

RESOLUTION NO. _____

A RESOLUTION APPROVING A DEVELOPER AGREEMENT
WITH MICHAEL BARE FOR THE INSTALLATION OF SEWER
INFRASTRUCTURE FOR THE BANCROFT CHAPEL ROAD
DEVELOPMENT AND AUTHORIZING THE MAYOR TO
EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS
NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE
OF THE AGREEMENT

WHEREAS, Mr. Michael Bare (Developer) has requested annexation of approximately 10 acres located at 226 Bancroft Chapel Road and being more particularly described as Tax Parcel ID No. 032 149.00 in Sullivan County, Tennessee; and

WHEREAS, Developer intends to develop a 45 lot single family subdivision on said property; and

WHEREAS, while the site is currently served by a public water utility there is no sanitary sewer service available, which would need to be extended approximately 1,300 feet from its current terminus near the intersection of Bancroft Chapel Road and East Stone Drive; and

WHEREAS, the cost to extend the sanitary sewer to the property is estimated to be \$375,000.00; and

WHEREAS, as this sanitary sewer extension is necessitated by Developer's requested annexation and development of the aforementioned property, Developer has agreed to provide surety to secure the city's costs in extending the sanitary sewer in proportion to the nature and extent of the impact of the development on the city; and

WHEREAS, the amount of surety will be reduced in proportion with the number of residential units issued a certificate of occupancy with the development to be completed within five years unless otherwise agreed to between Developer and city.

Now therefore,

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

SECTION I. That the Subdivision Development Agreement for Utilities with Michael Bare for the provisions of sanitary sewer infrastructure to service his property along Bancroft Chapel Road, 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, Subdivision Development Agreement for Utilities with Michael Bare 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:

SUBDIVISION DEVELOPMENT AGREEMENT
FOR UTILITIES

This Subdivision Development Agreement (hereinafter Agreement) is entered into this ____ day of _____, 2025 by _____ and _____ (hereinafter Developer) and _____ (hereinafter City) relative to the construction of necessary public infrastructure improvements directly related to an approved development more fully described herein.

WITNESSETH:

WHEREAS, Developer is the owner of real property situated along Bancroft Chapel Road in the 10th Civil District of Sullivan County, Tennessee as evidenced by a Warranty Deed recorded in Deed Book 3623, Pages 1485 – 1488 and which is more fully described therein, bearing Tax Parcel ID No. 032 149.00; and

WHEREAS, Developer desires to develop the property as a residential subdivision and in conjunction therewith requested its annexation into the corporate limits of City; and

WHEREAS, Developer's owner requested annexation of the property was approved by the board of mayor and aldermen via Ordinance Number _____; and

WHEREAS, Developers development plan provides for 40 units of single-family housing (hereinafter the Project); and

WHEREAS, the Development Plan for the Project was approved by the City of Kingsport Regional Planning Commission on the ____ day of _____, 2025 pursuant to *Tennessee Code Annotated Title 13, Chapter 3* and the Subdivision Regulations of the City of Kingsport (hereinafter Sub-Regs); and

WHEREAS, in order to provide for the health, safety, and welfare of future residents of the Project, it will be necessary for certain improvements to the City's public infrastructure, including but not limited to its utility system, within and to serve the Project; and

WHEREAS, in addition to those improvements required to be made pursuant to the Sub-Regs this project will require the extension of public sewer to the Project, the site for which is not currently being served as it lies outside of the corporate limits of City; and

WHEREAS, Developer has agreed to not only make those improvements required in the Sub-Regs but to also reimburse City for its costs in extending the necessary sanitary sewer infrastructure to service the Project in accordance with the terms and conditions set forth herein; and

WHEREAS, as City's Utility Division is statutorily required to be self-sustaining its rates, fees, and charges need be necessary so that public works projects be and remain self-sustaining to include costs of operation and maintenance of public works infrastructure; and

WHEREAS, the development of a sufficient number of residential housing units is necessary for the city to recoup through sufficient rates, fees, and charges funds to cover expenses of installation, operation, and maintenance of the sewer lateral main as well as other related infrastructure.

NOW THEREFORE, for good and adequate consideration the sufficiency and exchange of which is hereby acknowledged, Developer and City agree as follows.

1. **INFRASTRUCTURE TO BE CONSTRUCTED:** The parties acknowledge and agree the current site of the Project is not served by sanitary sewer and that based upon surrounding properties there is no immediately foreseeable need for public sewer service to be extended from its nearest terminus to the vicinity of the site. Developer shall therefore be responsible as follows:

a. The necessary sanitary sewer main must be extended roughly 1,300 linear feet from its current terminus at manhole 1741 situated northerly from the intersection of Bancroft Chapel Road and United States Highway 11-W.

b. City reasonably estimates based upon current market prices and its construction standards the cost for the installation of the aforementioned sanitary sewer to be \$375,000.

c. Based upon the Project plans Developer will construct 40 single-family units which will provide sufficient service demands to adequately provide for the recoupment of City's cost for the extension of the sanitary sewer main line.

d. For every single-family unit less than the number of units specified on the approved subdivision plans Developer shall pay to City the sum of \$9,331.2 for each residential unit constructed less than 40. By way of example, should Developer only construct 39 single-family residential units it shall pay to the City \$9,331.20.

2. **DEVELOPER TO PROVIDE SURETY:** Developer agrees to provide surety as follows:

a. To secure through a letter of credit or other acceptable surety as approved by City and as payable to City, sufficient surety for the cost of the sanitary sewer main infrastructure in the amount of \$375,000 to be held by City as security until final approval is issued for the Development. (hereinafter Surety).

b. Said Surety shall be provided to City within 5 business days of a contract being let by the board of mayor and aldermen for the construction of the sanitary sewer main.

c. The Surety shall be valid for a minimum period of 5 years with an additional redemption period of six months for City to initiate, if necessary, the collection on the Surety.

d. City will permit Developer to reduce the amount of surety for every ten residential units completed in an amount equal to the pro rata share for each residential unit set forth in Section 1. d. hereinabove. For purposes of this subsection 2.d. a residential unit shall be deemed completed upon the installation and approval of a sewer tap for the residential unit.

e. Upon completion of the Development with the requisite number of residential units and City's approval of the Development and acceptance of all necessary infrastructure accepted, the Surety shall be returned to Developer.

f. If within 5 years of execution of this Agreement Developer shall fail to complete the Development or fails to construct the requisite number of residential units City shall have, at its sole decision the option to either:

i. Pursuant to an amended agreement, extend the Surety on a year-by-year basis to allow for the completion of the Development or construction of the requisite number of residential units; or

ii. Collect the full amount of the Surety for use by City. Should City elect to collect the full amount of the Surety, City shall be allowed to utilize the funds from the Surety to recoup its costs for the installation of the sanitary sewer main or to complete the installation or construction of any other necessary infrastructure within the Development.

g. Upon recoupment of City's costs or completion of necessary work any remaining Surety funds shall be reimbursed to the Developer or indemnitor which paid out the funds.

3. **EASEMENTS:** Developer agrees to execute any easements and/or rights-of-way reasonably required by City in order to perform the work contemplated by this Agreement or otherwise necessary for public infrastructure within the Development or to provide future maintenance on said work within the Development after the work is completed. Said easements will be provided by Developer to City at no cost and shall be made whenever in City's discretion such is deemed necessary, even before City commences any work contemplated by this Agreement. City and Developer agree that City may need further easements and/or rights-of-way that allow for the extension of public infrastructure within the Development. City and Developer agree to negotiate in good faith to allow City to acquire further easements from Developer to extend public infrastructure to adjoining properties in the future.

4. **DEVELOPER'S STIPULATION TO AN ESSENTIAL NEXUS WITH GOVERNMENTAL INTEREST AND PROPORTIONALITY OF PAYMENT TO THE EXTENT OF IMPACT BY THE DEVELOPMENT:** DEVELOPER UNDERSTANDS, AGREES, AND STIPULATES THAT THE SITE OF THE DEVELOPMENT WAS NOT CONTAINED WITHIN THE CORPORATE LIMITS OF THE CITY PRIOR TO DEVELOPER'S REQUEST FOR ANNEXATION. AS SUCH THE SITE WAS NOT SERVED BY CITY SANITARY SEWER SERVICE AND THE ONLY NEED FOR THE EXTENSION OF SANITARY SEWER SERVICE IS THE PROJECT UNDERTAKEN BY DEVELOPER. FURTHERMORE, CITY IS REQUIRED BASED ON THE PUBLIC HEALTH, SAFETY, AND WELFARE TO PROVIDE RESIDENTS OF CITY WITH SANITARY SEWER SERVICE WHICH IS A LEGITIMATE LOCAL GOVERNMENTAL INTEREST. DEVELOPER HAS VOLUNTARILY AGREED TO THE ALLOCATION OF COST FOR THE EXTENSION OF SANITARY SEWER AS PROVIDED FOR IN THIS AGREEMENT AS AN INDUCEMENT TO CITY TO ANNEX THE PROPERTY UPON WHICH THE PROJECT WILL BE SITUATED, AS CITY IS NOT LEGALLY REQUIRED TO ANNEX SAID PROPERTY. AS SUCH, DEVELOPER UNDERSTANDS, AGREES, AND STIPULATES THAT THERE IS AN ESSENTIAL NEXUS BETWEEN THE PAYMENT BY IT PURSUANT TO THIS AGREEMENT WITH A LOCAL GOVERNMENTAL INTEREST AND THE PAYMENT IS PROPORTIONAL IN BOTH NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT. TO THE EXTENT NOT PROHIBITED BY LAW, DEVELOPER WAIVES ANY RIGHT TO CHALLENGE THE ESSENTIAL NEXUS BETWEEN THE PAYMENT REQUIRED HEREIN WITH THE LOCAL GOVERNMENTAL INTEREST OR THE PROPORTIONALITY OF THE PAYMENT. TO THE EXTENT SUCH CLAIM IS DEEMED UNWAIVABLE, THIS PROVISION SHALL BE CONSTRUED AS DEVELOPER'S ADMISSION AND STIPULATION THAT AN ESSENTIAL NEXUS EXISTS BETWEEN THE REQUIRED PAYMENT AND A GOVERNMENTAL INTEREST AND THAT SAID PAYMENT IS PROPORTIONATE TO THE IMPACT OF THE DEVELOPMENT.

5. **DEFAULT BY DEVELOPER AND TERMINATION:** If through any cause, the Developer shall fail to fulfill in timely and proper manner Developer's obligations under this Agreement, become insolvent, or if Developer shall violate any of the covenants, agreements or stipulations of this Agreement, City shall deliver written notice of the same to Developer and if such failure or violation is not cured within ten days thereafter (or such longer period of time as is reasonably necessary so long as Developer begins to cure such failure or violation within such ten-day period and thereafter

diligently pursues the same to completion), City shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If City elects to terminate under this provision, City shall have the right to collect on the Surety as provided for herein even if the time for completion has not yet expired.

6. **DEFAULT BY CITY AND TERMINATION:** If through any cause City shall fail to fulfill in timely and proper manner City's obligations under this Agreement, or if City shall violate any of the covenants, agreements or stipulations of this Agreement, the Developer shall deliver written notice of the same to City and if such failure or violation is not cured within ten days thereafter (or such longer period of time as is reasonably necessary so long as City begins to cure such failure or violation with such ten-day period and thereafter diligently pursues the same to completion), the Developer shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If developer elects to terminate under this provision, Developer shall be responsible to City for all actual costs in the completion of the sanitary sewer main. Termination of this Agreement shall be the sole and exclusive remedy for any default by City under this Agreement.

7. **SOVEREIGN IMMUNITY:** In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City's defenses with regard to sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.

8. **JURISDICTION AND VENUE:** This Agreement shall be taken and deemed to have been fully executed and made by the Parties herein and governed by the laws of the State of Tennessee for all purposes and intents. Venue under this Agreement or any disputes that come from it shall be in the law court at Kingsport, Tennessee or United States District Court for the Eastern District of Tennessee, Northeastern Division. Further, Developer and City waive any right to a trial by jury.

9. **DISPUTE:** In the event that City is the prevailing party in any litigation arising out of or relating to this Agreement, City shall be entitled to all reasonably attorneys' fees and expenses incurred.

10. **LIABILITY:** Nothing in this Agreement shall be construed to create any liability on behalf of City for any direct, special, indirect, liquidated, or consequential damages.

11. **TRANSFERABILITY:** Developer agrees to not transfer the property on which the Development is to be located without first providing City with written notice. Any transferee shall enter into an assumption agreement with City accepting the terms and conditions set forth herein to include the provision of adequate surety for the costs of extending the sanitary sewer main line. Developer understands and agrees that if Developer transfers the property without notifying City and ensuring transferee enters into an assumption agreement such shall constitute a breach of this Agreement and City may enforce any of its rights hereunder including but not limited to executing on the surety provided. Developer shall be permitted to transfer any subdivided lots upon which a single-family residential unit has been constructed and for which a certificate of occupancy issued by the Building Division of the City of Kingsport.

12. **NO PRESUMPTION AGAINST DRAFTER:** This Agreement shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. For purposes of interpreting this Agreement City and Developer are of equal strength and sophistication with regards to the subject matter of the Agreement and bargaining power. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

13. **SEVERABILITY:** Should any part, section, paragraph, sentence, or clause of this agreement be deemed unenforceable or unconstitutional by a court of competent jurisdiction the remainder of the agreement shall remain valid and of full force and effect.

14. **AMENDMENT:** Unilateral modification or amendment of the Agreement by Vendor is prohibited and any provision permitting such by Vendor is not applicable to City. Any amendment or modification of the Agreement or this Addendum is binding only if it is in writing and properly executed by the signatures of authorized representatives of the parties hereto, including attestation by City's city recorder and approved as to form by City's city attorney.

[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 16th day of September, 2025.

PAUL W. MONTGOMERY, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY