

RESOLUTION NO. 2018-1

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SUMMIT VIEW DEVELOPMENT, LLC FOR CERTAIN ADDITIONAL CONDITIONS TO THE PROPOSED FINAL DEVELOPMENT

WHEREAS, Section 9.12 of Article IX of the Charter of the City of Blue Ash, Ohio, provides the method under which the City Manager shall make certain purchases and enter into contracts on behalf of the City; and

WHEREAS, the Developer has submitted to the City for its approval a Final Development Plan permitting the Developer to proceed with the development and construction of a mixed-use development and a multi-unit senior housing development on a portion of the Summit Park property owned by the Developer; and

WHEREAS, the Developer has proposed the addition of certain conditions relating to the proposed Final Development Plan prior to the final consideration of the Final Development Plan by the Blue Ash City Council.

Be it resolved by the Council of the City of Blue Ash, Ohio.

SECTION I.

The City Manager is hereby authorized to enter into an agreement (including related agreements and any amendments or supplements thereto) with Summit View Development, LLC to include certain proposed additions and conditions relating to the proposed Final Development Plan prior to the final consideration of the Final Development Plan by the Blue Ash City Council. The form of the agreement shall be approved by the City Solicitor.

SECTION II.

The Treasurer is hereby authorized to expend the necessary funds therefor, which funds are hereby appropriated.

SECTION III.

This resolution shall be in full force and take effect immediately upon its adoption.

PASSED this 25th day of January, 2018.

Thomas C. Adamec, Mayor

Jamie K. Eifert, Clerk of Council

APPROVED AS TO FORM:

Bryan E. Pacheco, Solicitor

AGREEMENT

This Agreement is made and entered into as of this ___ day of January, 2018 by and between Summit View Development, LLC, an Ohio limited liability company (the "Developer") and The City of Blue Ash, Ohio, an Ohio municipal corporation (the "City").

WITNESSETH:

WHEREAS, the Developer has submitted to the City for its approval Final Development Plans permitting the Developer to proceed with the development and construction of 290 rental apartments in accordance with the terms of the School Compensation Agreement and a 201 unit senior housing development each as part of the Neighborhoods at Summit Park Development.

WHEREAS, the Development, including the apartment and senior housing, will be located on a 77.6772 acre site within the City as described on the attached Exhibit "A" (the Property).

WHEREAS, the Developer has proposed the addition of certain conditions relating to the proposed Final Development Plan prior to the final consideration of the Final Development Plan by the Blue Ash City Council; and

WHEREAS, the Developer and the City have agreed to enter into this Agreement in order to proceed with the final consideration of the Developer's Final Development Plans;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Contemporaneously with the issuance of a building permit for the Developer's construction of the proposed mixed-use development, including the 290 rental apartment units on the Property, the Developer shall deliver to the City security in the form of cash, a letter of credit, or a performance bond (each in a form reasonably acceptable to the City) in an amount of \$1,000,000 (the "Security"). In the event that the Developer has not within twenty four (24) months after the delivery of the Security, submitted to the City an application for final development plan approval of an office building containing a minimum of approximately 75,000 square feet on the Property, the Developer shall forfeit the Security to the City, which Security the City may use for whatever municipal purposes it deems appropriate, and the Developer shall have no further rights in or claims to the Security. In the event that the Developer does submit an application for final development plan approval of an office building on the Property within such twenty four (24) month period, the City shall return the Security to the Developer and the City shall have no further rights in or claims to the Security.

The Developer's rights and obligations with respect to the Security as set forth herein are separate and apart from the Developer's other rights and obligations with respect to the Property established by contract, zoning or other action of the City.

2. From and after the issuance of a building permit for the Developer's construction of the proposed mixed-use development, including the 290 rental apartment units on the Property, the Developer agrees that no more than the 290 rental apartment units approved for construction under the Final Development Plan and the building permit referenced above may be

constructed on the Property; provided, however, such restriction shall not apply to 201 living units that are designed as residences for elderly persons as part of a senior living facility, also granted Final Development Plan approval, or to future hotel units not currently approved. The Developer agrees that this Agreement, or a memorandum relating thereto, may be recorded against the Property.

3. This Agreement shall be binding upon the parties hereto, and their respective successors and assigns. The restrictions imposed by Section 2 hereto shall be binding upon the Property and run with the ownership of the Property.

4. Each of the parties hereto represents to the other that it is duly organized under applicable laws, and possesses all requisite authority, permits and power to enter into this Agreement, and that the execution and delivery of this Agreement and the performance by it of its obligations hereunder are within its legal powers and have been authorized by all necessary action.

5. This Agreement may not be amended, changed, modified or assigned except by written agreement executed by each of the parties. This Agreement may be signed in counterpart and in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement and the rights and obligations of the parties hereunder shall be governed by the substantive laws of the State, without regard to choice of law principles, and no action may be brought with respect to this Agreement except in a federal or state court located in Hamilton County, it being understood and agreed that, as a result of the location of the Property, and of each of the parties within Hamilton County, any other forum is and, so long as this Agreement is in effect, will be inconvenient to the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SUMMIT VIEW DEVELOPMENT, LLC

By: Al. Neyer, LLC, a Manager

By: _____
Molly North, President and
Chief Executive Officer

CITY OF BLUE ASH, OHIO

By: _____
David Waltz, City Manager

APPROVED AS TO FORM:

Bryan E. Pacheco, City Solicitor

REMAINING LOT
77.6672 ACRES

EXHIBIT A

Situated in Section 16, Township 4, Entire Range 1, Sycamore Township, in the City of Blue Ash, Hamilton County, Ohio and being part of Lot 3 of the Cincinnati-Blue Ash Airport Subdivision Phase II (Plat Book 411 Page 99), more particularly described as follows:

Commencing at a recovered concrete monument with disc stamped "Blue Ash Airport" in the east right of way of Plainfield Road (30' from centerline), said point being the southwest corner of Lot 3 of said Cincinnati-Blue Ash Airport Subdivision Phase II;

Thence with said east right of way, North 05°17'58" East a distance of 1,076.45 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227" at the southwest corner of Lot 2 of said subdivision;

Thence with the southeast line of said Lot 2, North 55°51'25" East a distance of 772.95 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227" at the corner of new division line, the Point of Beginning of this description:

Thence with continuing with the southeast line of Lot 2, North 55°51'25" East a distance of 3808.17 feet to a recovered mag nail at the northeast corner of Lot 2 in the south right of way line of Glendale-Milford Road;

Thence with the south line of Glendale-Milford Road, South 80°19'02" East a distance of 620.15 feet to a point at the intersection of the south line of Glendale-Milford Road and the west right of way line of Reed Hartman Highway;

Thence with the west line of Reed Hartman Highway, South 06°35'11" West a distance of 529.82 feet to a recovered 3/4" bar at the corner of Lot 3;

Thence with the line of Lot 3, South 55°51'10" West a distance of 3950.71 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227" at the corner of a new division line;

Thence along a new division line through Lot 3 for the following five (5) calls:

North 34°03'13" West a distance of 172.12 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227";

North 55°56'47" East a distance of 24.54 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227";

North 34°03'13" West a distance of 310.00 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227";

North 55°56'47" East a distance of 15.00 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227";

North 34°03'13" West a distance of 349.15 feet to a set 5/8" steel rebar with plastic cap stamped "JGK S-8227", the Point of Beginning.

Said parcel contains 77.6672 acres.

Said herein description being the result of a field survey by Cardinal Engineering Corporation on September 22, 2016 under the direct supervision of Joseph G. Kramer, P.L.S. #S-8227. The bearings of this description are based on State Plane Coordinates, Ohio South Zone, NAD 83.

