

**CITY OF TAMARAC**  
**INTEROFFICE MEMORANDUM (20-05-001M)**  
**COMMUNITY DEVELOPMENT DEPARTMENT**

**TO:** Michael C. Cernech,  
City Manager

**FROM:** Maxine Calloway,  
Director of Community Development

**DATE:** April 22, 2020

**RE:** Woodmont Amended and Restated Development Agreement Third Periodic Review

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**RECOMMENDATION:** The Director of Community Development hereby requests that the City Commission accepts this third Periodic Review of the Amended and Restated Development Agreement (“Development Agreement”) between the City, Woodmont Country Club, Inc. and Pulte Home Company LLC, dated January 11, 2017, in accordance with Paragraph 26 and Section 163.3235 F.S., and to further authorize the issuance of a written notice to Woodmont Country Club, Inc. advising of the City’s intent to formally determine whether or not there has been demonstrated good faith compliance with the terms and conditions of the Development Agreement.

**ISSUE:** In accordance with Paragraph 26 of the Development Agreement and Section 163.3235 F.S., a Periodic Review of the Development Agreement is required to determine if there has been demonstrated good faith compliance by the Developer(s) in accordance with the terms and conditions of the Development Agreement.

**BACKGROUND:** Section 163.3223, F.S. authorizes any local government, by ordinance, to establish procedures and requirements, as provided in 163.3220 through 163.3243, and to enter into a development agreement with any person having legal or equitable interest in real property located within its jurisdiction. On July 9, 2014, the City of Tamarac entered into a Development Agreement with Woodmont Country Club, Inc., for the permitting and development of approximately 285 acres of property with the following uses; (i) up to 152 single family residential units not to exceed two (2) stories in height, generating a total population projection of approximately 324 persons; (ii) twenty seven (27) holes of golf and ancillary country club uses not to exceed forty (40) feet in height; (iii) public and private bodies of water; (iv) up to 28,000 square feet of commercial use, maximum forty (40) feet in height, on approximately four and one half (4.5) acres of land; and (v) other uses consistent and compatible with the Property’s land use and zoning designations as may be permitted by the City.

Section 163.3237, F.S. further provides for the ability of a local government to amend or cancel a development agreement, by mutual consent of the parties to the agreement or by their successors in interest. On January 11, 2017, the City, Woodmont Country Club, Inc. (“WCC”) and Pulte Home Company, LLC (“Pulte”), entered into an Amended and Restated Development Agreement which incorporates and further clarifies multiple procedures, obligations and requirements as provided in Sections 163.3220, F.S. through 163.3243, F.S.

In accordance with Section 163.3235 Florida Statutes, as may be amended from time to time, and Paragraph 26 of the Development Agreement, the City’s Department of Community

Development is required to review the property subject to the Development Agreement at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms and conditions set forth in the Development Agreement by each of the parties with respect to their obligations.

On January 8, 2018, the City Commission of the City of Tamarac reviewed Community Development's memorandum and presentation containing the first Period Review of the Development Agreement at their scheduled workshop meeting. A determination of compliance hearing was subsequently held on January 24, 2018 at which the City Commission accepted a cure period and a phasing timeline from WCC, in which WCC was required to substantially comply with the outstanding findings identified in the Periodic Review. While a second Periodic Review of the Development Agreement was conducted in 2019, as required in Paragraph 26 and Section 163.3235 Florida Statutes, it was determined that there was no need for a City Commission meeting at that time. This memorandum outlines the third Periodic Review of the Development Agreement for which, a City Commission meeting is necessary to apprise the City Commission of the status of WCC's compliance with the terms and conditions of the Development Agreement.,.

Staff's findings are based on a thorough and meticulous review of the Development Agreement, plans, applications, submittals, approvals, communications, obligations, and activities on or affecting the property subject to the Development Agreement as further outlined below:

#### **PARAGRAPH 7: WATERWAY CONVEYANCE:**

##### Finding:

While the City has commenced the process necessary to convey certain waterways to WCC, WCC has not formally accepted the conveyance.

##### Analysis:

Paragraph 7 of the Development Agreement provides for the City's commencement of the necessary process to convey certain Waterway Areas to WCC or Pulte as applicable, within thirty (30) days from approval of the Applications by the City Commission. The City prepared a Special Warranty Deed for Parcel ID No. 494104010120 (see Special Warranty Deed attached), containing and describing that area also known as the Aqua Range for conveyance to WCC. WCC has expressed certain reluctance relative to the formal acceptance of the conveyance, predicated on certain responsibilities and obligations which they decline to accept.

##### Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Development Agreement by WCC with respect to their obligation under Paragraph 7 to formally accept the City's conveyance of the Aqua Range Water Way Area. Staff further recommends that the City Commission authorize formal written notice to WCC of the City's public intent to formally determine whether or not there has been demonstrated good faith compliance by WCC with the terms and conditions of the Development Agreement in accordance with Paragraph 26 of the Agreement.

## **PARAGRAPH 8: GOLF COURSE:**

### Finding:

Failure to comply with ownership, operation, and maintenance of the Golf Course Parcel to include the Golf Course Amenities.

### Analysis:

Paragraph 8 of the Development Agreement provides for WCC, and/or its successors or assignees, to own, operate and maintain the Golf Course Parcel for use as a golf course with Golf Course Amenities as defined in the Development Agreement to include the “driving/aqua range.” In addition, Paragraph 8 further requires WCC to bear full responsibility for the Golf Course Parcel and related obligations as stated in the same Paragraph, as such obligations are not intended to impart any liability or obligation onto Pulte or the City. As of the drafting of this memorandum, WCC has not accepted the ownership, operation, or maintenance of all the Golf Course Amenities, which, by definition, includes the Aqua Range.

### Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Development Agreement by WCC with respect to their obligation under Paragraph 8 to formally own, operate and maintain the Golf Course Amenities which includes the Aqua Range. Staff further recommends that the City Commission authorize formal written notice to WCC of the City’s public intent to formally determine whether or not there has been demonstrated good faith compliance by WCC with the terms and conditions of the Development Agreement in accordance with Paragraph 26 of the Agreement.

## **PARAGRAPH 9: IMPROVEMENTS AND MAINTENANCE:**

### Finding:

WCC’s public use of the Golf Course which is NOT substantially complete.

### Analysis:

WCC continues to occupy and publicly utilize the Golf Course, which, by definition, of the Development Agreement, is not substantially complete. Paragraph 9 of the Development Agreement outlines the Minimum Improvement and Maintenance Contribution required to be installed by WCC for the Pines Course. Specifically, this includes, although not limited to, *new driving/aqua range, new practice areas, new mature tree planting program, renovation of sand traps, relocation of certain tee boxes and/or waterways, extensive landscaping, addition of strategically placed coquina waste areas and cart paths and other beautification efforts in accordance with the Greenway Improvement Standards.*

While WCC asserts that the Golf Course (“Course”) is not substantially complete, their use of the Course and the fact that it has been open to the public strongly demonstrates that the Course is

in fact “occupied or used for its intended purpose”, and should therefore be inspected to determine substantial completion. To verify same, Staff conducted an inspection on April 22, 2020 and found the condition of the Golf Course to be satisfactory, but not substantially complete in accordance with the contractual definition as outlined in the Development Agreement. Paragraph 9 states in part *“For purposes of this Paragraph 9, substantially completed shall mean the New Pines Course is sufficiently complete so that it may be occupied or used for its intended purpose, which includes, but shall not be limited to installation of cart paths, sand installed in bunkers, functioning irrigation, installation of mature tree planting program, maintenance building, buffer wall construction and planting of new grass”*.

Based on Staff’s site inspection, while the overall condition of the improvements (tees, greens, fairways, bunkers) seemed quite satisfactory, some number of certain required improvements were not complete in accordance with the approved masterplan and Development Agreement. Specifically, the following items were **not** complete:

- Enhanced Outer Roughs
- Cart Paths
- Practice Hole “B”
- Gold Academy / Aqua Range
- Maintenance Building
- Buffer Wall

Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Development Agreement by WCC with respect to their obligation to sufficiently complete the New Pines Course to include the Minimum Improvement and Maintenance Contribution consistent with Paragraph 9 and the contractual definition of “substantially completed”. The New Pines Course should not be occupied or used for its intended purpose without first fully complying with the intent of the term “substantially completed”. Staff further recommends that the City Commission authorize written notice to WCC of the City’s intent to formally determine whether there has been demonstrated good faith compliance with the terms and conditions of the Development Agreement in accordance with Paragraph 26 of the Agreement.

**PARAGRAPH 13: RESERVATION AND DEDICATION OF LAND**

Finding:

Failure to grant a storm water utility easement (“Flowage Easement”) to the City for the drainage and flow of storm water into, through and out of the Aqua Range parcel.

Analysis:

Paragraph 13 of the Development Agreement obligates WCC to make any and all required dedications and reservations for canal rights of way or utility easements as are required by the City and Broward County. The City requires a storm water utility easement upon and through the

Aqua Range parcel to allow for the flowage of storm water from the development and surrounding properties into, through and out of the Aqua Range parcel.

In fact, the approved storm water and drainage plans prepared by WCC, contemplates that WCC would convey, to the City, a Flowage Easement that would conform with the SWM License, and permit the stormwater from the various “Pods” within Woodmont to flow over and through the Aqua Range lake. Specifically, the drainage plans for Woodmont depict that Easement #32 and #35 would be a drainage easement to allow for the stormwater from Pods C, B, and G to flow over and through the Aqua Range.

Since mid-2019, the City has made several attempts to obtain WCC’s approval and signature on the required Flowage Easement (see attached Flowage Easement Agreement), to no avail.

Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Development Agreement by WCC with respect to their obligation to grant any and all required easements, specifically, the Flowage Easement on and through the Aqua Range parcel. Staff further recommends that the City Commission authorize written notice to WCC of the City’s intent to formally determine whether there has been demonstrated good faith compliance with the terms and conditions of the Development Agreement in accordance with Paragraph 26 of the Agreement.

**PARAGRAPH 16: DEVELOPMENT OF COMMERCIAL PARCEL:**

Finding:

Failure to Commence and Diligently Pursue the Commercial Parcel Temporary Improvements.

Analysis:

Paragraph 16 of the Development Agreement provides for the completion of the Commercial Parcel Temporary Improvements no later than twelve (12) months from the Approval Date, which effectively was May 26, 2017 (Site Plan approval plus thirty (30) day appeal period as defined in Development Agreement). The Agreement further provides for the conditional suspension of the temporary improvements upon the formal filing of a site plan for development of the Commercial Parcel. While the filing was beyond the six (6) months allowed in the Development Agreement, WCC formally submitted the Brookstone project site plan for a residential development on April 24, 2018. This submittal effectively granted WCC a stay on the installation of the Temporary Improvements.

On May 24, 2018, the Brookstone Site Plan was rejected which restarted WCC’s obligation under the Development Agreement. WCC was essentially given a new twelve (12) months (“new clock”) from the May 24, 2018 Brookstone rejection date, which would have required the installation of the Temporary Improvements on or before May 24, 2019. Based on the above, WCC is in excess of ten (10) months beyond their required delivery date of the Temporary Improvements.

While WCC has filed a Temporary Improvements Site Plan with the Community Development Department, as of April 22, 2020, it has not been permitted through engineering or the building department, nor has the improvements been installed.

Recommendation:

Staff recommends that the City Commission finds based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Development Agreement by WCC with respect to their obligation under Paragraph 16 to install the Temporary Improvements on the commercial parcel. Staff further recommends that the City Commission authorize formal written notice to WCC of the City's public intent to formally determine whether or not there has been demonstrated good faith compliance by WCC with the terms and conditions of the Development Agreement in accordance with Paragraph 26 of the Agreement.

**CONCLUSION/RECOMMENDATION:** The above noted findings are hereby submitted consistent with the Periodic Review provision found in Paragraph 26 of the Development Agreement. Staff recommends a complete review of the finding and a determination hearing to be conducted at the regularly scheduled May 27, 2020 City Commission meeting, at which time, WCC will have a full and fair opportunity to be heard and to respond to the City's determination as to whether or not there has been demonstrated good faith compliance with the terms and conditions set forth in the Development Agreement.

If the City finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Development Agreement by WCC with respect to their obligations as indicated above and in the Development Agreement, and such failure to comply continues beyond any applicable notice and the thirty (30) days cure period, the Development Agreement may be revoked or modified by the City Commission at a properly noticed public hearing.



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Maxine Calloway,  
Director of Community Development

Attachments: Recorded Amended and Restated Development Agreement  
Special Warranty Deed  
Reciprocal Flowage Easement Agreement

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