

RESOLUTION NO. 32701

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF CHATTANOOGA, CHATTANOOGA MF JOINT VENTURE, LLC, AND CHATTANOOGA 706 LAND CO. LLC DETAILING COST AND RESPONSIBILITY OBLIGATIONS OF THE PARTIES FOR THE CLOSURE OF TWO PRIVATE AT-GRADE CROSSINGS (73467W AND 736945H) AND THE INSTALLATION OF TWO PUBLIC AT-GRADE CROSSINGS (946998L AND 947002G) FOR THE CONSTRUCTION OF TWO RESIDENTIAL AND MIXED-USE COMMUNITIES AT 702, 706, AND 710 MANUFACTURERS ROAD IN ORDER TO PROVIDE FULL PUBLIC ACCESS TO SUCH COMMUNITIES TO AND FROM THE MANUFACTURERS ROAD AND PAPERMILL ROAD PUBLIC RIGHT-OF-WAYS, SUBJECT TO THE APPROVAL OF THE AGREEMENT LANGUAGE BY THE CITY ATTORNEY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Administrator for the Department of Public Works to execute an Agreement between the City of Chattanooga, Chattanooga MF Joint Venture, LLC, and Chattanooga 706 Land Co. LLC detailing cost and responsibility obligations of the parties for the closure of two private at-grade crossings (73467W and 736945H) and the installation of two public at-grade crossings (946998L and 947002G) for the construction of two residential and mixed-use communities at 702, 706, and 710 Manufacturers Road in order to provide full public access to such communities to and from the Manufacturers Road and Papermill Road public right-of-ways, subject to the approval of the Agreement language by the City Attorney.

ADOPTED: November 4, 2025

/mem

AGREEMENT REGARDING CROSSINGS
between
CITY OF CHATTANOOGA
and
CHATTANOOGA MF JOINT VENTURE, LLC
and
CHATTANOOGA 706 LAND CO, LLC

This Agreement Regarding Crossings (this "Agreement") is made this _____ day of _____, 2025 between CITY OF CHATTANOOGA ("City") and CHATTANOOGA MF JOINT VENTURE, LLC and CHATTANOOGA 706 LAND CO, LLC (together, "Developer") in connection with a Memorandum of Agreement between Norfolk Southern Railway Company and the City of Chattanooga, Chattanooga MF Joint Venture, LLC, and Chattanooga 706 Land Co., LLC, dated on or about the date hereof ("MOU").

Developer is constructing two (2) residential and mixed-use communities on approximately 18.33 acres total located at 702, 706 and 710 Manufacturers Road in Chattanooga, Tennessee. Norfolk Southern Railway Company ("Railway") owns certain real property located within Chattanooga, Tennessee that contains existing mainline railroad tracks and sidings that are a part of Railway's Chicago Line. Developer's project involves (A) the closure of two (2) private at-grade crossings 73647W and 736945H, and (B) the installation of two (2) public at-grade crossings by City in the same or similar locations as 946998L and 947002G, as shown on Exhibit A attached hereto. The parties hereto intend to memorialize binding obligations with respect to future costs and responsibilities for the aforementioned railway crossings as more particularly set forth herein.

In the event Railway elects to increase rail operations over the line, the parties acknowledge there may be certain work required to conform City's right of way areas situated adjacent to the crossings to the condition required by the standards of the Railway and the Tennessee Department of Transportation ("TDOT") for public crossings, including, without limitation, installation of automatic warning devices (collectively, the "Railway Work"). Further, both City and Developer desire for the roadways abutting such crossings to be maintained in a safe and reputable manner with attractive landscaping.

Accordingly, the parties hereby agree that (i) except as otherwise expressly set forth herein, City shall be responsible, at its sole cost and expense, for accepting and maintaining the City's right-of-way area(s) of both public crossings (946998L and 947002G) after they have been designed, approved, permitted, and constructed by the Developer as contemplated herein in compliance with all City, TDOT and Railway requirements, and any Railway Work associated with the public crossing identified as 946998L that are not the Developer's responsibility as set forth in clause (ii) below, and (ii) Developer (and its successors and assigns) shall be responsible, at its sole cost and expense, for the initial design and construction of the roadways and any associated work to the City's right-of-way area(s) situated adjacent to the public crossings identified as 946998L and 947002G in substantial accordance with those certain Civil Construction Drawings prepared by Kimley-Horn, dated September 15, 2025, identified as Project Nos. 013591009 (the "Plans"), in compliance with the requirements of the City, Railway and TDOT, and for maintaining landscaping situated in the City's area surrounding the public crossings identified as 946998L and 947002G (within the area more particularly depicted on Exhibit "A" attached hereto).

The Developer shall reimburse the City within sixty (60) days of invoice from the City for any costs billed to the City by the Railway (including, without limitation, any engineering, design and flagging fees imposed by Railway, if any) that are the responsibility of the Developer as provided for herein during the initial design and construction phase of this project pursuant to the Plans due to the Railway's desire to have agreements with the City in lieu of the Developer. After the City's issuance of a certificate of occupancy for the residential community to be located at 702 Manufacturers Road Developer (and its successors and assigns) shall be solely responsible for performing, at their sole cost, any Railway Work associated with the roadway and public crossing identified as 947002G and City shall be solely responsible for performing, at its sole cost, any Railway Work associated with the roadway and public crossing identified as 946998L.

Any other Railway Work associated with the public crossing identified as 946998L that are not the Developer's responsibility as set forth above shall be provided by the City as set forth in the MOU at Section II, Obligations of the Parties. All landscaping and improvements to be maintained by a party hereunder shall be maintained in a safe, clean, sightly, good and functional first-class condition and state of repair, with the minimum standard of maintenance for such maintenance, repair and replacement being comparable to the highest standards of maintenance followed in comparable first-class developments in the Chattanooga, Tennessee area. Each party shall be solely responsible for the cost and expense of any damage to any improvements caused by such party (including, without limitation, as a result of negligence or intentional misconduct). Each responsible party shall reimburse the Railway, as may be required pursuant to the terms of the MOU, for any costs for the Railway Work associated with that portion of the crossing for which they are responsible hereunder, except where the Developer shall reimburse the City as outlined elsewhere in this Agreement. Developer's rights to access any City right-of-way area(s) to perform its maintenance and construction obligations required hereunder shall be by virtue of Chattanooga City Code Chapter 32 at Sections 32-34 et. seq. and 32-101 et. seq.. Each party shall use commercially reasonable efforts to ensure that its performance of the obligations and exercise of the rights contemplated herein shall not unreasonably or adversely interfere with the rights of the other party hereunder or the enjoyment and use of such other party's property. All work performed by a party in connection with the rights granted to such party herein shall be performed in a lien-free and workmanlike manner and in compliance with all applicable laws.

Each party to this Agreement represents and warrants to the other party that: (1) it has full power, authority, and legal right to execute and perform this Agreement; (2) it has taken all necessary legal, governmental, and corporate action to authorize the execution and performance of this Agreement; and (3) it shall act in good faith to give effect to the intent of this Agreement and to take such other action as may be necessary or convenient to consummate the purpose and subject matter of this Agreement.

In the event either party fails to rectify a material breach under a portion of this Agreement within thirty (30) days of receipt by the breaching party of written notice of such breach from the non-breaching party, then, in addition to any other rights available at law or in equity, the non-breaching party shall have the right, but not the obligation, to take such actions as may be reasonably necessary to cure such breach, in which case the breaching party shall reimburse the non-breaching party for all such costs incurred within sixty (60) days of receiving a bill thereof. The aforementioned thirty (30) day notice period shall not be required if an emergency exists or if such breach causes unreasonable interference with the construction, operation or use of a subject property which requires immediate attention, and in such event, the non-breaching party shall give whatever notice to the breaching party is reasonable under the circumstances. Notwithstanding anything contained herein to the contrary, in no event shall any party be

liable for any consequential, special, speculative or consequential damages in connection with this Agreement. In the event that any party shall institute legal proceedings to enforce or construe any of the terms, provisions, covenants, conditions or restrictions set forth in this Agreement, the prevailing party in such legal proceedings shall be entitled to recover its reasonable attorneys' fees, litigation expenses and court costs from the non-prevailing party.

Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person, by certified mail, return receipt requested, or via email to the addresses listed below or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the fifth day after mailing if not signed for.

If to Developer:

Chattanooga MF Joint Venture, LLC
Chattanooga 706 Land Co, LLC
889 Howell Mill Rd NW, Suite 3300
Atlanta, GA 30318
Attn: Matt Mason / Mack Reese / Frank
Reese
Phone: (768) 778-6288 / (770) 310-3414
/ (404) 550-4922
Email:
mmason@gatewayventuresre.com /
mreese@gatewayventuresre.com /
freese@atlantic-cos.com

If to City:

Chattanooga Public Works
1250 Market Street, Suite 3030
Chattanooga, TN 37402
ATTN: Greg Herold / Bill Payne / Phil Noblett
423-643-5950
Email: gherold@chattanooga.gov /
bpayne@chattanooga.gov /
pnoblett@chattanooga.gov

This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. Notwithstanding the foregoing, the parties shall cooperate in good faith to execute any additional agreements or instruments as may be reasonably requested in order to effectuate the subject matter contained herein. This Agreement and the terms, conditions and obligations contained herein shall run with title to and be appurtenant to and burden, as applicable, the subject properties and all covenants, conditions, obligations and agreements contained herein shall run with the title to and be binding upon each party and their successors or assigns, as applicable.

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. This Agreement and all the provisions hereof shall be governed by and constructed in accordance with the laws of the State of Tennessee.

This Agreement may be executed through the use of separate signature pages or in any number of counterparts and each of such counterparts shall, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart. Counterpart signature pages may be affixed to a true copy of this Agreement. The parties

agree that a signature transmitted by facsimile or similar electronic transmission may be deemed an original signature.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

CHATTANOOGA MF JOINT VENTURE, LLC,
a Delaware limited liability company

By: SHM Chattanooga, LLC,
a Delaware limited liability company,
its Manager

By: _____
Name: _____
Title: _____

STATE OF _____)
COUNTY OF _____)

Before me, a Notary Public of the aforementioned State and County, personally appeared _____, to me known (or proved by sufficient evidence) to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and for the purposes therein contained.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____

CHATTANOOGA 706 LAND CO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
COUNTY OF _____)

Before me, a Notary Public of the aforementioned State and County, personally appeared _____, to me known (or proved by sufficient evidence) to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and for the purposes therein contained.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____

Printed Name: Jerramy L. Wood

Title: Administrator of Public Works

STATE OF TENNESSEE)

COUNTY OF HAMILTON)

Before me, a notary public of the state and county aforesaid, personally appeared Jerramy L. Wood, of whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who upon oath acknowledged himself to be the Administrator of Public Works of CITY OF CHATTANOOGA, the within named bargainor, a corporation, and that he as such Administrator of Public Works, executed the foregoing for purposed contained therein, by signing the name of Jerramy L. Wood by himself as Administrator of Public Works.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____

SUBJECT TO REVIEW AND APPROVAL

OF LANGUAGE BY THE CITY ATTORNEY

By: _____

EXHIBIT "A"

RIGHT-OF-WAY DEPICTION