

RESOLUTION NO. 2382

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING ADDENDUM NO. 5 TO THE DEVELOPMENT AGREEMENT OF JUNE 14, 2004 BY AND BETWEEN THE CITY OF WILSONVILLE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE, MATRIX DEVELOPMENT CORPORATION, PROPERTY OWNERS DONALD E. BISCHOF & SHARON L. LUND, ARTHUR C. & DEE W. PICULELL, THE DeARMOND FAMILY LLC, LOUIS J. & MARGARET P. FASANO, AND VALERIE & MATTHEW KIRKENDALL

WHEREAS, Polygon Northwest Company, LLC (Polygon) is purchasing a certain parcel of land from the Fasano Family LLC and the DeArmond Family LLC (together referred to as Fasano/DeArmond); and

WHEREAS, this land was originally optioned by Matrix Development Corporation (Matrix) along with other land purchased and optioned by Matrix, all of which was subject to the Matrix Development Agreement for the development of all the property acquired and optioned. Due to a bankruptcy reorganization, the optioned land went back to the owners, including Fasano/DeArmond; and

WHEREAS, the City of Wilsonville (City), the Urban Renewal Agency of the City of Wilsonville (URA), and Polygon desire to enter into Addendum No. 5 to the Matrix Development Agreement to provide for the infrastructure for the proposed subdivision development by Polygon of the Fasano/DeArmond property into a 93 lot subdivision known as Special Area Plan East, Preliminary Development Plan 4 (SAP-E, PDP-4) of the amended Villebois Village Master Plan; and

WHEREAS, Polygon has applied for subdivision development approval, in keeping with the amended Villebois Village Master Plan, and entry into this Addendum 5 will assist in developing the subdivision in an efficient and timely manner;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The recitals above are incorporated by reference as if fully set forth herein.
2. The City Manager is authorized to execute Addendum 5 to the Matrix Development Agreement on behalf of the City, a copy of which is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.
3. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof
this ____ day of _____, 2012, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Núñez

Councilor Goddard

Councilor Starr

Attachments:

Exhibit A – Addendum No. 5

**ADDENDUM NO. 5
TO THE DEVELOPMENT AGREEMENT OF JUNE 14, 2004
BY AND BETWEEN THE CITY OF WILSONVILLE (CITY) AND
THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE (URA)
AND MATRIX DEVELOPMENT CORPORATION (DEVELOPER)
AND PROPERTY OWNERS DONALD E. BISCHOF / SHARON L. LUND,
ARTHUR C. / DEE W. PICULELL,
THE DeARMOND FAMILY LLC / LOUIS J. / MARGARET P. FASANO (OWNERS)
AND VALERIE AND MATTHEW KIRKENDALL (KIRKENDALL)**

THIS ADDENDUM NO. 5 (“Addendum 5”) to the above captioned Development Agreement (hereinafter referred to as the “Matrix Development Agreement”) is entered into this 5th day of November, 2012, by and between the City of Wilsonville (“City”), a municipal corporation of the State of Oregon, the Urban Renewal Agency of the City of Wilsonville (“URA”), a municipal corporation of the State of Oregon, Polygon Northwest Company, L.L.C. (“Polygon”), a Washington limited liability company. This Addendum 5 only applies to the City, the URA, and Polygon, and does not apply to the other parties to the Matrix Development Agreement. This Addendum 5 pertains to property referenced on the attached **Exhibit 1**, which is part of Special Area Plan East, Preliminary Development Plan 4 (hereinafter referred to as “SAP-E, PDP-4”) and is currently owned by Fasano Family LLC, as successors to Louis J. and Margaret P. Fasano, and DeArmond Family LLC (together referred to herein as “Fasano/DeArmond”).

RECITALS:

1. The Villebois Master Plan is a land use plan regulating the development of approximately 500 acres of a planned, mixed use community of internal commercial and a mix of 2,600 residential uses, with trails, parks, and open spaces, supported by \$140 million in infrastructure. In approximately June 2004, for the purposes of developing 655 home sites within the Villebois Master Plan area, Matrix Development Co. (“Matrix”) acquired certain land interests in approximately 150 acres of land east of 110th Street, known under the Villebois Master Plan as SAP-E, and entered into the 2004 Development Agreement set forth in the title above (known as the “Matrix Development Agreement”). However, due to a bankruptcy reorganization, Matrix now only retains a portion of the property known as SAP-E, PDP-1. Matrix has transferred its interest in the remainder of the SAP-E property to the respective owners, namely: to Wachovia Financial (“Wachovia”) and Redus OR Lands, Inc. (“Redus”), that portion of the property which is known as SAP-E, PDP-2; to Donald E. Bischof and Sharon L. Lund (“Bischof/Lund”), that portion of the property which Polygon has an option agreement to purchase and subsequently intends to develop, known as SAP-E, PDP-3; and to Fasano/DeArmond, that portion of the property known as SAP-E, PDP-4.

2. Redus is an entity formed to hold Oregon lands which Wachovia had financed, had security interests in to secure the repayment of its financing, and had received the land either by foreclosure or in lieu of foreclosure. Subsequently, Wachovia and its interests have been acquired by Wells Fargo, a national banking institution.

3. Polygon has entered into a purchase and sale agreement to purchase a portion of the property affected by and included in the Matrix Development Agreement, which is currently owned by Fasano Family LLC and DeArmond Family LLC and is known as SAP-E, PDP-4 (the “Fasano/DeArmond Property”). The Fasano/DeArmond property is described on the attached **Exhibit 1**. The City, the URA, and Polygon wish to clarify certain respective obligations under the Matrix Development Agreement that pertain to the Fasano/DeArmond property if Polygon acquires the Fasano/DeArmond property and Polygon receives its requested approvals for the development of SAP-E, PDP-4, as generally shown on the attached **Exhibit 2** (the “Site Plan”). The Site Plan contemplates 93 lots being developed on the Fasano/DeArmond property by Polygon.

4. Terms not specifically defined herein shall be as defined in the Development Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City, the URA, and Polygon agree as follows:

TERMS AND CONDITIONS:

1. **Condition Precedent.** Polygon hopes to acquire the Fasano/DeArmond Property much earlier than December 31, 2014. However, as a condition precedent to the implementation of this Addendum 5, Polygon must purchase the Fasano/DeArmond Property on or before December 31, 2014. In the event Polygon does not purchase the Fasano/DeArmond Property by December 31, 2014, this Addendum 5 shall become null and void unless the parties otherwise mutually agree, in writing.

2. **Supplemental I-5/Wilsonville Street Fee.** Polygon, as the developer of PDP-4, shall pay a supplemental I-5/Wilsonville Road street SDC of \$690 per DU at issuance of the building permit for each lot within PDP-3E. This supplemental street SDC is separate and apart from the basic street SDC and is not intended by the parties hereto to be a part of any street SDC credit or street SDC credit calculation that is set forth in this Agreement. The total supplemental street SDC to be paid by Polygon for the proposed 93 lots at \$690/DU is \$64,170.

3. **South Portion of Regional Park 8 and Neighborhood Park 6.** Polygon desires to have Neighborhood Park 6 constructed in its initial development phase of the Fasano/DeArmond property, and Polygon is willing to design and construct Neighborhood Park 6 for an estimated \$427,986 (the current basic rate of \$4,602 times 93 lots). Therefore, for designing and constructing Neighborhood Park 6, Polygon shall receive a credit against the basic fee in the amount of final actual costs, which shall be capped at \$427,986 in total. If the final actual amount is less \$427,986, then the remaining park fee amount shall be paid to the City. If the amount is greater than \$427,986, it shall be at Polygon’s expense. Additionally, Polygon shall pay a \$1,071 per lot park fee as and for contribution to design and construction of the remainder of Regional Park 8 on the Redus property. The maintenance of Neighborhood Park 6 shall be the responsibility of Polygon or such successor Homeowners Association as Polygon shall provide. In the event Polygon should acquire the Redus property for development and

design and construct the remainder of Regional Park 8, then the City would be willing to renegotiate the \$1,071 per lot park SDC charge.

4. **Miscellaneous Parks: Linear Greens (LG) 11 & 12, and Pocket Park (PP) 11.** These green spaces and park are on the Fasano/DeArmond property. The new greens and the park are located and described on the Revised Villebois Master Parks Plan, which Polygon has a copy of. Polygon will design and construct Linear Greens (LG) 11 & 12 and Pocket Park (PP 11) at its sole expense.

5. **Reimbursement District for the Coffee Lake Drive Sewer Line.** In constructing the grade school and associated fields, the City constructed a 15-inch sewer trunk line within the future right of way of Coffee Lake Drive between slightly south of Barber Street north to the Bischof/Lund southern property line. While this sewer line segment is needed to serve the school site, it is being sized for additional future residential development and with the understanding that a Coffee Lake Sewer Utility Reimbursement District would be formed and that benefited parties will be subject to reimbursement of proportionate costs upon development. The estimate of costs subject to reimbursement is \$22,199.67, together with such interest as may be established with the adoption of the Reimbursement District, and is also identified in **Exhibit 3** to this Agreement, which cost Polygon shall pay on or before the issuance of any public works or building permit.

6. **Reimbursement District for Local Roads, Waterline, Storm Lines, and Sewer Line Laterals To Be Constructed as a Part of the School Site Development.** The school site development included the construction of local roads, water lines, storm lines and sewer line laterals, some of which were oversized and benefit future development on the remaining Fasano/DeArmond property. This project is just completing and the School District will be applying to form a Reimbursement District. The City entered into a Development Agreement with the West Linn-Wilsonville School District to apportion these costs, based initially on estimates that were described in Exhibit E to the Purchase and Sale Agreement between the Urban Renewal Agency and Fasano/DeArmond, subject to a true-up with final, actual costs. To fairly apportion the final costs, the Development Agreement provides for the formation of a Road and Utility Reimbursement District wherein each benefited property pays its proportionate cost of the development. The proportionate costs to the Fasano/DeArmond property shall equal \$291,657.25, together with such interest as may be established with the adoption of the Reimbursement District. The Reimbursement District will be adopted at a public hearing and Polygon, by executing this Addendum 5 and, if Polygon purchases the Fasano/DeArmond Property from Fasano/DeArmond, is agreeing to be responsible for paying such final amount and the interest thereon on a per-lot basis at time of building permit issuance.

7. **Master Planning Fee.** The Matrix Development Agreement for SAP-E provides that the developer will pay a master planning fee of \$900 per lot, \$690 to the master planner, Costa Pacific Communities, and \$210 to the City, subject to an annual increase made per the Seattle Construction Cost Index. Polygon is subject to paying the master planning fee, which is currently, for fiscal year 2012-13, a total of \$1,027, with \$787 to Costa and \$240 to the City. The total current estimate for the 93 lots is \$95,511.

8. SDC Credit Calculations.

8.1. Included Costs. The standards for calculating the costs of constructing infrastructure, including both soft and hard construction costs, are standards known to the City and Polygon, and have been used for the calculations herein and against which SDC credits are calculated. The Matrix Development Agreement addresses the respective SDC and SDC credit calculations and is to be followed, except as may otherwise be specifically set forth in this Addendum 5. A series of tables of SDCs, as currently calculated but subject to future annual adjustment, are provided in **Exhibit 3**.

8.2. Excluded Costs. The parties to this Addendum 5 agree that the various infrastructure costs and SDC credit calculations shall not include the cost of any property or any easement, right of entry, or license for any property necessary to be dedicated to or otherwise transferred by any of the respective parties to this Addendum 5 to the City for the infrastructure improvements, including parks, provided for in this Addendum 5 and which shall be provided to the City without cost to the City.

8.3. Final Estimates and True Up. In order to secure a public works permit for the infrastructure provided for herein, plans for the construction of the infrastructure, including parks, must be provided to and approved by the City. In constructing the infrastructure, the approved plans must be followed and, to ensure the cost for providing the infrastructure is reasonable, and thus any credit entitlement is reasonable, Polygon shall provide the construction contract costs to the City as the final estimate for the City's review and approval, which approval shall not be unreasonably withheld. The final cost and SDC credits shall be based on actual costs true-up from the construction contract costs; provided, however, that for any such true-up change cost, the parties must mutually agree they are reasonable.

8.4. Insurance and Bonds. As a precedent to receiving SDC credits and prior to commencement of construction of the infrastructure set forth in this Addendum 5, Polygon shall provide to the City performance and payment bonds satisfactory to the City to provide for the respective infrastructure set forth in this Addendum. Polygon shall cause the City to be an additional endorsee on the applicable contractor's insurance policy for the construction of the respective infrastructure provided for in this Addendum in amounts and coverage satisfactory to the City.

9. **Recitals Incorporated.** The recitals set forth above, inclusive of exhibits, are incorporated by reference as general terms of this agreement to provide for the intent of the parties in developing and constructing the specific provisions of the Terms and Conditions of this Addendum No. 4 Agreement.

10. **Miscellaneous.** This Addendum 5 amends the Matrix Development Agreement as specifically set forth herein in Addendum 5. Except as set forth in Addendum 5, the Matrix Development Agreement remains in full force and effect as to the parties to this Addendum 5.

11. **Assignment.** Polygon shall have the right to assign, without release, this Addendum 5 to an affiliate of Polygon including Polygon at Villebois, L.L.C. An affiliate of

Polygon is defined as any entity that is managed or controlled by the same people who manage Polygon.

12. **Notices.** All notices, demands, consents, approvals, and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: Michael E. Kohlhoff, City Attorney
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville OR 97070

To Polygon: Fred Gast, President
Polygon Northwest Company
109 E. 13th Street
Vancouver WA 98660

With a copy to: Radler White Parks & Alexander LLP
Attn: Barbara Radler
111 SW Columbia Street, Suite 1100
Portland, OR 97201

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first written above.

CITY OF WILSONVILLE

POLYGON NORTHWEST COMPANY, L.L.C.

By: _____
Bryan Cosgrove
As Its: City Manager

By: _____

THE URBAN RENEWAL AGENCY
OF THE CITY OF WILSONVILLE

By: _____
Bryan Cosgrove
As Its: Executive Director

EXHIBIT 1

LEGAL DESCRIPTION OF FASANO/DeARMOND PROPERTY

Parcel 1, PARTITION PLAT NO. 2011-005, recorded February 1, 2011 at Fee No. 2011-007578, in the City of Wilsonville, County of Clackamas and State of Oregon.

and

Tract "DD" and Tract "EE" LEGEND AT VILLEBOIS, recorded January 19, 2007 as Plat No. 4101, City of Wilsonville, County of Clackamas, and State of Oregon.

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8.1. Included Costs. The standards for calculating the costs of constructing infrastructure, including both soft and hard construction costs, are standards known to the City and Polygon, and have been used for the calculations herein and against which SDC credits are calculated. The Matrix Development Agreement addresses the respective SDC and SDC credit calculations and is to be followed, except as may otherwise be specifically set forth in this Addendum 5. A series of tables of SDCs, as currently calculated but subject to future annual adjustment, are provided in **Exhibit 3**.

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8.3. Final Estimates and True Up. In order to secure a public works permit for the infrastructure provided for herein, plans for the construction of the infrastructure, including parks, must be provided to and approved by the City. In constructing the infrastructure, the approved plans must be followed and, to ensure the cost for providing the infrastructure is reasonable, and thus any credit entitlement is reasonable, Polygon shall provide the construction contract costs to the City as the final estimate for the City's review and approval, which approval shall not be unreasonably withheld. The final cost and SDC credits shall be based on actual costs trueed up from the construction contract costs; provided, however, that for any such true-up change cost, the parties must mutually agree they are reasonable.

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9. **Recitals Incorporated.** The recitals set forth above, inclusive of exhibits, are incorporated by reference as general terms of this agreement to provide for the intent of the parties in developing and constructing the specific provisions of the Terms and Conditions of this Addendum No. 4 Agreement.

10. **Miscellaneous.** This Addendum 5 amends the Matrix Development Agreement as specifically set forth herein in Addendum 5. Except as set forth in Addendum 5, the Matrix Development Agreement remains in full force and effect as to the parties to this Addendum 5.

11. **Assignment.** Polygon shall have the right to assign, without release, this Addendum 5 to an affiliate of Polygon including Polygon at Villebois, L.L.C. An affiliate of

Polygon is defined as any entity that is managed or controlled by the same people who manage Polygon.

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To City: Michael E. Kohlhoff, City Attorney
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville OR 97070

To Polygon: Fred Gast, President
Polygon Northwest Company
109 E. 13th Street
Vancouver WA 98660

With a copy to: Radler White Parks & Alexander LLP
Attn: Barbara Radler
111 SW Columbia Street, Suite 1100
Portland, OR 97201

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first written above.

CITY OF WILSONVILLE

POLYGON NORTHWEST COMPANY, L.L.C.

By: _____

By: _____

Print Name: Bryan Cosgrove

Print Name: _____

As Its: City Manager

As Its: _____

THE URBAN RENEWAL AGENCY
OF THE CITY OF WILSONVILLE

By: _____

Bryan Cosgrove
As Its: Executive Director

EXHIBIT 1

LEGAL DESCRIPTION OF FASANO/DeARMOND PROPERTY

Parcel 1, PARTITION PLAT NO. 2011-005, recorded February 1, 2011 at Fee No. 2011-007578, in the City of Wilsonville, County of Clackamas and State of Oregon.

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