

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: November 22, 2016 (B of T) Date: December 1, 2016

TITLE: First Amendment to the Woodmoor Development LLC Utility Service and Development Agreement

SUBMITTED BY: Department of Community Development *W*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an Ordinance approving a First Amendment to a Utility Service and Development Agreement for the Ken-Loch Golf Course Property.

Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

MEETING DATE: December 1, 2016

SUBJECT: **First Amendment to the Woodmoor Development LLC Utility Service and Development Agreement**

As the Village Board is aware, DuPage County approved a proposal by Donven Homes to redevelop the former Ken Loch golf course property in December, 2013 with 288 apartment units in four buildings and 100 townhome units. The Village entered into a companion Utility Service and Development Agreement with the developer, Woodmoor Development LLC, on July 16, 2015. The original agreement provided the opportunity for the developer to connect to Village public watermain and sanitary sewer services. In turn, the developer would also construct off-site stormwater improvements and selected other enhancements which would benefit neighboring properties.

Since the original approval, the developer has been completing final engineering activities associated with the project, with an anticipated construction start now set for Spring, 2017. As the project nears its proposed construction start, the developer is seeking consideration by the Village of an amended agreement that would set forth the following principal changes:

1. The existing traffic signal at the intersection of Finley Road and Oak Creek Drive does not meet current IDOT standards and in order to provide for the requisite fourth-leg to the intersection, the full signal would need to be brought up to standard. To that end, the Village would undertake the requisite signal improvements, provided that the developer reimburses the Village for half of the improvement costs, not to exceed \$150,000. Companion language is also offered in new Section 2.16 and 2.17 and elsewhere as noted in the agreement.
2. To address unforeseen delays in closing on the property and starting construction, the developer is seeking to amend construction related start dates by six months accordingly.
3. The original agreement and the amendment would also be applicable to any future developer successors. To account for the possibility that part of the project may be constructed by alternate developers at some point in the future, Section 7.1 provides clarity as to how the reimbursement credits associated with the original agreement should be applied against the development.

ACTION REQUESTED

Attached are the draft Ordinance and the companion First Amendment to the Woodmoor Development LLC Utility Service and Development Agreement. In order to ensure that the public is aware of the request and to provide the maximum amount of transparency, this amendment is suggested to be considered by the Village Board at the respective December 1 and December 15, 2016 Village Board meetings.

While no public hearing is required, the Village has been in regular communication with a group of area residents and sent them a letter regarding the amended agreement request during the week of November 21, 2016.

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ORDINANCE NO. _____

AN ORDINANCE APPROVING A FIRST AMENDMENT TO A UTILITY SERVICE AND DEVELOPMENT AGREEMENT FOR THE KEN-LOCH GOLF COURSE PROPERTY

WHEREAS, the Corporate Authorities of the Village of Lombard have received a First Amendment to a Utility Service and Development Agreement in regard to the Ken-Loch Golf Course Property, as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such an amendment;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2016.

First reading waived by action of the Board of Trustees this ____ day of _____, 2016.

Passed on second reading this ____ day of _____, 2016 pursuant to a roll call vote as follows:

Ayes: _____

Ordinance No. _____

Re: First Amendment to a Utility Service and Development Agreement – Woodmoor
Development LLC

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Nays: _____

Absent: _____

Approved by me this _____ day of _____, 2016.

Keith T. Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published by me in pamphlet from this _____ day of _____,
2016.

Sharon Kuderna, Village Clerk

EXHIBIT "A"

**FIRST AMENDMENT TO
UTILITY SERVICE AND DEVELOPMENT AGREEMENT
KEN-LOCH GOLF COURSE PROPERTY
(1S601 SOUTH FINLEY ROAD – 31 ACRES)**

This First Amendment to Utility Service and Development Agreement (hereinafter, the "First Amendment") is made and entered into as of _____, 2016 (hereinafter, the "Effective Date"), by and between the Village of Lombard, an Illinois municipal corporation located in DuPage County, Illinois (hereinafter, the "Village"), and Woodmoor Development, LLC, an Illinois limited liability company (hereinafter, the "Developer") in accordance with authority granted by Article VII, Section 10(a) of the Illinois Constitution. References to "Developer" herein shall include any nominees, successors or successor entities of Woodmoor Development, LLC, as well as any joint ventures in relation to which Woodmoor Development, LLC is a party. The Village and the Developer are hereinafter sometimes referred to collectively as the "Parties" and individually as a "Party."

WITNESSETH

WHEREAS, the Village and the Developer entered into a Utility Service and Development Agreement dated July 16, 2015, in regard to the property (the "Subject Property"), as legally described on Exhibit 1 attached hereto and made part hereof (the "Original Agreement"), which was recorded with the DuPage County Recorder's Office on September 3, 2015, as document number R2015-098665; and

WHEREAS, the Village and the Developer desire to amend certain provisions of the Original Agreement; and

WHEREAS, it is in the best interests of the Village and the Developer to enter into this First Amendment;

NOW, THEREFORE, in consideration of the foregoing, the covenants, conditions and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. That Recital F of the Original Agreement is amended to read in its entirety as follows:

"F. Developer agrees that improvements within the Finley Road right-of-way adjacent to the Subject Property, including a traffic signal at the intersection of Finley Road and the Northerly entrance to the Subject Property, as depicted on Exhibit B attached hereto and made part hereof, (hereinafter, the "Traffic Signal Improvements" as to the traffic signal improvements

depicted on Exhibit B, and the "Finley Road Improvements" as to all other right-of-way improvements depicted on Exhibit B, along with roadway, sidewalk, street lighting and storm sewer improvements in relation thereto, on the Subject Property, (hereinafter, the "On-Site Roadway Improvements"), necessary to serve the Development, as depicted on Exhibit C attached hereto and made part hereof, are required relative to the Development. In relation thereto, the Developer shall install the Finley Road Improvements and the On-Site Roadway Improvements in the publicly dedicated right-of-way, in accordance with the Village Public Improvements Standards, to the extent doing so would not be in violation of York Township and/or DuPage County public improvements construction and engineering standards, all at no cost to the Village. The Finley Road Improvements and the On-Site Roadway Improvements are hereinafter collectively referred to as the "Roadway Improvements." The Village shall install the Traffic Signal Improvements, subject to the Developer being obligated to reimburse the Village for one-half (1/2) of the cost thereof, not to exceed \$150,000.00."

2. That Recital M of the Original Agreement is amended by revising the reference therein to "June 1, 2019" to read "December 1, 2019."
3. That subsection 2.1 of the Original Agreement is amended by revising the reference therein to "December 31, 2016" to read "June 30, 2017."
4. That subsection 2.2 of the Original Agreement is amended by revising the reference therein to "December 31, 2017" to read "June 30, 2018," and by revising the reference therein to "December 31, 2018" to read "June 30, 2019."
5. That subsection 2.6 of the Original Agreement is amended by revising the reference therein to "June 1, 2019" to read "December 1, 2019."
6. That Section 2 of the Original Agreement is amended by adding new subsections 2.16 and 2.17 thereto, which shall read in their entirety as follows:
 - "2.16 Subject to *force majeure* (which shall include, but not be limited to, work stoppage, labor strikes and material shortages outside the Village's reasonable control), the Village shall substantially complete the Traffic Signal Improvements by June 30, 2018, with any claim of *force majeure* not to extent said completion deadline beyond June 30, 2019, provided the Agreement remains in full force and effect. If the Agreement is terminated as a result of the Developer's non-compliance with the terms of the Agreement, the Village shall not be obligated to complete the Traffic Signal Improvements.
 - 2.17 In regard to the Village's construction of the Traffic Signal Improvements, the Developer shall, subject to subsection 7.1 below, reimburse the Village for one-half (1/2) of the cost thereof, not to exceed \$150,000.00, with said Developer reimbursement amount, to the extent not applied as a credit pursuant to subsection 7.1 below, being due and payable to the Village within thirty (30) days of the

Village tendering a bill in relation thereto to the Developer. Late payments by the Developer shall accrue interest at the rate of two percent (2%) per month, subject to the minimum interest payment being for a one (1) month period.”

7. That subsection 7.1 of the Original Agreement is amended to read in its entirety as follows:

“7.1. As compensation for the costs incurred by the Developer relative to the Off-Site Stormwater Facilities, including the cost of the on-site stormwater relief basin and the value of the land encumbered with a Village interest relative to the on-site stormwater relief basin on the Stormwater Relief and Pathway Parcel (\$589,000.00); the Pathway (\$32,500.00); and the Landscaping Improvements (\$20,000.00); Developer shall receive a credit against Village engineering review and inspection fees under subsection 16.3(A)(iii) below, the amount due to the Village from the Developer relative to the Village’s construction of the Traffic Signal Improvements pursuant to Section 2.17 above, and Village potable water and sanitary sewerage tap-on/connection fees arising from apartment and townhome/coachhome building connections within the Subject Property, in the total amount of \$641,500.00. The credit shall be applied first against any Village engineering review and inspection fees under subsection 16.3(A)(iii) below, not already paid to the Village by the Developer, that may be imposed upon Developer; second against the amount due to the Village relative to the Traffic Signal Improvements; third against the potable water and sanitary sewerage system tap on/connection fee payments for the apartment buildings, as they become due the Village, with said credit amount not to exceed \$300,000.00; and fourth against the potable water and sanitary sewerage system tap on/connection fee payments for the townhome/coachhome buildings, as they become due to the Village.”

8. That subsection 16.3(C) of the Original Agreement is amended by inserting the following after the word “Agreement,” as contained therein: “as amended by any amendments hereto,”

9. That subsection 16.3 of the Original Agreement is amended by adding a new subsection (D) thereto, which shall read in its entirety as follows:

“(D) The provisions of subsection (A)(i) above shall apply to the preparation of any amendments to this Agreement in the same manner as to the preparation of this Agreement.”

10. That Exhibit B to the Original Agreement is relabeled as “Depiction of the Traffic Signal Improvements and the Finley Road Improvements.”

11. A copy of this First Amendment shall be recorded by the Village, and same shall be re-recorded, with a cover sheet acknowledging the Parties’ agreement to be bound hereby, upon Developer becoming the fee title owner of the Subject Property.

12. The individual executing this First Amendment on behalf of the Developer warrants that he/she has been lawfully authorized by Developer to execute this First Amendment on behalf of said Developer. The individual executing this First Amendment on behalf of Kensinger (as defined in Recital P of the Original Agreement) warrants that he has been lawfully authorized by Kensinger (as defined in Recital P of the Original Agreement) to execute this First Amendment on behalf of Kensinger (as defined in Recital P of the Original Agreement). The Village President and Village Clerk hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this First Amendment. The Developer, Kensinger (as defined in Recital P of the Original Agreement) and the Village shall deliver to each other, upon request, copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required to legally evidence the authority to so execute this First Amendment on behalf of each of them.
13. This First Amendment may be executed in three (3) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
14. The date on which the last of the Village, the Developer or Kensinger (as defined in Recital P of the Original Agreement) signs this First Amendment shall be inserted on page 1 hereof, which date shall be the Effective Date of this First Amendment.
15. That all portions of the Original Agreement, not amended hereby, shall remain in full force and effect.

**THE REMAINDER OF THIS PAGE
HAS INTENTIONALLY BEEN LEFT BLANK**

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the date first above written.

Village of Lombard,
an Illinois municipal corporation

Woodmoor Development, LLC,
an Illinois limited liability company

By: _____
Keith Giagnorio
Village President

By: _____
Scott A. Stevens
Manager

Date: _____

Date: _____

ATTEST:

Sharon Kuderna
Village Clerk

Date: _____

Kensinger Realty Investments, LLC, an Illinois limited liability company, as fee title owner of the Subject Property, hereby approves of and consents to this First Amendment, between the Village and the Developer, and hereby authorizes the Village and the Developer to record same against title to the Subject Property.

Kensinger Realty Investments, LLC,
an Illinois limited liability company

By: _____
Richard E. Kensinger
Manager

Date: _____

State of Illinois)
) SS
County of DuPage)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio, personally known to me to be the Village President of the Village of Lombard, and Sharon Kuderna, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Corporate Authorities of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2016.

Notary Public

State of Illinois)
) SS
County of DuPage)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Scott A. Stevens, personally known to me as Manager of Woodmoor Development, LLC, an Illinois limited liability company, acknowledged to me that he signed and delivered the foregoing instrument on behalf of said company as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2016.

Notary Public

State of Illinois)
) SS
County of DuPage)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard E. Kensinger, personally known to me as the Manager of Kensinger Realty Investments, LLC, an Illinois limited liability company, acknowledged to me that he signed and delivered the foregoing instrument on behalf of said company as his own free and voluntary act for the uses purposes therein set forth.

GIVEN under my hand and official seal, this ____ day of _____, 2016.

Notary Public

Exhibit 1

Legal Description of Subject Property

PARCEL 1: THAT PART OF THE NORTH 31 ACRES OF THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 LYING SOUTH OF THE NORTH 660 FEET OF SAID WEST HALF OF THE SOUTHEAST QUARTER, IN SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID NORTH 31 ACRES WITH THE EAST LINE OF FINLEY ROAD AS HERETOFORE DEDICATED BY DOCUMENT R69-42444; THENCE NORTH ALONG THE EAST LINE OF FINLEY ROAD, A DISTANCE OF 523.75 FEET FOR A PLACE OF BEGINNING, THENCE CONTINUING NORTH ALONG THE EAST LINE OF FINLEY ROAD A DISTANCE OF 164.38 FEET; THENCE EAST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET; THENCE SOUTH PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 164.38 FEET; THENCE WEST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS; AND

PARCEL 2: THE NORTH 31 ACRES OF THAT PART OF THE WEST HALF OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTH OF THE NORTH 660 FEET OF SAID WEST HALF OF THE SOUTHEAST 1/4, EXCEPT THE FOLLOWING: THAT PART OF THE NORTH 31 ACRES OF THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 LYING SOUTH OF THE NORTH 660 FEET OF SAID WEST HALF OF THE SOUTHEAST QUARTER, IN SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID NORTH 31 ACRES WITH THE EAST LINE OF FINLEY ROAD AS HERETOFORE DEDICATED BY DOCUMENT R69-42444; THENCE NORTH ALONG THE EAST LINE OF FINLEY ROAD, A DISTANCE OF 523.75 FEET FOR A PLACE OF BEGINNING, THENCE CONTINUING NORTH ALONG THE EAST LINE OF FINLEY ROAD A DISTANCE OF 164.38 FEET; THENCE EAST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET; THENCE SOUTH PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 164.38 FEET; THENCE WEST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PINS: 06-19-400-011, -030 and -031.