RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A GROUND LEASE AGREEMENT WITH REBOUND, LLC FOR THE MAINTENANCE OF "INSPIRATION PARK" A .7691 ACRE PUBLIC PARK LOCATED AT 2408 DUNCAN AVENUE, TAX MAP NO. 146N-E-001, THAT WAS CONSTRUCTED BY HEALTHSOUTH AND LEASED TO THE CITY OF CHATTANOOGA FOR PUBLIC USE.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into a Ground Lease Agreement with Rebound, LLC for the maintenance of "Inspiration Park" a .7691 acre public park located at 2408 Duncan Avenue, Tax Map No. 146N-E-001, that was constructed by HealthSouth and leased to the City of Chattanooga for public use.

ADOPTED: _____, 2013

/mms

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: September 10, 2013

Preparer: Cary Bohannon **Department:** General Services

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** 9

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A GROUND LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH REBOUND, LLC, FOR THE MAINTENANCE OF "INSPIRATION PARK', A .7691 ACRE PUBLIC PARK AT 2408 DUNCAN AVENUE, TAX MAP NUMBER 146N-E-001, THAT WAS CONSTRUCTED BY HEALTHSOUTH AND DEDICATED TO THE CITY OF CHATTANOOGA.

Name of Vendor/Contractor/Grant, etc.	Rebound, LLC	New Contract/Project? (Yes or No)	YES
Total project cost	$ 1.00 per year lease	Funds Budgeted? (YES or NO)	YES
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 AT RPA ON 09-09-13, MR-2013-114

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

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of _____, 2013 (the "Effective Date") by and between **REBOUND, LLC**, formerly known as Renaissance Rehabilitation Center of Chattanooga, Inc. ("Landlord"), and **THE CITY OF CHATTANOOGA**, a municipal corporation ("Tenant").

RECITALS:

A. Landlord owns certain real property in Hamilton County, Tennessee.

B. Tenant desires to utilize Landlord's real property for the construction of a public park.

C. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord, Landlord's real property on the terms and conditions contained in this Lease.

AGREEMENT:

In consideration of the mutual covenants and premises contained in this Lease, and of other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. DESCRIPTION OF PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain tract of real property in Hamilton County, Tennessee, consisting of approximately .7691 acres, which is more particularly described on Exhibit A attached to this Lease (the "Leased Premises").

2. TERM. Unless sooner terminated as provided in this Lease, the initial term of this Lease shall be for thirty (30) years and shall begin on the Effective Date and terminate thirty (30) years thereafter. Notwithstanding the foregoing, either party may terminate this Lease for any reason by providing One Hundred Eighty (180) days written notice to the other party.

3. RENT. Commencing on the Effective Date and continuing throughout the initial term of this Lease and any renewal term (if applicable), Tenant shall pay to Landlord an annual rent of One Dollar ($1.00), which shall be due on the first day of June each year.

4. USE OF PREMISES/INITIAL IMPROVEMENTS. Tenant shall use and occupy the Property for a public park or any related use (the "Park"). The Park shall be named "Inspiration Park, dedicated to the City of Chattanooga by HealthSouth," but the name shall be subject to change by the written agreement of the parties to this Lease. Landlord shall construct the initial improvements to the Park, at its sole cost and expense, including but not limited to, walkways, landscaping, lighting, separately metered electrical service, and separately metered water service.

5. TAXES. All property taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature

whatsoever that are assessed, levied, imposed or relate to the Property, improvements and the sidewalks or streets in front of or adjoining the Property shall be paid by Landlord.

6. UTILITIES; OTHER SERVICES. Tenant shall pay for all utility costs associated with the Park, including but not limited to water, sewer, electricity, gas and other utilities or services used by Tenant during the term of this Lease. Tenant shall also be responsible for trash on the Leased Premises and will use reasonable efforts to keep sidewalks cleared of snow unless inclement weather precludes the safe removal of snow.

7. INSURANCE.

(a) Certificate of Self Insurance. The parties acknowledge that Tenant is self-insured in accordance with the Tennessee Governmental Tort Liability Act ("TGTLA"), which establishes the limits of liability for governmental entities in the State of Tennessee and will, therefore, not be required to maintain general liability insurance. A copy of the Tenant's Certificate of Self Insurance is attached hereto as Exhibit B.

(b) Liability. It is agreed that the Landlord shall not be liable for any loss, damage or injury to property or person from any source whatsoever upon the Leased Premises as the rental is made on the basis of the Tenant's invitees and visitors assuming for themselves such risks. Landlord shall not be responsible for any property or valuables destroyed, damaged, lost, stolen, taken or missing from the Leased Premises except those which are resulting from or caused by the sole gross negligence of Landlord's agents, employees or invitees. Any property placed on or left upon the Leased Premises by Landlord is maintained strictly at Landlord's own risk, provided that Tenant shall not damage same. Any property Tenant places on the Leased Premises is placed there at its own risk.

To the extent provided for under the TGTLA, T.C.A. §§ 29-20-101, *et seq.*, Tenant shall be liable for any and all claims and causes of actions arising from the negligence of its employees for damages to person or property arising from the use by Tenant or the public of the Leased Premises herein conveyed. Tenant shall be solely liable for any and all claims and causes of action arising from the negligence of its employees and for damages to person or property arising from the use of the Leased Premises herein conveyed. Tenant shall have no obligation to maintain, repair or monitor the use of any facilities or equipment owned by Landlord and situated on the Leased Premises.

8. MAINTENANCE AND REPAIR. Tenant shall be solely responsible for the maintenance and repair of the Leased Premises. Tenant shall at all times keep the Leased Premises in good repair and condition, and shall not commit waste.

9. ALTERATIONS. Subject to Landlord's prior written approval, Tenant, at its sole cost and expense, may make alterations and additions to any portion of the improvements located on the Leased Premises, provided that (i) the additions and alterations shall be constructed expeditiously with good materials in a good and workmanlike manner; (ii) all alterations or additions shall be in full compliance with all applicable laws; and (iii) all material alterations and additions must be consistent with the use of the Leased Premises as a public park. All

improvements made by Tenant to the Leased Premises shall become the property of Landlord upon the expiration or earlier termination of this Lease; provided that Landlord shall have the right to require Tenant to remove any or all of the improvements within thirty (30) days after the termination of the Lease.

10. MECHANIC'S AND MATERIALMAN'S LIENS. Tenant will not create or permit to be created or to remain, and will promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Leased Premises, which arises out of the use or occupancy of the Leased Premises by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant or by reason of any construction, addition, alteration or repair of any part of the Leased Premises. If any such lien is filed, Tenant shall, within thirty (30) days after notice of the filing, cause such lien to be released or discharged with respect to the Leased Premises by payment or bonding. If Tenant fails to discharge the lien promptly as required by this section, Landlord may, at its option, discharge such lien and charge the costs thereof to Tenant as additional rent, which shall become due and payable within ten (10) days from Tenant's receipt of Landlord's invoice.

11. COMPLIANCE WITH LAWS. During the term, Tenant shall comply with and cause the Leased Premises and the improvements located on the Leased Premises to be in compliance with all applicable laws, rules, regulations and ordinances, including without limitation all laws and rules and regulations relating to the making, treating, storing, transporting or disposing of "hazardous substances" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, and the rules and regulations promulgated thereunder, as from time to time amended, 42 U.S.C. 9601 et seq.

12. NON-DISCRIMINATION. The parties agree to comply with all federal, state and local non-discrimination provisions that the Tenant is under a duty to comply with under federal, state or local law while leasing the Leased Premises. The parties agree not to discriminate against any employee, agent, or invitee on the basis of race, color, religion, sex, age or national origin. The parties further agree to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

13. ASSIGNMENT. Tenant, may not assign, transfer, mortgage or encumber this Lease or any interest created by this Lease without the written consent of Landlord, which consent shall not be unreasonably withheld.

14. OBLIGATIONS OF SUCCESSORS AND ASSIGNS. This Lease and the covenants and conditions in this Lease shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such assignees of Tenant to whom the assignment has been made in accordance with this Lease.

15. CAPTIONS. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, amplify or describe the scope of this Lease or the intent of any provision thereof.

16. NOTICES. Whenever this Lease provides that notices shall be given, or may be given or served, upon either of the parties by the other, or whenever the law requires or gives the right of serving a notice, such notices shall be in writing and shall be effective upon delivery by registered or by certified mail, proper postage prepaid, or by a nationally recognized overnight courier, as follows:

To Landlord: Rebound, LLC
3660 Grandview Parkway, Suite 200
Birmingham, AL 35243
Attn: Real Estate Department

To Tenant: City of Chattanooga
Department of Public Works
1250 Market Street
Chattanooga, TN 37402

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

City of Chattanooga
General Services Real Property Office
274 E. 10th Street
Chattanooga, TN 37402

Either party may, at any time, change the place of receiving notice by giving written notice to the other party of such change of address.

17. DEFAULT AND REMEDY.

(a) Tenant's Defaults. The occurrence of any of the following shall be deemed an "Event of Default":

(i) Failure by Tenant to pay rent within ten (10) days of when due; provided that Landlord shall provide Tenant with written notice of such failure and three (3) business days to cure such failure.

(ii) Failure by Tenant to perform any act to be performed by Tenant or to comply with any condition or covenant contained in this Lease and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

(b) Landlord's Remedies. Upon the occurrence of any Event of Default, Landlord may pursue any remedy available to Landlord, including the immediate termination of this Lease. The remedies available to Landlord are cumulative and not exclusive.

(c) Landlord's Defaults; Tenant's Remedies. It shall be a default under and a breach of this Lease by Landlord if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that Landlord shall not be in default if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period and Landlord has commenced performance to cure such default during the thirty day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default which remains uncured, Tenant may pursue any remedy available to Landlord.

18. SEVERABILITY. Any provision of this Lease which shall be determined to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision and all other provisions shall remain in full force and effect.

19. CUMULATIVE REMEDIES. No remedy or election set forth in this Lease shall be deemed exclusive but shall, when possible, be cumulative with all other remedies at law or in equity.

20. GOVERNING LAW. This Lease shall be construed in accordance with and shall be governed by the laws of the State of Tennessee.

21. ENTIRE AGREEMENT. There are no oral agreements affecting this Lease between the parties, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements, representations, promises, warranties and understandings between the parties with respect to the subject matter of this Lease, and no other document or agreement shall be used to interpret or construe this Lease. This Lease, including the exhibits and any addenda to this Lease, sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the lease of the Leased Premises. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing, signed by them and mutually delivered between them.

22. QUIET ENJOYMENT. Landlord represents to Tenant that it has good and marketable title to the Leased Premises free and clear of liens and encumbrances except for those covenants, conditions and restrictions of record as of the Effective Date or that are created after the Effective Date and which are acknowledged by and otherwise consented to by both Landlord and Tenant. Landlord further represents that is has the full power and authority to execute and deliver this Lease. Upon payment by the Tenant of the rent, and upon the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

23. CONDEMNATION. Unless this Lease is terminated pursuant to this Section 23, if a portion of the Leased Premises shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority ("Condemning Authority") having the power of eminent domain, or is sold to a Condemning Authority under threat of the exercise of that power, this Lease shall continue and there shall be no abatement of the rent. If a portion of the Leased Premises is so taken or sold, and that portion in Tenant's reasonable judgment is material to Tenant's use and occupancy of the Leased Premises, or if all of the Leased Premises is so taken or sold, Tenant may terminate this Lease by giving written notice to Landlord of Tenant's desire to terminate. This Lease shall then terminate on the day following the vesting of title in the Condemning Authority. Any award or compensation paid on account of any taking or sale described in this Section 23 shall be paid to Landlord.

24. RECORDING LEASE. Landlord or Tenant may require the other to execute and record a short form or memorandum of this Lease which describes the parties, the terms, including extension periods, and the Leased Premises.

25. WAIVER. No delay or failure on the part of any party to this Lease to exercise any right or remedy available under the terms of this Lease or at law or in equity shall constitute a waiver of any such rights or remedies, or of any other rights or remedies. No waiver of any of the terms or conditions to this Lease shall be valid or effective unless made in writing and signed by the party making the waiver. The waiver of any breach, term or condition of this Lease by any party shall not be deemed to be a waiver of any other or further breach of such term or condition, or of any other term or condition of this Lease.

26. COUNTERPARTS. This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which together constitute one and the same document.

27. ATTORNEYS' FEES. In the event of any legal action or proceeding brought by either party against the other to enforce this Lease or to interpret any provision of this Lease, the prevailing party shall receive, in addition to court costs, an amount determined by the court as the reasonable attorneys' fees incurred by such party which may be made a part of the judgment and which shall be considered an item of cost.

28. FORCE MAJEURE. The parties shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond the parties control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage, governmental regulations or controls, fire or other casualties, inability to obtain any material, services, or financing or through acts of God.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:

REBOUND, LLC

By: _____

Name: _____

Title: _____

TENANT:

CITY OF CHATTANOOGA

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description

All those tracts or parcels of land lying and being in the City of Chattanooga, Hamilton County, Tennessee, being lots 1-5 of Block 6 of the Chamberlain Avenue Land Company's Addition to Highland Park, as shown in Plat Book 3, Page 14 of the Hamilton County Register of Deeds Office.

Lots 1 and 5 being the same property conveyed by Deed recorded at Book 3545, Page 568 in the Hamilton County Register of Deeds Office.

Lots 2, 3 and 4 are the same property conveyed by Deed recorded at Book 3869, Page 693 in the Hamilton County Register of Deeds Office.

Tax Parcel Number 146N E 001

EXHIBIT B

City's Certificate of Self Insurance

[See attached.]

City of Chattanooga

Employee Benefits Division

CERTIFICATE OF SELF-INSURANCE

This is to certify that the City of Chattanooga Government is a self-insurer in accordance with the Tennessee Governmental Tort Liability Act.

The funded Self-Insurance Plan is established under the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-403, et. seq., which establishes the limits of liability for governmental entities in the State of Tennessee. For all claims against a self-insuring governmental entity, the Act establishes a maximum limit of liability of Three Hundred Thousand ($300,000.00) Dollars for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and Seven Hundred Thousand ($700,000.00) Dollars for bodily injury or death of all persons in any one (1) accident, occurrence or act, and One Hundred Thousand ($100,000) Dollars for injury or destruction of property of others in any one (1) accident, occurrence or act. The provisions of the above limits shall apply to any action arising on or after July 1, 2007.

By: _____

Madeline Green
Director of Risk Management and Insurance

274 East 10th Street • Suite 100 • Chattanooga, TN 37402
OFFICE: (423) 757-5360 • FAX: (423) 757-0087