

RESOLUTION NO. 32248

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN AMENDMENT GRANT OR RECREATIONAL AND CONSTRUCTION EASEMENT WITH VINCENT PROPERTIES, LLC, IN SUBSTANTIALLY THE FORM ATTACHED, RELATED TO THE CONSTRUCTION, MAINTENANCE, OPERATION, AND ACCESS TO A DUMPSTER AREA LOCATED ADJACENT TO THE COOLIDGE PARK PROPERTY.

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 an amendment grant or recreational and construction easement with Vincent Properties, LLC, in substantially the form attached, related to the construction, maintenance, operation, and access to a dumpster area located adjacent to the Coolidge Park property.

ADOPTED: October 1, 2024

/mem

PREPARED BY AND RETURN TO:

Charles G. Fisher, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, Suite 900
Chattanooga, Tennessee 37450

AMENDMENT TO GRANT OF RECREATIONAL AND CONSTRUCTION EASEMENT

THIS AMENDMENT TO GRANT OF RECREATIONAL AND CONSTRUCTION EASEMENT (this “**Amendment**”) is made this ____ day of _____, 2024, by and between VINCENT PROPERTIES, LLC, a Tennessee limited liability company (“**Owner**”), the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation and a political subdivision of the State of Tennessee (the “**City**”), and the COUNTY OF HAMILTON, TENNESSEE, a political subdivision of the State of Tennessee (the “**County**”). City and County are sometimes referred to herein collectively as the “**Grantee**”.

WITNESSETH:

WHEREAS, Owner is the owner of that certain real property, conveyed to Owner by that certain Quitclaim Deed recorded in Book 6349, Page 743 in the Register’s Office for Hamilton County, Tennessee, having a tax map/parcel number of 135E-D-003, and which is more particularly described on **Exhibit A**, attached hereto and incorporated herein (the “**Property**”);

WHEREAS, pursuant to that certain Grant of Recreational & Construction Easement recorded in Book 5025, Page 137 in the Register’s Office for Hamilton County, Tennessee, Grantee is the holder of an exclusive and permanent right-of-way easement on the Property (including all amendments, modifications and supplements thereto and all substitutions, replacements, restatements, extensions or renewals thereof, the “**Easement**”);

WHEREAS, Owner and Grantee desire to amend the Easement as herein provided, including terminating the Easement with respect to only that certain area marked as “Proposed area of Rec. and Const. Easement to be abandoned” on the Survey attached hereto as **Exhibit B** and incorporated herein (the “**Dumpster Area**”);

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid at or before the execution of these presents, the receipt and sufficiency of which are hereby acknowledged by all parties, the parties hereto do hereby amend the Easement as follows:

1. **Termination of Existing Easement.** Grantee does hereby terminate the Easement only with respect to and concerning the Dumpster Area; such termination being in order to permit the erection, use, possession, operation, maintenance, repair and improvement by Owner, its tenants and subtenants, and the officers, agents, employees, contractors, vendors, successors and assigns of each of them, of a dumpster/trash receptacle serving the Property.

2. **Access to Dumpster Area.** Grantee does hereby agree and confirm unto Owner, its tenants and subtenants, and the officers, agents, employees, customers, invitees, licensees, contractors, vendors, patrons, successors and assigns of each of them, for the benefit of the Property, that, notwithstanding Grantee’s rights under the Easement, Owner has the right and privilege to use and enjoy the remaining portion of the Property that is subject to Grantee’s Easement, for unobstructed vehicular and pedestrian access, ingress and egress to the Dumpster Area for the purpose of constructing, operating, and accessing

a dumpster/garbage receptacle serving the Property. Without limiting the foregoing, the parties hereby acknowledge and agree to permit access to the Dumpster Area by commercial trucks and other vehicles in connection with the operations conducted on the Property.

3. Maintenance. Grantee, “namely the City of Chattanooga, the responsible party for construction and maintenance of the Dumpster Area, will, at its sole cost and expense, construct a fence or other such enclosure around the perimeter of the Dumpster Area (the “Enclosure”), and Grantee will be responsible, at its sole cost and expense, for all maintenance, repair, and replacement of the Enclosure in a first-class condition. Additionally, Grantee will, at its sole cost and expense, be responsible for the maintenance and upkeep of the Dumpster Area in a first-class condition, including but not limited to all landscaping. Owner, at its expense, will be solely responsible for the maintenance and upkeep of the portion of the Dumpster Area located inside the Enclosure, including all equipment located thereon, and Grantee will ensure that Owner has access to the same twenty-four (24) hours per day, seven (7) days per weeks.

4. Indemnification. Owner will indemnify, hold harmless and defend Grantee from and against any and all third-party claims, demands, costs, damages, reasonable attorneys’ fees and other liability for personal injury or property damage (collectively, a “**Claim**”), to the extent arising out of use by Owner, its tenants or subtenants, or the officers, agents, employees, customers, invitees, licensees, contractors, vendors, patrons, successors and assigns of any of them, of the Dumpster Area and the area located inside the Enclosure; provided, however, the foregoing obligations to indemnify, hold harmless and defend shall not be applicable in the event that any Claim was caused primarily by the negligence or willful misconduct of Grantee, its tenants or subtenants, or the officers, agents, employees, customers, invitees, licensees, contractors, vendors, patrons, successors and assigns of any of them. This provision shall survive the parties’ termination of the Easement as amended herein.

5. Covenants Running with the Land. The parties hereby agree and declare that all of the provisions contained herein and all of the rights, easements and obligations hereunder, shall be and constitute covenants running with the fee simple estate of the Property. The grants of easements, rights and privileges in this Amendment are independent of any contractual agreements undertaken by the parties hereto and a breach by any party of any such contractual agreement shall not cause or result in a forfeiture or reversion of the easements, rights and privileges granted herein.

6. Notices.

a. Any notice required to be given to a party under the Easement shall be in writing and shall be given to such party at the address for such party as follows or at such other address as such party may hereafter specify by notice in accordance with the provisions of this Section:

If to City: City of Chattanooga, Tennessee
 ATTN: Mayor
 101 East 11th Street
 Chattanooga, TN 37402

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

With a copy to: Real Property Office of Economic Development
 101 East 11th Street, Suite G-18
 Chattanooga, TN 37402

If to County: Hamilton County, Tennessee
ATTN: Mayor
201 East 7th Street, Suite 208
Chattanooga, TN 37402

With a copy to: Office of the County Attorney
625 Georgia Avenue, Suite 204
Chattanooga, TN 37402

Hamilton County Real Property Office
4005 Cromwell Road
Chattanooga, TN 37421

If to Owner: Vincent Properties, LLC
ATTN: Callaway Sexton
4707 Tennessee Ave.
Chattanooga, TN 37409-1838

With a copy to: Charles G. Fisher
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, Suite 900
Chattanooga, Tennessee 37450

b. Each such notice shall be effective (i) three (3) Business Days after depositing the same in the U.S. Mail with first-class postage pre-paid, addressed to the noticed party at the address specified herein, (ii) one (1) Business Day following the date deposited for overnight delivery with Federal Express or other national overnight carrier, or (iii) if given by personal delivery, when duly delivered with receipt acknowledged in writing by the noticed party. Any written notice, request or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice, request or demand is actually received by the individual to whose attention at the noticed party such notice, request or demand is required to be sent.

7. Miscellaneous

a. Each of the parties represents and warrants to the other parties, which representations and warranties shall survive the execution and delivery of this Amendment, as follows:

i. such party has the requisite power and authority to enter into and perform the obligations under this Amendment.

ii. the execution and delivery by such party of this Amendment and the performance by such party of all of its obligations under this Amendment have all been duly authorized and approved prior to the date hereof by all appropriate action of such party;

iii. the execution, delivery and performance by such party of this Amendment does not constitute or result in a breach or violation of, or a default under, the organizational documents of such party or any legal requirement applicable to such party; and

iv. this Amendment constitutes the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

b. The Easement, as modified by this Amendment, constitutes the sole agreement of the parties regarding the subject matter thereof and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

c. The Easement may be amended or modified only by a written agreement executed and delivered by all parties hereto. Any agreement on the part of any party to a waiver of any of the provisions of the Easement shall be valid only if set forth in a written instrument signed on behalf of such party. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition contained in the Easement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement, or condition.

d. The Easement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to its conflicts of laws rules. The parties hereby irrevocably submit to the exclusive venue and jurisdiction of the federal and state courts located in Hamilton County, Tennessee, for any suit, action or proceeding arising out of or relating to the Easement. The parties hereby irrevocably waive, to the fullest extent permitted by law, any objection which may now or hereafter be made to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

e. If one or more provisions of the Easement are held to be unenforceable under applicable law, then (i) such provision shall be excluded from the Easement, (ii) the balance of the Easement shall be interpreted as if such provision were so excluded and (iii) the balance of the Easement shall be enforceable in accordance with its terms.

f. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. The Easement, including this Amendment, and any further amendments thereto, to the extent signed and delivered by means of email with a scan attachment, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party shall raise the use of email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of email as a defense to the formation or enforceability of the Easement, and each such party forever waives any such defense.

g. To the extent provided by law, in the event of any legal action or other proceeding relating in any way to this Easement, including the interpretation or enforcement of the Easement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees, court costs, and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding including any appellate proceedings, in addition to any other relief to which such party may be entitled.

h. The term "the Easement" includes not only this Amendment, but also such other future amendments as may from time to time be executed. The headings contained in the Easement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Easement. No party, nor its respective counsel, shall be deemed the drafter of the Easement for purposes of construing or enforcing the provisions hereof, and all provisions of the Easement shall be construed according to their fair meaning and not strictly for or against any party, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of its authorship of any provision of the Easement. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to the Easement as a whole, and not to any particular section, subsection paragraph, subparagraph or clause contained in the Easement; (ii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall

also include the plural, and vice versa; (iv) the words “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation”; (v) the words “party” or “parties” shall refer to parties to the Easement; (vi) all references to Sections are to Sections of the Easement; (vii) the word “or” is disjunctive but not necessarily exclusive; (viii) the words “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (ix) references to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time; (x) references to any person or entity include the successors and permitted assigns of that person or entity; (xi) references from or through any date mean, unless otherwise specified, from and including or through and including, respectively; (xii) the words “dollar” or “\$” shall mean U.S. dollars; (xiii) the word “day” means calendar day; and (xiv) references to any laws are to such laws as amended, modified or supplemented from time to time.

[signatures on following pages]

VINCENT PROPERTIES, LLC

By: _____
Callaway Sexton, President

STATE OF TENNESSEE)

COUNTY OF HAMTILTON)

Before me, a Notary Public of the State and County aforesaid, personally appeared Callaway Sexton, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he is the President of Vincent Properties, LLC the within named bargainer, and that as such he is authorized to do, executed the foregoing instrument for the purposes therein contained by signing the name of Vincent Properties, LLC.

WITNESS my hand and seal this _____ day of _____, 2024.

Notary Public

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION

Being parts of Lots Twelve (12) and Thirteen (13), Block Two (2), Frazier's Addition No. One (1), as shown by plat of record in Plat Book 4, Page 16, in the Register's Office of Hamilton County, Tennessee, and more fully described as follows: Beginning at a point in the south line of Frazier Avenue, as now widened, said point being Ninety-six and 35/100 (96.35) feet east of the east line of North Market Street, said point being also in the line dividing Lots Thirteen (13) and Fourteen (14) of said block; thence southwardly, along the line dividing Lots Thirteen (13) and Fourteen (14), One Hundred Eighty-three (183) feet, more or less, to the north line of an alley; thence eastwardly, along the north line of said alley, One Hundred (100) feet to a point in the line dividing Lots Eleven (11) and Twelve (12); thence northwardly, along the line dividing Lots Eleven (11) and Twelve (12) of said block, One Hundred Eighty-three (183) feet, more or less, to the south line of Frazier Avenue; thence westwardly, along the south line of Frazier Avenue, One Hundred and 5/100 (100.05) feet, more or less, to the point of beginning, being all of said Lots Twelve (12) and Thirteen (13) except that part used in the widening of Frazier Avenue.

For prior title see Deed recorded in Book 6349, Page 743, in the Register's Office of Hamilton County, Tennessee.

THIS CONVEYANCE MADE SUBJECT TO THE FOLLOWING:

Agreement as to location of building executed by W. M. Bogart et al. Dated June 24, 1925, and recorded in Book M, Volume 19, Page 121, in the Register's Office of Hamilton County, Tennessee.

Party Wall Agreements executed by W. M. Bogart et al. Dated October 16, 1925, and recorded in Book, Volume 19, Page 121, of said Register's Office; and executed by Kittie M. Bogart et al. dated March 18, 1935, recorded in Book Z, Volume 27, Page 627, of said Register's Office; and executed by Annie S. Williams et al dated December 28, 1936, recorded in Book J, Volume 29, Page 101, of said Register's Office.

Restrictions as set out in the deed from S. J. S. Frazier and wife, R. W. Colville, dated February 15, 1887, recorded in Book B, Volume 27, Page 635, of said Register's Office.

Any governmental zoning and subdivision ordinances in effect thereon.

EXHIBIT B

SURVEY

