MR-2016-008
City of Chattanooga Real Property Office/Gail Hart

RESOLUTION NO. _____

A RESOLUTION DECLARING SURPLUS OF PROPERTY LOCATED AT 1600 CENTRAL AVENUE, FURTHER IDENTIFIED AS TAX MAP NO. 146P-J-001, AND AUTHORIZING THE MAYOR TO ENTER INTO A DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, AND ANY RELATED DOCUMENTS, BETWEEN THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHATTANOOGA AND THE CITY OF CHATTANOOGA FOR THE DONATION OF THE PROPERTY.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby declaring surplus of property located at 1600 Central Avenue, further identified as Tax Map No. 146P-J-001, and authorizing the Mayor to enter into a donation agreement, in substantially the form attached, and any related documents, between the Young Men's Christian Association of Metropolitan Chattanooga and the City of Chattanooga for the donation of the property identified as follows:

Fire Hall Number 7, Lots 1, 2, 8, 9 and part of 10, Block 1, and Lots 1 thru 3, Block 2, M. V. Raley's Subdivision of the Lancaster Tract, Plat Book 5, Page 54, ROHC, Deed Book 1177, Page 613, ROHC. Tax Map No. 146P-J-001.

ADOPTED: _____, 2016

/mem

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: January 15, 2016

Preparer: Cary Bohannon **Department:** General Services

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** 8

A RESOLUTION DECLARING SURPLUS PROPERTY AT 1600 CENTRAL AVENUE, FURTHER IDENTIFIED AS TAX PARCEL I.D. NO. 146P-J-001, AND AUTHORIZING THE MAYOR TO ENTER INTO A DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, AND ANY RELATED DOCUMENTS, BETWEEN THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHATTANOOGA AND THE CITY OF CHATTANOOGA FOR THE DONATION OF THE PROPERTY.

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

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	
$	
$	

Agency Grant Number

CFDA Number if known

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

Approved as surplus by Regional Planning Agency on January 11, 2016, MR-2016-008

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-2016-008 City of Chattanooga
January 11, 2016

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 to Declare Surplus, property at 1600 Central Avenue.

Fire Hall Number 7, Lots 1, 2, 8, 9 and part of 10, Block 1, and Lots 1 thru 3, Block 2, M. V. Raley's Subdivision of the Lancaster Tract, Plat Book 5, Page 54, ROHC, Deed Book 1177, Page 613, ROHC. Tax Map 146P-J-001 as shown on the attached map.

AND WHEREAS, the Planning Commission held a public hearing on this petition on January 11, 2016,

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

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

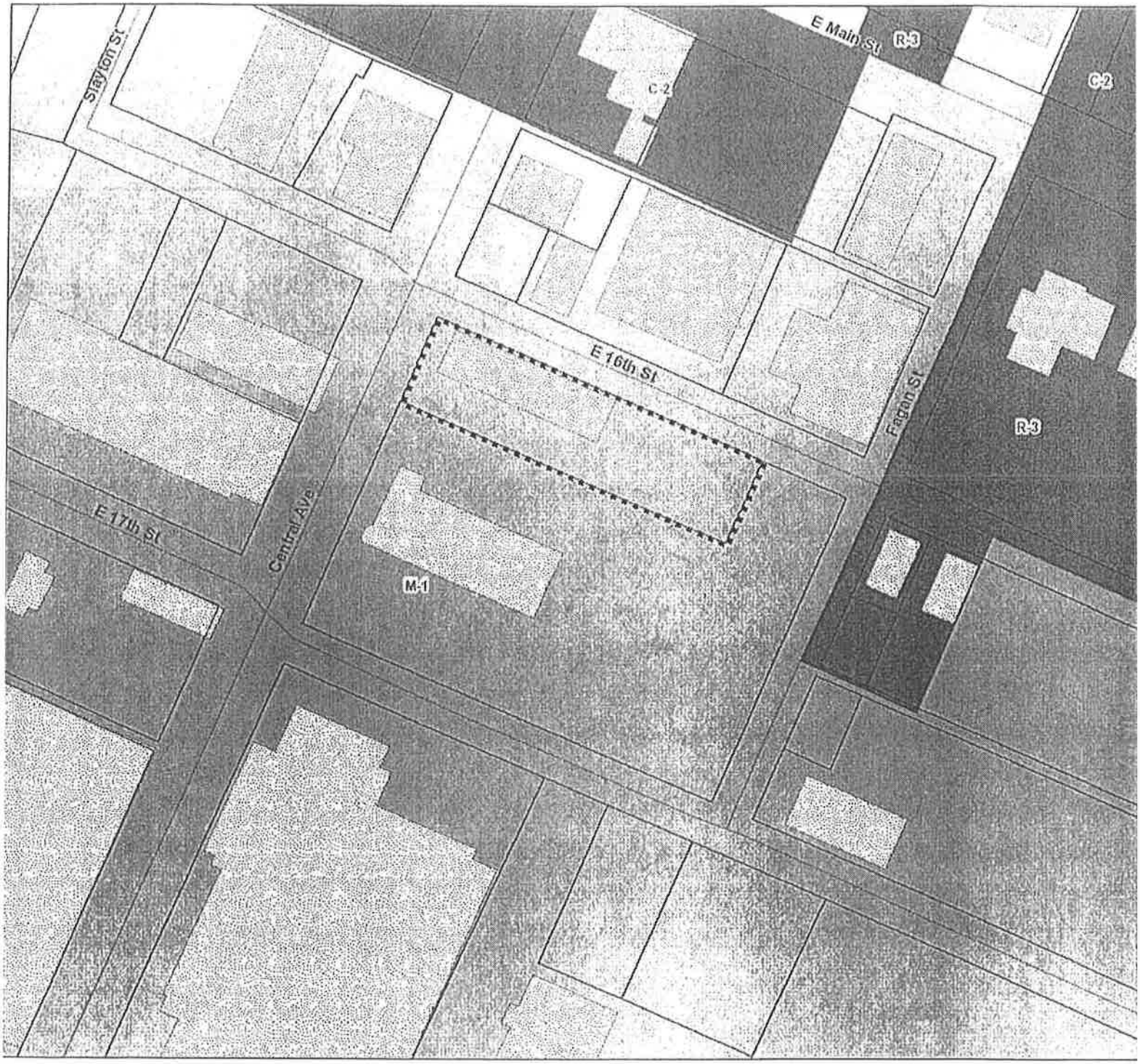
AND WHEREAS, the Planning Commission has studied the petition in relation to existing zoning and land use and potential patterns of development.

AND WHEREAS, the Planning Commission agreed with the staff's key findings and recommendation.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission, on January 11, 2016, recommended to the Members of the City Council of the City of Chattanooga that this petition for a Mandatory Referral to Declare Surplus for Transfer to YMCA for continued operation of the Y-CAP Program be approved.

Respectfully submitted,

John Bridger
Secretary



MR 2016-008 Declare Surplus

PLANNING COMMISSION RECOMMENDATION FOR CASE NO. MR-2016-008:
Approve

North

127 ft

Chattanooga Hamilton County Regional Planning Agency

RPA

DONATION AGREEMENT

This Donation Agreement (the **"Agreement"**) is made this _____ day of _____, 2016, by and between the **CITY OF CHATTANOOGA**, a municipal corporation, whose address is 101 E. 11th Street, Chattanooga, Tennessee 37402 (**"Donor"**), and the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHATTANOOGA,** a Tennessee nonprofit corporation whose address is 301 W. 6th Street, Chattanooga, Tennessee (**"Donee"**).

RECITALS:

A. Donor is the fee simple owner of that certain parcel of real property located in Chattanooga, Hamilton County, Tennessee, which has a street address of 1600 Central Avenue, Tax Parcel I.D. No. 146P-J-001, being more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**"). Donee is currently occupying the Property as tenant under a lease agreement with Donor.

B. Donor desires to donate to Donee the Property. Donee desires to accept such donation from Donor.

C. The parties desire to set forth the terms and conditions of the donation in this Agreement.

NOW, THEREFORE,

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Donation**.

(a) For and in consideration of the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donee's material reliance on this Agreement, Donor agrees to donate, grant and convey to Donee the Property described on **Exhibit A**. Donee shall not be obligated to accept the Property if (a) the donation of the Property is not consummated under this Agreement because of Donor's failure, refusal or inability to perform any of its obligations under this Agreement; (b) Donee elects to terminate this Agreement because any of Donor's representations or warranties cease to be true prior to Closing (hereinafter defined); (c) Donee elects to terminate this Agreement because Donor is unable to remove a title exception objected to by Donee; (d) Donee elects not to close by reason of damage to the Property in accordance with Paragraph 9 of this Agreement; (e) Donee elects to terminate this Agreement in accordance with Paragraph 8 of this Agreement because of unacceptable environmental or other conditions on the Property; or (f) Donee elects to terminate this Agreement in accordance with Paragraph 13 of this Agreement if the City Council of Donee fails to approve the transaction.

(b) The parties agree that a reasonable estimate of the value of the donated property is $_____. Donee agrees, upon request, to provide Donor reasonable written verification of Donee's receipt of the donated Property.

2. **Closing**. The donation of the Property by Donor (the "**Closing**") shall take place on or before _____, provided that Donee has not elected to extend or terminate this Agreement pursuant to the terms hereof. Donee's obligation to accept title to the Property shall be contingent on Donor's performance of all of its duties and obligations hereunder.

3. **Title**. Donor shall convey the Property to Donee by executing and delivering to Donee a special warranty deed (the **"Deed"**) in substantially the form attached hereto as **Exhibit B**. Donee shall be under no obligation to accept the Deed from Donor if Donee, in it's examination of title to the Property, determines that it is subject to liens, encumbrances or other matters of title other than (a) the lien of ad valorem property taxes for the year in which the Closing occurs, which taxes are not yet due and payable; (b) exceptions listed on a title commitment (the "**Title Commitment**") issued by a national title insurance company, which exceptions are accepted by Donee in writing; and (c) any other matters approved by Donee in writing. Donor shall obtain at its expense either a title report or a Title Commitment from a national title insurance company reasonably acceptable to Donee, reflecting good and marketable fee simple title to the Property in Donor. Donee shall examine the title report/Title Commitment and shall furnish to Donor at least ten (10) days prior to the Closing a written statement of any objections to matters of title. Matters reflected by the survey of the Property obtained by Donee pursuant to Paragraph 5 below may be treated as title defects and referenced in the above-referenced title objection letter. Donor may, but shall not be obligated to, cure any such title or survey objections. Following Donee's initial title examination, Donee shall have until the time of Closing to reexamine title to the Property and to give Donor notice of any additional objections disclosed by such reexamination which were not filed and indexed of record on the date of Donee's initial examination. If all of the stated title and survey objections are not cured or satisfied by the date set for Closing, Donee may, at its option:

(a) waive the title objections and proceed to Closing;

(b) extend the Closing date by written notice to Donor, to enable Donor to satisfy the stated title objections; or

(c) terminate this Agreement, and, except as may expressly be provided herein to the contrary, Donor and Donee shall have no further rights or obligations under this Agreement.

If Donee elects to extend the Closing date under subparagraph (b) above and the Donor subsequently fails or is unable to satisfy the stated title objections by the extended Closing date, Donee may elect between the alternatives set forth in subparagraphs (a) or (c) above. Donor agrees to provide to Donee and the title insurer all routine or otherwise available documents necessary or desirable to confirm Donor's title to and authorization to convey the Property, and to permit Donee to

obtain an ALTA Form owner's title insurance policy with respect to the Property, with all standard exceptions to coverage deleted therefrom.

4. **Donor's Promise not to Further Encumber**. From and after the date hereof, Donor shall not do any of the following without the prior written consent of Donee: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Property; (b) cause or permit any lien, encumbrance, mortgage, security deed, deed of trust, right, restriction or easement to be placed upon the Property; (c) permit any mortgage, security deed, deed of trust or other lien or encumbrance to be foreclosed upon due to Donor's actions or omissions, including failure to make any required payment(s); or (d) convey any interest in the Property, including but not limited to conveyances of title and transfers of development rights.

5. **Survey**. If Donee elects to do so, Donee shall, prior to Closing and at Donee's expense, obtain a boundary survey of the Property, signed and sealed by a Tennessee registered surveyor, certified to Donee and the title insurer, prepared according to state standards. The legal description drawn from any such survey shall serve as the legal description for the Property, as set forth in the Deed.

6. **Donor's Representations and Covenants**. Donor represents and covenants as follows:

(a) Donor has good and marketable, fee simple title to the Property, and has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby in accordance with the terms of this Agreement;

(b) No one other than Donor will be in possession of, or have any right of possession of, any portion of the Property at the Closing;

(c) To the best of Donor's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened against Donor, which could affect Donor's title to the Property or any portion thereof, affect the value of the Property or any portion thereof, affect Donor's duties and obligations under this Agreement or subject an owner of the Property, or any portion thereof, to liability;

(d) To the best of Donor's knowledge, there are no:

(i) Uncured notices from any governmental agency notifying Donor or its predecessor in ownership of the Property which might result in any lien upon or claim against the Property or any portion thereof, or which specify any violation of law, ordinance, rule, regulation, covenant or restriction which might affect the Property or any portion thereof;

(ii) Actual or impending mechanics' or materialmens' or similar liens against the Property or any portion thereof;

(iii) Notices or other information giving Donor reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property may have a material affect on the value of the Property or subject the owner of the Property to potential liability under any applicable environmental laws or regulations;

(iv) rental agreements, rights of first refusal or other agreements, written or oral, which affect the Property or any portion thereof except for that certain Lease by and between Donor and Donee dated May 15, 2013;

(v) Conditions at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance (as hereinafter defined) on the Property nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Property or into or upon ground or surface water at the Property. To the best of Donor's knowledge, no Hazardous Substance is now or ever has been stored on the Property in underground tanks, pits or surface impoundments and there are no asbestos-containing materials incorporated into any buildings or interior improvements or equipment that are part of the Property or other assets to be transferred pursuant to this Agreement, nor is there any electrical transformer, fluorescent light fixture with ballasts or other PCB Item, as defined at 40 CFR Section 761.3, on the Property or among the assets to be transferred pursuant to this Agreement. For purposes of this Agreement, **"Hazardous Substance"** shall have the meaning set forth at 42 U.S.C. Section 9601 (14), as well as the meaning(s) set forth in any applicable state law or regulation;

(e) The execution of this Agreement will not constitute a breach or default under any agreement by which Donor is bound and/or to which the Property is subject;

(f) Donor has delivered to Donee copies of all notices, correspondence, reports and other documents that Donor has received from or sent to any regulatory or enforcement agency concerning hazardous substances on the Property, and copies of all reports of investigations concerning Hazardous Substances on the Property prepared by any person and in the possession or control of Donor. Donor agrees to promptly deliver to Donee copies of all such documents received subsequent to the date hereof through and including the Closing; and

(g) The Property is not presently subject to, encumbered by, or conveyed under any mortgage, deed of trust, deed to secure debt, security deed, or other debt or financing instrument, and

Donor shall not convey any interest in or otherwise encumber or subject the Property to any such debt or financing instrument prior to the consummation of the Closing under this Agreement.

Each of the above representations and covenants is material to and is relied upon by Donee. Each of the above representations shall be deemed to have been made as of date hereof and as of the Closing. Donor shall indemnify, defend and hold harmless Donee, its officers, directors, employees, agents, successors and assigns from and against any and all expense, loss, liability, fine, penalty, damages and claims, including Donee's reasonable attorneys' and consultants' fees and costs, arising from or relating to the breach of any of Donor's warranties, representations and covenants. This indemnification obligation shall survive the Closing and the delivery of the instruments of conveyance.

If, before the conveyance to Donee, Donor discovers any information or facts that would materially change the foregoing warranties and representations, Donor shall immediately give notice to Donee of those facts and information. If any of the foregoing warranties and representations cease to be true before the conveyance to Donee, Donor shall be obligated to remedy the problem before the Closing. If the problem is not remedied before the date of conveyance to Donee, then Donee may elect either to (a) terminate this Agreement, in which case Donee shall have no obligation to accept title to the Property or (b) defer the Closing date until such problem has been remedied, or (c) accept title to the Property and close, in which case Donor shall donate the Property to Donee pursuant to the terms hereof. Donee's election in this regard shall not constitute a waiver of Donee's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or at equity.

7. **Remedies Upon Default**. In the event Donor defaults in the performance of any of Donor's obligations under this Agreement, Donee's sole remedy shall be the right of specific performance against Donor. In the event Donee defaults in the performance of any of its obligations under this Agreement, Donor shall have the right to any remedy provided in this Agreement or by law or equity, except Donor shall not have the right to sue Donee for damages.

8. **Right to Inspect the Property**. During the term of this Agreement, Donee, through its employees and agents, may enter upon the Property in order to conduct such survey, appraisal, environmental, physical, engineering, feasibility studies and other inspections and investigations as Donee deems appropriate in an effort to determine whether or not to proceed with the Closing of this transaction. Donee may terminate this Agreement if any inspections performed pursuant to this paragraph uncover unacceptable property conditions in Donee's discretion. Donee agrees to indemnify Donor against any damages or costs incurred by Donor due to Donee's or its agents' entry onto the Property to conduct the tests and studies above described.

9. **Risk of Loss**. All risk of loss shall remain with Donor until the Closing. Donor shall maintain the Property in its present condition pending Closing and shall not make or permit any changes in or upon the Property except with Donee's advance written consent. In the event the

Property is destroyed or damaged prior to Closing, such that the Property is, in the sole discretion of Donee, no longer suitable for Donee's public purposes, Donee shall have the right, by notice given to Donor as provided in Paragraph 10 below, to terminate this Agreement, and, except as may be provided expressly to the contrary herein, Donor and Donee shall have no further rights, obligations or duties under this Agreement. Donor agrees that upon Closing, all improvements, if any, located on the Property shall be in the same order and condition as on the date of this Agreement, except for reasonable wear and tear, and Donor shall maintain in full force a policy of all-risk hazard insurance, insuring against loss of or damage to said improvements.

10. **Notices**. All notices pertaining to this Agreement shall be in writing, delivered to the parties hereto personally by hand, by United States mail, certified or registered, with return receipt requested, by telecopier (provided a confirmation copy is sent via another mode) or courier service at the addresses set forth in Recital A. All notices shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

11. **Prorations and Fees**. Donor is exempt from paying real property taxes. Donee is a Tennessee non-profit public benefit corporation, and is exempt from paying real property taxes on the Property in connection with its current leasehold interest. Donor agrees that Donee may, prior to the Closing, apply for and take such other steps as may be available to obtain and/or confirm continued tax exemption of the Property following Closing. Donor agrees to cooperate with Donee in good faith with any such application process. From and after the date of Closing, Donee shall be responsible for the payment of all real property taxes, if any. Water quality fees assessed for the year 2016 (regardless of when due and payable) shall be prorated as of the Closing. Special assessments levied prior to the Closing shall be the responsibility of Donor. The provisions contained in this paragraph shall survive the Closing and shall not be merged into the Deed. Any documentary tax or real property transfer tax arising out of the conveyance of the Property, the premium for the title insurance policy, and any other fees and charges shall be paid by Donee.

12. **No Agents or Brokers.** Each party hereto represents to the other that it has not discussed the transactions contemplated in this Agreement with any real estate broker, agent or salesman so as to create any legal right or entitlement to claim a real estate commission or similar fee with respect to the conveyance of the Property to Donee. Donor (to the extent permitted under the Tennessee Governmental Tort Liability Act) and Donee hereby indemnify each other against, and agree to hold each other harmless from, any and all claims, loss, liability, cost, and expenses (including reasonable attorney's fees) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to this Agreement or the conveyance of the Property. The foregoing indemnities shall survive the termination or consummation of this Agreement.

13. **Approval.** This Agreement is contingent upon review and approval by the Chattanooga City Council.

14. **Time of the Essence**. Time is of the essence of this Agreement.

15. **Possession.** Possession of the Property shall be transferred to Donee at Closing.

16. **Binding on Successors**. This Agreement shall be binding not only upon the parties hereto but also upon their personal representatives, assigns, and other successors in interest. Donee, with Donor's prior written consent, which shall not be unreasonably withheld or delayed, may assign its rights under this Agreement to another charitable organization or to a governmental entity, in which case Donee shall be released in full from all duties and obligations hereunder, provided Donee's assignee agrees in writing to assume such duties and obligations.

17. **Additional Documents**. Donor and Donee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

18. **Entire Agreement; Modification**. This Agreement constitutes the entire agreement between Donor and Donee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

19. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

20. **No Merger**. The obligations contained in this Agreement, except for those specifically discharged at Closing, shall survive the Closing.

21. **Headings; Rules of Construction.** The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

22. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.

23. **No Waiver**. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of

either party's right to demand exact compliance with the terms hereof. Any party hereto may waive the benefit of any provision, contingency or condition for its benefit contained in this Agreement.

24. **Effective Date.** The effective date of this Agreement shall be the latter date of the execution dates below.

25. **Choice of Law.** The validity, construction, interpretation, and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the State of Tennessee.

26. **Miscellaneous.** In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

IN WITNESS of the foregoing provisions, the parties hereto, by their duly authorized signatories, have executed this Agreement under seal as of the last date of signature, as reflected below.

YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN CHATTANOOGA

By:_____
Printed Name:_____
Title:_____

CITY OF CHATTANOOOGA, TENNESSEE

By:_____
ANDY BERKE, Mayor

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

FORM OF SPECIAL WARRANTY DEED