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## MEMORANDUM

**To:** City of The Village of Douglas Planning Commission  
**Date:** June 6, 2024  
**From:** Tricia Anderson, AICP  
**RE:** **Westshore PUD Amendment – Internal Nonmotorized Pathways  
Final Location and Public/Private Designations**

Mr. Richard Dyk, of Douglas Property Development, LLC, has submitted an application for a proposed amendment to the existing Westshore PUD to finalize the location of the non-motorized pathways, and to change the designation of certain sections of the non-motorized pathways from public to private.

**Background and History.** The Westshore PUD was approved in 2012 in accordance with Article 27, Planned Unit Development District of the City of Douglas Zoning Ordinance and subject to Ordinance 03-2012, the Westshore PUD. One of the standards of PUD approval within Article 27 (Section 27.06), is that the PUD shall result in a “recognizable and substantial benefit to the residents of the PUD and the City, and such benefit would otherwise be unlikely to be achieved”. To satisfy this standard, the Westshore PUD proposed non-motorized pathways throughout the development for the use and enjoyment of the public and the residents of the PUD. As you may know, the developer has not yet satisfied this requirement, with the exception of the exterior non-motorized pathways along Ferry Street and Center Street, which have been constructed and finalized. The interior pathways still remain.

Over the past two years, the applicant has been working with the City Attorney and the Westshore Condominium HOA to design these internal pathways and draft the easement agreements that the pathways will be subject to. A significant amount of concern was expressed by the HOA related to maintenance and liability, particularly since the public would have use of these pathways. The applicant now proposes to designate some of the internal pathways as private to alleviate some of the HOA’s concerns with these areas, with the Westshore Condominium HOA being the responsible party for maintenance and ownership.

**Recognizable Benefit.** Section 27.03 indicates the eligibility requirements for land to be rezoned to PUD. Part 1 of this section requires the incorporation of a Recognizable and Substantial Benefit:

- 1) *Recognizable and Substantial Benefit. The Planned Unit Development shall result in a recognizable and substantial benefit to the ultimate users of the project and to the community. Such benefit must otherwise be unfeasible or unlikely to be achieved,*

*taking into consideration the reasonable and foreseeable detriments of the proposed development and use(s); including, without limitation:*

- a. The long-term protection and/or preservation of natural resources and natural features and/or historical and/or architectural features of a significant quantity and/or quality in need of protection or preservation on a local, state and/or national basis;*
- b. Reducing to a significant extent the non-conformity of a nonconforming use or structure, i.e., modification of a non-conforming use or structure so that, to a significant extent, it is rendered more conforming, or less offensive, to the zoning district in which it is situated.*

The nonmotorized pathways proposed as part of the Westshore PUD are deemed a recognizable and substantial benefit to the community. Our analysis of the request to designate a portion of the nonmotorized pathways as private begs the question of whether removing the public designation for a portion of the nonmotorized would alter the compliance with the requirement to offer a “recognizable and substantial benefit” to the community. In our view, the vast majority of the nonmotorized pathways remain public, and the burden of maintenance would be on the HOA, whether the designation is private or public, and the standard can still be met with this request. The nonmotorized pathways proposed to be designated public will be the responsibility of the future HOA that will be associated with future condominium development of the western areas.

**Procedure.** Section 27.12 provides the procedures for amending an existing PUD. Some of these provisions are overridden by language within Ordinance 03-2012, such as procedures for a minor amendment, which under Section 27.12.B would be subject to administrative review and approval. Ordinance 03-2012 requires any change to the Westshore PUD to be reviewed by the Planning Commission, per Section V. Approval Limitations, Subsection D., which reads as follows:

*All conditions contained herein and in the final approved site plan shall be binding upon the Developer, as well as its successors, tenants and assigns. **The conditions may be modified or amended only pursuant to a formal amendment of the PUD approval, approved site plan, and ordinance amendment.** The Project must be constructed and operated, and all properties therein used, in strict compliance with the PUD approval (including this Ordinance and the final approved site plan), **and no deviations can occur without prior formal written approval by the City.** So called minor deviations as provided for within Article 27 of the City’s Zoning Ordinance shall not occur unilaterally by the Developer or its successors, tenants, or assigns. Any deviation without prior formal written approval by the City will constitute a violation of this Ordinance and the City of Douglas Zoning Ordinance.*

Section 27.05 provides procedures for review and approval of new PUDs and major amendments to an existing PUD. Since a rezoning is not part of the proposed amendment, the Planning Commission is not required to hold a public hearing, however, the residents within 300’ of the subject property were provided an courtesy notices that a public meeting will be held to consider the amendment to the PUD concerning the nonmotorized pathways. The Planning

Commission will make a recommendation to the City Council, which will hold the public hearing, per the Michigan Zoning Enabling Act, and will be the final reviewing authority for the amendment.

**Recommendation.** At the June 13<sup>th</sup>, 2024 meeting, the applicant will be in attendance to present the proposed amendment, and the Planning Commission is encouraged to take comments from the public, even though it is not holding a public hearing. It is recommended that the Planning Commission take into consideration the information outlined in this memorandum, the memorandum provided by the City Attorney, the applicant and members of the public in making its decision to forward a recommendation to the City Council. If the Planning Commission is inclined to forward a favorable recommendation, we suggest that it be subject to the following conditions, along with any others deemed necessary:

1. Upon City Council approval of the nonmotorized pathway plans and public/private designations, the applicant shall record the easement agreements for said nonmotorized pathways no later than July 31, 2024, in accordance with Resolution No. 11-2024.
2. The applicant shall remove all golf course amenities as required by Ordinance 03-2012 prior to or concurrently with the the construction of the internal pathways, subject to the agreed upon inventory of items to be removed as determined by the Planning & Zoning Administrator.
3. The applicant shall provide a performance bond in the form of an an escrow deposit in the amount determined by the City Engineer equal to the cost to construct the internal pathways, prior to commencing construction of the internal pathways. The City may work with the applicant to move any remaining escrow monies for the external pathways into a new escrow account for the internal pathways, if reimburable funds remain.
4. Upon City Council approval of the nonmotorized pathway plans, the applicant shall submit construction drawings to the City Engineer for review and approval prior to commencing construction on the internal pathways.
5. Any further changes to the nonmotorized pathways shall require the same procedures for approval as an amendment to the Westshore PUD.
6. The applicant shall amend the master deed to include the “must be built” finalized locations of the public and private internal pathways, and provide the City with a recorded copy of the master deed amendment, prior to any final inspections of the internal nonmotorized pathways.

As always, please feel free to contact us with questions regarding this request.

## LEGAL MEMORANDUM

TO: All members of the Planning Commission  
City of the Village of Douglas

CC: Lisa Nocerini, City Manager  
City of the Village of Douglas  
Sean Homyen, Planning & Zoning Administrator  
City of the Village of Douglas

FROM: Philip Erickson, City Attorney  
Plunkett Cooney  
David S. Keast, Of Counsel  
Plunkett Cooney

DATE: June 3, 2024

RE: Douglas Property Development, LLC (“Developer”)  
Westshore PUD  
Proposed Public and Private Trail Plan and Easement Agreements

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Dear Members of the Planning Commission:

We are writing to provide background information for the Planning Commission’s final review of the requested amendment to the Westshore PUD. This request proposes a change to the public and private designations of the non-motorized trail system required by Ordinance 03-2012, adopted pursuant to Article 27 as an amendment to the City Zoning Ordinance. The proposed amendment to the Westshore PUD will also solidify the final locations of the non-motorized trail system.

Ordinance 03-2012, as amended, determined that a planned unit development (PUD) was appropriate for redevelopment of the former West Shore Golf Course, relying in part upon the commitment of Douglas Property Development, as Developer, to provide the “public benefit” required by Article 27 of the City Zoning Ordinance by constructing within the open space areas of the PUD a network of public and private non-motorized trails.

Ordinance 03-2012 and the Final Westshore PUD Plan did not definitively identify the number, location, public or private nature of each Westshore PUD trail, and it did not address their ongoing maintenance responsibilities. Unfortunately, natural topographic issues; the environmental contamination of the Warnock Drain by a contamination plume originating at the former Haworth Manufacturing site; and the construction of residential housing within the Westshore Condominium all have limited the locations at which trails may rationally be constructed.

Extensive discussions with the Developer, Westshore Condominium Association Board of Directors and the owner of Westshore Condominium unit 1 have produced a tentative agreement that, if approved by the City Council, is expected to result in the Developer's construction of all public and private trails this year, while also facilitating a proposal this summer of a site plan for additional development within the undeveloped portion of the Westshore PUD that would be consistent with the trail locations.

The Overall Trail Route and Map and Internal Trail Easement Agreements included within your packet propose a continuous public non-motorized trail with access from both Center Street and Lakeshore Drive. In the writer's opinion, this achieves the central 2012 objective of the Planning Commission and the City Council. Additional trail segments proposed to be constructed within the Westshore Condominium will be "private", i.e., restricted to the use of Westshore Condominium owners, residents and their guests. Two additional trail segments connecting those Westshore Condominium private trails to the Center Street-Lakeshore Drive public trail also will be private, but may be used by the owners, residents and guests of all residential developments within the Westshore PUD (in other words, the Westshore Condominium and any additional development subsequently approved by the City and constructed within the undeveloped portions of the Westshore PUD).

Interior trails generally will be constructed of crushed stone, except that the Westshore Condominium Association has requested a grass surface. The City will monitor the construction of all trails against the Developer's construction plans on file with the City.

Under this proposal there will be no public trail access from Ferry Street. Our review of the 2012 Plan suggests that the Planning Commission and Council may have expected a Ferry Street access, but this is unclear and the Westshore Condominium Unit 1 trail section was depicted as "private". Because the proposed trail system does not provide for public access from Ferry Street, we have considered it important that the Planning Commission again be consulted. It should be noted that, while the proposed trail configuration does not provide public access from the existing Ferry Street public trail system, the existing public trail section *along* Ferry Street, will remain unchanged.

In our opinion, to now require public trail access from Ferry Street, whether from the Golf View Drive cul-de-sac, Artisan Row Court or another location, would run afoul of several important planning considerations:

1. The private trails within the Westshore Condominium will be a maintenance responsibility of the Westshore Condominium Association. Neither the law nor the Westshore Condominium Master Deed requires that Association maintain public trails within the condominium boundaries, and the Association Board of Directors understandably has expressed a strong aversion to additional maintenance costs [particularly because of the proposed wooden boardwalk structures proposed for wetland crossings]

2. Public trail access in the vicinity of the Artisan Row Court area of the Westshore Condominium Association potentially will materially and negatively impact the safety and privacy of residents in their homes or while enjoying the common elements. Public trail access through the Golf View Drive cul-de-sac area of the Westshore Condominium must pass close to constructed residential units, resulting in similar resident safety and privacy issues.
3. All streets within the Westshore Condominium are private and unsuited to public street parking. If the trail segments within the Westshore Condominium were “public”, members of the public accessing the public trail system from Ferry Street would be required to cross the Westshore Condominium private common elements after parking along Ferry Street or other permissible areas for public parking.

From the City’s perspective, a significant consideration should be that, while the City Engineer will oversee the implementation of the City-approved construction plans, the City WILL NOT incur future trail maintenance costs or requirements under this proposal. The Developer has agreed to assume all such obligations, and to impose them upon the association of owners for any future developments within the Westshore PUD. And the Westshore Condominium Association will be responsible for the maintenance of the common element private trails within the Westshore Condominium.

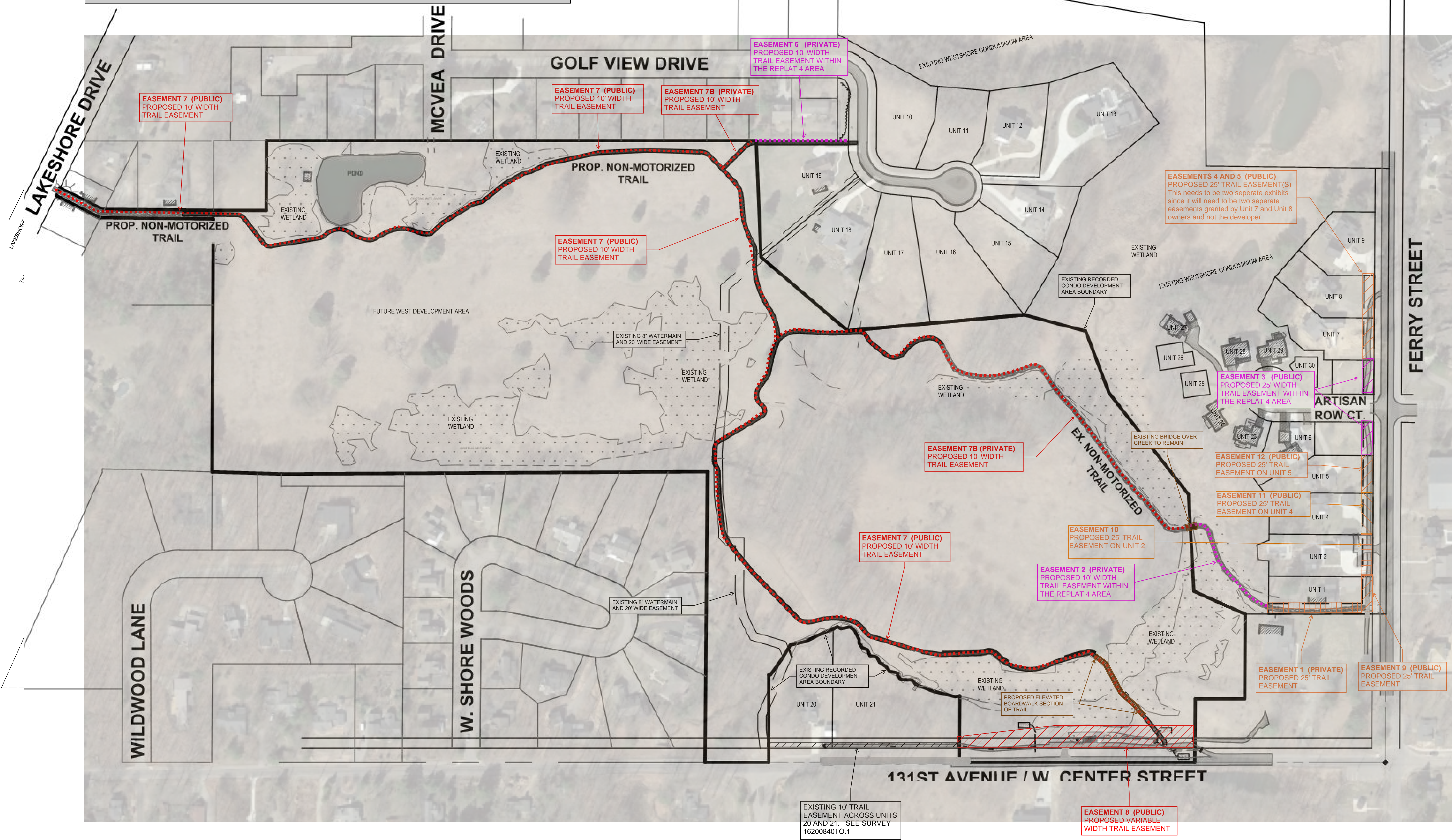
Respectfully submitted,

s/ David S. Keast, Of Counsel, Plunkett Cooney  
Philip Erickson, Plunkett Cooney, City Attorney

Open.20448.43876.33707794-1



2024 - PROPOSED Non-Motorized Trail Configuration + Public and Private Designations





NEDERVELD

www.nederveld.com  
800.222.1868

GRAND RAPIDS  
217 Grandville Ave., Suite 302  
Grand Rapids, MI 49503  
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ANN ARBOR  
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ST. LOUIS

PREPARED FOR:  
BDR CUSTOM HOMES INC.  
RIC DYK

5510 Cascade Road SE, Suite 200  
Grand Rapids, MI 49546  
Phone: 616.458.8505

REVISIONS:

Title: Owner Review	Checked: RJB	Date: 04/28/2022
Drawn: MCH	Checked: RJB	Date: 04/28/2022
Title: Addition of Connection to Golf View	Checked: RJB	Date: 06/16/2022
Drawn: MCH	Checked: RJB	Date: 06/16/2022

WESTSHORE

Overall Layout  
NON-MOTORIZED TRAILS

PART OF THE NORTH 1/2 OF SECTION 17, T3N, R16W,  
CITY OF DOUGLAS, ALLEGAN COUNTY, MICHIGAN

STAMP:

STATE OF MICHIGAN  
ROGER JACK BARR II  
ENGINEER  
No. 41990  
LICENSED PROFESSIONAL ENGINEER

RJB

PROJECT NO:  
20201248

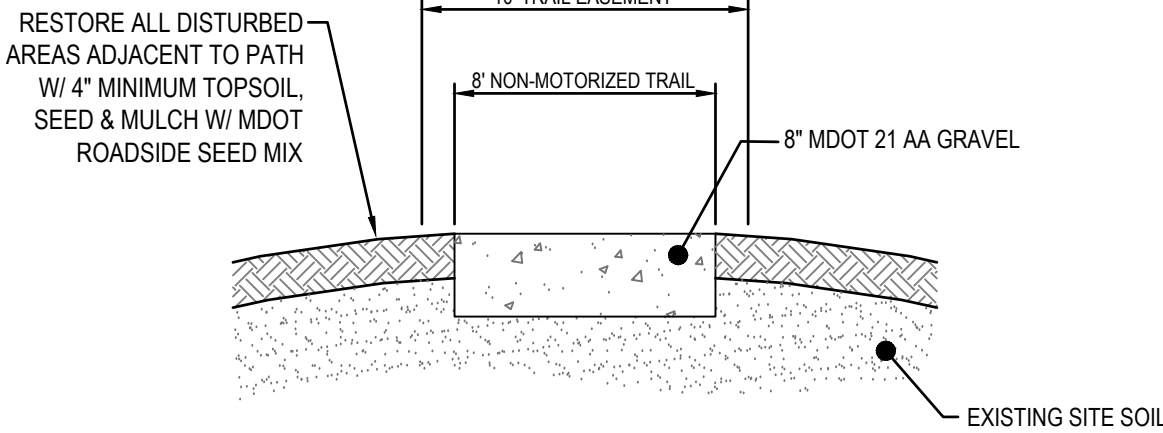
SHEET NO:  
C-205

SHEET: 3 OF 8

2022 - Previous Non-Motorized Trail  
Plan Configuration - All Public

LEGEND

- EXISTING WETLANDS
- EXISTING GRAVEL
- PROPOSED GRAVEL
- EXISTING BITUMINOUS



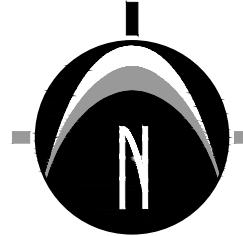
NON-MOTORIZED PATH  
TYPICAL CROSS SECTION DETAIL

N.T.S.

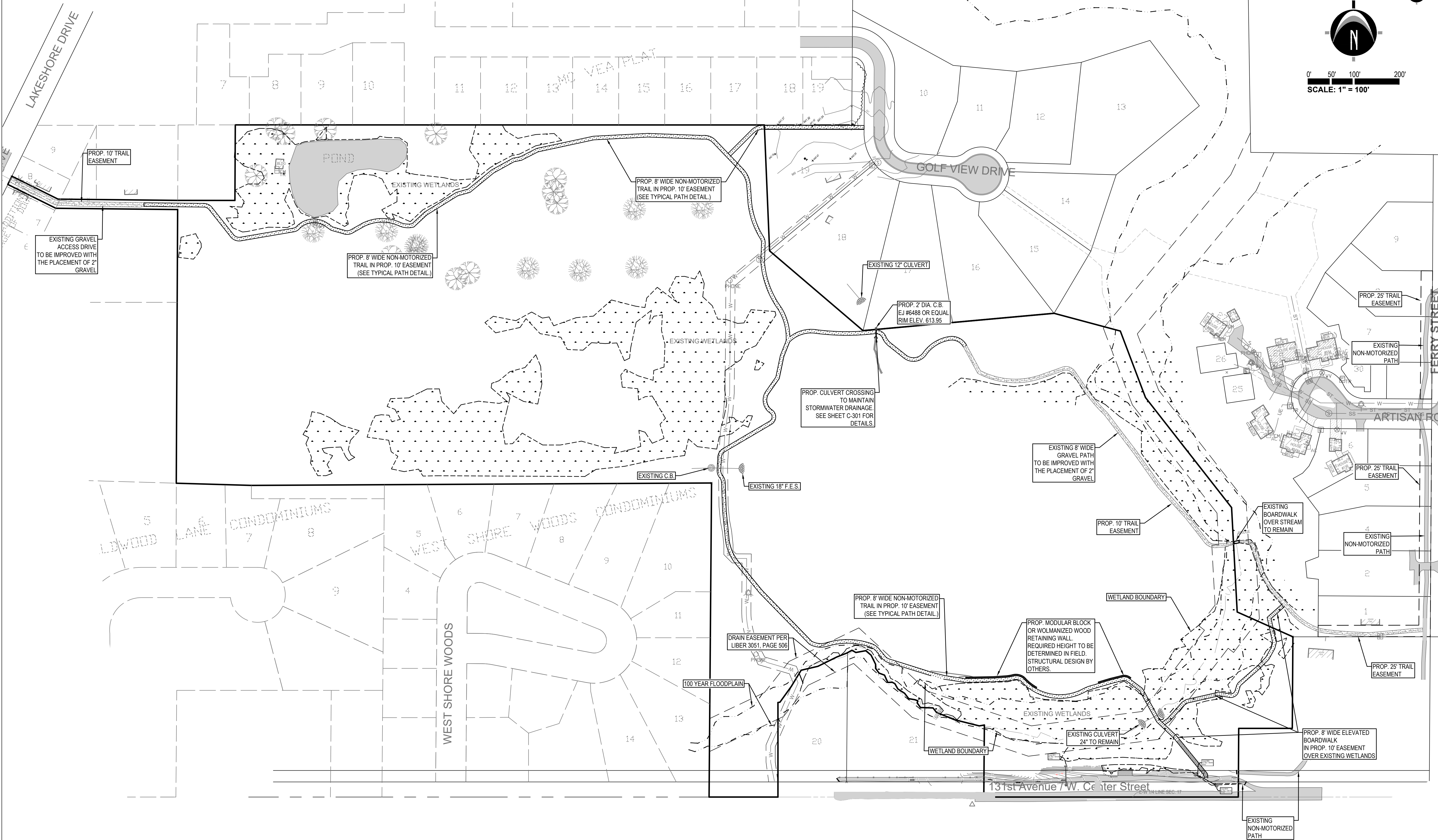


LOCATION MAP

NOT TO SCALE



0' 50' 100' 200'  
SCALE: 1" = 100'





CITY OF THE VILLAGE OF DOUGLAS  
ALLEGAN COUNTY, MICHIGAN  
ORDINANCE NO. 03 - 2012

**AN ORDINANCE TO AMEND THE CITY OF DOUGLAS ZONING ORDINANCE  
AND ZONING MAP TO ESTABLISH THE WEST SHORE GOLF COURSE  
REDEVELOPMENT PLANNED UNIT DEVELOPMENT PROJECT.**

The City of Douglas (the "City") Ordains:

Section I. An Amendment to the City of Douglas Zoning Ordinance.

The application received from Kevin Einfeld of Douglas Property Development, LCC (hereinafter referred to as the "Developer") for Planned Unit Development designation for the proposed Westshore Golf Redevelopment Planned Unit Development Project (hereinafter referred to as the "Project") was recommended by the City of Douglas Planning Commission for approval at the July 11, 2012 Planning Commission meeting following a public hearing. The property at issue was previously zoned R-1 PUD, but no PUD ordinance was prepared at that time. This PUD ordinance is enacted pursuant to Article 27 of the City of the Village of Douglas Zoning Ordinance.

Section II. Legal Description.

The legal description of the Project is as follows:

West Shore Golf PUD Description:

Part of the North 1/2 of Section 17, Town 3 North, Range 16 West, City of Douglas, Allegan County, Michigan described as: Commencing at the Northeast corner of said Section; thence S00°21'57"W 1203.72 feet along the East line of said North 1/2 to the Point of Beginning; thence N89°17'50"W 431.89 feet; thence N00°53'13"W 337.43 feet; thence N80°31'00"W 874.96 feet; thence S00°25'11"W 421.70 feet along the East line of McVea Plat and the extension thereof; thence N89°59'26"W 1471.32 feet along the South line of said Plat and its extension; thence S00°17'10"W 164.97 feet; thence N89°23'53"W 261.35 feet to a point on the East line of Lot 8, Trumbull's Addition to the Village of Douglas; thence N63°36'10"W 112.61 feet; thence S26°11'58"W 20.00 feet along the Southeast line of Lakeshore Drive; thence S63°36'10"E 117.13 feet to a point being 5.00 feet Northeasterly along the East line of said Lot from the Southeast corner of said Lot 8; thence S89°23'53"E 266.04 feet; thence S00°17'10"W 597.78 feet; thence S88°20'23"E 164.16 feet along the North line of Wildwood Lane to the North and South 1/4 line of said Section; thence N89°41'57"E 1004.98 feet along North line of West Shore Woods Condominiums and the extension thereof; thence S00°27'10"W 686.00 feet along the East line of said Condominiums; thence N90°00'00"E 1155.80 feet along said South line; thence N00°21'57"E 150.00 feet; thence N90°00'00"E 117.00 feet; thence N00°21'57"E 200.00 feet; thence N90°00'00"E 333.00 feet; thence N00°21'57"E 1052.88 feet along the East line of said North 1/2 to the point of beginning. Subject to highway right-of-way for 131st Avenue over the South 33.0 feet thereof, and for Ferry Street over the East 33.0 feet thereof. Also subject to easements, restrictions, and rights-of-way of record.

Also, part of the Northeast 1/4 of Section 17, Town 3 North, Range 16 West, City of Douglas, Allegan County, Michigan described as: Commencing at the East 1/4 corner of said Section; thence

S90°00'00"W 1005.80 feet along the East and West 1/4 line of said Section to the Point of Beginning; thence S90°00'00"W 300.00 feet; thence N00°27'10"E 300.00 feet to Reference Point "B"; thence N00°27'10"E 15 feet, more or less, to the centerline of a drain; thence Southeasterly 380 feet, more or less, along said centerline to a line which bears N00°27'10"E from the Point of Beginning; thence S00°27'10"W 17 feet, more or less, to Reference Point "C", said Reference Point being S51°10'45"E 175.00 feet and S72°47'35"E 170.00 feet from said Reference Point "B"; thence S00°27'10"W 140.00 feet to the point of beginning. Subject to highway right-of-way for 131st Avenue (Center Street) over the South 33.0 feet thereof. Also subject to easements, restrictions, and rights-of-way of record.

Also, part of the Northeast 1/4 of Section 17, Town 3 North, Range 16 West, City of Douglas, Allegan County, Michigan described as: Commencing at the East 1/4 corner of said Section; thence S90°00'00"W 1305.80 feet along the East and West 1/4 line of said Section to the Point of Beginning; thence S90°00'00"W 300.00 feet to the East line of West Shore Woods Condominiums; thence N00°27'10"E 100.00 feet along said East line to Reference Point "A"; thence N00°27'10"E 24 feet, more or less, to the centerline of a drain; thence Northeasterly 370 feet, more or less, along said centerline to a line which bears N00°27'10"E from the Point of Beginning; thence S00°27'10"W 15 feet, more or less, to Reference Point "B", said Reference Point being N56°26'58"E 361.87 feet from said Reference Point "A"; thence S00°27'10"W 300.00 feet to the point of beginning. Subject to highway right-of-way for 131st Avenue (Center Street) over the South 33.0 feet thereof. Also subject to easements, restrictions, and rights-of-way of record.

Contains 77.3 acres more or less.

Subject to any easements, restrictions or rights of way of record.

### Section III. General Provisions.

The following provisions shall hereby apply to the project, in addition to those provisions outlined in Article 27 of the City of the Village of Douglas Zoning Ordinance.

### Section IV. Purpose.

The Project occupies approximately 77.3 acres in the City. The Project will be a site condominium development containing 48 detached single family dwelling units. Not less than 65% of the property is to be preserved as open space. The Planned Unit Development technique has been chosen by the Developer to give it and the eventual owners of each unit more control over the Project's aesthetics and appearance. This development technique provides the developer with the ability to develop the Project in a manner to meet market expectations where more traditional mechanisms such as creating subdivision plats do not.

The regulations contained herein are established to define the procedures necessary to ensure high quality development in the Project. Additionally, they are designed to achieve integration of this development with adjacent land uses.

### Section V. Approval Limitations.

A. The provisions of this Ordinance are not intended as a substitute for the City of

the Village of Douglas Zoning Ordinance and the Final PUD Plan, nor do they in any way relieve the developer from obtaining all approvals and permits required by the City, except as otherwise expressly provided herein. In the event that a development issue or site plan element is not expressly addressed by this ordinance, the specifications and requirements of the City of the Village of Douglas Zoning Ordinance shall apply. Furthermore, all other City ordinances shall still govern the Project where applicable.

B. Except as expressly otherwise provided herein, the Developer and his assigns must meet all applicable provisions, ordinance requirements, and regulations of City of Douglas, as well as federal and state law, and must obtain all necessary approvals from state and county governmental agencies that are required for construction, operation, or use.

C. This PUD approval is expressly contingent upon all conditions of approval herein remaining fully effective and valid. If any condition imposed herein is determined to be illegal or contrary to law as a result of a successful legal challenge by the Developer or its assigns, or any other party, the City reserves the right to review the entire Project under the PUD provisions of the City of Douglas Zoning Ordinance, and further, to withdraw its approval of this PUD if the City finds that, absent the effect of any condition imposed herein, the PUD no longer meets the standards for PUD approval contained in the Zoning Ordinance.

D. All conditions contained herein and in the final approved site plan shall be binding upon the Developer, as well as its successors, tenants and assigns. The conditions may be modified or amended only pursuant to a formal amendment of the PUD approval, approved site plan, and ordinance amendment. The Project must be constructed and operated, and all properties therein used, in strict compliance with the PUD approval (including this Ordinance and the final approved site plan), and no deviations can occur without prior formal written approval by the City. So called minor deviations as provided for within Article 27 of the City's Zoning Ordinance shall not occur unilaterally by the Developer or its successors, tenants, or assigns. Any deviation without prior formal written approval by the City will constitute a violation of this Ordinance and the City of Douglas Zoning Ordinance.

E. This approval document shall be recorded with the Allegan County Register of Deeds by the Developer prior to construction occurring on site and shall run with and bind the lands involved. Copies of this recorded document shall be supplied by the Developer to the City of Douglas Clerk.

F. Failure to comply with the site plan or any condition of approval herein shall be deemed to be both a nuisance per se and a violation of the City of Douglas Zoning Ordinance.

G. Prior to recording a copy of this document as specified in Section II(E) hereof, the



Developer shall type the following statement onto the end of this document (or add an additional page to the document) as follows, and shall sign and date the same:

"I, Kevin Einfeld, have fully read the above PUD ordinance amendment, understand its provisions and fully agree with all requirements and conditions contained in the same, on behalf of myself and my assigns, successors and transferees in and to the property involved."

#### Section VI. Site Condominium Documents and Plans.

A. Specific controls relating to architectural elements, common elements of the site condominium project, construction materials, size and space requirements, improvements and out buildings, specific prohibitions and rules of conduct shall be governed by site condominium bylaws and master deed. These restrictions shall become part of this Ordinance by reference.

B. The Project shall be developed exactly in accordance with the site plan approved and signed by the City. The site plan shall indicate the approximate location of each building envelope and shall provide appropriate measurements demonstrating compliance with Section 16.25 of the Zoning Ordinance. Engineering plans and documents relating to utilities, topography, drainage, and the survey of each phase of the Project shall be reviewed and approved by the City Engineer. Approval of these documents shall be based upon their meeting the requirements of the Zoning Ordinance and also meeting recognized, acceptable engineering standards and practices. Once it has been determined that the plans have met City requirements, the City Engineer shall sign and mark these plan documents as "Approved," and forward them to the Developer. Only approved plan documents shall be recorded with the appropriate county and state agencies.

C. The number of building sites may be reduced or consolidated within the Project only after the review by and written approval of the Zoning Administrator. The proposed changes to the site/survey plan to reduce or consolidate building sites shall be reviewed by the Zoning Administrator to ensure compliance with the City of Douglas Zoning Ordinance, this PUD Ordinance, and any other requirements. Once approved by the Zoning Administrator, the amended site/survey shall then be recorded with the Allegan County Register of Deeds Office and the appropriate state agencies by the Developer at his cost. A copy of the recorded site/survey plan shall be forwarded to the City Clerk, so that accurate files regarding the development can be maintained.

#### Section VII. Permitted Uses.

The permitted uses for the Westshore Golf Course Redevelopment PUD are as follows:

A. Single Family Residences.

B. Accessory buildings customarily incidental to a single family residence, subject to the provisions of the Final Approved PUD Submittal, attached hereto as Exhibit (X).

C. Signs. All signs for the Project shall conform with the City of Douglas Sign Ordinance (Ordinance 111-D).

#### Section VIII. Design Guidelines, Requirements and Limitations.

The Project shall be developed in exact accordance with the site plan approved by the City and the narrative documentation provided within the Final approved Submittal for PUD. No alterations, expansions or additions may occur as to the Project without a formal amendment to this Ordinance, unless expressly otherwise authorized herein.

A. Maximum Number of Residential Units - The maximum number of single-family detached site condominium units within the Project shall be limited to forty six (46) units until such time as the developer submits a revised PUD plan to be reviewed by the City Planning Commission in accordance with the standards of Article 24 and 27 of the City of Douglas Zoning Ordinance and approved by the Douglas City Council.

#### Section IX. Private Street Development.

A. The Developer shall submit a street construction, maintenance, and pavement plan consistent with Article 18 of the Zoning Ordinance. The Developer may establish private streets to serve the Project provided the roads are constructed in accordance with the City of Douglas engineering requirements and standards for private streets and the following specifications:

1. All grades shall be sufficient to allow safe ingress/egress of emergency vehicles.
2. The private streets shall be posted with signs stating the street names. These signs shall be consistent with Allegan County Road Commission standards and requirements and shall be installed at the Developer's cost.
3. Any private street shall intersect any public road at a 90 degree angle or a 180 degree angle where appropriate.
4. Copies of any permits required by the Allegan County Road Commission to connect the private street to any public road shall be provided to the City Zoning Administrator by the Developer.

B. The Developer of the Project shall provide a disclosure statement on all property deeds to all owners of the private street, all those who utilize the private street and all persons securing a building permit to construct a building or structure served by the private street, by applying for and securing a building permit for construction of a building or structure that utilizes the private street, all such persons

shall use the private street at their own risk and the City (and its employees, officials, and agents) shall not be responsible for any aspect of the private street.

C. It shall be the responsibility of the Developer and its successors or the individual property owners to fully maintain and keep the private access street in good repair at all times and to ensure that snow and ice is removed in a timely fashion during the winter.

D. No combustible building materials may be erected on the Project until a temporary access road and operable fire hydrants are constructed to within 150 feet of the furthest point of a structure. Such road shall be a minimum 24 feet wide and be able to support 20 tons on a single axle with dual wheels and standard road tires.

#### Section X. Temporary Buildings.

No structure of a temporary nature; trailer, tent or construction shack shall be constructed, placed or maintained within the Project except accessory to and during construction of any building or infrastructure improvement.

#### Section XI. Easements

Prior to any construction occurring, the Westshore Golf Course Redevelopment PUD shall provide recorded copies of all permanent easements providing public access to trailways and/or conserving open space on the site. These easements have been illustrated on the site plan dated \_\_\_\_\_.

#### Section XII. Utilities.

A. Water and Sewer - The Project will be served by municipal sewer and water and each individual unit shall be serviced by a private lateral. Such systems shall be designed, installed, and maintained pursuant to all applicable requirements of the City of Douglas and the Kalamazoo Lake Sewer and Water Authority.

B. Stormwater Drainage - In lieu of requiring that an Act 433 agreement or a drainage district be established with the Allegan County Drain Commissioner, City of Douglas has agreed to approve the site plan for the Project so long as the Project (and any and all portions thereof) always complies with the City of Douglas Zoning Ordinance (as that ordinance may be amended from time to time, as well as any successor ordinance or ordinances). Accordingly, the property owner's association (the "Association") and all landowners within the Project ("Co Owners") are required to ensure the proper installation and permanent maintenance of any and all storm drainage and water retention systems, pipes, ponds, and facilities for the Project (collectively, the "Facilities") shown on the approved site plan or as otherwise required by the City of Douglas Zoning Ordinance (as that ordinance may be amended from time to time, as well as any successor ordinance or ordinances, all of which shall collectively be referred to hereinafter as the "Zoning Ordinance"). Such



requirements and obligations of the Association and Co-Owners include, but are not necessarily limited to, the following:

1. Maintenance and repair regarding the following items shall be done on a regular basis and in such fashion as to ensure that all components of the Facilities function properly at all times:

- (a) Sediment removal;
- (b) Erosion control;
- (c) Ensuring constant structural integrity of the physical systems; and
- (d) Designate access to the facilities.

2. The City (including its designated officials, officers, agents, and contractors) shall have the right to physically inspect all aspects of the Facilities at all reasonable times, or any other times if, in the opinion of the City, there is a threat to the public health, safety, or welfare.

3. Buildings, structures, landscaping, trees, or similar items shall not be installed, planted, or placed over any portion of the Facilities without prior written approval from the City.

4. The Association and Co-Owners shall supply the City with a permanent recordable easement (in a form acceptable to the City) regarding the following after installation and within 60 days of the date requested by the City for the following:

- (a) Storm sewer pipes;
- (b) Basins;
- (c) Spillways;
- (d) Waterways; and
- (e) Designated access routes

5. The City shall be supplied with an engineer's "as-built" certification to certify that the Facilities as constructed and installed matches the approved design. The City shall also be supplied with a reduced copy of the approved site plan graphically showing the Facilities, together with any and all easements therefore.

6. The City shall be supplied with a permanent easement or irrevocable license allowing the City (as well as its designated officials, officers, agents, and contractors) to have access between the public road right-of-way to any and all portions of the Facilities.

7. Should the Facilities not be properly installed, maintained, and/or repaired, in compliance with all of the requirements of this Section XII.B, the approved site plan, and the Stormwater Ordinance (whether due to the fault or neglect of the developer, the Association, and/or the Co-Owners), and any such noncompliance or deficiency shall not have been fully remedied within 30 days of the date when the City has

given the Association written notice of any such noncompliance or deficiencies, the City, at its sole option and discretion, shall have the right and authority to perform any and all installations, repairs, and/or maintenance which is reasonably required and charge back the costs thereof to the Association and Co-Owners (together with reasonable administrative costs and legal fees, should any challenge occur regarding the City's actions) as follows:

(a) Establish a Special Assessment District. The City may establish a special assessment district for the Project to pay for or reimburse the City for any and all such costs (as well as to ensure future required repairs and maintenance) pursuant to whichever state statute the City desires to utilize. In such event, all of the Co-Owners and the Association shall be deemed to have consented to the establishment of such a special assessment district.

(b) Proceeding to Collect Pursuant to the Master Deed and Condominium Documents. Alternately, the City shall also have the authority to collect or seek reimbursement for any and all such costs from the Association and Co-Owners as if such obligations of the Association and Co-Owners were in the form of a permanent deed restriction or covenant on the Project. Should the City pursue this remedy, the City would have any and all rights attributable to the Association when collecting dues or assessments from Co-Owners. Additionally, such costs shall be a lien on each of the Units, which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time. Any such charges which are delinquent for six (6) months or more may be certified annually to the City Treasurer, who shall enter the lien on the next tax roll against the applicable Unit, and the costs shall be collected in the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll in the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the City shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended.

The above alternate remedies (being (a) and (b)) shall be deemed to be in addition to any and all other remedies provided for elsewhere in the Master Deed or condominium documents or at law or equity. The City shall have the sole authority and discretion to determine whether or not to proceed pursuant to (a) or (b), above.

C. The Developer shall provide all necessary easements within the Project for telephone, electricity, gas and cable television to the appropriate utility provider without cost. Said easements shall be recorded with the Allegan County Register of Deeds and be provided to each utility provider for their records.

D. Exterior Lighting. All street lighting shall be consistent with Section 19.05 of the Zoning Ordinance and shall either be installed prior to the issuance of any certificate of occupancy for the first building in the Project or paid for prior to the issuance of any certificate of occupancy for the project.

### Section XIII. Soil Erosion Control Requirements.

The Developer shall submit a soil erosion control plan showing all temporary and permanent soil erosion control measures to be taken before, during, and after construction on the Project. This plan shall be reviewed and approved by the City Engineer prior to commencing any excavation on the site.

### Section XIV. Performance Guarantee.

To ensure compliance with this Ordinance and any conditions herein, the City may require reasonable performance guarantees to ensure completion of improvements such as, but not limited to, landscaping, drainage, lighting, roads, and utilities. The City Council, Engineer, or Zoning Administrator may require such guarantees at any time they deem reasonably necessary to ensure completion of the improvements. The form (including the bank or surety involved), duration, and amount of the performance guarantee as shall be approved by the City. The performance guarantees to be required by the City may include only the provision of performance and payment bonds by an approved surety or the provision of a letter of credit from an approved financial institution.

### Section XV. Permanent Common Open Space.

The permanent common open space area is to remain in its present undeveloped state in perpetuity. To ensure this occurs, the following regulations shall apply to the permanent common open space area:

A. No buildings, structures, fences, or driveways shall be erected, constructed or placed within the common open space area. The private streets and their associated infrastructure improvements may encroach into this area provided all plans are approved by the City and are consistent with the development plan for this Project.

B. There shall be no tree or vegetation cutting or removal within the common open space areas except to remove fallen, dead, diseased or dangerous trees or vegetation. The required detention and mitigation areas must also be constructed according to the approved plans.

C. There shall be no draining, filling or any other improvements of the wetlands within this common open space area other than that already permitted by the Michigan Department of Environmental Quality (MDEQ). The project must stay in full compliance with applicable MDEQ permits.

### Section XVI. Consistency of the Master Deed and/or Deed Restrictions/Covenants with the PUD Approval.



If the Project will be a condominium project (in whole or in part), the master deed (and attachments) shall be reviewed and approved by the City Attorney prior to final recording to ensure consistency with this Ordinance. If some or all of the Project will be governed by deed restrictions/restrictive covenants apart from a condominium master deed, such deed restrictions/restrictive covenants shall be reviewed and approved by the City Attorney before recording to ensure consistency with this Ordinance.

#### Section XVII. Consistency with Planned Unit Development (PUD) Standards.

The rezoning to Planned Unit Development will result in a recognizable benefit to the ultimate users of the Project and to the community. Current and future residents will recognize the benefits of a residential development that offers a low-density land use and public non-motorized pathways.

In relation to the underlying zoning (R-1) the City finds the Project will not result in a material increase in the need for public services, facilities and utilities and will not place a material burden upon the subject property and the surrounding properties. The Project is not anticipated to cause undo impact to the stormwater drainage of the surrounding area. All stormwater and soil erosion control plans have been approved by the City Engineer and the appropriate County and State agencies.

The Project has been determined by the City to be compatible with the 2005 Tri-Community Comprehensive Plan and with the spirit and intent of the Planned Unit Development Chapter of the Zoning Ordinance. The Project has been determined to be a "Residential" use, which is consistent with the City of Douglas Comprehensive Plan.

The City finds the Project will not result in an unreasonable negative economic impact upon surrounding properties.

The City finds the Project to have at least the same amount of green areas and usable open space than would typically be required by the City Zoning Ordinance.

Finally, the City recognizes the Project will be under single ownership or control. The City recognizes that the Developer or its assigns will retain ownership and control of the Premises until a majority of the site condominium units are purchased for single family residential purposes.

#### Section XVIII. Effective Date.

This Ordinance shall become effective twenty (20) days after publication of the ordinance, or a summary thereof, in a newspaper of general circulation within City of Douglas.

The foregoing Ordinance was offered for adoption by Greenwood, supported by

Mayer. The roll call vote being as follows:

YEAS: Bailey, Greenwood, Harvath, Hoexter, Mayer, Smith, Wiley

NAYS: None

ABSENT: None

Ordinance Declared Adopted.

\_\_\_\_\_  
James I. Wiley, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jean E. Neve, City Clerk

\_\_\_\_\_  
Date

#### CERTIFICATION

I hereby certify the foregoing Ordinance was adopted by the City Council of the City of the Village of Douglas at a meeting held on August 20, 2012 and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the City Charter and the Open Meetings Act, Public Act 267 of 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

\_\_\_\_\_  
Jean E. Neve  
City of Douglas Clerk