

CITY RESOLUTION NO. 7, 2019

A RESOLUTION OF THE OF THE CITY OF PARK HILLS, KENTUCKY (THE “CITY”), AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE CITY AND CONDOVIEW LLC (THE “COMPANY”) RELATING TO THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF A RESIDENTIAL PROJECT TO BE LOCATED WITHIN A DOWNTOWN BUSINESS DISTRICT AS DESIGNATED BY THE CITY (THE “PROJECT”); AGREEING TO UNDERTAKE THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS AT THE APPROPRIATE TIME TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, EQUIPPING AND INSTALLING SAID PROJECT AND FACILITIES; AND TAKING OTHER PRELIMINARY ACTION.

WHEREAS, CondoView LLC, a Kentucky limited liability company (the “Company”), proposes the acquisition, construction, equipping and installation of residential project to be located within a designated downtown business district of the City as determined by the City within its sound discretion, and Kenton County, Kentucky on property located in the City and the City of Covington, Kentucky, on property formerly used as part of the Gateway Community and Technical College Campus (the “Project”), as provided for in Section 103.200 of the Kentucky Revised Statutes, and in this connection it has been determined that the City may assist the Company by causing the acquisition, construction, equipping and installation of the Project and by entering into at the appropriate time a lease agreement with reference thereto pursuant to authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (collectively, the “Act”), all in furtherance of the purposes of the Act and the public benefit of the residents and inhabitants of the City; such lease agreement to be upon such terms and conditions as the Act may require and the City may deem advisable; and

WHEREAS, the acquisition, construction, equipping and installation of the Project by the Company will encourage the expansion of commerce in accordance with the public policy of the

Commonwealth of Kentucky by promoting the economic development of the Commonwealth of Kentucky and the City, will relieve conditions of unemployment, will encourage the increase of commerce and will improve the economic welfare of the people of the City; and

WHEREAS, the City is further authorized by the Act to issue bonds, which term under the Act encompasses bonds, variable rate bonds, commercial paper bonds, bond anticipation notes or any other obligations for the payment of money issued by a city, county or other authority pursuant to the Act, for the purpose of defraying the cost of acquiring, constructing, equipping and installing an industrial building or buildings, as defined in the Act; discussions have occurred between representatives of the Company and the City incident to the issuance of industrial building revenue bonds by the City; the City has agreed with the Company to issue such bonds upon compliance by the Company with certain conditions, requirements and obligations, and subject to the approval of the City of the terms of all agreements, ordinances and other documents required incident to said bond issue; and the City has authorized the Company to proceed with the acquisition, construction, equipping and installation of the Project, subject to reimbursement of the costs of the Project from the proceeds of such bonds, when, as and if issued; and

WHEREAS, based upon an estimate of the costs of the Project, the City proposes to issue its industrial building revenue bonds in one or more series as determined by the Company and agreed to by the City in an amount not to exceed Sixty Million Dollars (\$60,000,000) (the "Bonds"), such Bonds to be sold and delivered by the City to pay the costs of the Project, together with costs incident to the authorization, sale and issuance of such Bonds, but with such contributions from the Company as may be necessary; and

WHEREAS, the City proposes to enter into at the appropriate time a lease agreement with the Company with respect to the Project, whereby the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and interest on the Bonds, together with all trustee and paying agents' fees in connection with the Bonds as the same become due and payable; the liability of the Company under this instrument or any other instrument related to the issuance of the Bonds shall be limited to its interest in the Project to be financed thereby and no party shall have the right to obtain payment from the Company or from any assets of the Company other than such Project; and

WHEREAS, it is deemed necessary and advisable that a Memorandum of Agreement between the City and the Company be executed setting forth the preliminary agreements of the parties with respect to the acquisition, construction, equipping and installation of the Project, the issuance of the Bonds to defray the costs thereof and the payments to be made by the Company with respect to the Project; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PARK HILLS, KENTUCKY, AS FOLLOWS:

Section 1. It is hereby found, determined and declared that (i) the recitals set forth in the preamble to this Resolution, which are incorporated in this Section by reference, are true and correct; (ii) the total amount of money necessary to be provided by the City for the acquisition, construction, equipping and installation of the Project to be financed by the Bonds will not exceed Sixty Million Dollars (\$60,000,000); (iii) the Company has represented that it will have sufficient financial resources to acquire, construct, equip and install the Project and to place it in operation and to continue to operate, maintain and insure the Project throughout the term of the Bond issue, meeting when due the obligations of the proposed lease agreement; and (iv)

sufficient safeguards will be provided by the lease agreement to insure that all money provided by the City from the proceeds of the sale of the Bonds will be expended by way of direct expenditure or reimbursement, solely and only for the purposes of the Project.

Section 2. It is hereby found, determined and declared that the cost of acquiring, constructing, equipping and installing the Project will be paid out of the proceeds of the Bonds and such contributions of the Company as may be necessary to complete the Project as defined in the lease agreement to be executed by and between the City and the Company at the appropriate time pursuant to the Act; **THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE CITY; THAT NEITHER THE BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE CITY OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER, BUT THAT THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER SUCH LEASE AGREEMENT; AND THAT NO PART OF SAID COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE CITY.**

Section 3. In order to induce the acquisition, construction, equipping and installation of the Project in the City with the resultant public benefits which will flow therefrom, it is deemed necessary and advisable that the Memorandum of Agreement hereinafter referred to be approved and executed for and on behalf of the City. Accordingly, the Memorandum of Agreement by and between the Company and the City substantially in the form and with the contents set forth in EXHIBIT A attached hereto and incorporated herein by reference is hereby approved and the

Mayor is hereby authorized and directed to execute and deliver said Memorandum of Agreement.

Section 4. Inasmuch as the Project is to be acquired, constructed, equipped and installed in order to conform to the requirements of the Company, so that the Company may provide additional housing, economic development and employment to citizens and residents of the local community, and inasmuch as the Company is able to plan, acquire, construct, equip and install the Project and possesses more expertise in such matters, it is hereby found, determined and declared that acquisition, construction, equipping and installation of the Project should be undertaken or caused to be undertaken by the Company. Accordingly, the Company is hereby authorized to formulate and develop plans for the acquisition, construction, equipping and installation of the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, equipping and installation of the Project. Reimbursements made to the Company after the receipt of the proceeds of the sale of the proposed Bond issue by the City shall be subject to the certifications by qualified persons to be designated by the Company as specified in the lease agreement to be entered into by the City and the Company at the appropriate time pursuant to the Act.

Section 5. This Resolution and the Memorandum of Agreement approved hereby constitute the present official intent of the City to issue the Bonds at a later date.

Section 6. Keating Muething & Klekamp PLL, Cincinnati, Ohio, is hereby approved as local Bond Counsel. Local Bond Counsel is authorized and directed to take any legal action necessary or appropriate in connection with the issuance of the Bonds. The City Attorney is authorized and directed to assist Local Bond Counsel in any appropriate manner.

Section 7. No City funds shall be expended on the Project, except such as are derived from Bond proceeds.

Section 8. To the extent any resolution, ordinance or part thereof is in conflict, the provisions of this Resolution shall prevail and be given effect.

Section 9. This Order shall be in full force and effect from and after its adoption as provided by law.

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INTRODUCED, SECONDED, READ AND ADOPTED AT A DULY CONVENED MEETING OF THE CITY COUNCIL OF THE CITY OF PARK HILLS, KENTUCKY, held on the ____ day of _____, 2019, on the same occasion signed in open session by the Mayor as evidence of his approval, attested under seal by the City Clerk, ordered to be filed and recorded as required by law, and declared to be in full force and effect according to law.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of Park Hills, Kentucky, and as such City Clerk, I further certify that the foregoing is a true, correct and complete copy of Resolution No. _____, duly adopted by the City Council of said City at a duly convened meeting held on the ____ day of _____, 2019, signed by the Mayor, duly filed and recorded in my office, all as appears from the official records of said City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this ____ day of _____, 2019.

CITY CLERK

(SEAL)

EXHIBIT A

MEMORANDUM OF AGREEMENT REGARDING ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS

This MEMORANDUM OF AGREEMENT REGARDING ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS, by and between the CITY OF PARK HILLS, KENTUCKY (the “City”) and CONDOVIEW, LLC, a Kentucky limited liability company (the “Company”).

WITNESSETH:

1. Preliminary Statement and Agreements. Among the facts and circumstances which have resulted in the execution of this Memorandum of Agreement by and between the parties are the following:

(a) The Company is desirous of acquiring, constructing, equipping and installing residential project within a designated downtown business district of the City of Park Hills, and the City of Covington, Kenton County, Kentucky (the “Project”).

(b) The Project proposed to be acquired, constructed, equipped and installed for use by the Company will constitute an “industrial building” within the meaning of Section 103.200 of the Kentucky Revised Statutes.

(c) The Company is initiating the development of plans, specifications and designs for the Project and has entered into discussions with the City with respect to the financing thereof. The Company estimates that the aggregate cost of the Project will not exceed Sixty Million Dollars (\$60,000,000), including financing costs.

(d) The City is authorized and empowered by the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (collectively, the “Act”) to issue bonds, which term under the Act encompasses bonds, notes, variable rate bonds, commercial paper bonds, bond anticipation notes or any other obligations for the payment of money issued by a city, county or other authority pursuant to the Act, for the purpose of defraying the costs of acquiring, constructing, equipping and installing an industrial building or buildings, as defined in the Act, in order to promote the economic development of the Commonwealth and the establishment, retention or expansion of industry. The City is empowered, with respect to such industrial building facilities so acquired, constructed, equipped and installed, to enter into at the appropriate time a lease agreement with a concern such as the Company providing for such payments by the Company and such other terms and conditions as the City may deem advisable.

(e) The purposes of the Act, inter alia, are to promote the economic development of the Commonwealth of Kentucky, to relieve conditions of unemployment, to promote reconversion to a peacetime economy, to aid in the rehabilitation of returning veterans, to encourage the increase of industry in Kentucky, and to aid in the retention of existing industry by certain described means. In furtherance of such purposes the City, at the request of the

Company, proposes to cause to be acquired, constructed, equipped and installed the Project for the Company's use in connection with the operations of the Company in the City. The City intends to finance the Project and to enter into at the appropriate time a lease agreement with the Company pursuant to the provisions of the Act with respect to the Project.

(f) The Company is ready, willing and able to cause initial acquisition, construction, equipping and installation of the Project to be undertaken, but has been advised by counsel that in order to warrant the issuance of industrial building revenue bonds by the City it is necessary that official action be taken by the City approving the Project and agreeing to issue at the appropriate time industrial building revenue bonds to finance the costs of acquisition, construction, equipping and installation of the Project.

(g) Representatives of the City have indicated the willingness of the City to proceed with and to carry out such industrial building revenue bond financing in order to effectuate the purposes of the Act and have advised the Company that, subject to due compliance with all requirements of law and the obtaining of all necessary consents and approvals required by law, and to the happening of all acts, conditions and things required precedent to such financing, including satisfaction of all requirements of the City, the City, by virtue of authority of the Act, will issue and sell its industrial building revenue bonds in one or more series as determined by the Company and agreed to by the City in an amount not to exceed Sixty Million (\$60,000,000) (the "Bonds").

(h) The City considers and determines that the acquisition, construction, equipping and installation of the Project, and the execution of a lease agreement with the Company at the appropriate time with reference to the Project, will promote and further the purposes of the Act.

(i) Pursuant to KRS 103.230(1), the Company has requested and hereby requests that the sale of the Bonds by the City be made upon a negotiated basis in a manner to be determined by the Company.

(j) The City represents that the location of the Project is within a designated downtown business district of the City as set forth in KRS103.200(1)(n).

(k) That the City and Company acknowledge that the commitment of the City to issue the Bonds, shall be conditioned upon an annual payment in lieu of taxes ("PILOT Payment") by the Company to the City in the amount of annually in the amount of 100% of the real estate ad valorem taxes the City would have received had the Bonds not been issued based on the fair cash value of the Project as determined by the Kenton County Property Valuation Administrator. The first PILOT Payment shall be due on the earlier of (i) November 30th of the first calendar year following the date of the issuance of the Bonds, or (ii) November 30th of the first calendar year after the Project has been transferred to the City, and shall be paid annually each November 30th thereafter during the term of the Bonds.

2. Representations and Undertakings on the Part of the Company. The Company represents, undertakes, covenants and agrees as follows:

(a) The Company shall utilize the Project, or cause the Project to be utilized, at all times during the term of the lease agreement to be entered into at the appropriate time by and between the City and the Company with reference to the Project for the purposes hereinbefore indicated;

(b) The Project will tend to provide housing and relieve conditions of unemployment;

(c) The Company shall cause contracts to be entered into for, or shall otherwise provide for the acquisition, construction, equipping and installation of the Project;

(d) Prior to or contemporaneously with the delivery of the Bonds, the Company shall enter into a lease agreement with the City under the terms of which the Company shall obligate itself to undertake and to complete the acquisition, construction, equipping and installation of the Project and to pay to the City sums sufficient in the aggregate to pay the principal of, interest on, and premium, if any, on the Bonds as and when the Bonds shall become due and payable, such lease agreement to contain such other provisions as shall be agreed upon by the City and the Company; and

(e) The Company has obtained the services of Keating Muething & Klekamp PLL, Cincinnati, Ohio, as Bond Counsel, to prepare the necessary proceedings for the authorization, issuance, sale and delivery of the Bonds; provided all fees, expenses, and charges of such Bond Counsel, of the City, or of its City Attorney and of the purchaser of the Bonds will be borne by the Company, and/or paid out of the proceeds of the Bonds. The Company shall pay all costs of the Project and all fees and expenses of the financing shall be paid out of the proceeds for the Bonds or separately by the Company. Under no circumstances will any part of such fees, expenses, and charges be borne by the City;

(f) The Company shall hold the City harmless from all pecuniary liability and shall reimburse the City for all expenses which the City might incur in the fulfillment of its obligations under the Memorandum of Agreement and in its implementation;

(g) The Company shall pay or cause to be paid all costs of completing the Project, if, and to the extent that the proceeds of the Bonds shall be inadequate; and

(h) The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it or the City may deem appropriate in pursuance thereof.

3. Undertaking on the Part of the City. Subject to the fulfillment of the several conditions herein stated, the City agrees as follows:

(a) That it will at the appropriate time authorize or cause to be authorized the issuance and sale of the Bonds pursuant to the terms of the Act as then in force in an aggregate principal amount not to exceed Sixty Million Dollars (\$60,000,000), or such other aggregate principal amount as shall be sufficient to pay the costs of the Project and related costs when actually determined;

(b) That it will adopt or cause to be adopted such proceedings and authorize the execution of such documents as may be necessary or acceptable for (i) the authorization, issuance and sale of the Bonds, (ii) the acquisition, construction, equipping and installation of the Project, (iii) providing for the payment of principal of and interest on the Bonds by the lease agreement with the Company pursuant to the Act, all as shall be authorized by the Act and upon terms which shall be mutually satisfactory to the City and the Company;

(c) That the aggregate basic payments stipulated to be made by the Company under the lease agreement with the City with reference to the Project shall be at least sufficient (in addition to covenants of the Company to properly operate, maintain and insure the Project) to pay the principal of, interest on and redemption premium, if any, on all of the Bonds as and when the same become due and payable, whether at maturity or prior redemption or upon any acceleration of payment of principal as provided in the Bond proceedings; and

(d) That it will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings as it may deem appropriate.

4. General Provisions.

(a) The Company has requested that the sale of the Bonds be negotiated in the manner permitted by statute and that the terms of the sale be subject to approval by the Company.

(b) All commitments of the City and the Company pursuant to this Memorandum of Agreement are subject to the condition that on or before 12 months from the date hereof or such later date as shall be agreed upon in writing by the City and the Company, the City and the Company shall have agreed to mutually acceptable terms and conditions with respect to the lease agreement referred to in this Memorandum of Agreement and the details of the industrial building revenue bond financing.

(c) If the event set forth in (b) of this paragraph does not take place within the time set forth therein, or any agreed extension thereof, and the Bonds are not issued within such time, the Company agrees that it will reimburse the City for all reasonable and necessary direct out-of-pocket expenses which the City may incur at the Company's request arising from the execution of this Agreement, and the performance by the City of its obligations hereunder shall thereupon terminate.

(d) The City's obligations under this Memorandum of Agreement are expressly contingent upon the Company's strict adherence to all of the terms and conditions of the development agreement dated _____, 2019, between the City and the Company (the "Development Agreement"). In the event of a breach by the Company of the Development Agreement, the City shall have the right to terminate this Memorandum of Agreement, without prejudice to the City's right to pursue any and all other legal remedies available at law or in equity.

(e) This Memorandum of Agreement and the Resolution approving this Memorandum of Agreement constitute the present official intent of the City to issue the Bonds at a later date.

(f) NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE CITY AND NEITHER THE BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE CITY OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER ANY LEASE AGREEMENT WITH THE CITY AS REQUIRED BY THE ACT. NO PART OF THE COSTS OF ACQUIRING, FINANCING, CONSTRUCTING, EQUIPPING AND INSTALLING THE PROJECT WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE CITY.

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IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum of Agreement by their officers thereunto duly authorized as of the ____ day of _____, 2019.

CITY OF PARK HILLS, KENTUCKY

BY: _____
Mayor

CONDOVIEW LLC, a Kentucky limited liability company

BY: _____

TITLE: _____