

RESOLUTION NO. 28433

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, BETWEEN OBC HOLDINGS, LLC AND THE CITY OF CHATTANOOGA FOR THE ACCEPTANCE OF THE DONATION OF PROPERTY LOCATED AT 360 GREENWAY VIEW DRIVE, PARCEL I.D. NO. 157M-A-009.05.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Mayor to enter into a Donation Agreement, in substantially the form attached, between OBC Holdings, LLC and the City of Chattanooga for the acceptance of the donation of property located at 360 Greenway View Drive, Parcel I.D. No. 157M-A-009.05.

ADOPTED: October 20, 2015

/mem

DONATION AGREEMENT

THIS DONATION AGREEMENT (the "Agreement") is made this ____ day of _____, 2015, by and between **OBC HOLDINGS, LLC**, a Tennessee limited liability company, having an address of Suite 401 Volunteer Building, 832 Georgia Avenue, Chattanooga, Tennessee 37402 ("Donor"), and the **CITY OF CHATTANOOGA**, a Tennessee municipal corporation, having an address of c/o City Attorney's Office, 100 E. 11th Street, Suite 200, Chattanooga, Tennessee 37402 ("Donee").

RECITALS:

A. Donor is the fee simple owner of that certain parcel of real property located in Chattanooga, Hamilton County, Tennessee, which has a street address of 360 Greenway View Drive, Chattanooga, Tennessee, Tax Parcel I.D. No. 157M A 009.05, being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Donor desires to donate to Donee the Property as a charitable contribution within the meaning of Section 170(c) of the Internal Revenue Code of 1986, as amended, for the public benefit of the Donee and its citizens. Donee desires to accept such donation from Donor.

B. The parties desire to set forth the terms and conditions of the donation in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Donation.

(a) For and in consideration of the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donee's material reliance on this Agreement, Donor agrees to grant and convey to Donee the Property described on Exhibit "A". Donee shall not be obligated to accept the Property if (a) the donation of the Property is not consummated under this Agreement because of Donor's failure, refusal or inability to perform any of its obligations under this Agreement; (b) Donee elects to terminate this Agreement because any of Donor's representations or warranties cease to be true prior to Closing (hereinafter defined); (c) Donee elects not to close by reason of damage to the Property in accordance with Paragraph 10 of this Agreement; (d) Donee elects to terminate this Agreement in accordance with Paragraph 7 of this Agreement because of unacceptable environmental or other conditions on the Property; or (e) Donee elects to terminate this Agreement in accordance with Paragraph 14 of this Agreement if the city council of Donee fails to approve the transaction.

(b) The parties agree that a reasonable estimate of the value of the donated property is Twenty Three Thousand Five Hundred Twenty Two Dollars (\$23,522.00). If Donor elects to claim tax benefits associated with the donated property, Donee agrees, upon request, to provide Donor written verification of Donee's receipt of the donated Property in the form

attached as Exhibit "B"; provided, however, that Donee makes no representations, warranties, or guarantees relating to tax implication of such donation.

2. Closing. The donation of the Property by Donor (the "Closing") shall take place on or before October __, 2015 provided that Donee has not elected to extend or terminate this Agreement pursuant to the terms hereof.

3. Title. Donor shall convey the Property to Donee by executing and delivering to Donee a special warranty deed (the "Deed") in substantially the form attached hereto as Exhibit "C". Donee shall be under no obligation to accept the Deed from Donor if Donee determines that the Property is subject to liens, encumbrances or other matters of title other than any ad valorem property taxes which will be prorated as of the Closing, and inapplicable upon the completion of the donation, and other matters that are shown on the Plant Service Information Report prepared by Jones Raulston Title Agency, Inc., dated as of July 11, 2015.

4. Donor's Promise not to Further Encumber. From and after the date hereof, Donor shall not do any of the following without the prior written consent of Donee: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Property; (b) cause or permit any lien, encumbrance, mortgage, security deed, deed of trust, right, restriction or easement to be placed upon the Property; (c) permit any mortgage, security deed, deed of trust or other lien or encumbrance to be foreclosed upon due to Donor's actions or omissions, including failure to make any required payment(s); or (d) convey any interest in the Property, including but not limited to conveyances of title and transfers of development rights.

5. Survey. Donee, at its expense, may obtain a boundary survey of the Property, signed and sealed by a Tennessee registered surveyor, certified to Donee, and prepared according to state standards. The legal description drawn from any such survey shall serve as the legal description for the Property, as set forth in the Deed.

6. Phase I Environmental Assessment. Donee has obtained a Phase I Environmental Assessment for the Property, prepared by S&ME, Inc., dated June 25, 2015, and hereby affirms that the assessment reveals no actual or reasonably likely presence of contamination on or in the Property. The term "contamination" shall mean the presence of toxic or hazardous substances on or in the Property, or arising from the Property, which may require remediation under any applicable law. For purposes of this Agreement, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. §9601(14), as amended and of "regulated substance" at 42 U.S.C. §6991(2), as amended, and of any other substances which may be the subject of liability pursuant to any environmental law of the United States or the state of Tennessee.

7. Donor's Representations and Covenants. Donor represents and covenants as follows:

(a) Donor has good and marketable, fee simple title to the Property, and has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby in accordance with the terms of this Agreement;

(b) No one other than Donor will be in possession of, or have any right of possession of, any portion of the Property at the Closing;

(c) To the best of Donor's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened against Donor, which could affect Donor's title to the Property or any portion thereof, affect the value of the Property or any portion thereof, affect Donor's duties and obligations under this Agreement or subject an owner of the Property, or any portion thereof, to liability;

(d) To the best of Donor's knowledge, there are no:

(i) Uncured notices from any governmental agency notifying Donor or its predecessor in ownership of the Property which might result in any lien upon or claim against the Property or any portion thereof, or which specify any violation of law, ordinance, rule, regulation, covenant or restriction which might affect the Property or any portion thereof;

(ii) Actual or impending mechanics' or materialmen's or similar liens against the Property or any portion thereof;

(iii) Notices or other information giving Donor reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property may have a material effect on the value of the Property or subject the owner of the Property to potential liability under any applicable environmental laws or regulations;

(iv) Leases, licenses, permits, options, rental agreements, rights of first refusal or other agreements, written or oral, which affect the Property or any portion thereof.

(e) The execution of this Agreement will not constitute a breach or default under any agreement by which Donor is bound and/or to which the Property is subject;

(f) Donor has delivered to Donee copies of all notices, correspondence, reports and other documents that Donor has received from or sent to any regulatory or enforcement agency concerning hazardous substances on the Property, and copies of all reports of investigations concerning Hazardous Substances on the Property prepared by any person and in the possession or control of Donor. Donor agrees to promptly deliver to Donee copies of all such documents received subsequent to the date hereof through and including the Closing; and

(g) The Property is not presently subject to, encumbered by, or conveyed under any mortgage, deed of trust, deed to secure debt, security deed, or other debt or

financing instrument, and Donor shall not convey any interest in or otherwise encumber or subject the Property to any such debt or financing instrument prior to the consummation of the Closing under this Agreement.

Each of the above representations and covenants is material to and is relied upon by Donee. Each of the above representations shall be deemed to have been made as of the date hereof and as of the Closing. Donor shall indemnify, defend and hold harmless Donee, its officers, directors, employees, agents, successors and assigns from and against any and all expense, loss, liability, fine, penalty, damages and claims, including Donee's reasonable attorneys' and consultants' fees and costs, arising from or relating to the breach of any of Donor's warranties, representations and covenants. This indemnification obligation shall survive the Closing and the delivery of the instruments of conveyance.

If, before the conveyance to Donee, Donor discovers any information or facts that would materially change the foregoing warranties and representations, Donor shall immediately give notice to Donee of those facts and information. If any of the foregoing warranties and representations cease to be true before the conveyance to Donee, Donor shall be obligated to remedy the problem before the Closing. If the problem is not remedied before the date of conveyance to Donee, then Donee may elect either to (a) terminate this Agreement, in which case Donee shall have no obligation to accept title to the Property or (b) defer the Closing date until such problem has been remedied, or (c) accept title to the Property and close, in which case Donor shall donate the Property to Donee pursuant to the terms hereof. Donee's election in this regard shall not constitute a waiver of Donee's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or at equity.

8. **Remedies Upon Default.** In the event Donor defaults in the performance of any of Donor's obligations under this Agreement, Donee's sole remedy shall be the right of specific performance against Donor. In the event Donee defaults in the performance of any of its obligations under this Agreement, Donor shall have the right to any remedy provided in this Agreement or by law or equity, except Donor shall not have the right to sue Donee for damages.

9. **Right to Inspect the Property.** During the term of this Agreement, Donee, through its employees and agents, may enter upon the Property in order to conduct any survey, appraisal, environmental, physical, engineering, feasibility studies and other inspections and investigations as Donee deems appropriate in an effort to determine whether or not to proceed with the Closing of this transaction. To the extent permitted by law under the Tennessee Governmental Tort Liability Act, Donee agrees to indemnify Donor against any damages or costs incurred by Donor due to Donee's or its agents' entry onto the Property to conduct the tests and studies above described.

10. **Risk of Loss.** All risk of loss shall remain with Donor until the Closing. Donor shall maintain the Property in its present condition pending Closing and shall not make or permit any changes in or upon the Property except with Donee's advance written consent. In the event the Property is destroyed or damaged prior to Closing, such that the Property is, in the sole discretion of Donee, no longer suitable for Donee's public purposes, Donee shall have

the right, by notice given to Donor as provided in Paragraph 11 below, to terminate this Agreement, and, except as may be provided expressly to the contrary herein, Donor and Donee shall have no further rights, obligations or duties under this Agreement. Donor agrees that upon Closing, all improvements, if any, located on the Property shall be in the same order and condition as on the date of this Agreement, except for reasonable wear and tear, and Donor shall maintain in full force a policy of all-risk hazard insurance, insuring against loss of or damage to said improvements.

11. **Notices.** All notices pertaining to this Agreement shall be in writing, delivered to the parties hereto personally by hand, by United States mail, certified or registered, with return receipt requested, by telecopier (provided a confirmation copy is sent via another mode) or courier service at the addresses set forth in the introductory paragraph of this Agreement. All notices shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

12. **Prorations and Fees.** Real property taxes on the Property shall be prorated as of the Closing date. If the amount of such taxes for the current year cannot reasonably be determined, the apportionment shall be based at Closing upon the amount of such taxes for the prior year and shall be readjusted when the amount of tax is finally determined. From and after the Closing, the Property will be exempt from payment of real property taxes for the time period in which Donee owns the Property. Water quality fees assessed for the year 2015 (regardless of when due and payable) shall be prorated as of the Closing. Special assessments levied prior to the Closing shall be the responsibility of Donor. The provisions contained in this paragraph shall survive the Closing and shall not be merged into the Deed. Any documentary tax or real property transfer tax arising out of the conveyance of the Property, the fee for the title report, the Phase I Environmental Assessment, and any other fees and closing costs associated with the transfer of the Property either have been or shall be paid by Donor. Each party agrees to be responsible for its own attorneys' fees.

13. **No Agents or Brokers.** Each party hereto represents to the other that it has not discussed the transactions contemplated in this Agreement with any real estate broker, agent or salesman so as to create any legal right or entitlement to claim a real estate commission or similar fee with respect to the conveyance of the Property to Donee. Donor and Donee (to the extent permitted under the Tennessee Governmental Tort Liability Act) hereby indemnify each other against, and agree to hold each other harmless from, any and all claims, loss, liability, cost, and expenses (including reasonable attorneys' fees) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to this Agreement or the conveyance of the Property. The foregoing indemnities shall survive the termination or consummation of this Agreement.

14. **Approval.** This Agreement is contingent upon review and approval by the Chattanooga City Council.

15. **Time of the Essence.** Time is of the essence of this Agreement.

16. **Possession.** Possession of the Property shall be transferred to Donee at Closing.
17. **Binding on Successors.** This Agreement shall be binding not only upon the parties hereto but also upon their personal representatives, assigns, and other successors in interest. Donee, with Donor's prior written consent, which shall not be unreasonably withheld or delayed, may assign its rights under this Agreement to another charitable organization or to a governmental entity, in which case Donee shall be released in full from all duties and obligations hereunder, provided Donee's assignee agrees in writing to assume such duties and obligations.
18. **Additional Documents.** Donor and Donee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.
19. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between Donor and Donee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.
20. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
21. **No Merger.** The obligations contained in this Agreement, except for those specifically discharged at Closing, shall survive the Closing.
22. **Headings; Rules of Construction.** The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.
23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.
24. **No Waiver.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any party hereto may waive the benefit of any provision, contingency or condition for its benefit contained in this Agreement.

25. Effective Date. The effective date of this Agreement shall be the latter date of the execution dates below.

26. Choice of Law. The validity, construction, interpretation, and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the state of Tennessee.

27. Miscellaneous. In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

[SIGNATURE PAGES FOLLOW]

IN WITNESS of the foregoing provisions, the Donor, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONOR:

OBC HOLDINGS, LLC, a Tennessee limited liability company

By: _____
Lynda C. Hawks, Chief Operating Officer

Execution Date: _____

IN WITNESS of the foregoing provisions, the Donee, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONEE:

CITY OF CHATTANOOGA, a Tennessee municipal corporation

By: _____

Title: _____

Execution Date: _____

EXHIBIT "A"

All that tract or parcel of land lying and being in the city of Chattanooga, Hamilton County, Tennessee and being more particularly described as follows:

Parcel 5, Bright Par 3 Associates L.P. Subdivision as shown on Revised Plat of Bright Par 3 Associates, L.P. Subdivision recorded May 26, 2004 in Plat Book 75, Page 102, in the Register's Office of Hamilton County, Tennessee.

REFERENCE is made for prior title to Deed of record in Book 7800, Page 59, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT "B"

[date]

OBC Holdings, LLC
Suite 401, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402

Re: Acknowledgement of Charitable Contribution to the City of Chattanooga

Dear Sir or Madam:

On behalf of the City of Chattanooga, a public municipality organized under the laws of the State of Tennessee, this letter acknowledges the closing of the transfer of title of that certain real property known as 360 Greenway View Drive, Chattanooga, Tennessee (Tax Parcel I.D. No. 157M A 009.05) (the "Property") pursuant to that certain Donation Agreement by and between OBC Holdings, LLC, and the City of Chattanooga dated _____, 2015.

Accordingly, this letter acknowledges the receipt by the City of Chattanooga on _____, 2015, of the Property as a contribution for the public purposes of the City of Chattanooga with the use and benefit of the Property to inure to the benefit of the citizens of the City of Chattanooga.

Under the relevant provisions of the Internal Revenue Code of 1986, as amended, the amount of any charitable contribution that is deductible for federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of any property or services provided by the recipient of the contribution.

Accordingly, in connection with the receipt of the Property, it is acknowledged that no money, property or services were provided by the City of Chattanooga in exchange for the donation of the Property.

The letter is issued to you solely for purposes of substantiating your charitable contribution under the relevant provisions of the Internal Revenue Code.

Sincerely,

EXHIBIT "C"

Form of Special Warranty Deed

This Instrument Prepared by:
Miller & Martin PLLC (JMH)
Suite 1200 Volunteer Building
832 Georgia Avenue
Chattanooga TN 37402

Name and Address of New Owner:	Send Tax Bills to:	Map and Parcel No.
City of Chattanooga c/o City Attorney's Office 100 E. 11 th Street, Suite 200 Chattanooga TN 37402	Same	157M A 009.05

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and legal sufficiency of which hereby is acknowledged, **OBC HOLDINGS, LLC**, a Tennessee limited liability company (herein called "Grantor"), does hereby bargain, donate, transfer and convey unto the **CITY OF CHATTANOOGA**, a municipality of the state of Tennessee (herein called "Grantee"), the property described on Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the property, together with all and singular the rights, hereditaments, and appurtenances thereto in anywise belonging, but subject to the matters described on Exhibit "B" attached hereto, unto Grantee, its successors and assigns, and Grantor hereby agrees to warranty and forever defend all and singular the property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or claim the same, or any part hereof, by, through, or under Grantor but not otherwise.

EXECUTED this ___ day of _____, 2015.

GRANTOR:
OBC HOLDINGS, LLC, a Tennessee limited liability company

By: _____
Lynda C. Hawks, Chief Operating Officer

STATE OF TENNESSEE
COUNTY OF HAMILTON

Before me, a Notary Public in and for the state and county aforesaid, personally appeared Lynda C. Hawks, to me known (or proved to me on the basis of satisfactory evidence) to be the Chief Operating Officer of **OBC HOLDINGS, LLC**, a Tennessee limited liability company, who acknowledged that she executed the foregoing instrument for the purposes therein contained on behalf of said limited liability company in her capacity as such Chief Operating Officer.

WITNESS my hand at office this _____ day of _____, 2015.

Notary Public

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

I, _____, hereby swear or affirm that the actual consideration for this transfer is \$ _____.

Affiant-Grantee

Subscribed and sworn to before me
this _____ day of _____, 2015.

Notary Public

My Commission Expires: _____

EXHIBIT "A"

All that tract or parcel of land lying and being in the city of Chattanooga, Hamilton County, Tennessee and being more particularly described as follows:

Parcel 5, Bright Par 3 Associates L.P. Subdivision as shown on Revised Plat of Bright Par 3 Associates, L.P. Subdivision recorded May 26, 2004 in Plat Book 75, Page 102, in the Register's Office of Hamilton County, Tennessee.

TOGETHER WITH any appurtenant easement rights Grantor may have under the easements recorded in Book 1721, Page 66 and Book 2845, Page 394, in the Register's Office of Hamilton County, Tennessee.

REFERENCE is made for prior title to Deed of record in Book 7800, Page 59, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT "B"

1. Sanitary Sewer Easement of record in Book 1642, Page 676, Register's Office of Hamilton County, Tennessee.
2. Easement of record in Book 4557, Page 485, in the Register's Office of Hamilton County, Tennessee.
3. Easement of record in Book 4557, Page 489, in the Register's Office of Hamilton County, Tennessee.
4. Declaration of Access Easement Agreement (Cornelison Road Extension) of record in Book 5298, Page 737, in the Register's Office of Hamilton County, Tennessee.
5. Permanent easement of record in Book 6296, Page 763, in the Register's Office of Hamilton County, Tennessee.
6. Terms of easements and restrictions of record in Book 1721, Page 66, Book 2845, Page 394, Book 6744, Page 542, Book 6744, Page 475, Book 6744, Page 493 and Book 6832, Page 47, in the Register's Office of Hamilton County, Tennessee. As shown on the Plant Service Information Report prepared by Jones Raulston Title Agency, Inc., dated as of July 11, 2015, the easements and restrictions of these instruments are only applicable to the appurtenant easement areas and do not affect Lot 5, Bright Par 3 Associates LP Subdivision.
7. Subject to matters set forth in instrument of record in Book 6755, Page 789, in the Register's Office of Hamilton County, Tennessee.
8. Easements, requirements, and other matters as shown, described or noted on plat of record in Plat Book 75, Page 102, in the Register's Office of Hamilton County, Tennessee.