

RESOLUTION NO. _____

A RESOLUTION APPROVING VARIOUS AGREEMENTS WITH BLUECROSS BLUE SHIELD OF TENNESSEE FOUNDATION AND PLAYCORE WISCONSIN, INC., AS PART OF A HEALTHY PLACE GRANT FOR THE DEVELOPMENT OF BLUECROSS HEALTHY PLACE AT KINGSPORT RIVERWALK AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city owns land along the westerly side of Industry Drive at or near its intersection with Netherland Inn Road adjacent to the Holston River which is currently used as park land; and

WHEREAS, the BlueCross BlueShield Foundation offers BlueCross Healthy Place Grants which fund the development of community assets that promote active, healthy lifestyles; and

WHEREAS, the city has been selected to receive a BlueCross Healthy Place Grant in the amount of \$7,800,000 for the development and maintenance of various assets with \$6,500,000 allocated for construction and \$1,300,000 for maintenance; and

WHEREAS, the assets will include picnic areas, a water feature, pickleball courts, open lawn space, a kayak launch, a children's playground, additional parking, and a basketball court; and

WHEREAS, in order to receive the grant funding a Donation Agreement with BlueCross BlueShield of Tennessee Foundation, a License Agreement with PlayCore Wisconsin, Inc. d/b/a GameTime and a Transfer Agreement with the BlueCross BlueShield of Tennessee Foundation must be approved; and

WHEREAS, no local match is required for city to receive the grant.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the Donation Agreement with BlueCross BlueShield of Tennessee Foundation for the Development of BlueCross Healthy Place at Kingsport Riverwalk Park, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Donation Agreement with BlueCross BlueShield of Tennessee Foundation for the Development of BlueCross Healthy Place at Kingsport Riverwalk Park, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

DONATION AGREEMENT

THIS DONATION AGREEMENT (the "Agreement"), entered into and effective as of _____, 2024 (the "Effective Date"), is by and between the **BLUECROSS BLUESHIELD OF TENNESSEE FOUNDATION**, a Tennessee nonprofit public benefit corporation with its principal office at 1 Cameron Hill Circle, Chattanooga, Tennessee 37402 ("Donor") and **City of Kingsport, Tennessee a municipal corporation chartered under the laws of the State of Tennessee**, having an office at 415 Broad Street, Kingsport, Tennessee 37660 ("Donee") (each, a "Party", collectively, the "Parties").

RECITALS

WHEREAS, Donee owns the property described in **Exhibit A** hereof (the "Site"), which is the site of Kingsport Riverwalk Park; and

WHEREAS, in consideration of entering into this Agreement, Donee desires to permit Donor to cause certain renovations and other work to be done to the Site (collectively, the "Work"), including upgrading existing facilities and areas (the "Upgrades") and installing certain recreational equipment (the "Equipment"), as more particularly described in **Exhibit B** hereof; and

WHEREAS, Donor has engaged PlayCore Holdings, Inc. d/b/a PlayCore Wisconsin, Inc. and GameTime ("PlayCore") to perform the Work to the Site, including the Upgrades and installing the Equipment; and

WHEREAS, as part of Donor's engagement of PlayCore to perform the Work, including the Upgrades and the installation of the Equipment, Donor and PlayCore have entered into that certain Design Build Project Agreement dated _____, 2024 (the "Design Build Agreement"); and

WHEREAS, as part of PlayCore's obligation to perform the Work, including the Upgrades and the installation of the Equipment, PlayCore and Donee have entered into a License Agreement, dated _____, 2024 (the "License Agreement"), a copy of which is attached hereto and incorporated herein as **Exhibit C**, which provides PlayCore with access to the Site as more particularly set forth therein; and

WHEREAS, upon completion of the Work, including the Upgrades and the installation of the Equipment, Donor will acquire certain interests in the Upgrades and the Equipment and wishes to donate all of such interests in and to the Upgrades and Equipment (collectively, the "Donated Property") to Donee, and Donee wishes to accept such Donated Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the agreements and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DONATION

a. Transfer. On a date to be mutually agreed to by the Parties following completion of the Work (including the Upgrades and the installation of the Equipment) and inspection of the Donated Property (the "Donation Date"), Donor agrees to donate all of its rights, title, and interest in and to the Donated Property to Donee, and Donee agrees to accept the Donated Property from Donor, on the terms and conditions set forth on the Transfer Agreement, the form of which is attached hereto as **Exhibit D**. Upon transfer of the Donated Property to Donee, except as specifically set forth in this Agreement, Donor shall not have any rights or obligations with respect to Donated Property, and Donor shall not be responsible for any claims, liabilities, suits, damages, judgments, losses or actions as a result of any act or omission with respect to the Donated Property, including but not limited to, the use of the Donated Property.

b. Inspection. Prior to the Donation Date, Donee shall have the right to inspect the Donated Property and shall immediately inform Donor and PlayCore of any material defects in the Work or Donated Property. If any such material defects are identified, Parties agree that Donor shall use reasonable efforts to require PlayCore to repair those identified material defects prior to donation of the Donated Property. Nothing in this Section 1(b) shall be construed as creating rights for the Donee that are greater than the Donor's enforceable rights against PlayCore pursuant to the terms and conditions of the Design Build Agreement.

c. Restrictions on Donation. At all times during the Term (as defined hereinafter) of this Agreement, Donee covenants and agrees that Donee shall not transfer the Donated Property or any of its ownership or other interests in the portion of the Site on which the Donated Property is located, as more particularly described and/or depicted on **Exhibit E** hereof (the "Premises") to any third party, without the prior written consent of Donor.

d. Additional Conditions Precedent. Donee acknowledges and agrees that Donor will have no obligations under this Agreement unless and until the following conditions precedent are satisfied:

(i) any preparation of the Site by Donee necessary for the Work to commence is completed on or before _____, 2024, unless otherwise mutually agreed upon by the Parties;

- (ii) any design work proposed by Donee adjacent to or associated with the Work or the Premises ("Donee's Improvements") is completed to the satisfaction of Donor;
- (iii) any subcontracts associated with Donee's Improvements are finalized and approved by Donor; and
- (iv) a metes and bounds description, survey, tax map, or other sufficient description of the Site is provided to and approved by Donor and attached to this Agreement at Exhibit A.

2. WARRANTIES OF THE DONATED PROPERTY; LIMITATION OF LIABILITY; INDEMNIFICATION

a. Assignment. Effective on the Donation Date and in connection with the donation of the Donated Property to Donee, Donor shall assign to Donee any and all manufacturer's or other warranties Donor has received in connection with the Work (including the Upgrades and the installation of the Equipment), and any service warranties provided by PlayCore or its contractors, subcontractors, consultants, or others in connection with the Work (including the Upgrades and the installation of the Equipment), as provided in the Design Build Agreement or any other agreement relating to Work between PlayCore and/or its contractors, subcontractors, consultants or to which any of the foregoing are a party (the foregoing, collectively, the "Warranties"). Donor shall take such actions as are reasonably necessary and appropriate to consummate such assignment.

b. No Additional Warranties. TO THE EXTENT PERMITTED BY STATE LAW, INCLUDING BUT NOT LIMITED TO THE LIMITATION OF WARRANTIES APPLICABLE TO PUBLIC SUBDIVISIONS EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DONOR MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE WORK OR THE DONATED PROPERTY, INCLUDING ANY WARRANTY AS TO CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE. DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE DONATED PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THAT THE DONATED PROPERTY IS IN "AS IS, WHERE IS" CONDITION AND WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE.

c. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY STATE LAW INCLUDING BUT NOT LIMITED TO THE APPLICABILITY OF LIMITATIONS OF LIABILITY OR INDEMNITY BY POLITICAL SUBDIVISIONS AND THE LIMITATIONS OF LIABILITY CREATED UNDER THE TENNESSEE GOVERNMENTAL TORT LIABILITY ACT (Tenn. Code Ann. § 29-20-101, et seq.) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES, WHETHER DIRECT, SPECIAL, CONSEQUENTIAL OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO PROPERTY, PERSONAL INJURY, LOSS OF PROFITS OR ANTICIPATED PROFITS OR LOSS OF PRODUCT USE, ARISING OUT OF OR RELATED TO THE WORK, THE DONATED PROPERTY, THE USE OF THE DONATED PROPERTY OR AS A RESULT OF THIS AGREEMENT.

d. Indemnification. Subject to the limitations of Article II, Section 29 of the Tennessee Constitution which prohibits municipalities from lending their credit to private entities and therefore, in certain instances, precludes a political subdivision of the state from indemnifying a third party, Donee, to the extent permitted under Tennessee law applicable to Tennessee governmental entities as in effect as of the Effective Date of this Agreement and as may be amended from time to time, agrees to indemnify, defend and hold harmless Donor, its affiliates and their respective officers, directors, employees and agents, from and against any claims, damages, losses, liabilities, costs or expenses, including, but not limited to, any and all claims, demands, causes of action, court costs, fines, damages, judgments and reasonable attorneys' fees arising out of (i) any breach of this Agreement by Donee, (ii) any use of the Donated Property, the Site, or the Premises, or (iii) any property or other damage, personal injury or death arising out of or relating to the Donated Property, the Site, or the Premises.

3. USE AND MAINTENANCE; NAMING RIGHTS

a. Public Access to the Donated Property and Premises. Donee acknowledges and agrees that the purpose of the donation is to provide public access to the Donated Property and the Premises to families and children in the community. On and after the Donation Date, Donee agrees to provide public access to the Donated Property and the Premises at all times during the Term of the Agreement unless otherwise agreed in writing by Donor.

b. Maintenance of the Premises and Site. On and after the Donation Date, Donee shall be responsible for providing and/or managing all maintenance and upkeep of the Site, the Premises, and the Donated Property, including but not limited to the following: (i) providing utilities (electricity, water and sewer) to the Premises and (ii) day-to-day maintenance of the Premises (including, without limitation, mowing the grass, ensuring maintenance of street lights in and around the Premises, maintaining restrooms at the Premises or in close proximity on the Site, and picking up trash). The Parties acknowledge that Donee, at its option, may make additional improvements to the Premises and Site such as installing sidewalks and street lights around the perimeter of the Premises and/or

the Site. Donee acknowledges and agrees that Donor shall have no obligation for or liability with respect to the maintenance of the Donated Property, the Premises, or the Site after the transfer of the Donated Property to Donee, unless expressly set forth herein.

c. Maintenance Fund. Notwithstanding the foregoing, in connection with certain maintenance activities for the Premises and Donated Property, Donor intends to establish a maintenance and repair fund in the amount of [•] Dollars (\$[•]) (the "Maintenance Fund"), with a nonprofit organization exempt from United States federal income taxation under Section 501(a) of the Code, as more particularly described in Section 501(c)(3) of the Code, and further classified as other than a private foundation within the meaning of Section 509(a) of the Code, of the Donor's choosing (the "Maintenance Fund Sponsoring Organization"), to serve as a source of funds that may be utilized to pay for Major Repairs (as defined below) to the Donated Property during the Term of this Agreement. "Major Repairs" shall mean maintenance, repairs, or replacement of Donated Property as necessary due to normal wear and tear, damage due to vandalism that creates a dangerous condition, and natural disaster; provided, however, in no event shall a Major Repair include any of the foregoing maintenance, repairs, or replacements for which a claim can be made under the Warranties or that otherwise are or would be covered by the Warranties. It is the Donee's obligation to identify and determine whether maintenance, repairs, or replacements are covered by the Warranties and to pursue fully any claims to be made thereunder. Major Repairs shall be identified as follows:

(i) Donor may periodically examine the Donated Property and determine whether any Major Repairs are required. If Major Repairs are identified by the Donor, the Donor shall inform Donee, and a quote shall be obtained by Donee from PlayCore for the costs to make the Major Repair and provided to Donor for Donor's approval. In the event that PlayCore is no longer in existence at the time such Major Repair is needed or either of the Parties reasonably objects to PlayCore making the Major Repair(s) needed, (A) the Donee shall obtain a quote for the costs to make the Major Repair and provide the quote to the Donor; (B) upon receipt of approval of the quote from the Donor, the Donee will prepare either an invitation for bids or a request for proposals and advertise it publicly; and (C) Donee shall provide the Donor with a copy of its invitation for bids or request for proposals. Once the costs of the Major Repair have been determined and have been approved by the Donor, the Donor shall request the Sponsoring Organization make a distribution from the Maintenance Fund to pay for or reimburse the costs of the Major Repairs. Donee shall address the Major Repairs within ninety (90) days of receiving a distribution from the Maintenance Fund. If, after ninety (90) days, Donee fails to address the Major Repairs, Donor, at its discretion, may use funds from the Maintenance Fund to perform the Major Repairs. If Donor uses the funds from the Maintenance Fund to perform the Major Repairs, Donor shall be entitled to recoup the original distribution made to Donee.

(ii) Donee may from time to time notify Donor of potential Major Repairs it identifies. Donor shall review the information provided by Donee and determine, in its sole and absolute discretion, if the item qualifies as a Major Repair. If determined to be a Major Repair by the Donor, the Donor shall inform Donee, and a quote shall be obtained by Donee from PlayCore for the costs to make the Major Repair and provided to Donor for Donor's approval. In the event that PlayCore is no longer in existence at the time such Major Repair is needed or either of the Parties reasonably objects to PlayCore making the Major Repair(s) needed, (A) the Donee shall obtain a quote for the costs to make the Major Repair and provide the quote to the Donor; (B) upon receipt of approval of the quote from the Donor, the Donee will prepare either an invitation for bids or a request for proposals and advertise it publicly; and (C) Donee shall provide the Donor with a copy of its invitation for bids or request for proposals. Once the costs of the Major Repair have been determined and have been approved by the Donor, the Donor shall request the Sponsoring Organization make a distribution from the Maintenance Fund to pay for or reimburse the costs of the Major Repairs. Donee shall address the Major Repairs within ninety (90) days of receiving a distribution from the Maintenance Fund. If, after ninety (90) days, Donee fails to address the Major Repairs, Donor, at its discretion, may use funds from the Maintenance Fund to perform the Major Repairs. If Donor uses the funds from the Maintenance Fund to perform the Major Repairs, Donor shall be entitled to recoup the original distribution made to Donee.

(iii) Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Donee may opt to make any Major Repairs itself (A) after informing the Donor of its desire to do so and of the costs to be incurred to make any such Major Repair and (B) after obtaining the Donor's approval to do so. Once the costs of the Major Repair have been determined and have been approved by the Donor, the Donor shall request the Sponsoring Organization make a distribution from the Maintenance Fund to pay for or reimburse the costs of the Major Repairs.

Donor may, at its sole option and in its sole and absolute discretion, voluntarily increase the amount of the Maintenance Fund at any time during the Term of the Agreement in such amounts as Donor deems necessary and consistent with its resources. Upon termination of the Agreement, all

obligations of Donor and Maintenance Fund Sponsoring Organization to pay or reimburse for Major Repairs shall terminate, and Donor or the Maintenance Fund Sponsoring Organization may use any funds remaining in the Maintenance Fund for such other purposes as they may choose.

d. Naming Rights. The parties agree that during the Term of this Agreement the Premises shall be named and referred to as the “**BlueCross Healthy Place at Kingsport Riverwalk Park**” (the “Name”) or such other name that the Donor, in its sole and absolute discretion, may select or approve from time to time. The right to name the Premises to commemorate the Donor’s donation of the Donated Property shall be the sole and exclusive right of the Donor, and the Donee agrees not to commit, offer, or grant the right to name the Premises, or any subordinate portion thereof, to any other party, unless such is approved in writing by the Donor. Appropriate signage using logos, color palettes, design and placement, and bearing the Name or such other name that the Donor may select or approve, in Donor’s sole and absolute discretion, will be displayed at the Premises, subject to Donor’s prior review and approval. The Premises shall be referred to in publications and communications by the Donee by the Name or such other name that the Donor, in its sole and absolute discretion, may select or approve from time to time. Subject to Section 6 of this Agreement, the Donee may acknowledge the Donor’s support of the Premises in any or all announcements, publications, and written materials, and any such acknowledgements shall list the Donor as “BlueCross BlueShield of Tennessee Foundation” or in such other manner as expressly directed and approved by the Donor. A copy of any announcements, press releases, media releases, newspaper or magazine articles, or other publicity or promotional materials will be submitted to Donor for Donor’s review and approval prior to being released for publication or published. Upon the expiration of the Term of this Agreement or in the event the Donor determines in its sole and absolute discretion that the use of Donor’s name by the Donee would adversely impact the reputation, image, mission or integrity of the Donor, then Donor may, in its sole and absolute discretion, terminate the naming rights provided pursuant to this Agreement by providing the Donee with written notice of termination. Upon receiving such written notice of termination, the Donee shall remove or caused to be removed within a reasonable time the Name or such other name that the Donor may select or approve from time to time from the Premises, other structures, all publications, and any other mediums, whether tangible or intangible, relating to the Site, the Premises, or the Donated Property. The Donee also shall immediately cease to use the Donor’s name in any and all publicity or promotional material pertaining to the Site, the Premises, or the Donated Property, immediately upon being provided with written notice to do the same.

4. REPRESENTATION AND WARRANTIES OF THE PARTIES

a. Representation and Warranties of Donor. Donor is a nonprofit corporation duly organized, validly existing and in good standing under the laws of Tennessee. Donor has full power and authority to execute and deliver this Agreement and to perform its obligations under, and consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Donor has been duly and validly authorized by all necessary action on the part of Donor and this Agreement has been duly executed and delivered by Donor. This Agreement is a legal, valid and binding obligation of Donor enforceable in accordance with its terms.

b. Representation and Warranties of Donee. Donee is a **municipal corporation** duly chartered, validly existing and incorporated under the laws of Tennessee. Donee (i) is a political subdivision of the State of Tennessee and to whom charitable contributions may be made when contribution or gift is used for a public purpose as set forth in Section 170(c)(1) of the Code; (ii) has not received any notice or have any reason to believe that its status as described clause (i) of this Section 4(b) has been revoked, changed or lost (or could be revoked, changed, or lost) or that it is no longer in compliance with applicable law; (iii) has the ability, experience and resources to carry out this Agreement; and (iv) will not to use any of portion of the Site, the Premises, the Donated Property, or the Maintenance Fund (A) other than as permitted under the terms and conditions of this Agreement, (B) to carry on propaganda, or otherwise to attempt to influence legislation (within the meaning of Section 4945(d)(1) of the Code), (C) to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter or registration drive (within the meaning of Section 4945(d)(2) of the Code), (D) to make any grant which does not comply with requirements of Section 4945(d)(3) or (4) of the Code, or (E) for any purposes other than one specified in Section 170(c)(1) or Section 170(c)(2)(B) of the Code. Donee has full power and authority to execute and deliver this Agreement and to perform its obligations under, and consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Donee has been duly and validly authorized by all necessary action on the part of Donee and this Agreement has been duly executed and delivered by Donee. This Agreement is a legal, valid and binding obligation of Donee enforceable in accordance with its terms. The Premises is, and at all times throughout the Term (as defined herein) of this Agreement shall be, free and clear of all liens, pledges, security interests, encumbrances and liabilities of any kind whatsoever.

5. TERM & TERMINATION

a. Term. This Agreement shall commence on the Effective Date and shall continue for an initial term (the "Initial Term") of twenty (20) years. The Initial Term and the Renewal Terms are sometimes collectively referred to herein as the "Term."

b. Renewal. Within twelve (12) months prior to the expiration of the Initial Term or any Renewal Term hereof, Donor and Donee agree to negotiate in good faith the terms and conditions upon which this Agreement will renew for additional, consecutive terms of ten (10) years each (each, a "Renewal Term").

c. Termination for Failure to Maintain the Site or the Premises. If at any time during the Initial Term or a Renewal Term, Donor determines in its reasonable discretion that Donee has failed to adequately maintain the Site or the Premises in accordance with the terms of this Agreement, Donor may provide not less than sixty (60) days prior written notice of Donor's intent to terminate this Agreement; provided, however, that Donee shall have an opportunity to make repairs and cure other maintenance issues to Donor's satisfaction within the sixty (60) day notice period to prevent termination of the Agreement.

d. Termination by Mutual Agreement. This Agreement may also be terminated by mutual written agreement of both Donor and Donee.

6. USE OF NAMES AND SERVICE MARKS.

a. Donee agrees that the names, logos, symbols, trademarks, trade names, and service marks of Donor and BlueCross BlueShield of Tennessee ("BlueCross"), whether presently existing or hereafter established, are the sole property of Donor and BlueCross, and Donor and BlueCross retain the right to the use and control thereof. Donee shall not use Donor's or BlueCross' name, logos, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of Donor and shall cease any such usage immediately upon written notice by Donor or upon termination of this Agreement, whichever occurs earlier.

b. Donee agrees that the names, logos, symbols, trademarks, trade names, and service marks of Blue Cross and Blue Shield Association, whether presently existing or hereafter established, are the sole property of Blue Cross and Blue Shield Association, and Blue Cross and Blue Shield Association retains the right to the use and control thereof. Donee shall not use Blue Cross and Blue Shield Association's name, logos, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of Donor or Blue Cross and Blue Shield Association and shall cease any such usage immediately upon written notice by Donor or Blue Cross and Blue Shield Association or upon termination of this Agreement, whichever occurs earlier.

7. SPECIFIC ENFORCEMENT

To the extent permitted by Tennessee law, the parties agree that if there is not an adequate remedy at law for damages which the Donor might sustain for failure of the Donee to comply with the terms and conditions of this Agreement the Donor shall be entitled to the remedies of specific enforcement and injunctive relief in addition to all other legal remedies that Donor may have.

8. GENERAL PROVISIONS

a. Entire Agreement. This Agreement, and all exhibits attached hereto, contains the entire agreement between the Parties concerning the donation of the Donated Property and supersedes all prior written or oral agreements between the Parties to this Agreement.

b. Notices. Any written notice required by this Agreement shall be sent by overnight or certified mail, return receipt requested, to the location given in the opening paragraph of this Agreement, or to such other location as a Party may specify upon advance written notice to the other Party during the Term of this Agreement, and in the case of Donor, with a copy provided to its General Counsel, which shall not constitute notice. Notice shall be deemed to have been given on the date it is received by a Party.

c. Further Assurances. The Parties hereby covenant and agree that, from time to time, at the reasonable prior written request of either Party, the Parties shall perform, or cause to be performed, such other actions and execute and deliver, or cause to be executed and delivered, such other agreements, certificates, documents and/or instruments as either of the Parties may reasonably request in order to effectuate the transactions contemplated under this Agreement.

d. Severability. If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Agreement.

e. Assignment; Binding Effect. Neither Party shall have the right to assign, transfer and/or subcontract its rights and/or duties and obligations arising under this Agreement, either in whole or in part, without the prior written consent of the other Party which such consent shall not be unreasonably withheld, conditioned and/or delayed. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties, their successors and permitted assigns.

- f. Governing Law; Forum. Regardless of the location of the execution of this Agreement, the Parties hereby acknowledge and agree that this Agreement shall be governed in all respects, including validity, interpretation and effect by, and shall be enforceable in accordance with the internal laws of the State of Tennessee without regard to its conflicts of laws principles. The Parties hereby acknowledge and agree that the jurisdiction and venue for resolving any dispute arising regarding this Agreement shall be appropriate in the courts of Hamilton County, Tennessee in the United States of America, and the Parties hereby waive any objections to such jurisdiction and venue.
- g. Written Amendments. No addition to or modification of any term or provision of this Agreement, whether by amendment, addendum, or otherwise, shall be effective unless in writing, signed by both Donor and Donee.
- h. No Benefit for Third Parties. This Agreement is intended solely for the benefit of the Donor and Donee, and no benefit is conferred hereby, nor is any contractual relationship established hereby, upon or with any person or entity not a party to this Agreement.
- i. Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY AS A RESULT OF ANY CLAIM WHETHER SUCH CLAIM IS BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY. EACH PARTY ACKNOWLEDGES AND AGREES (I) THAT NO ATTORNEY, REPRESENTATIVE AND/OR OTHER AGENT OF THE OTHER PARTY HAS REPRESENTED, WHETHER EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF A CLAIM, SEEK TO ENFORCE THE TERMS AND CONDITIONS OF THIS SECTION 8(I) AND (II) THAT SUCH PARTY AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE TERMS AND CONDITIONS OF THIS SECTION 8(I).
- j. Waivers. No waiver by either Party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either Party of the same or any other provision.
- k. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the Parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed on its behalf by a duly authorized representative as of the Effective Date.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the License Agreement with PlayCore Wisconsin, Inc. d/b/a GameTimed for the Development of the BlueCross Healthy Place at Kingsport Riverwalk Park, is approved.

SECTION V. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the License Agreement with PlayCore Wisconsin, Inc. d/b/a GameTime for the Development of BlueCross Healthy Place at Kingsport Riverwalk Park, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "License"), entered into to be effective as of _____, 2024 (the "Effective Date"), by and between the **City of Kingsport, Tennessee a municipal**

corporation chartered under the laws of the State of Tennessee, having an office at 415 Broad Street, Kingsport, Tennessee 37660 ("Licensor") and PlayCore Wisconsin, Inc. d/b/a GameTime, with an address of 544 Chestnut Street, Chattanooga, Tennessee 37402 ("Licensee").

W I T N E S S E T H:

1. Licensed Property. Licensor, its successors and assigns including without limitation any successor owner of the Licensed Property, as hereinafter defined, grants to Licensee, its successors and assigns, a limited, non-exclusive license for construction trucks and other traffic associated with the construction activities conducted by or on behalf of Licensee on the property, and to cross over and store construction and other material on and within the property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Licensed Property").
2. Duration. The term of this License shall commence on the date hereof and shall continue for a period of twelve (12) months, unless earlier terminated by Licensee or Licensor.
3. Waiver. Licensor shall have no responsibility for the care or protection of Licensee or its invitees, nor shall Licensor be liable for any damage or injury of Licensee, contractors or their property or person, whether by fire, theft, vandalism, accident, or other peril of any kind whatsoever. Licensee waives any and all claims it, or any person claiming by, through, or under Licensee, might now or in the future have against Licensor on account of any such damage.
4. Quality of Work. In all work undertaken by Licensee, such work shall be completed in a prompt, good and workmanlike manner, free of all liens (including mechanic's liens) and encumbrances.
5. Indemnification. Licensee shall indemnify, defend, and save harmless Licensor from and against any and all costs, claims, damages, and charges, including Licensor's reasonable attorney fees and other costs, made by any person against Licensor to the extent resulting from any negligent or willful act or omission of Licensee, its contractors, agents and employees.
6. Insurance. Licensee shall maintain in full force and effect at all times during the term of this License commercial general liability and automobile insurance with limits of not less than One Million Dollars (\$1,000,000.00), and providing coverage for personal injury and property damage arising out of the use of the Licensed Property. Licensor shall be entitled to prior notice of any cancellation of such coverage, and Licensee shall provide to Licensor at the beginning of this License a certificate reflecting that such coverage is in full force and effect. Further, Licensee shall obtain and maintain any other reasonable and commercially accepted insurance requested by Licensor incident to the operation of Licensee's business. Failure to provide evidence of such insurance to Licensor within three (3) business days of any request therefor shall be cause for immediate termination of this License at the option of Licensor.
7. Assignment. Licensor may assign this License at any time and from time to time to any subsequent owner of the Licensed Property.
8. Non-waiver Provision. The failure of Licensor to insist upon performance of any of the terms, conditions, and covenants hereof shall not be deemed to be a waiver of any rights or remedies that Licensor may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.
9. Condition of Licensed Property. Licensee acknowledges that (i) Licensor has not made and does not hereby make any representations regarding the physical condition of the Licensed Property or the land or building in which they are located, and (ii) that there are no warranties, either express or implied, regarding the condition of the Licensed Property and/or the land or building in which they are located. Licensee expressly waives and releases any such warranties that may exist and hereby accepts the Licensed Property in its "as is" condition.
10. Liens. In the event any mechanic's lien is recorded against the Licensed Property as a result of services performed or materials furnished for the use of Licensee, then Licensee agrees to cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge within twenty (20) days following such lien filing. Licensee agrees to defend, protect, indemnify and hold harmless Licensor and the Licensed Property from and against all claims relating thereto, arising out of or resulting from such lien.
11. No Leasehold. The parties agree that the interest herein created is a license and that no leasehold or other tenancy is intended to be or shall be created by this License.
12. Entire and Binding License. This License contains all of the agreements between the parties hereto as to the subject matter hereof and it may not be modified in any manner other than by an agreement in writing signed by Licensor and Licensee and expressly referring to this License. Notwithstanding any prior agreements between Licensor, Licensee or any other party, whether written or oral, and notwithstanding any future agreement between Licensor and Licensee as to the Licensed Property, this License shall be the sole agreement relating to the subject matter of this

License. The terms, covenants, and conditions contained herein shall inure to the benefit of and be binding upon Licensor, Licensee, and their respective successor and permitted assigns.

13. **Authority.** The persons executing this License for Licensor and Licensee, respectively, warrant and represent to the other party that they are authorized to do so and that this License is valid and binding on their respective principals according to its terms.

14. **Choice of Law.** This License shall be governed by and construed in accordance with the laws of the State of Tennessee

15. **Counterparts.** To facilitate execution, this License may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION VI. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION VII. That the Donation Agreement with BlueCross BlueShield of Tennessee Foundation for the Development of BlueCross Healthy Place at Kingsport Riverwalk Park, is approved.

SECTION VII. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Donation Agreement with BlueCross BlueShield of Tennessee Foundation for the Development of BlueCross Healthy Place at Kingsport Riverwalk Park, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT (this “**Agreement**”), effective as of _____, 2024 (the “**Donation Date**”), is by and between **City of Kingsport, Tennessee a municipal corporation chartered under the laws of the State of Tennessee (“Donee”)** and the BlueCross BlueShield of Tennessee Foundation, a Tennessee nonprofit corporation (“**Donor**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in that certain Donation Agreement, effective _____, 2024 (the “**Donation Agreement**”), by and between Donor and Donee.

RECITALS

WHEREAS, pursuant to the Donation Agreement and subject to the terms and conditions set forth herein, Donor agrees to donate and transfer all of Donor’s rights, title, and interest in and to the Donated Property, as set forth on **Exhibit A**, to Donee, and Donee agrees to accept the Donated Property from Donor; and

WHEREAS, the parties mutually desire to execute and deliver this Agreement to evidence the donation and transfer of the Donated Property so as to vest more fully in Donee all of Donor’s right, title and interest in, to and under the Donated Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Transfer. Effective as of the Donation Date, in accordance with the Donation Agreement and this Agreement, Donor hereby donates, assigns, transfers, conveys and delivers to Donee, and Donee accepts from Donor, all of Donor’s right, title and interest in, to and under the Donated Property (collectively, the “**Transfer**”).

2. Restrictions on Donation. For a period beginning on the Donation Date and ending on the expiration or termination of the Donation Agreement, as provided therein, Donee covenants and agrees that Donee shall not transfer the Donated Property or any of its ownership or other interests in the Premises to any third party, without the prior written consent of Donor.

3. Remedies. The parties' remedies with respect to any and all losses that arise under, relate to and/or result from any breaches of this Agreement shall be as set forth in the Donation Agreement. TO THE EXTENT PERMITTED BY STATE LAW, INCLUDING BUT NOT LIMITED TO THE LIMITATION OF WARRANTIES APPLICABLE TO POLITICAL SUBDIVISIONS EXCEPT AS EXPRESSLY SET FORTH IN THE DONATION AGREEMENT OR THIS AGREEMENT, DONOR MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DONATED PROPERTY, INCLUDING ANY WARRANTY AS TO CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE. DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE DONATED PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THAT THE DONATED PROPERTY IS IN "AS IS, WHERE IS" CONDITION AND WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE.

TO THE EXTENT PERMITTED BY STATE LAW INCLUDING BUT NOT LIMITED TO THE APPLICABILITY OF LIMITATIONS OF LIABILITY OR INDEMNITY BY POLITICAL SUBDIVISIONS AND THE LIMITATIONS OF LIABILITY CREATED UNDER THE TENNESSEE GOVERNMENTAL TORT LIABILITY ACT (Tenn. Code Ann. § 29-20-101, *et seq.*) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES, WHETHER DIRECT, SPECIAL, CONSEQUENTIAL OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO PROPERTY, PERSONAL INJURY, LOSS OF PROFITS OR ANTICIPATED PROFITS OR LOSS OF PRODUCT USE, ARISING OUT OF OR RELATED TO THE DONATED PROPERTY, THE USE OF THE DONATED PROPERTY OR AS A RESULT OF THIS AGREEMENT.

4. Donation Agreement Override. This Agreement is expressly made pursuant to, and subject to the terms and conditions set forth in, the Donation Agreement. Nothing set forth in this Agreement is intended to supersede, modify, limit, expand and/or otherwise affect in any manner the terms, conditions, provisions, representations, warranties, covenants and other agreements set forth in the Donation Agreement, and such terms, conditions, provisions, representations, warranties, covenants and other agreements shall remain in full force and effect in accordance with the terms of the Donation Agreement. If any conflict exists between this Agreement and the Donation Agreement, the Donation Agreement shall govern and control in all respects.

5. Further Assurances. Following the Transfer, each of the parties shall, and shall cause their respective affiliates to, take all appropriate action and execute and deliver all additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably necessary or advisable to carry out any of the provisions hereof and give effect to the transactions contemplated hereby.

6. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

7. Miscellaneous. Section 8 of the Donation Agreement entitled "General Provisions" is hereby incorporated, by reference as if such Section 8 was set forth in full in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION IX. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION X. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION XII. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of February, 2024.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY