ORDINANCE NO. 2024-392

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPROVING A FIRST AMENDMENT TO THE HEMBREE LANE OAKS DEVELOPMENT AGREEMENT AND AUTHORIZING THE TOWN MANAGER TO PREPARE AND EXECUTE AN AMENDMENT TO THE HEMBREE LANE OAKS FEE DEFERRAL AGREEMENT (FILE NO. 21-18B)

WHEREAS, the Town of Windsor Community Development Department received an application from Amy Christopherson Bolten of Falcon Point Bolten Hembree, LLC ("Applicant") requesting to amend the Hembree Lane Oaks Development Agreement for the Hembree Lane Oaks planned development and subdivision project located at 7842 Hembree Lane (APN 163-080-047). General Plan: Very Low-Density Residential. Zoning: Surrounding Residential; Airport Safety Overlay Zone; and

WHEREAS, pursuant to Resolution 3855-23, incorporated herein by reference, the Town Council adopted a Mitigated Negative Declaration ("MND") and Mitigation Monitoring and Reporting Program ("MMRP") for the Hembree Lane Oaks Subdivision Project based on a Final Development Plan with 24 single-family residential lots and a 2.1-acre open space parcel ("Project"); and finding that the identified mitigation measures would reduce the Project's environmental impacts to a level that is less than significant; and

WHEREAS, pursuant to Ordinance 2023-376, incorporated herein by reference, the Town Council amended the Zoning Map to rezone the subject property from Very Low-Density Residential to Planned Development (retaining the Airport Safety Overlay Zone); and approved a Final Development Plan for the Hembree Lane Oaks Project; and

WHEREAS, pursuant to Resolution 3856-23, incorporated herein by reference, the Town Council approved a Tentative Parcel Map and Site Plan and Design Review for the Hembree Lane Oaks Project; and

WHEREAS, the Development Agreement has an eight-year term, with the potential for extensions subject to Town Council approval, formalizing the Town's acceptance of the dedication of open space in lieu of tree mitigation; and

WHEREAS, the attached First Amendment to the Hembree Lane Oaks Development Agreement ("Amendment") pertains only to the payment of fees; no physical changes to the Project are proposed, and therefore, no further environmental review is required; and

WHEREAS, the Amendment includes the following revisions, based upon the Planning Commission's recommendations:

(1) For the term of the Development Agreement, Town of Windsor development impact fees shall be assessed according to the FY23-24 master fee schedule for all units that receive a Certificate of Occupancy by October 31, 2025, and thereafter, the required impact fees

shall be based upon a one-year rolling fee schedule set-back. Development impact fees shall be paid per unit prior to issuance of a Certificate of Occupancy.

(2) The community benefit cash payment of $40,203 shall be paid upon issuance of the first Certificate of Occupancy (instead of with the first building permit issuance).

(3) The Town Manager shall be authorized to amend the Hembree Lane Oaks fee deferral agreement to include deferrals of water and wastewater capacity impact fees (with the same payment schedule as the other fee deferrals, as described in Paragraph (1), above), including removal of the "fail-safe" date for all impact fees to be paid no later than December 31, 2025; and

WHEREAS, on August 13, 2024, the Planning Commission conducted a public hearing to review the Amendment; and

WHEREAS, the Planning Commission voted 5-0 to recommend approval of the Amendment, pursuant to Planning Commission Resolution No. 759-24, herein incorporated by reference; and

WHEREAS, in accordance with the provisions of law, the Town Council conducted a public hearing on September 18, 2024, during which the Town Council considered the Planning Commission's recommendations, the Town Council Agenda Report, and all written and oral testimony submitted at the public hearing; and

WHEREAS, because the Hembree Lane Oaks is a small infill project of just 24 units, the Town Council supported the requests for fee deferrals and a fee schedule freeze as a part of the Hembree Lane Oaks Development Agreement.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.
The above recitals are true and correct and adopted as findings.

SECTION 2. Findings.
The Town Council finds that:

The Amendment is consistent with the General Plan.

FINDING
The Project is consistent with the General Plan land use designation Very Low Density Residential ("VLDR"). The Amendment does not change the physical attributes of the Project.

The amended 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.

FINDING
The Hembree Lane Oaks Development Project will implement the VLDR General Plan land-use designation. The Amendment does not change the physical attributes of the Project.

The Development Agreement is in conformity with the public convenience, general welfare, and good land-use practice.

FINDING
The Amended Development Agreement would not change any design features that would negatively impact public health, safety, and welfare. The Project is designed to cluster residential development in order to preserve biological resources. The Project includes two moderate-income affordable units, which will contribute toward the Town's Regional Housing Needs Allocation requirements. The Project completes the neighborhood's circulation system, with street extensions and connections, as well as new sidewalks through the area. With these improvements, the Project will contribute to the public's convenience, general welfare, and good land-use practices.

The Project will not adversely affect the orderly development of property or the preservation of property values.

FINDING
The amended Development Agreement will not change the physical development project; therefore, it will not adversely affect the orderly development of property or the preservation of property values. Through the planning and environmental review process, the Project has been designed to avoid negative impacts to public health, safety, and welfare, including through conditions of approval and mitigation measures. The Project is designed to provide for the long-term conservation of biological resources on site.

SECTION 3. Approval of First Amendment.
The Town Council hereby approves the First Amendment to the Hembree Lane Oaks Development Agreement, substantially attached hereto as Exhibit A, and authorizes the Town Manager to execute the Amendment in a form approved by the Town Attorney.

SECTION 4. Approval of Amendment to Deferral Agreement.
The Town Council hereby authorizes the Town Manager to prepare and execute an amendment to the Hembree Lane Oaks Fee Deferral Agreement, in a form approved by the Town Attorney, subject to this Ordinance and the First Amendment to the Hembree Lane Oaks Development Agreement, attached hereto as Exhibit A.

SECTION 5. Severability.
If any section, subsection, sentence, clause, or phrase or word in this Ordinance is for any reason held to be unconstitutional, unlawful, or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful, or otherwise invalid.

SECTION 6. Effective Date and Publication.
This Ordinance shall take effect and be in force 30 days following its passage. Before the expiration of fifteen days after its passage, this Ordinance, or a summary thereof, as provided in

California Government Code section 36933, shall be published at least once in a newspaper of general circulations published and circulated in the Town of Windsor.

PASSED, APPROVED AND ADOPTED this 2nd day of October 2024, by the following vote:

AYES:	**COUNCILMEMBERS SALMON, WALL, VICE MAYOR POTTER AND MAYOR REYNOZA**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**COUNCILMEMBER FUDGE**

ROSA REYNOZA, MAYOR

ATTEST:

IRENE CAMACHO-WERBY, TOWN CLERK

Attachment:

- **Exhibit A** - Development Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
Town of Windsor
9291 Old Redwood Highway
Windsor, CA 95492
Attn: Community Development Director

Record for the Benefit of the Town of Windsor
Pursuant to Government Code Section 27383

(Space Above This Line Reserved for Recorder's Use Only)

FIRST AMENDMENT TO THE HEMBREE LANE OAKS DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE TOWN OF WINDSOR

AND

FALCON POINT BOLTEN HEMBREE LLC

FIRST AMENDMENT TO THE
HEMBREE LANE OAKS DEVELOPMENT AGREEMENT

This First Amendment to Hembree Lane Oaks Development Agreement ("Amendment") is entered into as of this ___ day of _____, 2024, by and between the Town of Windsor, a California municipal corporation ("Town") and Falcon Point Bolten Hembree LLC, a California limited liability company ("Developer") pursuant to Government Code section 65864 et. seq., relating to Development Agreements. Town and Developer are hereinafter collectively referred to as the "Parties" and singularly as "Party."

RECITALS

A. The Town and Developer entered into a Development Agreement ("Agreement" or "Development Agreement") dated July 3, 2023, and recorded on July 26, 2023, in the Official Records of Sonoma County as 2023034275 establishing certain development rights for real property located in the Town of Windsor, located at 7842 Hembree Lane (APN 163-080-047) ("Property"). General Plan: Very Low-Density Residential. Zoning: Surrounding Residential; Airport Safety Overlay Zone.

B. The Development Agreement has an eight-year term, with the potential for extensions subject to Town Council approval, formalizing the Town's acceptance of the dedication of open space in lieu of tree mitigation.

C. Pursuant to Government Code section 65868, the Town and Developer now desire to modify and revise the Development Agreement.

D. On August 13, 2024, the Planning Commission conducted a public hearing to review the Amendment based on a request by Developer. The Planning Commission voted 5-0 to recommend approval of the Amendment, pursuant to Planning Commission Resolution No. 759-24.

E. The following amendments to the Development Agreement were recommended by the Planning Commission:

- For the term of the Development Agreement, Town of Windsor development impact fees shall be assessed according to the FY23-24 master fee schedule for all units that receive a Certificate of Occupancy by October 31, 2025, and thereafter, the required impact fees shall be based upon a one-year rolling fee schedule setback. Development impact fees shall be paid per unit prior to issuance of a Certificate of Occupancy.
- The community benefit cash payment of $40,203 shall be paid upon issuance of the first Certificate of Occupancy (instead of with the first building permit issuance).

- The Town Manager shall be authorized to amend the Hembree Lane Oaks fee deferral agreement to include deferrals of water and wastewater capacity impact fees (with the same payment schedule as the other fee deferrals, as described in Paragraph (1) above), including removal of the "fail-safe" date for all impact fees to be paid no later than December 31, 2025.

F. On September 18, 2024, the Town Council conducted a public hearing and introduced Town Council Ordinance 2024-392. During the public hearing, the Town Council considered the Planning Commission's recommendations, the Town Council agenda report, and all written and oral testimony submitted. The Town Council adopted Town Council Ordinance 2024-392 on October 2, 2024.

G. This Amendment pertains only to the payment of fees, and no physical changes to the Project are proposed; therefore, no further environmental review is required.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments to Section 2.4 of the Development Agreement**. Section 2.4, Mutual Agreement is amended as follows (added text is shown in **bold and underline**; deleted text is shown in ~~strikethrough~~):

"Section 2.4 Mutual Agreement:

In additional to other conditions of approval applicable to the Project, and in addition to other obligations of the parties set forth in this Development Agreement, the parties mutually agree as follows:

(a) **Dedication**. Developer shall take each and every step necessary to dedicate that 2.1-acre parcel of land shown and described as Parcel A in ***Exhibit "C"*** to the Town of Windsor, for open space or other suitable purposes as the Town may determine in its discretion; and prior to the Town's acceptance of the open space, Developer shall submit an associated design and improvement plan for said open space **Section 2.4** (b) immediately below.

(b) In recognition of the unique nature of the Project Site, the number of trees that exist onsite, the health and size of those trees, and the fact that the Project consists of 'infill development' of needed single-family housing, the Town agrees that Developer' dedication of said 2.1-acre parcel shall be received in-lieu of any tree mitigation fees which might otherwise be assessed in connection with the removal of trees on the Project Site to accommodate construction of the Hembree Lane Oaks Subdivision.

(c) Cash Payment for Community Benefit. Prior to ~~approval of the Final Subdivision Map~~ **issuance of the first Certificate of Occupancy**, applicant shall make a cash payment to the Town for community benefit in the amount equal to the cost difference between Trail Option 1 and Trail Option 3, as discussed at the May 17, 2023, Town Council meeting, subject to approval by the Town Engineer and Town Manager.

(d) Master Fee Schedule. Town of Windsor development impact fees shall be based upon the FY23-24 Master Fee Schedule for all units that receive a Certificate of Occupancy by October 31, 2025. Thereafter, impact fees shall be assessed based on a one-year rolling setback. Fees shall be paid per unit prior to issuance of a Certificate of Occupancy. For any units that receive a Certificate of Occupancy after October 31, 2025, but within the term of the Development Agreement, fees shall be assessed pursuant to the prior year's master fee schedule. For example, a project that receives a Certificate of Occupancy on November 30, 2025, normally would have fees assessed pursuant to the FY25-26 master fee schedule, which covers the period between July 1, 2025, and June 30, 2026. However, due to the one-year rollback that would be applied through this Agreement, the project with a Certificate of Occupancy issued on November 30, 2025, would instead be assessed pursuant to the FY24-25 master fee schedule.

(e) Water and Wastewater Capacity Fees. The Town Manager shall be authorized to amend the Hembree Lane Oaks fee deferral agreement to defer water and wastewater capacity fees for 24 units, in addition to the previously authorized deferral of drainage, traffic, parks and recreation, and police facilities impact fees, in accordance with the same payment schedule described in paragraph (d) of this section. Fire and school impact fees are not subject to fee deferrals.

~~(d)~~**(f)** Indemnification. The Developer shall defend, indemnify, and hold harmless the Town and its agents, officers, attorneys, or employees from any claim, action, or proceeding brought against the Town or its agents, officers, attorneys, or employees to attack, set aside, void, or annul the Planning Commission and/or Town Council decisions relating to this Project. This indemnification shall include damages or fees awarded against the Town, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by the Developer, including its partners, principals, or agents, the Town and/or the parties initiating or bringing such action. The Developer shall defend, indemnify, and hold harmless the Town, its agents, officers, employees, and attorneys for all costs incurred in the additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as a Mitigated Negative Declaration), if made necessary by said legal action.

In the event that a claim, action, or proceeding described above is brought, the Town shall promptly notify the Developer of the existence of the claim, action or proceeding, and the Town will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the Town from participating in the defense of any claim, action or proceeding. In the event that the Developer is required to defend the Town in connection with any said claim, action, or proceeding, the Town shall retain the right to (i) approve the counsel to so defend the Town, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The Town shall also have the right not to participate in said defense, except that the Town agrees to cooperate with the Developer in the defense of said claim, action, or proceeding. If the Town chooses to have counsel of its own to defend any claim, action, or proceeding where the Developer has already retained counsel to defend the Town in such matters, the fees and expenses of the counsel selected by the Town shall be paid by the Town. Notwithstanding the immediately preceding sentence, if the Town Attorney's office participates in the defense, all Town Attorney fees and costs shall be paid by the Developer.

The Developer shall indemnify the Town for all the Town's costs, fees, and damages which the Town incurs in enforcing the above indemnification provisions."

2. **Amendment**. This Amendment amends, but does not replace or supersede, the Development Agreement except as specified herein. As amended hereby with respect to the Property, the Development Agreement remains in full force and effect.

3. **Counterparts**. This Amendment may be executed in counterparts, and all counterparts together shall be construed as one document.

4. **Effective Date of Amendment**. The effective date of this Amendment is _____, 2024, which is the effective date of Town Ordinance _____, adopting this Amendment.

IN WITNESS WHEREOF, the Town and the Developer have executed this First Amendment to the Hembree Lane Oaks Development Agreement in Sonoma County, California, on the date first written above.

TOWN

_____
By: Town Manager

DEVELOPER
Falcon Point Bolten Hembree LLC

A California limited liability company

_____
By:
Its:

APPROVED AS TO FORM:

_____
Town Attorney

ATTEST:

_____
Town Clerk