated July 8, 2013, attached hereto and made a part hereof, will help to implement the "Tennessee

RiverPark Master Plan,” adopted by the Chattanooga City Council on September 24, 1985, and adopted by the Hamilton County Commission on September 17, 1985, and the greenway plan identified by the National Park Service in its 1994 study “Greenways of the Southeast Tennessee River Valley”; and

WHEREAS, Chattanooga City Code, Part II, Chapter 26, Article VII., adopted on May 13, 1997, established the Greenways Advisory Board and directed that the Board work to establish greenways, and the Board has determined that the creation of a public recreational trail through the grant of the easement under this Easement will be an integral component of the Tennessee RiverPark along the Tennessee River; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the portion of the Property encumbered by this Easement, and Grantee is willing to honor such intention and protect such values in perpetuity; and

WHEREAS, because Grantor will continue to own the Property adjoining the area covered by this Easement, Grantor has conditioned the grant of this Easement on the agreement by Grantee to take affirmative measures to: insure the safety and security of Grantor’s adjoining Property; promote the continuing opportunity for efficient use and sustained economic value for Grantor’s adjoining Property; and otherwise abide by the terms and conditions set forth herein; and

WHEREAS, Grantor, The City of Chattanooga, is a municipal corporation of the State of Tennessee and Grantee, Hamilton County, Tennessee, is a political subdivision of the State of Tennessee;

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions and restrictions contained herein, the receipt and legal sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of Tennessee and in particular the Conservation Easement Act, the following is hereby agreed upon and undertaken:

1. **Donation of Perpetual Easement.** Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity (subject to certain rights of reversion set forth herein) across and over the portion of the Property which is specifically set forth in attached legal description document for the permanent easement along with the Exhibit Drawing RW-026, Pages 1-2, for City of Chattanooga, by Barge Waggoner Sumner & Cannon, Inc, dated July 8, 2013, attached hereto and made a part hereof, of the nature and character and to the extent hereinafter set forth, with such portion of the Property to be referred to herein as the “Easement Area.” The Easement conveyed herein shall run with the land. The grant and conveyance of the Easement herein is subject to any and all limitations, restrictions, and encumbrances of record, and existing otherwise within the Easement Area. The Easement is granted to Grantee on an AS IS/WHERE IS basis, without any representations or warranties by Grantor with respect to the condition of the Easement Area or the suitability of such for Grantee’s intended use thereof or otherwise. Grantee shall be solely responsible for analysis of the physical, environmental, and ownership status of the Easement Area, and shall purchase or obtain on its own accord whatever survey, environmental, title insurance and suitability analysis that it chooses to do.

2. **Purpose.** It is the purpose of this Easement to assure that the Easement Area will be retained forever in its open space condition for public recreational purposes, to serve as the location for a segment of the Tennessee RiverPark linear park and Riverwalk public recreational trail, and to prevent any use of the Easement Area that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Easement Area to such activities, including, without limitation, those involving public recreation and outdoor education, as are not inconsistent with the purpose of this Easement.

3. **Rights of Grantee; Affirmative Obligations of Grantee.**

3.1 **Rights of Grantee.** To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Deed of Conservation Easement:

(a) To construct, maintain, repair, and replace paved and unpaved public recreational trails and/or boardwalks, observation areas, landscaped borders, wildlife viewing platforms and associated structures, public park amenities, and signs and fencing within the Easement Area, all of which shall be done to a high standard of quality consistent with previously-constructed sections of the Tennessee RiverPark and Riverwalk linear park, providing, however, that Grantee shall have the affirmative obligation to remove from the Easement Area any structure which is abandoned or which becomes dangerous to the public due to lack of appropriate use or maintenance;

(b) To clearly delineate and mark the Easement Area as distinct from the remainder of Grantor's Property, by means appropriate and consistent with this Easement and its use;

(c) To preserve and protect the Conservation Values of the Easement Area;

(d) To monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 6;

(e) Except as expressly allowed herein, to prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 6; and

(f) To allow trail connections and public access to the Easement Area from adjoining properties to the east and west of Grantor's Property (but not across Grantor's Property without Grantor's prior written consent) during all reasonable times for purposes such as recreational trail use and related purposes, provided however, that any legal liability for utilizing the Easement Area for these purposes shall rest solely with the Grantee, and the Grantor shall be held harmless by the Grantee from and against all legal actions arising from such actions in accordance with Section 8.2.

3.2 **Affirmative Obligations of Grantee.** As important considerations to Grantor in the conveyance of the Easement, Grantee affirmatively agrees to perform all of the following obligations in reference to the construction, operation and long-term maintenance of the public recreational trail and amenities within the Easement Area.

(a) **Review and Approval of Initial Development Plans.** Grantee shall present to Grantor for reasonable advance review and approval the design plans for the improvements to be constructed and maintained within the Easement Area, including the recreational trail, landscaping, fencing, and other material structural improvements and amenities.

(b) **Construction of Fencing.** Grantee shall install and permanently maintain chain-link security fencing, with a height of not less than six (6) feet, to prevent users of the Easement Area from having the ability to cross to and from the Easement Area onto the adjoining Property and buildings or remnants of buildings of Grantor. At Grantor's request, Grantee shall include one or more gates in such fencing, with locks and/or security features to be exclusively in the control of Grantor. The type and quality of such fencing shall be mutually agreed upon in advance and in writing by Grantor and Grantee. In future years, if Grantor's Property is developed and/or if Grantor or its successors in title desire to remove all or portions of such fencing in order to improve access to the Easement Area as an amenity to Grantor's adjoining Property, Grantor may at its own expense remove all or any portions of such fencing as it desires, or install public or private gateways in such fencing.

(c) **Maintenance and Upkeep.** Grantee shall at all times provide such maintenance, repair, and upkeep as are needed to insure that the pedestrian walkway, landscaping, and other improved amenities constructed within the Easement Area are kept and maintained to a high standard of quality and in a clean, attractive, and safe conditions, and will not allow the Easement Area to deteriorate or to otherwise become unsafe, unsanitary, or a public nuisance.

4. **Prohibited Uses.** Any activity or use of the Easement Area inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities on or within the Easement Area are expressly prohibited:

4.1 The construction or emplacement of buildings or the erection of commercial signs and billboards (other than, subject to prior written approval of Grantor as provided in Section 3.2(a) hereof, Grantee's construction and installation of landscaping and enhancements, paved recreational trails and related amenities and, subject to the prior written approval of Grantor, trail shelters, picnic facilities, public park buildings and maintenance facilities and public restroom facilities);

4.2 The subdivision of the Easement Area;

4.3 Surface alteration, mining, soil degradation or mineral development;

4.4 Dumping of waste or debris; and

4.5 Timbering, spraying with biocides, or removing vegetation, other than routine trail and landscape maintenance.

5. **Reserved Rights Retained by Grantor.**

5.1 **Uses Not Inconsistent With Purpose.** Grantor reserves to itself all rights accruing from its ownership of the Easement Area, including, but not limited to, the right to engage in, or permit or invite others to engage in, all uses of the Easement Area, including for continued access to the Tennessee River, that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Grantor shall retain the unrestricted right to all permissible uses under applicable law, rules and regulations of its adjoining Property not contained in the Easement Area.

5.2 **Storm Water Drainage.** Grantor reserves the right to drain naturally-occurring storm water from Grantor's adjacent Property over, under and through the Easement Area. Nothing in the construction of the pedestrian recreational trail, landscaping improvements, or any other improvement within the Easement Area undertaken by Grantee shall be considered as a storm water improvement or flood control facility, it being the intention of both Grantor and Grantee that Grantor's Property shall remain exempt from any storm water fees, for the reason that all storm water falling upon Grantor's Property naturally drains into the Tennessee River, and not into any storm water or flood control facility or improvement maintained by either Grantee or by any other governmental entity.

5.3 **Erosion Control.** Grantor reserves the right to undertake (or to permit others to undertake) work to control river bank erosion on Grantor's adjoining Property which lie below the normal (non-flood) high water mark of the Tennessee River, and to grant such easements to such governmental entities as are reasonably necessary to carry on and to perpetuate such erosion control efforts.

5.4 **Utility Easement.** Grantor reserves the right to construct, operate, and maintain underground utility easements passing through, over, or under the Easement Area in such locations as Grantor may deem reasonably necessary. If construction work or maintenance of such utility easements causes damage to the pedestrian trail or landscaping or any other improvements constructed within the Easement Area, Grantor shall be responsible for restoring such damaged area to its condition prior to the construction and/or maintenance.

5.5 **Future Road or Driveway.** Grantor reserves the right to operate, and maintain (or to permit others to construct, operate, and maintain) the existing driveway/access road, across the Easement Area to provide access to the Grantor's adjacent Property. If Grantor causes damage to the pedestrian trail or landscaping or any other improvements constructed within the Easement Area, Grantor shall be responsible for restoring such damaged area to its condition prior to such construction and/or maintenance.

5.6 **Reservation of Construction Easement for Future Work by Grantor on Adjoining Property.** Grantor also reserves a construction easement across the Easement Area to undertake any of the work permitted in this Section 5, or any other work upon the Property undertaken in relation to the sale, development, demolition, or improvement to the adjoining Property. If any such construction work necessitates the temporary closure of the Easement Area, Grantor and its successors and assigns shall endeavor to minimize the period of closure to the greatest extent reasonably practical, and shall be responsible for restoring any damaged area to its condition prior to the commencement of construction.

5.7 **Reversionary Interest.** Grantor also reserves a reversionary interest in the Easement Area for a period of twenty-five (25) years from the date of recording of the Easement. If during that period Grantee abandons, terminates use of, or allows the improvements within the Easement Area to fall into disuse and disrepair, and/or if the Tennessee RiverPark pedestrian trail is no longer maintained through the Easement Area, then title will, at the option of Grantor or its successor in title as owner of the Property, revert to Grantor or such successor. Grantor may exercise this right of reversion by giving Grantee notice of its belief that the conditions for such reversion have occurred, and if Grantee is unable to establish a reasonable basis to demonstrate that the conditions of reversion have not occurred, then reversion of title to Grantor (or its successor in title) shall automatically occur, without further action by any of the parties hereto, and this Easement will thereafter be null and void.

6. **Enforcement and Remedies for Violation.**

6.1 **Notice of Violation; Corrective Action.** If any party hereto believes that a violation of the terms of this Easement has occurred or is threatened, the aggrieved party may give written notice to the other parties of such claimed violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use

or activity inconsistent with the purpose of this Easement which is not permitted hereunder, to restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by the aggrieved party.

6.2 **Injunctive Relief.** If the defaulting party fails to cure the violation within thirty (30) days after receipt of written notice thereof from the other party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Easement Area to the condition that existed prior to any such injury.

6.3 **Emergency Enforcement.** If any party determines that circumstances require immediate action to either enforce this Easement or to prevent or mitigate significant damage to the Conservation Values of the Easement Area, the aggrieved party may pursue its remedies under this Section 5 without prior notice to the other party or without waiting for the period provided for cure to expire.

6.4 **Damages.** Any party shall be entitled to recover damages for violation of the terms of this Easement, or, in Grantee's case, injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, public recreational, or environmental values, and costs of restoration or remedy. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

6.5 **Scope of Relief.** Each party's rights under this Section 6 shall apply equally in the event of either actual or threatened violations of the terms of this Easement. Each party agrees that the remedies at law for any violation of the terms of this Easement are inadequate and that each party shall be entitled to the injunctive relief described in Section 6.2 above, both prohibitive and mandatory, in addition to such other relief to which the aggrieved party may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. The remedies of each party to this Easement described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 **Costs of Enforcement.** Each party shall bear its own costs incurred in enforcing the terms of this Easement, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, regardless of which party prevails.

6.7 **Forbearance.** Forbearance by any party to exercise its rights under this Easement in the event of any breach of any term of this Easement by the other party shall not be deemed or construed to be a waiver by the non-defaulting party of such term or of any subsequent breach of the same or any other term of this Easement or of any of the non-defaulting party's rights under this Easement. No delay or omission by any party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

6.8 **Waiver of Certain Defenses.** Each party hereby waives any defense of laches, estoppel, or prescription.

6.9 **Acts Beyond the Control of Any Party.** Except as provided otherwise in Section 8.2 hereof, nothing contained in this Easement shall be construed to entitle either party to bring any action against the other party for any injury to or change in the Easement Area resulting from causes beyond the control of any party, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by any party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

7. **Costs and Liabilities.** Grantee assumes all responsibilities and shall bear all costs and liabilities of any kind related to the construction, operation, upkeep, and maintenance of the Easement Area and any improvements within such Easement Area, with the exception of Grantor's utility lines or roadways as provided in Section 5 hereof, whether now existing or constructed by Grantor in the future.

7.1 **Taxes.** Grantee assumes liability for all real property ad valorem taxes and special assessments attributable to the improvements within the Easement Area, if any.

7.2 **Grantee's Hold Harmless.** Up to the limits of liability established by the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 *et seq.*, such as may exist from time to time, each Grantee shall hold harmless, indemnify, and defend Grantor and its employees, agents, contractors, principals, parents, affiliates, successors, and assigns of each of them (collectively "Grantor's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, 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 any other matter related to or occurring in, on, or about the Easement Area (or occurring on Grantor's adjoining Property involving any person who leaves the Easement Area), regardless of cause, unless due solely to the negligence of any of Grantor's Indemnified Parties.

8. **Extinguishment, Condemnation, and Reversion.**

8.1 **Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can be terminated voluntarily by agreement of the parties or may be terminated and extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. In the event of such extinguishment, the Easement shall terminate and unencumbered ownership shall return to the then-current owner of the underlying fee simple property.

8.2 [INTENTIONALLY OMITTED]

8.3 **Condemnation.** If all or any part of the Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Easement Area subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Each party shall share in the condemnation proceeds to the extent of their interests in the Easement Area, the improvements thereon, and the underlying land.

8.4 **Application of Proceeds.** Grantee shall use any such proceeds received under the circumstances described in this Section 9 in a manner consistent with its conservation purposes, which are exemplified by this grant.

9. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under the Conservation Easement Act (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least twenty (20) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

10. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way.

11. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement as may be requested by Grantor.

12. **Notices.** Any notice, demand, request, consent, approval, or communication that any 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 Tennessee
c/o Real Property Office
101 East 11th Street
Chattanooga, Tennessee 37402

Telephone: (423) 643-7502
Telecopier: (423) 643-5079

The Grantee:

Hamilton County, Tennessee
c/o Mr. Paul Parker, Real Property Division
4th Floor Mayfield Annex
123 East 7th Street
Chattanooga, TN 37402

Telephone: (423) 209-6444
Telecopier: (423) 209-6445

with a copy to:

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

Telephone: (423) 643-8227

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

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

14. **Responsibility for Environmental Contamination.** In the event of the occurrence or discovery of any environmental contamination of the Easement Area (or the Construction Easement Areas during the period of construction) which requires remediation, Grantee shall have no liability to Grantor for any such contamination (or the remediation thereof) which occurred prior to the conveyance of this Easement. As between Grantor and Grantee, Grantor shall indemnify and hold harmless Grantee from any such environmental contamination which exists prior to the date of this Easement. For any environmental contamination requiring remediation to the Easement Area (or the Construction Easement Areas during the period of construction) which occurs after the date of the conveyance of this Easement on account of Grantee's use and/or occupancy of the Easement Area for the purposes set forth herein, Grantor shall have no obligation or responsibility for remediation of such contamination, and Grantee shall indemnify and hold harmless Grantor for any such contamination which arises out of Grantee's use and/or occupancy of the Easement Area (or the Construction Easement Areas).

15. **General Provisions.**

15.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Tennessee.

15.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.3 **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.4 **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

15.5 **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its parents, successors, and assigns, and the above-named Grantee and their respective successors and assigns.

15.6 **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.7 **Captions.** 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.

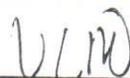
15.8 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all of the parties hereto; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the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

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

IN WITNESS WHEREOF, I the respective Grantor, have herunto subscribed my name as my free act and deed this ____ day of _____, 2013.

Andy Berke, Mayor
City of Chattanooga, Tennessee

Approved as to form and legality.



Chattanooga City Attorney

ACKNOWLEDGEMENT

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

Before me, a Notary Public of the State and County aforesaid, personally appeared *Andy Berke, Mayor*, to me known and known to me to be the same person whose name is subscribed to the foregoing grant of easement, who being by me duly sworn did depose and say that he is Mayor, City of Chattanooga, Tennessee, that he is duly designated, empowered and authorized by City of Chattanooga Resolution _____ of the City Council of the City of Chattanooga, Tennessee, dated _____ to execute the foregoing grant of easement and sign his name thereto; and that he signed his name thereto and acknowledges that he executed the foregoing instrument for and on the behalf of the City of Chattanooga, Tennessee, for the purposes and uses therein described.

WITNESS MY HAND and Notarial Seal, at office in said State and County of the day and year above written.

Notary Public

My Commission Expires: _____

**STATE OF TENNESSEE
COUNTY OF HAMILTON**

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

Affiant-Grantee

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

Notary Public
My Commission Expires: _____

PERMANENT RIVERWALK EASEMENT RW-026

Being a permanent riverwalk easement located on the City of Chattanooga property as described in Deed Book 1109, Page 260 in the Register's Office of Hamilton County, property is shown on Tax Map 145J, Group "A", Parcel 005 and is located in the City of Chattanooga, Hamilton County, Tennessee, said permanent easement being more particularly described as follows:

BEGINNING at a point located on the Southern margin of West 19th Street, said point marks the Northwest corner of Tract 5, ABB Combustion Engineering, Inc. as shown on plat of record in Plat Book 54, Page 184, R.O.H.C. and located at Tennessee State Grid Coordinates of N=257,597.9865 and E=2,170,435.8035, coordinates based on 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 24 degrees, 09 minutes, 46 seconds West a distance of 20.50 feet to a point;

THENCE South 45 degrees, 41 minutes, 10 seconds West a distance of 13.00 feet to the point of curvature;

THENCE with a curve to the left (counter clockwise) an arc distance of 136.01 feet, having a radius of 461.86 feet, a delta angle of 16 degrees, 52 minutes, 20 seconds and a chord of South 37 degrees, 15 minutes, 00 seconds West a distance of 135.52 feet to a point;

THENCE South 86 degrees, 22 minutes, 26 seconds West a distance of 16.07 feet to a point;

THENCE North 38 degrees, 06 minutes, 45 seconds East a distance of 124.69 feet to a point;

THENCE North 41 degrees, 14 minutes, 34 seconds East a distance of 30.47 feet to a point;

THENCE North 24 degrees, 40 minutes, 39 seconds East a distance of 11.01 feet to the point of curvature;

THENCE with a curve to the left (counter clockwise) an arc distance of 11.17 feet, having a radius of 18.00 feet, a delta angle of 35 degrees, 32 minutes, 33 seconds and a chord of North 47 degrees, 54 minutes, 58 seconds West a distance of 10.99 feet to the point of tangency;

North 65 degrees, 41 minutes, 15 seconds West a distance of 18.17 feet to a point;

THENCE North 24 degrees, 09 minutes, 46 seconds East a distance of 1.89 feet to a point;

THENCE North 65 degrees, 50 minutes, 14 seconds West a distance of 66.46 feet to a point;

THENCE North 24 degrees, 08 minutes, 28 seconds East a distance of 5.58 feet to a point located on the Southern margin of West 19th Street;

THENCE South 65 degrees, 51 minutes, 39 seconds East a distance of 105.64 feet along the Southern margin of West 19th Street to the POINT OF BEGINNING.

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

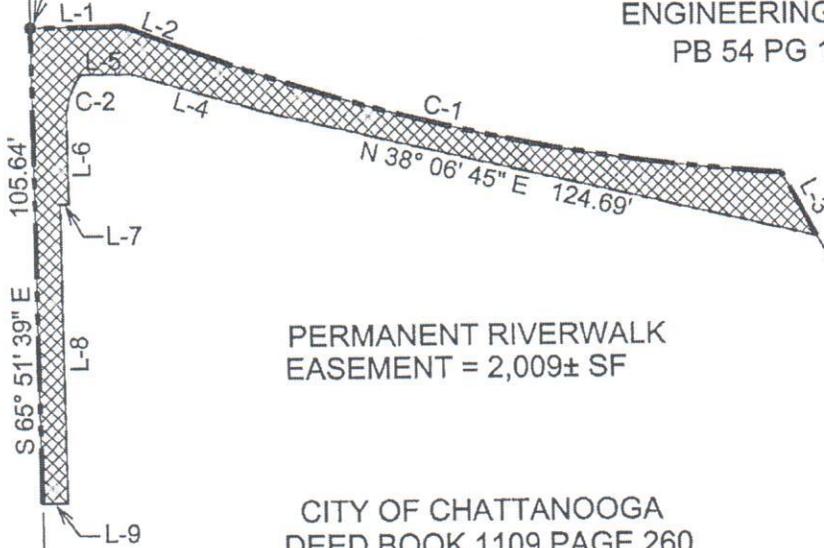
Said permanent riverwalk easement herein described contains 2,009 square feet, more or less, as shown on the attached drawing prepared by Barge, Waggoner, Sumner and Cannon, Inc. having project number 34796-03.

TRACT 4
 ABB COMBUSTION
 ENGINEERING, INC.
 PB 54 PG 184

TRACT 5
 ABB COMBUSTION
 ENGINEERING, INC.
 PB 54 PG 184

WEST 19TH STREET

POB
 N=257,597.9865
 E=2,170,435.8035
 NAD 83



PERMANENT RIVERWALK
 EASEMENT = 2,009± SF

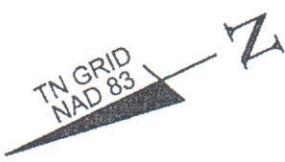
CITY OF CHATTANOOGA
 DEED BOOK 1109 PAGE 260

CURVE DATA

CURVE	ARC	RADIUS	DELTA	BEARING	DISTANCE
CURVE C-1	136.01	461.86 L	16° 52' 20"	S 37° 15' 00" W	135.52
CURVE C-2	11.17	18.00 L	35° 32' 33"	N 47° 54' 58" W	10.99

LINE DATA

LINE	BEARING	DISTANCE
LINE L-1	S 24° 09' 46" W	20.50
LINE L-2	S 45° 41' 10" W	13.00
LINE L-3	S 86° 22' 26" W	16.07
LINE L-4	N 41° 14' 34" E	30.47
LINE L-5	N 24° 40' 39" E	11.01
LINE L-6	N 65° 41' 15" W	18.17
LINE L-7	N 24° 09' 46" E	1.89
LINE L-8	N 65° 50' 14" W	66.46
LINE L-9	N 24° 08' 28" E	5.58



LEGEND

 PERMANENT RIVERWALK
 EASEMENT

TAX MAP #145J-A-005

BWSC
 ENGINEERS PLANNERS
 LANDSCAPE ARCHITECTS AND SURVEYORS
 BARGE WAGGONER SUMNER & CANNON, IN
 110 Market Street, Suite 200 Chattanooga, Tennessee 37402
 PHONE (423) 756-3025 FAX (423) 756-8477

CITY OF CHATTANOOGA

EXHIBIT DRAWING
 DOWNTOWN RIVERWALK - PHASE I & II
 CHATTANOOGA, TENNESSEE

DRAWN BY: JWWEHUNT	CHECKED BY: WNHOLDEN
DRAWING NO.: RW-026	
PROJECT NO.: 34796-03	DATE: 07/08/2013