

RESOLUTION NO. 25519

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO EXECUTE A RIGHT-OF-ENTRY AGREEMENT WITH HAMILTON COUNTY AND THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA IN SUBSTANTIALLY THE FORM ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Director of General Services be and is hereby authorized to execute a Right-of-Entry Agreement with Hamilton County and the University of Tennessee at Chattanooga in substantially the form attached hereto and made a part hereof by reference.

ADOPTED: May 6, 2008

THIS INSTRUMENT PREPARED BY:

Valerie L. Malueg, Esq.
City Attorney's Office
801 Broad Street, Suite 400
Chattanooga, TN 37402

RIGHT OF ENTRY

This Right of Entry Agreement ("Right of Entry") is entered into this ____ day of _____, 2008, by and between the City of Chattanooga, a municipal corporation, and Hamilton County, Tennessee, a political subdivision of the State of Tennessee (collectively, "Grantor"), and the University of Tennessee at Chattanooga, an incorporated, educational institution of the State of Tennessee ("Grantee").

RECITALS

WHEREAS, Grantor is the owner of certain real property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

WHEREAS, Grantee desires to obtain the Grantor's permission to enter onto the Property, on a temporary basis, for the purpose of constructing of an intramural field on property owned by Grantee.

WHEREAS, the parties desire to enter into this Right of Entry whereby the Grantor will allow Grantee to enter the Property, on a temporary basis, for the purpose of constructing an intramural field. The easement area is depicted on a drawing attached hereto as Exhibit "B", and incorporated herein by reference.

WHEREAS, Grantor desires to grant Grantee the temporary, exclusive use of a portion of the Property, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Right of Entry.** The Grantor hereby grants to Grantee and its agents, employees, and contractors the temporary right to enter onto the Property for the purpose of constructing an intramural field, and for no other purpose.
2. **Term.** The term of this Right of Entry shall automatically terminate one (1) year from the date first above written unless earlier terminated as provided herein. The term may be extended by written notice to Grantee in the sole and absolute discretion of the Grantor. This Right of Entry is subordinate to all prior or future rights and obligations of the Grantor in the Property, except that the Grantor shall grant no rights inconsistent with the reasonable exercise by Grantee of its rights under this Right of Entry.
3. **Liens.** Grantee shall not permit to be placed against the Property or any part thereof, any design professionals', mechanics', materialmen's, contractors', or subcontractors' liens with regard to Grantee's actions upon the Property. The Grantee agrees to hold the Grantor harmless for any loss or expense, including reasonable attorney's fees and costs, arising from any such liens which might be filed against the Property.
4. **Compliance with Laws/Permits.** Grantee shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statutes, orders, ordinances, rules, regulations, plans, policies, and decrees. Without limiting the

generality of the foregoing, Grantee, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities Grantee desires to conduct or have conducted pursuant to this Right of Entry.

5. **Inspection.** The Grantor and its representatives, employees, agents or independent contractors may enter and inspect the property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Grantee's compliance with the terms and conditions of this Right of Entry.
6. **No Real Property Interest.** It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to Grantee. This Right of Entry is not exclusive and the Grantor specifically reserves the right to grant other rights of entry within the vicinity of the Property.
7. **Liability and Workers' Compensation Insurance.** Grantee shall maintain at all times during the term of this Right of Entry, and any extensions, renewals or holdovers, public liability insurance for the protection of Grantor and Grantee. The public liability insurance policy shall have limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) for injury to and/or death of any single person in a single occurrence and not less than ONE MILLION DOLLARS (\$1,000,000.00) for injury to and/or death of more than person in a single occurrence, and not less than ONE MILLION DOLLARS (\$1,000,000.00) for damage to property in a single occurrence. Grantee agrees to provide the

insurance policy at its sole expense, with commercially reasonable increases in coverage thereafter, but in no event less than the limits set by the Tennessee Governmental Tort Liability Act as may be amended from time to time. Grantee shall provide Grantor evidence of coverage by a signed Certificate of Insurance that shows the coverage to be in effect, and the Grantee will be provided with a 30-day written notice prior to cancellation of the policy. The Certification of Insurance shall indicate that the insurance is placed with an insurer rated AX or better by A.M. Best's Rating Guide or as approved by the City's Risk Manager. Grantee also agrees to maintain at all times during the term of this Right of Entry and any extensions, renewals or holdovers, workers' compensation insurance covering all employees needing statutory limits in compliance with all applicable state and federal law.

8. **Approval/Consent.** Each party hereby represents to the other that all approvals and consents have been obtained authorizing the execution of this Right of Entry by such parties.
9. **Termination.** This Right of Entry may be terminated at any time by either party upon thirty (30) business day's prior notice in writing to be served upon the other party. In cases of an emergency or a breach of this Agreement by Grantee, this Right of Entry may be terminated by the Grantor immediately.
10. **Restoration of the Property.** Upon the termination of this Right of Entry, Grantee shall, at its sole cost and expense, restore the Property to the same condition in which it was prior to Grantee's entry. In case Grantee shall fail to restore the Property to its prior condition within ten (10) business days after the

effective date of the termination, the Grantor may proceed with such work at the expense of Grantee.

11. **Notices.** Any notices, requests, and demands, or other communications required or committed under this Right of Entry shall be in writing and shall be effective upon receipt:

If served personally, if sent by first class mail, registered or certified, postage prepaid, or if sent by a national recognized overnight delivery service, paid by the sending party and addressed as follows:

Grantor: City of Chattanooga
General Services Division
Attention: Paul Page
Suite 101, City Hall Annex
100 East 11th Street
Chattanooga, TN 37402

With a copy to: Michael A. McMahan, Esq./Valerie L. Malueg, Esq.
City Attorney's Office
801 Broad Street, Suite 400
Chattanooga, TN 37402

Grantee: University of Tennessee at Chattanooga
Attention: _____

Any party may change its address for notices under this Right of Entry by giving written notice of such change to the other party in accordance with the terms of this paragraph.

12. **Continuing Liability.** No termination of this Right of Entry shall release Grantee from any liability or obligation hereunder resulting from any acts, omissions or events prior to the termination of this Right of Entry in restoration of the Property to its prior condition.

13. **Attorney's Fees.** In the event of a dispute between the parties with respect to the terms or conditions of this Right of Entry, the prevailing party shall be entitled to collect from the other its reasonable attorney's fees.
14. **Severability.** If any provision of this Agreement becomes or is found to be illegal or unenforceable for any reason, such cause or provision must first be modified to the extent necessary to make this Right of Entry legal and enforceable and then if necessary, severed from the remainder of the Right of Entry to allow the remainder of this Right of Entry to remain in full force and effect.
15. **Miscellaneous Provisions.**
 - a. Grantor and Grantee acknowledge and agree that the terms and conditions set forth herein constitute the complete and entire agreement between them concerning this Right of Entry and no other agreements, representations or warranties have been made by or between them other than as set forth herein.
 - b. This Right of Entry may not be modified except by a document in writing. This Right of Entry is binding upon, and enforceable by the parties hereto and their respective successors and assigns.
 - c. This Right of Entry shall be governed by and construed in accordance with the laws of the State of Tennessee.
 - d. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one in the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands by and through their respective duly authorized representative as of the date first above stated.

GRANTOR

CITY OF CHATTANOOGA

By: _____
PAUL PAGE, Director of General Services

HAMILTON COUNTY, TENNESSEE

By: _____
CLAUDE RAMSEY, *County Mayor*

GRANTEE

UNIVERSITY OF TENNESSEE AT
CHATTANOOGA

By: _____

Its: _____

EXHIBIT A

Legal Description

Tract One (1):

BEING a part of the South half of the Southwest Quarter of Section Twenty-two (22), Township Two (2), Range (4), West of the Basis Line, Ocoee District, BEGINNING at a point on the Southeast intersection of East Third Street (formerly Harrison Avenue) and O'Neal Street, which point is four hundred thirty-five (435) feet East of the East line of Central Avenue, (formerly East End Avenue); thence eastwardly, along the South line of East Third Street, a distance of four hundred thirty-eight (438) feet to the center of what would be Johnson Street, if extended South; thence southwardly, along the center of said Johnson Street, if extended a distance of six hundred three and forty-eight hundredths (603.48) feet, more or less, to the North line of East Fifth Street; thence Westwardly, along the North line of said East Fifth Street, a distance of four hundred thirty-eight (438) feet to the Northeast intersection of East Fifth Street and O'Neal Street; thence northwardly, along the East line of O'Neal Street, a distance of five hundred ninety-nine and two hundredths (599.02) feet, more or less, to the point of beginning. Said property is fully shown on map or survey attached to and made a part of the deed from Nora F. Kearns and husband, William Kearns, to the Chattanooga Baseball Improvement Company, registered in Book B, Volume 10, Page 677, et seq., in the Register's Office of Hamilton County, Tennessee; and *being* the same property conveyed by the Chattanooga Baseball Improvement Company to Strang Nicklin, by deed registered in Book D, Volume 17, Page 572, et seq., in said Register's Office, and being the same property conveyed by Strang Nicklin to Chattanooga Baseball Company by deed registered in Book M, Volume 24, Page 288, et seq., in the Register's Office of Hamilton County, Tennessee; and being the same property conveyed by Chattanooga Baseball Company to Chattanooga Baseball Association, Inc. by deed dated September 20th, 1937, recorded in said Register's Office in Book V, Volume 29, Page 348, et seq.

Tract Two (2):

BEING Lots One (1) to Eighteen (18), inclusive, Block Three (3), McGee's Subdivision, and what is known as Lots One (1) to Seven (7), inclusive, Block Six (6), McGee's Subdivision, as shown by plat of record in Plat Book 5, Page 33 in the Register's Office of Hamilton County, Tennessee. According to said plat said Lots One (1) to Eighteen (18), inclusive, Block Three (3), are bounded on the north by Fifth Street, south by Vine Street Extension, West by O'Neal Street and east by Hoskins Street; also according to said plat said Lots One (1) to Seven (7), inclusive, Block Six (6), are bounded on the North by vine street Extension, on the east by the property conveyed to the Georgia Industrial Realty Company on December 15, 1925, west by O'Neal Street and South by the southern line of said subdivision.

Tract Three (3):

Lots Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and Twenty-nine (29), Block One (1) and Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15) and Sixteen (16), Block Two (2), Sunrise Terrace, Grady and McGee's Subdivision of the Kearns Tract, as shown by plat of record in Plat Book seven (7), Page Twenty-three (23) in the Register's Office of Hamilton County, Tennessee. EXCEPTING that part of Lots Fourteen (14), Fifteen (15), and Sixteen (16), Block Two (2), used in the widening of East Fifth Street.

