

**RESOLUTION NO. 2956-12**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR  
AUTHORIZING THE APPROPRIATION OF UP TO \$400,000 IN ANTICIPATED  
TOWN PROPERTY TAX REVENUE AS A CREDIT TO BURBANK HOUSING  
DEVELOPMENT CORPORATION DUE ON THE WINDSOR REDWOODS  
AFFORDABLE RENTAL HOUSING PROJECT DEVELOPMENT FEES LOCATED AT  
6065 OLD REDWOOD HIGHWAY.**

**WHEREAS**, Burbank Housing Development Corporation (“Burbank”) has developed an affordable rental housing development known as Windsor Redwoods (the “Project”), located in the Town of Windsor (the “Town”); and

**WHEREAS**, the Town and the former Town of Windsor Redevelopment Agency (the “Agency”) have provided certain financing for the development of the Project; and

**WHEREAS**, on October 1, 2008, the Agency approved Resolution No. 2364-08 RDA, and the Town Council of the Town (the “Council”) approved Resolution No. 2365-08, each making requisite findings, pursuant to the California Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (the “CRL”), including findings that the expenditure of redevelopment tax increment revenue for a “gap” financing loan in the amount of up to One Million Dollars (the “Loan”), in addition to other predevelopment and construction loans provided to the Project, would increase the availability of affordable housing in the Town and further the redevelopment goals of the Agency; and

**WHEREAS**, on October 2, 2008, the Agency’s Executive Director provided a commitment letter to the California Department of Housing and Community Development, summarizing the terms of the approved Loan; and

**WHEREAS**, in obtaining additional financing, Burbank and other of its lenders for the Project relied on the Loan commitment; and

**WHEREAS**, the Project has been constructed and is occupied, and Burbank is in the process of converting its construction financing to permanent financing; and

**WHEREAS**, pursuant to enactment of Assembly Bill x1 26 and the final decision of the California Supreme Court in *California Redevelopment Association v. Matosantos*, the Agency was dissolved as of February 1, 2012; and

**WHEREAS**, pursuant to Resolution No. 2869-12, approved on January 11, 2012, the Council elected to become the successor agency to the Agency (the “Successor Agency”); and

**WHEREAS**, pursuant to Resolution No. 2870-12, approved on January 11, 2012, the Council also elected to retain the housing assets and functions of the Agency, and to act as the Agency’s housing successor (the “Housing Successor”); and

**WHEREAS**, pursuant to Assembly Bill x1 26, the Town acting as Successor Agency listed the

Loan as an enforceable obligation on the Recognized Obligation Payment Schedules for the periods January through June, 2012 (“ROPS I”), and July through December, 2012 (“ROPS II”); which ROPS were approved by the Oversight Board for the Successor Agency and timely submitted to the State Department of Finance (“DOF”), the State Controller’s Office, and the Sonoma County Auditor-Controller’s Office; and

**WHEREAS**, pursuant to Assembly Bill 1484, enacted on June 27, 2012 and modifying Assembly Bill x1 26, on August 1, 2012, the Council approved Resolution No. 2942-12, acknowledging the separate legal existence of the Successor Agency; and

**WHEREAS**, on August 1, 2012, the Successor Agency approved Resolution No. 2943-12 SA, designating officers and adopting administrative and operating procedures; and

**WHEREAS**, the Successor Agency listed the Loan as an enforceable obligation on the ROPS for the period January through June 2013 (“ROPS III”), which ROPS was approved by the Oversight Board for the Successor Agency on August 30, 2012 and has been timely submitted to DOF, the State Controller’s Office, and the Sonoma County Auditor-Controller; and

**WHEREAS**, to date DOF has not approved the Loan as an enforceable obligation of the former Agency, and therefore pursuant to Assembly Bills x1 26 and 1484, the Loan proceeds have not been paid and cannot be paid to Burbank at this time; and

**WHEREAS**, on October 3, 2007, the Council approved Resolution No. 2157-007, authorizing authorized the execution of an agreement with Burbank to provide for the deferral of Windsor Redwoods, L.P. payment of certain Project development fees to the Town; and

**WHEREAS**, on October 30, 2009, the Town and Windsor Redwoods L.P. executed for the Project, which obligation was evidenced by a Promissory Note and was secured by a Deed of Trust and Deed of Trust Rider recorded on April 12, 2010, as Instrument No. 20100027145 in the Official Records of Sonoma County (collectively, the “Obligation”); and

**WHEREAS**, the Obligation was assigned to and assumed by Windsor Redwoods, L.P. , pursuant to an Assignment and Assumption Agreement recorded on April 16, 2010, as Instrument No. 2010031624 in the Official Records of Sonoma County; and

**WHEREAS**, because the Loan has not been available to Burbank, Windsor Redwoods, L.P. has been unable to close its permanent financing for the Project, has been unable to pay its deferred impact fees to the Town, and has informed Town staff it is in jeopardy of defaulting under the terms of its financing and other agreements; and

**WHEREAS**, foreclosure on the Project by other Burbank lenders could result in the loss of affordability covenants for the Project; and

**WHEREAS**, pursuant to Assembly Bill 1484, the Town expects that the unencumbered balance of the Agency’s Low and Moderate Income Housing Fund will be paid over to the Sonoma County Auditor-Controller in November 2012, for distribution by the County Auditor-Controller to local taxing entities, including the Town; and

**WHEREAS**, the Town expects to receive approximately Four Hundred Thousand Dollars in property tax revenue as a result of such distribution; and

**WHEREAS**, redevelopment, including the development of affordable housing, is a recognized public purpose for which expenditures of public funds may legally be made, notwithstanding that a private entity may also benefit from such expenditure; and

**WHEREAS**, based on the accompanying staff report and the information presented at the Council meeting, including without limitation the facts that the affordable housing Project has been built and is occupied; the Project is serving the affordable housing needs of 65 very low-income and low-income households within the Town; the Project is presently subject to affordability covenants of not less than 45 years, such covenants could be wiped out in the event of foreclosure by a private lender; and failure to obtain the committed gap financing could result in a default by Burbank under the terms of its financing and potential foreclosure on the Project; providing a credit in the amount of up to Four Hundred Thousand Dollars to Burbank against its development fee obligation for the Project serves a public purpose; and

**WHEREAS**, enabling Burbank to convert its higher-interest construction financing to lower-interest permanent financing, and to close on its permanent financing, for the Project, will enable Windsor Redwoods, L.P. to partially repay deferred development fees to the Town; and

**WHEREAS**, the Town's receipt of an estimated Four Hundred Thousand Dollars in property tax revenue as a result of a November 2012 distribution of the Agency's unencumbered Housing Fund balance was not anticipated in the Town's current budget, the anticipated distribution amount has not previously been allocated to General Fund purposes, and the allocation of such revenue as a credit against the Project's development fees will therefore not result in a budget shortfall to the Town.

**NOW, THEREFORE BE IT RESOLVED** by the Town Council of the Town of Windsor that it hereby:

- 1, Finds that the Recitals set forth above are true and correct, and incorporates them herein by this reference.
2. Finds that good cause exists for the allocation of up to Four Hundred Thousand Dollars in property tax revenue, or such lesser amount actually received by the Town, representing the Town's share of the unencumbered balance of the Low and Moderate Income Housing Fund of the former Town of Windsor Redevelopment Agency, as determined by the State Department of Finance and the Sonoma County Auditor-Controller, as a credit against Windsor Redwoods, L.P.'s development fees owed to the Town for the Windsor Redwoods affordable rental housing development in the Town of Windsor
3. Finds that the former Town of Windsor Redevelopment Agency and the Town Council of the Town of Windsor previously made the requisite findings pursuant to California Community Redevelopment Law for the use of redevelopment tax increment for gap financing for the Project, and reaffirms those findings.

4. Finds that allocation of the estimated Four Hundred Thousand Dollars or such lesser amount actually received by the Town, when received, from the General Fund as a credit against Windsor Redwoods, L.P.'s development fee obligation for the Project will serve the public purpose of continuing the 45-year affordability covenants for the Project, avoiding foreclosure of the Project, and permitting the continued and undisturbed occupancy of 65 very low-income and low-income households in the Town of Windsor, and therefore serves an important public purpose.

5 Finds that adequate consideration exists for such allocation, in that such allocation will assist Burbank in closing its permanent financing for the Project, upon which payment of deferred development fees to the Town is based.

6. Conditions such allocation, and directs that such condition be documented as approved by the Town Attorney and the Windsor Redwoods, L.P., such that, in the event the State Department of Finance approves as an enforceable obligation the former Redevelopment Agency's commitment of One Million Dollars of gap financing for the Project, Windsor Redwoods, L.P.'s obligation to repay such loan shall remain and the credited amount hereby approved shall be returned to the Town's General Fund forthwith.

7. Authorizes the Town Manager or his designee to take such other and further action as necessary, including without limitation the execution and recordation of documents in form approved by the Town Attorney, to carry out the intent of this Resolution.

8. Declares that if any provision, sentence, clause, section or part of this Resolution is found to be unconstitutional, illegal or invalid, such finding shall affect only such provision, sentence, clause, section or part, and shall not affect or impair any of the remaining parts.

9. Approves increasing budget appropriations by \$400,000 to cover the application of the credit to Windsor Redwoods, L.P. for the Windsor Redwoods Affordable Rental Housing Project Development Fees, as follows:

**Section I – Increase in Appropriations:**

010-61-00-0000-4230-000 Town Funding - Housing	\$ 400,000
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Purpose: To increase appropriations to cover the credit.

**Section II - Source of Funding:**

General Fund Unappropriated Fund Balance	\$400,000
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Impact: Reduces the General Fund unappropriated fund balance.

**PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of September, 2012, by the following vote:**

**AYES: COUNCILMEMBERS GOBLE, SALMON, SCHOLAR, AND MAYOR FUDGE**

**NOES: NONE**

**ABSTAIN: NONE**

**ABSENT: COUNCILMEMBER ALLEN**

  
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**DEBORA FUDGE, MAYOR**

**ATTEST:**

  
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**MARIA DE LA O, TOWN CLERK**