

RESOLUTION NO. 2403

A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING AGREEMENT REGARDING SDC CREDITS FOR COSTA CIRCLE EXTENSION AND ROUNDABOUT BETWEEN THE CITY OF WILSONVILLE AND POLYGON AT VILLEBOIS III, L.L.C.

WHEREAS, the City, Polygon Northwest Company, L.L.C. (Polygon), and the Urban Renewal Agency of the City of Wilsonville entered into an agreement, Addendum No. 4 to the Development Agreement of June 14, 2004, dated January 31, 2013 (Addendum No. 4); and

WHEREAS, this Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout between the City of Wilsonville and Polygon at Villebois III, L.L.C. fulfills the provisions of Addendum No. 4 for refunding by Zions National Bank of the credited SDCs for the early building of Costa Circle Extension and Roundabout since Zions National Bank, as one of the owners of the property, would have had to build Costa Circle Extension and Roundabout upon development of its property. Polygon at Villebois III, L.L.C. is the successor in interest to Zions National Bank, having purchased the affected property from PNW Home Builders, L.L.C., who had purchased the property from Zions National Bank, and is entering this Agreement to refund the SDC credits as the owner of the affected property to be developed in the future.

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

1. The City Manager is authorizing to execute on behalf of the City of Wilsonville the Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout between the City of Wilsonville and Polygon at Villebois III, L.L.C., a copy of which is marked as **Exhibit 1**, attached hereto and incorporated by reference as if fully set forth herein.
2. This Resolution shall take effect upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 4th day of March, 2013, and filed with the Wilsonville City Recorder this date.

Richard Goddard, Presiding Officer /
Acting Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp - Excused

Council President Starr - Excused

Councilor Goddard - Yes

Councilor Fitzgerald - Yes

Councilor Stevens - Yes

Attachments:

Exhibit 1 – Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout

After Recording Return To:

City of Wilsonville
Attn: City Recorder
29799 SW Town Center Loop East
Wilsonville, OR 97070

AGREEMENT REGARDING SDC CREDITS FOR
COSTA CIRCLE EXTENSION AND ROUNDABOUT

This Agreement Regarding SDC Credits for Costa Circle Extension and Roundabout (the "Agreement") is dated February 21, 2013, and is between the City of Wilsonville (the "City") and Polygon at Villebois III, L.L.C., a Washington limited liability company ("Owner").

Recitals:

A. Owner owns the property described in the attached Exhibit A which Owner acquired from PNW Home Builders, L.L.C., and which PNW Home Builders, L.L.C. acquired from Zions National Bank (the "Zions Property").

B. The City, Polygon Northwest Company, L.L.C. ("Polygon"), and the Urban Renewal Agency of the City of Wilsonville are parties to Addendum No. 4 to the Development Agreement of June 14, 2004, dated January 31, 2013 ("Addendum No. 4") pertaining to real property owned by Sharon L. Lund and Donald E. Bischof (the "Bischof/Lund Property").

C. As part of the development of land in SAP Central, a portion of the Villebois community in Wilsonville, Oregon, the Villebois Master Plan contemplates the construction of Villebois Drive from 110th Avenue to Costa Circle Drive, a roundabout, and Costa Circle Drive from Villebois Drive (collectively, the "Costa Circle Extension and Roundabout"). Pursuant to Section 5.2 of Addendum No. 4, Polygon or its affiliate may construct the Costa Circle Extension and Roundabout and receive SDC credits for such work. The purpose of this Agreement is to provide for reimbursement by the Owner or any future owner of the Zions Property for the Zions Property's share of such SDC credits when building permits are applied for on each lot on the Zions Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Agreement, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Agreement:

1. Reimbursement of Zions Property Share. If Polygon constructs the Costa Circle Extension and Roundabout and the City provides SDC credits to Polygon equal to the reasonable

To Owner: Polygon at Villebois III, L.L.C.
Attn: Fred Gast
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

6. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

7. Jurisdiction and Venue. This Agreement will be governed in accordance with the laws of the State of Oregon. Venue will be in Clackamas County Circuit Court.

8. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

9. Recording. The fully executed original of this Agreement shall be duly recorded in the Records of Clackamas County.

10. Modifications. This Agreement may not be modified unless signed by all parties and the modification is recorded.

11. Non-Waiver. Any failure to enforce any provision of this Agreement will not be deemed a waiver of the right to enforce that provision or any other provision of this Agreement.

12. Severability. If any provision of this Agreement is found to be void or unenforceable, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

13. Authority. The party executing this Agreement represents that he/she has full legal authority to bind the Owner and that the Owner is the true and actual legal owner of the Zions Property.

14. Time of the Essence. Time is of the essence in performance of this Agreement.

15. Entire Agreement. This Agreement, including all documents attached to this Agreement and all documents incorporated by reference herein, represents the entire Agreement between the parties

with respect to Owner's obligation to pay its share of SDC Credits for the Costa Circle Extension and Roundabout.

16. Guaranty. Based on due consideration, the receipt and adequacy of which are hereby acknowledged, Polygon, by signing below, guarantees the performance of Owner under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

City: City of Wilsonville

By: _____

Name: _____

Title: _____

Approved as to form:

Michael E. Kohlhoff, City Attorney

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by _____, as _____ of the City of Wilsonville.

Notary Public for Oregon
My Commission Expires: _____

Owner:

Polygon at Villebois III, L.L.C.,
a Washington limited liability company

By: PNW Home Builders South, L.L.C.,
a Washington limited liability company

Its: Manager

By: PNW Home Builders, L.L.C.,
a Washington limited liability Company

Its: Sole Member

By: PNW Home Builders Group, Inc.,
a Washington corporation

Its: Manager

By: _____
Fred Gast, Assistant V. P.

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by Fred Gast, as Assistant Vice President of PNW Home Builders Group, Inc., as Manager of PNW Home Builders, L.L.C., the sole member of PNW Home Builders South, L.L.C., the manager of Polygon at Villebois III, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

Notary Public for Oregon
My Commission Expires: _____

Polygon:

Polygon Northwest Company, L.L.C.,
a Washington limited liability company

By: Brentview, Inc., its Manager

By: _____
Fred Gast, Assistant Vice President

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013 by Fred Gast, as Assistant Vice President of Brentview, Inc., the manager of Polygon Northwest Company, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A

Legal Description

TRACT 1

Parcels 2 and 3, PARTITION PLAT NO. 2007-127, in the City of Wilsonville, County of Clackamas, and State of Oregon.

TRACT 2

Parcel 2, PARTITION PLAT NO. 2010-46, in the City of Wilsonville, County of Clackamas, and State of Oregon.