RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PROPERTY EXCHANGE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH HIGHLAND PARK COMMONS, INVOLVING 809 S. WILLOW, IDENTIFIED AS TAX MAP NO. 146O-V-006, AND THREE (3) VANCE AVENUE PARCELS, IDENTIFIED AS TAX MAP NOS. 146O-V-004.001, 146O-V-007, AND 146O-V-008.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a Property Exchange Agreement, in substantially the form attached, with Highland Park Commons, involving 809 S. Willow, identified as Tax Map No. 146O-V-006, and three (3) Vance Avenue parcels, identified as Tax Map Nos. 146O-V-004.01, 146O-V-007, and 146O-V-008.

ADOPTED: _____, 2016

/mem

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: April 26, 2016

Preparer: Cary Bohannon **Department:** Economic and Community Development

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** ____ **Council District #** 9

A RESOLUTION REQUEST AUTHORIZING THE MAYOR TO EXECUTE A PROPERTY EXCHANGE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH HIGHLAND PARK COMMONS, INC. INVOLVING 809 S. WILLOW, IDENTIFIED AS TAX MAP NUMBER 146O-V-006, AND THREE (3) VANCE AVENUE PARCELS, IDENTIFIED AS TAX MAP NUMBERS 146O-V-004.01, 146O-V-007 AND 146O-V-008.

Name of Vendor/Contractor/Grant, etc.	Highland Park Commons, Inc.	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)	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)

Letter of Intent, as related to this project, was approved by Council Resolution 28532 and executed by Mayor Berke on 02-18-16.

Approved by Mandatory Referral actions MR-2015-127 and MR-2015-128

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-2015-127 City of Chattanooga
October 12, 2015

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 granting approval of a Mandatory Referral pursuant to T.C.A. 13-4-104 to Declare Surplus, property located at 809 South Willow Street.

Lots 30, 32 and 34, Payne's Subdivision of Highland Park, Plat Book 1, Page 16, ROHC, Deed Book 1326, Page 342, ROHC. Tax Map 146O-B-V-006 as shown on the attached map.

AND WHEREAS, the Planning Commission held a public hearing on this petition on October 12, 2015,

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

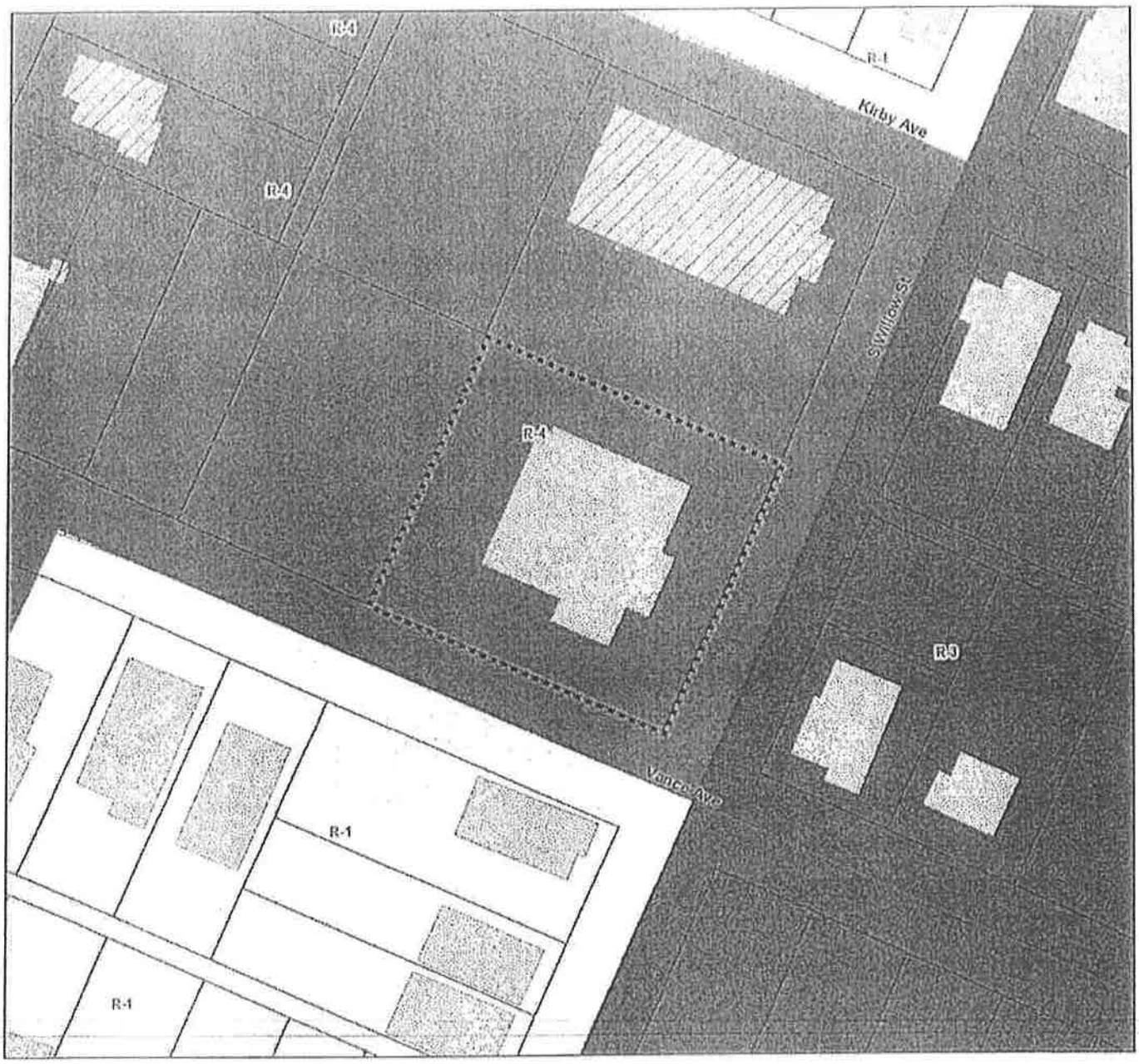
AND WHEREAS, no one was present in opposition to the petition,

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

NOW THEREFORE, BE IT RESOLVED that the Planning Commission, on October 12, 2015, recommended to the Members of the City Council of the City of Chattanooga that this petition for a Mandatory Referral for property swap for new Fire Hall be approved.

Respectfully submitted,

John Bridger
Secretary



MR 2015-127 Declare Surplus

PLANNING COMMISSION RECOMMENDATION FOR CASE NO.
MR-2015-127: Approve

66 R

Chattanooga Hamilton County Regional Planning Agency

RPA

MR-2015-128 City of Chattanooga
October 12, 2015

RESOLUTION

WHEREAS, City of Chattanooga Real Property Office/Gail Hart and Highland Park Commons, Inc. petitioned the Chattanooga-Hamilton County Regional Planning Commission to recommend to the Members of the City Council of the City of Chattanooga granting approval of a Mandatory Referral pursuant to T.C.A. 13-4-104 for Acquisition of properties located at 2003, 2005 and 2009 Vance Avenue.

Lots 22, 24, 26, and 28, Payne's Subdivision of Highland Park, Plat Book 1, Page 16, ROHC, Deed Book 10095, Page 391, ROHC. Tax Map 146O-V-004.1, 007 and 008 as shown on the attached map.

AND WHEREAS, the Planning Commission held a public hearing on this petition on October 12, 2015,

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

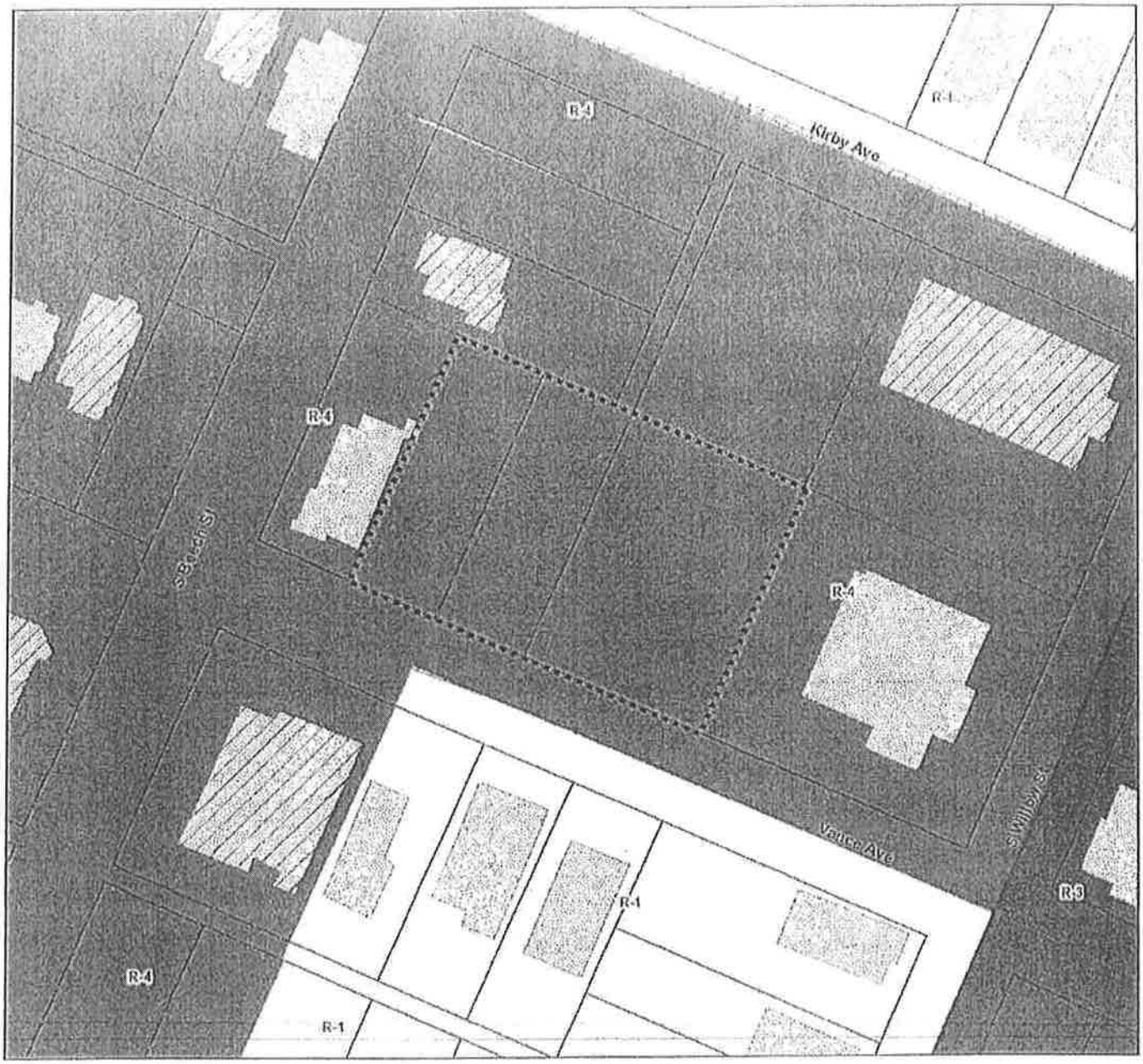
AND WHEREAS, no one was present in opposition to the petition,

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

NOW THEREFORE, BE IT RESOLVED that the Planning Commission, on October 12, 2015, recommended to the Members of the City Council of the City of Chattanooga that this petition for a Mandatory Referral for property swap for new fire hall be approved.

Respectfully submitted,

John Bridger
Secretary



MR 2015-128 Acquisition

PLANNING COMMISSION RECOMMENDATION FOR CASE NO.
MR-2015-128: Approve

72 ft

Chattanooga Hamilton County Regional Planning Agency

RPA

PROPERTY EXCHANGE AGREEMENT

This Property Exchange Agreement ("Agreement") is made and entered into on this _____day of _____, 2016 ("Effective Date") by and between the City of Chattanooga, a Tennessee municipal corporation, (hereafter "City"), and Highland Park Commons, Inc., a Tennessee not-for-profit corporation (hereafter "HPC") (collectively, "Parties").

WHEREAS, HPC owns a fee simple interest in certain parcels of real property identified as Lots 22, 24, 26 & 28, bearing Tax Map Nos. 146O-V-008, 146O-V-007, and 146O-V-004.01 respectively (hereafter "HPC Properties") and more particularly described in Paragraph 2 and in the Legal Property Description attached hereto as **Exhibit A** and incorporated herein by reference;

WHEREAS, City owns a fee simple interest in a parcel of real property located at 809 Willow Street, Chattanooga, Tennessee, bearing Tax Map Number 146O-V-006, and more particularly described in Paragraph 2 below and further described in the Legal Property Description attached hereto as **Exhibit B** and incorporated herein by reference (hereafter "City Property");

WHEREAS, the City Property and the HPC Properties are sometimes collectively referred to herein as the "Exchange Properties;"

WHEREAS, HPC has agreed to convey to the City the HPC Properties upon the condition that the City conveys to HPC the City Property, subject to the exclusion of Lot 30 referenced in the Legal Property Description attached hereto as **Exhibit B** and the performance by the City of the specific conditions for conveyance set forth in Paragraph 10(a)(ii) below, with such conveyances by HPC and City being further subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby mutually acknowledged and accepted, the Parties do contract and agree as follows:

1. **Exchange.**

(a) HPC shall convey, and City shall acquire, in fee simple, subject to the terms and conditions set forth in this Agreement, the HPC Properties;

(b) City shall convey, and HPC shall acquire, in fee simple, subject to the terms and conditions set forth in this Agreement, the City Property;

(c) The Parties acknowledge and agree that the conveyance of the Exchange Properties under the terms hereof shall be full and adequate consideration for the receipt of the other property under the terms hereof, and that, except as otherwise specifically set forth herein, there shall be no further or additional consideration, cash or otherwise, payable by one party to

the other due to the exchange of the Exchange Properties at Closing (as defined herein). For recording and reporting purposes for County and State agencies and for title insurance coverage and related premium cost, the Parties acknowledge and agree that the estimated fair market values of the HPC Properties and the City Property are set forth on **Exhibit D** attached hereto and incorporated herein by reference; and

(d) HPC and City agree to execute all documents reasonably necessary to complete the exchange of the Exchange Properties as contemplated herein.

2. **Property.**

(a) City Property: The City will transfer to HPC a portion of the real property located at 809 S. Willow Street, Chattanooga, Tennessee, and more particularly described in **Exhibit B** and as outlined in red in the diagram attached hereto as **Exhibit C** and incorporated herein by reference. The City Property includes all rights together with all improvements located thereon, including, without limitation, all of the fixtures, leases, maps, reports, plans, and other such material concerning the City Property, surrounding grounds, driveways, parking areas, and related facilities, including all land use entitlements, governmental permits, and allocations and other such governmental and agency approvals as may exist concerning the City Property. The City Property shall be free and clear of rights of first refusal and encumbrances of any kind. The Parties agree that the City Property shall not include Lot 30 referenced in **Exhibit B** and outlined in green on **Exhibit C.**

(b) HPC Properties: HPC will transfer to the City certain real property as more particularly described in **Exhibit A** and outlined in blue as shown on **Exhibit C**. The HPC Properties include all rights together with all improvements located thereon, including, without limitation, all of the fixtures, leases, maps, reports, plans, and other such material concerning the HPC Properties, surrounding grounds, driveways, parking areas, and related facilities, including all land use entitlements, governmental permits, and allocations and other such governmental and agency approvals as may exist concerning HPC Properties. HPC Properties shall be free and clear of rights of first refusal and encumbrances of any kind.

3. **Due Diligence.**

(a) The Parties shall have a period of up to forty-five (45) days ("Due Diligence Period") commencing on the day after the Effective Date of the Agreement in which to conduct an investigation of the Exchange Properties, including, but not limited to, any encumbrances, regulatory and environmental matters related to the Exchange Properties. To the extent such has not already been provided, each party will provide the other party with the following: (i) all environmental audits and appraisals of their respective property; (ii) all plats of any of the respective properties, including, without limitation, survey plats; (iii) any permits, certificates, studies, evaluations, and other documents related to the respective properties; (iv) title reports; and (v) any correspondence that would adversely affect each party's ability to use the property as contemplated. Each party shall be given full access to conduct such physical and other inspections and investigations of the respective parcels which they deem appropriate. At the end of the forty-five (45) day period, each party shall have an additional fifteen (15) days to

notify the other party in writing that it elects to terminate this Agreement in the event it deems any of the respective parcels to be unsuitable for any reason. Upon delivery of such termination notice, this Agreement shall be deemed terminated and each of the Parties shall be released from further liability to the other, except for liabilities expressly surviving the termination of this Agreement.

(b) To the extent permitted by law under the Tennessee Governmental Tort Liability Act, T.C.A. §§ 29-20-101, *et seq.*, as may be amended from time to time, City agrees to indemnify HPC against any damages or costs incurred by HPC due to City's or its agents', representatives', employees' or contractors' entry onto the HPC Properties to conduct the tests and studies above described. City shall promptly repair any damage to the HPC Properties to substantially the same condition as existed prior to City's entry thereon that is caused as a result of City's entry onto the HPC Properties or any of the activities of City or those of its agents, representatives, employees or contractors on the HPC Properties. HPC shall have the right to accompany City or its agents, representatives, employees or contractors during any entry upon the HPC Properties, provided HPC does not unreasonably interfere with City's inspection of the HPC Properties. The obligations of City under this Section 3(b) shall survive Closing and any termination of this Agreement.

(c) HPC agrees to indemnify City against any damages or costs incurred by City due to HPC's or its agents', representatives', employees' or contractors' entry onto the City Property to conduct the tests and studies above described. HPC shall promptly repair any damage to the City Property, to substantially the same condition as existed prior to HPC's entry thereon that is caused as a result of HPC's entry onto the City Property or any of the activities of HPC or those of its agents, representatives, employees or contractors on the City Property. City shall have the right to accompany HPC or its agents, representatives, employees or contractors during any entry upon the City Property, provided City does not unreasonably interfere with HPC's inspection of the City Property. The obligations of HPC under this Section 3(c) shall survive Closing and any termination of this Agreement.

4. **Title.** Title to the Exchange Properties shall be conveyed by special warranty deeds duly authorized and executed by the respective conveying party (collectively, the "Deeds").

(a) **City Property.** At HPC's election, HPC will conduct its own title search and analysis and obtain its own commitment for the issuance of a title insurance policy for the City Property satisfactory to HPC's standards. If any title defects or matters objectionable to HPC are disclosed in the title insurance commitment for the City Property, HPC shall give City written notice prior to the Closing. City shall be allowed no more than thirty (30) days within which to cure such defects. In no event shall City's cure period extend beyond the Closing without the express written consent of HPC. If the defects are not timely cured to HPC's satisfaction, HPC may waive such defects and proceed to close, or HPC may terminate this Agreement by written notice to City, in which event this Agreement shall be deemed terminated upon delivery of said notice and each of the Parties shall be released from further liability to the other, except for liabilities expressly surviving the termination of this Agreement.

(b) **HPC Properties.** At City's election, City shall conduct its own title search and analysis and obtain its own commitment for the issuance of a title insurance policy for the HPC Properties in form and substance satisfactory to City's standards. If any title defects or other matters objectionable to City are disclosed in the title insurance commitment for the HPC Properties, City shall give HPC written notice of the same prior to the Closing. HPC shall be allowed no more than thirty (30) days within which to cure such defects; provided, however, that in no event shall HPC's cure period extend beyond the Closing without the express written consent of City. If the defects are not timely cured to City's satisfaction, City may waive such defects and proceed to close, or City may terminate this Agreement by written notice to HPC, in which event this Agreement shall be deemed terminated upon delivery of said notice and each of the Parties shall be released from further liability to the other, except for liabilities expressly surviving the termination of this Agreement.

5. **Promise not to Further Encumber.** From the Effective Date of this Agreement and until Closing or termination of this Agreement, the Parties shall not do any of the following without prior written consent of the other party: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Exchange Properties, except such as will expire prior to Closing or can be terminated prior to Closing; (b) cause or permit any lien, encumbrance, mortgage, security deed, deed of trust, right, restriction or easement to be placed upon the Exchange Properties; (c) permit any mortgage, security deed, deed of trust or other lien or encumbrance to be foreclosed upon due to HPC's or City's actions or omissions, including failure to make any required payment(s); or (d) convey any interest in the Exchange Properties, including but not limited to, conveyances of title or easement rights, and transfers of development rights.

6. **Survey and Plat.** Prior to Closing and at their own expense, either party may obtain a boundary survey of the respective parcels being transferred to each party at Closing, signed and sealed by a Tennessee Registered Surveyor, prepared according to State standards. The legal descriptions shown on the surveys, as derived therefrom, shall be the description contained in the Deeds. Any defects or objectionable conditions revealed by any survey shall be considered as a title defect or objection under the provisions of Paragraph 4 above.

7. **Environmental Assessment.** Prior to Closing and at their own expense, either party may obtain a Phase I Environmental Site Assessment of the respective parcels being transferred to each party at Closing.

8. **City's and HPC's Representations.** The Parties represent the following:

(a) To the best of the Parties' knowledge, but without independent investigation other than the title research by each party as provided in this Agreement, they each do have good and marketable, fee simple title to the respective parcels to be exchanged, subject only to restrictions of record and governmental ordinances such as are approved by each party after review of their respective title insurance commitments and cure of any defects thereunder. The Parties have 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) To the City's actual knowledge, there are no suits, actions, arbitrations, legal, administrative or other proceedings or inquiries pending or threatened against the City Property or any portion thereof, or pending or threatened against the City, which could affect the Parties' title to the City Property or any portion thereof, affect the value of the City Property or any portion thereof, affect the City's duties and obligations under this Agreement or subject an owner of the City Property, or any portion thereof, to liability;

(c) To the best of City's knowledge, there are no:

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

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

(iii) Leases, licenses, permits, options, rental agreements, rights of first refusal or other agreements, written or oral, which affect the City Property or any portion thereof;

(iv) Conditions at, on, under or related to the City Property presently or potentially posing a significant hazard to human health or the environment other than the presence of Hazardous Substance (as hereinafter defined) presently on, under or related to the City Property. City hereby represents that it will provide to HPC all of the documentation that it has in its possession related to such Hazardous Substance within three (3) business days from the Effective Date of this Agreement.

(v) Except for the existence of certain Hazardous Substances as identified in a Phase I environmental assessment obtained by the City and shared with both parties, previous or ongoing production, use, treatment, storage, transportation, or disposal of any Hazardous Substance on the City Property nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the City Property or into or upon ground or surface water at the City Property, and no Hazardous Substance is now or ever has been stored on the City Property in underground tanks, pits or surface impoundments. 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;

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

(e) To the extent available, City agrees to deliver to HPC, within three (3) days of the Effective Date, copies of all notices, correspondence, reports and other documents that City has received from or sent to any regulatory or enforcement agency concerning

Hazardous Substances on the City Property, and copies of all reports of investigations concerning Hazardous Substances on the City Property prepared by any person and in the possession or control of City, and further agrees to immediately notify HPC of any notices, correspondences, reports or any other documents related to the foregoing that are received by City prior to Closing; and

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

(g) To the best of HPC's knowledge, but without investigation, there are no suits, actions, arbitrations, legal, administrative or other proceedings or inquiries pending or threatened against the HPC Properties or any portion thereof, or pending or threatened against HPC, which could affect title to the HPC Properties or any portion thereof, affect the value of the HPC Properties or any portion thereof, affect HPC's duties and obligations under this Agreement;

(h) To the best of HPC's knowledge, but without investigation, there are no:

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

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

(iii) Leases, licenses, permits, options, rental agreements, rights of first refusal or other agreements, written or oral, which affect the HPC Properties or any portion thereof, other than those that will expire or can be terminated prior to the Closing Date;

(iv) Conditions at, on, under or related to the HPC Properties presently or potentially posing a significant hazard to human health or the environment other than the presence of Hazardous Substance (as hereinafter defined) presently on, under or related to the HPC Properties.

(v) Except for the existence of certain Hazardous Substances as identified in a Phase I environmental assessment obtained by the City and shared with both parties, previous or ongoing production, use, treatment, storage, transportation, or disposal of any Hazardous Substance on the HPC Properties nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the HPC Properties or into or upon ground or surface water at the HPC Properties, and no Hazardous Substance is now or ever has been stored on the HPC Properties in underground tanks, pits or surface impoundments. 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;

(i) The execution of this Agreement will not constitute a breach or default under any material agreement by which HPC is bound and/or to which the HPC Properties are subject; and

(j) Within three (3) days of the Effective Date, HPC agrees to deliver to City copies of all notices, correspondence, reports and other documents that HPC has received from or sent to any regulatory or enforcement agency concerning Hazardous Substances on the HPC Properties, and copies of all reports of investigations concerning Hazardous Substances on the HPC Properties prepared by any person and in the possession or control of HPC, and further agrees to immediately notify City of any notices, correspondences, reports or any other documents related to the foregoing that are received by HPC prior to Closing.

(k) The HPC Properties are 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 HPC shall not convey any interest in or otherwise encumber or subject the HPC Properties to any such debt or financing instrument prior to the consummation of the Closing under this Agreement except for the following:

Each of the above representations is material to and is relied upon by the Parties. Each of the above representations shall be deemed to have been made as of date hereof and as of the date of Closing.

If, before the Closing, either of the Parties discovers any information or facts that would materially change the foregoing warranties and representations, it shall immediately give notice to the other party of those facts and information. If any of the foregoing warranties and representations ceases to be true before the Closing, either of the Parties may elect to terminate this Agreement by delivering notice of such termination to the other party. Upon delivery of such notice, this Agreement shall be deemed terminated and each of the Parties shall be released from further liability to the other, except for liabilities expressly surviving the termination of this Agreement.

9. **Adjustments; Closing Costs.**

(a) **City Property.**

(i) **Taxes and Assessments.** The City represents that the City Property is presently exempt from the payment of real property taxes for the year 2016. Water Quality Fees assessed for the year 2016 (regardless of when due and payable) shall be prorated as of the date of release of the deed to the City Property from escrow. Special assessments levied prior to the Closing shall be the responsibility of City. Any documentary tax or real property transfer tax arising out of the conveyance of the HPC Properties to City, the premium for title insurance policy, and any other fees and charges related to the transfer of the HPC Properties to City shall be paid by City.

(ii) **Other Income.** City shall be entitled to all other income, whether paid or unpaid, attributable to the period prior to the Closing Date, including, but not limited to liability claims, damages and litigation settlement. If HPC receives any income due City after closing, HPC agrees to remit it to City immediately. HPC shall be entitled to all other income whether paid or unpaid, attributable to the period from and after the Closing Date. Accordingly, if City receives any income due HPC after Closing for periods from or subsequent to Closing, City shall immediately remit same to HPC.

(iii) **Other Expenses.** Except for continued operational expenses incurred by the City prior to delivery of the deed to HPC by the Closing Agent (as hereinafter defined), all other expenses of operating or owning the City Property shall be prorated as of the Closing Date, those paid or accruing prior to the Closing Date being City's responsibility and those accruing on and after the Closing Date, being HPC's responsibility. To the extent that invoices for such expenses attributable to the period before the Closing Date are received by HPC, such invoices shall be forwarded upon HPC's receipt to City, whereupon, City shall promptly pay same. All refunds of expenses attributable to the period before the Closing Date shall belong to City. If any such refunds are received by HPC, HPC shall deliver them immediately to City.

(iv) **Cash Adjustments.** All of such adjustments and allocations shall be made in cash at Closing. Where adjustments are made or based on estimates, any necessary readjustment shall be made when actual figures are available.

(v) **Other Closing Costs.** Any documentary tax or real property transfer tax arising out of the conveyance of the City Property, the premium for the title insurance policy, and any other fees and charges related to the transfer of the City Property to HPC shall be paid by HPC.

(b) **HPC Properties.**

(i) **Taxes and Assessments.** HPC represents that the HPC Properties are not exempt from the payment of real property taxes for the year 2016, which are a lien, and which will be pro-rated as of the date of Closing. 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 HPC. Any documentary tax or real property transfer tax arising out of the conveyance of the City Property to HPC, the premium for title insurance policy, and any other fees and charges related to the transfer of the City Property to HPC shall be paid by HPC.

(ii) **Other Income.** HPC shall be entitled to all other income, whether paid or unpaid, attributable to the period prior to the Closing Date, including, but not limited to liability claims, damages and litigation settlement. If City receives any income due HPC after closing, City agrees to remit it to HPC immediately. City shall be entitled to all other income whether paid or unpaid, attributable to the period from and after the Closing Date. Accordingly, if HPC receives any income due City after Closing for periods from or subsequent to Closing, HPC shall immediately remit same to City.

(iii) **Other Expenses.** All other expenses of operating or owning the HPC Properties shall be pro-rated as of the Closing Date, those paid or accruing prior to the Closing Date being HPC's responsibility and those accruing on and after the Closing Date, being City's responsibility. To the extent that invoices for such expenses attributable to the period before the Closing Date are received by City, such invoices shall be forwarded upon City's receipt to HPC, whereupon, HPC shall promptly pay same. All refunds of expenses attributable to the period before the Closing Date shall belong to HPC. If any such refunds are received by City, City shall deliver them immediately to HPC.

(iv) **Cash Adjustments.** All of such adjustments and allocations shall be made in cash at Closing. Where adjustments are made or based on estimates, any necessary readjustment shall be made when actual figures are available.

(v) **Other Closing Costs.** Any documentary tax or real property transfer tax arising out of the conveyance of the HPC Properties, the premium for the title insurance policy, and any other fees and charges related to the transfer of the HPC Properties to City shall be paid by City.

For any other costs not listed in this paragraph, the City will pay for all closing costs associated with the exchange of the HPC Properties, and HPC will pay all closing costs associated with the exchange of the City Property.

The provisions in this Paragraph 9 shall survive the Closing and shall not be merged into the Deed.

10. **Conveyances.** At Closing, the Parties shall assign and transfer to each other, by such instruments and assignments as may be acceptable to the Parties, the following:

(a) **Deeds.**

(i) **Special Warranty Deed to City.** Fee simple title to HPC Properties shall be conveyed by HPC to City by Special Warranty Deed at Closing. Title to the HPC Properties shall be good and marketable subject to only those exceptions as approved by the City in accordance with Paragraph 4 after title review.

(ii) **Special Warranty Deed to HPC.** Fee simple title to the City Property shall be conveyed by City to HPC by special warranty deed placed in escrow with Jones Raulston Title Insurance Agency, Inc., which shall be transferred to HPC upon the City's completion of the following:

a. The construction and occupancy of a new fire station to be constructed on Lots 22, 24, 26, 28 & 30;

b. Demolition of the existing building and pavement on Lots 30, 32 & 34;

c. Re-platting the HPC Properties as described in **Exhibit A**, which re-plat will include Lots 22, 24, 26, 28 and Lot 30, which is being retained by the City, as described on **Exhibit B**;

d. Completion of a parking lot on Lots 32 and 34 to include 24 parking spaces, the cost of which shall not exceed $90,000.00 and shall be constructed as generally shown on parking lot schematic drawing CS-0.14 attached as **Exhibit E**; and

e. Additional improvements to the City Property by City at City's expense shall include:

i. Concrete curb or precast wheel stops;

ii. Curb/gutter and sidewalk improvements as required by the City of Chattanooga Land Disturbing Permit;

iii. Storm water pipe connection to municipal system or tie into existing City system;

iv. Planting of parking lot trees per City Code, Article IX, Section 38-592, *et al*; and

v. New street yard buffer planting along Willow Street and Vance Street.

(iii) **Use Restrictions, Covenants, and Conditions.** Title to the City Property shall be good and marketable, subject only to those exceptions as are approved by HPC in accordance with its title research and review under Paragraph 4.

11. **Conditions.** Unless otherwise waived by the Parties in writing, the duties and obligations of each party under the terms and provisions of this Agreement are and shall be expressly subject to the following conditions precedent, each of which shall be deemed material to this Agreement:

(a) **Resolutions and Consents.** City's delivery to HPC, at or before Closing, of such resolutions and/or consents to the sale of the City Property as contemplated by this Agreement as HPC may reasonably require, all in such form as is satisfactory to HPC and the title agent.

(b) **Written Approval.** HPC's written approval of all riders and exhibits to this Agreement to be supplied by City.

12. **Failure of Condition.** In the event of failure of any of the conditions set forth in this Paragraph 11, which condition is not waived, either party may:

(i) Terminate this Agreement by written notice to the other party and this Agreement shall be null and void, in which event, each of the Parties shall be released from further liability to the other; or

(ii) Either party may postpone the closing for up to twenty (20) business days to allow such conditions to be satisfied, or to waive the same; provided the provisions of this paragraph shall continue to apply if the Closing is postponed pursuant hereto and no waiver of such condition shall be deemed to have been made unless expressly set forth in writing.

13. **"AS IS" Sale; No Representations.** City and HPC agree that each party shall purchase the Exchange Properties "As Is," that is, in its condition as of the Effective Date of this Agreement. HPC and City make no warranties or representations concerning the condition of the Exchange Properties in any respect, but acknowledge that HPC will not be required to take title and possession of the City Property until after the completion by the City of its demolition, removal, and parking lot construction obligations under Paragraph 10(a)(ii).

14. **Default.** If either party fails to comply with this Agreement within the time specified or if a party breaches any covenant contained herein, the non-defaulting party shall be entitled to pursue any remedies available to it at law or in equity. An election by the non-defaulting party to pursue any one or more of its available remedies at law or in equity shall in no way limit or be deemed a waiver of its rights to pursue any other remedies available.

15. **Real Estate Commissions.** Each party hereto represents to the other that it has not authorized any broker to act on its behalf in connection with the exchange hereunder and that it has not dealt with any broker purporting to act on behalf of any party. To the extent permitted by law, each party hereto agrees to indemnify, defend, and hold harmless the other party from and against any and all lawsuits, liens, claims, judgments, liabilities, costs, expenses, or damages, including reasonable attorneys' fees and court costs, of any kind or character arising out of or resulting from any agreement, arrangement, or understanding alleged to have been made by such party or on its behalf with any broker in connection with this Agreement. Notwithstanding anything to the contrary contained, this paragraph shall survive the Closing or any termination of this Agreement.

16. **Assignment.** Neither City nor HPC shall have the right to assign its interest in this Agreement to any person or entity.

17. **Waiver of Breach.** The failure of either party to insist upon strict performance of any of the terms or conditions and covenants contained herein shall not be deemed to constitute a waiver of any rights or remedies by either party that they may have and shall not be deemed to constitute a waiver of any subsequent breach or default.

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

19. **Miscellaneous.**

(a) **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. Should there be any provision thereof to be declared invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect.

(b) **Captions.** The captions used in this Agreement have been inserted only for purposes of convenience and the same shall not be construed or interpreted so as to limit or define the intent or the scope of any part of this Agreement.

(c) **Gender and Number.** Within this Agreement, words of any gender shall be held and construed to include any other gender and the words in the singular number shall be held and construed to include the full, unless the context otherwise requires.

(d) **Exhibits.** All exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference for all purposes.

(e) **Counterpart/Effective Date.** This Agreement may be executed by the Parties independently and any number of identical counterparts and upon execution by both Parties of any such independent counterparts, this Agreement shall be in full force and effect on the date that the last party executes an identical counterpart (the "Effective Date") as if the Parties had executed one and the same counterpart, and of such counterparts when taken together shall constitute one and the same instrument.

(f) **No Assumption.** The Parties' acquisition of the Exchange Properties shall in no way be construed as an assumption of any liability, debt or obligation related thereto, known or unknown, which is allocable to periods prior to the Closing.

20. **Closing.** The exchange of properties shall be closed as soon as practical, but in no event later than August 16, 2016, (the "Closing Date"), by Jones Raulston Title Insurance Agency, Inc. (the "Closing Agent"). City and HPC shall deposit with Closing Agent all instruments and monies required to complete the exchange of the Exchange Properties. City shall notify HPC in writing of the place, date and time of Closing, but in no event shall the Closing be scheduled less than twenty (20) days in advance of HPC's receipt of such written notice from City.

21. **Possession.** City and HPC hereby agree that City shall take possession of the HPC Properties on the Closing Date, and HPC shall take possession of the City Property only upon and subject to the completion of the conditions set forth in Paragraph 10.

22. **Risk of Loss and Allocation of Liability.** Risk of loss or damage is assumed by HPC for the HPC Properties until the Closing, and by the City for the City Property until the completion of the exchange of the properties following performance by the City of its obligations under Paragraph 10(a)(ii) and release of the deed to the City Property from escrow. Prior to the date each party assumes possession, each party will be responsible for any liability, whether for

personal injury or property damage, which occurs on the respective properties as owned by each party. The City's responsibility shall continue until the release of the deed to the City Property from escrow.

23. **Notice.** All notices and other communications given hereunder by the Parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date or certification thereof delivered by or addressed to the Parties as follows:

City:	City of Chattanooga Attention: General Services 101 E. 11th Street, Suite G4 Chattanooga, TN 37402
With a copy to:	City Attorney's Office 100 E. 11th Street, Suite 200 Chattanooga, TN 37402
HPC:	Highland Park Commons Attention: Eduardo Centurion, Project Manager Maclellan Foundation, Inc. 820 Broad Street, Suite 300 Chattanooga, TN 37402
With a copy to:	Allen L. McCallie Miller & Martin PLLC Suite 1200, Volunteer Bldg. 832 Georgia Avenue Chattanooga, TN 37402-2289

24. **Binding on Successors.** This Agreement shall be binding not only upon the Parties hereto, but also upon their respective heirs, executors, administrators, successors or assigns.

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

26. **Mergers.** Except as expressly provided to the contrary in this Agreement, none of the obligations, representations or warranties contained in this Agreement shall survive the Closing.

27. **Modifications.** This Agreement shall not be modified, amended or terminated orally, and no such amendment, modification or termination shall be effective for any purpose unless same is in writing and duly authorized and executed by both Parties hereto.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

HIGHLAND PARK COMMONS, INC.

By: _____
Printed Name: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Andy Berke, Mayor

EXHIBIT A

Legal Description of HPC Properties

All that tract or parcel of land lying and being in the city of Chattanooga, Hamilton County, Tennessee and being more particularly described as follows:

Lots 22, 24, 26 and 28, Payne's Subdivision to Highland Park, as shown by plat of record in Plat Book 1, Page 16, in the Register's Office of Hamilton County, Tennessee.

The source of Grantor's interest is found in Deed of record in Book 10095, Page 361, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT B

Legal Description of City Property

All that tract or parcel of land lying and being in the city of Chattanooga, Hamilton County, Tennessee and being more particularly described as follows:

Lots 30, 32 and 34, Payne's Subdivision to Highland Park, as shown by plat of record in Plat Book 1, Page 16, in the Register's Office of Hamilton County, Tennessee.

The source of Grantor's interest is found in Deed of record in Book 1326, Page 342, in the Register's Office of Hamilton County, Tennessee.

Red: City to HPC; Blue: HPC to City

EXHIBIT C (Green: City Retains)

Printed: Mar 03, 2016

Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. Parcel lines are shown for reference only and are not intended for conveyances, nor is it intended to substitute for a legal survey or property abstract

HCGIS

EXHIBIT D

Fair Market Values of City Property and HPC Properties

Property	Fair Market Value
City Property:	
Tax Map No. 146O-V-006	**$66,200.00**
HPC Properties:	
Tax Map Nos. 146O-V-004.01, 146O-V-007, 146O-V-008	**$88,300.00**