

6. Developer's Agreement

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From: Mike Hoffman <mike@tarabicosgrosso.com>

Sent: Oct 22, 2023 1:27 PM

To: Richard Nicholds (rhnichols@earthlink.net) <rhnichols@earthlink.net>

Subject: Development Agreement Update

Richard –

As discussed, below are some proposed edits to the Development Agreement that the Finance Committee may wish to consider based upon the concerns raised. Note that I kept the escrow amounts as reasonable set in existing Development Agreements, with the expectation that the Finance Committee will revise those numbers as you all see appropriate for recommendation.

Proposed Revisions to Section 6.1.4 of BPW Policies (proposed additions shown as underline):

6.1.4 Developer Obligation

The developer must accept responsibility for the costs and expenses of designing, permitting, installing, and inspecting all Improvements.

The developer will also be responsible for the costs to construct, install, and provide for the planned utility improvements outside of the planned development, unless otherwise determined by the Lewes BPW.

6.1.4.1 Escrow for Administrative Review

Developer must deposit with the BPW prior to executing the Development Agreement an amount, as established separately by the BPW based upon the size of the subject development, in the BPW's sole and absolute discretion, to cover inspections and legal work and other actual administrative and review costs

associated with the Development. The deposit will be no less than \$50,000 and will be replenished when requested by the BPW in \$25,000 increments when the fund balance reaches \$25,000. Developer must replenish such funds within thirty (30) days' notice from the BPW. Any amounts not paid within such thirty (30) day period shall incur interest at the lesser of: (i) eight percent (8%) per annum; and (ii) the maximum annual interest rate permitted by law.

6.1.8 Remedies and Enforcement

6.1.8.1 Remedies of BPW

(a) If Developer fails in any manner to fully perform and carry out each and all of the terms, covenants and conditions of the Development Agreement, Developer will be in default and notice in writing will be given by the BPW to Developer of the default. If Developer fails to cure the default within the commercially reasonable time as may be stated in the notice, the BPW may, at its option, terminate and cancel the Agreement or any part thereof, as appropriate, and, at the expense, including all actual costs, attorneys' fees and professional fees, of Developer and its surety, complete the BPW Improvements or cause them to be completed.

(b) In the event of termination, all monies deposited by Developer under the terms of the Development Agreement will be retained by the BPW, but the retention shall not release Developer or its surety from liability for Developer's default. In such event, however, Developer and its surety will be credited with the amount of money so retained toward any amount owed by Developer.

(c) If Developer fails to cure the default within the commercially reasonable time as provided herein, such failure will not affect or terminate any of the rights of the BPW as against Developer or its surety then existing, or which may accrue because of the default, and the above provisions shall be in addition to all other rights and remedies available to the BPW under the law or in equity.

6.1.8.2 Remedies of Developer

If BPW fails in any manner to fully perform and carry out each and all of the terms, covenants, and conditions of the Development Agreement requiring action by BPW, then BPW shall be in default and notice in writing will be given by the Developer to BPW of the default. If BPW fails to cure the default within the commercially reasonable time as may be stated in the notice, Developer may, at its option, pursue a cause of action for mandamus. For avoidance of doubt, Developer shall be limited to a cause of action for mandamus; provided, however, that Developer may assert any claim or cause of action against the BPW based solely upon alleged willful misconduct or grossly negligent acts of the BPW.

6.1.8.3 Additional Remedies

In addition to any rights stated in the Development Agreement and the right to draw proceeds from the performance guarantee, if Developer fails to complete the BPW Improvements in conformance with the Development Agreement or violates or fails to perform any provision of the Development Agreement beyond any applicable notice and cure period, the BPW may also seek any relief available at law or in equity, including declaratory relief, equitable relief, specific performance and monetary damages, including actual professional fees and attorneys' fees, associated with the enforcement of the Development Agreement incurred by the BPW. In addition, if Developer is in violation of any provision of the Development Agreement beyond any applicable notice and cure period, Developer authorizes the BPW, in its sole discretion, to coordinate with the agency having jurisdiction to ensure the suspension of issuance of certificates of occupancy or use for all structures in the Development, as well as ensure the refusal of said jurisdiction to issue new building permits for the Development.

6.1.8.4 Right of Entry

Developer must allow representatives for the BPW access to all parts of the subject property undergoing development or involving construction of any BPW Improvements included in the Development Agreement to which the Developer has access. Additionally, in the event Developer fails or declines to complete the required BPW Improvements in accordance with the provisions contained within the Development Agreement and beyond any applicable cure period, Developer must grant unto the BPW, its agents, assigns, and designees, the right, privilege and authority to enter such portions of the subject property necessary to complete the BPW Improvements as provided therein. The right of entry provided therein will occur upon prior written notice to the Developer and at reasonable hours and shall be done in a manner that minimizes disturbance to the subject property.

Please don't hesitate to contact me with any questions or follow up concerns.

Thanks –

Mike

Michael J. Hoffman
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