

THE PARK HILLS CITY COUNCIL HELD A BUSINESS MEETING ON MONDAY, OCTOBER 8, 2018 AT 7:00 P.M. AT ST. JOSEPH HEIGHTS, 1601 DIXIE HIGHWAY, WITH MAYOR MATTHEW MATTONE PRESIDING  
COUNCILMEMBERS PRESENT: KATHY ZEMBRODT, PAM SPOOR, JASON RESER, GREG CLAYPOLE, STEVE ELKINS AND KARL OBERJOHN  
ALSO PRESENT: CITY ATTORNEY, TODD MCMURTRY AND CITY ENGINEER, JAY BAYER

Call to Order

Pledge of Allegiance

Roll Call

Motion to approve the September 10 and September 24, 2018 meeting minutes was made by Ms. Spoor; second by Ms. Zembrodt. Roll call: all ayes

I. Petitioners

A. Joe Michels, Michels Construction, was at the meeting to discuss the North Arlington Road project. He said it is their goal to have the project completed by the end of the year. Many of the delays, he stated, are out of their control. There were setbacks at the beginning. Duke had to come in and do their work and then Michels came in and did their section of work. The NKWD had a contract with a separate contractor to do the water work and now Michels is back doing the street. By the end of the week the lower section will be blacktopped. He relayed the upcoming scheduled work. He stated there will be some traffic restrictions. Mr. Elkins stated he spoke with Mr. Michels about the interim condition of the road and how to make it better. He stated he sees Mr. VonHandorf doing his best to make it better but the dust issue right now is brutal. Mr. Michels stated he will bring a water truck to the project twice a week to alleviate some of the dust. Mr. Michels said they would address the divots and holes in the street; this has still not been done. Mr. Elkins asked Mr. Oberjohn what makes the Arlington project so much different from the Aberdeen project. Mr. Oberjohn replied he believes the schedule being stretched out due to the weather is a major difference and contractors showing up late and finding some challenging conditions. He stated other projects in the city moved along more quickly giving residents less time to get frustrated. Mr. Oberjohn stated the concern at the beginning of the Arlington project was if extra money was used for asphalt patching to control the dust, it would hold the contractors up. He said the opposite of that happened but that the thought was to error on the side of caution. Mr. Elkins was not aware this was considered. Ms. Spoor reiterated the need to control the dust especially for those with medical issues such as asthma. Mr. Michels stated the job foreman has been meeting with residents about the dust and their medical issues. He believes the water truck will help.

II. Resolution No. 2, 2018 approving the Park Pointe Development Agreement was read by Mr. McMurtry. Motion to accept Resolution was made by Ms. Zembrodt; second by Mr. Claypole. Roll call: all ayes

III. Motion to amend the agenda to include the discussion of Resolution No. 10, 2018 along with Resolution No. 9, 2018 was made by Ms. Spoor; second by Ms. Zembrodt.

Roll call: all ayes

Mr. McMurtry explained that it was necessary to pass both Resolutions at the same time. Resolution No. 9 authorizes the city to enable Condoview, LLC to obtain Industrial Revenue Bonds (IRB). Resolution No. 10 concludes this agreement is in the best interest of the residents. Mr. McMurtry stated the Development Agreement was seen in closed session and this is the first time it will be shown/read to the public. Mr. Zeltwanger, Mayor Mattone, Mr. Bayer and Mr. McMurtry came up with an agreement that will move along the development and also be attractive to Park Hills.

Mr. McMurtry stated the high points as:

- The City will receive a new Amsterdam Road, approved by Jay Bayer, with at least a 20 year lifespan.
- The City will offload the parcels it owns along Amsterdam for more than anticipated.
- The Developer will bolster Hamilton Road with savings to the City of approximately \$100,000.
- The new development will increase the City's tax base by over \$100,000 per annum – more than enough to offset the costs of the future road maintenance and repair.
- The City will receive a beautified Amsterdam Valley with a new bike path that can connect with the pathway in Trolley Park.
- Other than the time spent by elected officials, the Developer will compensate the City for its fees and costs associated with creation and implementation of the agreement.

Dirt will be taken from the former Gateway site to grade and landscape Amsterdam Valley. The street will go from 2 one-way streets to 1 two-way street. Hamilton Road, on the lower Amsterdam side, will be bolstered by the developer to stabilize the hillside. Mr. McMurtry stated the first part of action is to pass Resolution No. 9 authorizing the city to cooperate with Condoview, LLC regarding the IRB. The second part is the approval of the development agreement by passing Resolution No. 10 stating the City of Park Hills negotiated the agreement with Condoview, LLC and agrees it is in the best interest of the residents and authorizes the Mayor to sign. Mr. McMurtry went over the key parts of the agreement (which can be found in its entirety as an addendum to the minutes). Mr. McMurtry believes it is a good agreement.

Ms. Spoor asked if there was a start and completion date for Amsterdam Road. Mr. McMurtry stated the language would give so many days just as in other street projects the city has done. Discussion took place regarding the Amsterdam Road timeline. Mr. McMurtry stated a schedule would be worked out once it is decided if Amsterdam needs a mill & overlay type fix or a deep fix. Mr. Bayer will have a geotech do their study on Amsterdam and then Bayer Becker will be able to make a recommendation.

Mr. Elkins noticed in the performance bond, it shows a July 31<sup>st</sup> deadline. Mr. McMurtry stated he spoke with Mr. Zeltwanger and it will be changed to December 31<sup>st</sup>.

Ms. Spoor asked if Covington's participation is necessary for the closure of Amsterdam's north bound lane. The Mayor said it will be discussed at Covington's business meeting tomorrow but added that Mr. Zeltwanger felt there would be no issues with Covington. Mr. David Gray asked who would maintain the street. Mr. McMurtry replied it would be maintained the same as any other street in the city. Mr. Miller, Hamilton resident, is worried about possible water drainage issues affecting his property due to the project. Mayor Mattone stated SD1 approves the grading plans and should ensure that properties are protected. The Stage 2 development has not been presented or approved yet. Mr. Bayer said he would be happy to discuss with Mr. Miller.

Resolution No. 9, 2018 was read by Attorney McMurtry. Motion to accept Resolution was made by Ms. Zembrodt; second by Mr. Claypole.

Mr. Elkins asked what the advantages and/or disadvantages are by not passing the Resolutions this evening. Mr. McMurtry stated it would delay the geotech work on Amsterdam. Mr. Reser stated that since there is no big drawback to voting on this at a Special Meeting, he made the motion to lay Resolutions No. 9 and 10, 2018 on the table to be read at a Special Meeting before the next Caucus Meeting. Roll call: Ms. Spoor; abstain, Ms. Zembrodt; aye, Mr. Reser; aye, Mr. Claypole; aye, Mr. Elkins; aye, Mr. Oberjohn; aye. Motion carried.

#### IV. Department Reports

##### A. Police Department – Chief Cody Stanley

Chief Stanley emailed his report prior to the meeting. Ms. Spoor asked if the speed sign could be put back up on Amsterdam Road. Chief Stanley stated he would.

##### B. Fire Department – Chief John S. Rigney

Chief Rigney's monthly report included the following:

- A total of 43 calls for service were received during the month of September. The incidents are broken down by type on the activity report Council received.
  - Fall hydrant flushing in residential areas has been completed.
  - New HVAC unit installed in rear FD bay and dorm area.
  - Emergency Generator transfer switch replaced.
  - October is Fire Prevention Month, and the FD will be hosting its annual "Halloweenies" on Halloween night from 6:00 – 8:30 p.m.

This year the Chief will look into getting some port-o-lets for the event

##### C. Public Works – Dan VonHandorf

Mr. VonHandorf thanked Mayor and Council for another month.

- Duke's subcontractor is back after helping with the hurricane work and is now working between Lawton and Amsterdam Roads.
- Mr. VonHandorf received some left over gravel to put on the trolley tracks for the utility workers.
- After the electric contractors finish up they will come in and switch out poles
- North Arlington Road is moving along

- There will be two wagons available for this years' Pumpkin Parade.

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- Mr. VonHandorf is getting estimates to replace the bay door in the rear of the FD

D. City Engineer – Jay Bayer

Mr. Bayer's written report contained the following:

**Projects in construction phase:**

**N. Arlington Road project**

Michels has started reconstruction of the roadway. Reconstruction has started at Dixie Highway and will progress to Old State Road. Curb and gutter is currently being constructed from Dixie Highway to around the bend. It is anticipated that this section will have asphalt base in the next 2 weeks. The project is scheduled for completion this fall.

**Projects in design phase:**

**Jackson Road Improvement Project**

Easement negotiations are anticipated to be complete soon. Geotechnical exploration should begin as soon as easement negotiations are complete. Bayer Becker has presented plans to the Infrastructure Committee showing an alternate curb section and sidewalk location.

**Private projects in the city:**

**Gateway Development (aka Park Pointe)**

A pre-application meeting occurred on July 12<sup>th</sup> at the PDS to discuss the preliminary plat for the project. The NKWD plans to replace their water main along Amsterdam Road with the project.

**Audubon Forest Project**

The contractors are constructing the storm and sanitary sewers in conjunction with the site grading.

Mr. McMurtry brought up the Memorandum of Understanding between Park Hills and the SD1 regarding the Jackson Road easements. Motion to authorize the Mayor to enter into the agreement was made by Ms. Spoor; second by Ms. Zembrodt. Roll call: all ayes

E. Treasurer's Report – Julie Alig

Motion to accept the financial reports for August and September was made by Mr.

Oberjohn; second by Mr. Reser. Roll call: all ayes

Motion to pay the Road Fund invoices in the amount of \$7,485.00, the Vehicle Fund invoices in the amount of \$4,149.96 and the Municipal Road Fund invoices in the amount of \$331.02 was made by Mr. Reser; second by Ms. Spoor. Roll call: all ayes

V. Committee Reports

A. Infrastructure – Karl Oberjohn

- North Arlington Road – discussed earlier in the meeting
- Lower Jackson Road – The committee met last week. Bayer Becker is working on another sidewalk design which would leave a planting strip. Two residents have retaining walls close to the street so the sidewalk will not be perfectly straight. Mr. Oberjohn would like to get more resident feedback. Instead of rolled curbs, a

box curb could be used due to driveway grades. The sanitary sewer line will not be upgraded as SD1 does not support it.

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- The PDS did a sidewalk and sign study for the city. Mr. Oberjohn stated it was put online last week. He will have it put in a useful format for the city engineer and public works director.

Ms. Zembrodt asked when Jackson Road would be ready to bid. Mr. Bayer replied it will be 6 – 8 weeks before the geotech report is back.

#### B. Communications – Karl Oberjohn

Mr. Oberjohn would like articles for the winter newsletter by November 1<sup>st</sup>.

Mr. Oberjohn inquired about digitalizing the legislation in the clerk's office. Ms. Alig replied she would get with Stephanie from Mr. McMurry's office once tax season dies down.

Motion to enter into contract with Geotech not to exceed \$7,300 was made by Ms. Spoor; second by Mr. Elkins. Roll call: all ayes

#### C. Historic Preservation – Pam Spoor

Ms. Spoor stated the Northern KY Heritage League Tour was well attended with 120 people and a great talk was given by Mr. Tenkotte. She stated Park Hills showed itself well.

#### VI. Old Business – None

#### VII. New Business

A. Mayor's Group Meeting is scheduled for Saturday, October 20<sup>th</sup> at 9:00 a.m. in Ft. Mitchell.

B. Board of Adjustment Meeting is scheduled for Thursday, October 18<sup>th</sup> at 6:30 p.m. at the City Building to discuss the demolition and new home construction at 1148 Breckenridge.

C. NDA's meet the candidates public candidate forum is scheduled for Tuesday, October 23<sup>rd</sup> from 7-9 p.m.

8:59 Motion to adjourn from Business Meeting was made by Mr. Elkins; second by Mr. Reser

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Mayor, Matt Mattone

ATTEST:

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City Clerk

## **DEVELOPMENT AGREEMENT**

This **DEVELOPMENT AGREEMENT** (hereinafter “Agreement”) is entered into by and between the **CITY OF PARK HILLS, KENTUCKY**, a Kentucky municipal corporation and city of the home rule class (hereinafter “City”), and **CONDOVIEW LLC**, a Kentucky limited liability company (hereinafter “Developer”).

**WHEREAS**, Developer has purchased the Property in Park Hills, which is in part the former Gateway Community College campus;

**WHEREAS**, the Developer wishes to develop the Property into a single family home subdivision to be known as Park Pointe (the “Development”);

**WHEREAS**, Developer has submitted a Stage 1 Development Plan approved by the City with conditions;

**WHEREAS**, the City owns parcels of property integral to successful development of the Property, including but not limited to, a portion of Patton Drive and parcels adjacent to Amsterdam Road;

**WHEREAS**, the City has an interest in the development of the Property because it will result in increased tax revenue and other benefits for the City.

**NOW, THEREFORE**, based upon the mutual covenants and promises herein contained, and other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows.

### **SECTION I. DEFINITIONS.**

- 1.1. “City” shall mean the City of Park Hills.
- 1.2. “City Council” shall mean the Park Hills City Council.
- 1.3. “Developer” shall mean CondoView LLC, a Kentucky limited liability company.
- 1.4. “Development” shall mean the Park Pointe residential development to be located on the Property, as described in the Developer’s Stage I Application.
- 1.5. “PDS” shall mean Planning and Development Services of Northern Kentucky.
- 1.6. “Planning Commission” shall mean the Kenton County Planning Commission.

1.7. "Property" shall mean the properties commonly known as 1025 Amsterdam Road, Park Hills, Kentucky, being PIDNs 041-30-00-014.00 and 041-30-00-035.31 and 041-30-00-035.00 and 041-30-00-035.01, which are proposed for redevelopment, as further described in in the Developer's Stage I Application. See **Exhibit A**.

1.8. "Stage I Application" shall mean the Application submitted by the Developer to PDS and the Planning Commission on or about April 5<sup>th</sup>, 2018, including all supporting materials.

1.9. "Stage II Application" shall mean the Stage II Development Plan Review that Developer intends to submit to PDS and the Planning Commission, including all supporting materials.

1.10. "Development Plan" shall mean those plans, drawings, and specifications which have been approved by the City and which are attached hereto as Exhibit B and incorporated herein by reference.

## **SECTION II. SALE/EASEMENT/AND OTHER CONSIDERATION GIVEN BY THE DEVELOPER.**

### **2.1 Reconfigured Amsterdam Road.**

(A) Developer shall construct the newly reconfigured Amsterdam Road, as set forth in the Development Plan. The reconfigured Amsterdam Road shall be in compliance with all street and road specifications and requirements of the City, including associated storm infrastructure. Prior to issuing requests for bids for the construction work associated with reconfigured Amsterdam Road, the Developer shall work with the City via the City's Engineer to design and document with detailed plans, drawings and specifications for the reconfigured Amsterdam Road for advance approval by the City. The scope of the construction project for reconfigured Amsterdam Road shall include, but not necessarily be limited to, new construction and widening of relocated Amsterdam Road to a two-way street, including installation of appropriate storm-water management solutions, construction of the asphalt path set forth in Section 2.3 hereof, new landscaping and a tree removal/tree replacement plan, a new entry sign for Park Hills to be located where the VFW Hall is currently situated, and reasonable reserves for contingencies. Additionally, the specifications for newly reconfigured Amsterdam Road shall be satisfactory to the City and its engineers and other professional advisors indicating that such specifications will provide a public street with a minimum life span of twenty (20) years after completion, and which life span shall be capable of expansion for another 10-15 years by application of industry standard overlay work. The Developer shall pay the costs and expenses of the reconfigured Amsterdam Road, including the engineering, design, construction, and administration costs associated therewith according to the amounts and not to exceed thresholds as outlined in Section 2.9 of this Agreement.

(B) The newly configured Amsterdam Road will extend from the current intersection of the southbound lane Amsterdam Road and Montague Road north to where the road currently splits.

(C) As a part of the construction of the reconfigured Amsterdam Road, the Developer will purchase the Property from the City for \$100,000, as stated in paragraph 2.12. However, if City, based upon the recommendation of its engineer and the applicable geotechnical reports, reasonably concludes that the only way to reconfigure Amsterdam Road is to remove the entire existing roadway and then to build an entirely new roadway, then the City will convey the Property to the Developer for \$1.00.

(D) Construction Schedule and Security for Completion. Developer shall use its best efforts to complete construction of the improvements associated with newly reconfigured Amsterdam in the following sequence and within the allotted time periods:

(1) First, northbound Amsterdam Road to be vacated not later than 45 work days after City closes it for use by the general public;

(2) Second, City shall sell and transfer to Developer the Property not later than 30 work days after northbound Amsterdam Road is vacated;

(3) Third, southbound Amsterdam Road will be newly constructed and widened not later than 50 work days following the sale and transfer of the real property described in Section 2.12;

(4) Fourth, the buttressing of the toe slopes below Hamilton Road pursuant to Section 2.10 of this Agreement shall be completed not later than 75 work days following the widening of southbound Amsterdam Road; and

(5) Fifth, Developer shall construct and install the bicycle pathway/trail described in Section 2.3 of this Agreement, together with landscaping, signage, and lighting, not later than 30 work days after the Hamilton Road buttressing work is completed.

“Work days” as used herein mean days when at least 8 hours of work can be performed without interruption from weather events.

A Performance Bond shall be obtained by the Developer in such amounts as to secure and guarantee the full, final, and unconditional completion of construction of newly reconfigured Amsterdam Road. The Performance Bond shall be issued for the benefit of the City and the City shall be named as its beneficiary. The Performance Bond shall be obtained at the sole cost and expense of the Developer. The Performance Bond shall be in the amount of the contracted cost to complete the reconfigured Amsterdam Road and shall include an additional ten percent (10%) for contingency.

Notwithstanding anything to the contrary set forth in this Agreement, if the Developer shall fail, for any reason, to fully and finally complete construction of the newly reconfigured and reconstructed Amsterdam Road by December 31, 2019, such a failure shall be deemed a default under this Agreement, and in addition to any other rights or remedies the City may have hereunder, or at law or in equity, the City may immediately proceed to enforce the Performance Bond and may complete the construction using its own contractors and workforce (in which event Developer shall reimburse to the City any costs and expenses it incurs in doing so), and the Developer shall pay to the City damages for such delay in the amount of \$1,000 per day for each day beyond December 31, 2019, that the newly reconfigured and relocated Amsterdam Road is not fully and finally completed.

(E) Intentionally Omitted.

(F) Those portions of old Amsterdam Road which are vacated and/or disturbed as a result of constructing reconfigured Amsterdam Road shall be seeded with grass and landscaped by Developer, at its sole cost and expense, in accordance with landscaping plans and a construction schedule which are to be approved in advance by the City and shall be consistent with the drawings and presentation made to the City. All such vacated and/or disturbed areas must be filled with appropriate amounts and types of dirt and/or topsoil until growth of heavy turf has been stabilized. All erosion control measures shall be provided, maintained, and properly documented by the Developer pursuant to SD1 requirements. The Developer must obtain the City's approval of its final landscape and grading plan, which approval shall not unreasonably be withheld.

(G) After completion of construction of reconfigured Amsterdam Road, and if the City shall elect in its sole discretion, then Developer shall purchase from the City, for \$1.00, those excess parcels of land underlying the vacated portions of old Amsterdam Road, and which are not located in the new right-of-way underlying the reconfigured and relocated Amsterdam Road.

2.2 Pedestrian Access to North Arlington Road. Developer, at its sole cost and expense, shall construct a pedestrian access connection from the Development to North Arlington Road, as set forth in the Development Plan.

2.3 Walks and Trails and Bicycle Path. Developer agrees to construct, at its cost and expense, a multi-use bicycle pathway/trail at least 8 feet wide which shall be located along the reconfigured Amsterdam Road, the course and location of which shall be approved in advance by the City.

2.4 Old State Road. Developer, at its sole cost and expense, shall construct a vehicular access connection at the terminus of Old State Road sufficient to permit emergency and first-responder vehicles to access the Development from the Old State Road terminus, in accordance with the Development Plan. The emergency access connection shall be completed during the first phase of construction of the

Development. The emergency access connection shall be screened with landscaping, in accordance with landscaping plans to be approved in advance by the City.

2.5 Retaining Walls. Developer acknowledges and agrees, that in consideration of the City's approval of the Development and its execution of this Agreement, the City shall not assume any ownership, liability, or any other obligation associated with any existing or newly constructed retaining walls as part of the Development. All existing and newly constructed retaining walls shall be located outside of any right-of-way or utility easement under the jurisdiction of the City. All plans, plats and other drawings which are publicly recorded shall contain a statement that all maintenance, repair, and reconstruction of retaining walls are the responsibility of the private land owner or homeowners' association upon which such retaining wall is located.

2.6 Easements. If any roads, utilities, or any other improvements constructed as part of the Development should become owned by the City, or otherwise become subject to the jurisdiction of the City, then Developer agrees to grant to the City all necessary access and utility easements such that the City shall have the legal right to enter the Development for the purposes of maintaining and repairing such improvements. All such easements granted shall be in recordable form and shall be perpetual and irrevocable.

2.7 Reconfigured Patton Drive. Developer, at its sole cost and expense, and during the first phase of construction of the Development, shall construct the newly reconfigured and relocated Patton Drive and connect it to reconfigured Amsterdam Road, as set forth in the Development Plan. If such construction requires the City to convey its fee simple interest in any land required to provide the road-bed for newly reconfigured and relocated Patton Drive, then Developer shall purchase such land from the City at the price of \$1.00. Conveyance shall be by recordable quitclaim deed. The land deeded over to Developer shall include any existing or newly constructed retaining walls. Upon completion of the newly reconfigured and relocated Patton Drive to Amsterdam Road, Developer shall then subdivide the land adjoining newly reconfigured and relocated Patton Drive, as well as those portions of Street A and Street B and the cul-de-sac which are located within the city limits of Park Hills, into individual and buildable lots. All subdivision plats shall be approved in advance of recording by the City. The Developer shall deliver to the City a written certification from Developer's geotechnical engineer pursuant to Park Hills Zoning Code, Section 12.0, that all subdivided lots are compacted and graded appropriately to permit geotechnically sound and proper construction of residential homes. Patton Drive shall also be extended to the Old State Road terminus during the first phase of construction of the Development to allow emergency and first-responder access to the Development.

2.8 Use of Park Hills Property Along Amsterdam.

(A) The City will close the northbound portion of the existing Amsterdam Road and re-designate the southbound portion of Amsterdam as a two-way street.

(B) In return for the payment of \$1.00, the City will grant the Developer a grading easement over the northbound portion of the existing Amsterdam Road and the adjacent property the City owns. The Developer will be permitted to place dirt and soils from the Development site onto the City's property.

(C) Those portions of old Amsterdam Road which are disturbed as a result of the Developer's activities shall be seeded with grass and landscaped by Developer, at its sole cost and expense, in accordance with landscaping plans and a construction schedule which are to be approved in advance by the City. All such vacated and/or disturbed areas must be filled with appropriate amounts and types of dirt and/or topsoil until growth of heavy turf has been stabilized. Specifications for the placement of soils will be provided by the City's geotechnical engineer.

2.9 Fee Reimbursement. Upon the execution of this Agreement and at such later times as any such fees may be incurred by the City, the Developer shall reimburse the City for any and all fees and expenses incurred by the City in connection with the Development, including but not limited to, legal fees, attorneys' fees, engineering fees, and inspection fees, but subject to the following not to exceed limits: (a) reimbursement to the City for legal fees and engineering fees, and geotechnical fees<sup>1</sup> shall not exceed \$175,000.00, and (b) reimbursement to the City for street lighting costs shall not exceed \$25,000.00.

2.10 Hamilton Road. Developer, at its sole cost and expense, will take all necessary steps to buttress and bolster the toe of slope below Hamilton Road to alleviate all existing sliding on the road such that it will be buttressed and bolstered according to the geotechnical engineer's recommendation, provided that the Developer shall not be responsible for installation of piling if determined to be necessary. The City shall submit a plan to the Developer, based upon the City's geotechnical engineer's recommendation, which describes the work to be done. All clearing and grading work to be accomplished by the Developer. The City agrees to grant necessary grading easements for the placement of removed soil and dirt resulting from the buttressing work. The Developer agrees to reasonably restore landscaping to Hamilton upon completion of the work.

2.11 Intentionally Omitted.

2.12 Purchase of City Property. The City owns property located on the north end of Amsterdam Road and along Montague Road described above as the Property. The Developer agrees to buy these parcels from the City for \$100,000.00.

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<sup>1</sup> (b) Reimbursement to the City for geotechnical fees shall be for a study and report for widened Amsterdam Road from Parkvale Drive and newly constructed Patton Drive downward to the reconfigured intersection at Montague Road and for a study and report for the stabilization below Hamilton Road.

### **SECTION III. DEVELOPMENT PLAN.**

3.1 Stage I Application. Developer's Stage I Application shall constitute a Development Plan pursuant to KRS 100.111(8) and KRS 100.203(2). Developer agrees to be bound by the Development Plan. A copy of the Stage I Application/Development Plan is attached as **Exhibit A** and incorporated by reference.

3.2 Compliance With Development Plan. Developer shall comply in all material respects with the Development Plan; provided, however, PDS / Planning Commission shall be permitted to authorize minor adjustments to the Development Plan, including approved Stage II Plans, as it/they may determine, so long as the adjustments do not affect the spatial relationship of structures, change land uses, increase overall density, alter circulation patterns (vehicular and/or pedestrian), decrease the amount of and/or usability of open space and/or recreation areas, or affect other applicable requirements of the Park Hills zoning ordinance. Any homeowners' association established by Developer for the Development shall be restricted by Developer from taking any actions that are inconsistent in any material respects with the Development Plan, as may be amended in accordance with this Agreement from time to time.

3.3 Stage II Application. Developer shall submit a copy of its Stage II Application to the City for review and input by the City Council. For clarification purposes "review and input" used in this Agreement shall be deemed to limit the City's review and input as to its consistency with the approved Stage I Plan and shall not be deemed to require Developer to obtain the City's approval or delay Developer's submittal for approval by PDS and the Planning Commission until the City Council has provided input.

3.4 Subsequent Phases of the Development. Developer and City shall proceed in the same manner for approval of subsequent phases of the Development as is provided in Sections 3.3, 3.5, 3.6, 3.7, and 3.8 of this Agreement.

3.5 Development Plan Amendments. Developer shall submit any amendment to the Development Plan, including any amendments contained in the Developer's Stage II Plans, to the City for review and input by the City Council.

3.6 Amendments Approval Process. Notwithstanding the above or anything to the contrary set forth in this Agreement, City Council approval for the following amendments to the Development Plan, including through Stage 2 Plans, listed in this section are expressly not required, and the City agrees to permit/approve same; provided, however, the Developer shall submit the applications to the City Council for review and input prior to securing approval of the PDS and/or the Planning Commission:

(A) Modification or alteration of single-family housing layout, and/or designs, whether attached or detached.

(B) Any matters indicated on Stage II submissions as approved by PDS and/or the Planning Commission not specifically excluded in Section 3.7

3.7 Other Amendments. Any amendment to the Development Plan, other than those permitted pursuant to Section III of this Agreement, may be approved only as an addendum to this Agreement, executed by the City and the Developer. No approval shall be unreasonably withheld, conditioned or delayed.

3.8 Right to Object. To the extent that the Developer and City cannot agree on proposed revisions to the Stage II and other plans, the City reserves its right to object to PDS and/or the Planning Commission. Further, the City reserves its right to pursue other legal remedies available to it.

#### **SECTION IV. CONSTRUCTION.**

4.1 Construction Schedule. Developer and City will enter into an addendum to this agreement that will detail the construction schedule for the reconfigured Amsterdam Road. For construction of the Development, Developer will provide the City its good faith schedule upon request.

4.2 Construction Hours. Construction of the Development shall occur only between the hours of 7:00 a.m. and 7:00 p.m. Sounds emanating from construction sites outside the hours of 7:00 a.m. and 7:00 p.m. weekdays and 9:00 a.m. and 6:00 p.m. Saturdays and on Sundays or legal holidays are prohibited.

4.3 Clean-up. Construction cleanup and street-sweeping of debris caused by the Development work on Amsterdam Road and Patton Drive shall occur as required and directed by Sanitation District #1 or the City Public Works official.

4.4 Construction Ingress and Egress. Construction vehicles shall enter and exit the City by way of Amsterdam Road and Patton Drive. Construction vehicles shall not use any other residential streets for primary site access. All construction vehicles coming to and leaving the site of the Development must be in full compliance with all ordinances of the City relating to the weights of such vehicles.

4.5 Construction Trailer. The Developer's construction trailer shall be located on the Development site. Typical office hours for the construction trailer shall be 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

4.6 Model Unit Hours. Model residential units on the Property shall be open to the public only between the hours of 8:00 a.m. and 9:00 p.m.

4.7 Garbage Pickup. Developer shall arrange for adequate garbage pickup and trash and debris removal from the Development site on a regular basis to prevent the unsightly accumulation of waste materials.

4.8 Streets. At the time of the initial construction, the surface course will be applied to all Park Hills streets. After the construction of the last house in the Development or the payment of the IRB, whichever occurs first, the Developer or successor will mill and overlay the portions of Park Pointe Drive and Gateway Drive within the City.

4.9 Insurance. Developer shall maintain general liability insurance throughout the construction period in the amount of \$2,000,000 in primary insurance with a \$4,000,000.00 aggregate along with an umbrella policy for \$3,000,000.00. The City shall be named as an additional insured and/or loss payee under such policy. Upon request of the City, Developer shall provide a certificate of insurance evidencing the insurance coverages required under this Agreement. The Developer shall also carry and maintain unemployment and workers compensation insurance as required by applicable law.

4.10 Subcontractors. Developer shall require any and all subcontractors to comply with the requirements of Section IV of this Agreement. Also the Developer shall require all subcontractors to comply with Chapter 111 of the Park Hills Code of Ordinances titled Business Licenses and Occupational License Tax and Fees. Developer shall deliver to City a comprehensive list of all subcontractors performing work on behalf of Developer in connection with the Development.

4.11 Reporting. Commencing on the date of execution of this Agreement and until all street construction associated with the Development is fully completed and accepted by the City, Developer shall provide weekly written status reports to the City on Monday of each week detailing the progress of the construction and/or development. Reports should address the timeline and any anticipated obstacle to completion of the development within the timeframe contemplated in the Development Plan.

4.12 Developer's Default. Developer shall be in default of this Agreement, if it breaches this Agreement and such breach is not remedied within 30 days of Developer's receipt of written notice of same or, if such breach is unable to be cured within such 30-day period despite reasonable diligence, such later period as may be agreed to by the parties.

## **SECTION V. PUBLIC SERVICES AND PUBLIC ACCESS.**

5.1 Dedication of Streets. Only those portions of streets located within the city limits of Park Hills will be accepted by City.

5.2 Subdivision Regulations. Developer shall comply in all respects with applicable subdivision regulations in the construction of the Development.

## **SECTION VI. MISCELLANEOUS PROVISIONS.**

6.1 No Waiver. The delay or failure of any party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed as a waiver of the party to enforce such provision. The waiver of any breach or default or the delay or failure to exercise any right shall not operate as a waiver of any subsequent breach, default or waiver of the right to exercise any other right. This Agreement sets forth the entire understanding of the parties, there being no oral or other written agreements or understandings affecting the subject matter hereof, and supersedes all previous agreements and letters of intent relating to the subject matter of this Agreement.

6.2 Amendment. This Agreement may not be amended, modified or released without the written consent of both parties.

6.3 No Third-Party Beneficiaries. Neither this Agreement nor any provisions hereof shall be deemed or construed to create any rights in any third-party beneficiary, intended or unintended. Nor does this Agreement confer upon any third-party any benefit, right, claim, or cause of action by reason of the performance or non-performance of either of the parties to this Agreement.

6.4 Governing Law. This Agreement, the construction thereof, and the rights and obligations of the parties shall be governed by the laws of the Commonwealth of Kentucky. Any suit regarding its terms, construction, or enforcement shall be brought in Kenton County, Kentucky Circuit Court.

6.5 Successors and Assigns. This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their respective successor and assigns. This Agreement may not be assigned by Developer without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Developer may, without the consent of the City, assign its rights and/or obligations under this Agreement to its lender for the purpose of obtaining construction financing for the Development improvements, as long as such an assignment provides that the Developer remains liable for all its obligations under this Agreement, and the City will cooperate with any reasonable assignment request by a lender in connection with that financing.

6.6 Severability. If any portion of this Agreement shall be ruled or adjudicated invalid by a court of competent jurisdiction or as a result of legislative or administrative action for any reason, such holding or action shall be strictly construed and that portion

shall be deemed excised here from and the remainder of this Agreement shall continue in full force and effect unaffected by any such invalidity. Should any provision be held by a court of competent jurisdiction or as a result of legislative or administrative action invalid for any reason, the parties agree to revise the excised portion to reflect the original intent of the parties to the greatest extent permitted by the change.

6.7 Time Is of the Essence. Time shall be of the essence with respect to the duties and obligations imposed on the parties. Where any time for performance is set forth herein, such time may be extended only by the written agreement of the parties.

6.8 Rights and Remedies Cumulative. All rights and remedies provided by this Agreement or existing at law or in equity shall be cumulative with all other rights and remedies, and the pursuit of one right or remedy shall in no way operate as an exclusive election or otherwise preclude or limit any party from pursuing any other or additional right or remedy.

6.9 Force Majeure. In the event that any element of the Development shall be delayed, hindered, or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials which could not have been reasonably anticipated and avoided by the appropriate party, failure of power, riots, insurrection, war, or natural disaster, then performance of such act shall be extended for a period equivalent to the period of such delay and the other parties of this Agreement shall, at their option have the corresponding periods for the performance of their obligations similarly extended to the extent that they are interdependent with the obligations of the party subject to force majeure.

6.10 No Joint Venture. The parties acknowledge that this Agreement does not create an agency relationship, a joint venture, an employer-employee relationship, or an independent contractor relationship.

6.11 Immunity. Neither party to this Agreement waives any claims or defenses accorded to them under the doctrines of absolute immunity, governmental immunity, statutory immunity, sovereign immunity, or any other immunity from claims of third parties under state or federal law.

6.12 Notices. Any notice permitted or required to be given under this Agreement shall be in writing and shall be delivered either (1) by hand delivery, (2) nationally recognized overnight carrier (e.g., FedEx, DHL, UPS), or (3) by U.S. certified mail, postage prepaid, return receipt requested, as follows:

**IF TO CITY:**  
City of Park Hills  
Attn: Julie Alig  
City Clerk  
1106 Amsterdam Road

Park Hills, KY 41011

**IF TO DEVELOPER:**

CondoView LLC  
321 MLK Jr. Blvd.  
Covington, KY 41011  
Attn: Paul Zeltwanger

6.13 Estoppel Certificate. Within five (5) days after a request by the City, the Developer will execute and deliver to the requesting party, an estoppel certificate stating that: (i) this Agreement is in full force and effect and has not been amended or modified, or it has been amended or modified, stating such amendments and modifications; (ii) that neither the Developer nor the City is in default under any of the terms, covenants or conditions of this Agreement, or, if that Developer or City is in default, specifying the same; and (iii) such other matters as the City reasonably requests.

6.14 Certain Representations and Warranties of the City. The City represents and warrants as of the date of delivery of this Agreement that:

(i) It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the Commonwealth of Kentucky.

(ii) It will have duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement and to constitute this Agreement as a valid and binding obligation of the City enforceable in accordance with its terms.

(iii) Its execution, delivery and performance of this Agreement will not (a) result in a violation or conflict or (b) conflict with or result in any breach of any provisions of any other agreement or instrument to which the City is a party or by which it may be bound.

(iv) It has and will have full power and authority (a) to execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by it in connection herewith and (b) to enter into, observe and perform the transactions contemplated by this Agreement and those other instruments and documents.

6.15 Certain Representations and Warranties of the Developer. The Developer represents and warrants as of the date of delivery of this Agreement that:

(i) It is a limited liability company duly organized, validly existing and in full force and effect under the laws of the Commonwealth of Kentucky.

(ii) It will have duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement and to constitute this Agreement as a valid and binding obligation of the Developer enforceable in accordance with its terms.

(iii) Its execution, delivery and performance of this Agreement will not (a) result in a violation or conflict or (b) conflict with or result in any breach of any provisions of any other agreement or instrument to which the Developer is a party or by which it may be bound.

(iv) It has and will have full power and authority (a) to execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by it in connection herewith and (b) to enter into, observe and perform the transactions contemplated by this Agreement and those other instruments and documents.

(v) It will not through any homeowners' association documents or take any other action that would adversely affect the obligations or rights of the City under this Agreement, except as approved by the City or required by law.

6.16 Further Cooperation. The City, the Developer and their respective successors and assigns agree to execute any further agreements, documents, or instruments, and take such other actions, as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement.

6.17 Compliance with Laws and Development Plan. All work performed by Developer in constructing the Development shall at all times be in full and unconditional compliance with all laws, statutes, regulations, codes, and ordinances of federal, state, and municipal governments, and with the Development Plan. The City's review and/or approval of any plans, drawings, or other specifications provided by Developer in connection with the Development shall not constitute a representation or a warranty of any kind on behalf of the City that such plans, drawings, or other specifications are in compliance with any applicable law, code, or ordinance. The Developer shall bear all risk associated with the fact that any plans, drawings, or other specifications for performance of the work are not in compliance with applicable laws, codes, or ordinances.

6.18 Supervision. The Developer shall supervise and direct all work associated with the construction of the Development, and shall be solely responsible for, and have control over, the construction means, methods, techniques, sequences and procedures. The Developer shall provide and pay for all labor, materials, equipment, tools, machinery utilities, transportation, and other facilities and services necessary to

complete construction of the Development. All contractors, subcontractors, material suppliers, and laborers engaged by Developer to perform any part of the construction of the Development shall be qualified and competent in their fields of expertise, and shall be properly licensed as required by applicable law.

6.19 Warranty. With respect to any improvements constructed by Developer which shall become the property of the City upon completion, or shall otherwise be placed under the jurisdiction of the City to maintain and repair upon completion, then the Developer hereby warrants to City that all materials furnished for such improvements are of good quality and new, and Contractor further warrants that all work performed and materials provided are in accordance with the Development Plan, and such work and materials will be free from defects for a period of two (2) years after the date of substantial completion of the Development. If defects arise during such two (2) year period, the Developer shall correct such defects at its sole cost and expense, and not later than sixty (60) days after receipt of written notice from the City.

6.20 Indemnification. Developer agrees to protect, indemnify and hold the City harmless from and against any and all occurrences, claims, demands, lawsuits, causes of action, personal injuries, damages, costs, expenses, fines, penalties or judgments (including reasonable attorneys' fees) which may arise from, or be related directly to the Developer's construction of the Development, or arising from the Developer's breach of or default under this Agreement, or arising from any act or omission of the Developer, or its contractors, subcontractors, laborers, material suppliers, employees, or other agents. Developer's indemnification of the City is one of first defense and payment, not of reimbursement or surety. Developer's indemnification of the City includes any expenses and reasonable attorneys' fees which the City may incur in defending any such claims. Developer's indemnification of the City shall be to extend of the Developer's insurance coverage as detailed in paragraph 4.9. Developer's indemnification of the City shall survive the termination of this Agreement, and shall survive the completion of construction of the Development by one year.

6.21 Waiver of Jury Trial. The Developer acknowledges that, as to any and all disputes that may arise between Developer and City under this Agreement, the commercial nature of the transaction out of which this Agreement arises makes any such dispute unsuitable for trial by jury. Accordingly, the Developer hereby knowingly, voluntarily, and willingly waives any right to trial by jury as to any and all disputes that may arise relating to this Agreement.

6.22 Governmental Permits. The Developer shall be responsible for obtaining, at its sole cost and expense, all necessary governmental permits, certificates and approvals to lawfully allow the construction of the Development.

**[INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date noted below:

**CITY OF PARK HILLS**

**CONDOVIEW LLC**

\_\_\_\_\_

Mayor

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_