

**TOWN OF OCEAN BREEZE
SPECIAL TOWN COUNCIL MEETING**

February 27, 2025, 6:00 pm
Ocean Breeze Resort Media Room
700 NE Seabreeze Way, Ocean Breeze, FL
MEDIA ROOM

***PLEASE TURN OFF CELL PHONES –
SPEAK DIRECTLY INTO MICROPHONE***

1. Call to Order, President Docherty

- Pledge of Allegiance
- Roll Call

2. Proposed Resolution No. 359-2025 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF OCEAN BREEZE FINDING THAT FORESTAR (USA) REAL ESTATE GROUP, INC. HAS DEFAULTED UNDER THAT CERTAIN CONTRACT OF CONSTRUCTION OF REQUIRED IMPROVEMENTS AND INFRASTRUCTURE FOR OCEAN BREEZE WEST PLANNED UNIT DEVELOPMENT (PUD); AUTHORIZING A CLAIM (A “CALL”) UPON THE PERFORMANCE SURETY BOND FOR SAID INFRASTRUCTURE DEVELOPMENT; PROVIDING DIRECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE – Attorney Paul Nicoletti
(Motion, second, public comments, roll call vote)

3. **Announcements** Regular Town Council Meeting – Monday, March 10, 2025, at 10:30AM to be held at Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze

4. Adjourn

(Motion, second, all in favor)

the Charter, to ensure that the Town Council has good legal advice to stay within the boundaries of their law, and to represent the Town.

Mr. Biondolillo stated that the Charter also covers helping the Town address matters dealing with compliance and that was what he was asking for. He stated that they had submitted 558s under the HOA to deal with the construction defect but that they were there today to focus on responsibilities associated with the PUD.

Attorney Nicoletti answered that compliance had been achieved because whenever a building official issues a certificate of occupancy, compliance had been achieved and after that, those issues, defects that may exist, become warranty matters between the homeowner and the builder. He said that to the extent that the Town may have helped with a few issues, i.e., roof vents and attic access doors, that was not the Town's responsibility. He stated that compliance issues, once the certificate of occupancy was issued, no one has the ability to say what the building official can and cannot approve; no city official will go against whatever the building official does unless it is illegal, unethical, or immoral. He said that the Town was concerned with the PUD closeout issues which were infrastructure primarily and landscape and irrigation. He stated that it was not the Town's business to be involved in certain issues. He spoke about the as built drawing for each home.

Mr. Biondolillo said that it was for the PUD.

Attorney Nicoletti stated that there were as built, and part of the problem was making sure that they are actually accurate and up to date and these matters continue to be looked into. He said that there were not as built for individual homes but that there were surveys for each property. He said that the (Town's) responsibility was a clear path and does not involve some of the things the homeowners are interested in.

Council Member Ciaschi asked if it was going to cost anything moving forward in getting the estimates before the special meeting.

Attorney Torcivia answered that the costs would be for lawyers and engineers.


Council Member Ciaschi asked if it would affect the 558 they are doing if the Town moves forward?

Attorney Nicoletti answered "no."

Council Member Ciaschi, seconded by Vice President Kelley, made a motion to move forward in obtaining the engineering cost estimates and to direct the attorneys to move forward in calling the bond.

President Docherty asked for public comment.

Mr. Biondolillo asked to clarify that a conversation took place between Terry O'Neil as it related to the off-ridge vents which are listed on the closeout list and that he had made a statement that it was not warranty work but rather compliance so there still ... to be chaos and confusion...

 Council Member Ciaschi confirmed the following motion: the Town Council was directing the Town Attorneys to get the cost estimates from the Town engineer and move forward with calling the bond for the Seawalk PUD and as well as to notify the Council as soon as those numbers come in so that a special meeting potentially could be called as soon as possible with all expedience.

(Roll call vote: Yes: Ciaschi, Kelley, Heller, Galante, Docherty; No: none; Absent: Squires; Motion passed 5-0)

7. Comments from the Council on topics not on the Agenda – Council Member Heller asked about tie votes either at regular town council meetings or budget meetings.



PAUL J. NICOLETTI
Attorney at Law
1445 SE Lark Boulevard
Stuart, Florida 34996-2609

MEMORANDUM

TO: THE MAYOR AND MEMBERS OF THE OCEAN BREEZE TOWN COUNCIL

SUBJECT: RESOLUTION No. 359-2025

DATE: FEBRUARY 25, 2025

THIS MEMORANDUM IS PUBLIC RECORD

RESOLUTION No. 359-2025

At the Town Council Meeting of February 10, 2025, the Town Council directed the Town Attorney to bring back a resolution triggering a "call" on the surety bond associated with the Forestar development of Seawalk, and to do so expeditiously, not waiting for the next Regular Town Council Meeting. With that in mind, I am submitting a proposed Resolution No. 359-2025 for your consideration to start this process. Once approved, we will contact the insurance company regarding the bond and begin what I anticipate a negotiated process to complete the Seawalk development.

A bond call will require an updated and detailed engineer's "estimate of cost" regarding the current status of the development "infrastructure," and that work is being completed by Leo Giangrande, P.E. If you have any questions about this matter, please contact me prior to the Special Town Council Meeting on Thursday evening.

Respectfully submitted,

//s Original Signed

PAUL J. NICOLETTI

Cc: Terry O'Neil, Management Consultant; Gemma Torcivia, Town Attorney; Pam Orr, Permit Processor; Kim Stanton, Town Clerk

Telephone and Fax: +1 (772) 260-3276

Email: pnicoletti@comcast.net



Resolution No. 359-2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF OCEAN BREEZE FINDING THAT FORESTAR (USA) REAL ESTATE GROUP, INC. HAS DEFAULTED UNDER THAT CERTAIN CONTRACT OF CONSTRUCTION OF REQUIRED IMPROVEMENTS AND INFRASTRUCTURE FOR OCEAN BREEZE WEST PLANNED UNIT DEVELOPMENT (PUD); AUTHORIZING A CLAIM (A "CALL") UPON THE PERFORMANCE SURETY BOND FOR SAID INFRASTRUCTURE DEVELOPMENT; PROVIDING DIRECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 10, 2010, the Ocean Breeze Town Council adopted Ordinance No. 170, rezoning the Subject Property as the OBP West Planned Unit Development (PUD), Master Site Plan, and Development Conditions, which Ordinance is recorded in Official Records Book 2476, Page 1346, public records of Martin County, Florida; and

WHEREAS, on March 13, 2017, the Ocean Breeze Town Council adopted Ordinance No. 251-2017, approving and rezoning the Subject Property as the "Ocean Breeze West Planned Unit Development (PUD), Master Site Plan, and Development Conditions, which Ordinance is recorded in Official Records Book 2476, Page 1580, public records of Martin County, Florida; and which Ordinance was accepted and agreed to by OBP West, LLC, a Florida limited liability company; according to the "Development Timetable" contained in this ordinance, "Completion of all infrastructure improvements and recordation of a plat must be completed within three (3) years of the final site plan approval unless extended by the Town Council." This ordinance provided for a required completion date of March 13, 2020; and

WHEREAS, on January 8, 2018, the Ocean Breeze Town Council adopted Ordinance No. 274-2017, approving amendments to the "Ocean Breeze West Planned Unit Development (PUD), Master Site Plan, and Development Conditions, which Ordinance is recorded in Official Records Book 2981, Page 781, public records of Martin County, Florida; and which Ordinance was accepted and agreed to by OBP West, LLC, a Florida limited liability company; and

**RESOLUTION No. 359-2025
DEFAULT BY FORESTAR (USA) REAL ESTATE GROUP, INC. AND CLAIM WITH
WESTCHESTER FIRE INSURANCE COMPANY**

WHEREAS, on March 14, 2018 OBP West, LLC conveyed the entire 45.10 (more or less) acres comprising the Subject Property, including “all the tenements, hereditaments and appurtenances thereto...” to Forestar (USA) Real Estate Group, Inc. a Delaware corporation whose address is 10700 Pecan Park Blvd., Suite 150, Austin, Texas 78750; this conveyance included the rights and responsibilities under Ordinance No. 274-2017, which deed was recorded in Official Records Book 2981, Page 1093, public records of Martin County, Florida; and

WHEREAS, on June 11, 2018, the Ocean Breeze Town Council adopted Resolution No. 277-2018, approving the “Plat of Ocean Breeze West a PUD” submitted by Forestar (USA) Real Estate Group, Inc. which plat is recorded in Official Record Book 3030, Page 899, public records of Martin County, Florida; and which plat required production of a performance surety bond by Forestar to assure completion of the infrastructure for what later became known as “Seawalk” a single-family residential development; and

WHEREAS, on or about August 24, 2018, the Ocean Breeze Town Council and Forestar (USA) Real Estate Group, Inc. entered into that certain “Contract of Construction of Required Improvements and Infrastructure for Ocean Breeze West Planned Unit Development (PUD” (the”Contract”); and

WHEREAS, on August 12, 2019, the Ocean Breeze Town Council adopted Resolution No. 293-2019, making minor changes to the Ocean Breeze West PUD Master Site Plan. This resolution was recorded in Official Record Book 3080, Page 2736, public records of Martin County, Florida; and

WHEREAS, on or about December 6, 2022, the Town staff first sent a “close out” matrix entitled “Seawalk Close Out – Working List, Subject to Change” to Forestar to address all of the infrastructure issues needed to close out the infrastructure permits and therefore the Ocean Breeze West PUD; and

WHEREAS, on June 13, 2022, the Ocean Breeze Town Council adopted Resolution No. 321-2022, again making minor changes to the Ocean Breeze West PUD Master Site Plan. This resolution was recorded in Official Record Book 3322, Page 1880, public records of Martin County, Florida; and

WHEREAS, pursuant to the various zoning approvals, contracts, and the surety bond described herein, Forestar was granted development orders all under infrastructure construction permit #1580 issued by the Town of Ocean Breeze; and

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DEFAULT BY FORESTAR (USA) REAL ESTATE GROUP, INC. AND CLAIM WITH
WESTCHESTER FIRE INSURANCE COMPANY

WHEREAS, notwithstanding the production by the Town staff of a matrix showing the outstanding development infrastructure issues, and non-acceptance of the Developer's Engineer's Certifications of Completion, along with several meetings between Forestar and the Mayor and Town staff, and oral agreements by Forestar to repair or replace non-acceptable work, all at the urging of the Town over the past three (3) years, Forestar has not completed the infrastructure as required by the ordinances and resolutions of the Town, each of which were agreed upon and executed by Forestar; and

WHEREAS, beginning on March 8, 2024, and again on May 17, 2024, the Town's attorney wrote a letter to Forestar (USA) Real Estate Group, Inc., (Zachary Griffin, Land Development Director, Southeast Florida) re-transmitting an updated matrix intended to assist Forestar with the necessary PUD infrastructure closeout requirements, and demanding completion by July 1, 2024; and

WHEREAS, on June 29, 2024, the Town received an email from Zachary Griffin on behalf of Forestar transmitting an electronic file containing 1082 pages of material, purporting to be all the documents needed for the closeout of the Ocean Breeze West Planned Unit Development. Subsequently, the town's attorney responded to Forestar's attorney, William McFetridge, Esq., indicating that the Town reserved the right to review all of the material and comment back to them on or before August 1, 2024 pertaining to any missing or incomplete materials, or any materials which were non-responsive to the items in the matrix sent to Forestar on March 8, 2024; and

WHEREAS, on July 31, 2024, the town's attorney advised Forestar's attorney that the Town was reacting to the 1082 page submittal by Forestar by accepting certain items, asking for additional "explanation or certification" for several items; and identifying those items which required additional work by Forestar; and noting that over 700+ pages of the 1082 pages were photographs of individual lots within the Ocean Breeze West PUD which had no apparent evidentiary value; and at that time the Town granted Forestar until September 30th to accomplish each of the items, and that date was set as the new "compliance date," failing which legal action would be taken by the town; a copy of this letter is attached as **Exhibit "A;"** and

WHEREAS, since that time, on September 20, 2024 the town's attorney received a letter from Forestar's attorney indicating those items which Forestar would consider for completion of the infrastructure requirements by the Town; a copy of that letter is

**RESOLUTION No. 359-2025
DEFAULT BY FORESTAR (USA) REAL ESTATE GROUP, INC. AND CLAIM WITH
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attached as **Exhibit “B;”** notwithstanding this assurance, as of this time no remedial or additional work has been completed by Forestar or its subcontractors; and

WHEREAS, the Ocean Breeze Town Council finds that Forestar (USA) Real Estate Group, Inc. has defaulted on its obligation to perform the infrastructure work as required by Resolution No. 277-2018, and the Contract of Construction of Required Improvements and Infrastructure for Ocean Breeze West Planned Unit Development (PUD), and under the terms of Bond No. K09676235, and the other Ordinances, Resolutions, Permits, and Contracts described in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF OCEAN BREEZE, FLORIDA:

SECTION 1. The precatory language above is approved and included herein as if set forth below.

SECTION 2. The Mayor, and the Town Attorney are authorized and directed to contact Westchester Fire Insurance Company, as Surety, regarding Performance Surety Bond No. K09676235 dated August 27, 2018, required by the provisions of Resolution No. 277-2018, and to take those steps necessary to make a claim (a “call”) upon said bond for the work which needs to be completed to closeout the permits and other infrastructure requirements on behalf of Forestar (USA) Real Estate Group, Inc., as Principal, including the bidding and other administrative, engineering, and legal fees and costs incurred, plus the cost of the production of the work, and all work-related materials and services to be approved by the Town Council for the completion of the work, or in the alternative to approve having Westchester Fire Insurance Company contract for and complete the work.

SECTION 3. The Town Engineer and Town staff are authorized and directed as needed, to work with the Mayor and Town Attorney, and indirectly with Westchester Fire Insurance Company, to provide cost estimates and records as may be required.

SECTION 4. The Mayor, the President of the Town Council and the Town Clerk are each hereby directed to execute this Resolution forthwith, and the Town Clerk shall affix the Town Seal, and is directed to record a certified copy of this Resolution in the public records of Martin County, Florida and cause a recorded copy to be sent to the Westchester Fire Insurance Company, other parties, and attorneys of record.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

**RESOLUTION No. 359-2025
 DEFAULT BY FORESTAR (USA) REAL ESTATE GROUP, INC. AND CLAIM WITH
 WESTCHESTER FIRE INSURANCE COMPANY**

Council Member _____ made the motion to approve the Resolution, and Council Member _____ seconded the motion, and having been put to a vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
KEVIN DOCHERTY, PRESIDENT				
SANDY KELLEY, VICE PRESIDENT				
GEORGE CIASCHI, COUNCIL MEMBER				
JANET GALANTE, COUNCIL MEMBER				
MICHAEL HELLER, COUNCIL MEMBER				
MATTHEW SQUIRES, COUNCIL MEMBER				

PASSED AND ADOPTED by the Town Council of the Town of Ocean Breeze Florida on this _____ day of _____, 2025.

KEVIN DOCHERTY
 President

KAREN M. OSTRAND
 Mayor

ATTEST:

KIM STANTON
 Town Clerk

APPROVED AS TO FORM AND LEGALITY:

GEMMA TORCIVIA
 Town Attorney



PAUL J. NICOLETTI
Attorney at Law
1445 SE Lark Boulevard
Stuart, Florida 34996-2609

July 31, 2024

William F. McFetridge, IV, Esquire
Johnson Pope Bokor Ruppel & Burns LLP
400 N Ashley Dr Ste 3100
Tampa, FL 33602-4337

Office: 813-579-4177
Fax: 813-223-7118
wmcfetridge@jpfirm.com

Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

Dear Mr. McFetridge:

The Town staff has reviewed the 1082 pages which your client, Zachary Griffin, at Forestar, Inc., submitted on June 29, 2024 regarding the closeout of the Sea Walk Planned Unit Development (PUD) Ordinances and Resolutions. **Reference is made to the TABs on the Attached Matrix dated July 30, 2024.**

In response to your client's submittal, I would call your attention to the following issues of concern:

1. Items and Matters which are accepted and approved, as submitted:

a. **TABs 3 through 9:** Are accepted as cleared, not necessarily by Forestar, but by individual evidence provided by the Town staff or submitted to the Town by the HOA.

b. **TAB 11:** The certification of Shaun G. MacKenzie, P.E. dated January 15, 2024 is accepted as final evidence of compliance with the **Individual Lot Landscaping** in accordance with the approved landscaping plan in the PUD.

July 31, 2024

William F. McFetridge, IV, Esquire

Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

c. **TAB 23:** This acceptance has been received by the Town from Martin County for all utility easements within the PUD.

d. **TAB 24:** This acceptance has been received by the Town from the SFWMD and FDEP of all approval documentation for the PUD.

2. Items and Matters which require additional explanation or certification prior to acceptance:

a. **TAB 2:** The approved Landscape Plan provides there shall be no permanent irrigation of the common areas, except for the entrance features. Notwithstanding this provision, many common areas and rights of way have been piped for irrigation. As understood by the Town, the HOA agrees to allow for this permanent irrigation on the common areas. However, this arrangement is not in compliance with the PUD and a Minor Amendment to the PUD must be proposed by Forestar/DR Horton, which in turn requires prior HOA approval, along with complete drawings showing the irrigation system (as built, plus an "after the fact" Construction Permit from the Town. Whatever the resolution, it must be demonstrated that the common area vegetation will be reliably sustained in a viable condition.

b. **TAB 13:** The Infrastructure As-Built certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. This certification indicates the "fill on individual lots is documented separately on lot grading plans," but no certification is provided regarding the fill on individual lots, especially as regarding drainage performance and consistency with the Approved Stormwater Master Plan.

c. **TAB 14:** The Infrastructure As-Built certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. There is no specific consideration of the street signs, and other traffic signs or other traffic devices meeting the requirements of MUTCD and the Approved PUD Master Plan.

d. **TAB 15:** The Infrastructure As-Built certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. There is no mention of that the project's entrance gates are in compliance with ASTM Designation F2200-20 "Standard Specification for Automatic Vehicular Gate Construction," and the PUD Master Plan.

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Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

e. **TAB 21:** The survey documentation for the overall Approved Master Plan is lacking a certification provided by Shaun G. MacKenzie, P.E. or a Florida Land Surveyor, indicating that markers (PRM's, etc.) have been found and located for the overall boundaries of the Plat.

f. **GENERAL REQUIREMENT:** There are 700+ photo pages which are not adequately correlated to any certifications required of your client's firm. For these to be acceptable, they must indicate for each and every photo, the name and contact information of the photographer, the date and time each photo was taken, the exact location and direction of the camera when taking the photo referenced to the Approved Master Plan, whether the photo accurately shows what the photographer was viewing when taking the photo, the exact purpose of the photo, that is, the evidentiary value expressed or being provided by the photo, whether the photo has been altered in any way, and to what extent the photo was altered, and by whom.

3. Items and Matters which require additional work on the part of your firm:

a. **TAB 1:** This issue has long term impacts on the Stormwater System. No information was provided by your client in the submittal of June 29, 2024. The Lucido and Associates Certification of Landscaping Installation and Maintenance dated September 13, 2022 is deemed inadequate and cannot be considered correct, accurate or complete. The Town has obtained the Assessment Report on the Landscape for Seawalk PUD filed by Michael Flaugh, Landscape Architect dated March 23, 2023, and January 29, 2024. Recommendations have been provided by Mr. Flaugh dated June 12, 2024, copies of all reports have been provided earlier to your client. **TAB 10** has been merged with this **TAB 2** regarding Landscaping compliance.

b. In addition, Lucido and Associates, as the PUD designer, certified the entire PUD as complying with the PUD requirements and the Approved Master Plan. However, and for instance, the roadway T-turnaround immediately adjacent to Lot 1 (1519 NE Skyhigh Terrace) is not even shown on the Approved Master Plan drawings, and the turn around must either be removed or added to the Approved Master Plan by a proposed Minor PUD Amendment. In order to comply with this requirements, Forestar must also confirm and

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William F. McFetridge, IV, Esquire

Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

certify that all preserve areas are free of exotics, debris, and intrusions and are in compliance with the Preserve Area Maintenance Plan (PAMP).

c. **TAB 12:** Lot 1. This issue has long term impacts on the Stormwater System. The grading and slopes on the front, rear and west side of Lot 1, are not consistent with acceptable engineering standards or the Approved Master Plan. The Final Survey fails to address the steep slope which adversely impacts the 3 foot drainage easement on the north and west boundary of Lot 1. In the rear of the lot, the slopes vary as much as 1.8:1. Lot 1 needs to be corrected, and harmonized with the contiguous Preserve Area to the west. This issue requires re-grading and re-planting, and most likely a retaining wall, to provide protection from erosion and protection of the Preserve Area. To the extent that remedial work impacts the adjoining preserve area, those impacts must be offset by new plantings specified in the PAMP and approved by the Town.

d. In addition, the T-turnaround which was constructed by Forestar or DR Horton, is not shown on the Approved Master Plan and must be either removed, or a Plan Amendment furnished, as a result PUD Consistency Certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete.

e. **TAB 17:** The PUD Consistency Certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. Forestar must produce a new engineer's inspection and compliance report, acceptable to the Town regarding the failed grout at storm drain inlets, and failed asphalt installed at the south side of the entry island as provided in the comments from Scott Montgomery, P.E. dated January 8, 2024 to Pam Orr, the Town's Permit Processor, a copy of which was sent to Zachary Griffin at Forestar on January 18, 2024.

f. **TAB 19:** The PUD Consistency Certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. The project's infrastructure was designed and partially certified by Grzelka Engineering before the developers advised the Town on June 15, 2021 that Mr. Grzelka was no longer the infrastructure engineer-of-record and that Melissa Corbett, P.E. of the MilCorps Group would be the new Engineer of Record. The Town requires Forestar to produce an affirmative statement acceptable to the Town, as to which engineer was the engineer-of-record for each and every one of the major components of the infrastructure plan.

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William F. McFetridge, IV, Esquire

Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

g. **TAB 20:** The Stormwater Adequacy certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. The certification indicates "In addition, based on the performance of the stormwater ponds historical events over the past three years, adequate capacity is available to accommodate limited additional discharge from the plaza." Nonetheless, the As-built drawings of the area of concern are not accurate as to the walkway to the Plaza, and no drawings reflect the drainage discharge onto Lot 11, which discharge needs to be corrected, to be consistent with the Approved Stormwater Master Plan. In addition, there are reports of erosion from several homeowners on both the north and southeast side of the community. Additional information is available from the Town staff, and is evolving as of the writing of this letter, but may require additional work by Forestar to comply with the stormwater and landscaping requirements of the P.U.D.

h. **TAB 22:** The PUD Consistency Certification by Shaun G. MacKenzie, P.E. dated January 15, 2024 cannot be considered correct, accurate or complete. There is a "Do Not Enter" sign located near the exit gate on White Pine Terrace just east of Hickory Ridge Avenue. The sign does not conform to the Approved Master Plan, and must be relocated closer to Hickory Ridge Avenue, consistent with the Approved Master Plan.

i. **TAB 25:** All documentation required by Westchester Fire Insurance Company for a proposed bond reduction must be prepared in draft by your client and provided to the Town no later than the compliance date.

The items above contained in this response letter must be completed and submitted to the Town on or before September 30, 2024, unless authorization to extend the date is issued in writing by the Town (the "compliance date"), failing which legal action will be taken by the Town. The Town staff has tried to be as specific and clear as possible, but if you or your client have questions or need further clarification, please let me know.

If your client disputes any of the items listed, they should provide the Town with a letter clearly specifying the disputed item(s), the extent and basis for the dispute, and asking for specific consideration regarding the item(s).

Please note that some of the action items will require coordination with the Sea Walk Homeowners Association, and I encourage you or your client to contact their representatives

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Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

in that regard. The HOA attorney, Deborah Ross, Esq., and the attorney for Mrs. Sheila Raver (Lot 1), David Earle, Esq. have specifically asked for copies of any correspondence (including this letter) under the Florida Public Records laws.

PERFORMANCE BOND: I also recognize that your client wishes to have the Performance Surety Bond reduced at the earliest possible date. Working on the items that need attention is the best possible way to accomplish this goal. If we receive all of the final items required by the Town in a complete and acceptable form which can be approved by the Town within the time set for compliance, I will then ask the Ocean Breeze Town Council to consider a Bond Reduction at its next Regular Town Council Meeting. If there is a failure by your client to submit all of the final items required by the Town in a complete and acceptable form which can be approved by the Town within the time set for compliance, **it is my intent at the next Regular Town Council Meeting following such failure to ask the Ocean Breeze Town Council for authority to make a claim on the Performance Surety Bond furnished by Westchester Fire Insurance Company forthwith.** Because there are various dates associated with the Bond, including its original issuance on August 27, 2018, and a Verification Certificate for Indefinite Term Surety Bond dated March 25, 2022, I will be contacting the Insurer to have them verify in writing that this Bond is not in jeopardy of expiration on August 27, 2024. If the bonding company advises us that the Bond expires August 27, 2024, I will be making a claim for all work which is not in compliance by Forestar. I am certainly willing to work with you jointly on this issue.

INDEMNITY: On August 27, 2018, the Forestar (USA) Real Estate Group, Inc. [Fee Owner] issued its Indemnity Agreement for, among other things, "...certification services for all civil engineering work... and all other improvements authorized under the Ocean Breeze West P.U.D. and its related plat approved by Town Resolution No. 277-2018, for which permits are required to be obtained by Fee Owner." A copy of this Indemnity Agreement is attached for your review. The Indemnity Agreement goes on to say in paragraph 2 that the "Fee Owner hereby agrees to fully indemnify, defend, and hold harmless the Town of Ocean Breeze, and the Town Engineer, Building Official (and all other officials, representatives and personnel of the Town having any oversight responsibility with respect to services being provided by Fee Owner's private providers)." Clearly it was the intent of the parties that this indemnity would protect the Town from any inaction or improper action by the private providers hired by Forestar on behalf of the Town. For many reasons which do not need to be enumerated here, the five year statute of limitations on the filing of an action regarding the Indemnity Agreement could expire on August 27, 2024. **Please be advised this is the**

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William F. McFetridge, IV, Esquire

Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

Town's notice to your client that this Indemnity Agreement must be extended in a timely manner for a two year period, until August 27, 2026 by the Fee Owner so that the Town may rely on this indemnification if the private providers hired by the Fee Owner are later are discovered to have violated or failed to "comply with all applicable laws, codes, and ordinances" as provided in the Indemnity Agreement. As consideration for this extension, I am willing to ask the Town Council to agree that it shall forego any code violation actions described below until not earlier than December 1, 2024, thereby giving your client additional time within which to comply with the Town Codes, if needed. **Failure by your client to extend this Indemnity Agreement on or before August 26, 2024 is also deemed a violation of the Ocean Breeze West P.U.D.**

CODE VIOLATION ACTIONS: I am preparing a list of current violations of the relevant PUD ordinances and resolutions which will be ready in case your client is not responsive and there is a failure by your client to submit all of the final items required by the Town in a complete and acceptable form which can be approved by the Town within the time set for compliance and I must later file an action in our state courts. In addition to a claim on the Performance Surety Bond and the Indemnity Agreement, I am also considering an ordinance violation action in state court, as the Town's initial, but not exclusive, legal remedy. There are Town Code provisions which provide for fines of up to \$500.00 per day per violation for failure to comply with the zoning provisions of the Code, including a failure to abide by the time frames provided in the Conditions of Development provided in the Ocean Breeze West P.U.D ordinances and resolutions. **This is notice to your client that such fines and reasonable administrative costs can be assessed by the court.**

CIVIL ACTIONS: I am also discussing with the Town staff the possibility of filing a civil lawsuit regarding the failure of your client to do all things necessary and proper to closeout the Ocean Breeze West PUD in a timely manner. This situation has caused certain damages to the Town by incurring additional professional expenses for surveys, reports and studies paid for using the taxpayer's money, and for legal expenses, all caused by the failure of your client to comply with its written agreement including the timetable for development and the Development Conditions adopted in the PUD ordinance.

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William F. McFetridge, IV, Esquire

Reference: Closeout Requirements for the Sea Walk PUD, Town of Ocean Breeze, Florida

The Town wants to avoid any and all of these enforcement measures, and is looking to Forestar and/or D.R. Horton to thoroughly and professionally resolve the issues listed as specified herein and in the attached documents.

Very truly yours,



PAUL J. NICOLETTI

Attachment: Sea Walk Matrix

Cc:

Ocean Breeze Mayor and Town Council

Town Staff

Deborah Lynn Ross, Esquire

David B. Earle, Esquire

Gary E. Simmons, Jr., Esquire

Ross Earle Bonan Ensor & Carrigan, P.A

Attorneys for the Sea Walk HOA

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SEA WALK CLOSEOUT MATRIX

TAB #	SEA WALK PUD -- ISSUE	PARTY RESPONSIBLE	PUD REQUIREMENT	CURRENT STATUS	ACTION ITEM
1	ENVIRONMENTAL & PAMP	FORESTAR /DR HORTON	Forestar to confirm and certify that all preserve areas are free of exotics, debris, and intrusions and are in compliance with the PAMP, and that all PAMP annual reporting requirements are up to date.	1. Some exotics and debris exist in Preserve Areas and the PAMP compliance may have been compromised. 2. Per the HOA on 7/9/24, all annual reporting requirements have been met.	Forestar to perform all work necessary to remove exotics and construction debris; and provide an updated final environmental inspection and compliance report.
2	IRRIGATION IN RIGHTS OF WAY AND COMMON AREAS	HOA/ TOWN COUNCIL	With the exception of entrance landscaping features, the PUD Ordinances prescribe that "there is no permanent irrigation of the common areas." Notwithstanding this provision, common areas have been piped for irrigation. This arrangement is not in compliance with the PUD and must be corrected or proposed as an amendment to the PUD, possibly via a minor PUD amendment application.	Town staff agrees with HOA to APPROVE THE INSTALLATION OF A PERMANENT IRRIGATION SYSTEM, even though the PUD states otherwise. A PUD Ordinance Amendment required.	Town Staff will make favorable recommendation to the Town Council and prepare a Minor PUD Amendment AT SUCH TIME AS ALL OTHER PUD REQUIREMENTS ARE MET.
3	ENTRANCE LOCK BOX	HOA	HOA to confirm that entrance lock box configurations are in compliance with the Martin County Sheriff and Martin County Fire-Rescue standards.	HOA REPAIRED	NO ACTION REQUIRED
4	ENTRANCE CALL BOX ELECTRICAL "SHORT"	HOA	HOA to confirm that entrance call boxes are free from low voltage shocks.	HOA REPAIRED	NO ACTION REQUIRED
5	MC SHERIFF	HOA	Has the HOA entered into a Patrol Agreement with the Martin County Sheriff's Office?	DOCUMENT NOT REQUIRED	NO ACTION REQUIRED
6	MC FIRE-RESCUE	HOA	Has MCFR Approved the Fire Hydrants and locations and tested hydrants?	DOCUMENT NOT REQUIRED	NO ACTION REQUIRED
7	MC HEALTH DEPT	HOA	Provide a copy of the MC Health Department approval of community pool.	HOA PROVIDED	NO ACTION REQUIRED
8	OCEAN BREEZE PLAZA	FORESTAR	Provide a copy of the Ocean Breeze Plaza Access Agreement.	DOCUMENT NOT REQUIRED	NO ACTION REQUIRED
9	SOLID WASTE REMOVAL	HOA	Provide a copy of the Solid Waste Removal Agreement.	HOA PROVIDED	NO ACTION REQUIRED
10	LANDSCAPE COMMON AREA COMPLIANCE	FORESTAR / DR HORTON	Lucido & Associates earlier statement of landscaping compliance, must be revisited based upon more recent Flaugh reports (2 reports) and recommendations.	Flaugh reports (2) and recommendations identify deficiencies which need to be corrected.	Forestar to consider Flaugh Reports and recommendations; do the necessary work; and provide a new landscape inspection and compliance report acceptable to the Town.
11	LANDSCAPE INDIVIDUAL PARCEL COMPLIANCE	MACKENZIE	Some parcel owners reported discrepancies in the final landscaping of their properties by DR Horton. Confirm the individual parcel landscaping was installed in accordance with the PUD Master Site Plan.	So much time has passed since Certificates of Occupancy were issued that Town finds individual property owners may have altered the landscape in such a manner that it is impossible to accurately certify compliance. Therefore, the Certification statement regarding Individual Lot Landscaping by Shaun G. MacKenzie, P.E. dated January 15, 2024 IS ACCEPTED AS SUBMITTED.	NO ACTION REQUIRED

Dated: July 30, 2024

SEA WALK CLOSEOUT MATRIX

TAB #	SEA WALK PUD – ISSUE	PARTY RESPONSIBLE	PUD REQUIREMENT	CURRENT STATUS	ACTION ITEM
12	LANDSCAPE INDIVIDUAL PARCEL COMPLIANCE	FORESTAR / D.R. HORTON	LOT 1 site deficiencies require remedial improvements to address inconsistencies with the infrastructure plan and/or the individual parcel plan, including but not limited to improper grading and slopes, risks of erosion and access to perimeter landscaping. To the extent that remedial work impacts the adjoining preserve area, those impacts must be offset by new plantings specified in the PAMP and approved by the Town.	Lot 1 Property Owner (Sheila Raver) has indicated a willingness to accept the Patrick LaConte drawing, regarding how to reconfigure her lot; the Town and HOA are waiting for input from Forestar.	Forestar to work with the HOA and the Owner of Lot 1 regarding the reconfiguration of Lot 1 and how it fits into the PAMP and overall Master Site Plan; then obtain Town Permits, do the work, and provide a new engineer's Infrastructure inspection and compliance report, addressing this issue which is acceptable to the Town.
13	SITE PLAN INDIVIDUAL PARCEL COMPLIANCE	MACKENZIE	Confirm that all other infrastructure components (including those discussed above) have been installed properly and in accordance with the approved PUD Master Site Plan and Infrastructure Plan.		Forestar to provide a new engineer's Infrastructure inspection and compliance report, addressing this issue which is acceptable to the Town.
14	MASTER SITE PLAN INFRASTRUCTURE	MACKENZIE	Confirm that all street signs, speed signs, and other traffic signs or devices are consistent with MUTCD and PUD Master Site Plan, as amended.	There is no confirmation that streets signs and traffic devices meet MUTCD standards and PUD Master Plan. For instance, the "Do Not Enter" sign on White Pine Terrace does not conform to the Approved Master Plan (See TAB 22).	Forestar to provide a new engineer's Infrastructure inspection and compliance report, addressing this issue which is acceptable to the Town.
15	MASTER SITE PLAN "AS BUILT"	MACKENZIE	Confirm that the project's entrance gates are in compliance with ASTM Designation F2200-20 "Standard Specification for Automatic Vehicular Gate Construction"	There is no mention of this requirement in the engineer's report of January 15, 2024.	Forestar to provide a new engineer's Infrastructure inspection and compliance report, addressing this issue which is acceptable to the Town.
16	MASTER SITE PLAN "AS BUILT"	MACKENZIE	Does the as-built infrastructure plan, submitted by the developer's design engineer(s) of record, and approved by Mackenzie Engineering, account for DR Horton's placement of fill on individual sites?	As stated by Forestar representatives, the individual lot surveys (143) are the "as built" document for each individual lot. There is no overall "as built" drawing which shows the final configuration of the PUD.	NO ACTION REQUIRED
17	MASTER SITE PLAN "AS BUILT"	MACKENZIE	Confirm the final road asphalt and concrete road inlets (drainage) were installed correctly and is consistent with the PUD Master Site Plan, as amended.	See email comments from Scott Montgomery, P.E. 01/08/2024 indicating failing grout at inlets, and failed asphalt installed at south side of entry island	Forestar to do the necessary work and provide a new engineer's (MacKenzie) Infrastructure inspection and compliance report, addressing this issue acceptable to the Town.
18	MASTER SITE PLAN "AS BUILT"	MACKENZIE	Confirm the final configuration of the "as built project" is consistent with the PUD Master Site Plan, as amended.	There does not appear to be a final "As Built" drawing for the overall Master Plan.	Forestar to review all components of the Approved Master Plan, do any necessary work to conform the components to the Approved Master Plan, and provide a new engineer's (MacKenzie) inspection and compliance report, addressing this issue acceptable to the Town.

Dated: July 30, 2024

SEA WALK CLOSEOUT MATRIX

TAB #	SEA WALK PUD – ISSUE	PARTY RESPONSIBLE	PUD REQUIREMENT	CURRENT STATUS	ACTION ITEM
19	REQUEST FOR REDUCTION OR RELEASE OF PERFORMANCE BOND	FORESTAR / D.R. HORTON	A request for Bond reduction will follow the process in the bond agreement contract and the outline provided by the Town Attorney dated October 12, 2022.	The project's infrastructure was designed (and partially certified?) by Grzelka Engineering before the developers advised the Town on June 15, 2021 that Mr. Grzelka was no longer the infrastructure engineer-of-record and that Melissa Corbett, PE at the MilCorps Group would be the new Engineer of Record.	Forestar to provide an affirmative statement acceptable to the Town, as to which engineer is the engineer-of-record for each of the components of the infrastructure plan.
20	COMPLIANCE WITH HISTORICAL STORM WATER FLOWS	FORESTAR / D.R. HORTON	Developer's Engineer to confirm that the Seawalk infrastructure design provides for historical storm water flows from the Plaza site, and whether the Plaza's discharge exceeds what the Seawalk site is obliged to accommodate.	The Town has received video evidence that rainwater drainage is flowing southward from the Ocean Breeze Plaza property along the walkway and flowing into Lot 11, causing minor flooding. The "As Built" drawing showing this feature is not correct. This issue needs to be corrected by Forestar.	Forestar to do the necessary work and provide a new engineer's (MacKenzie) Infrastructure inspection and compliance report, addressing this issue acceptable to the Town.
21	"AS BUILT" SURVEY CONFORMITY WITH MASTER PLAN	FORESTAR / D.R. HORTON	Survey issues, corner markers shown on "As Built" Survey?	Since no "As built" drawing was completed for the entire Master Plan, the engineer of record must certify that all of the survey markers (PRM's, etc.) have been found and located for the overall boundaries of the Plat.	Forestar to do the necessary work and provide a new engineer's (or Certified Land Surveyor's) compliance report, addressing this issue acceptable to the Town.
22	MARTIN COUNTY APPROVAL OF "OFF-SITE" IMPROVEMENTS	FORESTAR / D.R. HORTON	Documentation needed confirming Martin County's acceptance of all off-site improvements. (drainage, sidewalk(s), signage, etc.)	For instance, there is a "Do Not Enter" sign on White Pine Terrace just east of Hickory Ridge Avenue. This sign does not conform to the Approved Master Plan. There may be other examples known to the Developer which need correction.	Forestar to do the necessary work and provide a new engineer's (MacKenzie) Infrastructure inspection and compliance report, addressing this issue acceptable to the Town.
23	MARTIN COUNTY INFRASTRUCTURE APPROVALS	FORESTAR / D.R. HORTON	Proof of Martin County acceptance or easements for water line located on Parcel A	The Town has received acceptance documentation from Martin County.	NO ACTION REQUIRED
24	SFWM and FDEP INFRASTRUCTURE APPROVALS	FORESTAR / D.R. HORTON	SFWM and FDEP acceptance and approval documentation.	The Town has received acceptance documentation from SFWM and FDEP.	NO ACTION REQUIRED
25	REQUEST FOR REDUCTION OF PERFORMANCE BOND	FORESTAR / D.R. HORTON	Furnish bond reduction documents to Town Attorney for review and approval.		When all infrastructure issues are resolved and certifications are acceptable to the Town, Forestar shall provide a formal written request and draft documents to the Town for a proposed Bond Reduction.

Dated: July 30, 2024

SEA WALK CLOSEOUT MATRIX

	SEA WALK PUD – ISSUE	PARTY RESPONSIBLE	HOA OR RESIDENT MATTERS	CURRENT STATUS	STAFF ACTION ITEM
26	AC Units Not Sized Correctly	DR HORTON	Allegation by HOA or Residents	CLEARED BY DAVID WOJCIESZAK, PE	NO STAFF ACTION REQUIRED
27	Attic Access Panels	DR HORTON	Allegation that Attic Access Panels were not properly installed	CLEARED BY TOWN BUILDING OFFICIAL	NO STAFF ACTION REQUIRED
28	Foundations Cracking	DR HORTON	Allegation of foundations cracking on some homes	CLEARED BY TOWN BUILDING OFFICIAL	NO STAFF ACTION REQUIRED
29	Ridge Vents Properly Installed	DR HORTON	Allegation that offset roof vents were not properly installed	CLEARED BY TOWN BUILDING OFFICIAL	NO STAFF ACTION REQUIRED
30	Improper Insulation Installed	DR HORTON	Allegation that insulation was not sufficient with typical weather	CLEARED BY DAVID WOJCIESZAK, PE	NO STAFF ACTION REQUIRED
31	Minimum Landscape Not Installed on Lots	DR HORTON	Allegation that not all required landscape was installed	CLEARED BY CERTIFICATES OF OCCUPANCY AND PASSAGE OF TIME	NO STAFF ACTION REQUIRED
32	Parking Problems on Turf Blocks	DR HORTON	Allegation that Grass blocks not properly installed		STAFF IS REVIEWING
33	Drainage Issues on Lots	DR HORTON	Allegation that certain lot owners and HOA claim drainage problems	A drainage issue was verified on Lot 11 which requires Forestar action as discussed in TAB 20, but does not require additional staff action at this time.	NO STAFF ACTION REQUIRED

Dated: July 30, 2024



**JOHNSON
POPE**

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September 20, 2024

VIA EMAIL

Paul J. Nicoletti
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Re: Town of Ocean Breeze – Sea Walk Closeout Items

Mr. Nicoletti:

As you know, this firm represents Forestar (USA) Real Estate Group Inc. ("Forestar"). This letter responds to your letter dated July 31, 2024, the accompanying "Sea Walk Closeout Matrix," and the issues raised therein. Forestar's responses are as follows:

Section 2: Items and Matters for which the Town requests additional explanation or certification prior to acceptance

- a. TAB 2: Forestar is committed to coordinating with the Sea Walk HOA ("HOA") and provided the following alternatives: (i) the shutting down and capping in place of any existing active irrigation per the PUD; or (ii) if the HOA wishes, pursuing a minor amendment to the PUD to allow for irrigation only in any currently and actively irrigated common areas with the HOA's written approval, along with irrigation system plans and an after-the-fact construction permit from the Town.
- b. TAB 13: Fill on individual lots and individual Lot grading plans are not typically provided on a Site Overall Paving, Grading & Drainage as-built, which is why they were not included on this as-built. Individual Lot as-built surveys that are provided at Certificate of Occupancy show finished individual lot grading per any typical lot grading plans provided in the civil grading design. If the Town requires MacKenzie's certification of the individual lot grading, we will coordinate with MacKenzie Engineering & Planning, Inc. ("MacKenzie") to review and certify each individual lot grading as-built survey and include their certification of those surveys in a revised/amended resubmittal. There is too much data to add each individual lot's survey data to the Overall Paving, Grading & Drainage as-builts.
- c. TAB 14: Signage certifications are also not typically requested on a Site Overall Paving, Grading & Drainage as-built. However, as the Town has requested it, we will coordinate with MacKenzie



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to inspect and, upon inspection approval, have MacKenzie provide a certification stating the signage and traffic devices have been installed per the approved civil plans and the approved PUD Master Plan, and meet MUTCD requirements. This certification will be included in the revised/amended resubmittal.

- d. TAB 15: We will coordinate with MacKenzie to provide a certification that the Sea Walk project's entrance gates are in compliance with ASTM Designation F2200-20 and the PUD Master Plan and include it in the revised/amended resubmittal.
- e. TAB 21: A certification by Caulfield & Wheeler for the confirmation of installation of all PRMs and PCPs (survey markers) has been provided by Zachary Griffin via email and at each of the meetings at the Town between Forestar and the Town's representatives. However, as the Town is requesting that MacKenzie certify an already signed and sealed certified document by a professionally licensed public land surveyor, we will coordinate with MacKenzie to review and provide a certification of the certification and add it to the revised/amended submittal.
- f. GENERAL REQUIREMENT: We will coordinate with MacKenzie, as the certifying engineer, to either remove the 700+ referenced photos from the revised/amended resubmittal, or if they so choose, keep any photos in the revised/amended resubmittal, add the Town's criteria for each remaining photo.

Section 3: Items and Matters for which the Town requests additional work from Forestar

- a. TAB 1: The landscaping for the Sea Walk project has been under the control and maintenance of the HOA since May 31, 2022. To facilitate the certification of the site landscaping, Forestar installed, at its cost, missing landscaping materials following an inspection by Lucido & Associates, at which time Lucido & Associates certified the landscaping was complete and installed per the PUD. Because the Town elected to have Mr. Flaugh perform a site inspection seven (7) months later, there may have been deficiencies found by Mr. Flaugh, but these deficiencies were not caused by Forestar. Forestar will review Mr. Flaugh's last inspection and provide further information upon assessment.
- b. It is typical in PUDs that after PUD site plan approval, certain engineering additions are added that may not be reflected in a PUD site plan but are nonetheless reviewed and approved on other subsequent documents or sets of plans. PUDs are not typically amended to show these additions because the other subsequent approvals are typically included in a full PUD plan set, and there is an understanding that the PUD Site Plan is an architectural rendering and does not include civil engineering design standards and details. As the PUD designer, Lucido & Associates, certified the entire PUD as complying with PUD requirements and the Approved Master Plan because, in their experience, they know non-material deviations that do not impact the requirements of a PUD are



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sometimes added following subsequent reviews. Such deviations do not substantiate PUD amendments.

However, since the Town is requiring a PUD amendment for the irrigation issue, Forestar proposes to remove the T-turnaround adjacent to Lot 1 and leave the portion of the turnaround across the street from Lot 1 and amend the PUD Site Plan accordingly. Forestar will also, through its environmental consultant, provide a certification that confirms that all preserve areas are free of exotics, debris, and intrusions and are in compliance with the PAMP, allowing for one particular area where exotics were left in place as a buffer upon the request of the residents. This will be confirmed with the HOA in writing.

- c. TAB 12: Forestar will continue to coordinate with the resident/owner of Lot 1 and the resident's attorneys to address the resident's concerns about the re-grading and full usage of the west side of her lot. Forestar will coordinate with the Town as needed to resolve this resident's complaint. In prior meetings with the Town, the Town's representatives acknowledged that filling a portion of the preserve adjacent to the resident's west property line with a slope to adjust for the difference in elevation would be allowed to accommodate the filling and re-grading of the resident's lot. The impact of this slope would be offset by new plantings specified in a PAMP amendment and approved by the Town. Please confirm that this is still the case.
- d. See response for Section 3, Letter b. above.
- e. TAB 17: The maintenance of drainage inlet grout and minor landscaping and/or water damage of the asphalt at the south side of the main entrance island will be corrected by Forestar and re-inspected and re-certified by MacKenzie in a revised/amended submittal. Neither of these items have failed, as stated in the July 31st letter, or drainage inlets would have collapsed underground, and asphalt would have broken into pieces on the roadway. Neither has happened in each case. These are long-term maintenance issues which is why MacKenzie provided the Town with their PUD Consistency Certification.
- f. TAB 19: Forestar has provided the affirmative statement as to which engineer was the EOR for each and every one of the major components of the infrastructure plan. As no comments were provided by the Town regarding the statement, Forestar considered the request closed. Please advise whether the Town prefers this statement included in the revised/amended submittal forthcoming by MacKenzie.
- g. TAB 20: The discharge onto Lot 11 from the neighboring commercial plaza was due to overflow stormwater from the plaza not maintaining its drainage system during one very extreme storm event. Forestar has not been provided and has not received any reports of erosion from Sea Walk homeowners. As is typical, the sidewalk access to the plaza was modified to attain ADA standards but is considered a non-substantial deviation from the approved PUD Site Plan. However, at the



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Town's request, Forestar and MacKenzie will re-evaluate the area's construction and provide further feedback at a later date. We must note that the Town is holding Forestar responsible for the plaza's unauthorized discharge into the Sea Walk Community but, instead, should be pursuing action against the plaza for its lack of stormwater system maintenance which is the most likely cause of the discharge.

- h. TAB 22: The "DO NOT ENTER" sign on White Pine Terrace will be relocated closer to Hickory Ridge Avenue if MacKenzie's review of the signage mandates that the sign is in the wrong location.
- i. TAB 25: A draft bond for the 10% reduction will be provided for the Town's review as soon as possible.

Although Forestar and MacKenzie are currently working through these issues, based on the above, Forestar requests that the Town revise the compliance date to complete Section 2., Items b., c., d., e., f., and Section 3., Items e., f., h., and i., to October 30, 2024. Where responses outlined above can be submitted earlier, they will be. Due to the complexity of coordination with the HOA, the Town, plan reviews, completion of the minor amendment to the PUD, and coordinating with the owner and attorneys of Lot 1, Forestar requests that additional time past October 30, 2024, be provided for Section 2., Item a., and Section 3 Items a., b., c., d., and g., revising the compliance date for these items to December 31, 2024. Finally, Forestar requests reconsideration of Section 3, Items a. and g., as Forestar disputes the Town's position on these issues.

Concerning the Performance Bond, the Bond is set for automatic renewal and is in no danger of expiration. Please feel free to confirm this with Westchester Fire Insurance Company. Concerning the Indemnity Agreement, the Agreement is not limited in time and there is no fixed duration. Thus, there is no need to extend the Agreement for any period of time as there is no period to extend.

Forestar looks forward to continuing to work through these issues with the interested parties.

Sincerely,

JOHNSON, POPE, BOKOR,
RUPPEL & BURNS, LLP

/s/ William F. McFetridge

William F. McFetridge