RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH T & C HOLDINGS, GP AND WALGREEN DRUG STORE FOR THE DONATION AND PLACEMENT OF ARTWORK AT THE CORNER OF THE PARKING LOT LOCATED AT 110 NORTH MARKET STREET.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation be and is hereby authorized to enter into an agreement with T & C Holdings, GP and Walgreen Drug Store for the donation and placement of artwork at the corner of the parking lot located at 110 North Market Street.

ADOPTED: _____, 2012.

/mms

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: November 12, 2012

Preparer: Wanda Eckstein **Department: Parks & Recreation**

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** _____

A resolution is needed authorizing the Administrator of the Department of Parks and Recreation to enter into an Agreement with T & C Holdings, GP and Walgreen Drug Store for the donation and placement of artwork at the corner of the parking lot at 110 North Market Street.

Name of Vendor/Contractor/Grant, etc.		New Contract/Project? (Yes or No)	
Total project cost	$	Funds Budgeted? (YES or NO)	
Total City of Chattanooga Portion	$	Provide Fund	
City Amount Funded	$	Provide Cost Center	
New City Funding Required	$	Proposed Funding Source if not budgeted	
City's Match Percentage	%	Grant Period (if applicable)	

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	
$	
$	

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by: FINANCE OFFICE DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

Questions? Contact Finance Department . 423.757.5232

K04F

AGREEMENT FOR DONATION AND PLACEMENT OF ARTWORK ON PRIVATE PROPERTY AND GRANT OF EASEMENT

This Agreement for Donation and Placement of Artwork on Private Property and Grant of Easement (hereinafter "Agreement") is entered into as of this ____ day of _____, 2012 by and between the CITY OF CHATTANOOGA, a municipal corporation (hereafter "City"), T & C HOLDINGS, GP, a Tennessee general partnership (hereafter "Owner") and_____ WALGREEN DRUG STORE (hereafter the "Tenant"). Owner and Tenant shall be jointly referred to as the "Recipient" or "Owner and the Tenant".

RECITALS:

WHEREAS, the City has established a Public Art Program which authorizes the placement of works of art on appropriate public and private property which encourages public access and viewing of artwork in the City of Chattanooga; and

WHEREAS, Recipient is willing to allow City an easement to place artwork on its property at the corner of the parking lot at 110 North Market Street;

NOW THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

1. City Representative. The City's Administrator of the Parks and Recreation Department, or his designee (hereinafter "Administrator"), shall be the City's designated representative with respect to this Agreement. The Administrator shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the City for purposes of this Agreement.

2. Agreement to Donate and Place Work of Art. City agrees to place a work of art as shown on Exhibit "A" (hereinafter "Artwork") to this Agreement on certain real estate of the Recipient as more fully described herein.

3. Duties of Recipient. Recipient agrees to allow City to place the Artwork on the portion of the Recipient's property depicted and described on Exhibit "B" to this Agreement (hereinafter "Site"). City shall provide for the installation of the Artwork on the Site at the City's sole cost and expense, including, construction of any necessary improvements for displaying the Artwork on the Site. No alteration to or replacement of the Artwork shall be made without the prior written approval of Recipient.

4. Termination. Either party to this Agreement may terminate this Agreement upon thirty (30) days written notice to the other party. Upon termination of this Agreement by either party, City shall have thirty (30) days thereafter to remove the Artwork from the Site.

5. Removal. The Artwork shall not be removed from the Site by the Recipient for any reason prior to the termination of this Agreement without the prior written consent of the City.

6. Ownership of Artwork. The Artwork shall be obtained by Chattanooga Public Art and donated to the City. Following donation of the Artwork, the Artwork shall become the sole property of the City. The City shall not be required to display the Artwork at the Site permanently and the City's removal of the Artwork from the Site shall not affect the ownership of the Artwork by the City.

7. Grant of Public Access Easement. Recipient hereby grants and conveys to the City a nonexclusive easement in gross over and across the Site for purposes of maintaining and displaying the Artwork and allowing the public access to the Site to view and enjoy the Artwork at reasonable times and in a reasonable manner (hereinafter "Easement"). This Easement shall include the grant to the City the right to enter the Site for purposes of reasonable maintenance and repair of the Artwork. The Easement shall exist for a fixed term commencing with the placement of the Artwork on the Site and ending with the termination of this Agreement or removal of the Artwork.

8. Maintenance. City shall provide all maintenance, repair, replacement and restoration reasonably necessary to keep the Artwork in a good and safe state of condition and repair, and City shall inspect the Site regularly and shall maintain it in a clean and orderly condition, free of rubbish and debris. All such maintenance, repair, replacement, restoration and inspection shall be at the sole expense of the City. City may in its discretion, and based on budgetary concerns, remove the Artwork from the Site rather than provide any maintenance or make any repairs, replacement or restoration to the Artwork.

9. Compliance with Law. Recipient hereby agrees to comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the display of the Artwork on the Site or to the use or manner of use of the Site. Recipient agrees to comply with the Visual Artists Rights Act of 1990 (17 U.S.C. Section 106A) (hereinafter "VARA"), but in no event shall VARA be construed as permitting the Artwork to remain at the Site for more than thirty (30) days beyond the termination of this Agreement.

10. Indemnification. City hereby agrees to indemnify, defend and hold harmless the Owner and the Tenant, its members, managers, directors, officers, agents and employees to the extent of the limits of the Tennessee Governmental Tort Liability Act, as amended, from and against any and all actions, suits, claims, damages, losses or costs arising out of public access to the Site. The indemnification obligations of City will be independent of and will not be limited by any policies of insurance maintained by Owner and the Tenant. City's indemnification obligations will survive the termination of this Agreement.

Owner and the Tenant hereby agree to indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all actions, suits, claims, damages, losses or costs arising out or in any way connected with personal injury or property damage resulting from any negligence of the Owner and the Tenant, its agents, employees or contractors with regard to the Artwork on the Site.

11. Insurance. During the term of this Agreement, Recipient shall procure and maintain, at its sole cost and expense, in a form and content consistent with industry standards, with an insurer qualified to do business in Tennessee, the following policy of insurance:

> **Commercial General Liability:** A policy of comprehensive general liability insurance, with a combined single limit liability of One Million Dollars ($1,000,000.00). This policy shall specifically insure Recipient's indemnity obligation under this Agreement and shall name the City as an additional insured.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Recipient during the duration of this Agreement. Renewal certificates shall be sent to City's Manager of Real Property at least thirty (30) days prior to any expiration date. There shall be a thirty (30) day notification to City in the event of cancellation or modification of any required insurance coverage.

The parties agree and understand that the City of Chattanooga is a self-insured governmental entity and that the City is not required to carry, but may at its discretion obtain, a fine arts insurance policy for the Artwork located at the Site.

12. Mortgage Protection. No violation of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust given in good faith or for value. All of the covenants and conditions contained herein shall be binding and effective against any party whose interest is derived through foreclosure, trustee sale, deed in lieu of foreclosure or otherwise provided, however, that any mortgagee or beneficiary who takes title to the Site pursuant to foreclosure or deed in lieu of foreclosure or any purchaser at a foreclosure or trustee sale shall take title free of any claims against Recipient arising under this Agreement which became due and payable prior to the date such mortgagee, beneficiary or purchaser takes title hereto.

13. Successors and Assigns. Until this Agreement is terminated, the obligations of Recipient under this Agreement shall be binding on Owner and the Tenant's successors and assigns and shall burden the Site and shall run with the land and be binding upon all successors and assigns acquiring any right, title and interest in and to the Site.

14. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

15. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.

16. Notices. Any and all notices, requests, demands, consents, approvals or other communications required or permitted under this Agreement by either party hereto shall be in writing and shall be made by hand delivery, by sending via Federal Express or another nationally-recognized overnight delivery service, or by sending via certified U.S. Mail with unrestricted delivery, return receipt requested, postage prepaid, and such communications shall be hand delivered or so sent to the party being notified at the following address:

If to Owner:

T & C Holdings GP
P.O. Box 4733
Chattanooga, TN 37405

If to Tenant:

Walgreens
110 North Market Street
Chattanooga, TN 37405

If to City:

City of Chattanooga
Administrator of the Department of Parks and Recreation
1102 Watkins Street
Chattanooga, TN 37404

with a copy to:

Chattanooga City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Notice shall be considered delivered at the earliest of the following to occur: (i) when actually received, (ii) three (3) Business Days (as hereinafter defined) after being so sent by U. S. Mail, or (iii) one (1) Business Day after being so sent by Federal Express or another nationally-recognized overnight courier service (and as to the foregoing clauses (ii) and (iii), delivery shall be deemed to have occurred independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish the fact that notice was sent or tendered as provided herein).

If notice is tendered pursuant to the provisions of this Section and is refused by the intended addressee thereof, the notice, nevertheless, shall be considered to have been given and shall be effective as of the date herein provided. As used in this Agreement, "Business Day" means a day other than a Saturday, a Sunday or a day designated as a holiday by the United States Congress at 5 U.S.C.A. § 6103. Either party may designate a different address for receiving communications pursuant to this Agreement by giving written notice to the other party of same at the address set forth above.

17. Non-Discrimination. There shall be no discrimination as to race, gender, religion, color, creed or national origin against any worker, employee or applicant or any member of the public in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation of the Site.

18. Tennessee Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

19. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

20. No Recording. Neither this Agreement nor any memorandum hereof shall be filed in the Register's Office of Hamilton County, Tennessee.

21. Entire Agreement. This Agreement contains the sole and entire agreement of the parties and no prior or contemporaneous oral or written representation or agreement between the parties shall have legal effect. No provision of this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of such party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

T & C HOLDINGS GP

By:_____

Title: _____

Date: _____

WALGREEN DRUG STORE

By:_____

Title: _____

Date: _____

CITY OF CHATTANOOGA
DEPARTMENT OF PARKS AND RECREATION

By:_____
LAWRENCE A. ZEHNDER
Title: Administrator of Chattanooga Parks and Recreation

Date: _____

EXHIBIT "A"
[depiction of Artwork

EXHIBIT "B"
[description of Site]

WOODLAND AVENUE
FRAZIER AVENUE
30'
30'
40'