

RESOLUTION NO. 31862

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE WITH MARATHON REALTY CORP., IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE PURCHASE OF APPROXIMATELY ONE POINT NINETY-FOUR (1.94) ACRES OF TAX MAP NO. 129H-J-001 AT 4536 HIGHWAY 58 FOR THE PURPOSE OF REGIONAL STORMWATER IMPROVEMENTS AND FLOOD MITIGATION AND TO EXECUTE ALL DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION AT THE PURCHASE PRICE OF THREE HUNDRED EIGHTY THOUSAND DOLLARS (\$380,000.00), WITH CLOSING EXPENSES NOT TO EXCEED FIVE THOUSAND DOLLARS (\$5,000.00), FOR A TOTAL TRANSACTION AMOUNT NOT TO EXCEED THREE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$385,000.00).

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 Contract for Sale and Purchase with Marathon Realty Corp., in substantially the form attached, for the purchase of approximately 1.94 acres of Tax Map No. 129H-J-001 at 4536 Highway 58 for the purpose of Regional Stormwater Improvements and Flood Mitigation and to execute all documents required to complete the transaction at the purchase price of \$380,000.00, with closing expenses not to exceed \$5,000.00, for a total transaction amount not to exceed \$385,000.00.

ADOPTED: November 14, 2023

/mem

CONTRACT FOR SALE AND PURCHASE

This contract for sale and purchase of real estate (“Contract”) is made and entered into this ___ day of _____, 2023, by and between MARATHON REALTY CORP. (“Seller”), and CITY OF CHATTANOOGA, a Tennessee municipal corporation (“Buyer”).

WITNESSETH

WHEREAS, Seller owns a fee simple interest in a parcel of real property located at 4536 Highway 58, Chattanooga, Tennessee, Tax Map Number 129H-J-001 as more particularly described on **Exhibit “A”** (the “Property”); and

WHEREAS, the Seller wishes to sell and the Buyer wishes to purchase a portion of the Property as more specifically described on **Exhibit “B”** (the “Purchase Property”)

NOW, THEREFORE, in consideration of the respective covenants, agreements, conditions, and terms stated herein and at the time and in the manner provided herein, the parties covenant as follows:

1. **Purchase Property.** Seller, in consideration of the mutual covenants and obligations herein, does hereby agree to convey to Buyer, and Buyer agrees to purchase from Seller, at the consideration of the Purchase Price (as defined below) and upon the terms and conditions hereof, the Purchase Property, together with all improvements located thereon, including, without limitation, the grounds, driveways, parking areas, and related facilities located thereon, and including all appurtenances, rights, privileges, easements, and advantages thereto belonging.

2. **Consideration; Purchase Price.** Subject to the terms, conditions, and provisions herein, Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Purchase Property described in Paragraph 1 above, the purchase price as set forth below (the “Purchase Price”):

- a. **Purchase Price.** Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Purchase Property described in Paragraph 1 hereinabove, the sum of THREE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$380,000.00).

3. **DUE DILIGENCE**

Within three (3) business days after the Effective Date, Seller will deliver to Buyer all existing documentation, maps, surveys, environmental reports, engineering, and architectural reports, plans or drawings, title reports, as well as all correspondence received from any federal, state, or local authority that Seller may have in Seller’s possession that would adversely affect the Buyer’s ability to use the Purchase Property for the Buyer’s intended purpose. Buyer shall have thirty (30) days from the Effective Date to conduct such physical and other inspections and investigations of the Purchase Property which it deems appropriate (the “Due Diligence Period”) to determine whether or not the transaction contemplated herein is suitable for Buyer’s intended purposes, as determined by Buyer, in Buyer’s sole discretion. Buyer may, prior to the expiration of the Due Diligence Period, notify Seller in writing that it elects to terminate this Contract in the event it deems the Purchase Property to be unsuitable for any reason or no reason at which point this Contract

shall be deemed terminated, and the parties shall have no further obligations pursuant to this Contract, except as expressly stated to survive the termination of this Contract.

4. **Survey and Title Approval.**

- a. **Survey; Plat.** At Buyer's option and Buyer's expense and direction during the Due Diligence Period, Buyer may obtain an as built survey and a surveyor's certificate, in form sufficient to remove the survey exception from the Title Commitment (as defined below). The survey will be prepared by a licensed surveyor acceptable to Buyer. The survey shall incorporate an exact description of the Purchase Property to be conveyed, shall be dated not more than sixty (60) days prior to the Closing Date, shall show the total area of the Purchase Property in square feet, easements, if any, dimensions and locations of improvements, driveways, location of adjoining streets and rights of way, building setback lines, zoning requirements and such other details as may be required by Buyer. The survey shall be insurable by the Title Company (as defined below).

Buyer, at its sole cost and expense, shall be responsible for submitting and securing approval of a plat to subdivide the Purchase Property from the Property. A plat of the subdivided Property shall be recorded by Buyer at a minimum of ten (10) days prior to the Closing;

- b. **Title Commitment.** At Buyer's option and Buyer's expense, Buyer may obtain, within thirty (30) business days after the Effective Date, a binding commitment ("Title Commitment"), from a national title

insurer reasonably acceptable to Buyer ("Title Company"), for an ALTA owner's title insurance policy covering the Purchase Property, together with copies of all documents referenced therein (the "Title Policy").

- c. **Review of Title.** Buyer shall have until the expiration of the Due Diligence Period to review all of: (i) the Title Commitment, (ii) legible copies of all documents referenced in title exceptions disclosed therein, and (iii) the survey, (i) through (iii), together, the ("Due Diligence Documents") and to give written notice to Seller of any title matters which affect title to the Purchase Property and which are unacceptable to Buyer. If any title or survey defects or other matters objectionable to Buyer are disclosed by any of the Due Diligence Documents, Buyer shall give Seller written notice of same prior to the expiration of the Due Diligence Period. Seller shall be allowed a reasonable time, not in excess of fifteen (15) business days or longer period if approved, in writing, by Buyer, as determined in Buyer's sole discretion. If said defects are not timely cured to Buyer's satisfaction, Buyer may waive such defects and proceed to Closing, or Buyer may terminate this Contract by written notice to Seller, and each of the parties shall be released from further liability to the other.
- d. **Title at Closing.** At the Closing, the Title Company shall be prepared to issue an owner's title insurance policy on a standard

ALTA Form insuring Buyer's fee simple title to the Purchase Property free and clear of all exceptions and encumbrances with liability limits in the amount of the Purchase Price, subject only to the delivery of documents, materials, and funds described herein, the recordation of the Deed, and payment of the applicable title insurance premiums and survey exceptions, if any. If the Title Company is unable to insure the Purchase Property for any reason, Buyer shall be entitled to terminate the Contract by written notice to Seller, and each of the parties shall be released from further liability to the other.

e. **Closing Costs.**

- a. Seller shall be responsible for all fees, costs, and expenses incurred by Seller in connection with or relating to Seller's satisfying the terms and conditions hereof.
- b. Buyer shall be responsible for all fees, costs and expenses incurred by Buyer in connection with or relating to Buyer's satisfying the terms and conditions hereof.
- c. Buyer and Seller shall be responsible for their own attorney's fees.
- d. All other costs shall be allocated as follows:

<u>Cost</u>	<u>Party Responsible</u>	
	<u>Seller</u>	<u>Buyer</u>
Title Insurance & Title Examination	_____	<u>X</u>
Preparation of Deed	_____	<u>X</u>
Survey	_____	<u>X</u>
Recording Fees and Tax on Deed	_____	<u>X</u>

Phase I Environmental Assessment	_____	_____
Phase II Environmental Assessment	_____	X
Preparation and Recording of the Plat	_____	X
Water Quality Fees (prorated)	X	X

Buyer shall pay for all closing and expenses.

5. **Water Quality Agreement.** At closing, Buyer shall deliver to Seller a Water Quality Agreement regarding stormwater detention and water quality for the Property and adjacent and contiguous parcels to the Property owned by Seller.

6. **Taxes and Assessments.** Real estate taxes for 2023 shall be paid by Seller. From and after the Closing Date, the Purchase Property will be exempt from the payment of real property taxes. Water quality fees assessed for the year in which the Closing occurs (regardless of when due and payable) shall be prorated as of the Closing Date.

7. **Conveyances.** At Closing, Seller shall convey title to the Purchase Property by Warranty Deed conveying to Buyer marketable and insurable fee simple title to the Purchase Property (the “Deed”).

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

a. **Resolutions and Consents.** Seller’s delivery to Buyer, at or before Closing, of such resolutions and/or consents to the sale of the Purchase Property as contemplated by this Contract as Buyer may reasonably require, all in such form as is satisfactory to Buyer.

- b. **Written Approval.** Buyer's written approval of all exhibits to this Contract.
- c. **Purchase Property Condition.** Buyer's approval that no material, adverse change occurring in the physical or financial condition of the Purchase Property between the Effective Date of this Contract and the Closing Date, including, but not limited to, any change in the environmental condition of the Purchase Property or presence of a Hazardous Substance on the Purchase Property. For purposes of this Contract, "**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. **Representations and Covenants.** All covenants and representations contained in this Contract being true and correct as of the Closing.
- e. **Buyer's Title Policy.** As of the Closing, the Title Company shall have committed to issue, upon the condition of the payment of its regularly scheduled premium, the Title Policy.
- f. **Easement Agreement for Ingress, Egress and Access.** On or before Closing, Seller shall execute the Easement Agreement for Ingress, Egress and Access in substantially the form attached as **Exhibit "C."**
- g. **Failure of Condition.** In the event of the failure of any of the conditions set forth in this Paragraph 9, which condition is not

waived in writing by Buyer, in Buyer's sole discretion, Buyer may (i) terminate this Contract by written notice to Seller, and this Contract shall be null and void and each of the parties shall be released from further liability to the other, or (ii) Buyer may, at Buyer's sole election, postpone the Closing for twenty (20) business days to allow such conditions to be satisfied, or 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 conditions shall be deemed to have been made unless expressly set forth in a writing signed by Buyer.

- h. **Updates.** Seller shall immediately notify Buyer, in writing, if Seller obtains knowledge or receives notice of (i) any event which has or is likely to have a material adverse effect on the operation, physical condition or financial condition of the Purchase Property, (ii) any violation, potential violation or alleged violation of any applicable governmental laws, statutes, codes, ordinances, rules, regulations, orders, judgments and decrees, including, but not limited to, the terms of all permits, related to the Purchase Property, or (iii) any legal action or governmental proceeding related to the Purchase Property or which may affect Seller's ability to perform its obligations under this Contract, or any actual, pending or threatened taking of the Purchase Property by condemnation or eminent domain.

9. **Contract Default.**

- a. **Seller's Default.** If Seller fails to comply with this Contract within the time specified or if Seller breaches any covenant contained herein, Buyer may terminate this Contract and Buyer shall be entitled to any remedies available to Buyer at law or in equity. An election by Buyer 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 right to pursue any other remedies available.
- b. **Buyer's Default.** If Buyer shall fail to purchase the Purchase Property from Seller in breach of this Contract and does not cure such failure within ten (10) business days after receiving written notice of the same from Seller, then Seller may terminate this Contract, and Seller shall be entitled to any remedies available to Seller at law or in equity. An election by Seller 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 right to pursue any other remedies available. .

10. **Closing Date and Location.**

- a. **Closing Date.** The consummation of the transaction contemplated by this Contract (the "Closing") shall occur no later than forty-five

(45) days following expiration of the Due Diligence Period (the “Closing Date”).

- b. **Closing Location.** The Closing shall be held at the offices of Title Guaranty and Trust, 617 Walnut Street, Chattanooga, TN 37402.
- c. **Documents.** At Closing, all documents herein contemplated for the conveyance of the Purchase Property, payment of the Purchase Price, and all other necessary documents and instruments shall be executed and/or delivered by the parties.
- d. **Possession.** Possession of the Purchase Property shall be transferred to Buyer on the Closing Date.

11. **Notices.**

- a. **Written Notices; Addresses.** All notices required herein must be written and shall be deemed to have been validly given when deposited postage prepared in the United States Mail, Certified, Return Receipt Requested, addressed to the parties as identified and set forth below:

Seller: Marathon Realty Corp.
1 Food City Circle
Abington, VA 24210
Attn: Stephen D. Spangler

Buyer: City of Chattanooga
101 E. 11th Street, Suite G-18
Chattanooga, TN 37402
Attn: Gail Hart, Real Property Manager

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

- b. **Attorneys.** The respective attorney for each party shall have the right, but not the obligation, to give any notice on behalf of such attorney's client. Any notice so given by such attorney shall be deemed to have been given to such attorney's client.

12. **Representations and Warranties.** As a material inducement to Purchaser entering into this Agreement, Seller hereby represents, warrants, and covenants that, to Seller's knowledge:

- a. This Agreement has been duly authorized and executed by Seller, and Seller has full power and authority to consummate the transaction described herein, and the persons executing this Agreement and all instruments to be delivered to Purchaser at Closing on behalf of Seller are fully authorized to do so, have the power to bind Seller and to so act on Seller's behalf, and are incumbent in the offices which such officer purport to hold.
- b. This Agreement is, and the documents and agreements mentioned herein are, to be delivered pursuant to the terms hereof, and when duly executed and delivered, will be legal, valid, and binding obligations of Seller and as set forth herein will be valid and enforceable against Seller in accordance with their respective terms. Neither the entering into of this Agreement nor the consummation of the transaction herein described will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction, or decree issued against or imposed upon it, or will result

in a violation of any applicable law, order, rule, or regulation of any governmental authority. There is no action, suit, proceeding, or investigation pending which would become a cloud on the title to the Property or any portion thereof or which questions the validity or enforceability of the transaction herein described or any action taken in connection with said transaction in any court or before or by any federal, district, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality. No approval, consent, order, or authorization of, or designation, registration or filing (other than for recording purposes) with any governmental authority is required in connection with the consummation by Seller of the transaction herein described.

- c. There is no litigation, suit, arbitration, governmental investigation or proceeding pending or threatened against or relating to the Property.
- d. Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986.
- e. As of the date of the Agreement, Seller has not entered into any leases, subleases, licenses or other rental agreements or occupancy agreements, whether written or verbal, which grant any possessory interest in and to any space situated on or in the Property or that otherwise give rights with regard to use of the Property, other than

such agreements which are terminable by Seller with such termination being effective no later than the Closing Date.

- f. No assessments have been made against the Property which are unpaid, or shall not be paid in full, at or prior to the Closing, except those ad valorem taxes, if any, for the current year which are not yet due and payable, whether or not they have become liens; and Seller is not aware of any assessments against the Property for public improvements not yet in place.
- g. No person or entity, except Purchaser, has been granted any options, rights of first refusal or other purchase rights with respect to the Property.
- h. Seller has received no notice of any pending or threatened condemnation, litigation, claim, demand, damage, action, violation, or cause of action of any person, entity or governmental agency or instrumentality affecting the Property. The Property is not in violation of any law, ordinance, code, or regulation. The Property is not in violation or breach of any of the covenants, conditions, restrictions, or other agreements affecting the Property.
- i. Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or

other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

- j. Seller has received no written notice that any municipality or any governmental or quasi-governmental authority has determined that there are any violations of zoning, health, environmental or other statutes, ordinances or regulations affecting the Property, and Seller has no knowledge of any such violations. In the event Seller receives notice of any such Hazardous Substances or Waste on the Property or any such violations affecting the Property prior to the Closing, Seller shall promptly notify Purchaser thereof. "Hazardous Substances or Waste" means petroleum (including gasoline, crude oil or any crude oil fraction), waste, trash, garbage, industrial by-product, and chemical or hazardous substance of any nature, including, without limitation, radioactive materials, PCB's, asbestos, pesticides, herbicides, pesticide or herbicide containers, untreated sewage, industrial processed sludge and any other substance identified as a hazardous substance or waste, toxic substance or waste, pollutant or contaminant in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA") as amended, the Superfund Amendment and Reauthorization Act (commonly known as

“SARA”), the Resource Conservation and Recovery Act (commonly known as “RCRA”), each as amended, or any other federal, state, county or city legislation or ordinances applicable to the Property.

The aforementioned representations and warranties contained in this Section 14 shall survive the Closing for a period of one (1) year.

13. **As Is, Where Is.** Except as is expressly set forth in this Contract to the contrary, Buyer is expressly purchasing the Purchase Property in its existing condition “AS IS, WHERE IS, AND WITH ALL FAULTS” with respect to all facts, circumstances, conditions, and defects, and, except as is expressly set forth in this Contract to the contrary, Seller has no obligation to determine or correct any such facts, circumstances, conditions, or defects or to compensate Buyer for the same.

14. **Tax Deferred Exchange.** Buyer hereby acknowledges that Seller, as its option, may elect to participate in a tax deferred exchange in connection with the sale and purchase of the Purchase Property under Section 1031 of the Internal Revenue Code. To the extent allowed by law, Buyer agrees to cooperate, at no expense to Buyer, with Seller’s efforts to participate in such exchange and to execute any and all reasonable documents required by Seller or any qualified intermediary in connection with such exchange.

15. **Entire Agreement.** This Contract constitutes the sole and entire agreement between Buyer and Seller relative to the Purchase Property, and no modification hereof shall be binding unless signed by both Buyer and Seller. Representations, promises, or inducements not included in this Contract shall not be binding upon either of the parties.

16. **Successors and Assigns.** This Contract shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective heirs, successors, assigns, beneficial owners, and representatives.

17. **Assignment.** Buyer shall have no right to assign its interest in this Contract to any person or entity except that Buyer shall have the right to assign its rights hereunder to an entity controlled by, or under common control with, the Buyer, by giving written notice thereof to Seller at least five (5) days before Closing.

18. **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.

19. **Performance. Time is of the essence in the performance and satisfaction of the obligations and conditions of this Contract.**

20. **Miscellaneous.**

a. **Choice of Law.** The validity, construction, interpretation, and performance of this Contract 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 Contract 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 Contract.

- c. **Gender and Number.** Within this Contract, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- d. **Exhibits.** All exhibits described herein and attached hereto are fully incorporated into this Contract by this reference for all purposes.
- e. **Counterparts/Effective Date.** This Contract may be executed by the parties independently in any number of identical counterparts, and upon execution by both parties of any such independent counterparts, this Contract shall be in full force and effect on the date the last party executes an identical counterpart (the “Effective Date”) as if the parties had executed one and the same counterpart, and all of such counterparts when taken together shall constitute one and the same instrument.
- f. **No Assumption.** Buyer’s acquisition of the Purchase Property 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. Furthermore, Buyer shall assume no liabilities of Seller of any kind or nature whatsoever, whether known or unknown, fixed, or contingent, in connection with or as a result of the acquisition of the Purchase Property or arising from or in

connection with Seller's ownership of the Purchase Property or Seller's operation of any business, concern, or enterprise involving the Purchase Property. Seller shall remain solely responsible for the obligations, liabilities, and debts of Seller. Seller shall indemnify Buyer against, and shall hold Buyer harmless from, any and all claims, demands, causes of action, liabilities, judgments, losses, damages, costs, and expenses of any kind whatsoever (including without limitation reasonable attorneys' fees incurred in connection with the enforcement of this indemnity) resulting from or arising out of or in connection with the ownership and operation of the Purchase Property, any business conducted thereon or therein, and any use or occupancy of the Purchase Property by Seller or its agents, employees, invitees, licensees or guests on or before the Closing Date. The indemnities contained in this Section 20(f) shall survive the Closing of this Agreement.

- g. **Additional Documents.** The parties agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Contract.
- h. **Mergers.** Except as expressly provided to the contrary in this Contract, none of the obligations, representations or warranties contained in this Contract shall survive the Closing.
- i. **Modifications.** This Contract 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, this Contract has been executed by the Buyer and Seller on the dates set out below their respective signatures hereto.

BUYER:

CITY OF CHATTANOOGA

BY: _____
Richard J. Beeland
Administrator of Economic Development

Date: _____

SELLER:

MARATHON REALTY CORP.

BY: _____
Stephen D. Spangler, *President*

Date: _____

EXHIBIT "A"

Legal Description of the Property

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

Lot Four (4), Final Plat, Haron Subdivision, as shown by plat of record in Plat Book 34, Page 126, in the Register's Office of Hamilton County, Tennessee.

EXCEPTING THEREFROM Lot One (1), R.S. Tatum Company Subdivision, as shown by plat of record in Plat Book 54, Page 164, Lot Six (6), Haron Subdivision, as shown by plat of record in Plat Book 65, Page 25, and Lot Seven (7), Haron Subdivision, as shown by plat of record in Plat Book 75, Page 67, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH rights as set forth in Deed of Declaration recorded in Book 2888, Page 959, as amended by Amended Deed of Declaration recorded in Book 4714, Page 175, Book 5874, Page 521 and Book 7132, Page 295, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH rights as set forth in Party Wall Agreement recorded in Book 7132, Page 300, in the Register's Office of Hamilton County, Tennessee.

Being the same property conveyed to Marathon Realty Corp., a Virginia corporation, by Deed from Wilart & Company, a Delaware general partnership, as to an eight percent (80%) undivided interest, and Niasher Realty, Inc., a New York Corporation, executed April 6, 2020 and recorded on April 8, 2020 in Book 11963, Page 466, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT "B"

Legal Description of the Purchase Property

Commencing at a 5/8 inch rebar found at a fence corner (N-274174.228, E-2209621.813 TN GRID, NAD 1983) in the western existing right-of-way line of Rocky River Road, at the northeast corner of Lot No. 120 of the Lake Hills Subdivision as shown on Plat Book 19, Page No. 69 in the Register's Office of Hamilton County, Tennessee, the same being the southeast corner of Proposed Parcel 1 herein described;

Thence, with the western existing right-of-way line of Rocky River Road and a tie line; North 11 degrees 17 minutes 15 seconds West, 47.01 feet to a 6 inch mag spike set in the asphalt entrance of a gravel roadway, the same being the southeast corner and Point of Beginning of this Proposed Parcel 1R;

Thence, leaving the western existing right-of-way line of Rocky River Road with the south boundary of this Proposed Parcel 1R, South 75 degrees 08 minutes 18 seconds West, running along the north side of the gravel roadway, 218.44 feet to a 5/8 inch rebar set on the north side of the gravel roadway; thence, South 77 degrees 25 minutes 33 seconds West, 237.00 feet to a 5/8 inch rebar set on the north side of the gravel roadway; thence, South 81 degrees 21 minutes 01 seconds West, 97.79 feet to a 5/8 inch rebar set on the north side of the gravel roadway, said point being the southwest corner of this Proposed Parcel 1R; thence, North 05 degrees 56 minutes 30 seconds West, crossing a field, 180.01 feet to a magnetic PK-Nail set, said point being the northwest corner of this Proposed Parcel 1R; thence, with the north boundary of this Proposed Parcel 1R, North 86 degrees 43 minutes 51 seconds East, 66.00 feet to a 5/8 inch rebar set on the south side of the asphalt roadway; thence, running along the south side of an asphalt roadway, North 84 degrees 15 minutes 35 seconds East, 160.18 feet to a 5/8 inch rebar set on the south side of the asphalt roadway; thence, North 88 degrees 33 minutes 25 seconds East, 77.42 feet to a 5/8 inch rebar set on the south side of the asphalt roadway; thence, North 74 degrees 20 minutes 04 seconds East, 233.79 feet to a magnetic PK-Nail set in the western existing right-of-way line of Rocky River Road, said point being the northeast corner of this Proposed Parcel 1R; thence, with the western existing right-of-way line of Rocky River Road and the east boundary of this Proposed Parcel 1R, South 19 degrees 22 minutes 10 seconds East, 12.01 feet to a 5/8" rebar set; thence, South 11 degrees 17 minutes 15 seconds East 132.81 feet to the Point of Beginning,

Containing a total of 1.94 acres, more or less, as shown on the drawing entitled "Exhibit A, Subdivision Plat, Marathon Realty Corp, Tax Assessor Map No. 129-H, Group "J", Parcel No. 001.00", by JMT, for the City of Chattanooga, Tennessee.

EXHIBIT “C”

ADDRESS OF OWNER: (easement only)	SEND TAX BILLS TO: Same (easement only)	MAP PARCEL NO. (easement only) Pt/129H-J-001
(Name) Marathon Realty Corp.	(Name)	
(Street Address) 4536 Highway 58	(Street Address)	
(City) (State) (Zip) Chattanooga, TN 37416	(City) (State) (Zip)	

THIS INSTRUMENT PREPARED BY:
 Valerie L. Malueg, Esq.
 Office of the City Attorney
 100 E. 11th Street, Suite200
 Chattanooga, TN 37402

Reference: Pt. of Deed Book 11963, Page 466

EASEMENT AGREEMENT FOR INGRESS, EGRESS AND ACCESS

This Easement Agreement for Ingress, Egress and Access (the “Easement Agreement”) is entered into this ___ day of _____, 2023 (the “Effective Date”) by and between the **CITY OF CHATTANOOGA**, a municipal corporation existing under the laws of the State of Tennessee (“Grantee”) and **MARATHON REALTY CORP.** (“Grantor”) whose address is 1 Food City Circle, Abington, VA 24210.

RECITALS

WHEREAS, Grantor is the owner in fee simple and in possession of the property situated in Hamilton County, Tennessee, and as described in Deed Book 11963, Page 466 being described on **Exhibit “A”** attached hereto and incorporated by reference (the “Grantor Tract”). Grantee has requested that Grantor convey to Grantee an easement, over, under and across the Grantor’s Tract that is twenty (20’) feet wide and five hundred sixty (560’) feet long (the “Easement Tract”), which Easement Tract is more particularly described on “**Exhibit B**” attached hereto and incorporated by reference; and

WHEREAS, by this Easement Agreement, Grantor desires to grant to Grantee a permanent nonexclusive easement (the "Easement") over, under and across the Easement Tract for the purpose of ingress, egress, and access to the City of Chattanooga regional detention pond (the "Detention Pond"), which is owned by Grantee and located adjacent to the Easement Tract as described in **Exhibit B** (the "Easement Purpose").

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant to Grantee the Easement described in this Easement Agreement, according to the terms and provisions set forth herein.

GRANT OF EASEMENT

1. Grant of Easement. Grantor grants, sells, and conveys the Easement to Grantee over and across the Easement Tract, which shall be a permanent, nonexclusive easement appurtenant and right-of-way upon and across the Easement Tract.

2. Purpose of Easement. The Easement is granted for the benefit of Grantee for the Easement Purpose.

3. Recitals. The Recitals set forth above are incorporated into this Easement Agreement as though fully set forth herein.

4. No Dedication. There is no right of access by the general public to any portion of the Easement Tract.

GENERAL COVENANTS

5. Duration of Easement. The Easement shall continue in perpetuity over and across the Easement Tract for the benefit of Grantee. If Grantee intends to permanently abandon the Easement, Grantee shall give Grantor one hundred twenty (120) days' prior written notice of its intent to abandon the Easement, and Grantee shall, at its expense, during such one hundred twenty (120) day period, permanently remove all facilities and improvements placed on the Easement Tract. At the end of the one hundred twenty (120) day period, the Easement Tract shall revert to Grantor, its successors, and assigns, free and clear of the Easement.

6. No Interference. The rights granted to Grantee pursuant to the Easement shall be exercised in such a manner so not to interfere with the normal operations of the Grantor Tract and the businesses conducted thereon.

7. Relocation of Easement. Grantor reserves the right to amend this Easement Agreement to relocate the Easement Tract on the Grantor Tract by recording and delivering to Grantee a notice of relocation setting forth the new legal description of the Easement Tract provided, however, that Grantor obtains Grantee's consent on the location of the Easement Tract, which consent will not be unreasonably withheld, conditioned, or delayed.

8. Maintenance by Grantee. Grantee shall maintain and repair the improvements located on or under the Easement Tract at Grantee's sole expense.

9. Notices. All notices from Grantor to Grantee, or from Grantee to Grantor, required or permitted to be given pursuant to this Easement Agreement, shall be in writing and shall be deemed received when sent by either certified mail, return receipt requested, postage prepaid, via messenger with receipted delivery, or via nationally recognized overnight air courier, to the parties at the addresses shown below:

If to Grantor:	Marathon Realty Corp. 1 Food City Circle Abington, VA 24210
If to Grantee:	City of Chattanooga Real Property Office 101 E. 11 th Street, Suite G-18 Chattanooga, TN 37402
With a copy to:	Office of the City Attorney 100 E. 11 th Street, Suite 200 Chattanooga, TN 37402

All notices shall specifically refer to this Easement Agreement. The address of any party to this Easement Agreement, or of a successor or assign to a party to this Easement Agreement, may be changed by written notice to the other party given in the manner required for notices as set forth above.

10. Binding Effect. The terms and provisions of this Easement Agreement shall bind and inure to the benefit of Grantor and Grantee, and to their respective successors and assigns.

11. Controversies and Attorney's Fees. If any controversy, claim, or dispute arises relating to this Easement Agreement or its breach, the prevailing party shall be entitled to recover from the other party's reasonable attorney's fees and costs of court.

12. Entire Agreement. This Easement Agreement contains the entire agreement between Grantor and Grantee relating to the Easement. Any subsequent amendment or modification must be in writing and agreed to by Grantor and Grantee, their successors, and assigns.

13. Authority. The undersigned individuals who sign this Easement Agreement on behalf of Grantor and Grantee, respectively, have all necessary authority to execute this Easement Agreement and to bind the party that they represent.

14. Multiple Counterparts. This Easement Agreement may be executed in multiple counterparts, each of which shall have the force and effect of an original, but together shall constitute one instrument.

15. Severability. In case any one or more of the provisions contained in this Easement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Easement Agreement shall be construed, to the extent reasonably possible, as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties executed this Temporary Construction Easement as of the Effective Date.

CITY OF CHATTANOOGA

BY: _____
Richard J. Beeland
Administrator of Economic Development

Date: _____

MARATHON REALTY CORP.

BY: _____
Stephen D. Spangler, *President*

Date: _____

STATE OF TENNESSEE

COUNTY OF HAMILTON

Before me, a Notary Public, personally appeared Richard J. Beeland, with whom I am personally acquainted, and who, upon oath, acknowledged that he is the Administrator of Economic Development of the City of Chattanooga, the within-named bargainer, and that he as such Administrator of Economic Development, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation as the City of Chattanooga.

WITNESS, my Hand and Notarial Seal at Hamilton, Tennessee, this ____ day of _____, 2023.

NOTARY PUBLIC

My commission expires: _____

STATE OF _____

COUNTY OF _____

Before me, a Notary Public, personally appeared Stephen D. Spangler, with whom I am personally acquainted, and who, upon oath, acknowledged that he/she is the President of Marathon Realty Corp., the within-named bargainer, and that he/she as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation as Marathon Realty Corp..

WITNESS, my Hand and Notarial Seal at _____,
_____, this ____ day of _____,
2023.

NOTARY PUBLIC

My commission expires: _____