ORDINANCE NO. 2009-254

ORDINANCE OF THE TOWN OF WINDSOR APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH WINDOR MILL HOMES, LLC AS RELATED TO THE WINDSOR MILL PROJECT (FILE NO. DA 04-10)

THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

A. Cal-WAII Moulding Company, the original property owner, requested and received approval for entitlements for a 201 unit residential planned development know as the "Windsor Mill Project' including townhomes, single family detached, and commercial live/work units on 20.3 +/- acres. A Development Agreement was also approved and executed between Cal-WAII Moulding Company and the Town of Windsor as part of the project approvals and recorded. Site addresses include 8629, 8709, 8711, 8713, 8716, and 8777 Bell Road; 8955 Conde Lane, 366 Johnson Street; and 8820 Larsen Way. Assessor's Parcel Numbers include 066-170-011, and 013; 164-010-020; 164-020-005, 006, 007, 008, 009, and 010.

As provided in the Development Agreement, Cal-WAII Moulding Company and Windsor Mill Homes, LLC entered into and recorded an Assignment and Assumption Agreement by which Windsor Mill Homes, LLC assumed all the rights, title, interest, burdens and obligations of Cal-WAII Moulding Company under the Development Agreement.

B. Windsor Mill Homes, LLC has requested the approval of an Amendment to the Development Agreement appended hereto as Attachment No. 1 in accordance with provisions of Title XVI of the Code of the Town of Windsor. The requested amendment would extend the performance provision of the Development Agreement by three years.

C. The Town completed an Initial Study and the Town Council approved a Mitigated Negative Declaration for the original project. No new impacts are identified with the currently requested amendment beyond those already included within the original project approval.

D. The Planning Commission of the Town of Windsor considered and recommended approval of the Amendment to the Development Agreement at duly noticed public hearing on May 12, 2009. The recommendation of the Planning Commission is based on its determinations stated in Resolution No. 567-09.

E. A duly noticed public hearing on the proposed Development Agreement was held by the Town Council on July 1, 2009. Staff prepared an Agenda Report dated July 1, 2009 on the matter and the Planning Commission recommendation.

F. The Town Council considered the Planning Commission recommendation, including the Planning Commission's determinations for its recommendation as stated in Planning Commission Resolution No. 567-09, the Agenda Report, and all comments received in writing and all testimony received at the public hearing.

SECTION 2. FINDINGS & DETERMINATIONS

Therefore, on the basis of the foregoing recitals which are incorporated herein; the Town of Windsor General Plan-2015; the Agenda Report; and, on the basis of the specific conclusions set forth below, the Town Council approves the Planning Commission's recommendation and determines with respect to this Amendment to the Development Agreement that:

A. The proposed Amendment to the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan;

B. The proposed Amendment to the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.

C. The proposed Amendment to the Development Agreement is in conformity with the public convenience, general welfare and good land use practice;

D. The proposed Amendment to the Development Agreement will not be detrimental to the health, safety and general welfare;

E. The proposed Amendment to the Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

F. The proposed Amendment to the Development Agreement will not have the potential for causing a significant effect on the environment.

SECTION 3. APPROVAL

The Town Council of the Town of Windsor hereby approves the Amendment to the Development Agreement. The Town Manager is authorized to execute an Amendment to the Development Agreement substantially similar to the document attached hereto.

SECTION 4. EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days following its adoption by the Town Council. The Town Clerk shall cause this Ordinance to be published or to be posted in at least three (3) public places in Town in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED AND ADOPTED this 15th day of July 2009, by the following vote:

AYES:	**COUNCILMEMBERS ALLEN, FUDGE, SALMON AND MAYOR GOBLE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**COUNCILMEMBER SCHOLAR**

ROBIN R. GOBLE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachments:

Attachment No. 1: Amendment to Development Agreement

AMENDMENT TO DEVELOPMENT AGREEMENT

This Amendment to the Development Agreement ("Amendment") is entered into by and between WINDSOR MILL HOMES, LLC ("Owner") and the TOWN OF WINDSOR, a municipal corporation ("Town") on this_____day of _____, 2009.

RECITALS

A. The Town and CAL-WAII MOULDING COMPANY entered into a development agreement ("Development Agreement") which was recorded in the official records of Sonoma County as Instrument No.2006090228 on July 20, 2005. The Development Agreement concerns the development of property located in the southerly portion of downtown Windsor on Bell Road and know as "The Windsor Mill Project".

B. CAL-WAII MOULDING COMPANY and WINDSOR MILL HOMES, LLC entered into an ASSIGNMENT AND ASSUMPTION AGREEMENT on July 12, 2006 in which WINDSOR MILL HOMES, LLC assumed all the rights, title, interest, burdens and obligations of CAL-WAII MOULDING COMPANY under the Development Agreement. Said ASSIGNMENT AND ASSUMPTION AGREEMENT was recorded in the official records of Sonoma County as Instrument No. 2006090229 on July 20, 2006.

C. WINDSOR MILL HOMES, LLC ("Owner") requested an amendment to the Development Agreement in order to permit time extensions for initiation of construction and project completion.

D. The Planning Commission of the Town of Windsor considered and recommended approval of the proposed amendment to the development agreement at a duly noticed public hearing on May 12, 2009. The recommendation of the Planning Commission is based on its determinations as stated in Resolution No. 567-09.

E. A duly noticed public hearings on the proposed Amendment to the Development Agreement was held by the Town Council on July 1, 2009.

F. The Town Council considered the Planning Commission's recommendation, including the Planning Commission's determinations for its recommendations as stated in Planning Commission Resolution No. 567-09.

G. The Town Council at the Town Council meeting of July 1, 2009, adopted Ordinance No. _____ and made certain findings and determinations and approved the Amendment to the Development Agreement;

Ordinance No. 2009-254
Attachment No. 1

NOW, THEREFORE, the parties agree as follows:

1. **Section 3.09 of the Development Agreement is amended to read as follows:**

Section 3.09 Timing of Project Construction and Completion

(a) Commencement of Construction. Notwithstanding any provisions of this Agreement, Town and Owner expressly agree that the commencement of construction of the project on the property shall, subject to extension for force majeure, begin six (6) years within the effective date, or July 12, 2012. "Commencement of Construction" shall mean, at a minimum, achievement of signed improvement plans, issuance of a grading permit, and initiation of associated sitework.

(b) Project Completion. Owner shall, subject to extension for force majeure, complete the project not later than eleven (11) years after the effective date, or July 12, 2017. "Project Completion" shall mean that date on which all improvements on the property are complete for the project as necessary for Owner to secure a certificate of occupancy from the Town for all construction authorized in the project approvals or subsequent approvals. Extensions of time may be granted to entitlement approvals as provided in the Town Code and Subdivision Map Act (based upon the effective date) provided, however, that said extensions of time shall not extend the project completion deadline as stated herein.

2. **Integration.** With the exception of those matters specifically set forth herein the terms and provisions of the Development Agreement shall continue in full force and effect. All other provisions of the Development Agreement shall remain in effect.

3. **Entire Understanding**. This Amendment and the Development Agreement sets forth the entire understanding and agreement of the parties concerning its subject matter

4. **Incorporation of Recitals**. The recitals to this Amendment are incorporated herein and are part hereof.

5. **Counterparts.** This Amendment may be executed in two duplicate originals, each of which shall be deemed an original but all taken together shall constitute one and the same instrument.

6. **Recordation.** The Town shall record a copy of this Amendment within ten (10) days following execution by all parties.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Owner and Town as of the day and year first above written.

Dated _____ TOWN OF WINDSOR, a Municipal Corporation

By_____

J. Matthew Mullan
Town Manager

Dated:_____ WINDSOR MILL HOUSING, LLC

By_____

Name: _____

ATTEST:

By_____

Town Clerk

APPROVED AS TO FORM:

By_____

Town Attorney

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