

RESOLUTION NO. 29567

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH JWM CHATTANOOGA, LLC FOR THE ACCEPTANCE OF THE DONATION OF AN APPROXIMATELY ONE THOUSAND FOUR HUNDRED SEVENTY-ONE (1,471') SQUARE FOOT PARCEL LOCATED AT 5061 SUMMIT SPRING WAY, IDENTIFIED AS TAX MAP NO. 131-099.12, ON WHICH A MONUMENT HAS BEEN ERECTED WITH A COMMEMORATIVE PLAQUE OF THE SUMMIT COMMUNITY AND THEIR ANCESTORS, AND FOR THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY FOR THE ACCEPTANCE OF THE PARCEL WITH AN APPROXIMATE VALUE OF THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into a Donation Agreement, in substantially the form attached, with JWM Chattanooga, LLC for the acceptance of the donation of an approximately 1,471 square foot parcel located at 5061 Summit Spring Way, identified as Tax Map No. 131-099.12, on which a monument has been erected with a commemorative plaque of the Summit Community and their ancestors, and for the Mayor to execute all documents necessary for the acceptance of the parcel with an approximate value of \$3,200.00.

ADOPTED: August 7, 2018

/mem

DONATION AGREEMENT

THIS DONATION AGREEMENT (the “Agreement”) is made this _____ day of _____, 2018, by and between, **JWM CHATTANOOGA, LLC**, a Delaware limited liability company having an address of _____ (“Donor”) and the **CITY OF CHATTANOOGA**, a Tennessee municipal corporation having an address of 101 E. 11th Street, Chattanooga, Tennessee 37402 (“Donee”).

RECITALS:

- A. Donor is the fee simple owner of a certain parcel of real property located in Chattanooga, Hamilton County, Tennessee, which has a street address of _____, bearing tax parcel I.D. No. 131-099.12 and being more particularly described on **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”).
- B. Donor desires to donate the Property to Donee, and Donee desires to accept such donation from Donor, pursuant to the terms of this Agreement.
- 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 and sufficiency 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 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 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; or (d) Donee elects not to close by reason of damage to the Property in accordance with Paragraph 10 of this Agreement.

(b) The parties agree that a reasonable estimate of the value of the Property is \$3,200.00 according to the Hamilton County Tax Assessor’s Office.

2. **Closing.** The donation of the Property by Donor (the “Closing”) shall take place on or before October 31, 2018, 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; No Warranty.** Donor shall convey the Property to Donee by executing and delivering to Donee a Limited Warranty Deed (the "Deed"). Donee shall be under no obligation to accept the Deed from Donor if Donee, in its 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. Donee may obtain at its sole expense, either a title report or a Title Commitment from a national title insurance company reflecting good and marketable fee simple title to the Property in Donor. If obtained, 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 re-examine title to the Property and to give Donor notice of any additional objections disclosed by such re-examination, but only as to matters of title 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, and as its sole remedy:

- (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, at its sole expense, to obtain an ALTA Form B-1970, as amended, owner's title insurance policy with respect to the Property, with all standard exceptions to coverage deleted therefrom.

(d) **No Warranty - Acceptance of the Property in its AS-IS Condition.**

Donee acknowledges that Donor makes no guarantee, representation or warranty regarding the physical or environmental condition of the Property, and Donee expressly disclaims any and all obligation and liability to Donor regarding any defects, contamination or structural damage which presently exists on the Property. Donee hereby agrees to accept the Property in its **AS-IS-WHERE-IS, WITH ALL FAULTS** condition and Donee assumes all risks associated with the physical and environmental condition of the Property, regardless of the cause or date of origin of such condition, and releases all rights or claims against Donor relating to such condition or for any costs of remediation or cure of any physical or environmental condition.

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 on the Property 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.** Prior to Closing, Donee, at its sole expense, may 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.** Donor represents as follows:

Donor has no actual knowledge of any party presently occupying the Property;

(a) Donor has not received written notice of any 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;

7. **Donee's Representations and Warranties.** In addition to Donee's representations and warranties made elsewhere herein, Donee represents and warrants to Donor the following:

(a) Donee is accepting the Property solely in reliance on its own information and/or findings and not on any information, representation or warranty provided or to be provided by Donor, its officials, representatives, agents, employees, or assigns; and

(b) Neither Donor, nor its officials, representatives, agents, employees, or assigns have made any representations or warranties, implied or expressed, relating to the condition of the Property or the contents thereof.

8. **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.

9. **Right to Inspect the Property.** 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, provided, however, promptly following such studies, inspections and investigations, Donee shall restore the property to its conditions prior to such studies, inspections and investigations. Donee hereby agrees to indemnify Donor, its officials, officers, agents, and employees and save it harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to property, including civil rights actions, to any person or for any cause whatsoever caused wholly or in part by any act or omission of Donee, its agents, employees, invitees, contractors or assigns. Donee further agrees to defend, pay all costs of defense, including reasonable attorney's fees, and/or any judgment or cost for any claim or suit brought against Donor as a result of any claim brought against Donee, its agents, employees, invitees, contractors, or assignees for Donee's temporary use of the Property for the above-stated purpose. This indemnification obligation shall survive the Closing and the delivery of the instruments of conveyance.

10. **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 12 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.

11. **Third-Party Claims.** Subject to the provisions of T.C.A. sections 29-20-101 *et seq.*, Donee shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to property and/or injury to privacy or reputation, caused by any activities conducted by City employees in connection with this Agreement, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of Donor.

12. **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 the introductory paragraph of this Agreement. 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.

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
ATTN: Real Property of ECD
101 E. 11th Street, Suite G-4
Chattanooga, TN 37402

With a copy to: Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Donor: JWM Chattanooga, LLC
ATTN: Tim Mitchell
75 Argonaut, Suite A
Aliso Viejo, CA 92656

With a copy to: Saad Development Corporation
ATTN: James Saad
P.O. Box 8008
Spanish Fort, AL 36577

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

13. **Prorations and Fees.** Real property taxes on the Property shall be prorated as of the Closing date. If the amount of such taxes for the current year cannot reasonably be determined, the apportionment shall be based at Closing upon the amount of such taxes for the prior year and shall be readjusted when the amount of tax is finally determined. From and after the Closing, the Property will be exempt from payment of real property taxes for the time period in which Donee owns the Property. Water quality fees assessed for the year 2018 (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. Donee shall be responsible for paying to record the deed.

14. **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.

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

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

17. **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.

18. **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.

19. **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.

20. **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.

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

22. **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.

23. **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.

24. **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.

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

26. **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.

27. **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.

[SIGNATURE PAGES FOLLOW]

IN WITNESS of the foregoing provisions, the Donor, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONOR:

JWM CHATTANOOGA, LLC
a Delaware limited liability company

By: _____
TIMOTHY S. MITCHELL, Manager

Execution Date: _____

IN WITNESS of the foregoing provisions, the Donee, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONEE:

CITY OF CHATTANOOGA

By: _____
ANDY BERKE, Mayor

Execution Date: _____

EXHIBIT "A"

Being all of Lot 2A, as shown on Final Plat entitled "Lots 2 and 2A, The Crossings Subdivision, being a revision of Plat Book 107, Page 48, Register's Office of Hamilton County, Tennessee, prepared by Barge, Waggoner, Sumner & Cannon, Inc., Wilburn N. Holden TN RLS No. 1826, dated February 13, 2018, and signed March 9, 2018, bearing Project No. 36080-00 and filed of record in Plat Book 111, Page 175, Register's Office of Hamilton County, Tennessee, to which plat reference is hereby made for a more particular description of said lot.