

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

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 Niehaus, Village Manager
DATE : December 5, 2017 (BOT) Date: December 7, 2017
SUBJECT: Second Reinstatement of and Third Amendment to the Woodmoor Development LLC Utility Service and Development Agreement, Ken Loch Golf Course Property

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

BACKGROUND/POLICY IMPLICATIONS:

Woodmoor Developmnet LLC, developer of the former Ken Loch Golf Course is requesting approval of a reinstated utility and service agreement due to weather conditions and funding considerations. The attached Ordinance and Agreement:

- Extends the construction start date to April 30, 2018 and extends other constructed related dates set forth within the original Agreement and previously approved amendments;
- Modifies the traffic signal reimbursement cost cap from \$150,000 to \$170,000; and
- Incorporates the developer's share of obligated legal review and recording costs within the credit.

The developer and staff request a waiver of first reading.

Fiscal Impact/Funding Source:

Review (as necessary):


Finance Director _____ Date _____
Village Manager _____ 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 

MEETING DATE: December 7, 2017

SUBJECT: **Second Reinstatement of and Third Amendment to the Woodmoor Development LLC Utility Service and Development Agreement**

The Village entered into a companion Utility Service and Development Agreement with Woodmoor Development LLC, as developer, on July 16, 2015 and associated with the redevelopment of the former Ken Loch golf course property. 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.

In December, 2016, the Village entered into a First Amendment to the Agreement which provided for cost-sharing modifications to the proposed Finley Road/Oak Creek Drive traffic signal, credit amendments for successor developers and the requisite construction related start date to June 30, 2017. Due to delays by the proposed apartment developer, Urban Street Group LLC, in securing investor funding by the June 30 date, the developer requested and received approval of a Reinstated Agreement and Second Amendment on July 20, 2017.

Staff received the attached correspondence noting that further lender delays precluded the project from starting before the winter season. As such, they are requesting a Second Reinstatement of the aforementioned Agreement to meet their proposed 2018 construction schedule. While most of the substantive portions of the past Agreements remain unchanged from previous versions of the Agreement, the attached Ordinance:

- Extends the construction start date to April 30, 2018 and extends other constructed related dates set forth within the original Agreement and previously approved amendments;
- Modifies the traffic signal reimbursement cost cap from \$150,000 to \$170,000; and
- Incorporates the developer's share of obligated legal review and recording costs within the credit.

ACTION REQUESTED

Attached is an Ordinance providing for the Second Reinstatement of and Third Amendment to the Woodmoor Development LLC Utility Service and Development Agreement. Please place this item on the December 7, 2017 Village Board agenda for consideration and approval.

The developer and staff also seek a waiver of first reading of the Ordinance in order to effectuate the property closing and to memorialize the development terms and conditions associated with the project.

WOODMOOR DEVELOPMENT, LLC

October 9, 2017

Mr. Scott Niehaus, Village Manager
Village of Lombard
255 E. Wilson Ave.
Lombard, IL 60148

RE: Woodmoor - Site Improvement Work Delay

Dear Scott:

For the benefit of both the Village of Lombard as well as the neighboring residents adjacent to Woodmoor, we are writing you to provide both an explanation as to why we were unable to begin construction of the Woodmoor community (the former Ken Loch golf course) as originally planned and to provide updated information on the revised start date for site development work on Woodmoor. We also met with DuPage County previously to inform them of the delay and provide them current information regarding our revised site work commencement date.

At the Village of Lombard's Open House in late May, we provided construction schedule information to the Village of Lombard and the neighboring residents indicating the start of site development construction was to begin in June. However, our apartment builder partner encountered difficulties in obtaining final approvals to allow for full funding of their acquisition. It was not until September that they were able to secure their final lender approvals.

The result of this delay meant that the closing and subsequent site construction work would not be able to begin until late September which does not provide sufficient time to complete the site improvement work prior to winter weather shutting down construction.

To allow for completion of site construction work to continue once started without intermittent delays, the schedule was changed to have site improvement work begin in March, 2018 (see attached site construction work schedule for detailed information). The resulting revised site construction schedule will allow for site work to be substantially completed by July 2018, allowing both the apartment and townhome building construction to commence in June/July of 2018.

Page Two
Scott Niehaus, Village Manager
October 9, 2017

We would like to assure the Village of Lombard that both Woodmoor Development, LLC and our apartment builder partner, remain fully committed to the Woodmoor project and look forward to beginning work in early 2018. Until then, we will continue to maintain the Ken Loch property by cutting grass and weeds along the site perimeter.

Sincerely,

Woodmoor Development, LLC

A handwritten signature in black ink that reads "Don Stevens". The signature is written in a cursive, slightly slanted style.

Don Stevens, Member

cc: Bill Heniff, Director of Community Development
Paul Hoss, DuPage County Zoning Administration Coordinator

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A REINSTATEMENT OF,
AND THIRD 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 Reinstatement of, and Third Amendment to, a Utility Service and Development Agreement in regard to the Ken Loch Golf Course Property; a copy of which is attached hereto as Exhibit "A" and made part hereof (the "Third Amendment"); and

WHEREAS, the Corporate Authorities deem it to be in the best interests of the Village of Lombard to approve the Third Amendment;

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

SECTION 1: That the Third Amendment, attached hereto as Exhibit "A", is hereby approved.

SECTION 2: That the Village President and Village Clerk are hereby authorized and directed to execute said Third Amendment on behalf of the Village of Lombard, and to execute any additional documents in furtherance of said Third Amendment.

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

Passed on first reading this ____ day of _____, 2017.

First reading waived by action of the Board of Trustees this 7th day of December, 2017.

Passed on second reading this 7th day of December, 2017 pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved by me this 7th day of December, 2017.

Keith T. Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit "A"

**REINSTATEMENT OF,
AND THIRD AMENDMENT TO,
A UTILITY SERVICE AND DEVELOPMENT AGREEMENT
FOR THE KEN LOCH GOLF COURSE PROPERTY**

(attached)

**REINSTATEMENT OF, AND THIRD AMENDMENT TO,
UTILITY SERVICE AND DEVELOPMENT AGREEMENT –
KEN LOCH GOLF COURSE PROPERTY
(1S601 FINLEY ROAD – 31 ACRES)**

This Reinstatement of, and Third Amendment to, Utility Service and Development Agreement (hereinafter, the "Third Amendment") is made and entered into as of _____, 2017 (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 (the "Original Agreement"), in regard to the property as legally described, at the time of the approval of the Original Agreement and the First Amendment (as defined below), as set forth on Exhibit 1 attached hereto and made part hereof; with said Original Agreement being recorded with the DuPage County Recorder's Office on September 3, 2015, as document number R2015-098665; and

WHEREAS, the Village and the Developer entered into a First Amendment to Utility Service and Development Agreement dated December 15, 2016 (the "First Amendment"), which amended the Original Agreement, and which was recorded with the DuPage County Recorder's Office on February 9, 2017, as document number R2017-014395; and

WHEREAS, the property covered by the Original Agreement, as amended by the First Amendment, was subdivided pursuant to the plat of subdivision recorded on April 17, 2017 as document number R2017-036373, with said property now being legally described as set forth on Exhibit 2 attached hereto and made part hereof (the "Updated Legal Description"); and

WHEREAS, the Village and the Developer entered into a Reinstatement of, and Second Amendment to, Utility Service and Development Agreement dated July 26, 2017 (the "Second Amendment"), which amended the Original Agreement, as amended by the First Amendment, and which was recorded with the DuPage County Recorder's Office on August 10, 2017, as

document number R2017-081533 (the Original Agreement as amended by the First Amendment and the Second Amendment being hereinafter referred to as the "Amended Agreement"); and

WHEREAS, the Village and the Developer desire to reinstate the Amended Agreement, and amend certain provisions of the reinstated Amended Agreement; and

WHEREAS, it is in the best interests of the Village and the Developer to enter into this Third 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 Amended Agreement is amended by revising the reference therein to "\$150,000.00" to read "\$170,000.00."
2. That subsection 2.1 of the Amended Agreement is amended by revising the reference therein to "August 31, 2017" to read "April 30, 2018."
3. That subsection 2.2 of the Amended Agreement is amended: (a) by revising the reference therein to "August 31, 2018" to read "June 30, 2019"; and (b) by revising the reference therein to "August 31, 2019" to read "June 30, 2020."
4. That Section 2.16 of the Amended Agreement is amended: (a) by revising the reference therein to "August 31, 2018" to read "April 1, 2019"; and (b) by revising the reference therein to "August 31, 2019" to read "April 1, 2020."
5. That Section 2.17 of the Amended Agreement is amended by revising the reference therein to "\$150,000.00" to read "\$170,000.00."
6. That subsection 5.1 of the Amended Agreement is amended by: (a) revising the references therein to "September 1, 2017" to read "September 30, 2018"; and (b) adding the following to the end thereof: "In lieu of making the aforementioned \$60,296.00 deposit with the Village, the Developer shall have the option of electing to reduce the total amount of the Developer credit, as referenced in Section 7.1 below, by \$60,296.00."
7. That subsection 7.1 of the Amended Agreement is amended by adding the following between the first and second sentence of said subsection: "In the event that the Developer elects to reduce the amount of the credit, rather than making the deposit with the Village, relative to the 18th Street Storm Sewer as provided for in Section 5.1 above, the amount of the Developer's credit shall be \$581,204.00. The Village shall be entitled to reduce said Developer credit amount by the amount of attorneys' fees and recording fees due the Village from the Developer pursuant to subsections 16.3(A)(i) and 16.3(A)(ii) below."

8. That Exhibit A of the Amended Agreement shall continue to read in its entirety as set forth on Exhibit 2 attached hereto.
9. A copy of this Third 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 (as defined in the Amended Agreement, as revised by this Third Amendment).
10. The individual executing this Third Amendment on behalf of the Developer warrants that he/she has been lawfully authorized by Developer to execute this Third Amendment on behalf of said Developer. The individual executing this Third Amendment on behalf of Kensinger (as defined in Recital P of the Amended Agreement) warrants that he has been lawfully authorized by Kensinger (as defined in Recital P of the Amended Agreement) to execute this Third Amendment on behalf of Kensinger (as defined in Recital P of the Amended 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 Third Amendment. The Developer, Kensinger (as defined in Recital P of the Amended 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 Third Amendment on behalf of each of them.
11. This Third Amendment may be executed in three (3) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
12. The date on which the last of the Village, the Developer or Kensinger (as defined in Recital P of the Amended Agreement) signs this Third Amendment shall be inserted on page 1 hereof, which date shall be the Effective Date of this Third Amendment.
13. That all portions of the Amended Agreement, not amended hereby, shall remain in full force and effect, and the Amended Agreement, as amended by this Third Amendment, is hereby approved in its entirety, and hereby reinstated to the extent necessary.

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

IN WITNESS WHEREOF, the Parties have caused this Third 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 Third Amendment, between the Village and the Developer, and hereby authorizes the Village and the Developer to record same against title to the Subject Property (as defined in the Amended Agreement, as revised by this Third Amendment).

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 _____, 2017.

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 _____, 2017.

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 _____, 2017.

Notary Public

Exhibit 1

**Legal Description
of the Subject Property
as Contained in the Original Agreement and the First Amendment**

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.

COMMON ADDRESS: 1 South 601 Finley Road,
Lombard, Illinois 60148.

Exhibit 2

**Current Legal Description
of the Subject Property**

Lots 1 through 20, inclusive, in Woodmoor Subdivision, being a subdivision in the West 1/2 of the Southeast 1/4, in Section 19, Township 39 North, Range 11, East of the Third Principal Meridian, DuPage County, Illinois.

PINs: 06-19-400-033, -034, -035, -036, -037, -038, -039, -040, -041, -042, -043, -044, -045, -046, -047, -048, -049, -050, -051, -052, -053, -054, -055, -056 and -057.

COMMON ADDRESS: 1 South 601 Finley Road,
Lombard, Illinois 60148.