

RESOLUTION NO. 29740

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A BERTHING AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH REINERT GROUP, LLC FOR THE BERTHING OF A FLOATING RESTAURANT WITH RIVER EXCURSION VESSEL ON THE CITY'S WATERFRONT, FOR AN INITIAL TERM OF TEN (10) YEARS COMMENCING ON JANUARY 1, 2019, WITH THE OPTION TO RENEW FOR TWO (2) ADDITIONAL TERMS OF FIVE (5) YEARS EACH AT A FEE SCHEDULE AS SET FORTH IN THE BERTHING AGREEMENT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Berthing Agreement, in substantially the form attached, with Reinert Group, LLC for the berthing of a floating restaurant with river excursion vessel on the City's waterfront, for an initial term of ten (10) years commencing on January 1, 2019, with the option to renew for two (2) additional terms of five (5) years each at a fee schedule as set forth in the Berthing Agreement.

ADOPTED: December 18, 2018

/mem

BERTHING AGREEMENT

This Berthing Agreement (“Agreement”) is entered into this ____ day of _____, 2018, by and between the City of Chattanooga, Tennessee, (the “City”), a municipal corporation and Reinert Group, LLC (“Reinert”), a Tennessee limited liability corporation (collectively, the “Parties”).

WHEREAS, the City issued a Request for Proposal on August 16, 2018, for a floating restaurant with river excursion vessel on the City’s Waterfront, and Reinert was selected; and

WHEREAS, the Parties desire to enter into this Agreement.

NOW THEREFORE, for valuable consideration exchanged between the Parties, including the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties do here covenant, contract and agree as follows:

1. TERM AND FEE.

(a) TERM. The term of this Agreement shall commence upon execution by the last party to sign (the “Effective Date”), shall be for an initial term of ten (10) years, and shall not renew automatically, but may be renewed for two (2) additional terms of five (5) years each upon mutual agreement of the Parties.

(b) SCHEDULE OF FEES. In compensation for use, Reinert shall pay an Annual Fee which shall be set at \$38,500.00 for the calendar contract year 2019. Thereafter, the Annual Fee shall be increased by four (4%) percent per year as set forth below:

<u>Term</u>	<u>Annual Fee</u>
For the year commencing January 1, 2020	\$40,040.00
For the year commencing January 1, 2021	\$41,642.00
For the year commencing January 1, 2022	\$43,308.00
For the year commencing January 1, 2023	\$45,040.00
For the year commencing January 1, 2024	\$46,842.00
For the year commencing January 1, 2025	\$48,716.00
For the year commencing January 1, 2026	\$50,665.00
For the year commencing January 1, 2027	\$52,692.00
For the year commencing January 1, 2028	\$54,800.00

Upon contract renewal for any extended period, the Annual Fee shall increase each successive year of any renewal by the same rate as above according to this schedule.

For the year commencing January 1, 2029	\$ 56,992.00
For the year commencing January 1, 2030	\$ 59,272.00
For the year commencing January 1, 2031	\$ 61,643.00
For the year commencing January 1, 2032	\$ 64,109.00
For the year commencing January 1, 2033	\$ 66,673.00
For the year commencing January 1, 2034	\$ 69,340.00
For the year commencing January 1, 2035	\$ 72,114.00
For the year commencing January 1, 2036	\$ 74,999.00
For the year commencing January 1, 2037	\$ 77,999.00
For the year commencing January 1, 2038	\$ 81,119.00

(c) DELINQUENT FEES. All payments of the Annual Fee shall be made by Reinert to City without notice or demand, at the offices of the City Finance Officer or such other offices the City may direct. All delinquent fee payments shall bear interest from the due date at a rate of ten (10%) percent per annum. If the City institutes legal proceedings to collect delinquent fees, it shall also be entitled to recover its costs and attorney's fees.

2. LICENSES, COMPLIANCE WITH LAWS. Reinert agrees to obtain at its sole expense any and all state, city, and county licenses and permits that may be required for its business operation. Reinert also agrees to obtain, and maintain in full force and effect throughout the term of this Agreement, any and all licenses and permits that may be required by the United States Government, or any of its agencies (including, without limitation, the

Tennessee Valley Authority, U.S. Corps of Engineers, and U.S. Coast Guard) for its business operations. Reinert shall observe and comply with all laws, statutes, ordinances, rules, regulations and directives of the United States Government, the State of Tennessee, the City of Chattanooga, and any department, board or agency of any of the above. Reinert shall indemnify and hold harmless the City, its officials, agents, representatives, and employees, from any liability that may be imposed by any governmental authority by reason of asserted violations by Reinert, or the agents or employees of Reinert, or any said applicable laws and regulations.

3. PREMISES. The Reinert Berthing Site under this Agreement will be the exclusive use of:

Three hundred (300) contiguous feet of the down bound left bank of the Tennessee River in the proximity of and upstream from, but not beneath, the Olgiati Bridge with the downstream (or western most) limit at or near River Mile 463.69, and extending three hundred (300) feet upstream (or eastwardly) therefrom (the “Berthing Site”).

4. USE OF THE BERTHING SITE. Reinert shall use the Berthing Site for the mooring, docking, and maintenance of an office barge and reception, food and beverage barge space for the operation of the following excursion boat(s) and vessel(s):

M/V Southern Belle and presently existing wharf boat and/or equivalent replacement vessels.

Reinert shall be entitled to substitute an excursion boat of similar quality and passenger capacity for the above-named boat(s) or to add additional excursion boat(s) provided, however, Reinert shall not moor or dock more boats than allowed by applicable permits and regulations of the State of Tennessee and the United States Government. Reinert shall also be entitled to use the Berthing Site for the mooring, docking and maintenance of a barge(s) that directly supports the excursion boat; provided, however, that no additional or larger barges than the ones currently

in use shall be moored without the City's permission, which permission shall not be unreasonably withheld for needed office space and restaurant(s), operations, or directly-related ancillary facilities to be erected on such barge(s); provided any such increase shall be subject to a reasonable increase in the Annual Fee. Any usage other than for these purposes and/or other uses instant to and customarily necessary to the normal operations of said excursion vessel(s) and restaurant(s) barge(s) must be first submitted to and approved in writing by the City.

Upon expiration, termination or cancellation of the Agreement, Reinert shall remove any and all of its vessels, boats, watercraft, office equipment, or other practical movable structures from the Berthing Site, without expense to City. In the event of early termination or cancellation of this Agreement, and should Reinert fail to remove said vessels, boats, watercraft, office equipment, or other practical movable structures within ninety (90) days after receipt of notice from the City to vacate, City may take possession of said vessels, boats, watercraft, office equipment, or other practical movable structures or may cause same to be removed at the expense and risk of the Reinert. In the event that this Agreement shall remain in full force for its entire term, including any renewal term, Reinert shall be under a duty to remove said vessels and structures prior to the final expiration date.

5. UTILITIES. Reinert shall bear the expense for the use of any and all utilities. Reinert agrees to have separate meters and/or metering devices installed for its utility services and to pay its own utility bills as they become due, i.e., electrical power, water, gas, telephone and all other utilities utilized by Reinert.

6. REPAIRS, MAINTENANCE AND IMPROVEMENTS. Reinert agrees to maintain the Berthing Site in good order and repair, including replacing, repairing and/or restoring any part of the Berthing Site subject to this Agreement that may be damaged during the

term of this Agreement by Reinert's use, ordinary wear and tear being specifically excepted. Reinert shall make no structural repairs or alterations to the Berthing Site without first submitting plans and specifications to the City and obtaining its written consent. All such alterations, additions or improvements made by Reinert, except movable furniture, fixtures and equipment placed at the expense of Reinert, shall inure to the benefit of the City and shall belong to the City as soon as made or installed.

Reinert shall, at its own expense, provide and locate an industrial-type disposal dumpster at a location on the Berthing Site at Ross's Landing Park as designated by the City's Public Works Department, Parks Division. Reinert must keep its vessels, boats, structures, equipment, and the Berthing Site and the area immediately adjacent thereto neat and clean and free of all garbage, trash and rubble, and shall place any and all of same in the disposal dumpster. Further, Reinert shall prohibit and enforce the rule that no trash or articles of any sort shall be thrown overboard or into the Tennessee River. In addition, Reinert shall not discharge, spill, leak or place into the Tennessee River any trash, garbage oils, petroleum products, chemicals, chemical agents or other substances or foreign objects. Reinert shall store no hazardous materials on its vessels or on the premises. Violation of any provision of this paragraph shall be considered a breach of this Agreement.

In the event of flood or other natural disaster, Reinert shall have the right (but not the obligation) to make request for, receive, utilize and apply federal disaster assistance or aid and in such circumstances City will not unreasonably delay or withhold such consents or approval as may be required.

7. SUBLETTING AND ASSIGNMENT. Reinert shall neither sublet the whole nor any part of the Berthing Site, nor assign, nor hypothecate or mortgage this Agreement or any or

all of its rights hereunder without the express approval of the City which consent shall not be unreasonably withheld. In the event of any approval of a sublease or assignment, all parts of this Agreement shall become binding upon the sub-lessee and/or assignee; provided, that Reinert shall remain jointly liable and responsible for the payment of all fees and the performance of all obligations herein.

8. CASUALTY INSURANCE AND DAMAGE. The City shall be under no duty to carry any casualty insurance which would cover the property of Reinert within, upon or adjacent to the Berthing Site, and Reinert shall bear all risk of loss of its property. If the Berthing Site is rendered totally or substantially untenable by fire or other casualty, this Agreement at the option of City shall terminate. If the Berthing Site is rendered totally or substantially untenable by fire or other casualty, the City shall make reasonable efforts to relocate Reinert to an equal and acceptable site, if available or, at the option of City, this Agreement shall terminate.

9. INDEMNITY, LIABILITY AND LIABILITY INSURANCE. Reinert shall conduct its activities within the Berthing Site subject to this Agreement and upon any boating vessel berthing at the Berthing Site subject to this Agreement so as not to endanger any persons or property therein. Reinert shall indemnify, save and hold harmless and defend the City, and all of its officers, officials, agents, and employees from any and all claims resulting from losses, injuries, damages and liabilities to persons or property resulting, wholly or in part, from acts or omissions of Reinert, including acts or omissions of its officers, agents, employees, guests and/or patrons to the full extent of its insurance coverage provided within this section, including reasonable attorneys' fees and costs associated therewith. This section further requires Reinert to indemnify, save and hold harmless and defend the City and all of the City's officials, officers,

agents and employees, from any and all claims for injuries or damages resulting from “runaway” barges or other watercraft owned or operated by Reinert dislodged or freed in any manner from mooring at the Berthing Site, including reasonable attorneys’ fees and costs associated therewith.

Notwithstanding the foregoing, Reinert shall not be liable (or held to indemnify) for liability arising from any act, person or part of the Berthing Site not under the control of Reinert or which is caused by act, omission, design or construction of persons, premises or property which is not under the control of Reinert.

Reinert shall, at Reinert’s expense, purchase and maintain for the benefit of the City a policy or policies of public liability and property damage insurance, issued in the name of the Reinert and naming the City as an additional named insured, with limits not less than Five Million Dollars (\$5,000,000.00) for injury to and/or death of any one person in a single occurrence, and not less than Five Million Dollars (\$5,000,000.00) for injury to and/or death of more than one person in a single occurrence, and not less than Five Million Dollars (\$5,000,000.00) for damage to property in a single occurrence. The insurance policy shall include contractual liability coverage, which shall recognize and include the indemnification provisions of this Agreement.

The insurance policy shall be approved by the City Attorney as to form and by the City Finance Officer as to surety, which approvals shall not be unreasonably withheld, and which policy or policies shall be filed with the City Finance Officer before execution of this Agreement. Reinert shall, after securing approval by the City Attorney, file with the City Finance Officer a list of all insurance policies to be carried. Said insurance coverage must be maintained during the entire term life of this Agreement plus any renewals, and each insurance policy shall contain a clause whereby the insurance company shall give written notice to the City

Attorney at least sixty (60) days prior to any cancellation or alteration of said insurance policy. Any notice of cancellation or alteration of insurance policies during the term of this Agreement shall be considered as default. Following notice of cancellation or alteration of any insurance policy during the term of this Agreement and the failure of Reinert to cure such default, the City may, upon the date of cancellation or alteration of the insurance policy, without further notice, terminate this Agreement, and Reinert shall immediately cease its operations and vacate the premises.

10. NON-PERFORMANCE BY REINERT. The non-payment of any fees contained within this Agreement at the time when same becomes due, and/or the non-performance by Reinert of any of the covenants contained herein, shall be considered a default and breach of contract, and the City, at its election, may terminate this Agreement; provided, the City shall give Reinert written notice of any default and Reinert shall thereafter have thirty (30) days to correct the default. Reinert waives notice to quit possession of the Berthing Site, or any further demand for the payment of the fees as the same becomes due. The failure and omission of the City to declare this Agreement forfeited upon any default of Reinert and the non-payment of any fee as the same becomes due, or the non-performance of any of the covenants to be performed by Reinert, shall not operate to bar, abridge or destroy the right of City to declare this Agreement void upon any subsequent breach, forfeiture or non-performance by Reinert.

11. HOLDOVER PROVISION. If Reinert uses the Berthing Site provided herein after the expiration of the term of this Agreement, including any renewal term, and Reinert continues to pay the fees (as specified in paragraph 1 of this Agreement) and City continues to accept said fees, such possession shall be construed as creating a month-to-month license

agreement and not as a renewal or extension of this Agreement; but such month-to-month license agreement shall not continue for more than one (1) year.

12. DATES OF OPERATION. Reinert agrees that it will moor, dock and maintain its commercial vessels for excursion purposes; and that it will operate its boating concession from the Berthing Site not less than the months from April 1 through December 31 of each year during the term of this Agreement. Failure to maintain such a vessel as required herein during the months of April through December shall constitute a breach of this Agreement, except that such failure which results from emergency repairs, reasonable down time or maintenance time or from force majeure or such failure which results from special events utilizing the vessel(s) for planned excursion trips and the like shall not constitute a breach.

13. COOPERATION WITH CITY. Reinert agrees that it shall coordinate its scheduling of any special activity that is outside the scope of the normal operation of the boating concession, and which may occur from or in connection with the Berthing Site, with the City or its designated representatives. Reinert shall submit in writing to the City at least ten (10) days prior to the requested date (which time period may be waived by the City), a description of any special event to be scheduled, including sufficient details so as to allow a determination by City of any conflict or potential conflict.

Notwithstanding the foregoing, it is understood and agreed by the Parties that (1) the Riverbend Festival event may affect the Berthing Site within Ross's Landing Park for a period of time in excess of ten (10) days, but in no event shall it affect the Berthing Site for more than fifteen (15) days; and (2) the widening of the Olgiati Bridge by the Tennessee Department of Transportation ("TDOT") may affect the Berthing Site by requiring Reinert to move the excursion boat, thereby possibly eliminating Reinert's normal operation of boating concession

for more than ten (10) days for the years 2018, 2019, and 2020. The Parties agree that in the event TDOT determines that the excursion boat/Pier 2 must be moved and pays relocation expenses to City, City agrees to promptly reimburse Reinert for any documented relocation expenses incurred by Reinert, not to exceed the amount paid to City by TDOT. However, any costs incurred by City in connection with the relocation of the excursion boat/Pier 2 and paid to City by TDOT shall be retained by City.

In order to more clearly set forth the relationship between Reinert and the Waterfront Management Vendor or the City of Chattanooga, as it relates to the subject property during the time of concurrent use, an Addendum to the Agreement shall be developed, subject to the consent of the Parties, which consent will not be unreasonably withheld. The Addendum to the Agreement will set forth the requirements of Reinert and the Waterfront Management Vendor and the City of Chattanooga in their relationship to each other during the periods of concurrent use. The Addendum to Agreement will be attached hereto and adopted herein by reference and also will be attached to the Agreement by and between the City and the Waterfront Management Vendor and adopted therein by reference. It is the express intent of the Parties that each will coordinate their respective scheduling of events and activities within the area of Ross's Landing Park containing the Berthing Site, especially during the peak tourist season from Memorial Day to Labor Day of each year to avoid conflicts and interruptions to Reinert's normal operations.

It is expressly agreed and understood by Reinert that it waives any claim or action that it may have for damages or other compensation that might arise or be allowed by reason of any disruption of business activities on the Berthing Site during the Riverbend Festival and during the period of time required by TDOT to complete the widening of the Olgiati Bridge. The City

shall be entitled to exercise its right under this section without penalty or decrease in fee payments.

14. LOCATION OF BOATS. Reinert shall moor all boats, vessels or other floating barges in a seaman-like manner and shall keep all of its vessels clear of the boat ramp located within Ross's Landing Park at the foot of Broad Street. Reinert shall allow no auxiliary craft to be moored to any craft covered by this Agreement except for reasonable public safety and maintenance.

15. BREACH OF CONTRACT. In the event of any breach of any of the items or provisions of this Agreement, City shall have, upon the failure of Reinert to cure any default within thirty (30) days after notice, the right to terminate this Agreement, to enter and obtain possession of the entire Berthing Site, to remove and exclude any and all persons from the Berthing Site, and to remove and exclude all property of Reinert therefrom in addition to any other recourse identified in this Agreement. If it shall become necessary for City to employ an attorney to assert any right or to enforce any obligation under this Agreement after default, City shall be entitled to recover, in addition to all other costs and fees, the reasonable costs and charges of such attorney.

16. NOTICES. All notices or communications which this Agreement requires or permits to be given shall be in writing and shall be mailed or delivered to the respective address as set forth below or to such other address as may be designated in writing by either party.

To the City as follows:

Mayor
City Hall
101 East 11th Street
Chattanooga, TN 37402

With copy to:

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

To Reinert as follows:

Reinert Group, LLC
Attention: _____
201 Riverfront Parkway, Pier 2
Chattanooga, TN 37402

Copy to:

17. MISCELLANEOUS.

(a) Reinert will be permitted all signage which is authorized by and available under the present City of Chattanooga Sign Ordinance or any future amendments to the signed ordinance.

(b) Reinert shall ensure that all boats and vessels are safely moored with lines adequate for weather conditions and that all row boats, life boats, and dinghies are stored on-board vessels at night. Reinert shall be allowed to perform ordinary maintenance on any boat, barge or other vessel while at the Berthing Site, provided it shall hold harmless and indemnify the City from any and all liability to persons or proper resulting therefrom in accordance with the provisions of this Agreement. Reinert shall ensure that all vessels berthed at the Berthing Site are properly maintained, including, but not limited to, having its boats, vessels, and barges, painted, cleaned, and free of litter, debris, and refuse.

(c) The accommodations for reaching the gangplank from shore to boat will be maintained by the City and will comply with the ADA requirements. In addition, a roadway vehicle ramp down to the gangplank at the Berthing Site will be maintained by the City so as to accommodate a delivery truck for delivery of provisions and supplies to the barge. Construction and maintenance of the gangplank will be the responsibility of Reinert.

(d) The City will provide for parking spaces in a reasonable proximity to the docking area for Reinert's customers and patrons at rates no greater than **the regular daily parking rate in that area**. Reinert will have inspected the Berthing Site and adjacent area, to the extent it deems necessary, and will have satisfied itself that the Berthing Site is adequate and safe for each use and that of its patrons. This Agreement is not a bailment of Reinert vessels, but a license for berthing space, and the City's liability is limited solely to the negligence of its agents and employees and by common law and the statutes and the laws of the State of Tennessee. The City assumes no responsibility for tending mooring lines or moving vessels from the Berthing Site under any condition.

(e) This Agreement, together with all amendments thereto, contain the entire agreement between the Parties hereto and may not be modified in any manner unless by agreement in writing signed by the Parties hereto or their respective successors and interests. All the times of this Agreement, as amended, and shall inure to the successors and assigns of the Parties to this Agreement. The provisions of this Section shall not be deemed a waiver of any of the conditions against assignments set forth in this Agreement.

(f) In the event that a part of the Berthing Site is taken under power of eminent domain, but such taking does not materially interfere with Reinert's availability to continue its operations from the Berthing Site, then this Agreement shall remain in full force and

effect. If substantial portions of the Berthing Site are taken under power of eminent domain, rendering it impractical for Reinert to continue its operations as previously existing, Reinert shall have the right to terminate this Agreement by delivering written notice to the City within ninety (90) days of such taking. If Reinert elects to terminate this Agreement, then all awards for such taking shall be paid to the City.

(g) Except as expressly amended herein, the Agreement shall remain in full force and effect.

(h) If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with inapplicable law, the validity of the remaining portions of this Agreement shall not be effective thereby.

(i) The interpretation and enforcement of this Agreement shall be construed according to the laws of the State of Tennessee.

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor Andy Berke

REINERT GROUP, LLC

By: _____

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

The undersigned, a Notary Public, does hereby certify that the **Andy Berke** whose name as **Mayor of the City of Chattanooga, Tennessee** is signed to the foregoing Agreement, and who is known to me and known to be such official, acknowledged before me on this day under oath that, being informed of the contents of the Agreement, he, in his capacity as such official of **City of Chattanooga, Tennessee** and with full authority, executed and delivered the same voluntarily and as the act of **City of Chattanooga, Tennessee** on the day the same bears date.

Given under my hand and seal of office, this ____ day of _____, 2018.

Notary Public

My Commission expires: _____

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

The undersigned, a Notary Public, does hereby certify that _____ whose name as _____ of **Reinert Group, LLC** has signed the foregoing Agreement, and who is known to me and known to be such official, acknowledged before me on this day under oath that, being informed of the contents of the Agreement, he/she, in his/her capacity as such official of **Reinert Group, LLC** and with full authority, executed and delivered the same voluntarily and as the act of **Reinert Group, LLC** on the day the same bears date.

Given under my hand and seal of office, this ____ day of _____, 2018.

Notary Public

My Commission expires: _____