

**CITY OF PAPIILLION
MAYOR AND CITY COUNCIL REPORT
MAY 2, 2023 AGENDA**

Subject:	Type:	Submitted By:
Resolution to approve the Real Estate Purchase Agreement between Granite Creek Development, LLC and the City of Papillion for the Granite Creek East woodland park land acquisition.	Resolution #R23-0076	Travis Gibbons, CFM Planning Director

SYNOPSIS

This is a request for approval of a Purchase Agreement between Granite Creek Development, LLC and the City of Papillion for the Granite Creek East woodland park land acquisition. Approval of Resolution #R23-0076 will allow the City to execute the Purchase Agreement and perform all actions to carry out the purchase, including payment of the purchase price of \$1,039,785.00.

If Resolution #R23-0076 is approved, the City of Papillion will purchase Outlots D and F, Granite Creek East, which contains a woodland area that will be dedicated as a public park for use by the general public.

The purchase of Outlots D & F (woodland area) has been a long term goal of the City, has been contemplated since the 2002 Papillion Comprehensive Plan and has been identified as a high priority in the Papillion Parks & Recreation Master Plan. The Papillion Parks & Recreation Master Plan identifies the area of the Granite Creek Development (North of Hwy 370 west of 96th St) as the second overall priority for Parks in the entire City system.

The woodland park area is also identified within the Papillion Comprehensive Plan (Map 4.4). This area is depicted at the southwest corner of S 96th Street and Lincoln Road as being reserved for a future park/buffer area.

FISCAL IMPACT

The City's purchase price for the woodland park area contained within Outlots D and F is \$1,039,785. The City has been awarded a Land and Water Conservation Fund (LWCF) reimbursement grant for acquisition of the woodlands area. The grant will award matching funds not to exceed \$400,000 for the purchase of this area. The City will receive the reimbursement after completing the purchase of the woodland area.

RECOMMENDATION

Approval, contingent upon City Council approval of the following:

- Granite Creek East Change of Zone Ordinance, ORD. #1973;
- Granite Creek East Final Plat, RES. #R23-0072;
- Granite Creek East Subdivision Agreement, RES. #R23-0073;
- Granite Creek East Planned Unit Development Agreement, RES. #R23-0074; and
- Granite Creek East Water Connection Agreement, RES. #R23-0075.

BACKGROUND

In September 2022, City Council approved the Granite Creek East Preliminary Plat.

In November 2022, Planning Commission recommended approval of the Granite Creek East Final Plat.

In May 2023, City Council will consider the Granite Creek East Final Plat via Resolution #R23-0072.

ATTACHMENTS:

RES. #R23-0076

Real Estate Purchase Agreement between Granite Creek Development, LLC and the City of Papillion

RESOLUTION NO. R23-0076

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PAPIILLION TO APPROVE A PURCHASE AGREEMENT UNDER WHICH THE CITY WOULD PURCHASE OUTLOTS D AND F FROM GRANITE CREEK DEVELOPMENT, LLC.

WHEREAS, the City of Papillion is interested in purchasing the land to be platted as Outlots D and F, Granite Creek East (the "Property"); and

WHEREAS, the City of Papillion wishes to enter into a Real Estate Purchase Agreement (the "Purchase Agreement") to purchase the Property for \$1,039,785.00 from Granite Creek Development, LLC as the owner of the Property; and

WHEREAS, attached as Exhibit "A" and incorporated herein by this reference is the draft Purchase Agreement to be approved by the Mayor and City Council of the City of Papillion; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Papillion that they hereby approve the Purchase Agreement to purchase the Property from Granite Creek Development, LLC contingent upon: (1) City Council approval of the Granite Creek East Change of Zone Ordinance, ORD. #1973; the Granite Creek East Final Plat, RES. #R23-0072; the Granite Creek East Subdivision Agreement, RES. #R23-0073; the Granite Creek East Planned Unit Development Agreement, RES. #R23-0074 and the Granite Creek East Water Connection Agreement, RES. #R23-0075 and (2) the recording of the Granite Creek East Final Plat; and

BE IT FURTHER RESOLVED by the Mayor and City Council of the City of Papillion that they hereby authorize the Mayor and City Administrator to take all actions necessary, including the finalization and signing of documents and legal papers, in order to carry out the intent and purposes of such Agreement on behalf of the City.

PASSED AND APPROVED THIS _____ DAY OF _____, 2023.

CITY OF PAPIILLION, NEBRASKA

David P. Black, Mayor

Attest:

Nicole L. Brown, City Clerk

(SEAL)

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into on this _____ day of _____, 2023 ("Effective Date"), by and between Granite Creek Development, LLC ("Seller") and the City of Papillion, a Municipal Corporation ("Buyer").

WHEREAS, Seller owns certain real property as legally described on Exhibit "A" attached hereto and fully incorporated into this Purchase Agreement; and

WHEREAS, Buyer wishes to purchase the real estate legally described on Exhibit "A" together with all other rights, benefits, privileges, easements, tenements, hereditaments and appurtenances pertaining thereto (collectively, the "Property"); and

WHEREAS, Seller has agreed to sell the Property to Buyer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Upon the terms and conditions hereinafter stated, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase all of Seller's right, title, and interest, in and to a certain parcel of real estate as legally described on Exhibit "A" which is attached hereto and fully incorporated by reference into this Purchase Agreement.

ARTICLE II PURCHASE PRICE AND PAYMENT

2.1 Purchase Price. The total purchase price for the Property shall be one million, thirty-nine thousand, seven hundred, and eighty-five Dollars (\$1,039,785.00) ("Purchase Price"). Provided that the Closing Conditions defined herein are satisfied by Seller or otherwise waived by Buyer, Buyer shall deliver the Purchase Price to Seller on or before the Closing Date.

2.2 Payment. The Purchase Price shall be paid by Buyer to Seller in certified funds or by wire transfer to the Seller on the Closing Date.

ARTICLE III CLOSING

3.1 Closing Date. Subject to the Conditions listed below, the closing of the sale of the Property ("Closing Date") shall occur within ten (10) calendar days after fulfillment of the Closing Conditions described in Section 3.3 of this Agreement.

3.2 Place of Closing. The place of Closing shall be held at the City of Papillion City Hall, 122 East Third St., Papillion, NE 68046, or at such other place as may be agreed upon by Buyer and Seller.

3.3 Closing Conditions.

- a. Buyer's Obligation to Close.
 - i. Buyer's obligation to purchase the Property under this Agreement is specifically conditioned upon the City of Papillion receiving adequate assurances that the Property is in good and suitable condition, as is, for the use and purposes intended by Buyer, and that Seller has Marketable Title to the Property, as evidence by buyer's ability to obtain Title Insurance on the Property.
 - ii. Buyer may obtain, prior to the Closing Date and at Buyer's expense, a current preliminary title commitment including copies of all documents evidencing any exception thereto (the "Title Report").
 - iii. Within ten (10) business days of receiving the Title Report, Buyer may approve or disapprove (in its sole and absolute discretion) the Title Report for the Property by delivering written notice to Seller ("Buyer's Title Notice") specifying each title defect or matter for which Buyer is requesting a cure by Seller ("Title Defect") and each Title Company requirement ("Title Requirement") which Buyer is requesting Seller to satisfy in order for the Title Policy to be issued for the Property at Closing. Buyer's failure to deliver Buyer's Title Notice to Seller within the time period specified above shall be a conclusive presumption that Buyer has approved the Title Report and this Agreement shall remain in full force and effect. Within three (3) calendar days after receiving Buyer's Title Notice, Seller shall deliver to Buyer written notice ("Seller's Title Notice") of those Title Defects, if any, which Seller covenants and agrees to either eliminate or cure to Buyer's satisfaction by the Closing Date and those Title Requirements, if any, which Seller agrees to satisfy by the Closing Date. Seller's failure to deliver Seller's Title Notice to Buyer within the time period specified above shall be deemed to constitute Seller's election not to eliminate or cure any such Title Defect or to satisfy any such Title Requirements. If Seller elects (or is deemed to have elected) not to eliminate or cure any Title Defects or to not satisfy any Title Requirements, Buyer shall have the right, by written notice delivered to Seller prior to the Closing Date, to either (i) waive its prior notice as to the Title Defects which Seller has elected not to cure and those Title Requirements which Seller has elected not to satisfy, or (ii) terminate this Agreement. Buyer's failure to deliver any written notice prior to the Closing Date shall be a conclusive presumption that Buyer has approved the Title Report, waived any Title Defects and Title Requirements and this Agreement shall remain in full force and effect. In the event that Buyer elects to terminate this Agreement, pursuant to this paragraph, this Agreement shall be null and void, in which event neither Buyer nor Seller shall be liable for damages hereunder to the other. Notwithstanding the foregoing, Seller shall have the obligation to remove any mortgage or deed of trust or other lien placed or allowed to attach by or through Seller without the necessity of objection by Buyer.

- b. Seller's Obligation to Close.
 - i. Seller's obligation to sell the Property as set forth under this Agreement shall be completed on or before sixty (60) days after the execution of this Agreement by both Seller and Buyer.
 - ii. In the event Seller fails or refuses to meet Seller's obligation within the time period stated, Buyer may terminate this Agreement by notice to Seller and thereafter neither party shall have any further duties, obligations or rights hereunder, or in the alternative, Buyer may pursue any available remedies for specific performance herein.
 - iii. In the event Seller has satisfactorily completed Seller's obligations hereinunder and Buyer fails or refuses to meet Buyer's obligation to purchase the Property, Seller may terminate this Agreement by giving written notice to Buyer, in which event neither party shall have any further duties, obligations or rights hereunder, or the parties may mutually agree to extend the period in which Seller is obligated to Close by thirty (30) days.

3.4 At the conclusion of the Closing, Buyer shall be responsible for the filing or recording of any documentation, including the Warranty Deed, necessary to complete the transfer of ownership from Seller to Buyer, and Buyer shall further be solely responsible for all costs and fees associated with any such filings or recordings necessary to complete the transfer of ownership from Seller to Buyer.

ARTICLE IV CLOSING DELIVERIES

4.1 At the Closing, Seller shall deliver to Buyer the following documents:

- a. A duly executed and acknowledged Warranty Deed, conveying marketable title to the Property, subject only to (i) covenants, (ii) utility easements of record, and (iii) such other conditions or exceptions as may be approved by Buyer; and
- b. All other Seller documents necessary to close this transaction in accordance with the terms of this Agreement, including but not limited to a standard Seller's Affidavit confirming the absence of bankruptcy, tax liens, judgement or other proceedings and unrecorded interests in the Property which could affect the title to the Property, and such documents as may be required by the title commitment.

4.2 At the Closing, Buyer shall deliver to Seller:

- a. Payment in full of any balance remaining on the Purchase Price; and
- b. All other Buyer documents necessary to close this transaction in accordance with the terms of this Agreement.

ARTICLE V
EXPENSES TO BE PAID AT OR PRIOR TO CLOSING

5.1 Buyer's Closing Costs. On the Closing Date, Buyer shall pay the following, if applicable:

- a. The Purchase Price due at Closing as set forth above;
- b. One half of the closing costs associated with the real estate purchase;
- c. The costs of the Title Report and title insurance policy premiums; and
- d. All filing or recording fees upon said Warranty Deed.

5.2 Seller's Closing Costs. On the Closing Date, Seller shall pay the following:

- a. One-half of the Closing Costs associated with the closing transaction.
- b. Real estate taxes for 2022, which became due and payable on December 31, 2022 and delinquent in 2023 (and considered to be current), will be paid in full by Seller without any proration between Buyer and Seller to the date of Closing. With regard to real estate taxes for 2023, if Closing occurs in 2023, the parties agree that neither party shall be responsible to pay the 2023 real estate taxes. If, however, Closing occurs in 2024, Seller agrees to pay real estate taxes for 2023 in full without any proration between Buyer and Seller, and neither party shall be responsible to pay for the 2024 real estate taxes.

ARTICLE VI
REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

Seller warrants, represents and covenants as follows, each and every one of which shall be true in all material respects on the Closing Date unless specifically waived in writing by Buyer:

6.1 Absence of Claims. There are no pending or, to Seller's knowledge, threatened litigations, proceedings, code violations, claims or investigations, including without limitation any such pending or threatened litigations, etc., by any government authority or insurance underwriter and no contract or agreement to which Seller is a party, which relates in any way to the Property or which on or after the Closing Date will adversely affect the Property.

6.2 Condemnation. Seller has received no notice of any pending or threatened proceedings in eminent domain by any federal or state entity by which the Property or any portion thereof or interest therein is sought to be obtained.

6.3 Title and Authority. Seller owns the Property and has the lawful authority to enter into this Agreement and to sell and convey the Property to Buyer as provided in this Agreement and to carry out Seller's obligations hereunder.

6.4 Agreements pending Closing. From the effective date hereof until the Closing, Seller covenants and agrees that Seller:

- a. Shall not transfer, alienate, lease or otherwise encumber the Property or any portion thereof, or grant any right of occupancy to any person or entity;

- b. Shall maintain the Property in good condition, repair and operating order, and shall not make any material changes to the Property from the condition in which exists as of the effective date hereof;
- c. Shall maintain in full force such insurance policies respecting the Property, if any, as it maintains on the date hereof; and
- d. Shall not create any covenants, easements, or restrictions on the Property.

6.5 Compliance with Agreements. The execution and delivery of this Agreement, the consummation of the transaction herein contemplated and the compliance with the terms of this Agreement will not conflict with, constitute a default under, or result in a breach of any indenture, mortgage, loan agreement, judgment, order or decree of any court having jurisdiction over Seller or Seller's properties, or instrument to which the subject property is bound.

6.6 Environmental Claims; Hazardous Wastes. Seller represents and warrants to Buyer that it has not used the Property for storage or disposal of any hazardous substance, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601-9657, as amended or any similar state law or local ordinance, in violation of CERCLA or such laws or ordinances. Seller further represents and warrants to Buyer that Seller has used due diligence to investigate into the previous uses and ownership of the Property, including consultation with appropriate federal, state and local environmental quality agency(ies), and there are no claims, complaints, judicial or administrative proceedings or other actions that have been taken or filed against Seller or the Property related to any federal, state or local environmental law, statute, ordinance or regulation, nor have any notices of pending or possible such claims, complaints, judicial or administrative proceedings or other actions against the Property been received. Seller further represents and warrants that it has received from the appropriate environmental quality agency(ies) an opinion regarding any environmental mitigation of unsafe or hazardous conditions which may be necessary on the Property, and that any mitigation action which is deemed necessary has been satisfactorily completed. Seller further represents and warrants that it will indemnify Buyer against any claims, complaints, judicial or administrative proceedings or other actions which may in the future be taken or filed against the Buyer or the Property related to the storage, release, or disposal of any hazardous material prior to the closing date of this Agreement.

6.7 No Foreign Ownership. Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax act as codified in Section 1445 of the Internal Revenue Code of 1954, as amended.

6.8 Rights of Tenants. The Property shall not be subject to rights of any tenancies as of the Closing Date.

If any representation above is found by Buyer, prior to the Closing, to become untrue and is not remedied by Seller prior to the Closing, Buyer may (i) terminate this Agreement, in which event neither party shall have any further duties, obligations or rights pursuant to this Agreement or (ii) waive its objections and close this transaction.

If any representation regarding environmental claims or hazardous waste above is found by Buyer to become untrue after the Closing, Seller agrees to indemnify Buyer against any claims, complaints, judicial or administrative proceedings or other actions which may be taken or filed against Buyer or the Property, and further agrees to promptly undertake and complete any and all testing,

abatement, clean up, remediation or other corrective action necessary or recommended to remove, remediate, clean up or abate any unsafe or hazardous condition or non-compliance with any environmental requirement under federal, state or local law, statute, ordinance or regulation.

**ARTICLE VII
REMEDIES**

7.1 If Seller fails or refuses, in violation of this Agreement, to comply with the obligation to sell the Property to Buyer as set forth herein, Buyer's remedies shall be to either (i) terminate this Agreement by written notice upon Seller in the manner provided herein, or (ii) file an action in the Sarpy County District Court for specific performance of this Agreement, provided, any such action must be filed within six (6) months from the date of Seller's failure or refusal to perform. In no event shall Seller be liable for any actual, consequential, or punitive damages for failure to comply with the obligation to sell the Property.

7.2 If Buyer fails or refuses, in violation of this Agreement, to comply with any obligation or duty set forth herein, Seller's sole remedy shall be to terminate this Agreement and to retain as liquidated damages any amounts already paid by Buyer to Seller. In no event shall Buyer be liable for any actual, consequential, or punitive damages.

**ARTICLE VIII
MISCELLANEOUS**

8.1 Notices. All notices and other documents of similar legal import from either of the parties hereto to the other shall be in writing and considered to have been duly given or served if sent by first class certified mail, return receipt requested and addressed as set forth below, or to such other address as such party may hereafter designate by written notice to the other party.

To Seller: Granite Creek Development LLC
11205 S 150th Street, Suite 100
Omaha, NE 68138

To Buyer: City of Papillion
Attn. City Administrator
122 East Third Street
Papillion, NE 68046

8.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. This Agreement shall survive Closing and shall not be deemed to be merged into any deed or other document delivered at Closing.

8.3 Headings. The headings of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and do not form a part hereof, and in no way interpret or construe such paragraphs and subparagraphs.

8.4 Entire Agreement. This instrument contains the entire agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the sale and purchase of the Property, and this Agreement cannot be changed except by written consent signed by both parties.

8.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

8.6 In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.7 This Agreement shall not, by itself, be construed as a conveyance of title by Seller to Buyer.

8.8 This Agreement shall be construed under and in accordance with the laws of the State of Nebraska and any action hereunder shall be brought only in the state or federal court having jurisdiction in Sarpy County, Nebraska.

8.9 Time is of the essence regarding the payment and performance of this Agreement.

(End of Agreement)

IN WITNESS WHEREOF, Buyer has executed this instrument as of this _____ day of _____, 2023.

BUYER:

THE CITY OF PAPILLION,

David P. Black, Mayor

Attest:

Nicole L. Brown, City Clerk

Exhibit A
Legal Description

Outlots D and F, Granite Creek East, as subdivision as platted and recorded in Sarpy County, NE