

RESOLUTION NO. 29213

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH BRIAN M. COTTER, IN SUBSTANTIALLY THE FORM ATTACHED, FOR A HOUSE LOCATED AT 324 BASS ROAD, KNOWN AS THE BROWN ACRES RENTAL HOUSE, IN CONSIDERATION OF EIGHT HUNDRED DOLLARS (\$800.00) PER MONTH AND THE PROVIDING OF SECURITY SERVICES AT BROWN ACRES AND BRAINERD GOLF COURSES, FOR A TERM OF TWO (2) YEARS, WITH AN OPTION TO RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR TERMS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized to enter into a Lease Agreement with Brian M. Cotter, in substantially the form attached, for a house located at 324 Bass Road, known as the Brown Acres Rental House, in consideration of \$800.00 per month and the providing of security services at Brown Acres and Brainerd Golf Courses, for a term of two (2) years, with an option to renew for two (2) additional one (1) year terms.

ADOPTED: October 17, 2017

/mem

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) made and entered into as of the ____ day of _____, 2017, by and between the City of Chattanooga, Tennessee, a municipal corporation (hereinafter referred to as “Lessor”), and Brian M. Cotter (hereinafter referred to as “Lessee”).

RECITALS

WHEREAS, Lessor is the owner of certain property located at 324 Bass Road, Chattanooga, Tennessee, commonly known as the Brown Acres Rental House;

WHEREAS, Lessor agrees to lease to Lessee the residential real property located at 324 Bass Road, Chattanooga, Tennessee, Tax Parcel Number 158I-C-021.01, to include only the Brown Acres Rental House, which is a residential house approximately one thousand one hundred and thirty four square feet (1,134 sq. ft.); and

WHEREAS, Lessee agrees to provide certain security services at Brown Acres and Brainerd Golf Courses in exchange for Lessor paying certain utilities servicing the Leased Premises;

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:

SECTION 1. Leased Premises. Lessor leases to Lessee property located at 324 Bass Road, situated in the City of Chattanooga, Hamilton County, Tennessee, Tax Parcel Number 158I-C-021.01 (the “Leased Premises”).

SECTION 2. Use of the Leased Premises. It is expressly agreed to and understood by the parties that the Leased Premises shall be used exclusively as Lessee’s primary residence and for no other purpose.

SECTION 3. Term. The term of this Lease shall commence on November 1, 2017 (the “Commencement Date”) and shall be for a period of two (2) years, and shall not renew

automatically, but may be renewed for two (2) additional one (1) year periods upon mutual agreement of the parties. Either party may terminate this Lease at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least sixty (60) days prior to the termination date.

SECTION 4. Lease Payments. Lessee shall, during the term of this Lease, pay to Lessor rent in the amount of EIGHT HUNDRED AND NO/100 DOLLARS (\$800.00) per month with the first monthly payment due on the Commencement Date of this Lease and subsequent payments due thereafter on the first day of each succeeding month (with rentals for portions of a month, if any, being prorated). All rentals payable by Lessee to Lessor under this Lease shall be paid to City of Chattanooga, Golf Course Administrative Offices, 5203 Old Mission Road, Chattanooga, TN 37411.

SECTION 5. Improvements. Lessee agrees that no improvements, additions, or alterations (“Improvements”) shall be made to the Leased Premises without obtaining Lessor’s written approval. If Lessee desires to make Improvements to the Leased Premises, it shall be required to submit a detailed description of the Improvements to be made to Lessor (the “Lessee’s Plan”). The Lessee’s Plan shall be subject to Lessor’s written approval. Lessor’s approval of Lessee’s Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the Improvements or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises. In the event Lessor approves Lessee’s Plan, the parties shall execute an amendment to this Lease setting forth the obligations of the Lessee with respect to the construction of Improvements in accordance with Lessee’s Plan, which shall be attached as an exhibit to the lease amendment. All Improvements shall become the sole property of Lessor.

SECTION 6. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease.

SECTION 7. Termination and Holding Over. Upon termination of this Lease, at the expiration of the term hereof or any extension thereof, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty (30) days following the expiration of the term hereof or any extension thereof including removal of all personal property. Any personal property of Lessee which is not removed from the Leased Premises after termination of this Lease shall be deemed abandoned and may be disposed of by Lessor in any manner without accounting or being liable to Lessee. Lessee shall surrender all keys to the Leased Premises at or before the termination of this Lease.

SECTION 8. Casualty Insurance and Damage. The Lessor shall be under no duty to carry any casualty insurance which would cover the property of the Lessee within the Leased Premises, and the Lessee shall bear all risks of loss to its property. If the Leased Premises are rendered totally or substantially untenable by fire or other casualty, this Lease, at the option of either party shall terminate.

SECTION 9. INDEMNITY, LIABILITY AND LIABILITY INSURANCE: Lessee shall so conduct his activities upon the Leased Premises so as not to endanger any person or property lawfully thereon, and shall indemnify, save and hold harmless, protect and defend the Lessor, and all of its officers, officials, agents, and employees (the "Indemnified Parties") from any and all claims from losses, injuries, damages, liabilities, costs and expenses, including, without limitation, court costs and attorneys' fees (the "Indemnified Matters"), directly or indirectly arising out of any property damage or loss, bodily injuries, sickness, disease or death, in connection with the Leased Premises, occasioned wholly or in part by the acts or omissions of the Lessee, his agents, officers,

employees, guests and patrons. Lessee's indemnification obligations under this Section 9 shall apply whether the Indemnified Matters are due in part to the contributory fault or negligence of the Indemnified Parties or others; provided, however, that Lessee shall not be obligated to indemnify the Indemnified Parties for the Indemnified Parties' respective primary negligence. Lessee's defense obligations under this Section 9 shall be with attorneys approved by Lessor. Notwithstanding anything contained in this Lease to the contrary, the provisions of this Section 9 shall survive any expiration or termination of this Lease and each party shall remain obligated to the other party under all provisions of this Lease that expressly or by their nature extend beyond and survive the expiration or termination of this Lease.

Lessee shall, at Lessee's expense, purchase and maintain: Public liability insurance covering injury to one or more persons entering onto the Leased Premises with minimum limits of liability not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

All insurance required herein shall be secured from an insurance company or companies which shall have been approved by the Real Property Office of the Department of Economic and Community Development and shall name Lessor as an additional insured therein. Lessee shall provide Lessor with copies of said insurance policies or insurance certificates evidencing payment of premiums prior to the signing of this Lease for review by the Real Property Office of Economic and Community Development. Each insurance policy provided by Lessee shall further contain a clause acceptable to the City Attorney whereby the insurance company will agree to give written notice to the City Attorney and the Real Property Office of Economic and Community Development, at least thirty (30) days prior to any cancellation or alteration of said insurance policy. The lapse of any insurance policy required in this paragraph shall constitute a breach of this Lease and shall be grounds for immediate termination of this Lease by Lessor.

SECTION 10. Limitation of Lessor's Liability.

(a) Lessor shall not be liable to Lessee in any manner whatsoever for failure to furnish or delay in furnishing any service or services provided for in this Lease and no such failure or delay shall constitute actual or constructive eviction of Lessee nor operate to relieve from prompt and punctual performance of each and all of the covenants to be performed herein by Lessee.

(b) Lessor shall not be liable to Lessee or his agents or invitees for damage to person or property caused by defects in the cooling, heating, electric, water or other apparatus or systems located in, on, or about the Leased Premises.

(c) Lessor shall not be liable for any theft or loss of property of Lessee or his agents or invitees.

SECTION 11. Assignment or Sublease. Lessee shall neither assign nor transfer this Lease or any interest herein nor sublease the Leased Premises or any part thereof to anyone during the term of this Lease or any extensions or holdovers.

SECTION 12. Discrimination. Lessee covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 13. No Warranties. Lessee takes and accepts the Leased Premises from Lessor “AS IS,” that is at its condition as of the Commencement Date of this Lease, upon the terms and conditions herein contained.

SECTION 14. UTILITIES; SECURITY SERVICES; CABLE; INTERNET. In exchange for Lessee providing security services for both Brown Acres and Brainerd Golf courses during non-operational hours for the term of this Lease, Lessor shall provide, at its sole expense, electricity water and sewer for the Leased Premises, and Lessor also agrees to pay all water quality fees. Lessee shall be responsible for the cost of cable television, telephone and internet service.

SECTION 15. Repairs and Maintenance.

(a) Lessor shall make necessary repairs to the roof and exterior walls of the building, except such repairs made necessary by any act or negligence of Lessee or his invitees.

(b) Lessee shall not suffer or permit any waste or neglect of the Leased Premises and agrees to maintain the Leased Premises in a clean condition and in good repair.

(c) Lessor shall not be liable for the cost of any repairs made by or through Lessee, unless there is an express written agreement to the contrary between the parties, or unless the repair involves any appliance or fixture which is provided by Lessor and which is covered by a warranty, guaranty, or other similar instrument running to Lessor, and then only to the extent covered by said warranty or guaranty.

SECTION 16. Laws and Ordinances. Lessee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Leased Premises are concerned.

SECTION 17. Possession. If this Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Leased Premises, and the Lessor shall be entitled to immediate possession.

SECTION 18. Attorney's Fee for Right to Recover Possession. Should the Lessor at any time rightly seek to recover possession of the Leased Premises, and be obstructed or resisted therein, and any litigation thereon ensues, the Lessee shall be bound to pay the Lessor a reasonable attorney's fee.

SECTION 19. Right to Enter. The Lessor shall have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

SECTION 20. Damage or Destruction. In the event the Leased Premises shall be damaged by fire, or other casualty, the Lessee shall give immediate notice thereof to the Lessor. This Lease shall, unless notice is given as set forth below, continue in full force and effect, and the Lessor shall, at its own expense, with reasonable promptness, subject to force majeure as defined in SECTION 26 and delays in making of insurance adjustments by Lessor, repair the Leased Premises. Lessor need not restore fixtures and improvements owned by Lessee or floor coverings, furnishings, personal property, and other decorative features furnished by Lessee. In the event the Leased Premises shall, before or after the Commencement Date, be so damaged that the Lessor shall decide not to repair the same, or if the Lessor shall decide to demolish or rebuild the Leased Premises for any reason whatsoever, upon notice to Lessee, the term of this Lease shall cease and terminate effective as of the time of the damage, and the accrued rent, if any, shall be paid up to the time of the damage. All proceeds of insurance payable as a result of fire or other casualty shall be the sole property of the Lessor.

SECTION 21. Condemnation of Property. In the event that any government, public body, or other condemning authority shall take, or if Lessor shall transfer in lieu of such taking, all or such part of the Leased Premises thereby making it physically or financially infeasible for the Leased Premises to be used in the manner intended by this Lease, Lessee shall have the right to terminate this Lease effective as of the date of the taking by the condemning party and the rental shall be prorated appropriately. However, if only a portion of the Leased Premises is taken, and Lessee does not elect to terminate this Lease under this Section 03, then rental payments provided under this Lease abate proportionately as to the portion taken which is not then usable by Lessee. Lessor shall make all necessary repairs and alterations to restore the portion of the Leased Premises remaining to as near its former condition as circumstances will permit (at a cost not to exceed Lessor's proceeds from said condemnation or transfer), and this Lease shall continue.

SECTION 22. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

(a) The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- i. Abandonment of the Leased Premises, except for causes of force majeure, as defined in SECTION 26; and
- ii. Any attempted assignment, transfer, or sublease in violation of SECTION 11 above;

(b) Failure to pay rent as provided for herein or failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. Lessor shall give written notice to Lessee of such default and if Lessee does not cure any rent default within five (5) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Lessee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then Lessor may terminate this Lease on not less than three (3) days' written notice to Lessee, and on the date specified in said notice the term of this Lease shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Lessee or other occupants and their effects.

SECTION 23. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 24. Surrender of Leased Premises on Termination. Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Lease, whatever the reason for termination. Lessor shall have the right to re-enter and take possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 25. No Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease. No delay, failure, or omission of Lessor to re-enter the Leased Premises, to insist on strict enforcement of any term, covenant, or condition, or to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option or be construed as a waiver of or acquiescence in such breach of default.

SECTION 26. Force Majeure. Lessor 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 Lessor's 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 casualty, inability to obtain any material, services, or financing or through acts of God.

SECTION 27. Notices. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the parties as follows:

Lessor: City of Chattanooga, Tennessee
Attn: Real Property Office of ECD
101 E. 11th Street, Suite G4

Chattanooga, TN 37402

With a copy to: City Attorney
100 E. 11th Street, Suite 200
City Hall Annex
Chattanooga, TN 37402

Lessee: Brian M. Cotter
324 Bass Road
Chattanooga, TN 37421

SECTION 28. Miscellaneous Provisions.

28.1 Applicable Law. This Lease shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the parties and/or default by Lessee may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee, and the prevailing party shall be entitled to recover all costs, expenses, and legal fees in defending such legal action.

28.2 Entire Agreement. This Lease represents and constitutes the entire understanding between the parties and supersedes all other leases, agreements, and communications between the parties, whether oral or written, concerning the subject matter herein. Any amendment to this Lease must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

28.3 Binding Effect. The terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

28.4 Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease on the ____ day of _____, 2017, at Chattanooga, Hamilton County, Tennessee.

LESSOR:

CITY OF CHATTANOOGA, TENNESSEE

BY: _____
ANDY BERKE, *Mayor*

LESSEE:

BRIAN M. COTTER