



RESOLUTION NO. 2021-014

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE VILLAGE OF MONTGOMERY, H & K PROPERTY DEV LLC, AND BALMOREA OF MONTGOMERY TOWNHOME ASSOCIATION REGARDING CERTAIN ROAD IMPROVEMENTS AND MAINTENANCE

(HELENE RIEDER DRIVE)

WHEREAS, the Village of Montgomery is not a home rule municipality within Article VII, Section 6A of the 1970 Constitution of the State of Illinois, and therefore, acts pursuant to those powers granted to it under 65 ILCS 6/1-1 *et seq.*; and,

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs, and to review, interpret, and amend its ordinances, rules, and regulations; and,

WHEREAS, the Village President and Board of Trustees of the Village are committed to ensuring the general welfare of the Village and its residents; and,

WHEREAS, the original developer of the Balmorea Subdivision ("Subdivision") failed to complete development of the Subdivision in accordance with the terms of the annexation agreement, as amended, and development within Subdivision ceased for a number of years causing certain improvements to fall into a state of disrepair; and,

WHEREAS, one such improvement is a roadway commonly known as Helene Rieder Drive ("Drive"); and,

WHEREAS, the Balmorea of Montgomery Townhome Association ("HOA") is responsible for the maintenance of the Drive; and,

WHEREAS, the Village desires to encourage the future development of the townhome unit within the subdivision and has agreed to assist the HOA by performing a one-time improvement to bring the Drive up to the Village's baseline standards;

WHEREAS, the current owner/developer of the property agrees that for each townhome unit which has not been issued a building permit, such townhome unit shall subject to the covenant to pay the Village at application of building permit, a proportionate share of the Village's improvement costs so incurred in accordance with the terms and conditions of the above-referenced agreement.

NOW, THEREFORE, BE IT RESOLVED by the Village President and Village Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois, as follows:

That the Village President, or his designee, is authorized and directed to sign, and the Village Clerk is authorized and directed to attest, on behalf of the Village, AN AGREEMENT BETWEEN THE VILLAGE OF MONTGOMERY, H & K PROPERTY DEV LLC, AND BALMOREA OF MONTGOMERY TOWNHOME ASSOCIATION REGARDING CERTAIN ROAD IMPROVEMENTS AND MAINTENANCE attached hereto as EXHIBIT A.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois, this 27th day of September, 2021.

Matthew Brolley

Matthew Brolley,
President of the Board of Trustees of the Village of Montgomery



ATTEST:

Penny Fitzpatrick

Penny Fitzpatrick,
Clerk of the Village of Montgomery

	Aye	Nay	Absent	Abstain
Trustee Matt Bauman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Tom Betsinger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Dan Gier	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Steve Jungermann	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trustee Doug Marecek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Theresa Sperling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Village President Matthew Brolley	<i>No vote cast</i>			

EXHIBIT A

(see attached agreement)

AGREEMENT BETWEEN THE VILLAGE OF MONTGOMERY, H & K PROPERTY DEV LLC, AND BALMOREA OF MONTGOMERY TOWNHOME ASSOCIATION REGARDING CERTAIN ROAD IMPROVEMENTS AND MAINTENANCE

(HELENE RIEDER DRIVE)

THIS AGREEMENT ("Agreement") is entered into on this 27th day of September, 2021 ("Effective Date"), by and between the **VILLAGE OF MONTGOMERY**, an Illinois municipal corporation ("Village"), **H & K PROPERTY DEV LLC**, a Pennsylvania limited liability company ("Owner"), and **BALMOREA OF MONTGOMERY TOWNHOME ASSOCIATION** ("HOA"), an Illinois not-for-profit corporation (as each may be individually referred to as a "Party" or collectively as the "Parties").

WHEREAS, the property commonly known as part of the Balmorea of Montgomery subdivision in the Village of Montgomery (the "Subdivision"), the pertinent portion of which is legally described on Exhibit A attached hereto (the "Property") consists of sixty two (62) lots platted for construction of sixty (60) single family attached townhomes (each a "Townhome" or a "Unit") as depicted by that certain Final Plat of Balmorea of Montgomery – Unit 3 recorded on August 1, 2007, as document number 200700023463 (the "Original Plat") with the Kendall County Recorder (the "Recorder");

WHEREAS, pursuant to the terms of: i) the annexation agreement dated October 25, 2004 and recorded as Document No. 2005-00010467 ("Original Annexation Agreement"); ii) the 1st Modification and Restatement of Annexation Agreement dated January 10, 2005 and recorded as Document No. 200500010468 ("First Amended Annexation Agreement"); and iii) the Second Amendment to Annexation Agreement dated December 11, 2006 and recorded as Document No. 200700023464 ("Second Amendment to Annexation Agreement")(collectively the "Agreements") certain improvements were to be constructed within the Subdivision by the original developer ("Original Developer") of the Subdivision, which were ultimately to be turned over to the HOA for future responsibility and maintenance as is set forth in the Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for Balmorea of Montgomery Townhomes dated September 1, 2008, and recorded with the Recorder as document number 200800020344 on September 10, 2008, as amended by the First Amendment to the Declaration of Party Wall Rights, Covenants, Conditions Restrictions and Easements for Balmorea of Montgomery Townhomes dated _____ and recorded with the Recorder on _____, as document number _____(the "Declaration");

WHEREAS, in accordance with the Declaration, the HOA is responsible for the maintenance of Lot 61 as depicted on the Plats, including, but not limited to, the private roadway known as Helene Rieder Drive (the "Drive");

WHEREAS, the Original Developer failed to complete the development of the Subdivision in accordance with the Agreements and development within Subdivision ceased for a number of years; and,

WHEREAS, because the Property was not fully constructed and completed, the Drive has come into a state of disrepair;

WHEREAS, the Village desires to encourage the future development of the subdivision and has agreed to assist the HOA by performing a one-time improvement to bring the Drive up to the Village's baseline standards;

WHEREAS, Owner, as owner of the Property, resubdivided the vacant lots (the "Lots") within the Property by the Final Plat of Balmorea of Montgomery – Unit 3 Resubdivision recorded on January 6, 2021, as document number 202100000404 with the Office of the Kendall County Recorder (the "Plat of Resub" and together with the Original Plat, the "Plats");

WHEREAS, Owner agrees that for each Unit which has not been issued a building permit as of the Effective Date, such Unit shall subject to the covenant to pay the Village at application of building permit, a proportionate share of the Subject Improvement costs as hereinafter defined, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the VILLAGE, OWNER, and HOA agree as follows:

1. **Recitals**. The above-stated Recitals are hereby restated and incorporated into this Section 1 as though fully set forth herein.
2. **Village One-Time Improvement**. The Village agrees to undertake the following improvements with respect to the Property, conditioned upon the Village's advanced receipt of the funds described in Section 3:
 - A. **Streetlights**. The Village shall install a total of five (5) streetlights on the Drive ("Streetlight Improvements"). The total cost of the installation of five streetlights is estimated to be \$15,250, as is more specifically set forth on Exhibit A.
 - B. **Road Resurfacing**. The Village shall perform road resurfacing on the Drive. Said resurfacing shall include asphalt repaving the entire length of the roadway with 3" mill and 3" overlay and repairing and replacing concrete curb as needed (the "Road Resurfacing"). The total cost of the road resurfacing is estimated to be \$90,600, as is more specifically set forth on Exhibit B.

The Streetlight Improvements together with the Road Resurfacing shall be collectively referred to as the "Subject Improvements".

3. **Payment**. All costs associated with the Subject Improvements shall be paid to the Village no later than February 1, 2025, in accordance with the terms below:
 - A. **Streetlight Improvements**. Upon the issuance of a building permit for a Unit, payment on a unit-by-unit basis in the amount of Three Hundred Seventeen Dollars and seventy-one cents (\$317.71) shall be due and payable to the Village for the Village's installation of the Streetlight Improvements. The Village acknowledges and agrees that no payment shall be due with respect to the Streetlight improvements for the Units that have already been issued building permits.
 - B. **Roadway Improvements**. Village shall perform the Roadway Improvements in connection with the Village's Infrastructure Road Program and shall pay for all costs and expenses of the Roadway Improvements. Upon issuance of a building permit for each

140 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Laura M. Julien
Email: LMJ@mickeywilson.com

To the OWNER: H&K Property Dev Limited Liability Company
1272 Mars Evan City Road
Evans City, PA 16033

With a copy to:
NVR, Inc.
603 E. Diehl Road
Naperville, Illinois 60563
Attn: Land Manager

To the HOA: Balmorea of Montgomery Townhome Association

- E. **Modification.** This Agreement may only be modified by a written instrument executed by the authorized representatives of the Parties.
- F. **Severability.** If any term of this Agreement is found to be invalid or otherwise incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect.
- G. **Binding Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and approved assigns.
- H. **Force Majeure.** Neither Party shall be liable for any delay or non-performance of its obligations caused by any contingency beyond its control, including, but not limited to, acts of God, war, civil unrest, labor strikes or walkouts, fires and natural disasters.
- I. **Authority to Execute.** The Parties hereto have read and reviewed the terms of this Agreement and by their signature as fixed below represent that the signing party has the authority to execute this Agreement and that the Parties intend to be bound by the terms and conditions contained herein.
- J. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date identified herein.

[Signatures on Following Page]

**Village of Montgomery,
an Illinois municipal corporation**

By: _____

Its: _____

**H & K Property Dev LLC,
a Pennsylvania limited liability company, as Owner of the Lots**

By: _____

Its: _____

**Baltimore of Montgomery Townhome Association,
an Illinois not-for-profit corporation**

By: _____

Its: _____

EXHIBIT A

UTILITY DYNAMICS CORPORATION

23 COMMERCE DRIVE
OSWEGO, ILLINOIS 60543
e-mail: contact@utilitydynamicscorp.com

PHONE:
(630) 554-1722
FAX (630) 554-1195

ELECTRICAL CONTRACTORS • OVERHEAD LINE CONSTRUCTION • UNDERGROUND DISTRIBUTION SYSTEMS

March 17, 2021

Att. Shawn Murphy
Village of Montgomery
200 N River St.
Montgomery, IL 60538

RE: Helene Rieder Dr.-Revised

Dear Sir:

The following scopes and prices reflect your request for the repairs on Helene Rieder Dr.:

Scope:

- 1) Hand excavate to expose existing power feed.
- 2) Remove damaged pole.
- 3) Furnish and install 8"x6' Helix Foundation Base.
- 4) Furnish and install HAPCO aluminum 20' pole with 6' arm.
- 5) Reinstall existing fixture.
- 6) Furnish and install new pole wire and fusing.
- 7) Splice into existing power.

- | | |
|---|----------------------------------|
| A) 3 Poles- | \$3,170.00 Each x 3= \$9,510.00 |
| B) 6 Poles | \$3,050.00 Each x 5= \$15,250.00 |
| C) Replace underground with 1 1/4" poly and 3-#8 conductor. | |
| | \$12/LF |

Clarifications:

- 1) Restoration is by others.
- 2) Obstruction removal at applicable T&E rates (rock, foundations, etc.)
- 3) Private Facilities unknown or unshown and damaged will be addressed at applicable T&E rates.
- 4) Damaged material returned to the Village of Montgomery Public Works.

Once again, Utility Dynamics Corporation appreciates this opportunity. Please call if you have any questions or want to schedule the project.

Sincerely,
Utility Dynamics Corporation

Joseph B. Spencer
President




EXHIBIT B

Village of Montgomery - Helene Rieder Improvements	
Draft Budget Cost Estimate March 2021	
Improvement Type	Cost
Helene Rieder Asphalt Improvements	\$ 67,900.00
Helene Rieder Concrete Improvements	\$ 22,700.00
Helene Rieder Total:	\$ 90,600.00