

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2019-45**

**APPROVAL OF A FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT
FOR WINDSOR GARDENS SUBDIVISION – PHASE 4**

WHEREAS, Apple Apartments, LLC, Donald C. Tierney and Joanne K. Tierney (collectively, the "Developer") has requested an amendment ("Fifth Amendment") to the Windsor Gardens Development Agreement to provide for development of Phase 4, which includes Lots 37-39, 101-107, and 109-116 in the Plat of Windsor Gardens (collectively, the "Phase 4 Lots"); and

WHEREAS, the Developer and Village Attorney have negotiated the Fifth Amendment to address impacts of the Development on the public health, safety and welfare; and

WHEREAS, the Developer has executed the Fifth Amendment and is ready to proceed in the manner set forth therein; and

WHEREAS, Village staff and consultants have reviewed the Fifth Amendment and recommend the Village Board approve same.

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

1. The Village Board hereby approves the following documents, in the form attached hereto as Exhibit A, and authorizes the Village President and staff to execute same; subject to the conditions that the Developer provide the Letter of Credit to the Village, and pay any and all outstanding fees due and owing to the Village:
 - a. Fifth Amendment to Development Agreement
 - b. Letter of Credit
2. All of the conditions set forth in this Resolution shall be satisfied, as determined by the Village Director of Planning / Zoning Administrator, prior to Developer commencing any work pursuant to the Fifth Amendment.

The above and foregoing Resolution was duly adopted at a meeting of the Village Board of the Village of Windsor on May 16, 2019, by a vote of 5 in favor and 0 opposed.

VILLAGE OF WINDSOR

Robert E. Wipperfurth
Robert E. Wipperfurth, President

Attested by:

Christine Capstran
Christine Capstran, Village Clerk

Incorporated by Reference:
Fifth Amendment to Development Agreement
Letter of Credit



T: 9025131

**PLAT OF WINDSOR GARDENS,
VILLAGE OF WINDSOR,
DANE COUNTY, WISCONSIN**

**FIFTH AMENDMENT TO DEVELOPMENT
AGREEMENT**

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
5490499
05/24/2019 03:14 PM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 6**

Recording area

Name and return address:

Village of Windsor
Amy Anderson Schweppe
4084 Mueller Road
DeForest, WI 53532

See Attached

See Exhibit A

PARCEL IDENTIFICATION NUMBER*
(*Not required for road right of ways)

(b)

**FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT,
PHASE 4, WINDSOR GARDENS, VILLAGE OF WINDSOR, AND RELEASE OF
TRANSFER RESTRICTION AS TO PHASE 4**

This Fifth Amendment to Development Agreement (the “**Fifth Amendment**”) regarding Windsor Gardens (the “**Plat**”) is entered into by and between the Village of Windsor, a Wisconsin municipal corporation (“**Village**”), and Donald C. Tierney and Joanne K. Tierney, and Apple Apartments, LLC, a Wisconsin limited liability company (collectively “**Developer**”) to be effective when signed by both parties.

RECITALS

WHEREAS, Village and Developer entered into a Development Agreement dated November 15, 2007, a First Amendment to Development Agreement dated July 16, 2009, a Second Amendment to Development Agreement dated October 17, 2013, a Third Amendment to Development Agreement dated August 7, 2014, and a Fourth Amendment to Development Agreement dated September 7, 2015 (collectively the “**Original Agreement**”); and

WHEREAS, the Developer now wishes to proceed with the installation of public improvements to serve Lots 37-39, 101-107, and 109-116 in the plat of Windsor Gardens, Village of Windsor, Dane County, Wisconsin (“**Phase 4**”); and

WHEREAS, the Developer and Village wish to amend the Original Agreement so that the Developer may commence Phase 4 of the Development, all on the terms set forth more fully in this Fifth Amendment; and

WHEREAS, the Original Agreement and this Fifth Amendment shall be collectively referred to hereafter as the “**Development Agreement**;” Now, therefore,

AGREEMENT

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 Village and Developer agree as follows:

1. **Amendments to Development Agreement.** The Development Agreement shall be amended as follows:
 - A. The Development Agreement shall be amended to provide that the Developer may construct the public improvements applicable to Lots 37-39, 101-107 and 109-116 within the Plat of Windsor Gardens, Village of Windsor, Dane County, Wisconsin, to be known and referred to as “**Phase 4.**”

- B. The Development Agreement shall be amended to provide that the Village acknowledges that Developer has satisfied all Village requirements with respect to park land dedication, fees in lieu of park land dedication, if any, and park improvement fees with respect to Phase 4, and all provisions of the Original Agreement relating thereto shall be deemed amended to remove any requirements for further park land dedication, fees in lieu payments or park improvement fee payments by the Developer or lot owners/builders with respect to Phase 4, including deletion of any requirements for escrowing of any such fees.
- C. The Development Agreement shall be amended to provide that the development of Phase 4 will commence on or before August 1, 2019 and be completed by December 31, 2019, except for the finish layer of asphalt which will be installed after the completion of all other work at a time when directed by the Village Engineer (weather permitting) to avoid damage to the finish layer of asphalt, but not later than the time when construction of houses on all of the lots in Phase 4 is substantially completed.
- D. The Development Agreement shall be amended to provide that the Village Engineer has no objection to the preliminary construction plans for Phase 4 presented by the Developer's Engineer, Krista Sommerfeldt at MSA Professional Services, Inc., which plans are dated and marked as May 10, 2019. Phase 4 shall be developed in accordance with said construction plans and Developer shall certify such completion prior to issuance of building permits for the Phase 4 lots.
2. **Security.** The security for performance of Phase 4 shall be by means of a letter of credit. The amount of the letter of credit shall be \$165,024.00. The form of the letter of credit shall be subject to approval by the Village Attorney.
3. **Ratification.** Except as expressly modified herein, the Original Agreement is hereby ratified and reaffirmed by the Village and the Developer as if set forth in full herein.

**WINDSOR GARDENS, VILLAGE OF WINDSOR
DANE COUNTY, WISCONSIN**

EXHIBIT A
TAX PARCEL NUMBERS

LOT NO.	PARCEL NO.
37	196/0910-254-4001-0
38	196/0910-254-2001-0
39	196/0910-254-2012-0
101	196/0910-254-2408-0
102	196/0910-254-2419-0
103	196/0910-254-4254-0
104	196/0910-254-4265-0
105	196/0910-254-4276-0
106	196/0910-254-4287-0
107	196/0910-254-4298-0
109	196/0910-254-4320-0
110	196/0910-254-4331-0
111	196/0910-254-4342-0
112	196/0910-254-4353-0
113	196/0910-254-4364-0
114	196/0910-254-4375-0
115	196/0910-254-4386-0
116	196/0910-254-4397-0