

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A
MEMORANDUM OF UNDERSTANDING FOR THE USE OF THE
SINGLE-FAMILY RESIDENCE ON BAYS MOUNTAIN PARK FOR
THE BAYS MOUNTAIN PARK CARETAKER

WHEREAS, Tennessee Code Annotated § 70-4-404(c)(1)(C) requires a resident caretaker on site for any holder of a Class I wildlife permit; and

WHEREAS, Bays Mountain Park exhibits Class 1 wildlife; and

WHEREAS, Bays Mountain Park contains a single-family residence with an address of 853 Bays Mountain Park Road, Kingsport, TN 37660 which is suitable for the purpose of providing housing for a resident caretaker; and

WHEREAS, it is necessary to approve a memorandum of understanding which establishes the rights and obligations of the city and the caretaker with regards to the use and maintenance of the single-family residence; and

Now therefore,

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

SECTION I. That a Memorandum of Understanding establishing the rights and obligations of the city and the caretaker with regards to the use and maintenance of the single family residence is approved.

SECTION II. That the mayor or in his absence, incapacity, or failure to act, the vice-mayor, is authorized 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 Memorandum of Understanding with the Bays Mountain Caretaker for the single-family residence space located at 853 Bays Mountain Park Road, Kingsport, TN 37660 to deliver the Memorandum of Understanding 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, said agreement being as follows:

**The Bays Mountain Caretaker
Memorandum of Understanding**

THIS MEMORANDUM OF UNDERSTANDING made and entered into as of this (date) _____, by and between the City of Kingsport, a municipal corporation (herein called "Landlord"), and **Kingsport Caretaker** (name of caretaker) _____, (herein called "Tenant").

WITNESSETH:

This MEMORANDUM OF UNDERSTANDING is subject to the terms, covenants and conditions herein set forth and the Tenant covenants as a material part of the consideration for this MEMORANDUM OF UNDERSTANDING to keep and perform each and all said terms, covenants, and conditions by him to be kept and performed.

Now therefore, in consideration of the premises and the mutual covenants of this MEMORANDUM OF UNDERSTANDING herein contained and other good and valuable consideration, the parties do hereby agree to the terms which follow.

1. Purpose. Due to the nature of Landlord's operations at its Bays Mountain Park, an on-site caretaker is necessary to provide for the safety and wellbeing of certain wildlife contained within exhibits as well as to perform other tasks necessary to preserve and protect park resources. This individual will also serve to assist park staff with park operations especially during extended hours and to enforce park rules and assist in search and rescue operations to ensure the safety of park visitors. In order to fulfill these needs and for Landlord's benefit housing is being made available to Tenant at no cost as more fully specified herein.

2. Premises. Tenant shall reside in the house provided by the landlord located at 853 Bays Mountain Park Road, Kingsport Tennessee 37660 (herein called "premises"). The house shall be the only part of the property intended for Tenant's use.

3. Term. The terms of the MEMORANDUM OF UNDERSTANDING shall be for one year and shall commence to run on the date above written. The Parties shall have the option to renew this MEMORANDUM OF UNDERSTANDING annually. Each such renewal term shall be upon the same terms, covenants, and conditions hereof. This MEMORANDUM OF UNDERSTANDING shall be extended without any further instrument provided the MEMORANDUM OF UNDERSTANDING is not terminated for other reasons as stated herein. This MEMORANDUM OF UNDERSTANDING may be terminated for any reason by either party upon 30 days written notice of the other party.

4. Not a Contract of Employment. While the Premises is being afforded to Tenant in exchange for the performance of duties enumerated herein, this arrangement is acknowledged and agreed to be for the benefit of Landlord. Nothing herein shall be construed as creating a contract for employment or any other rights not otherwise afforded to employees of the City of Kingsport as set forth in the Charter, Code of Ordinances, and personnel policies duly adopted by the Board of Mayor and Aldermen of the City of Kingsport.

5. Use and Tenant's Responsibility for Tenant's Property. Tenant shall use the Premises as a single-family residence only. Tenant shall not use or permit the Premises to be used in any unlawful conduct or for any other purpose without the prior written consent of the Landlord. Landlord shall have no responsibility for Tenant's property, or any damage caused to Tenant's property. Tenant agrees to be responsible for any loss of Tenant's property.

6. Rent. Tenant shall pay no rent in exchange for performing the following duties:

A. Animal Habitats: Check fences for fallen trees at least twice a week. Pay special attention to the fencing enclosing the Wolves. Monitor weather forecasts: if thunderstorms, high winds, or snow is forecast, increase the frequency of observation, especially at the Wolf Habitat;

B. After hours patrons: Assist Park Rangers when required in sweeping the park for individuals who are still present after closing. Lock/open gate for special events from foot races to mountain bike night rides;

C. Appearance of property: Mow yard at least once a week;

D. Assist park staff in the location and recovery of individuals who may be lost or in distress outside of park hours.

7. Utilities. Water and electricity will be provided by the Landlord in connection with the housing. Tenant shall pay for any charges for telephone, satellite television, or other utilities that maybe used, rendered, or supplied upon or in connection with the housing.

8. Uses Prohibited. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein that is not within the permitted use of the Premises or that shall in any way increase the existing rate of or affect any fire or other insurance upon the building in which the Premises are located, or any of its contents, or cause a cancellation of any insurance policy covering said building or any part thereof, or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises that shall in any way obstruct or interfere with the rights of other Tenants or occupants of the Premises or injure or annoy them or use or allow the Premises to be used for any unlawful purpose. Tenant shall not cause, maintain, or permit any nuisance in, on or about the Premises, and Tenant shall not commit, or allow to be committed, any waste in or upon the Premises.

9. Compliance with Law. Tenant shall not use the Premises or permit anything to be done in or about the Premises, that shall in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or that shall hereafter be enacted or promulgated. Tenant shall, at his sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or

that may hereafter be in force relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgement of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation, or requirement, shall be conclusive of that fact as between the Landlord and Tenant.

10. Repairs and Alterations. Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof without first obtaining the written consent of Landlord, and any alterations, additions or improvements to or of said Premises including, but not limited to, wall coverings, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the reality and belong to the Landlord and shall be surrendered with the Premises. In the event Landlord consents to the making of any alterations, additions, or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. Upon the expiration or sooner termination of the term hereof, Tenant shall, upon written demand by Landlord, given at least thirty (30) days prior to the end of the term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alteration, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall, forthwith and with all due diligence, at his sole cost and expense, repair any damage to the Premises caused by such removal.

Failure, on the part of the Tenant, to maintain the Premises in a condition satisfactory to the Landlord or maintaining the Premises in a manner which constitutes a nuisance, shall cause this MEMORANDUM OF UNDERSTANDING to terminate if, after notice by Landlord to Tenant of deficiencies in maintenance of the Premises, Tenant does not correct said enumerated deficiencies within ten (10) working days after receipt of notice thereof. However, Tenant shall not be responsible for outside painting, roof repair and major repairs to the heating and/or cooling systems installed at 853 Bays Mountain Park Road, Kingsport, Tennessee 37660. The Tenant shall be responsible for payment of all utilities except water and electricity, which shall be paid by the Landlord.

11. Surrendered Premises. By entry hereunder, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition, and repair. Tenant shall, upon the expiration or sooner termination of this MEMORANDUM OF UNDERSTANDING, surrender the Premises to the Landlord in good condition, broom clean, ordinary wear and tear excepted. Any damage to adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

12. Assignment and Subletting. Tenant shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this MEMORANDUM OF UNDERSTANDING or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (employees, agents, servants, member, groups and invitees of Tenant excepted) to occupy or use the said Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent need not be given and shall be at Landlord's sole and absolute discretion. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent, subletting, occupation or use by another person. Consent to any assignment or subletting shall in no way relieve Tenant or any liability under this MEMORANDUM OF UNDERSTANDING. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord constitute a default under the terms of this MEMORANDUM OF UNDERSTANDING.

13. Hold Harmless. Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this MEMORANDUM OF UNDERSTANDING, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all cost, attorneys' fees and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. In case any action or proceeding is brought against Landlord by reason of such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause; and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in

case of casualty or accidents on the Premises. Tenant has no workers compensation benefits for any injury or harm suffered as a result of any incident or accident that may occur as a result of Tenant's personal use of the Premises. This paragraph shall survive the expiration or termination of this MEMORANDUM OF UNDERSTANDING.

14. Rules and Regulations. Tenant shall faithfully observe and comply with all rules and regulations that Landlord shall from time to time promulgate and/or modify regulating use and occupancy of the Premises. The rules and regulations shall be binding upon the Tenant upon delivery of a copy of them to Tenant.

15. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof or upon termination of the MEMORANDUM OF UNDERSTANDING by the Landlord as provided herein without the express written consent of Landlord, then Tenant's occupancy shall be deemed that of a Tenant at will and in no event a Tenant from month to month.

16. Entry by Landlord. Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to repair the Premises and any portion of the building of which the Premises are a part that Landlord may deem necessary or desirable. For each of the aforesaid purpose, Landlord shall at all times have and retain a key with which to unlock all the doors in, upon and about the Premises, and Landlord shall have the right to use all means which Landlord may deem proper to open said doors in an emergency, to obtain entry to the Premises without liability to Tenant.

17. General. The following shall apply to this Memorandum of Understanding:

(a) The invalidity or unenforceability of any clause or provision of this Memorandum of Understanding shall not affect or render invalid or unenforceable any other clause or provision hereof;

(b) Any action or proceeding arising out of the subject matter of this Memorandum of Understanding shall be brought by Tenant within one year after the cause of action has occurred and only in a state court in Kingsport, Tennessee;

(c) This Memorandum of Understanding is made and delivered in the state of Tennessee, and shall be interpreted, construed, and enforced in accordance with the laws thereof;

(d) This Memorandum of Understanding is the result of negotiations between parties of equal bargaining strength, and shall constitute the entire agreement between the parties, superseding all prior oral and written agreements, representations, statements and negotiations relating in any way to the subject matter herein. This Memorandum of Understanding may not be extended or amended except by written agreement signed by both parties, or as otherwise provided herein, and no other subsequent oral or written representation shall have any effect hereon;

(e) Notwithstanding any other statements herein, Landlord makes no warranty, express or implied, concerning the suitability of the Premises for Tenant's intended use;

(f) Tenant agrees that if Landlord does not deliver possession of the Premises as herein provided for any reason, Landlord shall not be liable for any damages to Tenant for such failure, but Landlord agrees to use reasonable efforts to deliver possession to Tenant at the earliest practical date;

(g) Landlord shall not be liable for any special, incidental, indirect or consequential damages, arising out of or in any manner connected with performance or nonperformance under this Memorandum of Understanding, even if any party has knowledge of the possibility of such damages;

(h) The headings and captioned in this Memorandum of Understanding are for convenience only and shall not be considered part of the terms hereof;

(i) Tenant shall conform to all rules and regulations now or hereafter made by Landlord for parking, for the care, use or alteration of the building, its facilities and approaches, and for the administration of this Memorandum of Understanding, and shall not permit any visitor or invitee to violate this or any other covenant or obligation of Tenant;

(j) Landlord and Tenant hereby waive any and all rights to a jury trial in any proceeding in any way arising out of the subject matter of this Memorandum of Understanding.

18. Changes. This MEMORANDUM OF UNDERSTANDING shall constitute the entire MEMORANDUM OF UNDERSTANDING between the Parties hereto. This MEMORANDUM OF UNDERSTANDING shall not be altered, or in any way modified unless by written consent of the Parties.

[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 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 7th day of February, 2023.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY