

RESOLUTION NO. _____

A RESOLUTION APPROVING THE PURCHASE OF 8.4 WETLAND MITIGATION CREDITS FROM WATER RESOURCES, LLC, AND THE EXECUTION OF LAND USE RESTRICTIONS ON PROPERTIES OWNED BY THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE SUCH RESTRICTIONS

WHEREAS, during construction of the Kingsport Aquatic Center 15.5 acres of wetlands were disturbed, and the city received a permit to alter these wetlands with a plan to mitigate some areas on site and others along Reedy Creek near John B. Dennis; and

WHEREAS, these areas were to be observed for ten years to ensure that the sites developed wetlands as determined in the permit, but during monitoring studies it was determined that one site containing proposed 10.5 acres of created wetland did not meet the criteria for success; and

WHEREAS, the Tennessee Department of Environment and Conservation of Water Pollution Control (TDEC) determined that the city would need to purchase 8.4 wetland mitigation credits from Water Resources, LLC, and once purchased, the city will have met the requirements of the permit; and

WHEREAS, the cost of the credits is \$336,000.00 and the funding is identified in NC2316; and

WHEREAS, the original permit required all proposed mitigation sites to have land use restrictions placed on them, essentially returning those sites to their natural state; and

WHEREAS, these areas are all along the Greenbelt in the vicinity of John B. Dennis Highway and are described in Deed Book 2728C at page 779, Deed Book 2849C at page 474, Deed Book 3024 at page 3282, Deed Book 2769C, at page 693, and Deed Book 3283 at page 2323; and

WHEREAS, once approved by the board, the Land Use Restrictions will be executed and recorded with the Sullivan County Register to Deeds to ensure proper use of the property in the future.

Now therefore,

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

SECTION I. That the purchase of 8.4 wetland mitigation credits from Water Resources, LLC is approved.

SECTION II. That the Land Use Restrictions, as prepared by the Tennessee Department of Environment and Conservation for the properties acquired by the city and more fully described in deeds recorded in Deed Book 2728C at page 779, Deed Book 2849C at page 474, Deed Book 3024 at page 3282, Deed Book 2769C, at page 693, and Deed Book 3283 at page 2323, are 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 Land Use Restrictions, to deliver the restrictions 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 restrictions and this resolution generally, as set out below:

This instrument was prepared by:
Tennessee Department of Environment and Conservation Division of Water Pollution Control
7th Floor Annex, 401 Church Street
Nashville, TN 37243-1538

NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to Tennessee Code Annotated (T.C.A.) Section 68- 212-225, the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to T.C.A. Section 68-212-225(d) the register of deeds shall record this Notice and index it in the grantor index under the names of the owners of the property.

WITNESSETH:

WHEREAS, City of Kingsport (Grantor), is the owner of the real property described in a Deed of record with the Sullivan County Register of Deeds, Book _____, Page _____, herein after referred to as the "Property"; and,

WHEREAS, on or about August 16, 2010, the Commissioner of the Department of Environment and Conservation (TDEC) issued Aquatic Resource Alteration Permit (ARAP) Number NRS10.165 to Grantor; and,

WHEREAS, the referenced ARAP requires that certain uses of the Property be restricted.

NOW, THEREFORE, in consideration of the foregoing, the Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions. Said land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and the respective successors and assigns of such parties:

Land Use Restrictions:

- A. (Vegetation) There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation, nor any disturbance or change in the natural habitat in any manner. There shall be no planting or introduction any vegetation other than that described in the Aquatic Resource Alteration Permit NRS 10.165 for this project.
- B. (Uses) There shall be no agricultural, commercial, or industrial activity undertaken or allowed; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial activity.
- C. (Animals) No dogs, cats, or other domestic or exotic animals be raised on the Protected Property.
- D. (Topography) There shall be no filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land in any manner.
- E. (Building) There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards, or other structures.
- F. (Roads) There shall be no building of new roads or any other rights of way nor widening of existing roads.
- G. (Waters) There shall be no disruption of flow pattern by damming, dredging or construction in any free flowing water body, nor construction of any weirs, groins nor dikes in any marshland, nor any manipulation or alteration of natural water courses, fresh water lake and pond shores, marshes, or other water bodies nor any activities or uses detrimental to water purity.
- H. (Vehicles) There shall be no operation of dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles.
- I. (Construction) There shall be no construction or placing of temporary or permanent buildings, docks, bridges, piers or other structures.

Enforcement:

Any owner of the land or any unit of local government having jurisdiction over any part of the subject property may enforce this Notice of Land Use Restrictions by means of a civil action. The Commissioner of TDEC may enforce this Notice of Land Use Restrictions through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against

present or threatened violations of the restriction. Pursuant to T.C.A. Section 68-212-213, any person who fails, neglects or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

Term:

This Notice of Land Use Restrictions shall run with and bind the Property unless/until this Declaration shall be made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."

Amendment and Termination:

This Notice of Land Use Restrictions may be waived, amended, modified, or terminated at any time by the Commissioner of TDEC for cause. No amendment to of this Notice of Land Use Restrictions shall be effective until such amendment or instrument terminating this Notice of Land Use Restrictions is recorded in the Register's Office for Sullivan County, Tennessee.

Severability:

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ____ day of _____, 2024.

[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 restrictions 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 4th day of June, 2024.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY