

**RESOLUTION NO. 3062-14**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPROVING A FIRST AMENDMENT TO THE DEED AND AGREEMENT BY AND BETWEEN THE TOWN OF WINDSOR AND THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT CONVEYING A CONSERVATION EASEMENT, APPROVING A REVOCABLE LICENSE AGREEMENT BETWEEN THE TOWN AND KC'S DOWNTOWN GRILL, AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE FIRST AMENDMENT TO DEED AND AGREEMENT CONVEYING A CONSERVATION EASEMENT AND REVOCABLE LICENSE AGREEMENT ON BEHALF OF THE TOWN.**

**WHEREAS**, in November 1999, the Town of Windsor (Town) and the Sonoma County Agricultural Preservation and Open Space District (District) entered into a Deed and Agreement By and Between the Town of Windsor and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement (Easement); and

**WHEREAS**, the Easement designates a Windsor Town Green Area, which allows for certain recreational, public assembly and educational activities, and an Oak Preservation Area, which allows for more restrictive recreational and education activities so as to protect the significant native oaks on the site; and

**WHEREAS**, on June 1, 2005, the Town sent a letter to the District describing an arrangement reached between the Town and Town Green Village, LP (TGV), by which the Town would accept a 5020 +/- square foot conservation easement on Lot 7 of Town Green Subdivision and would provide the Town Green Village, LP a revocable license agreement to use 1427 +/- square feet of land owned by the Town as part of the Windsor Town Green, for the purpose of outdoor dining (Arrangement); and

**WHEREAS**, TGV commenced development of the KC's Downtown Grill outdoor patio dining area without benefit of a Revocable License Agreement and TGV did not convey a 5020 +/- square foot conservation easement area to the Town in accordance with the Arrangement; and

**WHEREAS**, in April 2012, David Culley, owner of KC's Downtown Grill located at 9501 DuVander Lane in downtown Windsor, requested approval to construct a permanent arbor spanning the limits of the existing outdoor dining area; and

**WHEREAS**, in August 2013, the District informed the Town and KC's Downtown Grill that the continued use of the outdoor dining area and construction of a permanent arbor would not be allowed by the District until such time that the outdoor dining area is removed from the Easement and a conservation easement area equal to 5020 +/- square feet is conveyed by the Town Green Village Association (TGVA) to the Town; and

**WHEREAS**, meeting the exact terms of the Arrangement and Easement which would allow KC's Downtown Grill the continued use of the outdoor dining area and construction of a permanent arbor would be difficult to execute and therefore an alternate solution was proposed which

modifies the existing Easement boundaries and retains the easement area proportions of the Arrangement and in a manner suitable to all parties; and

**WHEREAS**, a First Amendment to Deed and Agreement Conveying a Conservation Easement (Amendment) is proposed to implement said alternate solution whereby rather than TGVA conveying a conservation easement to the Town, various additional easement areas will be granted by the Town to the District and the limits of the Oak Preservation Area will be adjusted to fit the current vegetation boundaries; and

**WHEREAS**, upon approval of the proposed Amendment by the District's Board of Directors, the existing outdoor dining area will not be subject to the terms of the Easement, and the construction of a permanent arbor will not be subject to District approval; and

**WHEREAS**, upon District approval and execution of the proposed Amendment revocable license agreement with the Town is required for the operation of the outdoor dining area and construction of a permanent arbor at KC's Downtown Grill; and

**WHEREAS**, the proposed Amendment is in draft form and may be subject to revisions pending the outcome of the District Board of Directors meeting, currently scheduled for March 18, 2014; and

**WHEREAS**, the Revocable License Agreement has been reviewed by the Town Attorney and is in final draft form, but may be subject to minor revisions pending the outcome of the District Board of Directors meeting; and

**WHEREAS**, both the Amendment and the Revocable License Agreement once in final form will be subject to Town staff and Town Attorney review prior to execution by the Town Manager.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Windsor hereby approves a First Amendment to the Deed and Agreement By and Between the Town of Windsor and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement substantially in the form attached to the Agenda Report as the First Amendment to Deed and Agreement Conveying a Conservation Easement and authorizes the Town Manager to make such changes as do not materially increase the Town's obligations thereunder, and execute said First Amendment to Deed and Agreement Conveying a Conservation Easement on behalf of the Town; and

**BE IT FURTHER RESOLVED** that the Town Council of the Town of Windsor hereby approves a Revocable License Agreement with KC's Downtown Grill and authorizes the Town Manager to make such changes as do not materially increase the Town's obligations and execute said Revocable License Agreement on behalf of the Town; and

**BE IT FURTHER RESOLVED** that the Town Council authorizes the Town Manager or her designee to take such other and further action, including without limitation the execution and/or recordation of documents, as necessary or appropriate to carry out the intent of this Resolution.

**PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of March, 2014 by the following vote:**

**AYES: COUNCILMEMBERS FUDGE, GOBLE, SALMON AND  
VICE MAYOR ALLEN**

**NOES: NONE**

**ABSTAIN: NONE**

**ABSENT: MAYOR OKREPKIE**



**STEVE ALLEN, VICE MAYOR**

**ATTEST:**



**MARIA DE LA O, TOWN CLERK**