

**RESOLUTION NO. 2985-13**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPROVING A SETTLEMENT AND RELEASE AGREEMENT FOR THE TOWN'S CLAIM AGAINST THE PERFORMANCE BOND FOR THE OAKS AT WINDSOR VILLAGE, LOCATED AT 6114 AND 6122 OLD REDWOOD HIGHWAY, AND AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE TOWN**

**WHEREAS**, on June 6, 2007, the Town Council approved Resolution No. 2062-07, approving and accepting the parcel map titled The Oaks at Windsor Village, the Subdivision Improvement Agreement (SIA) which included Surety Bonds to guarantee completion of the required public improvements for the subdivision; and

**WHEREAS**, the subdivision was approved for 15 residential and 15 commercial condominiums and is comprised of 2.91 acres of development; and

**WHEREAS**, Construction activities on the public improvements began in 2007 but were suspended in 2009; and

**WHEREAS**, on April 7, 2010 the Town Council approved Resolution No. 2654-10, (Amendment No. 1) which extended the term of the SIA to April 7, 2012; and

**WHEREAS**, since that time construction activities have not resumed and the required public improvements for the subdivision have not been completed. The public improvements yet to be completed include concrete sidewalk, concrete curb ramps, signing, striping, street lighting, landscaping, landscape irrigation and miscellaneous storm drain, sanitary sewer and domestic water items; and

**WHEREAS**, on March 8, 2012, staff issued a letter to West America Bank, the current owner of the foreclosed subdivision titled The Oaks at Windsor Village, informing West America Bank that Amendment No. 1 of the SIA would expire on April 7, 2012. Staff also requested a construction schedule from West America Bank for completion of the required public subdivision improvements, but did not receive a response; and

**WHEREAS**, West America Bank did not request an extension to the SIA and made no attempt to complete the public improvements or correspond with Town Staff; and

**WHEREAS**, on May 8, 2012, staff issued a letter to the attorney for Developer Surety and Indemnity Company (DSI), filing a claim against the full value of the Performance Bond, or requesting that DSI complete the required public subdivision improvements at their costs. The cost of completing the public improvements exceeds the total value of the Performance Bond, therefore DSI does not intend to complete the public improvements.

**WHEREAS**, on October 9, 2012, DSI issued a Settlement and Release Agreement (Letter Agreement) to the Town for The Oaks at Windsor Village. The Letter Agreement states that DSI will release the full amount of the Town's claim against the Performance Bond, totaling one hundred thousand dollars (\$100,000.00) upon execution of the Letter Agreement; and

**WHEREAS**, upon receipt of the full value of the Performance Bond the Town will release the Performance Bond, Labor and Materials Bonds, Maintenance Bond and Monumentation Bond to DSI; and

**WHEREAS**, once the total value of the Performance Bond (\$100,000.00) is received from DSI, the funds will be deposited into a separate Town account and could be used as an incentive for future development; and

**WHEREAS**, the remaining public improvements will not be completed at this time because future development of the site may be different from the currently approved project.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council hereby approves the Letter Agreement for the settlement of the Town's claim against the Performance Bond for the parcel map titled Oaks at Windsor Village, and authorizing the Town Manager to execute said agreement on behalf of the Town.

**BE IT FURTHER RESOLVED** that the Town Council hereby authorizes the release of the Performance Bond, Labor and Materials Bond, Maintenance Bond and Monumentation Bond for The Oaks at Windsor Village, upon receipt of the \$100,000 payment from DSI.

**PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of March 2013, by the following vote:**

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

**ATTEST:**

  
*Maria De La O*  
**MARIA DE LA O, TOWN CLERK**

  
**ROBIN GOBLE, MAYOR**