

RESOLUTION NO. 30265

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH FRIENDS OF THE FESTIVAL, INC. FOR RIVERBEND FESTIVAL 2020 FOR THE PERIOD OF MAY 22, 2020 THROUGH JUNE 1, 2020.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to execute a License Agreement, in substantially the form attached, with Friends of the Festival, Inc. for Riverbend Festival 2020 for the period of May 22, 2020 through June 1, 2020.

ADOPTED: March 10, 2020

/mem

RIVERBEND FESTIVAL LICENSE AGREEMENT

THIS AGREEMENT, made and entered into by and among the CITY OF CHATTANOOGA, TENNESSEE (“CITY”), a municipal corporation of the State of Tennessee, the CHATTANOOGA DOWNTOWN REDEVELOPMENT CORPORATION (“CDRC”), and the RIVER CITY COMPANY (“RIVER CITY”) (collectively, the “Licensors”), and FRIENDS OF THE FESTIVAL, INC. (“Licensee”).

W I T N E S S E T H:

1. That in consideration of the covenants and agreements herein expressed and of the faithful performance by the Licensee of all such covenants and agreements, Licensors do hereby license and assign their respective properties unto the Licensee and the Licensee does hereby take as Licensee and assignee, the right to use said real property lying in the City of Chattanooga, Hamilton County, Tennessee, including Ross’s Landing Park and properties in its vicinity as shown on the map attached hereto as **Exhibit A** and including all or parts of the properties which are described in **Exhibit B** (collectively, the “Licensed Premises”) for the sole purpose of producing the “Riverbend Festival” (“Riverbend”). Licensors reserve unto themselves the right to remove in their sole discretion parcels located to the South of Riverfront Parkway or to the North of Riverfront Parkway in the vicinity of the Marina that may hereinafter be developed or offered for development upon ninety (90) days’ notice. The Licensed Premises shall not include those properties that are licensed to Erwin Marine, Southern Belle , Chattanooga Water Taxi or other similar operations which may be hereafter authorized by the Licensors. The City hereby reserves reasonable ingress and egress across and through the Licensed Premises for the operation of these businesses. Licensee agrees to take the Licensed Premises “**AS IS,**” “**WHERE IS,**” **WITH ALL**

FAULTS that is at its condition as of the date of this Agreement and Licensee assumes all risks associated with the condition of the Licensed Premises, regardless of the cause or date of origin of such condition, and releases all rights and claims against Licensor related to such condition of the Licensed Premises.

2. The term of this License (the “License Term”) shall be from May 22, 2020 through June 1, 2020. For the License Term, Licensee shall, subject to limitations otherwise expressed herein, have exclusive control of the Licensed Premises to produce Riverbend including, without limitation, exclusive advertising and sponsorship activities, various entertainment events, sports events, artistic activities, and race events. Licensee shall have non-exclusive access to the Licensed Premises for the set-up of facilities to support Riverbend for the period during the License Term. During the License Term, certain road closures will occur as coordinated with the Chattanooga Department of Transportation. Roads shall reopen no later than 2:00 p.m. on June 2, 2020. During these periods of non-exclusive and limited control, Licensee shall take all reasonable steps to avoid disruption of normal functions in Ross’s Landing Park and to the extent practicable shall allow normal park activities. Licensee shall at all time take reasonable measures after consultation with adjoining property owners and tenants to minimize the adverse impact that Riverbend shall create for said owners and tenants. Either party with just cause may terminate the Agreement upon ninety (90) days written notice.

3. The City of Chattanooga shall sponsor this event by waiving the rental fees of \$16,000.00 as set forth in Chattanooga City Code Chapter 26. The Licensee shall remain subject to all other financial obligations assumed by Licensee herein.

4. This Agreement is made and entered into upon the following express covenants and conditions, all and every one of which the Licensee hereby covenants and agrees to and with the Licensors to keep and perform:

- a. That Licensee will cause the Licensed Premises to be kept clean and generally cared for during said term, excepting as otherwise provided. A refundable damage deposit of SIXTEEN THOUSAND AND NO/100 (\$16,000.00) DOLLARS, will be paid by the Licensee to the City for the use and benefit of all Licensors in advance on or before April 21, 2020. During Riverbend, daily inspections will be made by representatives of the Licensors and Licensee to determine damage caused by Riverbend. When the total damage is estimated, Licensee shall make up any deficiency or a refund will be issued by the Licensors;
- b. That Licensee will quit and surrender up the Licensed Premises to the Licensors at the end of the License Term in the same condition as the date of the commencement of this License, ordinary use and wear thereof excepted, and excepting as otherwise provided in this License;
- c. That the Licensee agrees to save the Licensors, their officers, officials, agents, employees, volunteers, successors, and assigns, harmless and to indemnify them against any and all claims or liability for any claims, actions, causes of action, suits, or demands of any sort, including reasonable attorneys' fees, for damages on account of alleged personal injuries, injuries to property, violations of all laws, including but not limited to intellectual property laws and copyright laws, related to, or arising out of, the use of the Licensed Premises by the Licensee or any of its exhibitors, officers, agents, employees, successors, assigns, licensees or independent contractors;
- d. The Licensee shall provide a comprehensive liability insurance policy, including liability coverage for the sale and service of alcoholic beverages, naming the City of Chattanooga, the Chattanooga Downtown Redevelopment Corporation, and River City as additional insureds to protect the Licensee and Licensors against all claims for injuries to members of the public and damage to property of others arising out of the use of the Licensed Premises during the License Term. The liability limits shall not be less than:

Combined limits for personal injury (including death) and property damage of not less than \$1,000,000 per occurrence, with excess liability of \$4,000,000 per occurrence, for a combined coverage of \$5,000,000 per occurrence.

- e. The Licensee has represented to Licensors that it desires and does license the Licensed Premises for the sole purpose of producing the “Riverbend Festival” and for no other purpose and does, therefore, covenant and agree not to assign this License or sublet or use the premises for any other purpose than the production of Riverbend;
- f. During the period of exclusive control, the Licensee shall have the right to control access and restrict the use of the Licensed Premises to patrons of Riverbend and participants therein, subject to Licensee’s responsibility to provide reasonable ingress and egress for the Marina, the Southern Belle, and any other similar activity on the waterfront that has been duly authorized by the Licensors. The Licensee shall have the duty of providing its own personnel to control the points of public access. The City may but shall not be required to provide one or more police officers to help secure and patrol the area; provided that the police officers shall not be used for the purposes of controlling patron access to the Licensed Premises. The Licensee shall be solely responsible for controlling access to the Licensed Premises and for providing a reasonable quantity and quality of security personnel consistent with the agreed security plan for the 2020 event, subject to annual review by the City;
- g. Licensee shall be solely responsible and at its own cost shall make available reasonable facilities for the health, sanitation, police, and utility services needed by the patrons of Riverbend. This shall include, without limitation, the provision of adequate water, portable toilets, a first-aid station, ambulance service, emergency telephone or communication facilities, security protection, and fire protection;
- h. It is understood and agreed that Licensee may have concession booths for the sale of beer and other alcoholic beverages for the use of its adult patrons during Riverbend. The Licensee shall procure all necessary permits and shall comply with all applicable laws and regulations. Licensee specifically agrees to carefully monitor all sales or consumption of such alcoholic beverages to preclude the sale to or use by minors or intoxicated persons;
- i. Licensee will comply with all laws of the United States and of the State of Tennessee, all ordinances of the City of Chattanooga, all relevant resolutions of Hamilton County, Tennessee, and all rules and regulations of the police and fire departments or other municipal authorities of the City of Chattanooga and Hamilton County, Tennessee, and will obtain and pay for necessary permits and licenses, and will not do or suffer to be done anything on the Licensed Premises during the License Term in violation of any such laws, ordinances, rules or requirements, and if the attention of said Licensee is called to any such violation on the part of Licensee or of any person

employed by or admitted to said premises by Licensee, Licensee will immediately desist from and correct such violation;

- j. Licensee shall not, without express permission of Licensors, make any permanent improvements to the Licensed Premises and such approval or disapproval shall not be unreasonably delayed or withheld;
- k. Licensee covenants and agrees not to create or suffer to be created or maintained on the Licensed Premises any nuisances;
- l. Notwithstanding any other provisions of this License, Licensee shall be responsible for damage to or destruction of the statue "Cherokee" located within Ross' Landing Park and Plaza only if such damage or destruction is caused by the negligence of Licensee;
- m. Licensee shall be responsible for the payment of utility expenses incurred during Riverbend within thirty (30) days of having been billed for same;
- n. Licensee shall be responsible for reimbursing the City for the cost of trash and recyclable material pick-up and disposal from the site within thirty (30) days of having been billed for same;
- o. All layouts of structures, stages, equipment, vendors, vehicles, etc. shall be reviewed and approved by the appointed representative for the City of Chattanooga and if any structure is placed upon property owned by River City or the CDRC, the placement of said structures must be approved by a River City or CDRC representative. The CDRC designates the appointed agent(s) of the City to act on its behalf with respect to this subsection. Any changes made to this layout will also be reviewed and approved prior to placement;

5. Notices. Unless otherwise provided to the contrary, and except as to the return of this Agreement itself upon its being signed by Licensee, all notices required under this Agreement shall be deemed given when deposited in the United States Mail, postage pre-paid, addressed as follows:

LICENSEE:

Friends of the Festival, Inc.
180 Hamm Road
Chattanooga, TN 37405
Telephone: (423) 756-2211
Attention: Mickey McCamish

LICENSORS:

City of Chattanooga
101 E. 11th Street
Chattanooga, TN 37402
Telephone: (423) 643-7800
Attention: _____

Copy to:
Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402
Telephone: (423) 643-8250

River City Company
850 Market Street, Suite 200
2nd Floor Plaza
Chattanooga, TN 37402
Telephone: (423) 265-3700
Attention: Kim H. White

Chattanooga Downtown Redevelopment Corporation
101 E. 11th Street
Chattanooga, TN 37402
Telephone: (423) 643-7363
Attention: Daisy W. Madison, President

6. Breach of Contract

Any party shall have the right, in addition to any other rights or remedies available to such party at law or in equity, to terminate this Agreement upon written notice to any other party for any material breach of this Agreement. In the event of a material breach, the non-breaching party may terminate this Agreement five (5) days after notice of a material breach to the party allegedly guilty of a material breach has been received; provided that a party who has received notice of a material breach might cure the alleged breach (its curable) within five (5) days after receipt of notice of a material breach, and must then provide notice to the party alleging the material breach that the breach has been cured before that five (5) day period expires. If the party alleging the material breach continues to believe that the material breach has not been cured, it must provide notice to the other party that this Agreement will terminate at the expiration of the five (5) day period, as originally noticed, as well as a detailed explanation as to why it believes the cure of the breach is ineffective. Notwithstanding the foregoing, the non-breaching party shall have the right, but not the obligation, to extend the cure period described above at its sole discretion, and such extension shall not be deemed a waiver of its rights contained herein. Notwithstanding the

foregoing, if in the event of a material breach of this Agreement occurs within ten (10) days of Riverbend, the breaching party must seek to immediately cure such failure upon receipt of notice by the non-breaching party.

Upon termination of this Agreement due to Licensee's and uncured material breach, Licensors may, upon prior notice to Licensee, safely enter the Licensed Premises and instruct Licensee to remove all persons and property therefrom and Licensee agrees to comply with such instructions in the safest and most efficient manner reasonably possible. Licensors agree to allow Licensee the time necessary to remove all persons and property safely and efficiently.

Upon termination due to Licensors' uncured material breach, Licensee shall have the right to receive all monies paid to Licensors by Licensee pursuant to Riverbend prior to such cancellation, and to pursue all rights and remedies available at law and at equity.

If it should become necessary for any party to employ an attorney to assist any right or enforce any obligation under this Agreement, or any of them, such party shall be entitled to recover, in addition to other costs and expenses, the reasonable costs and charges of such attorney should such party be the prevailing party in any suit, claim or action.

7. All patrons of Riverbend shall be prohibited from bringing food and beverages, bottles, cans, containers, professional video cameras, professional recording devices, weapons, incendiary devices, or any controlled substances (accepting those medically required as prescribed by a medical doctor) or illegal substances in, upon, or about the Licensed Premises. Licensee reserves the right to conduct a reasonable search of all persons and their possessions prior to entry. Notwithstanding the foregoing, all patrons shall be permitted to bring in (1) empty or factory-sealed water bottles or an empty hydration pack into the event as determined by Licensee in its sole discretion.

8. The parties shall not be deemed to have defaulted or failed to perform under this Agreement if that party's default or inability to perform shall have been caused by an event or events beyond the control or without the fault of that party, including (without limitation), acts of God, acts of government, fire, flood, dangerous weather conditions, death, injury, or illness or headline talent and/or their immediate family or a substantial number of non-heading talent, failure to obtain a required permit (provided such failure was not due to the acts or omissions of the applicable party), explosions, strikes, labor disputes, or sabotage, acts of war, or a public enemy, terrorist attacks, civil riots, or commotions, or acts of military authority, pandemic or epidemic (each a "Force Majeure Occurrence"). If the Force Majeure Occurrence continues more than sixty (60) days or otherwise materially affects a party's or parties' ability to present Riverbend or performance obligations as contemplated by this Agreement, the parties will negotiate in good faith as to whether this Agreement shall be terminated or otherwise modified to account for the Force Majeure Occurrence. In the event this Agreement is terminated due to a Force Majeure Occurrence, then (i) each party hereby waives any claim for damages or compensation from the other party by reason of such termination, and (ii) neither Party shall be liable to the other for failure to perform their obligations as a result of a Force Majeure Occurrence and such obligations

hereunder shall be fully excused without any additional obligations. Notwithstanding anything to the contrary contained herein, in the event of a world war or global and/or domestic acts of terrorism or violence that results in the actual cancellation or postponement of (or recommendation to cancel or postpone), mass gatherings in the United States in close temporal proximity to the Licensed Premises, the parties shall by mutual agreement have the right to cancel Riverbend and may do so without incurring any liability or penalties whatsoever.

9. Relationship of the Parties. Nothing herein contained will create or be construed as creating a partnership, employment, landlord-tenant or agency relationship between the parties, and no party will have the authority to bind the other in any respect. Each party shall be solely responsible for all wages, income taxes, medical benefits, workers' compensation requirements, and/or any other requirements for all of the personnel that it supplies or hires pursuant to this Agreement.

10. Miscellaneous.

- a. Non-Discrimination Provision. Licensee agrees to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law when utilizing this City facility. Licensee agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin. Licensee further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.
- b. Audit Provisions. The City or its assign may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Licensee. The City may further audit any Contractor's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The Licensee shall at all times during the term of the contract or agreement and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed pursuant to this Agreement or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Licensee. Documents shall be maintained by the Licensee necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Licensee shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

The obligations of this section shall be explicitly included in any subcontracts or agreements formed between the Licensee and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Licensee's obligations to the City.

Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Licensee shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

11. This Agreement shall be governed by the laws of the State of Tennessee.

[signatures on following page]

IN WITNESS WHEREOF, the City of Chattanooga, Tennessee, the Chattanooga Downtown Redevelopment Corporation, and the River City Company have caused this Agreement to be signed by duly authorized officers as of this _____ day of _____, 2020.

CITY OF CHATTANOOGA

FRIENDS OF THE FESTIVAL, INC.

BY: _____
Andy Berke, Mayor

BY: _____
Mickey McCamish, Executive Director

CHATTANOOGA DOWNTOWN
REDEVELOPMENT CORPORATION

RIVER CITY COMPANY

BY: _____
Daisy W. Madison, President

BY: _____
Kim H. White, President

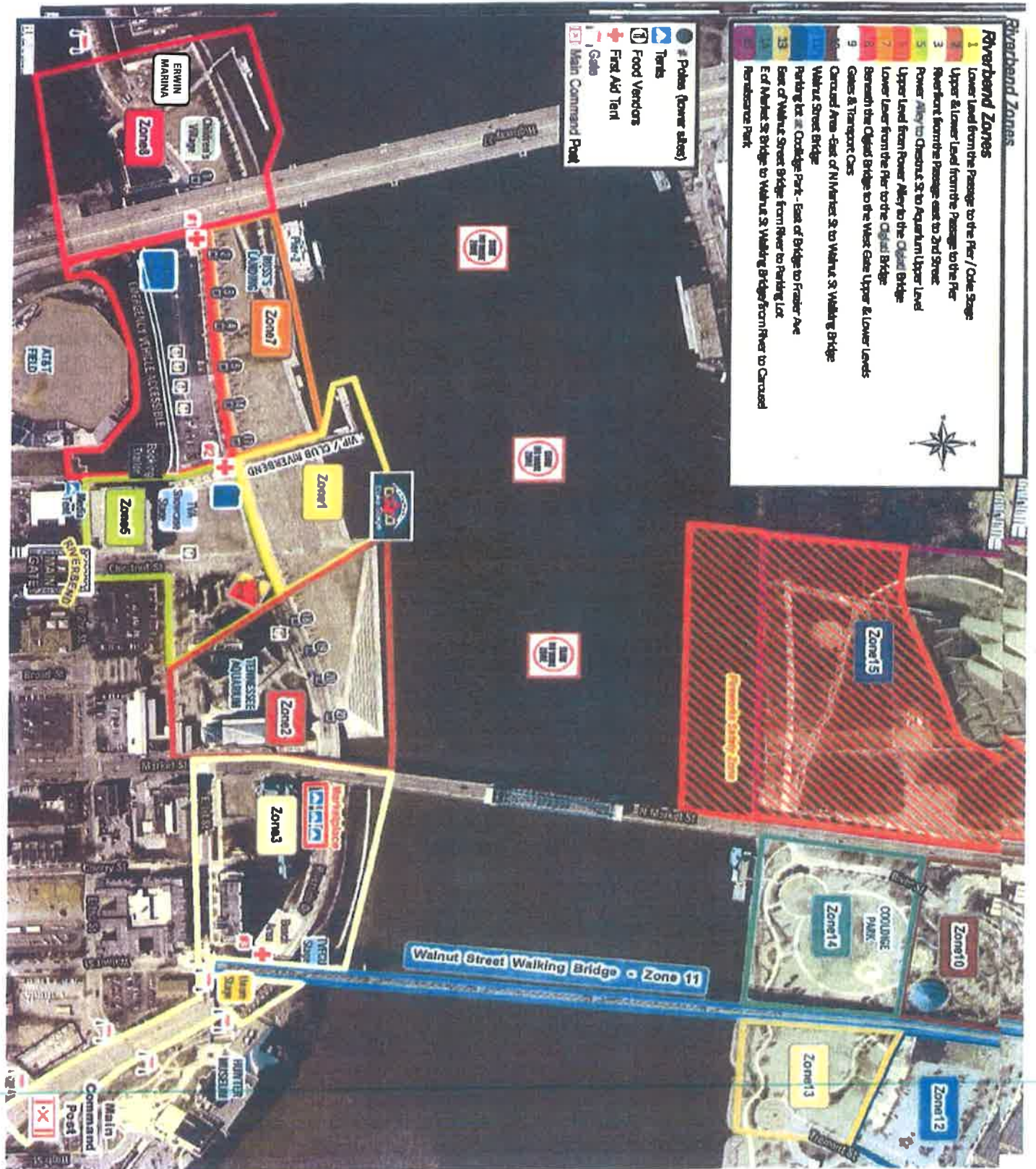


EXHIBIT A

Exhibit B
Riverbend Description of Demised Premises

A generic description of the parcels included within the demised premises follows:

1. Ross's Landing Park, excluding any property leased to Reinert Group, LLC or Erwin Marine Riverfront, LLC
2. "The Green", being Lot 7 of the Waterfront Subdivision (Plat Book 76, Page 186)
3. Properties to south of Riverfront Parkway, to west of Lot 7, and to the east of the Route 27 right-of-way (including any rights of the City to said right-of-way), being Parcels 2, 3A and 3B of an unrecorded plat, formerly parts of Tract 4 and a portion of Tract 7, Golden Gateway Urban Renewal Area
4. Riverfront Parkway from the intersection of 2nd Street on the East to the boundary of the westernmost properties identified above
5. Power Alley from 2nd Street to Riverfront Parkway
6. Chestnut Street from 2nd Street to Riverfront Parkway