LEGISTAR # 170298 DISTRICT: UNINCORPORATED

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

	Recom	tion or Ordinance (Blue) X_Waiver of First Requested mendations of Boards, Commissions & Committees (Green) Business (Pink)		
то	:	PRESIDENT AND BOARD OF TRUSTEES		
FROM	:	Scott Niehaus, Village Manager		
DATE	:	July 11, 2017 (BOT) Date: July 20, 2017		
SUBJECT:		Reinstatement and Second Amendment to the Woodmoor Development LLC Utility Service and Development Agreement for the Ken-Loch Golf Course Property		
SUBMI	ITTED	BY: William J. Heniff, AICP, Director of Community Development		
BACKGROUND/POLICY IMPLICATIONS: Woodmoor Development, LLC is requesting the Village approve a Reinstatement and Second Amendment that will reinstate the Utility Service Agreement. This action is necessary as the previous agreement lapsed on June 30, 2017. The Second Amendment will reinstate past negotiated provisions for utility connections and companion off-site improvements.				
Fiscal I	mpact	/Funding Source:		
		cessary): cor Date ger Date		
NOTE:	Ľ	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: July 20, 2017

SUBJECT:

Reinstatement of and Second 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 an amendment to the requisite construction related start dates by six months (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 is seeking that the Village approve a Reinstated and Second Amendment that will reinstate the original agreement.

Key provisions of the Second Amendment are that the requisite closing date is changed to August 31, 2017, with other date references adjusted accordingly. The attorney for the developer has represented that the closing may be in late July, but the additional time period is offered if in the event there are any other issues that arise prior to the closing date.

The Second Amendment will also memorialize a past verbal representation between the developer and the Village. If in the event the Village cannot secure a utility easement for the proposed 18th Street storm sewer line in a timely fashion; the Village will release the developer from the construction obligation, provided that the funds for the engineer's probable construction costs for the improvements are transmitted to the Village. The Village will then place these funds into an escrow account until the easement is secured. The Village will then proceed with

Second Amendment to the Donven Homes Utility Service Agreement Page 2

construction of the storm sewer line accordingly. All other terms and conditions in the original agreement would remain as previously agreed to by the parties.

The Village recognizes that it is the best interest to extend the Utility Agreement approval as it is the primary mechanism the Village is using to facilitate a project that will provide meaningful benefits to the surrounding residential properties. This time period will align with your current possible closing date of July 24, 2017.

ACTION REQUESTED

Attached is the Ordinance to provide for the Reinstatement of and Second Amendment to the Woodmoor Development LLC Utility Service and Development Agreement. Please place this item on the July 20, 2017 Village Board agenda for consideration and approval.

The developer also seeks a waiver of first reading of the Ordinance in order to effectuate the property closing. Staff also notes that the waiver of first reading will also allow the developer to be in closer alignment with the proposed construction timetable shared with the public at the Open House event on May 31, 2017.

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WOODMOOR DEVELOPMENT, LLC

June 28, 2017

Mr. Scott Niehaus Village Manager Village of Lombard 255 E. Wilson Ave. Lombard, Illinois 60148-3969

RE: Ken-Loch Property Development Utility Agreement Woodmoor Development LLC

Dear Mr. Niehaus:

This letter is to confirm our previous discussions, and request for a restatement and amendment to the Woodmoor Development LLC ("Woodmoor") Utility Service and Development Agreement for the Ken Loch Property. The single term of the Agreement that we request be amended is that the June 30, 2017 deadline for Woodmoor Development LLC closing on the property under Section 2.1 of the Utility Agreement be extended to August 31, 2017.

We anticipated the closing on the purchase of the property to occur last year, but financing considerations for the project resulted in delays. There are several aspects to the financing, given that Urban Street Group, LLC is constructing the four (4) apartment buildings and the clubhouse, and has its own financing approval process that must be coordinated with Woodmoor's financing for the land purchase, site development, and townhome construction. Both Urban Street's and Woodmoor's financings are approved, but review by lenders' outside attorneys have caused a delay in our scheduled June 27, 2017 land acquisition closing.

That delay has extended our closing date beyond the June 30, 2017 land acquisition deadline under the Utility Service and Development Agreement and we will need Village Board approval of an extension of the Woodmoor land acquisition deadline in order to close. We understand that the next Village Board meeting is July 20, 2017, so in anticipation of the Village Board's approval we are re-scheduling the closing on the property to the week of July 24, 2017.

Both Woodmoor and Urban Street are enthusiastic about this project and very much appreciate the Village's continued cooperation. We would appreciate an expression of your support of this request for the benefit of our lenders as we finalize the closing.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your cooperation.

Respectfully yours,

Woodmoor Development, LLC

By: Donald A. Stevens. Member

ORDINANCE NO.	<u> </u>
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AN ORDINANCE APPROVING A REINSTATEMENT OF, AND SECOND 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 Second 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	, 2017.
First reading waived by action of the Board, 2017.	of Trustees this day of
Passed on second reading this day of to a roll call vote as follows:	, 2017 pursuant

Ordinance No	
Re: Reinstatement of and Second Amendment to a Utility Service and Deve	elopment Agreement –
Woodmoor Development LLC	
Page 2	
Ayes:	
Nays:	
Absent:	
Approved by me this day of	_, 2017.
Keith T. Giagnorio, Village Pre	acidont
Reith 1. Glaghono, Village Pie	esiderit
ATTEST:	
Sharon Kuderna, Village Clerk	
Published by me in pamphlet from this day of	
Sharon Kuderna, Village Clerk	

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

This Reinstatement of, and Second Amendment to, Utility Service and Development Agreement (hereinafter, the "Second 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 (the Original Agreement as amended by the First Amendment being hereinafter referred to as the "Amended Agreement"); and

WHEREAS, the property covered by the Amended Agreement 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 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 Second 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 M of the Amended Agreement is amended by revising the reference therein to "December 1, 2019" to read "February 1, 2020."
- 2. That subsection 2.1 of the Amended Agreement is amended by revising the reference therein to "June 30, 2017" to read "August 31, 2017."
- 3. That subsection 2.2 of the Amended Agreement is amended: (a) by revising the reference therein to "June 30, 2018" to read "August 31, 2018"; (b) by revising the reference therein to "June 30, 2019" to read "August 31, 2019"; and (c) by adding the following language thereto, between the words "to" and "force" in the first line thereof: "the provisions of subsection 5.1 below, relative to the Off-Site Stormwater Facilities (as defined in subsection 5.1 below), and subject to".
- 4. That subsection 2.6 of the Amended Agreement is amended by revising the reference therein to "December 1, 2019" to read "February 1, 2020."
- 5. That Section 2.16 of the Amended Agreement is amended: (a) by revising the reference therein to "June 30, 2018" to read "August 31, 2018"; and (b) by revising the reference therein to "June 30, 2019" to read "August 31, 2019."
- 6. That subsection 5.1 of the Amended Agreement is amended by adding the following to the end thereof: "Notwithstanding the foregoing, in the event that the Village has not obtained all temporary construction and permanent easements necessary to construct that portion of the Off-Site Stormwater Facilities as referenced in subsection (D) of the first sentence of this subsection (hereinafter, the "18th Street Storm Sewer") on or before September 1, 2017, the Developer shall deposit \$60,296.00 with the Village within seven (7) days of September 1, 2017, and the Developer shall, upon deposit of said amount with the Village, be relieved of its obligation to construct the 18th Street Storm Sewer, with the Village being thereafter obligated to construct said 18th Street Storm Sewer upon obtaining the necessary temporary construction and permanent easements to do so."
- 7. That Exhibit A of the Amended Agreement is hereby amended to read in its entirety as set forth on Exhibit 2 attached hereto.

- 8. A copy of this Second 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 Second Amendment).
- 9. The individual executing this Second Amendment on behalf of the Developer warrants that he/she has been lawfully authorized by Developer to execute this Second Amendment on behalf of said Developer. The individual executing this Second 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 Second 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 Second 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 Second Amendment on behalf of each of them.
- 10. This Second Amendment may be executed in three (3) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 11. The date on which the last of the Village, the Developer or Kensinger (as defined in Recital P of the Amended Agreement) signs this Second Amendment shall be inserted on page 1 hereof, which date shall be the Effective Date of this Second Amendment.
- 12. 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 Second 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 Second 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	By:Scott A. Stevens
Village President	Manager Manager
Date:	Date:
ATTEST:	
Sharon Kuderna Village Clerk	
Date:	
Subject Property, hereby approves of and Village and the Developer, and hereby authoragainst title to the Subject Property (as defined Second Amendment).	ois limited liability company, as fee title owner of the consents to this Second Amendment, between the orizes the Village and the Developer to record same ned in the Amended Agreement, as revised by this
Kensinger Realty Investments, LLC, an Illinois limited liability company	
By: Richard E. Kensinger Manager	
Date:	

State of Illinois)
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) County of DuPage)	SS			
County of DuPage)	00			
	ACKNOWL	EDGMENT		
CERTIFY that Scott Development, LLC, an I	Notary Public in and for A. Stevens, personally Illinois limited liability cor instrument on behalf of es therein set forth.	known to me	e as Manager of edged to me that he	Woodmoor signed and
GIVEN under my hand	and official seal, this	day of	, 2017.	
		Entertain the same of the same	Notary Public	

State of Illinois)	
State of Illinois)) SS County of DuPage)	
ACKNO	OWLEDGMENT
CERTIFY that Richard E. Kensinger, pers Realty Investments, LLC, an Illinois limite	I for the County and State aforesaid, DO HEREBY conally known to me as the Manager of Kensinger and liability company, acknowledged to me that he tent on behalf of said company as his own free and 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 164.38 FEET; THENCE WEST 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.