

RESOLUTION NO. 24934

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A PERMANENT EASEMENT FROM MACK DEVELOPMENT, LLC ON PROPERTY DESCRIBED AS PART OF TAX MAP NO. 1000-E-002.01, AS SHOWN ON THE ATTACHED MAP, TO BE USED AS PART OF THE NORTH CHICKAMAUGA GREENWAY AND EXPRESSING THE GRATITUDE OF THE MAYOR AND CITY COUNCIL FOR SAID EASEMENT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That there be and is hereby authorized the acceptance of a Permanent Easement from Mack Development, LLC on property described as part of Tax Map No. 1000-E-002.01, as shown on the attached map, to be used as part of the North Chickamauga Greenway.

BE IT FURTHER RESOLVED that the Mayor and City Council of the City of Chattanooga do hereby express their sincere gratitude to Mack Development, LLC for said easement.

ADOPTED: October 31, 2006

/add

6/21/05

*This instrument was prepared by, and
recorded original should be returned to:*
City of Chattanooga
Dept. of Parks & Recreation
1102 S. Watkins Street
Chattanooga, TN 37404

<u>Name and Address of New Owner</u>	<u>Send Tax Bills To:</u>	<u>Map and Parcel No.</u>
City of Chattanooga Dept. of Parks & Recreation 1102 S. Watkins Street Chattanooga, TN 37404	City of Chattanooga Dept. of Parks & Recreation 1102 S. Watkins Street Chattanooga, TN 37404	1000-E-002.01 Deed Book 7092-Page 499

DEED OF CONSERVATION AND PUBLIC ACCESS TRAIL EASEMENT

THIS GRANT DEED OF CONSERVATION AND PUBLIC ACCESS TRAIL EASEMENT (the "Indenture") is made and entered into this 22nd day of NOVEMBER 2005, by and between **MACK DEVELOPMENT, LLC**, a Tennessee limited liability company ("Grantor"), having an address of 5010 Austin Road, Chattanooga, TN 37343 and **THE CITY OF CHATTANOOGA**, a municipality of the State of Tennessee, having an address at Administration, Suite 216, City Hall, Chattanooga, Tennessee 37402 (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain tracts or parcels of real property located in Hamilton County, Tennessee, and intends to grant this Conservation and Public Access Trail Easement over a portion of its property as more particularly described on Exhibit A attached hereto and by this reference made a part hereof and as shown on the survey plan attached hereto as Exhibit A-1 and by this reference made a part hereof (the "Easement Property");

WHEREAS, the Easement Property in its present state possesses significant natural, scenic, aesthetic, and open-space features as well as recreational and educational opportunities for members of the general public by reason of its connection to the North Chickamauga Creek and to the Tennessee River (collectively, the "Conservation Values"); and

WHEREAS, the preservation of the Easement Property in substantially its present state, together with the restricted and limited establishment of new uses on the Easement Property, including certain recreational uses that have proven to be historically compatible with the Easement Property's Conservation Values, will clearly preserve and enhance the Easement Property's Conservation Values; 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, the installation and maintenance of a public recreational trail over and across the Easement Property will assist in the Chattanooga Greenway Master Plan adopted on May 13, 1997; 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 this easement will be an integral component of connecting residents to North Chickamauga Creek and eventually to the Tennessee Riverwalk; and

WHEREAS, the specific Conservation Values of the Easement Property are or will be further documented in an inventory of relevant features of the Easement Property, dated on or about the date hereof and placed on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"), which consists or reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Easement Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and

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

WHEREAS, Grantee, City of Chattanooga is a political subdivision of the State of Tennessee and is a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), and is a qualified "holder" within the meaning of the Conservation Easement Act.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at or before the sealing and delivery of these presents, the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of Tennessee and in particular the Conservation Easement Act (as presently enacted and as may subsequently be modified and amended from time to time, hereinafter referred to as the "Act"), which expressly authorizes the conveyance herein contained, Grantor has freely and voluntarily granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does freely and voluntarily grant, bargain, sell, alien, convey and confirm, unto Grantee and its successors and assigns, a perpetual, irrevocable conservation easement (the "Conservation Easement") over, across and through the Easement Property for the purposes hereinafter set forth.

1. General Purposes. It is the purpose of this Easement to assure that the Easement Property subject to the Easement (a) will be retained forever in a natural, scenic, aesthetic, open and undisturbed condition, except for the construction of a trail and accessory structures as set forth herein, (b) will be accessible by members of the general public at no charge for recreational and/or educational purposes, and (c) will not be used in such fashion as will significantly impair or interfere with the Conservation Values of the Easement Property, as generally defined in the Baseline Data.

2. Rights of Grantee. To accomplish the general purpose of this Easement, Grantor, by this Indenture, hereby grants, transfers, assigns, bargains, aliens, conveys and confirms the following rights and interests to Grantee, which are hereby accepted by Grantee:

(a) To construct and maintain boardwalks, trails, wildlife viewing platforms and associated structures, signs and fencing within the Easement Property, providing, however, that Grantee shall have the affirmative obligation to remove any structure which is abandoned or which becomes dangerous to the public due to lack of appropriate use or maintenance. Plans or drawings for all items to be constructed will be reviewed in advance by Grantor. Approval, rejection or approval with changes will be given within fifteen (15) business days after plans have been submitted for review. Failure to respond within 15 business days will be deemed approval of the plans or drawings.

(b) To clearly delineate and mark the Easement Property as distinct from the remainder of Grantor's property by means appropriate and consistent with this Easement and its use, as will be provided in the approved architectural drawings or plans.

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

(d) To enter upon the Easement Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 5; provided that, except in such cases where Grantee determines that immediate entry is

required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Easement Property or Grantor's adjacent property; and

(e) To prevent any activity on or use of the Easement Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Easement Property that may be damaged by any inconsistent activity or use pursuant to the remedies set forth in Section 5;

(f) To allow vehicular access over and across other portions of Grantor's property adjacent to the Trail Easement Property permitted only where feasible, in the event of an emergency and, to the extent necessary or convenient, for trail construction and/or trail maintenance provided care is taken to minimize the environmental impact of such vehicular access.

(g) To maintain the trail and other amenities constructed by Grantee on the Easement Property as more particularly provided herein. Such maintenance will include the following, without limitation: Water irrigation including payment of water bills; Electricity and maintenance of light fixtures and bulbs (payment of bills); Security; General upkeep and repairs; Garbage pick-up and general clean-up; and Maintaining landscaping (including replacement of dead plants).

(h) To landscape and install plants, trees and shrubs as appropriate. Prior to installation of any plants, a plan will be presented to Grantor for review and approval.

3. Prohibited Uses. Any activity on, or use of, the Easement Property materially inconsistent with the purpose of this Easement is prohibited. (Notwithstanding anything to the contrary herein, it is expressly understood and agreed that Grantee, its successors and assigns shall be permitted to construct and maintain a trail system (together with associated signage, benches, and related trail-side improvements). Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. The change, disturbance, alteration or impairment of the natural, scenic, agricultural and aesthetic features of the Easement Property, except as expressly provided herein.

B. Any residential, commercial or industrial use of, or activity on, the Easement Property.

C. The construction or maintenance on the Easement Property of any buildings, structures or other improvements, except as expressly permitted herein with respect to the trail system.

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

E. The exploration for, or the extraction of, oil, gas or other minerals, hydrocarbons, soils or other materials on or below the surface of the Easement Property.

F. The dumping or other disposal of trash, garbage or other refuse of any nature whatsoever on the Easement Property.

G. The construction, maintenance or erection of any sign or billboard on the Easement Property, except for the posting of "No hunting" and "No trespassing" signs, and directional or informational signs designed to enhance use of the trail system.

4. Reserved Rights. Grantor reserves to itself and its successors and assigns the rights of entry and use and all other rights accruing from its ownership of the Easement Property not inconsistent with the purposes of the Conservation and Public Access Trail Easement.

5. Grantee's Remedies.

5.1 Notice of Violation: Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee may give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Easement Property so injured to its prior condition in accordance with a plan approved by Grantee.

5.2 Enforcement. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction consistent with T.C.A. §66-9-307 to enforce the terms of this Easement.

5.3 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Easement Property, Grantee may pursue its remedies under this Section 5 without prior notice to Grantor or without waiting for the period provided for cure to expire.

5.4 Damages. To the extent permitted under the Tennessee Claims Commission Act, T.C.A. §§9-8-301, et seq., Grantee shall be entitled to recover damages for violation of the terms of this Easement. 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 Property.

5.5 Costs of Enforcement. In any judicial enforcement action to enforce the terms of this easement, each party shall bear its own costs.

5.6 Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed

or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

5.7. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor or to suggest that Grantor would have any liability for any injury to or change in the Easement Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, other acts of God, unauthorized acts of third parties or other damage beyond Grantor's control, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Easement Property resulting from such causes.

6. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the Easement Property, including, without limitation, the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Easement Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantee shall keep the Easement Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantee. Grantee shall bear all costs and liabilities of any kind related to the construction, security, operation, upkeep and maintenance of the public recreational trails and other improvements constructed on the Easement Property by Grantee or Grantor.

6.1. Hold Harmless; Indemnification.

6.1.1 The Grantee, its successors and assigns, shall indemnify and hold the Grantor harmless from any and all claims, costs, damages and judgments arising out of the installation, occupation, use, maintenance, and operation of the Easement Property, and any improvements constructed thereon pursuant to this Easement; shall assume any and all responsibility and liability therefor, including but not limited to costs and expenses incurred by the Grantor in defense of any action; and shall discharge any judgment that may be rendered therein. The Grantee's monetary liability under this indemnity is limited to the monetary limits of liability as provided for in Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101, et seq.; provided, however, that the liability under this indemnification of any non-governmental successors or assigns of the Grantee shall not be limited by the limits of liability as provided in T.C.A. §29-201-101, et seq.

6.1.2 The Grantee, its successors and assigns, agrees to maintain adequate public liability insurance, which may include self-insurance, and will provide satisfactory evidence of such protection to the Grantor (in the discretion of the Grantor), with the monetary limits of the Grantee's insurance not less than the monetary limits of liability provided for in the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101, et seq., as it may be from time to time amended. Any non-governmental successor or assign of the Grantee agrees to maintain public liability insurance with the limits of said insurance to be no less than the exposure and limits of the Grantor's liability under the Claims Commission Statute, T.C.A. §9-8-

307, as it may be from time to time amended and/or construed by the Claims Commission and the courts, and will provide satisfactory evidence of such protection to the Grantor. The insurance policy shall include a provision for the insurance company to notify the Grantor in writing of any cancellation or change of the policy at least thirty (30) days in advance of the cancellation or changes.

6.2. Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Property by any competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement.

7. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.. For purposes hereof, "impossibility" shall not include any change in the use of any land in the vicinity of the Easement Property. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction or prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Section 7.1.

7.1 Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Section 7, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Easement Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) x/y , which is the ratio of the value of the Easement at the time of this grant to the value of the Easement Property, without deduction for the value of the Easement at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant (if any), pursuant to Section 170(h) of the Internal Revenue Code. For the purpose of this Section, the ratio of the value of the Easement to the value of the Easement Property unencumbered by the Easement shall remain constant.

7.2 Condemnation. If all or any part of the Easement Property 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 Property 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. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Section 7.1.

7.3 Application of Proceeds. Grantee shall use any such proceeds received under the circumstances described in this Section 7 in a manner consistent with its conservation purposes, which are exemplified by this grant.

8. 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 Code and the applicable regulations promulgated thereunder or to a Federal, state or local governmental agency or other public entity, provided that the proposed assignee of the Conservation Easement is also authorized to acquire, hold and enforce conservation easements under the Conservation Easement Act of 1981 (or any successor provision then applicable) or the laws of the United States. As a condition precedent to any such transfer(s), Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Easement from each transferee hereunder, which assumption shall state that the purposes that the Easement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor, as applicable. The failure of Grantee to give notice of such assignment shall not affect the validity of such assignment not impair the validity of this Easement or limit its enforceability.

9. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or to such other addresses as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Paragraph 9)

To Grantor: **MACK DEVELOPMENT, LLC**
5010 Austin Road
Chattanooga, TN 37343

With a copy to:

To Grantee: **THE CITY OF CHATTANOOGA**
Administration
Suite 216
City Hall
Chattanooga, Tennessee 37402

With a copy to:

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U.S. registered or certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

10. General Provisions.

A. Controlling Law. The interpretation and performance of this Easement shall be governed by and construed in accordance with the laws of the State of Tennessee.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of Grantee to effectuate the purposes hereof and the policy and purposes of the Act. If any provision of this Indenture is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. 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.

D. Entire Agreement. This Easement sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings, and agreements relating thereto, all of which are merged herein.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title, in any respect.

F. Successors and Assigns; Covenants, etc. Run With Land. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the Easement Property in perpetuity and enforceable against Grantor and all present and future owners, tenants and other holders of any interest in the Easement Property. The benefits herein conferred upon Grantee shall be in gross and assignable by Grantee, but only in accordance with Paragraph 8 above. The terms "Grantor" and "Grantee", when used herein, shall be deemed to refer to Grantor or Grantee, as the case may be, and its personal representatives, heirs, executors, administrators, successors and assigns.

G. Termination of Rights and Obligations. Each party's rights and obligations under this Easement shall terminate upon the transfer of such party's interest in this Easement pursuant to Paragraph 8 above or the sale or transfer of the Easement Property (subject to the provisions of subparagraph 10(F) above and otherwise consistent with the terms of this Easement), as the case may be, except that liability for the acts or omissions of such party occurring prior to such transfer shall expressly survive such transfer.

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

Signed, sealed and delivered in the presence
of:

GRANTOR:
MACK DEVELOPMENT, LLC

Ava Radin

Witness

By: *Roger Radin*
Name: ROGER RADIN
Its: MANAGER

James B. Peterson

Witness

[CORPORATE SEAL]

Signed, sealed and delivered in the presence
of:

GRANTEE:

**CITY OF CHATTANOOGA,
TENNESSEE**

Witness

Witness

By: _____
Name:
Its:

Approved as to form:

By: _____
City Attorney

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the state and county aforesaid, personally appeared ROGER RADPOVA, to me known (or proved to me on the basis of satisfactory evidence) to be the MANAGER of MACK DEVELOPMENT, LLC, the within named bargainor, a ~~TENNESSEE~~ limited liability company, who acknowledged that he/she executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by him/herself as MANAGER.

WITNESS my hand, at office, this 22nd day of November, 2005.

Sandra Dardner
NOTARY PUBLIC

My commission expires: April 8, 2007

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the state and county aforesaid, personally appeared _____, to me known (or proved to me on the basis of satisfactory evidence) to be the _____ of THE CITY OF CHATTANOOGA, the within named bargainor, a Tennessee municipality, who acknowledged that he/she executed the foregoing instrument for the purposes therein contained by signing the name of the City by him/herself as _____.

WITNESS my hand, at office, this _____ day of _____, 2005.

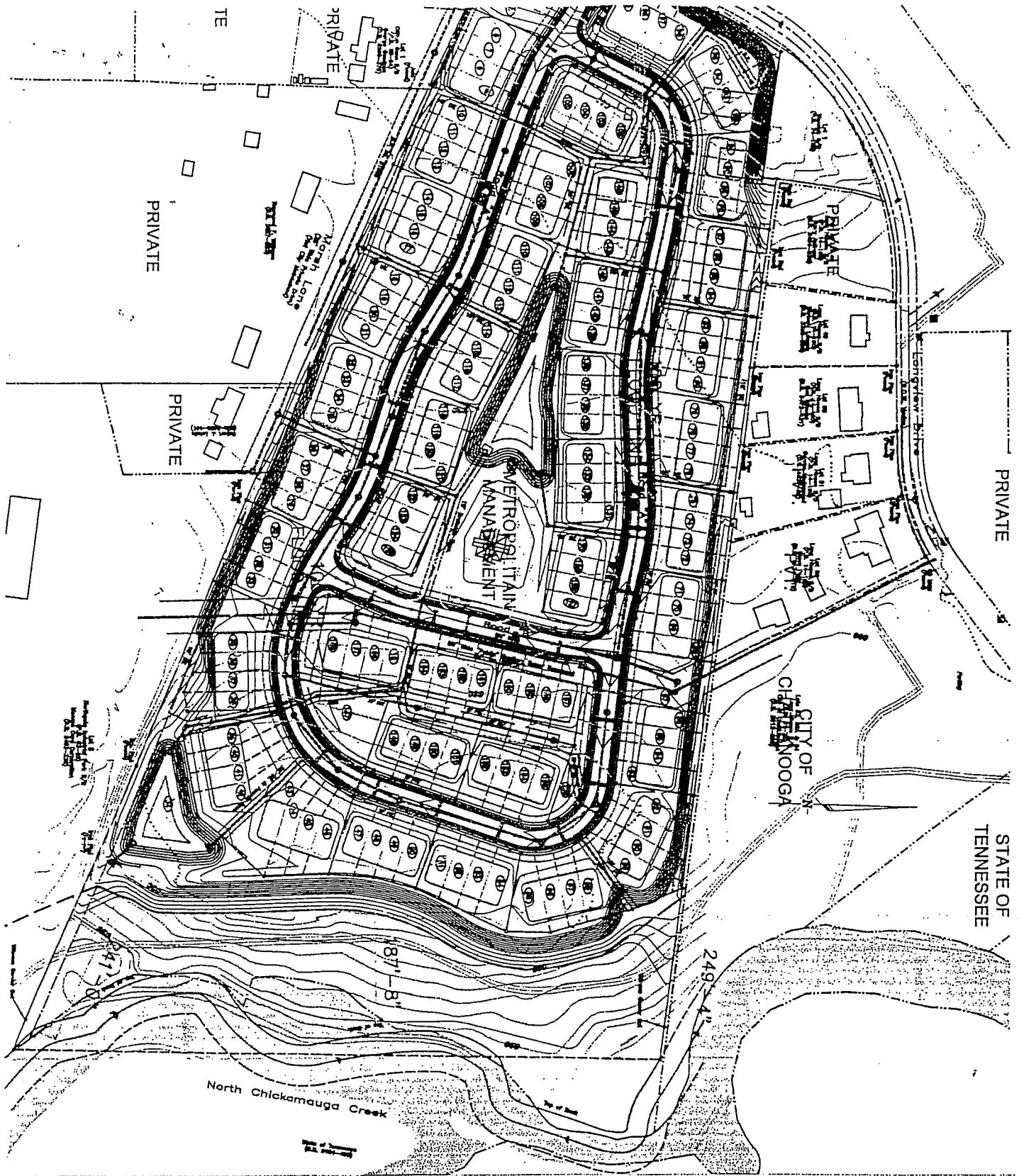
NOTARY PUBLIC

My commission expires: _____

EXHIBIT "A"

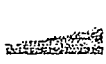
Legal Description

EXHIBIT "A-1"
SURVEY PLAN OF EASEMENT PROPERTY



100' 0"

PROPOSED EASEMENT FOR THE NORTH CHICKAMAUGA GREENWAY



polisstudio
Architecture Planning Urban Design

Metropolitan Management

3.90 acre easement

scale 1:200