

RESOLUTION NO. 32778

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A PERMANENT RIGHT-OF-WAY EASEMENT WITH TENNESSEE OFFICE PROPERTIES LLC ON A PORTION OF TAX MAP NO. 148N-A-002, IN SUBSTANTIALLY THE FORM ATTACHED, FOR BARRY PAYNE DEVELOPMENT LLC TO COMPLETE THE REQUIRED IMPROVEMENTS FOR THE PUBLIC EXTENSION OF CUSTOMER DELIGHT DRIVE.

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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 enter into a Permanent Right-of-Way Easement with Tennessee Office Properties LLC on a portion of Tax Map No. 148N-A-002, in substantially the form attached, for Barry Payne Development LLC to complete the required improvements for the public extension of Customer Delight Drive.

ADOPTED: January 13, 2026

/mem

**THIS INSTRUMENT PREPARED BY:**  
**VALERIE L. MALUEG**  
**OFFICE OF THE CITY ATTORNEY**  
**100 E. 11<sup>th</sup> Street, Suite 200**  
**Chattanooga, Tennessee 37402**

<b>ADDRESS OF GRANTEE:</b> City of Chattanooga, Tennessee 100 E. 11th Street, Suite 200 Chattanooga, Tennessee 37402	<b>SEND TAX BILLS TO:</b> <b>Tennessee Office Properties LLC</b> <b>6730 Customer Delight Drive</b> <b>Chattanooga, TN 37421</b>	<b>MAP PARCEL NO.</b> 148N-A-002
<b>ADDRESS OF GRANTOR:</b> Tennessee Office Properties LLC 6730 Customer Delight Drive Chattanooga, TN 37421		

### **PERMANENT RIGHT OF WAY EASEMENT**

**KNOW ALL MEN BY THESE PRESENTS:** That this Permanent Right of Way Easement (this “Right of Way Easement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2026, by and between TENNESSEE OFFICE PROPERTIES LLC (“Grantor”), and the CITY OF CHATTANOOGA, a Tennessee municipal corporation (“Grantee”).

### **WITNESSETH:**

That Grantor, in consideration of TEN DOLLARS AND 00/100 (\$10.00) and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, does grant, donate and convey unto the Grantee, its successors and assigns, forever a perpetual easement over, under, and through the following described real estate for the purpose of constructing, using, replacing, and maintaining a public roadway including storm sewer, street lighting, and sidewalks and appurtenant work in any part of the easement (collectively, the “ROW Improvements”), including the right to clean, repair, maintain and replace the roadway, and for any reconstruction and future expansion of such facilities within the area of the easement together with the right of access to the easement and over the easement for these purposes, in the following described premises:

#### **Proposed Right-of-Way:**

A certain tract of land being a portion of Lot 2, Holder Properties Subdivision, as recorded in Plat Book 80, Page 26 in the Register’s Office of Hamilton County, Tennessee, being known hereafter as Proposed 50 Foot Right-of-Way, and being more particularly described as follows.

Commencing at a point at the easternmost corner of Customer Delight Drive, having a right-of-way width of 70 feet, point also being a common corner with the aforementioned Lot 2 Holder Properties Subdivision property, point also known herein as the POINT OF COMMENCEMENT; thence, with and along the northern right-of-way line of the aforementioned Customer Delight Drive, North 24 degrees 56 minutes 55 seconds West, 3.44 feet to a point, point being known herein as the POINT OF BEGINNING; thence, North 24 degrees 56 minutes 55 seconds West, 3.75 feet to a point; thence, in a curve to the left having a radius of 234.99 feet, a curve length of 86.01 feet, and being subtended by a chord bearing of North 35 degrees 26 minutes 02 seconds West, 85.53 feet to a point; thence, in a curve to the left having a radius of 25.0 feet, a curve length of 34.38 feet, and being subtended by a chord bearing of South 85 degrees 18 minutes 43 seconds East, 31.73 feet to a point; thence, North 55 degrees 17 minutes 45 seconds East, 37.30 feet to a point; thence, South 66 degrees 59 minutes 34 seconds East, 72.92 feet to a point; thence, in a curve to the left having a radius of 25.0 feet, a curve length of 25.18 feet, and being subtended by a chord bearing of South 84 degrees 09 minutes 05 seconds West, 24.13 feet to a point; thence, South 55 degrees 17 minutes 45 seconds West, 54.90 feet to a point; thence, in a curve to the left having a radius of 25.0 feet, a curve length of 33.29 feet, and being subtended by a chord bearing of South 17 degrees 08 minutes 55 seconds West, 30.88 feet to the POINT OF BEGINNING.

Said tract of land being herein described contains 3,888.82 sq. ft. or 0.09 Acres (the “Easement Area”), which Easement Area is depicted on the survey attached hereto as **Exhibit A**.

THIS RIGHT OF WAY EASEMENT is executed and delivered and is granted upon the following conditions, to-wit:

1. The Grantor, its successors and assigns, hereby releases the Grantee, its agents and employees, assigns and successors from any and all liability for damage to the remaining lands owned by Grantor resulting from the construction and maintenance of said ROW Improvements, provided the Grantee, its agents and employees, assigns and successors shall, as soon as practicable, after construction of said ROW Improvements and all subsequent alterations and repairs thereto, restore the property of the Grantor to a condition that is as good as the condition that the property was in prior to its disturbance.
2. It is understood by the Grantor that the roadway constructed hereunder in connection with the ROW Improvements shall, in every respect, be a public roadway. The Grantee shall have the right at all times to enter upon the Easement Area for the purpose set forth herein. Additionally, upon completion of the ROW Improvements, Grantor agrees to execute a plat—at no cost or unreasonable inconvenience to Grantor—for recording in the office of the Register of Deeds of Hamilton County, Tennessee (the “Final Plat”), together with any other documents or instruments reasonably required by Grantee to formally dedicate the ROW Parcel to Grantee.
3. Grantor understands and agrees that this Right of Way Easement is also subject to the Grantee’s official policies of a private road conversion to a City of Chattanooga public

road as set forth in **Exhibit B** attached hereto and incorporated by reference. In the event that the Developer, Barry Payne Development LLC (“Developer”), (i) fails to satisfactorily comply with all terms and conditions set forth in **Exhibit B** related to the ROW Improvements on or before February 28, 2027, unless such date is extended by written agreement between Developer and Grantee (the “Completion Deadline”); or (ii) fails to satisfy the terms and conditions set forth in that certain Development Agreement by and between Grantee and Developer on or before the Completion Deadline, Grantor and Grantee agree that this Right of Way Easement shall terminate following thirty (30) days’ written notice by Grantee to Grantor and Developer and shall be of no further force and effect.

4. Grantor hereby represents and warrants that (a) it has obtained all necessary consents, subordinations, releases, approvals, and authorizations required for the execution, delivery, grant, and performance of this Right of Way Easement including without limitation, (i) the Joinder of Beneficiary and Subordination of Security Instruments signed by beneficiary relating to that certain Deed of Trust, recorded in Book 12664, Page 186, that certain Absolute Assignment of Rents and Leases in Book 12664, Page 228, and that certain UCC-1 Financing Statement in Book 12664, Page 244 (collectively, the “Financing Instruments”), consenting to this Right of Way Easement and subordinating the Financing Instruments to the Easement Area; and (ii) an amendment to that certain Lease evidenced by Memorandum of Lease recorded in Book 7647, Page 416, as assigned to HEG Chattanooga, LLC in Book 7875, Page 157, to be recorded in the Register’s Office of Hamilton County, Tennessee, releasing the Easement Area from the Lease, and (b) that the Right of Way Easement granted to Grantee is free of all other liens and encumbrances.
5. Grantor further represents and warrants that it has paid the 2024 Hamilton County and 2024 City of Chattanooga taxes in full on property bearing Tax Map Number 148N-A-002, which includes the Easement Area. Simultaneously upon execution of this Right of Way Easement, Grantor shall execute and deliver to Grantee a standard Owner’s Affidavit affirming, without limitation, that there are no unrecorded leases or other instruments that affect the Easement Area, property taxes have been paid, and that all indebtedness due anyone for labor, materials, or services which might be liens on the Easement Area is fully paid.
6. This Right of Way Easement will inure to the benefit of and be binding upon the parties hereto and their respective successors, successors-in-title and assigns. This Right of Way Easement will run with, and bind the title to, the Easement Area, regardless of whether this Right of Way Easement is expressly referenced in a deed conveying all, or any portion of, such property. Each person or entity who acquires all or any part of, or interest in, all or any portion of the Easement Area will automatically take its interest subject to and/or together with the terms and conditions of this Right of Way Easement.

**GRANTOR:**

TENNESSEE OFFICE PROPERTIES LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF TENNESSEE    )

COUNTY OF HAMILTON    )

Before me, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the \_\_\_\_\_ of Tennessee Office Properties LLC, the within named bargainor, a Tennessee limited liability company, and that he as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by personally signing the name of the limited liability company by himself as such \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

*[signatures continue on following page]*

**GRANTEE:**

CITY OF CHATTANOOGA

By: \_\_\_\_\_

Name: JERRAMY L. WOOD

Its: Administrator of Public Works

STATE OF TENNESSEE    )

COUNTY OF HAMILTON    )

Before me, a Notary Public of the state and county mentioned, personally appeared Jerramy L. Wood, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the Administrator of Public Works of the City of Chattanooga, the within named bargainor, a Tennessee municipal corporation, and that he or she as such Administrator, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by personally signing the name of the City of Chattanooga by herself/himself as such Administrator of Public Works.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**OATH OF VALUE**

STATE OF TENNESSEE    )

COUNTY OF HAMILTON    )

I hereby swear and affirm that the actual consideration for this transfer is \$-0-.

\_\_\_\_\_  
AFFIANT

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2026.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:\_\_\_\_\_

## **JOINDER OF BENEFICIARY AND SUBORDINATION OF SECURITY INSTRUMENTS**

ROYAL BANK OF CANADA, a Canadian chartered bank (the “**Beneficiary**”), holder of (i) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated as of September 20, 2021 and recorded on September 24, 2021 in Book 12664, Page 186 in the Register’s Office of Hamilton County, Tennessee (the “**Register’s Office**”) made by TENNESSEE OFFICE PROPERTIES LLC, a Delaware limited liability company, as grantor (the “**Grantor**”), to MATTHEW FOSTER, an individual, as trustee, for the benefit of Beneficiary in the original principal amount of \$10,985,000.00 (the “**Deed of Trust**”), (ii) that certain Absolute Assignment of Leases and Rents dated as of September 20, 2021 and recorded on September 24, 2021 in Book 12664, Page 228 in the Register’s Office made by the Grantor, as assignor, to Beneficiary, as assignee (the “**ALR**”), (iii) that certain UCC-1 Financing Statement naming Grantor, as debtor, and Beneficiary, as secured party, recorded on September 24, 2021 in Book 12664, Page 244 in the Register’s Office (the “**Financing Statement**”; and the Financing Statement, together with the Deed of Trust and the ALR, collectively, the “**Security Instruments**”), hereby consents to the aforesaid Permanent Right of Way Easement to which this Joinder of Beneficiary and Subordination of Security Instruments is attached and hereby subordinates the Security Instruments to said Permanent Right of Way Easement with the same force and effect as if said Permanent Right of Way Easement had been executed, delivered and recorded before the execution, delivery and recording of the Security Instruments. This Joinder of Beneficiary and Subordination of Security Instruments does not in any way (i) affect the validity or enforceability of the Security Instruments, or (ii) affect, terminate, amend or otherwise modify the provisions of the Security Instruments.

**[NO FURTHER TEXT ON THIS PAGE/  
SIGNATURE PAGE FOLLOWS]**



**BENEFICIARY:**

**ROYAL BANK OF CANADA**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, a Notary Public, duly appointed, commissioned and qualified in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, with whom I am personally acquainted and who upon oath acknowledged himself/herself to be a \_\_\_\_\_ of Royal Bank of Canada, the within named beneficiary, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of Royal Bank of Canada, by himself/herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal at office in said State and County on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

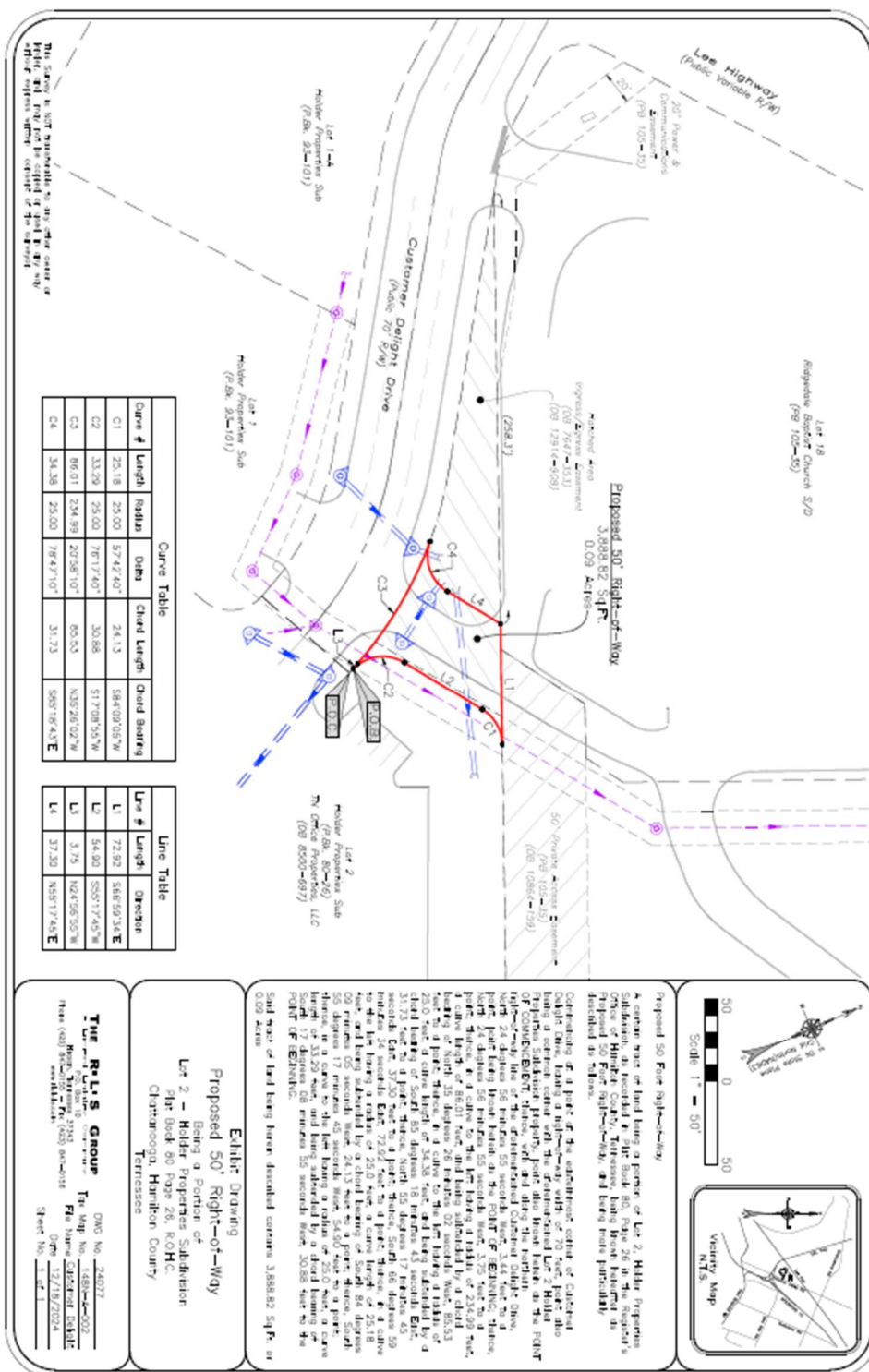
\_\_\_\_\_

NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

### Depiction of Easement Area



**EXHIBIT B**  
PUBLIC ROAD POLICIES

[see attached]

Private Road Conversion to City of Chattanooga Right-of-Way (Public Road)  
City of Chattanooga  
Department of Public Works  
Effective Date: 5/24/2022

Existing privately-owned roads may be converted to City of Chattanooga Right-of-Way when the following required conditions are met:

1. Proof of Pavement Adequacy and/or Completion of Necessary Repairs/Rehabilitation
  - a. The owner shall contract with an engineering consulting firm that is prequalified for geotechnical engineering work by the Tennessee Department of Transportation (TDOT). The list of qualified consultants is available on TDOT's website:  
<https://www.tn.gov/tdot/business-redirect/consultantinfo.html>.
  - b. Anticipated work to be performed by the engineering consultant includes, but is not limited to, the following items:
    - i. Extract core samples of the existing road through the base material.
      1. A minimum of three (3) cores shall be extracted.
      2. Cores shall be evenly spaced and staggered across traffic lanes.
      3. Core spacing shall not exceed 200 feet.
    - ii. Analyze core samples for materials, thickness, gradation, and other necessary parameters to establish a Structural Number (SN) for the existing road, in accordance with current AASHTO guidelines.
    - iii. Any hazardous materials present (example: foundry sands) in the core samples shall be identified during the analysis of the core samples. Remediation of all hazardous materials is required.
    - iv. Recommend repair, rehabilitation, or other improvement methods to meet or exceed the equivalent SN for the standard design of City streets for the corresponding functional classification of the proposed public right-of-way (see Chapter 32 of City Code)
    - v. Furnish a report that is signed and sealed by the responsible engineer for the consulting firm which includes all testing data, material data, and recommended repair/rehabilitation items to the City of Chattanooga Department of Public Works.
  - c. The owner shall submit necessary documents to the Development Review and Permitting Division of the Department of Public Works for proper permitting and inspection for any repairs or rehabilitation work.
  - d. The owner shall perform all repairs/rehabilitation in accordance with the responsible engineer's recommendations using a licensed contractor.
  - e. Completed repair/rehabilitation work shall be certified with a signed and sealed letter by the responsible engineer for the consulting firm. This letter shall be submitted to the City of Chattanooga Department of Public Works.
  - f. The roadway will be subject to a final inspection by City transportation inspection staff before being accepted.
2. Roadway geometry constructed to City Standards
3. Approval of new or updated plat dedicating right-of-way to the City of Chattanooga
  - a. New or updated plat shall be prepared by a registered land surveyor and approved through the Regional Planning Agency (RPA) subdivision process  
<https://chcrpa.org/zoning-subdivisions/subdivisions/>.

- b. Review of existing drainage systems within the proposed public right-of-way shall be completed by the Stormwater Division of the Department of Public Works. Once approved, drainage systems will be accepted concurrent with the road acceptance.
  - c. Review of existing sanitary sewer systems within the proposed public right-of-way shall be completed by the Wastewater Division of the Department of Public Works. Once approved, sanitary sewer systems will be accepted concurrent with the road acceptance.
- 4. Acceptance of the private roadway as City of Chattanooga Right-of-Way by Chattanooga City Council
- 5. Property transfer (closing) documents are filed with the Hamilton County Register of Deeds, at the owner's expense