

LEASE AGREEMENT

THIS LEASE AGREEMENT, duly made and entered into as of the ____ day of _____, 2009, by and between The Nashville and Western Railroad Corporation (Lessors), and The Metropolitan Government of Nashville and Davidson County (Lessee).

WITNESSETH:

WHEREAS, Lessors hold a leasehold interest in real estate described in Exhibit 1 (hereinafter "Site"); and

WHEREAS, Lessee desires to construct improvements on the site for a greenway; and

WHEREAS, Lessee further desires that once improved, the site would be used as a greenway for public access; and

WHEREAS, Lessee is desirous of subleasing the Site from Lessors and Lessors are willing to sublease such property to Lessee.

NOW, THEREFORE, Lessors, subject to the terms, provisions, and conditions herein and hereinafter set forth, and in consideration of the covenants of payment and performance of Lessee set forth here, does hereby lease, demise, and let unto Lessee the Leased Property.

TO HAVE AND TO HOLD unto the Lessee for a term of years as hereinafter set forth, upon the following terms and conditions:

1. Definitions. For purposes of this Lease Agreement, the following terms shall have the following meanings.

- 1.1 **Site**. "Site" shall mean that parcel or real property, more particularly described in Exhibit 1 hereof which is attached hereto and made a part hereof.
- 1.2 **Lease**. "Lease" shall mean this Lease Agreement and all Exhibits and Schedules attached hereto.
- 1.3 **Leased Premises**. "Leased Premises" shall mean the Site.
- 1.4 **Leasehold Improvements**. Improvements shall include construction of a pathway to be located on the Leased Premises, including, at the discretion of Metro, necessary trailheads, signage, benches, and other improvements consistent with the recreational and educational uses of the pathway.
- 1.5 **Mortgage**. "Mortgage" shall mean any deed to secure debt, deed of trust, mortgage, or similar instrument upon the Site.

1.6. **Term.** “Term” shall mean the first day of the first calendar month following the execution by both parties to this Lease and shall extend for a period of twenty (20) years unless sooner terminated pursuant to the terms and conditions set forth below.

2. **Rent.** Throughout the Term of this Lease Agreement the rent shall be \$2.09 per month due and payable by Lessee on the fifteenth (15) day of each month or, in the alternative Lessee may pay \$500 as one lump sum payable on or before the commencement of the Term in full satisfaction of all rent due throughout the Term. Should the fifteenth day of a month fall on either Saturday or Sunday or on a legal holiday observed by the United States Government, the rent shall be due on the first working day following the fifteenth.

3. **Purpose of Lease and Access to Leased Premises.** During the Term, Lessee shall have access to the Leased Premises. It is the purpose of this Lease to allow Metro to utilize the Leased Premises for one or more of the following: a pathway for pedestrian or bicycle travel, nature trail, and/or natural area. Metro, at its discretion, shall design, construct, and maintain Improvements including a pathway or physical structure in a manner consistent with the purpose of the Lease. Metro is hereby granted the right to and shall make the Leased Premises available for use by all members of the general public consistent with the purpose of this Lease without distinction or illegal discrimination on the grounds of race, color, national origin, handicap, or age.

4. **Utilities.** Lessee shall be responsible for all electricity and other utility charges incurred by it as a result of its activities on the Leased Premises. Lessee, shall, at its sole cost and expense, cause an electric meter or other utility meters to be installed, metering the utilities used by the Lessee on the Leased Premises.

5. **Insurance.** The parties anticipate that a liability insurance policy (the “Policy”) affording certain coverage to Lessor shall be provided by Greenways for Nashville, which is made a party to this Agreement for the sole purpose of providing the Policy, as partial consideration for the conveyance contemplated by the Agreement. The Policy shall be issued by a company with an A.M. Best rating of A, with at least two million dollars in coverage, listing Lessor as an additional insured. The parties agree that Lessor shall, upon written notice to Lessee and opportunity to cure as herein provided, have the right to terminate this agreement in the event that the Policy should lapse or be cancelled. Lessor may exercise the right to terminate the Agreement under this paragraph only if Lessee fails to procure or arrange for the procurement of a substitute policy with similar terms and coverage within 30 days after receiving Lessor’s notice to cure.

6. **Maintenance and Repairs.** Lessee, at its sole cost and expense, shall maintain and repair the Leased Premises in good repair and condition.

7. **Mechanics Liens.** Nothing herein contained shall be construed as authorizing Lessee to incur any mechanic’s lien or liens against the Leased premises for any work

performed, labor, or materials furnished thereon. Lessee covenants and agrees to promptly pay the just claims or demands for any services performed and for materials furnished and used in connection with the Leased Premises. Lessee shall, however, have the right to defend any action involving a mechanic's lien at its own expense, including the right to appeal from any verdict or judgment rendered.

8. Subordination and Non-Disturbance. At Lessors' option, the Lease Agreement shall be subordinate to any Mortgage by Lessors which, from time to time, may encumber all or part of the Leased Premises; provided, however, the holder of every such Mortgage shall recognize the validity of this Lease Agreement in the event of a foreclosure of Lessors' interest and Lessee's right to remain in occupancy of the Leased Premises as long as Lessee is not in default of this Lease Agreement by executing a non-disturbance agreement in a form reasonably acceptable to Lessee, which action shall constitute a condition precedent to the effectiveness of such subordination. Lessee shall execute in a timely manner whatever instruments as reasonably may be required to evidence this subordination clause.

9. Quiet Enjoyment. Subject to the rights of the Lessors hereunder, Lessors covenant that Lessee shall, upon paying the rent and observing the other covenants and conditions herein upon its part to be observed, peaceably and quietly hold and enjoy the Leased Premises during the Term of this Lease Agreement without hindrance, ejection or molestation by Lessors or any person or entity whomsoever, and Lessors shall warrant and defend the same to Lessee against the claims and demands of all persons and entities.

10. Possession and Holdover. At the expiration of the Term of this Lease Agreement or upon the expiration of tenancy from any cause, Lessee will peaceably and quietly yield up and surrender the Leased Premises to Lessors in as good and tenable condition as the same are at the beginning of Lessee's occupancy, reasonable wear and tear excepted. Any holdover by Lessee shall be deemed to be a tenancy from month to month.

11. Landlord's Access. Lessee agrees that Lessors may enter upon the Leased Premises at all reasonable times for the purpose of inspecting the same.

12. Assignment and Sublease. Lessee shall not voluntarily assign its interest in this Lease or in the Leased premises, or sublease all or any part of the Leased Premises, without Lessors' prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignee, sublessee or successor of Lessee shall agree in writing to assume and perform all of the terms and conditions of this Lease on Lessee's part to be performed from and after the effective date of such assignment and then shall enjoy all the rights and privileges of Lessee under this Lease, and such assignment shall not operate to release the theretofore current Lessee of its liabilities and obligations arising hereunder after the date of such assignment.

13. Condemnation. If the whole or any part of the Leased Premises is taken for any public or quasi-public use under any statute or by any right of condemnation or eminent domain, the Lease Agreement and all rights of Lessee hereunder shall immediately cease and terminate and Lessee shall have no claim against the Lessors for the value of the unexpired Term, nor shall Lessee have any part of the condemnation award.

14. Leasehold Improvements. All Leasehold Improvements shall become the property of the Lessor at the expiration or termination of this Lease Agreement.

15. Default. In the event Lessee fails to pay the monthly installment of rent within 30 (30) days from the time said rent is due, Lessors shall give Lessee written notice of said failure to pay said rental amount and, after thirty (30) days from the receipt of said notice by Lessee, if said installment of rent has not been paid, Lessors shall have the right to enter and repossess the Leased Premises. In the event Lessee shall violate any of the other terms, conditions and/or covenants herein contained, other than non-payment of rent as aforesaid, Lessors shall give the Lessee written notice of said violation or violations, defaults, or defects, and Lessee shall then have thirty (30) days from the date of receipt of said notice to cure any and all such violations, defaults, or defects. If such violations, defaults, or defects cannot be reasonably cured within thirty (30) days from receipt of said written notice, such violations, defaults, or defects shall be cured within a reasonable time. If said violation is not cured, Lessors shall have right to enter and repossess the Leased Premises. In the event Lessors shall repossess the Leased Premises, Lessors shall have the right to remove any and all property therefrom and store same without liability for safekeeping, and for the purposes of such injury and repossession. Lessors shall have the further right to re-lease or re-rent the Leased Premises to the best advantage, applying all rentals received therefrom first to any and all expenses or commissions in re-renting or re-releasing the same, and applying the balance to any and all amounts that may be due from the Lessee under this Lease Agreement, and Lessee shall be liable to the Lessors for any and all balance or deficiency remaining unpaid, and said deficiency shall be accelerated at the option of Lessors.

16. Notices. All notices provided in this Lease Agreement to be given to the Lessors shall be considered properly and legally given to the Lessors as served upon or delivered in person or the United States Mail, certified mail, return receipt requested, to _____, or to such other address as the Lessors shall designate in writing to the Lessee. All notices to be delivered to the Lessee hereunder shall be considered legally delivered as served upon or delivery in person or by the United States Mail, certified mail, return receipt requested, to Lessee at the Metropolitan Government, Metropolitan Board of Parks & Recreation, 511 Oman St., Nashville, TN 37203 with a copy to Department of Law, Metro Courthouse, Nashville, TN 37201, or to such other address as the Lessee shall designate in writing to the Lessors.

17. Non-Waiver. Neither party shall be considered to have waived any of their rights, covenants or conditions under this Lease Agreement unless evidenced by a written waiver.

18. Succession. This Lease Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, devisees, distributees, personal representatives, successors in interest and permitted assigns.

19. Headings. The headings used in this Lease Agreement are for convenience and reference and are not to be construed as part of this Lease Agreement or used in determining the intent of the parties.

20. Entire Agreement. This Lease Agreement contains the entire agreement between the parties hereto, and no representations, inducements, promises or agreements, oral or written, made or entered into prior to the execution hereof, will alter the covenants, agreement, and understandings herein set forth. No amendment hereto or modification hereof shall be valid or binding unless in writing and signed by the party sought to be charged herewith.

21. Maintenance of Records. Lessors shall maintain documentation for all charges against Lessee. The books, records, and documents of Lessors, insofar as they relate to work performed or money received under this Lease Agreement, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by Lessee or its duly appointed representatives. The records shall be maintained in accordance with standard accounting principles.

22. Metro Property. Any of Lessee's property that is in Lessors' possession shall be maintained by Lessors in good condition and repair and shall be returned to Lessee by Lessors upon termination of the Lease Agreement. All goods, documents, records, and other work product and property produced during the performance of this Lease Agreement are deemed to be property of Lessee.

23. Amendment of Lease. This Lease Agreement may be modified only by written amendment executed by all parties and their signatories hereto and approved by the Metropolitan Government Council by Resolution.

24. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

25. Contingent Fees. Lessors hereby represent that Lessors have not been retained or retained any persons to solicit or secure this Lease Agreement upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

26. Ethical Standards.

- (a) It shall be a breach of ethical standards for any person to offer, give or agree to give any present or past employee of Lessee, or for any employee of Lessee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or

controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor.

- (b) It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or to secure a contract with the Lessee upon agreement or understanding for a contingent commission, percentage or brokerage fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (c) The Lessors affirm that it has not retained anyone in violation of this Section 26. A breach of ethical standards is a material breach of this Lease Agreement and could result in civil or criminal sanction.

27. Force Majeure. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire casualty, work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control. Reasonable notice of such occurrence shall be provided to the other parties hereto.

28. Governing Law. The validity, construction and effect of this Lease Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Lessors may provide. Venue for any lawsuit arising out of this Lease Agreement shall be in the courts of Davidson County, Tennessee.

29. Right to Renew. If Lessor renews its leased interest in the Site, Lessor agrees that this Lease shall automatically renew without additional cost, unless written notice is given by either party hereto of their intent to terminate this agreement, or unless another lease is signed by both parties. Upon such renewal, the Term shall automatically extend to coincide with the Lessor's interest.

30. Lessor Changes. Should railroad purposes necessitate that Lessor make physical changes in its use of its property, or should third parties impose upon Lessor a need to make such physical changes, which physical changes shall require that Lessee shall relocate, or adjust its use of the Leased Premises, Lessee shall relocate or adjust its use of the Leased Premises as required at its sole cost and expense. Lessee shall assume all liability for claims arising out of conduct on the part of the Lessee for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, up to the limits for which it can be held liable for such conduct under that act, arising from its use of the Leased Premises, including conduct relating to such herein described relocation.

31. Reserved Rights. Except as otherwise provided herein, Lessors reserve to themselves, and to their personal representatives, successors, and assigns, all rights accruing from their lease of the Leased Premises, including the right to engage in, or permit or invite others to engage in, all uses of the Lease Premises. Nothing in the foregoing shall be construed

to prevent Lessee from using the Leased Premises for purposes of a greenway trail with improvements and/or to prevent Lessee from allowing access of the public to said greenway trail with improvements for the recreational and educational uses for which it was designed. Further, Lessors reserve the right to utilize the subject property for its own purposes, including, but not limited to, the right to install railroad track and appurtenances; to place along, across, and over the subject property facilities and structures, roads, electric and power lines, telecommunication lines, water lines, sewer lines, gas lines, petroleum lines, spur lines, and any and all other utilities which may be desired; provided that, if Lessor uses the Leased Premises for its own purposes, it shall do so in a manner that does not impair or impede the continued use of any of the Leased Premises as a greenway trail. Lessors shall have the right to repair and maintain its property even where such repair and maintenance requires the Lessor to use the Leased Premises in a manner that would interfere with the Lessee's use of the Leased premises; provided that, said interference with Lessee's use of the Leased Premises is necessitated for the Lessor's maintenance or repair of its own property and provided that this use of the Leased Premises by Lessor causes only brief temporary relocation or closure of the greenway trail. Lessors also reserves all rights it may have to enforce the terms of this agreement, whether at law or in equity.

32. Maintenance and Improvements. Any improvements made upon the demised premises must first be approved by the Lessors. Lessee shall construct and/or maintain all improvements upon said premises, in a good, substantial and workmanlike manner, and shall comply with any and all applicable building or construction codes. Lessee shall provide Lessors with plans and specifications for any new structures, items, or construction which are to be placed on the demised premises, prior to beginning of construction. Lessee further agrees to keep said demised premises in good condition (properly mowed where applicable) during the term of this lease. Any outside contractors working upon the demised premises shall maintain railroad protective insurance, with the Lessors named as an additional insured.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement the day and year first hereinabove set forth.

LESSORS:

LESSEE: THE METROPOLITAN
GOVERNMENT OF NASHVILLE AND
DAVIDSON COUNTY, DEPARTMENT
OF PARKS AND RECREATION

Director, Public Property Administration

APPROVED AS TO AVAILABILTY OF
FUNDS:

Director
Department of Finance

FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:

Date: _____

APPROVED AS TO FORM AND
LEGALITY:

Metropolitan Attorney

GREENWAYS FOR NASHVILLE:

By:

Date: _____

SURVEYOR'S DESCRIPTION
Cheatham County Rail Authority
Leased under Operating Agreement with
Nashville and Western Railroad Corporation
Map 81

Being an area to be subleased in the Urban Services District, Twenty-First Councilmanic District, Davidson County, Nashville, Tennessee, being generally located to the west of the Cumberland River, the south of Ted Rhodes Golf Course, east of Ed Temple Blvd, and north of the tracks, but within the right-of-way of the Cheatham County Rail Authority Railroad, said lease being over and across a portion of the right-of-way owned by the Cheatham County Rail Authority of record in Book 7229, Page 547, Register's Office of Davidson County Tennessee, and being more particularly described as follows:

BEGINNING, at the northwest corner of said William H. Otey, Jr., and wife Anne Otey property of record in Book 7990, Page 211, R.O.D.C., also being at the southwest corner of the William H. Otey, Jr., and wife Willie Ann Otey property of record in Deed Book 4902, Page 966, R.O.D.C., and at the southeast corner of the Metropolitan Government of Nashville and Davidson County, Tennessee property of record in Deed Book 8337, Page 223, R.O.D.C.;

THENCE, with said William H. Otey, Jr., and wife Anne Otey property of record in Book 7990, Page 211, R.O.D.C., S 17° 40' 37" W, 25.00 feet to the southerly line of said Leased Area;

THENCE, with said area to be subleased the following calls:

N 72° 17' 43" W, 57.36 feet,

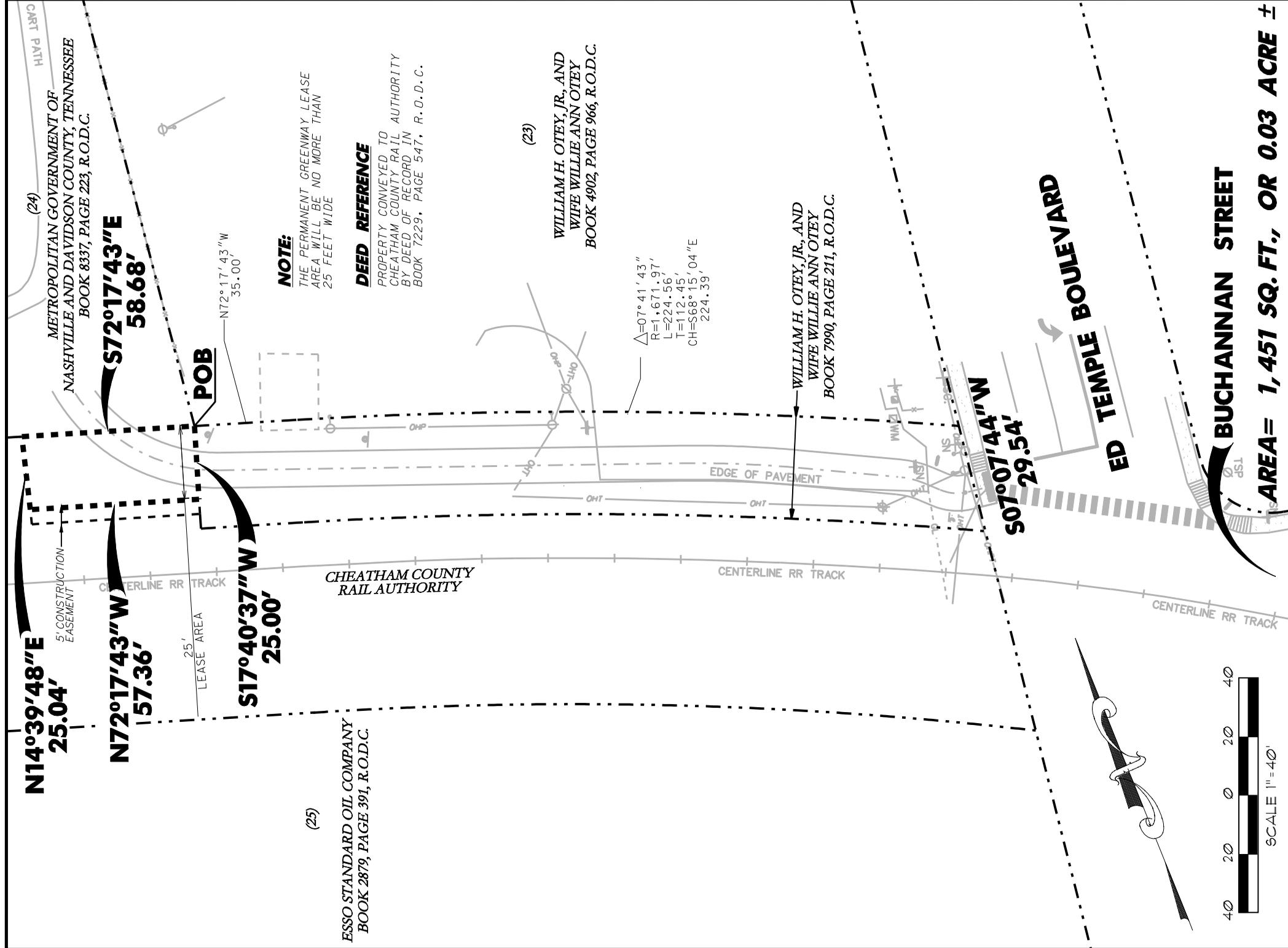
N 14° 39' 48" E, 25.04 feet to the southerly line of said Metropolitan Government of Nashville and Davidson County, Tennessee property;

THENCE, with said Metropolitan Government of Nashville and Davidson County, Tennessee S 72° 17' 43" E, 58.68 feet to the POINT of BEGINNING;

Containing 1,451 Square Feet or 0.03 Acre, more or less.

Barge, Waggoner, Sumner, and Cannon.
File No. 34493-00
July 28, 2009

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NOTE:
THE PERMANENT GREENWAY LEASE AREA WILL BE NO MORE THAN 25 FEET WIDE

DEED REFERENCE
PROPERTY CONVEYED TO CHEATHAM COUNTY RAIL BY DEED OF RECORD IN BOOK 7229, PAGE 547, R.O.D.C.

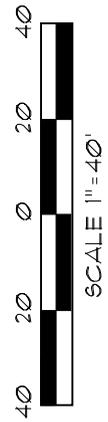
(23)
WILLIAM H. OTEY, JR., AND WIFE WILLIE ANN OTEY BOOK 4902, PAGE 966, R.O.D.C.

WILLIAM H. OTEY, JR., AND WIFE WILLIE ANN OTEY BOOK 7990, PAGE 211, R.O.D.C.

MAP SHOWING

SUBLEASED AREA
ACROSS THE LEASE HOLD OF
NASHVILLE & WESTERN
RAILROAD CORPORATION
(FEE INTEREST OWNED BY
CHEATHAM COUNTY RAIL AUTHORITY)

URBAN SERVICES DISTRICT
TWENTY-FIRST COUNCILMANIC DISTRICT
NASHVILLE, DAVIDSON COUNTY, TENNESSEE



AREA = 1,451 SQ. FT., OR 0.03 ACRE ±

BWSC

BARGE WAGGONER SUMNER & CANNON, INC.
21 Commerce Street, Suite 600 Nashville, Tennessee 37201
PHONE (615) 254-1500 FAX (615) 255-6572

ENGINEERS ARCHITECTS PLANNERS LANDSCAPE ARCHITECTS SURVEYORS

PROJECT NO. 34493-00	METRO PROPERTY MAP 81	PARCEL NO. N/A
SCALE: 1"=40'	DATE: 7-28-09	CHK. BY BTT
		BY: BARGE, WAGGONER, SUMNER AND CANNON, INC.