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MEMORANDUM

To: Rich LaBombard, City Manager, City of The Village of Douglas
Date: November 1, 2022
From: Tricia Anderson
RE: Resolution 13-2022 – Extension of Deadline for Easements

On May 16, 2022, the City Council adopted a resolution to approve the renewal of the approved Westshore PUD final condo project plan, subject to several conditions and terms assigned to the developer (Ric Dyk of BDR) related to outstanding items associated with the PUD.

Condition No. 2 requires the developer to:

2. *Demonstrate to the satisfaction of the Zoning Administrator and City Attorney as was required by Section XI of PUD ordinance 03-2012, providing to the City Evidence that a meeting of the Westshore Condominium Association HAS OCCURRED at which unit owners not affiliated with the Developer have been permitted to consider and have approved Easements with a description of their permitted use for:*
 - i. *Permanent public open space conservation easements for the preservation of open space and wetland protection, within one-hundred and eighty (180) days; and*
 - ii. *Permanent public access easements for internal trailways no later than May 31, 2024.*

Part i. of the conditions requires the open space preservation easements (OSPE) to be drafted, and in final form within 180 days of the date of the resolution, which would put the deadline at November 16, 2022. It should be noted that the developer has scheduled a meeting with the Association for November 2, 2022, and plans to share the draft version of the OSPE agreement document at this meeting.

The purpose of this memorandum is to provide an update to the City Council as it relates to the status of the OSPE agreement draft, as well as to request that the City Council consider allowing an extension of the above-noted deadline.

Between May 16, 2022 and the present date, the City has endured a gap in the staffing of the Zoning Administrator position, which is named in the Resolution as having review authority of the easement documents. Because of this, there has been some delay between the date of the first draft, and our initial review of the OSPE document draft. The current status of the OSPE document is that it's nearly complete and has undergone several reviews and comment periods with the City Attorney, the developer's attorney, and the Interim Zoning Administrator. The final

iteration of the legal descriptions that correspond to each open space area has not yet been completed, as the developer is working to design the future development area and the open space has not yet been delineated around the units in the future phase.

In our view, the best path forward would be for the easement documents to stay in draft form until after the Planning Commission and City Council review the developer's future application for a major amendment to the PUD and condominium review of the next phase of units within the PUD (future development area). It may be difficult to assign a hard deadline to the submittal of an application for PUD amendment and condominium review, as development is largely dependent on the economy and the market. Thus, an alternative condition may be more appropriate. We would recommend that if the developer has not submitted the application for the major PUD amendment and condominium review of the future development area by November 7, 2023 (within one year), then the City Council could require that the conservation easements be recorded with legal descriptions of the open space being reflective of the as-built conditions.

The City Council should consider the following sample motion for their decision on this issue:

I move to approve the extension of the deadline to allow the developer of the Westshore PUD/Condominium Project, BDR, to record the open space easements as a condition of future PUD amendment/condominium approval. If the future phase of the condo project is not approved within one year (November 7, 2023), the developer shall record the open space easement agreements to reflect the existing open space in accordance with the as-built conditions".

Please feel free to contact me with questions regarding this issue.

c: David Keast, City Attorney – Plunkett Cooney
Ken Bosma, P.E., City Engineer – Prein & Newhof

**CITY OF THE VILLAGE OF DOUGLAS
COUNTY OF ALLEGAN
STATE OF MICHIGAN**

RESOLUTION NO. 13-2022

**RESOLUTION IN CONSIDERATION OF
RENEWAL OF APPROVED FINAL CONDOMINIUM PROJECT PLANS
(WESTSHORE CONDOMINIUMS)**

At a regular meeting of the City Council for the City of the Village of Douglas, Michigan, held at the City of the Village of Douglas City Hall, Douglas, Michigan, on the 16th day of May 2022, at 7:00 p.m.

PRESENT: Miller, Naumann, North, Seabert, Toepper, Van Loon, Donovan

ABSENT: None

The following Resolution was offered by Councilperson North and supported by Councilperson Miller.

RESOLUTION

WHEREAS, the City of Douglas has approved with conditions an application for Site Plan Review and Resolution 18-2021, a Resolution in Consideration of Revisions to Approved Final Condominium Project Plan (Westshore Condominiums), on behalf of Richard Dyk, Douglas Property Development, LLC (“Developer”);

WHEREAS, the Developer has proposed no changes to the revised Approved Final Condominium Project Plan as reviewed by the Douglas Planning Commission April 14, 2021, and approved with conditions as assigned by Douglas City Council on May 17, 2021;

WHEREAS, the Developer and Westshore Condominiums Final Project Plan, as amended, shall conform with the provisions and standards of PUD Ordinance 03-2012, An Ordinance to Amend the City of the Village of Douglas Zoning Ordinance and Zoning Map to Establish the West Shore Golf Course Redevelopment Planned Unit Development Project and resulting R-1 Residential PUD zoning district, as approved by Douglas City Council August 20, 2012; and,

WHEREAS, the City approved on October 4, 2021 Resolution 45-2021, A Resolution to Enter Into the Center Street and Ferry Street Non-Motorized Pathways (Westshore) Two-Party Agreement with the Developer, certified with Performance Obligation Cash Deposit Agreement, dated June 22, 2021, and the Construction and Maintenance Agreement, dated October 8, 2021; and,

NOW, THEREFORE, BE IT RESOLVED, that the City Council approves the Renewal of Approved Final Condominium Project Plan (Westshore Condominiums), expressly reserving all rights and remedies it may have with respect to any non-compliance and unauthorized changes to the original approved PUD Final Submittal, PUD Ordinance 03-2012, and Project as defined in Section IV therein; and,

BE IT FURTHER RESOLVED, upon certification of this Resolution, this approval shall be subject to conditions and terms as assigned to the Developer:

1. Perform all outstanding items as required by the City Engineer (2220100, RE: Westshore PUD Pathways, dated April 29, 2022) within 60 days, pursuant to Resolution 45-2021 and Construction and Maintenance Agreement - Center Street and Ferry Street Non-Motorized Pathways (Westshore); and

2. Demonstrate to the satisfaction of the Zoning Administrator and City Attorney as was required by Section XI of PUD Ordinance 03-2012, providing to the City evidence that meeting of the Westshore Condominiums Association HAS OCCURED at which unit owners not affiliated with the Developer have been permitted to consider and have approved Easements with description of their permitted use for:

(i) permanent public open space Conservation Easements for the preservation of open space and wetland protection, within one-hundred and eighty (180) days; and

(ii) permanent public access easements for Internal Trailways no later than May 31, 2024;

complete with any resulting and necessary assignment or reassignment of general and limited common elements, as provided in the Condominium Act, to record with the Allegan County Register of Deeds against all land within the approved PUD Project, delivering copy to the City Clerk; and

3. Obtain and provide wetland delineation report(s) and proof required EGLE/USACE permits and/or waiver letters, recording copy with the Allegan County Register of Deed and returning copy to the City Clerk no later than May 31, 2024, for environmental regulation and wetland preservation for compliance with Ordinance 03-2012 and Resolution 45-2021;

4. Complete by no later than May 31, 2024, construction of Internal Trailways within the PUD Project area in conformance with the

Final PUD Submittal and PUD Ordinance 03-2012, in accordance with Resolution 45-2021 and plans approved by the Zoning Administrator, with trail standards and construction specifications pursuant to an Construction and Maintenance Agreement - Internal Trailways (Westshore), as authorized by the City Engineer, to be approved by Resolution and certified by Douglas City Council;

5. Complete by no later than May 31, 2024, demolition and removal of former golf course features not contemplated by the approved PUD site plan, including bridges, culverts, outbuildings and cart paths - retaining all existing (deciduous and evergreen) specimen trees, wetland areas, and tree lines as demonstrated by the Natural Features Inventory Map (C-106, Project No. 1120074 Westshore Golf Redevelopment PUD, Final PUD Submittal);
6. Any future application by the Developer requesting that the Council amend PUD Ordinance 03-2012, the PUD Final Submittal and/or the site plan of Westshore Condominiums, and/or seeking approval of a proposed site plan with respect to the "Future Development Area", as described in the recorded Third Amendment to Master Deed and 3rd Replat of the Condominium Subdivision Plan of Westshore Condominiums, or any portion thereof as amended, shall:
 - (i) demonstrate compliance with this Resolution and all conditions herein, to replace Resolution 18-2021;
 - (ii) in the case of any future application for development of the Future Development Area, demonstrate that the open space

requirements for the Project contemplated by PUD Ordinance 03-2012, the PUD Final Submittal and the approved PUD site plan are being addressed, including, without limitation, with respect to open space to be located within the Westshore Condominiums or made available by right to persons interested therein;

- (iii) in the case of any application relating to the Future Development Area, in whole or in part, propose the terms of an amendment or replacement, as applicable, of PUD Ordinance 03-2012 and the PUD Final Submittal; and,

BE IT FURTHERMORE RESOLVED, that all resolutions and parts of resolutions insofar as they may conflict with the provisions of this Resolution be and the same hereby are rescinded, and that this Resolution shall NOT constitute a determination by the City that the Project is in compliance with the requirements of PUD Ordinance 03-2012, the PUD Final Submittal and applicable provisions of the City Zoning Ordinance, nor shall it be considered approval or ratification by City Council of any prior changes to the Westshore Condominiums Condominium Documents or approved site plan, including, without limitation, to the First, Second and Third Amendments to the Master Deed, and the 1st, 2nd and 3rd Replats of the Condominium Subdivision Plan.

YEAS: Council Members: Miller, Naumann, North, Seabert, Toepper, Van Loon, Donovan

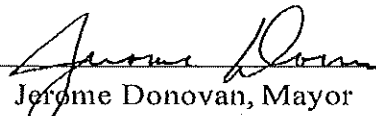
NAYS: Council Members: None

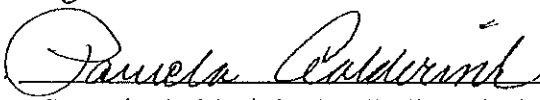
ABSTAIN: Council Members: None

ABSENT: Council Members: None

ADOPTED this 16th day of May 2022.

CITY OF THE VILLAGE OF DOUGLAS

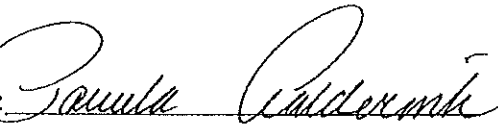
BY: 
Jerome Donovan, Mayor

BY: 
Pamela Aalderink, CMC, City Clerk

CERTIFICATION

I, Pamela Aalderink, the duly appointed Clerk of the City of the Village of Douglas, do hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the Douglas City Council at a regular meeting held May 16th, 2022, in compliance with the Open Meetings Act, Act No. 267 of the Public Acts of Michigan, 1976, as amended, the minutes of the meeting were kept and will be or have been made available as required by said Act.

CITY OF THE VILLAGE OF DOUGLAS

BY: 
Pamela Aalderink, CMC, City Clerk