

RESOLUTION NO. 13, 2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARK HILLS, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO \$40,000,000 MAXIMUM AGGREGATE PRINCIPAL AMOUNT TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2019A, AND \$7,000,000 MAXIMUM AGGREGATE PRINCIPAL AMOUNT TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2019B, IN ORDER TO ASSIST CONDOVIEW LLC, OR ASSIGNS, TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN INDUSTRIAL BUILDING FACILITY LOCATED WITHIN THE CITY OF PARK HILLS, KENTUCKY AND THE CITY OF COVINGTON, KENTUCKY, AND TO IMPROVE SAID FACILITY; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF PARK HILLS, KENTUCKY AND CONDOVIEW LLC, OR ASSIGNS, WITH RESPECT TO THE FACILITY (THE “AGREEMENT”); AUTHORIZING A SPRINGING EXECUTORY INTEREST DEED; AUTHORIZING A TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND FURTHER TO SECURE THE PAYMENT OF SAID BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT; AUTHORIZING CERTAIN OPEN END LEASEHOLD MORTGAGES AND SECURITY AGREEMENTS (WITH GROUND LESSOR JOINDER), A PILOT MORTGAGE TO SECURE THE SERIES 2019B BONDS, AND AUTHORIZING A HOME OFFICE PAYMENT AGREEMENT.

WHEREAS, the City of Park Hills, Kentucky (the “Issuer”) is by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, and other authorities mentioned therein, authorized and empowered, among other things, (a) to assist in the financing of costs of industrial building facilities located within the boundaries of the Issuer, (b) to enter into an agreement with the lessee of such facilities providing for revenues sufficient to pay the principal of and interest and any premium on such revenue bonds, including the issuance of refunding bonds (c) to secure such revenue bonds by a trust agreement or indenture between the Issuer and a corporate trustee, and by a pledge and assignment of such revenues, as provided for herein, and (d) to enact the Bond Legislation and enter into the Indenture and the Agreement, as hereinafter identified, upon the terms and conditions provided therein; and,

WHEREAS, it is hereby determined by this Legislative Authority that the acquisition, construction and equipping of the Park Pointe Project, as a single family residential project (the “Project”), and improvement to said Project will require the issuance, sale and delivery of the Project Bonds, as hereinafter defined, in the combined maximum aggregate principal amount of \$47,000,000 and hereafter may, with the prior written consent of the Issuer, involve the Issuer’s issuance, sale and delivery of Additional Bonds on a parity therewith, all of which Project Bonds

and Additional Bonds shall be equally and ratably payable and secured as provided herein and in the Indenture authorized herein;

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE CITY OF PARK HILLS, KENTUCKY, as follows:

That the provisions hereof shall be, as follows:

1. Definitions. All defined terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Trust Indenture with respect to the Project Bonds (the “Indenture”) between the Issuer and The Huntington National Bank, Cincinnati, Ohio and its successors in trust, as trustee (the “Trustee”).

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include any person or entity which succeeds to its or their duties or responsibilities pursuant to or by operation of law. Any reference to a section or provision of the Kentucky Constitution or the Act or to a section, provision or chapter of the Kentucky Revised Statutes shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded; provided, however, that no such change in the Constitution or laws (a) shall alter the obligation to pay the Bond service charges in the amounts and manner, at the times and from the sources provided in this Bond Legislation and the Indenture, except as otherwise herein permitted or (b) shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer, the Trustee or the Company under the Agreement or the Indenture.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof”, “hereby”, “hereto”, “hereunder”, and similar terms, mean this Bond Legislation.

2. Determinations of Legislative Authority. The Legislative Authority hereby determines that the Project is an “industrial building” as that term is defined in Section 103.200 of the Kentucky Revised Statutes, and will benefit the people of the Issuer by creating or preserving jobs and employment opportunities and promoting the commercial and economic development of the Issuer and the State.

3. Authorization and Terms of Project Bonds.

(a) Authorization. It is hereby determined to be necessary to, and the Issuer shall issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, up to \$47,000,000 maximum aggregate principal amount of Project Bonds for the purpose of providing funds to be used to finance the Project and to finance improvements to said Project and to pay costs of issuance of said Project Bonds. The Project is and shall be owned by Issuer and leased to the Company. Said Project Bonds may, pursuant to the Trust Indenture, be issued in a multiple series beginning with the designation “Taxable Industrial Building Revenue

Bonds, Series 2019A “Park Pointe Project” in a maximum aggregate amount of up to \$40,000,000 (the “Series 2019A Bonds”). In addition, the Issuer hereby authorizes the issuance of Series 2019B Bonds, “Park Pointe Project”) in a maximum aggregate amount of up to \$7,000,000 (the “Series 2019B Bonds” and together with the Series 2019A Bonds the “Project Bonds”). The principal, interest, and maturity requirements of the Series B bonds are specified in the Trust Indenture. The proceeds of the Project Bonds shall be applied (i) to provide funds to finance the acquisition, construction and installation of the Project and (ii) to pay reasonable and customary closing costs associated with the issuance of the Project Bonds.

(b) Terms. The Project Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Project Bonds shall mature as provided in the Indenture, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indenture. This Legislative Authority hereby fixes and establishes the interest rate in effect from time to time on the Project Bonds in the manner and pursuant to the provisions of the Indenture.

The form of the Project Bonds attached to the Indenture, subject to appropriate insertions and revisions in the Resolution to comply with the provisions of the Indenture, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, in a principal amount of up to \$47,000,000 (being the sum of the maximum aggregate principal amount of both the Series A and Series B Bonds) shall represent the approved form of the Project Bonds of the Issuer.

(c) Place of Payment. Bond service charges on Project Bonds shall be payable, without deduction for services of the Paying Agent, in the manner provided in the Project Bonds.

(d) Execution. The Project Bonds shall be executed by the Mayor and City Clerk of the Issuer, provided that either or both of such signatures may be facsimiles.

(e) Maximum Rate. The per annum interest rate applicable to the Project Bonds shall at no time exceed the maximum rate allowable by the laws of the Commonwealth of Kentucky

4. Terms of all Project Bonds and Additional Bonds. All Project Bonds and Additional Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Bond service charges on all Project Bonds and Additional Bonds shall be payable in lawful money of the United States of America. Bonds shall be issued as fully registered bonds. All Project Bonds and Additional Bonds shall be negotiable instruments within the meaning of Chapter 103 of the Kentucky Revised Statutes, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

All Project Bonds and Additional Bonds shall be executed in the manner provided in the Bond Legislation authorizing their issuance or in the manner provided by the applicable law in effect at the time of their issuance. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the issuance, authentication or delivery of such Project Bonds and Additional Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until that time.

Any notice of call for redemption of all Project Bonds shall be given in the manner provided in the Indenture. If Project Bonds and Additional Bonds or portions of fully registered Project Bonds and Additional Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Project Bonds and Additional Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Trustee or Paying Agents so as to be available therefor, then from and after such redemption date such Project Bonds and Additional Bonds or portions of fully registered Bonds shall cease to bear interest.

5. Security Pledged for Project Bonds. The Project Bonds shall be payable solely from the Revenues and secured by, among other things, a pledge of and lien on moneys deposited in the Construction Fund and the Bond Fund, and a pledge and assignment of other moneys constituting Revenues, and further secured by the Indenture, and anything in this Bond Legislation, the Project Bonds, the Agreement, and Indenture to the contrary notwithstanding, neither this Bond Legislation, the Project Bonds, the Agreement, nor the Indenture shall constitute a debt or a pledge of the faith and credit of the Issuer or of the State or any political subdivision thereof and the holders or owners of the Bonds shall have no right to have taxes levied by the General Assembly of the State or the taxing authority of the Issuer or of any other political subdivision of the State for the payment of the principal of, premium, if any, or interest on the Project Bonds, but such Bonds are payable solely from the Revenues and the Bonds shall contain on the face thereof a statement to that effect.

6. Sale of Project Bonds; Allocation of Purchase Price. The Legislative Authority is hereby authorized and directed to offer for sale the Project Bonds to CondoView LLC, a Kentucky limited liability company, (in its role as purchaser of the Project Bonds, the "Purchaser"), or its assigns, for purchase by the Purchaser at the price or prices set forth in the Bond Purchase Agreement, plus accrued interest, if any, in accordance with the terms and provisions of this Bond Legislation, and to make the necessary arrangements on behalf of the Issuer with the Purchaser to establish the date, location, procedure and conditions for the delivery of the Project Bonds to the Original Purchaser. The Mayor and City Clerk are further hereby authorized and directed to take all steps necessary to effect due authentication, delivery and security of the Project Bonds under the terms of this Bond Legislation, Bond Purchase Agreement and the Indenture, and it is hereby determined that the aforesaid purchase price and the interest rate for the Project Bonds and the manner of sale, as provided in this Bond Legislation, are in compliance with all legal requirements. The City Clerk shall furnish to the Purchaser a true and certified transcript of proceedings with reference to the issuance of the

Project Bonds, along with such information from his or her records as is necessary to determine the regularity and validity of the issuance of said Project Bonds.

There is hereby created by the Issuer and ordered to be maintained as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee a trust fund to be designated “City of Park Hills, Kentucky-Park Pointe Project Construction Fund” (herein also sometimes called the “Construction Fund”). After payment of the costs of issuance related to the Bonds, the Project Bond proceeds shall be used to fund the Construction Fund. Moneys in the Construction Fund shall be disbursed by the Trustee in accordance with the provisions of the Agreement, and the Trustee is hereby authorized and directed to issue its check, transfer funds via wire transfer or credit accounts for each disbursement required by the provisions of the Agreement. The Issuer covenants and agrees promptly to take whatever action, if any, is necessary in approving and ordering all such disbursements.

The moneys to the credit of the Construction Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holders of the Project Bonds, but only to the extent of their interest therein.

7. Source of Payment - Bond Fund. As provided in the Agreement, moneys sufficient in time and amount to pay the Bond service charges with respect to the Project Bonds as they come due are to be paid by the Company directly to the Trustee, including Lease Payments for the account of the Issuer and deposited in an appropriate account in the Bond Fund.

There is hereby created by the issuer and ordered to be maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated “City of Park Hills, Kentucky-Park Pointe Project Revenue Bond Fund” (herein called the “Bond Fund”). The Bond Fund (and accounts therein provided for in the Indenture or in the Agreement) and the moneys and investments therein are hereby pledged to and shall be used for the payment of Bond service charges, all as provided herein and in the Indenture and the Agreement, provided that no part thereof (except as may otherwise be provided for herein and in the Indenture or the Agreement) shall be used to redeem or purchase, prior to maturity, any Project Bonds. The Trustee is authorized and directed to create and maintain appropriate accounts in the Bond Fund with respect to each series of Project Bonds and Additional Bonds consistent with their respective payment and security (priority) provisions.

On or before each date when Bond service charges are due and payable, the Trustee shall transmit from moneys in the Bond Fund applicable thereto to any other Paying Agents, as appropriate, amounts sufficient to meet payments to be made by them of Bond service charges then to be due and payable; provided that to the extent the amount needed by any other Paying Agent is not sufficiently predictable, the Trustee may, but shall not be required to, make such credit arrangements with such Paying Agent as to permit meeting such payments.

There shall be deposited into the Bond Fund (and credited, if required by the Indenture or the Agreement, to appropriate accounts therein), as and when received, (a) all Lease Payments, to the extent not required to pay Base Rent due under the Agreement which has not been paid and (b) all other Revenues, except those amounts required by the Indenture or the Agreement to be deposited in any other separate insurance or condemnation proceeds account.

The Issuer hereby covenants and agrees that so long as any of the Project Bonds are outstanding it will deposit or cause to be deposited in the Bond Fund, amounts sufficient in time and amount to pay the Bond service charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Project Bonds are outstanding, it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement, and that, should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and with the Bondholders to protect fully the rights and security of the Bondholders hereunder. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond service charges any funds or revenues from any source other than revenues or to expend any of its own funds to enforce the Agreement.

Notwithstanding anything herein to the contrary, the Issuer, Company, Purchaser and Trustee may enter into agreements that vary the method of payment of bond service charges, to the extent authorized by the Indenture.

8. Covenants of Issuer. In addition to other covenants of the Issuer contained in this Bond Legislation and the Indenture, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges. The Issuer will, solely from Revenues pay or cause to be paid the Bond service charges on each and all Project Bonds on the dates, at the places and in the manner provided herein, in the applicable Bond Legislation and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Agreement, the Indenture, the Bond Purchase Agreement and in any and every Project Bond executed, authenticated and delivered under the Indenture, and in all proceedings of the Issuer pertaining to the Project Bonds, the Indenture, the Bond Purchase Agreement or the Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Project Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Project Bonds and to execute the Indenture, the Bond Purchase Agreement and the Agreement to provide the security for payment of the Bond service charges in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Project Bonds and execution and delivery of the Indenture, the Agreement and the Bond Purchase Agreement have been or will be duly and effectively taken; and that the Project Bonds in the hands of the holders thereof will be valid and enforceable special obligations of the Issuer according to the terms thereof.

Each provision of the Bond Legislation, the Indenture, the Agreement, the Bond Purchase Agreement and the Bonds is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duties required by such provision; and each duty of the Issuer and of its officers undertaken pursuant to such proceedings for the issuance of the Project Bonds is established as a duty of the Issuer and of each such officer having authority to perform such duty, specifically enjoined by law and resulting from an office, trust, or station within the meaning of the Kentucky Revised Statutes, providing for enforcement by writ of mandamus.

(c) Revenues. Except as otherwise provided in the Bond Legislation, the Indenture and the Agreement, the Issuer will not create or suffer to be created any debt, lien or charge thereon, or make any pledge or assignment of or create any debt, lien or charge thereon, or make any pledge or assignment of or create any lien or encumbrance upon the Revenues, including the moneys in the Bond Fund and the Construction Fund other than the pledge and assignment thereof under this Bond Legislation, the Indenture and the Agreement.

(d) Recordings and Filings. The Issuer will, at the expense of the Company, cause (to the extent required by the laws of the State to perfect such instruments and/or the lien created thereby) all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges and assignments made by it to secure the Project Bonds, to be recorded and filed in such manner and in such places and to the extent required by law in order to fully preserve and protect the security of the holders of the Project Bonds and the rights of the Trustee under the Indenture.

(e) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or the Revenues shall at all times be open to inspection by such accountants or other agents of the Trustee or the Purchaser as the Trustee or the Purchaser may from time to time designate.

(f) Rights under Agreement. The Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Bondholders, enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(g) Maintenance of Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all actions within its authority to maintain the Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate. The Issuer shall not be required to expend its own funds for this purpose.

9. Investment of Bond Fund and Construction Fund. Except as otherwise provided in the Indenture, moneys in the Bond Fund, and the Construction Fund shall be invested and

reinvested by the Trustee in Eligible Investments, in accordance with and subject to the orders (if verbal, to be confirmed in writing) of the Authorized Tenant Representative with respect thereto, provided that investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys hereunder to pay Bond service charges as they fall due at stated maturity or by redemption or pursuant to any Mandatory Sinking Fund Requirements, and provided that each investment of moneys in the Construction Fund shall in any event mature or be redeemable at the option of the Trustee at such time as may be necessary to make timely payments from said Bond Fund. Any such investments may be purchased from the Trustee or its affiliates. In the absence of written direction from the Company with respect to investment of moneys held in the Funds, the Trustee is hereby directed to invest funds in money market mutual funds of the Trustee or its affiliates that qualify as Eligible Investments under the Indenture. The Trustee shall sell or redeem investments standing to the credit of the Bond Fund to produce sufficient moneys hereunder at the times required for the purpose of paying Bond service charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any such order. For purposes of the Indenture and this Bond Legislation, such investments shall be valued at face amount or market value, whichever is less.

10. Indenture, Agreement, Home Office Payment Agreement, Springing Executory Interest Deed, and Bond Purchase Agreement. In order better to secure the payment of the Bond service charges as the same shall become due and payable, the Mayor and City Clerk are hereby authorized and directed, on behalf of the Issuer, to execute and deliver the Indenture, the Agreement, the Springing Executory Interest Deed, which Springing Executory Interest Deed shall automatically grant fee title to the Company or its respective assigns at the time the Project Bonds are paid in full, the Home Office Payment Agreement, which Home Office Payment Agreement shall govern the disbursement and payment of the Series A Bonds notwithstanding the provisions of the Agreement and Indenture, and the Bond Purchase Agreement in substantially the forms submitted to the Issuer, which instruments are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Indenture, the Agreement, the Home Office Payment Agreement, the Bond Purchase Agreement, the Pilot Mortgage to secure the Series 2019B Bonds, and authorizing the execution of a Springing Interest Deed, respectively by such officers.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of said Indenture.

11. Other Documents. The Mayor and City Clerk are hereby further authorized and directed to execute financing statements, other assignments and any other agreements, documents and instruments as are, in the opinion of bond counsel to the Issuer, necessary or desirable to perfect the pledges set forth in the Indenture and to consummate the transactions

provided for in the Indenture, the Agreement and the Bond Purchase Agreement. This authorization to the Mayor and City Clerk to execute other related documents necessary to close the transaction include, but are not limited to, certain documents that may be required of the Lender to the Company, Stock Yards Bank & Trust Company, a Kentucky banking corporation, including a Fee and Leasehold Mortgage, Security Agreement, and Fixture Financing Statement or similar Documents, and other related documents as the same might be otherwise styled.

12. Compliance with Kentucky Revised Statutes. It is hereby found and determined that all formal actions of this Legislative Authority concerning and relating to the passage of this Bond Legislation were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements of the Kentucky Revised Statutes.

13. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in any Project Bonds, or in the Agreement, the Indenture, or the Bond Purchase Agreement, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Project Bonds, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Project Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Project Bonds, or otherwise, of any sum that may remain due and unpaid upon any Project Bonds, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, Indenture, and the Bond Purchase Agreement and the issuance of the Project Bonds.

14. Designated Downtown Business District. The City hereby finds and affirms that the Project, as proposed by the Company, is located within a designated downtown business district, per KRS 103.200(1)(n).

15. Bond Counsel. The City hereby approves and designates Keating Muething & Klekamp, Cincinnati, Ohio, as bond counsel for the issuance of the Project Bonds.

16. Cost of Issuance. Any cost of issuance or other costs related to the issuance of the Project Bonds, or the Project shall be paid for by the Company, and shall not be a cost of the City.

That this Resolution shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon adoption.

ADOPTED: _____, 2019

KATHY ZEMBRODT, MAYOR

ATTEST: _____
JULIE ALIG, CITY CLERK

CERTIFICATE

I, Julie Alig, City Clerk for the City of Park Hills, Kentucky (the “City”), certify that the foregoing is a true copy of Resolution No _____ adopted by the City Council of the City on the _____ day of _____, 2019, that all actions taken in connection with the Resolution were in compliance with the requirements of KRS 61.800 to 61.850, and that said Resolution is now in full force and effect, all as appears from the official records of the City in my custody and under my control.

Witness my hand as City Clerk this ____ day of _____, 2019.

Julie Alig, City Clerk