

RESOLUTION NO. 31833

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A DONATION AGREEMENT WITH THE CHATTANOOGA HOUSING AUTHORITY, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE DONATION OF PROPERTY LOCATED AT 501 W. 12TH STREET, IDENTIFIED AS TAX MAP NO. 145C-B-001, FOR THE PURPOSE OF CONSTRUCTING MIXED INCOME NEW HOUSING UNITS AS RELATED TO THE WESTSIDE EVOLVES REDEVELOPMENT PLAN, AND TO EXECUTE ALL DOCUMENTS REQUIRED FOR THE COMPLETION OF THE TRANSACTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a Donation Agreement with the Chattanooga Housing Authority, in substantially the form attached, for the donation of property located at 501 W. 12th Street, identified as Tax Map No. 145C-B-001, for the purpose of constructing mixed income new housing units as related to the Westside Evolves Redevelopment Plan, and to execute all documents required for the completion of the transaction.

ADOPTED: October 31, 2023

/mem

DONATION AGREEMENT

THIS DONATION AGREEMENT (the “Agreement”) is made this ____ day of _____, 2023 (the “Effective Date”), by and between the **CITY OF CHATTANOOGA**, a Tennessee municipal corporation, having an address of 101 E. 11th Street, City Hall, Chattanooga, Tennessee 37402 (“Donor”) and **CHATTANOOGA HOUSING AUTHORITY**, a Tennessee nonprofit corporation having an address of 801 N. Holtzclaw Avenue, Chattanooga, Tennessee 37404 (“Donee”).

RECITALS:

- A. Donor is the fee simple owner of the remaining portion of a parcel of real property located in Chattanooga, Hamilton County, Tennessee, which has a street address of 501 W. 12th Street, Chattanooga, TN bearing Tax Parcel No. 145C-B-001 and being more particularly described on Exhibit “A” as Parcel 1 attached hereto and incorporated herein by reference (the “Property”).
- B. Donor desires to donate the Property to Donee for the purpose of constructing mixed income new housing units as related to the Westside Evolves Redevelopment Plan.
- C. The parties desire to set forth the terms and conditions of the donation in this Agreement.

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

1. Donation.

(a) For and in consideration of the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donee’s material reliance on this Agreement, Donor agrees to grant and convey to Donee the Property described on Exhibit “A” as Parcel 1 (to be replaced by the final legal description of Parcel 1 prior to Closing) (the “Donated Property”). 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 9 of this Agreement.

(b) The parties agree that the Hamilton County Tax Assessor’s office lists the appraised land value of the Property as \$2,758,500.

2. Closing. The donation of the Property by Donor (the “Closing”) shall take place on or before November 30, 2023, 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 Donated Property to Donee by executing and delivering to Donee a quitclaim deed (the “Deed”). Donee shall be under no obligation to accept the Deed from Donor if Donee, in its examination of title to the Donated 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, (b) any encumbrances created by Donee including without limitation deeds of trust, assignment of rents and leases or financing statements; (c) 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 (d) any other matters approved by Donee in writing. Donee may obtain at its expense either a title report or a Title Commitment from a national title insurance company reflecting good and marketable fee simple title to the Donated Property in Donor. If obtained, Donee may examine the title report/Title Commitment and shall furnish to Donor at least twenty (20) days prior to the Closing a written statement of any objections to matters of title. Matters reflected by the survey of the Donated Property obtained by Donee pursuant to Paragraph 4 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 Donated Property and to give Donor notice of any additional objections disclosed by such re-examination, which were not filed and indexed of record on the date of Donee’s initial examination. If all of the stated title and survey objections are not cured or satisfied by the date set for Closing, Donee may, at its option:

- (a) waive the title objections and proceed to Closing; or
- (b) 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.

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 Donated Property, and to permit Donee to obtain an ALTA 2006 Form, as amended, owner’s title insurance policy, at Donee’s sole cost and expense with respect to the Donated Property.

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

Physical Condition of the Donated Property. Donor makes no guarantee, representation or warranty regarding the physical condition of the Donated Property, and Donee expressly disclaims any and all obligations and liability to Donor regarding any defects or structural damage which presently exists on the Donated Property. Donee hereby agrees to accept the Donated Property in its **AS-IS-WHERE-IS, WITH ALL FAULTS** condition and Donee assumes all risks associated with the physical condition of the Donated 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 condition.

The provisions set forth in this Paragraph 3 shall survive the Closing and all instruments of conveyance.

4. **Survey.** Prior to Closing, Donee, at its expense, may obtain a boundary survey of the Donated 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 Donated Property, as set forth in the Deed.

5. **Donor's Representations.** Donor represents as follows:

To the best of Donor's knowledge, but without conducting an investigation, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Donated Property or any portion thereof, or pending or threatened against Donor, which could affect Donor's title to the Donated Property or any portion thereof, affect the value of the Donated Property or any portion thereof, affect Donor's duties and obligations under this Agreement or subject an owner of the Donated Property, or any portion thereof, to liability.

6. **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 Donated 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 Donated Property or the contents thereof.

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

8. **Right to Inspect the Donated Property.** Donee, through its employees and agents, may enter upon the Donated 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. Subject to the provisions of T.C.A. § 29-20-101 *et seq.*, Donee shall defend, and if found liable, be responsible for paying any damages arising from third party claims, suits, liabilities, and judgments for personal injuries or damage to property, excepting any injury, damage, or loss caused, in whole or in part, by the primary negligence or fault of Donor. Donee further agrees to defend, pay all costs of defense, including reasonable attorney's fees and court costs, 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 Donated Property for the above-stated purpose. This indemnification obligation shall survive the Closing and the delivery of the instruments of conveyance.

9. **Risk of Loss.** In the event the Donated 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 11 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.

10. **Third Party Claims.** Subject to the provisions of T.C.A. § 29-20-101, *et seq.*, Donee agrees to defend Donor, its officials, representatives, employees or agents from and against any and all losses, claims, demands, liabilities, costs, damages, and expenses (including reasonable attorneys' fees and costs) that Donor may incur to the extent arising from Donee's actions or failure to act on, respond to or comply with any written notices received after closing regarding violation of any local, state or federal laws, rule or ordinance affecting the Donated Property. This indemnification provision shall survive the Closing and all instruments of conveyance.

11. **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
Attention: Office of Real Property
101 E. 11th Street, Suite G18
Chattanooga, TN 37402

With a copy to:

Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Grantee:

Joseph Kelly, Esq.
Chattanooga Housing Authority
801 N. Holtzclaw
Chattanooga, TN 37404

With a copy to:

Larry Cash, Esq.
Miller & Martin
832 Georgia Avenue, #1200
Chattanooga, TN 37402

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

12. **Prorations and Fees.** The Property is presently exempt from the payment of real property taxes. From and after the Closing, the Property will be placed on the tax roll, and Donee shall be responsible for the payment of real property taxes, unless otherwise exempted. Water quality fees assessed for the year 2023 (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. Any documentary tax or real property transfer tax arising out of the conveyance of the Property, the premium for the title insurance policy, and any other fees and charges shall be paid by Donee.

13. **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.

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

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

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

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

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

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

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

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

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

23. **No Waiver.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any party hereto may waive the benefit of any provision, contingency or condition for its benefit contained in this Agreement.

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

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

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

[SIGNATURE PAGE FOLLOWS]

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:

CITY OF CHATTANOOGA

By: _____
RICHARD J. BEELAND
Administrator of Economic Development

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:

CHATTANOOGA HOUSING AUTHORITY

By: _____
ELIZABETH F. MCCRIGHT
Executive Director

EXHIBIT "A"

LEGAL DESCRIPTION

SURVEYOR'S DESCRIPTION TAKEN FROM THE "WESTSIDE EVOLVES – YFD SITE" SURVEY PERFORMED BY RAGANSMITH, CERTIFIED BY TED. J STEVENSON II (RLS 2136) ON OCTOBER 17, 2023:

PARCEL 1

BEING A CERTAIN PARCEL OF LAND LYING IN DISTRICT 1, OF THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE. SAID PARCEL IS BOUNDED ON THE NORTH AND EAST BY INTERSTATE HIGHWAY 27, ON THE WEST BY THE WEST 12TH/ STREET RAMP AND ON THE SOUTH BY WEST 12TH/ STREET AND BEING MORE PARTICULARLY DESCRIBED, BY METES AND BOUNDS, AS FOLLOWS:

BEGINNING AT AN EXISTING 3/4" SQUARE IRON ROD, AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 27 AND THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 12TH/ STREET, AND BEING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED PROPERTY;

THENCE, LEAVING SAID INTERSTATE 27, WITH SAID WEST 12TH STREET, THE FOLLOWING THREE (3) CALLS:

- 1) NORTH 66°10'27" WEST, A DISTANCE OF 68.47 FEET TO AN EXISTING 3/4" SQUARE IRON ROD, WITH NO CAP;
- 2) WITH A CURVE TO THE RIGHT, WITH A CENTRAL ANGLE OF 35°56'51", A RADIUS OF 328.10 FEET, AN ARC LENGTH OF 205.85 FEET, WITH A BEARING AND DISTANCE OF NORTH 48°12'00" WEST, 202.49 FEET TO AN EXISTING 3/4" SQUARE IRON ROD, WITH NO CAP;
- 3) NORTH 30°08'42" WEST, A DISTANCE OF 139.00 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES, IN THE WESTERLY RIGHT-OF-WAY LINE OF THE WEST 12TH STREET RAMP;

THENCE, LEAVING SAID WEST 12TH/ STREET WITH SAID WEST 12TH/ STREET RAMP, ALONG A CHAINLINK FENCE, THE FOLLOWING SIX (6) CALLS:

- 1) NORTH 03°09'32" WEST, A DISTANCE OF 86.45 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES;
- 2) NORTH 12°30'35" EAST, A DISTANCE OF 132.65 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES;
- 3) NORTH 02°54'48" WEST, A DISTANCE OF 57.79 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES;
- 4) NORTH 24°07'26" EAST, A DISTANCE OF 284.65 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES;

5) NORTH 45°57'13" EAST, A DISTANCE OF 42.85 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES;

6) SOUTH 85°13'44" EAST, A DISTANCE OF 23.56 FEET TO AN EXISTING CONCRETE HIGHWAY MONUMENT IN THE SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 27;

THENCE, LEAVING SAID WEST 12TH STREET RAMP WITH SAID INTERSTATE HIGHWAY 27, THE FOLLOWING EIGHT (8) CALLS:

1) SOUTH 47°55'18" EAST, A DISTANCE OF 76.35 FEET TO AN EXISTING CONCRETE HIGHWAY MONUMENT;

2) SOUTH 58°36'39" EAST, A DISTANCE OF 65.07 FEET TO AN EXISTING CONCRETE HIGHWAY MONUMENT;

3) SOUTH 42°12'13" EAST, A DISTANCE OF 50.10 FEET TO AN EXISTING CONCRETE HIGHWAY MONUMENT;

4) SOUTH 13°16'49" WEST, A DISTANCE OF 70.91 FEET TO AN EXISTING CONCRETE HIGHWAY MONUMENT;

5) SOUTH 22°22'25" EAST, A DISTANCE OF 159.51 FEET TO AN EXISTING CONCRETE HIGHWAY MONUMENT;

6) SOUTH 03°41'32" EAST, A DISTANCE OF 104.65 FEET TO AN EXISTING 1/2" IRON ROD, WITH NO CAP;

7) SOUTH 65°24'23" EAST, A DISTANCE OF 66.63 FEET TO AN IRON ROD (NEW), WITH A CAP STAMPED, RAGAN-SMITH & ASSOCIATES;

8) SOUTH 23°58'06" WEST, A DISTANCE OF 408.34 FEET TO THE POINT OF BEGINNING AND CONTAINING 239,940 SQUARE FEET OR 5.51 ACRES MORE OR LESS.

BEING PART OF THE SAME PROPERTY CONVEYED TO THE CITY OF CHATTANOOGA, FROM CHATTANOOGA HOUSING AUTHORITY, OF RECORD IN DEED BOOK 2149, PAGE 880, REGISTER'S OFFICE FOR HAMILTON COUNTY, TENNESSEE.

BEING TRACT I AS SHOWN ON THE FINAL PLAT ENTITLED "LAND DISPOSITION PARCEL H-4A, GOLDEN GATEWAY URBAN RENEWAL PROJECT NO. TENN. R-10" OF RECORD AS PLAT OF SURVEY BY HENSLEY-SCHMIDT, INC., DRAWING NUMBER "335D-62.1", REGISTER'S OFFICE FOR HAMILTON COUNTY, TENNESSEE.

ALSO BEING TRACT II AS SHOWN ON THE FINAL PLAT ENTITLED "LAND DISPOSITION PARCEL F-9, GOLDEN GATEWAY URBAN RENEWAL PROJECT NO. TENN. R-10" OF RECORD AS PLAT OF SURVEY BY HENSLEY-SCHMIDT, INC., DRAWING NUMBER "335D-91.0", REGISTER'S OFFICE FOR HAMILTON COUNTY, TENNESSEE.

BEING PARCEL NUMBER 1 AS SHOWN ON HAMILTON COUNTY PROPERTY MAP NUMBER 145C-B-001.

ALSO BEING PARCEL NUMBER 4 AS SHOWN ON HAMILTON COUNTY PROPERTY MAP NUMBER 145F-A-004.