ORDINANCE NO. 2009-O-111

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, AMENDING ORDINANCE NO. 2006-O-70; AMENDING ZONING REGULATIONS, PROCEDURES AND REQUIREMENTS FOR A PLANNED DEVELOPMENT DISTRICT ("PDD") OF APPROXIMATELY 297 ACRES OF LAND WITHIN THE VILLAGE OF VOLENTE; AND PROVIDING SEVERABILITY, EFFECTIVE DATE, AND OPEN MEETINGS CLAUSES

WHEREAS, the purpose and intent of a Planned Development District is to provide a flexible, alternative procedure to encourage imaginative and innovative designs for the unified development of property in the Village of Volente ("Village") consistent with Article 30 of the Village's Code of Ordinances and the Village's Comprehensive Plan; and

WHEREAS, the Village Planning and Zoning Commission and the Village Council have continued to work with Grason Volente Investments Ltd and the Volente Group of Texas, Ltd ("Landowners") on development issues for the approximate 297 acre tract of land ("Property") a portion of which was contingently rezoned as a PDD under Ordinance No. 2006-O-70; and

WHEREAS, the Village Council finds that the Landowners' and Village's proposed amendments to the PDD and the Preliminary Development Plan for the PDD are consistent with the provisions of the comprehensive plan for the Village of Volente and are designed to achieve the purposes set forth in Sections 211.003 and 211.004 of the Texas Local Government Code and Chapter 30 of the Village's Code of Ordinances regulating zoning within the Village;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS, THAT THE FOLLOWING AMENDMENTS TO ORDINANCE NO. 2006-O-70 ARE HEREBY ENACTED:

1. Section 2 is hereby amended to read in its entirety as follows:

(2) Rezoning of the Property. The outer boundaries of the PDD shall be as shown on the map attached as Exhibit "A" to Ordinance No. 2006-O-70, which is incorporated herein for all purposes.

2. Section 3 is deleted.

3. Section 4(a)(3) is deleted.

4. Sections 4(a)(8)(2) is amended to read in its entirety as follows, in order to add Village Council approval requirement:

(2) Home and related residential lot improvements, including driveways:

(a) Driveway construction may occur on slopes averaging from 25% up to 40% within the driveway envelope, only if necessary to provide access from a road to a home, provided Best Management Practice erosion controls approved by the Village Engineer and the Village Council are used. Such construction shall be approved on a case by case basis and shall be inspected by a qualified third party recommended by the Village Engineer and approved by the Village Council and paid for by the Landowner(s).

(b) Residential construction may occur on slopes averaging from 25% to 35% within the building envelope provided Best Management Practice erosion controls approved by the Village engineer and approved by the Village Council on a case by case basis are used. Such construction must be inspected by a qualified third party, recommended by the Village engineer and approved by the Village Council and paid for by the Landowner(s). The lots where construction will occur on slopes from 25% to 35% will be identified on the final plat(s).

(c) Residential construction may occur on slopes averaging from 35% to 40% within the building envelope on no more than 12 lots, provided Best Management Practice erosion controls approved by the Village engineer and the Village Council on a case by case basis are used. Such construction must be inspected by a qualified third party, recommended by the Village engineer and approved by the Village Council and paid for by the Landowner(s). The lots where construction will occur on slopes of 35% to 40% will be identified on the final plat(s).

5. <u>Section 4(c)(1)(b) and (c) are amended to read in their entirety as follows, in order to add Village Council approval requirement</u>:

(b) Cut/fill limitations for streets and utilities within easements shall not exceed twenty feet (20') in cut and 20' in fill within public rights-of-way and utility easements where reasonably necessary for access and proper and safe design of roadways and utilities. Roadside slopes may exceed 3:1 and be up to vertical with use of structural retaining walls with a maximum height of 20 feet upon the recommendation of a geotechnical or structural engineer. Cut or fill on driveways shall not exceed the cut or fill of the street frontage immediately adjacent to the driveway, provided that no driveway fill may exceed 15 feet in height. Lots fronting street cut or fill in excess of 10 feet shall be identified on the Final Plat. Cut or fill over ten feet (10') shall be mitigated to minimize the aesthetic, engineering and erosion potential from such cut and fill; mitigation measures include natural materials such as stone cladding, dry stack walls, planter walls, planter pockets, landscaping and terracing or other measures approved by the Village Engineer and the Village Council. Slope stability analysis shall be submitted by a licensed geotechnical engineer for cuts or fills greater than 10'. Structural retaining walls greater than 5' in height shall be designed by a licensed structural engineer. A license agreement must be negotiated for maintenance of

improvements within the R.O.W.

(c) Cut/fill limitations for residential lots, excluding driveways, shall not exceed a total of ten feet (10') of cut and a total of 10 feet of fill within building envelope where necessary. Building foundations are not considered cut or fill. Cut or fill over five feet (5') shall be mitigated to minimize the aesthetic, engineering and erosion potential from such cut or fill; mitigation measures include natural materials such as stone cladding, drystack walls, planter walls and planter pockets, landscaping and terracing or other measures reasonably approved by the Village Engineer and approved by the Village Council. A maximum of 2 feet (2') of the vertical face building foundation may remain exposed. Slope stability analysis shall be submitted by a licensed geotechnical engineer for cuts or fills greater than 10 feet. Structural retaining walls greater than 5 feet in height shall be designed by a licensed structural engineer.

6. <u>Section 7(c) is amended to read in its entirety as follows, in order to change the date for dedication of Parkland to the Village</u>:

(c) Park to be Dedicated to the Village

Approximately 3.0 acres of land, as shown on the <u>Project Conceptual Master Plan</u>, attached as <u>Exhibit "D"</u> of the Preliminary Development Plan shall be dedicated to the Village for use as parkland on or before July 31, 2012. Such dedication shall be part of the approval of the first final plat within Volente Peak. Parkland and usable open space dedications, as set forth in Exhibit "D", complies with the parkland and usable space requirements of the PDD Enabling Ordinance (Section 30.124(A)(e)).

7. <u>Section 7(d) is amended to read in its entirety as follows, in order to modify the provisions for waterlines for the Village's future use for firefighting purposes</u>:

(d) Waterlines for the Village's future use

The Owners of the Volente Peak MUD have agreed to size the distribution water lines running to F.M. 2769 and Lime Creek Road (see Conceptual Water Distribution Location and Conceptual Distribution System attached as "Exhibit I" of the Preliminary PDD Plan) for an additional 600 living unit equivalents of service to provide potable water to points at F.M. 2769 and Lime Creek Road for possible future distribution to the Village, as shown on "Exhibit I" of the PDD standards. These lines will be terminated with fire hydrants, which may be utilized by the Emergency Services District ("ESD"). Water delivered to the ESD or the Village if it ever assumes the fire fighting functions for the Village and its citizens shall not be considered water delivered to the Village. If the Village should ever need such potable water, it may enter into water supply agreements with water providers and the MUD shall allow such water to pass through its systems at a cost not to exceed the wholesale rate charged by the MUD's water

provider plus a surcharge to account for the Village's share of operations and maintenance of the pass through lines and water losses. The surcharge shall be a pro rata portion of costs of operations, maintenance and water losses based on the volume of water delivered to the Village as compared to the volume of water delivered to the District. The Volente MUD and the Village may negotiate adjustments to the surcharge from time to time based upon the MUD's actual operational costs for passing water through to the Village. At no cost to the Village and if the Village makes such a request, the Volente MUD shall dedicate to the Village by plat or separate instrument an approximate 100 foot by 100 foot area adjacent to the MUD's water storage tank(s) for use as the Village's future water storage tank site and shall provide valved stubouts for all future connection points to the Village meters and tank.

8. <u>Section 7(e) is amended to read in its entirety as follows, in order to provide for a due date for the monetary contribution for parkland and for accrual of interest on the contribution if it is not paid by the due date</u>:

(e) Monetary Contributions to Improve the Parkland Dedicated to the Village

The Landowners shall contribute the sum of $200,000.00 to the Village, designated for park improvements, to be paid on or before August1, 2012 ("Due Date"). If the $200,000.00 amount ("Principal") is not paid by the Due Date, the Principal shall bear interest at the rate of the price index for the base year.

(1) "base year" means the full calendar year starting one year before the Due Date.

(2) "price index" means the consumer price index published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers.

(3) "price index for the base year" means the average of the monthly price indexes for each of the twelve (12) months of the base year.

The Principal plus interest shall be paid on or before the final plat is recorded for Phase I.

9. <u>Severability</u>: If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

10. **Effective Date:** This Ordinance shall take effect immediately from and after its passage and publication of its enacting ordinance in accordance with the provisions of *Chapter 52 of the Texas Local Government Code.*

11. **Open Meetings:** It is hereby officially found and determined that the meeting at which the enacting ordinance of this article is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551 of the Texas Government Code.*

PASSED AND APPROVED on the 2nd day of December, 2009, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the Village Council of the Village of Volente, Texas.

JAN YENAWINE, MAYOR OF THE VILLAGE OF VOLENTE

ATTEST:

JENNIFER ZUFELT, CITY SECRETARY