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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR  
**SUBJECT:** DISCUSSION: SETTLERS RIDGE ANNEXATION AGREEMENT AMENDMENT  
**AGENDA:** DECEMBER 21, 2021 VILLAGE BOARD  
**DATE:** MEETING DECEMBER 17, 2021

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**ISSUE**

Shall the Village Board discuss an amendment of the Settlers Ridge Annexation Agreement Amendment.

**DISCUSSION**

In 2014, the Village and Land Cap, a/k/a Coast Oak, the investor-owner of Settlers Ridge following the Great Recession, entered into an Annexation Agreement Amendment prior to Land Cap preparing the subdivision lots for sale to Pulte Homes. Among the many items in the Annexation Agreement Amendment is a provision that the Village and Land Cap would adopt land development regulations for the future development of Settlers Ridge.

The deadline for completing this task has past and Coast Oak has sold all of the remaining future development areas to other parties. The other parties have no immediate plans to develop the remainder of Settlers Ridge. Village staff agrees with Coast Oak and the other parties that adopting land development standards when no one knows what will be constructed in the future is a futile exercise. Instead of developing land development regulations, the parties wish to simply acknowledge that prior to developing any of the undeveloped parts of Settlers Ridge the Village and the respective property owner will agree to amend the Annexation Agreement Amendment by adopting new land development regulations specific to the property.

A public hearing is scheduled on January 4 to accept public comment on the proposed amendment.

**ATTACHMENTS**

- Settlers Ridge Annexation Agreement Amendment (Coast Oak) excerpt
- Proposed amendment text

**COSTS**

There is no cost to discuss the matter.

**RECOMMENDATION**

The Village Board provide input and direction to Village staff.

*Proposed text amendment (DRAFT)*

I (c) The Parties hereto acknowledge and agree at such time as there is proposed development for the Northwest Parcel and Landcap Commercial Parcel, the PDD ordinance currently pertaining to the Property shall be revised to conform the PDD ordinance (the “Revised PDD Ordinance”) with the Amended Agreement. This amendment shall take place upon (identify trigger action). Development of the Northwest Parcel and Landcap Commercial Parcel shall be in conformance with the Revised PDD Ordinance, provided, however, that in the event of any conflict between this Amended Agreement and the Revised PDD Ordinance for the Affected Property, this Amended Agreement will control.

**This instrument prepared by and after  
recording return to:**

Thompson Coburn LLP  
55 East Monroe Street  
37<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: Bernard Citron

*This space reserved for Recorder's use only.*

**AMENDMENT TO ANNEXATION AGREEMENT**  
**SETTLERS RIDGE**

This amendment ("**Amended Agreement**") to the Annexation Agreement dated June 28, 2005 ("**Annexation Agreement**"), recorded as Document number 2005K081146 in the Kane County, Illinois Records office (the "**Kane County Records**"), and the subsequent amendment to the Annexation Agreement dated August 21, 2007, recorded as Document number 2008K009627 in the Kane County Records (together with the Annexation Agreement, the "**Original Agreement**"), between the Village of Sugar Grove ("**Village**"), LCP SLJV 2008-1 IL-1, LLC ("**LCP**" or "**North Parcels Owner**") and LCP Settlers Ridge Development, LLC ("**Northwest Parcel Developer**"), the Village, North Parcels Owner and Northwest Parcel Developer together referred to as Parties ("**Parties**"), said Amended Agreement made and entered into this 13 day of December, 2016.

**WHEREAS**, the Original Agreement controlled the annexation of approximately 1,331 acres of property ("**Property**") into the Village; and

**WHEREAS**, the North Parcels Owner is the current owner of a subdivided lot within the Property ("**Northwest Parcel**") as described on Exhibit "C1" and shown on Exhibit "C2" attached hereto; and

**WHEREAS**, a portion of the Property in the North Parcel have been subdivided as Settlers Ridge Units 1A and 1B ("**Settlers Ridge**") and developed in conformance with terms of the Original Agreements and developed in conformance thereto, such parcels being shown on Group Exhibit "B"; and

**WHEREAS**, the North Parcels Owner is the current owner of the subdivided lots located within Settler's Ridge identified on Exhibit D (the "**Landcap Lots**") and the commercial parcel identified on Exhibit D (the "**Landcap Commercial Parcel**"); and

**WHEREAS**, the owners of platted lots may request and the Village may grant amendments to the Original Agreement in accordance with the terms of the Original Agreement; and

**WHEREAS**, the Northwest Parcel, the Landcap Lots and the Landcap Commercial Parcel shall be hereafter be referred to as the "**Affected Properties**"; and

**WHEREAS**, in accordance with the powers granted to the Village by the provisions of 65 ILCS 5/11-15.1-1 through 15.1-5, inclusive, relating to annexation agreements and amendments to such agreements, the Parties hereto wish to enter into and binding themselves to this Amended Agreement with respect to the Affected Properties and to provide for various other matters related directly or indirectly to the development of the Affected Properties in the Village as authorized by the provisions of said statutes; and

**WHEREAS**, pursuant to due notice and publication in the manner so provided by law, the appropriate zoning authorities of the Village have held the necessary public hearing(s) and have taken all further action required by the provisions of 65 ILCS 5/11-15.1-3 and the ordinances of the Village relating to the procedure for the authorization, approval and execution of this Amended Agreement by the Village; and

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the Parties agree as follows:

**I. EFFECT OF AGREEMENTS AND DEVELOPMENT OF SETTLERS RIDGE.**

- a. Development and construction on the Affected Properties shall be in conformance with the provisions set forth within this Amended Agreement. The terms, conditions, and requirements of the Original Agreement shall no longer control or govern development of the Affected Properties, and only this Amended Agreement shall control or govern development of the Affected Properties. If there is a conflict between the Original Agreement and the Amended Agreement, the terms of the Amended Agreement shall control.
- b. All Property outside the Affected Properties ("**Excluded Land**") shall continue to be governed by the Original Agreement. The Original Agreement as it affects the Excluded Land may be amended independently of this Amended Agreement.
- c. The Village agrees to approve a revision to the PDD ordinance for the Affected Property within 120 days of the effective date of this Amended Agreement to conform the PDD ordinance (the "**Revised PDD Ordinance**") with this Amended Agreement. Development of the Northwest Parcel and the Landcap Commercial Parcel shall be in conformance with the Revised PDD Ordinance; provided, however, that in the event of any conflict between this Amended Agreement and the Revised PDD Ordinance for the Affected Property, this Amended Agreement will control.
- d. The North Parcels Owner and the Northwest Parcel Developer, on behalf of themselves and their successors and assigns, hereby covenant not to sue and hereby waive all rights of contribution, indemnity, and unjust enrichment that the North Parcels Owner and the Northwest Parcel Developer presently have, or may in the future have against the existing owners of residential lots identified on Exhibit "J" on which residences have been completed (the "Existing Homeowners") for: (1) the cost of any public improvements of the subdivision that the North Parcels Owner or the Northwest Parcel Developer

are obligated hereunder to construct; (2) any liability that Fidelity and Deposit Company of Maryland may establish against the North Parcels Owner or the Northwest Parcel Developer or their successors and assigns in the lawsuit presently pending in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, known as Village of Sugar Grove v. Fidelity and Deposit Company of Maryland, Case No. 10 MR 597 ( the "Lawsuit") and 3) any independent claim that North Parcels Owner and the Northwest Parcel Developer may have against the Existing Homeowners with respect to construction of required public improvements for contribution, indemnity, and unjust enrichment.

- e. Notwithstanding 65 ILCS 5/11-15.1-4, any provision of any applicable municipal ordinance, the Original Agreement or this Amended Agreement, no successor to any interest of the North Parcels Owner or the Northwest Parcels Developer who obtains its, his or her interest after the date of this Amended Agreement (a "**Transferee**"), shall have any obligation to construct or complete any improvements required hereunder provided that such improvements are the subject of an existing subdivision bond, performance bond, letter of credit or cash construction escrow that is not released as part of the transfer in which the Transferee obtained Transferee's interest in the Property. While not creating an obligation to complete any improvements, this subsection I(e) shall not require the Village to issue permits for properties for any lot or parcel not adequately served by such improvements (as determined by the Village) and this subsection I(e) shall not obligate the Village to complete said improvements.

## **II. ZONING AND DEVELOPMENT PLANS**

- a. Reserved.
- b. The zoning and development parameters for the Northwest Parcel shall be in conformance with the preliminary plan ("**Northwest Plan**") for the Northwest Parcel dated December 1, 2016, and attached hereto as Exhibit "G" and the following terms and conditions:
  1. Reserved.
  2. The maximum number of residential units in the Northwest Parcel shall be 669.
  3. Allowable housing types shall be single-family detached homes, single family attached dwelling units and multi-family dwelling units ("**Housing Types**"), as such are defined by the Village's Zoning Ordinance.
  4. No development shall be undertaken except within subsequently subdivided portions of the Northwest Parcel, ("**Development Area**"), which shall be designated at the time development is proposed. Multiple Housing Types may be developed within a Development Area.