

**WINDSOR TOWN BOARD**

**RESOLUTION 2014-46**

**RESOLUTION APPROVING  
THIRD AMENDMENT TO DEVELOPMENT AGREEMENT  
FOR PHASE II OF WINDSOR GARDENS SUBDIVISION  
& FIELD OF DREAMS ADDITION TO WINDSOR GARDENS SUBDIVISION**

**WHEREAS**, Apple Apartments, LLC, Donald C. Tierney and Joanne K. Tierney (collectively, "Developer"), has requested an amendment to the Windsor Gardens Subdivision Development Agreement ("Development Agreement") to commence Phase II of Windsor Gardens Subdivision and complete Field of Dreams Addition to Windsor Gardens Subdivision; and

**WHEREAS**, the Town Engineer and Development and Planning Coordinator have reviewed the request and recommended certain conditions on which the request may be approved, all as set forth in the proposed written amendment to the Development Agreement, as prepared by the Town Attorney; and

**WHEREAS**, at its regularly scheduled meeting on August 7, 2014, the Town Board reviewed the Third Amendment to Development Agreement, and considered the Developer's request and the terms and conditions set forth in the Third Amendment.

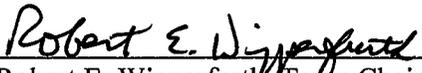
**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Windsor as follows:

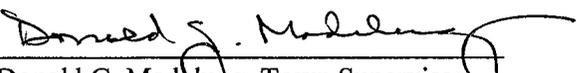
- A. The Town Board **APPROVES** the proposed Third Amendment to Development Agreement for Windsor Gardens Subdivision, **subject to each and every one of the following conditions:**
1. Subject to execution by the Town and Developer.
  2. Subject to recording at the Dane County Register of Deeds Office by the Town, at the Developer's expense, with a copy of the recorded document returned to the Developer and Town Attorney.
  3. Subject to Developer's reimbursement to the Town of Windsor for all costs and expenses incurred by the Town of Windsor in connection with the review and approval of this Resolution and the development associated therewith, including but not limited to, the cost of professional services incurred by the Town of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.

- B. The Town Board's approval expires ninety (90) days from the date of adoption of this Resolution. Time is of the essence.
- C. It is the Petitioner's obligation to timely satisfy those conditions adopted by the Town Board, and to provide satisfactory verification of compliance to the Town. Any necessary or requested reviews or submissions to the Town for determinations of compliance with this Resolution shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.

The above and foregoing Resolution was duly adopted at the regular meeting of the Town Board of the Town of Windsor on the 7<sup>th</sup> day of August, 2014.

**TOWN OF WINDSOR**

  
Robert E. Wipperfurth, Town Chairman

  
Donald G. Madelung, Town Supervisor

  
Bruce Stravinski, Town Supervisor

  
Alan Buchner, Town Supervisor

  
Monica M. Smith, Town Supervisor

Attest:  
  
Christine Capstran, Town Clerk

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**  
**WINDSOR GARDENS SUBDIVISION**

This Third Amendment to Development Agreement (the "**Third Amendment**") regarding the Windsor Gardens Subdivision (the "**Development**") is entered into by and between the Town of Windsor, a Wisconsin municipal corporation ("**Town**") and Apple Apartments, LLC, Donald C. Tierney and Joanne K. Tierney (collectively, "**Developer**") effective when signed by both parties.

**RECITALS**

**WHEREAS**, the Town and Developer entered into a Development Agreement dated November 15, 2007 (the "**Original Agreement**"), a First Amendment to Development Agreement dated July 16, 2009 (the "**First Amendment**"), and a Second Amendment to Development Agreement approved October 17, 2013 (the "**Second Amendment**"); and

**WHEREAS**, the Developer wishes to further amend the Original Agreement, First Amendment and Second Amendment to begin Phase II of Windsor Gardens and complete the Field of Dreams Addition to Windsor Gardens, and the Town has agreed to do so pursuant to this Third Amendment (the "**Third Amendment**"), all on the terms set forth more fully herein; and

**WHEREAS**, the Original Agreement, the First Amendment, the Second Amendment and the Third Amendment shall be collectively referred to herein as the "**Development Agreement**."

**AGREEMENT**

**IN WITNESS WHEREOF**, in consideration of the above recitals, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Developer agree as follows:

1.) Phase II Lots. The Original Agreement includes a phasing schedule. The Phase II Lots are hereby amended to include Lots 10-30, 144-149, 171-173, and 177 as Phase II of the Development.

2.) Security. The security for performance of Phase II and the Field of Dreams Addition shall be by means of an escrow agreement, or a letter of credit, as elected by Developer. The amount escrowed or the amount of the letter of credit shall be equal to 110% of the costs of the required public improvements in Phase II and the construction of the Little League diamond that was agreed to be built as part of the Field of Dreams Addition platting process. In the event the escrow option is elected, the following shall govern:

a. The escrow shall be established and managed in accordance with standard construction industry practices for construction draws made by a title company on behalf of the owner's construction lender. The Town shall have the right of full access to information known to the title company in performance of the title company's duties under the escrow agreement.

b. The title company shall obtain full and complete lien waivers prior to or concurrent with payment of any contractors, and all such requests must be signed by both the Developer and the Town. The Town Engineer shall be entitled to act as the Town's agent in signing any such requests, and may require authorization from the Town Board prior to signing any such requests.

c. The Escrow Agreement shall grant the Town authority to access escrowed funds using the same practices that the Town uses when a letter of credit is held by the Town. That is, upon default, as reasonably determined by the Town, the Town may present a sight draft and the title company shall honor same in accordance with its terms and disburse said funds to the Town.

d. All draws shall require compliance with the terms of the Escrow Agreement, which shall be in a form acceptable to the Town Attorney.

3.) Conditions for Construction on Phase II Lots. By execution of this Third Amendment, the Developer agrees to each and all of the conditions set forth herein. The Town's approval of this Third Amendment is subject to Developer's completion of the following condition, as set forth herein:

a. Neither a building permit nor an occupancy permit shall issue for any lots in Phase II until Developer completes the construction of the Little League diamond ("ball field") that was agreed to be built as part of the Field of Dreams Addition, and obtains written verification of completion from the Town Engineer.

b. The construction of the Little League diamond ("ball field"), that was agreed to be built as part of the Field of Dreams Addition platting process shall be constructed in accordance with the following schedule:

1. The ball field shall be rough graded, and the fine grading and improvements shall be done by September 15, 2014.

2. The ball field shall be complete and ready for play no later than June 1, 2015, subject solely to force majeure. That is, if weather prevents Developer from meeting the completion date, the Developer shall so advise the Town Engineer in writing and shall specify those days on which Developer did not work on this project due to weather. Upon verification, the Town Engineer may extend the deadline as the circumstances demand. Only written extensions shall bind the Town and Developer.



