#### **RESOLUTION NO. 2338**

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO THE FOLLOWING: A FIRST AMENDMENT TO THE MEDIATED SETTLEMENT AGREEMENT FOR CONSTRUCTION OF THE VILLEBOIS COMMUNITY CENTER WITH ARBOR VILLEBOIS LLC, WEST HILLS DEVELOPMENT COMPANY, VILLEBOIS, LLC AND POLYGON AT VILLEBOIS, LLC ("MEDIATED SETTLEMENT AGREEMENT"); A FIRST AMENDMENT TO ADDENDUM NO. 2 OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE, VILLEBOIS LLC, AND POLYGON AT VILLEBOIS LLC ("ADDENDUM NO. 2"); AND A FIRST AMENDMENT TO ADDENDUM NO. 3 OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE, VILLEBOIS LLC, POLYGON AT VILLEBOIS LLC AND VILLEBOIS VILLAGE CENTER LLC ("ADDENDUM NO. 3")

WHEREAS, in 2004, the City of Wilsonville ("City") and the Urban Renewal Agency of the City of Wilsonville ("URA") entered into a Development Agreement ("Agreement") with Villebois LLC ("Developer") and the State of Oregon for the residential development of certain real property in the community known as Villebois Village ("Villebois Property"), pursuant to the Villebois Master Plan; and

WHEREAS, the Development Agreement has been amended by Contract Addendums

Nos. 1, 2 and 3 and by the related Mediated Settlement Agreement; and

WHEREAS, due to the continued slow recovery of the real estate market, Polygon at Villebois LLC has elected to defer closing on the real property described in the Mediated Settlement Agreement( Exhibit A) and in Addendums 2 (Exhibit B) and 3 (Exhibit C) (collectively the "Agreements") from December 31, 2011 until April 1, 2011 ("Closing Date") but has also agreed to advance the cost of preparation of the plans for the Community Center (as defined in the Mediated Settlement Agreement) so that all other dates provided in all of the foregoing Agreements can remain unchanged and all projects contemplated therein can remain on schedule; and

WHEREAS, all of the parties to the foregoing Agreements have agreed to the foregoing change in the Closing Date, with all other provisions of the Agreements and all dates contained therein remaining as originally written.

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

- 1. City Council hereby authorizes the City Manager to enter into Amendments to change the Closing Date in the Agreements to April 1, 2012, in substantially the forms attached hereto as **Exhibits A, B, and C**, as approved by the City Attorney.
- 2. This Resolution is effective upon adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 19th day of December, 2011, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST

Starla Schur, MMC, Deputy City Recorder

**SUMMARY OF VOTES:** 

Mayor Knapp

Yes

Council President Núñez

Yes

Councilor Hurst

Yes

Councilor Goddard

Yes

Councilor Starr

Yes

### AMENDMENT TO MEDIATED SETTLEMENT AGREEMENT

This Amendment to Mediated Settlement Agreement (the "Amendment") is made as of December 7, 2011, and is by and among the City of Wilsonville (the "City"), Arbor Villebois, LLC ("Arbor"), West Hills Development Company ("West Hills"), Villebois, LLC ("Villebois"), and Polygon at Villebois, L.L.C. ("Polygon").

### Recitals:

The parties to this Amendment are the parties to a Mediated Settlement Agreement dated August 3, 2011 (the "Settlement Agreement"). Due to market conditions, Polygon and Villebois have agreed to extend the deadline for Polygon to purchase the Villebois/Polygon Property, as defined in the Settlement Agreement.

In consideration of the foregoing and the covenants of the parties set forth in this Amendment, the receipt and adequacy of which are acknowledged, the parties agree as follows:

## Agreements:

- 1. <u>Change of Dates</u>. In each place where the date "December 30, 2011" appears in the Settlement Agreement, it is hereby replaced with "April 1, 2012." No other dates in the Settlement Agreement are changed by this Amendment.
- 2. <u>Advance Funding of Construction Drawings</u>. The parties agree that the \$700,000 deposit required by the Settlement Agreement shall be reduced by the amount of funds paid by Polygon to West Hills' architects, engineers, and other consultants in connection with the design and drawings of the Community Center.
- 3. <u>Deferral of Permit Fees</u>. The City agrees to defer payment of permit fees for the Community Center until \$700,000 (as such deposit is reduced pursuant to Section 2 of this Amendment) is deposited in escrow pursuant to the Settlement Agreement or, if the Settlement Agreement terminates, until the party responsible for construction of the Community Center is agreed upon or otherwise legally determined.
- 4. <u>Counterparts; Delivery</u>. This Amendment may be executed in counterparts. Delivery of this executed Amendment by facsimile or e-mail shall be sufficient to form a binding agreement.
- 5. <u>Effect of Amendment</u>. The parties agree to amend the Settlement Agreement as set forth in this Amendment. Except as set forth herein, all other provisions of the Settlement Agreement remain in full force and effect. The parties ratify and confirm the Settlement Agreement, as amended by this Amendment.

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

City:	CITY OF WILSONVILLE
	By:
	Name:
	As Its:
	Approved as to form for the City of Wilsonville:
	By:
	As Its:
Arbor:	ARBOR VILLEBOIS, LLC
	By:
	Name:
	Title:
West Hills:	WEST HILLS DEVELOPMENT COMPANY
	By:
	Name:
· •	Title:
Villebois	VILLEBOIS, LLC
	By:
	Name:
	Title:

Polygon:		POLYGON AT VILLEBOIS, L.L.C., a Washington limited liability company.					
	Ву:	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					
	Ву:	PNW HOME BUILDERS GROUP, INC. a Washington corporation, its Manager					
		By:					
		Name:					
		Title:					

# AMENDMENT TO DEVELOPMENT AGREEMENT CONTRACT ADDENDUM NO. 2

This Amendment to Development Agreement Contract Addendum No. 2 (the "Amendment") is made as of November 10, 2011, and is by and among the City of Wilsonville, the Urban Renewal Agency of the City of Wilsonville, Villebois LLC, Polygon at Villebois L.L.C., and Polygon Northwest Company, L.L.C.

### Recitals:

The parties to this Amendment are the parties to a Development Agreement Contract Addendum No. 2 with an effective date of September 8, 2011 (the "Agreement"). Due to market conditions, Polygon at Villebois, L.L.C. and Villebois LLC have agreed to extend the deadline for Polygon at Villebois, L.L.C. to purchase the Villebois Property, as defined in the Agreement.

In consideration of the foregoing and the covenants of the parties set forth in this Amendment, the receipt and adequacy of which are acknowledged, the parties agree as follows:

## Agreements:

- 1. <u>Change of Dates</u>. In each place where the date "December 31, 2011" appears in the Agreement, it is hereby replaced with "April 1, 2012."
- 2. <u>Counterparts; Delivery</u>. This Amendment may be executed in counterparts. Delivery of this executed Amendment by facsimile or e-mail shall be sufficient to form a binding agreement.
- 3. <u>Effect of Amendment</u>. The parties agree to amend the Agreement as set forth in this Amendment. The parties ratify and confirm the Agreement, as amended by this Amendment.

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

Villebois, LLC

Polygon at Villebois, L.L.C., a Washington limited liability company PNW Home Builders South, L.L.C., a By: Washington limited liability company Manager Its: PNW Home Builders, L.L.C., a By: Washington limited liability company Sole Member Its: By: PNW Home Builders Group, Inc., a Washington corporation Manager Its: Fred Gast As Its: Polygon Northwest Company, L.L.C., a Washington limited liability company By: Brentview, Inc., a Washington corporation, Its: Manager By:\_\_\_\_\_\_
Print Name:\_\_\_\_\_\_ As Its: Villebois Village Center, LLC, an Oregon limited liability company By:\_ Print Name: Mike McKernan, Director of Operations, Granite Land Co. As Its: Managing Member City of Wilsonville, an Oregon municipal corporation

By:\_\_\_

Bryan Cosgrove

As Its: City Manager

Urban	Renewal Agency of the City of Wilsonville
Ву:	· · · · · · · · · · · · · · · · · · ·
	Bryan Cosgrove
As Its:	Executive Director
ATTESTED TO:	•
Sandra C. King, MMC, City Recorder	<del>-</del>
Date:	-
APPROVED AS TO FORM	
this day of October, 2011	
	· -
Barbara A. Jacobson, Assistant City Attorne City of Wilsonville, Oregon	y

# AMENDMENT TO DEVELOPMENT AGREEMENT CONTRACT ADDENDUM NO. 3

This Amendment to Development Agreement Contract Addendum No. 3 (the "Amendment") is made as of November 10, 2011, and is by and among the City of Wilsonville, the Urban Renewal Agency of the City of Wilsonville, Villebois LLC, Polygon at Villebois L.L.C., Polygon Northwest Company, L.L.C., and Villebois Village Center, LLC.

### Recitals:

The parties to this Amendment are the parties to a Development Agreement Contract Addendum No. 3 with an effective date of October 17, 2011 (the "Agreement"). Due to market conditions, Polygon at Villebois, L.L.C. and Villebois LLC have agreed to extend the deadline for Polygon at Villebois, L.L.C. to purchase the Villebois Property, as defined in the Agreement.

In consideration of the foregoing and the covenants of the parties set forth in this Amendment, the receipt and adequacy of which are acknowledged, the parties agree as follows:

## Agreements:

- 1. <u>Change of Dates</u>. In each place where the date "December 31, 2011" appears in the Agreement, it is hereby replaced with "April 1, 2012."
- 2. <u>Counterparts: Delivery</u>. This Amendment may be executed in counterparts. Delivery of this executed Amendment by facsimile or e-mail shall be sufficient to form a binding agreement.
- 3. <u>Effect of Amendment</u>. The parties agree to amend the Agreement as set forth in this Amendment. The parties ratify and confirm the Agreement, as amended by this Amendment.

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

Villebois, LLC

Polygon at Villebois, L.L.C., a Washington limited liability company PNW Home Builders South, L.L.C., a By: Washington limited liability company Manager Its: By: PNW Home Builders, L.L.C., a Washington limited liability company Sole Member Its: By: PNW Home Builders Group, Inc., a Washington corporation Its: Manager Fred Gast As Its: Polygon Northwest Company, L.L.C., a Washington limited liability company By: Brentview, Inc., a Washington corporation, Its: Manager By:\_\_\_\_\_\_
Print Name:\_\_\_\_\_\_ As Its: \_\_\_\_\_ Villebois Village Center, LLC, an Oregon limited liability company By:\_\_\_\_ Print Name: Mike McKernan, Director of Operations, Granite Land Co.

As Its: Managing Member

City of Wilsonville,
an Oregon municipal corporation

By:

Bryan Cosgrove

As Its: City Manager

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Urban	Urban Renewal Agency of the City of Wilsonville							
By:								
	Bryan Cosgrove							
As Its:	Executive Director							
ATTESTED TO:								
	_							
Sandra C. King, MMC, City Recorder								
Date:	_							
APPROVED AS TO FORM								
this day of October, 2011								
Barbara A. Jacobson, Assistant City Attorne	у							
City of Wilsonville, Oregon								

PROJECT Project Ma	& SPOSITO, INC.  NAME: 95th Avenue and Boones Ferry Road Intersection Improvements nagement & Construction Survey and Management Services sonville Project: # 4041	Novemb	of Wilsor er 17, 2011							
Task No.	Description	PIC \$185.00	\$132.00 pc	\$97.00 m	LSII \$95.00 mf	3PSC \$211.00	2PSC \$160.00	CL \$49.00 ab	Total Hrs	Total Total
Task 1.0	Project Management (PM)				·					
	1.1 Communication	<b></b>								04 050 00
<del></del>	1.1.a Coordinate various members of the consultant team     1.1.b Communicate clearly and regularly with the City's project manager	<del> </del>	8	<del> </del>	<del> </del>	<del> </del>			8	\$1,056.00 \$528.00
	1.1.c Provide monthly status report	<del> </del>	4 4	<del> </del>		<del> </del>		-	4	\$528.00
	1.1.d Separate costs by task	<del>                                     </del>	4	<del> </del>		<del>                                     </del>			4	\$528.00
	1.1.e Submit monthly pay requesets no later than 7th day of each month		8						8	\$1,056.00
	Subtotal Task 1.0 - Project Managemen	0	28	0	0	0	0	0	28	\$3,696.00
Task 2.0	Construction Management (CM)									
Tuon 2.0	2.1 Bidding Services				<del></del>					
	2.1.a Update Specifications for current project schedule		16					4	20	\$2,308.00
	2.1.b Supply 30 sets of plans and specifications to City for Bidding		6						6	\$792.00
	2.1.c Prepare and distribute addenda	<b></b>	16	ļ	ļ <u>.</u>			ļ	16	\$2,112.00
	2.1.d Answer contractor questions during bidding	<del> </del>	16		ļ	<del> </del>		ļ	16	\$2,112.00 \$132.00
	2.1.e Attend project bid opening 2.2 Construction Management Services	<del> </del>	1 3	<u> </u>	L	<u> </u>	l <del></del>	l	1	<b>⊅132,00</b>
<del> </del>	2.2.a Lead the pre-construction conference	<del> </del>	1 4	T	T	1			4	\$528.00
	2.2.b Lead weekly progress meetings during construction		100	1	1	1			100	\$13,200.00
	2.2.c Process and track RFI's, COR's, WCD's and CCO's		200						200	\$26,400.00
	2.2.d Review and process daily on-site construction inspection reports		16						16	\$2,112.00
ļ	2.2.e Process material submittals		40	ļ					40	\$5,280.00
	2.2.f Review shop drawings	<del> </del>	8 16	<u> </u>	ļ	<del> </del>		<del> </del>	8 16	\$1,056.00 \$2,112.00
	Coordinate with design team and interpret plans as necessary     Conduct site visits as necessary	<del> </del>	80	<del> </del>		<del> </del>		<del>                                     </del>	80	\$10,560.00
	2.2.i Perform constructability reviews as needed	<del> </del>	16	<del> </del>		<del> </del>		<del> </del>	16	\$2,112.00
<del></del>	2.2.] Provide centralized documentation and handling of project communication	<u> </u>	16	<u> </u>					16	\$2,112.00
	2.2.k Coordinate with City on project closeout and transfer of all original documents		8						8	\$1,056.00
	2.2.I Archive weekly photo log and supply to City searchable DVD		4						4	\$528.00
	Subtotal Task 2.0 - Construction Managemen	1 0	563	0	0	0	0	4	567	\$74,512.00
Task 3.0	Surveying	1					_			
	3.1 Construction Surveying Services (CS, AB & BY)				I					
	3.1.a Construction Staking (all improvements staked once)	2				80			82	\$17,250.00
	3.1.b As Built Survey	2	<b> </b>	8	20	16		ļ	10 50	\$1,146.00 \$6,786.00
	3.1.c Pre and Post Construction Monumentation	2	1	   8	32	16	0	0		
	Subtotal Task 3.0 - Surveying	6	0	0	32	96		J. U	142	\$25,182.00
Task 4.0	Sub-Consultants (SB)									
	4.1 Traffic Engineering - ATEP									
	4.1.a Assistance during construction	ļ	24	32				4	60	\$6,468.00
	4.1.b As-Builts Subtotal Task 4.0 - Sub-Consultants		28	24 56		0		ļ	28 88	\$2,856.00 \$9,324.00
	Subtotal Task 4.0 - Sub-Consultants	U U	20	30	U			4	88	φ <del>9,524.00</del>
Task 5.0	Expenses (RE)	1								
	5.1 M&S Expenses									\$7,500.00
							_~			\$0.00
	Subtotal Task 5.0 • Expenses									\$7,500.00
Task 6.0	Contingencies (CT)	1							• ;	
1454 0.0	6.1 Contingency - 10%	<del>                                     </del>	<del> </del>							\$5,000.00
										\$0.00
	Subtotal Task 6.0 - Contingencies									\$5,000.00
				·			·		205	6440 744 00
	Total Hours		619	64	32	96	0	8	825 825	\$112,714.00
	Labor Totals	\$1,110	\$81,708	\$6,208	\$3,040	\$20,256	\$0	\$392	\$112,714.00	
	M&S Total Labor								\$112,714.00	
	Expenses  Contingency  Total Estimate (includes Markup, Expenses)								\$112,714.00 \$7,500.00 \$5,000.00 \$125,214.00	