

RESOLUTION NO. _____

A RESOLUTION APPROVING THE DONATION OF PROPERTY ON CLEEK ROAD FROM THE WALLACE FAMILY FOR A FUTURE GREENBELT PARKING LOT, NAMING THE PARKING LOT THE "WALLACE & BILLIE ALLEY MEMORIAL PARKING LOT"; AND AUTHORIZING THE MAYOR TO EXECUTE THE DONATION AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE DONATION OR THIS RESOLUTION

WHEREAS, Wallace D. Alley, Jr., Martin E. Alley and David G. Alley, owners of the property located on Cleek Road, would like to donate approximately .781 acre of property for a future greenbelt parking lot, as shown on a survey titled "Survey of a Portion of Wallace Douglas Alley, Jr., Trustee of the Wallace Douglas Alley Jr. Living Trust and Martin Edward Alley and David Gale Alley Property" dated April 1, 2024; and

WHEREAS, the aforementioned property shall serve as a parking lot site to better service the city's needs for parking around the greenbelt walking path; and

WHEREAS, the family has requested that the donated .781 acre of property be memorialized with the name "Wallace & Billie Alley Memorial Parking Lot"; and

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN as follows:

SECTION I. That the donation of approximately .781 acre of property owned by the Wallace and Billie Alley family, as shown on a survey titled "Survey of a Portion of Wallace Douglas Alley, Jr., Trustee of the Wallace Douglas Alley Jr. Living Trust and Martin Edward Alley and David Gale Alley Property" dated April 1, 2024, is approved.

SECTION II. That the future parking lot be memorialized with the name "Wallace and Billie Alley Memorial Parking Lot".

SECTION III. 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, a Donation Agreement with the Wallace & Billie Alley family, LLC of approximately .781 acre of property and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement, including the naming of the future parking lot "Wallace & Billie Alley Memorial Parking Lot", execution of closing documents and acceptance of the Warranty Deed, 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 (hereinafter "Agreement") is hereby made and entered into as of the latest of the dates of execution by the parties hereto as shown by the date of notarization of the

signatures of the parties (hereinafter "Effective Date"), by and between CITY OF KINGSPORT, TENNESSEE, a Tennessee municipal corporation, (hereinafter "City") and WALLACE D. ALLEY, JR., MARTIN E. ALLEY and DAVID G. ALLEY (hereinafter "Donors").

RECITALS

WHEREAS, the Donors are the owners of a certain parcel of land containing .781 acres, more or less, located in Kingsport, Sullivan County, Tennessee the legal description of which is more particularly set forth on Exhibit A attached hereto and hereby made a part hereof (the "Property"); and WHEREAS, Donors desire to donate the property to City; and WHEREAS, City is willing to accept donation of the Property.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the premises and mutual promises herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

SECTION 1. PROPERTY DONATION. Subject to the terms and conditions herein, Donors hereby agree to donate the Property to City, and City hereby agrees to accept a donation of the Property. Donation of the Property shall be made by the Donors' execution of a Warranty Deed conveying the Property to City, which conveyance shall be free and clear of all liens and encumbrances except those to which City consents (the "Permitted Exceptions".) All property and interests of Donors to be conveyed hereunder are herein collectively called the "Property".

SECTION 2. CONDITIONS PRECEDENT. Prior to consummation of the donation, the following conditions precedent shall be satisfied.

a. Title Report. City shall, at its expense, obtain a title report for the Property, which title report shall describe the current status of title to the Property and shall be accompanied by copies of all instruments which create exceptions to the title. City shall have a period of fifteen (15) days after its receipt of the title report and exception documents and the survey described below to examine same and to raise any objections to the title or survey that City has. If City raises any objections to the title or survey, within ten (10) days thereafter the Donors will advise City whether or not the Donors will seek to cure any such objections. If Donors agrees to undertake the cure, it shall have such time as Donors needs to successfully effect the cure. All matters of title and of survey to which City does not object, and all matters of title and survey to which City has objected and Donors cures to the City's satisfaction, shall be Permitted Exceptions. City shall not be required to accept the donation of the Property if there are any matters of title or survey to which City has objected and for which no cure satisfactory to City has been obtained.

b. Environmental Report. City shall, at its expense, have an acceptable Phase I Environmental Report for the Property.

SECTION 3. DONATION VALUE. Based on an appraisal dated April 19, 2024, by Christopher R. Holt a licensed property appraiser, for purposes of this Donation Agreement the value of the Property shall be the sum of Forty Four Thousand Dollars (\$44,000) subject to the prorations and other adjustments as hereinafter provided. At the closing of the transfer of the Property, the City shall provide proof or confirmation of donation of the Property for intended civic purposes and public benefit; provided, however, the donation value of the Property shall not be construed to create or impose any additional duty, monetary or otherwise, upon the City with respect to the other provisions of this Agreement; and provided, further, the City does not warrant or represent the deductibility of the donation for income tax purposes. Whether the donation may be treated as a proper deduction for income tax purposes is and shall remain solely the responsibility of Donors.

SECTION 4. PAYMENT OF PROPERTY TAXES. Incident to its donation of the Property to City, the closing agent shall prorate the estimated taxes back to the Sellers. Sellers shall pay the outstanding taxes upon receipt of the tax notices.

SECTION 5. NO LIABILITY OF CITY OFFICIALS AND EMPLOYEES. No member, official, or employee of City shall be personally liable to Donors in the event any provision of the Agreement is unenforceable, or there is any default or breach by City, or for any amount which may become due under the Agreement, or on any obligations under the terms of the Agreement.

SECTION 6. CONVEYANCE OF PROPERTY. Donors shall convey clear and marketable title to the Property to City by Warranty Deed to said Property, without any restrictions or encumbrances except the proration real property taxes for the year in which the closing takes place and the Permitted Exceptions.

SECTION 7. CLOSING. Subject to the conditions set out in this Agreement, the closing shall occur on or before thirty (30) days after the Effective Date (the "Closing Date"), at a time and location mutually agreed upon by the parties or, upon failure of the parties to agree, at a time and place specified by City (the "Closing"). City and Donors agree to deliver and execute such documents as may be reasonable and necessary in the opinion of counsel for Donors and City to consummate and close the Donation and sale contemplated herein pursuant to the terms and provisions hereof.

SECTION 8. TITLE INSURANCE. City, at its expense, may secure an owner's title insurance commitment to issue a title insurance policy insuring City's fee simple interest in the Property to the extent of the Donation Price.

SECTION 9. POSSESSION. Delivery of possession of the Property to City shall occur at the successful completion of Closing.

SECTION 10. NOTICE. Any notice or demand on either party hereunder shall be deemed to have been given when mailed to the other party by Certified Mail, Return Receipt Requested, postage prepaid at the addresses set forth below:

DONORS:

Wallace D. Alley, Jr., Martin E. Alley & David G. Alley
2 Spring Creek Wynd
Kingsport, Tennessee 37664

CITY:

City of Kingsport, Tennessee
415 Broad Street
Kingsport, Tennessee 37660

SECTION 11. PRORATIONS. All real property taxes and assessments shall be prorated as of the Closing Date, using for such purpose the rate and valuation shown on the latest available tax notice.

SECTION 12. REZONING. City assumes any and all costs of rezoning the property for civic use.

SECTION 13. SPECIAL ASSESSMENTS. Donors assume the payment of any unpaid deferred charges or special assessments for public improvements levied before the Closing on or against the Property, including any tap fees for water or sewer service.

SECTION 14. REAL PROPERTY TAXES. City shall be responsible for all real property taxes levied against the Property after title is transferred, if any.

SECTION 15. EXPENSES OF DONORS. In closing this transaction, Donors shall be charged with the following:

- (a) The cost of preparation of the warranty deed;
- (b) Any expenses needed to provide City with clear and marketable title to the Property;
- (c) The fees and expenses of any attorney or other advisor engaged by Donors in connection with this transaction; and
- (d) The commission or fees charged by any real estate broker or agent retained or used by the Donors in connection with this transaction.

SECTION 16. EXPENSES OF CITY. In closing this transaction, City shall be charged with the following:

- (a) The cost of any title search and title insurance policy;
- (b) The cost of recording the deed and any transfer tax associated with such deed; and
- (c) Any fees charged in connection with any attorney or other advisor engaged by City in connection with this transaction.

SECTION 17. RISK OF LOSS. The risk of loss or damage to any of the Property described above by fire or other casualty shall remain with the Donors until Closing. In the event of such loss before Closing, this Agreement shall be voidable at the option of City by written notice of such option to the Donors prior to the scheduled Closing. Should City elect to continue with the Donation following such loss or damage before Closing, City shall the right to close this Agreement at the stated Donation Price.

SECTION 18. DEFAULT. In addition to the default set out in subsection (b) of this Section 18, the failure of either party to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this Agreement, is a default.

(a) If City is in default of this Agreement, Donors shall give written notice to City, and City shall have ten (10) business days from the date of the receipt of such notice within which to cure such default.

If the Closing contemplated by this Agreement is not consummated on account of City's default hereunder, Donors shall be entitled to terminate this Agreement.

(b) If Donors are in default of this Agreement, City shall give written notice to Donors, and Donors shall have ten (10) business days from the date of the receipt of such notice within which to cure such default, provided, however, there shall be no cure period for Donors' failure to close. If the Closing contemplated by this Agreement is not consummated on account of Donors' default hereunder City shall be entitled to terminate this Agreement and City shall be entitled to specific performance and all other rights, privileges or remedies available to City at law or in equity, severally or cumulatively. A default of Donors shall include, but is not limited to, the failure or refusal of Donors to close on the sale of the Property, when scheduled, or to convey a clear and marketable title by warranty deed to City, as set forth herein.

SECTION 19. DONORS'S WARRANTIES, REPRESENTATIONS AND COVENANTS. Donors hereby represent and warrant to City solely as to the following matters, each of which is so warranted to be true and correct as of the date hereof and shall, as a condition to City's obligations hereunder, be true and correct on the closing date:

(a) Donors have entered into no other presently effective agreement to sell the Property, or any

portion thereof, nor has it granted any presently effective option for the sale of the Property, or any portion thereof, or right of first refusal or right of first offer with respect thereto;

(b) Donors have no knowledge of pending or contemplated condemnation proceedings affecting the Property, the abutting streets, or *any* part thereof;

(c) Donors are not now a party to any litigation with respect to the Property, and Donors know of no litigation or threatened litigation affecting the title to the Property (and Donors shall give City prompt notice of the institution or threat of *any* such litigation prior to the Closing Date);

(d) Donors are not a "foreign person" as defined in the Internal Revenue Code of 1986, as amended, and as contemplated by the Foreign Investments in Real Property Tax Act (96 Stat. 2682), as amended by the Deficit Reduction Act of 1984, and City has no obligation to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Donors in the transaction contemplated hereby;

(e) The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Donors on the Closing Date, and the performance by Donors of Donors' duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the Donation and sale of the Property as contemplated herein, are consistent with and not in violation of, and shall not create any adverse condition under, any contract, agreement or other instrument to which Donors are a party, or any judicial order or judgment of any nature by which Donors are bound; and

(f) All necessary and appropriate action has been taken by Donors authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Donors of the documents and instruments to be executed by Donors on the Closing Date, and the performance by Donors of Donors' duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the Donation and sale of the Property as contemplated herein.

SECTION 20. CITY'S WARRANTIES, REPRESENTATIONS AND COVENANTS. City hereby represents and warrants to Donors solely as to the following matters, each of which is so warranted to be true and correct as of the date hereof and shall, as a condition to Donors' obligations hereunder, be true and correct on the closing date:

(a) The execution and delivery of this Agreement and the performance by City of its obligations hereunder have been duly authorized by all required action of City;

(b) City does not require any consents or approvals from any third party with respect to the execution and delivery of this Agreement or with respect to the performance by City of its obligations hereunder, including the Donation of the Property from Donors;

(c) The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by City on the Closing Date, and the performance by City of City's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the Donation of the Property as contemplated herein, are consistent with and not in violation of, and shall not create any adverse condition under, any contract, agreement or other instrument to which City is a party, any judicial order or judgment of any nature by which City is bound; and

(d) All necessary and appropriate action has been taken by City authorizing and approving the execution of and entry into this Agreement, the execution and delivery by City of the documents and instruments to be executed by City on the Closing Date, and the performance by City of City's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the Donation and sale of the Property as contemplated herein.

SECTION 21. TIME IS OF THE ESSENCE. Time is of the essence to the performance of this Agreement.

SECTION 22. MERGER CLAUSE; ENTIRE AGREEMENT; MODIFICATIONS. All understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement, representation, express or implied warranties, guarantees, promises, statements, "setups", representation, or information not embodied in this Agreement, made by the other, or by any agent, employee, servant, or other person representing or purporting to represent the Donors. This Agreement contains the full agreement between the parties and there are no other contracts, express or implied, which are not stated herein, and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

SECTION 23. POST CLOSING SURVIVAL. Wherever in this Agreement Donors or City shall have agreed or promised to perform certain acts or otherwise where the context of this Agreement would require such performance or grants to occur after the Closing, then those agreements and covenants shall survive the Closing and continue to bind Donors and City.

SECTION 24. CAPTIONS. The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

SECTION 25. SEVERABILITY. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

SECTION 26. CONTROLLING LAW; VENUE. This Agreement has been made and entered into under the laws of the State of Tennessee, and said laws shall control the interpretation thereof. Venue for any litigation concerning this Agreement shall be filed in the state or federal courts for Sullivan County, Tennessee.

SECTION 27. BINDING EFFECT. All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 28. MISCELLANEOUS.

(a) This Agreement is intended to be solely for the benefit of the parties hereto and their respective successors and assigns, and the provisions of this Agreement are not intended to be, and shall not be construed, for the benefit of any third party.

(b) The rights and remedies provided by this Agreement are cumulative in nature and are in addition to, and not in lieu of, any other rights afforded by law.

(c) This Agreement may not be modified except in a writing executed by all of the parties.

(d) Where the circumstances require, the singular shall refer to the plural and the plural to the singular, and the use of one gender shall be applicable to all genders.

SECTION 29. FURTHER ACTS. Each party hereto agrees to do execute, acknowledge and deliver all such further acts, assignments, transfers, assurances, and instruments that may reasonably be required to fully effectuate the transactions contemplated in this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands hereto in duplicate originals.

[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 Donation 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 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 V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 17th day of September, 2024.

PAUL W. MONTGOMERY, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY