



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

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

MEETING DATE: April 19, 2018

SUBJECT: **Fourth 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. Per the developer's request, the Village Board approved a Second Reinstatement and Third Amendment to the Agreement on December 7, 2017, due to winter conditions and construction timing matters. That amendment set forth a closing date of April 30, 2018.

Staff received the attached correspondence stating that while it is possible that the April 30 date may be sufficient for the closing, there is a possibility that external delays by lending entities could result in this date not being met. To account for this possibility, the developer is seeking a further amendment that would change the requisite closing date from April 30, 2018 to May 31, 2018. No other amendments are sought by the developer at this time. This representation was also verbally expressed to both staff as well as District 3 Trustee Reid Foltyniewicz in a meeting on April 5, 2018.

ACTION REQUESTED

Attached is an Ordinance providing for the Reinstatement of and Fourth Amendment to the Woodmoor Development LLC Utility Service and Development Agreement. Please place this item on the April 19, 2018 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

April 10, 2018

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

RE: Woodmoor Project

Dear Scott:

As we discussed at our meeting on April 6, 2018 with yourself, Trustee Reid Foltyniewicz and Bill Heniff, our Woodmoor project Loan has been approved and we are working with all parties to finalize loan documentation.

We are striving to have the loan closed by the end of April; however, given the null and void expiration date of April 30, 2018 in the Utility Agreement, we request a short extension to the "null and void" date referenced in the Agreement from April 30, 2018 to May 31, 2018.

We understand an extension will require an Amendment to the Utility Agreement, so it is our request that the topic of the extension be placed on the Agenda for the Village Board Meeting on April 19, 2018.

We continue to work towards coordinating an end of April closing date, however the additional time afforded with an extension through May 31st will provide a reasonable time period for closing in the event of any unanticipated delays with the required lender documentation.

Thank you for your consideration in this matter. I have enclosed a revised Site Development Construction Schedule corresponding to a start date of May 7, 2018 for informational purposes for the Village and interested parties. When we have set a closing date certain we will provide this information to you.

Sincerely,

Woodmoor Development, LLC



Scott A. Stevens, Manager

cc: Reid Foltyniewicz, Village of Lombard Trustee District 3
Bill Heniff, Director of Community Development

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

This Reinstatement of, and Fourth Amendment to, Utility Service and Development Agreement (hereinafter, the "Fourth Amendment") is made and entered into as of _____, 2018 (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; and

WHEREAS, the Village and the Developer entered into a Reinstatement of, and Third Amendment to, Utility Service and Development Agreement dated December 31, 2017 (the "Third Amendment"), which amended the Original Agreement, as amended by the First Amendment and the Second Amendment, and which was recorded with the DuPage County Recorder's Office on February 14, 2018, as document number R2018-013552 (the Original Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment being hereinafter referred to as the "Amended Agreement"); and

WHEREAS, the Village and the Developer desire to reinstate the Amended Agreement, as necessary, and amend a provision of the reinstated Amended Agreement; and

WHEREAS, it is in the best interests of the Village and the Developer to enter into this Fourth 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 subsection 2.1 of the Amended Agreement is amended by revising the reference therein to "April 30, 2018" to read "May 31, 2018."
2. That Exhibit A of the Amended Agreement shall continue to read in its entirety as set forth on Exhibit 2 attached hereto.
3. A copy of this Fourth 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 Fourth Amendment).
4. The individual executing this Fourth Amendment on behalf of the Developer warrants that he/she has been lawfully authorized by Developer to execute this Fourth Amendment on behalf of said Developer. The individual executing this Fourth 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 Fourth 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 Fourth 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 Fourth Amendment on behalf of each of them.

5. This Fourth Amendment may be executed in three (3) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
6. The date on which the last of the Village, the Developer or Kensinger (as defined in Recital P of the Amended Agreement) signs this Fourth Amendment shall be inserted on page 1 hereof, which date shall be the Effective Date of this Fourth Amendment.
7. 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 Fourth 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 Fourth 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 Fourth 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 Fourth 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 _____, 2018.

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 _____, 2018.

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 _____, 2018.

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.