

THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE

URA RESOLUTION NO. 214

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE APPROVING ADDENDUM NO. 2 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE, VILLEBOIS LLC, AND STATE OF OREGON, AUTHORIZING THE AGENCY'S EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT ADDENDUM NO. 2 ON BEHALF OF THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE FOR THE ADDITION OF POLYGON AT VILLEBOIS LLC AS A PARTY TO THE DEVELOPMENT AGREEMENT, AND AUTHORIZING CERTAIN CHANGES TO CONSTRUCTION, FUNDING, AND TIMING REQUIREMENTS FOR GRAHAMS FERRY ROAD IMPROVEMENTS LOCATED WITHIN THE VILLEBOIS VILLAGE DEVELOPMENT

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 State of Oregon is no longer a party to that Agreement; and

WHEREAS, Developer is hoping to sell a portion of the Villebois Property and to assign a portion of its development obligations related thereto to Polygon at Villebois LLC, a Washington limited liability company ("Polygon"); and

WHEREAS, Polygon intends to purchase that Villebois Property and has received unanimous preliminary approval from the City's Development Review Board ("DRB"), at its regularly scheduled meeting on August 22, 2011, for the future residential development within the Villebois Property Village known as Specific Area Plan South ("SAP") Preliminary Development Plan 5 ("PDP-5S") and SAP-North, Areas 1 and 2, Preliminary Development

Plan 1 ("PDP-1N"). Those two (2) areas are legally described and shown on **Exhibits A**, attached hereto and incorporated by reference herein; and

WHEREAS, DRB conditions of approval for the development of PDP-5S and PDP-1N include, among others, the requirement that Developer, Polygon, and the City enter into a contract addendum to the Development Agreement ("Addendum No. 2") to establish the roles and responsibilities for the completion of certain road improvements to Grahams Ferry Road; and

WHEREAS, Contract Addendum No. 2 sets forth with particularity the respective obligations of the City, Developer, and Polygon.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

The Urban Renewal Agency Board hereby authorizes the Agency's Executive Director to enter into Contract Addendum No. 2 to the Development Agreement addressing construction roles, responsibilities, and timing for improvements to be made to Grahams Ferry Road to benefit past and future development, in substantially the form attached hereto as **Exhibit B**, as approved by the City Attorney.

ADOPTED by the Urban Renewal Agency of the City of Wilsonville at a regular meeting thereof this 7th day of September, 2011, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Board Chairperson

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Chairperson Knapp	Yes
Member Núñez	Yes
Member Hurst	Yes
Member Goddard	Yes
Member Starr	Yes

Attachment:

Exhibit A – Property Legal Description

Exhibit B - Development Agreement Contract Addendum No. 2

EXHIBIT A

Lot 3 of Villebois, a replat of Parcel 5 and a portion of Parcel 4 of Partition Plan No. 2005-063 located in the Northeast, Southeast, Southwest and Northwest one-quarters of Section 15, Township 3 South, Range 1 West, of the Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

AND

Parcel 1 of partition Plan No. 2007-127 being a replat of Lot 1, Villebois Plat no. 4052, located in the Northeast and Northwest quarters of Section 15, Township 3 South, Range 1 West, of the Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

**DEVELOPMENT AGREEMENT
CONTRACT ADDENDUM NO. 2**

This Contract Addendum No. 2 ("Addendum No. 2") is made to the Development Agreement by and between the City of Wilsonville ("City"), the Urban Renewal Agency of the City of Wilsonville ("URA"), Villebois LLC ("Developer"), the State of Oregon Administrative Services ("State"), Polygon at Villebois L.L.C. ("Polygon") as possible successor in interest to Villebois LLC and Polygon Northwest Company, L.L.C., a Washington limited liability company ("Guarantor"). The effective date of this Addendum No. 2 is September __, 2011 ("Effective Date").

RECITALS

- A. The above-named parties, excluding Polygon, entered into a Development Agreement, dated May 24, 2004, which was subsequently amended by Contract Addendum No. 1, dated June 7, 2006. The State of Oregon is no longer a party to the Agreement.
- B. Polygon has the right to purchase certain real property covered by the Development Agreement and the Villebois Village Master Plan from Developer ("Villebois Property") in phases. The Villebois Property is located within an area known as Villebois Village, City of Wilsonville, Oregon. The first closing of Polygon's acquisition of the Villebois Property includes the property described in Recital I below as "Phase 1" and the second closing of Polygon's acquisition of the Villebois Property includes the property described in Recital I below as "Phase 2." In conjunction with and in partial consideration of that purchase, should it occur, Polygon has agreed to assume responsibility to make certain road improvements to Grahams Ferry Road ("Road Improvements") that were to have been made by Developer, pursuant to the Development Agreement related to the portions of the Villebois Property that Polygon elects to purchase.
- C. Polygon wishes to develop additional homes on the Villebois Property. The Villebois Property includes the areas referred to in the Villebois Village Master Plan as SAP-South, PDP-5 ("PDP-5S") and SAP-North 1, PDP-1, Areas 1 and 2 ("PDP-1N"), and is anticipated to contain a total of 169 lots. The above-described Road Improvements are partially required in order to properly service the future residences to be located within the Villebois Property, as well as those residences located in an earlier phase of the development by Developer in an area known as SAP-South, PDP-4 ("PDP-4S"). As used herein, SAP means Specific Area Plan and PDP means Preliminary Development Plan, all as more particularly described in the Villebois Village Master Plan.
- D. Polygon and Developer have submitted the following land use applications: For the area known as PDP-5S: A Preliminary Development Plan; Tentative Plat; Development Plan; and Temporary Use Permit (for a sales office for homes). For PDP-1N: Modification of a Preliminary Development Plan; Tentative Plat; and Final Development Plan of Park

Phases. A two (2) parcel partition of Lot 3 Villebois in order to allow for construction of a Community Center by West Hills Development and subsequent ownership thereof by the Arbor Villebois Owners Association, pursuant to a Settlement Agreement to which the City, Developer, and Polygon are all parties, dated August 3, 2011. (Collectively, the foregoing applications and accompanying staff reports are referred to as the "Application.")

- E. The Application was approved by the City for a multiple phased project, subject to certain conditions of approval ("Conditions of Approval"), including, but not limited to, Developer and Polygon entering into this Addendum No. 2. Some of the Conditions of Approval addressed by this Addendum No. 2 are necessary due to the projected impacts created by the development to existing City infrastructure and improvements and also as a result of unfulfilled road improvement obligations that were conditions of development for PDP-4S, which obligations will be assumed by Polygon, as successor in interest to Developer to the extent provided in this Addendum No. 2. The Conditions of Approval impose upon Developer and Polygon the obligation to construct the Road Improvements to a capacity that is greater than that needed for their development, in order to provide extra capacity for possible future development in Villebois. As a result thereof, that portion of the Road Improvements designed to handle that excess capacity will be the financial responsibility of the City but shall be constructed by Polygon in conjunction with the construction of its proportionate share of the required Road Improvements. To the extent Polygon pays for the City's extra capacity work, it may be entitled to Street and Utility System Development Charge ("SDC") credits, as set forth in Section 1.2.5 of this Addendum No. 2.
- F. The parties desire to set forth in this Addendum No. 2 the obligations of Developer, Polygon, and the City with respect to the Road Improvements, SDCs, SDC credits, and land dedication for public right-of-way for the Road Improvements. Certain Conditions of Approval between Developer, Polygon, and the City with respect to related park improvements are not included in this Addendum No. 2 but will be included in a subsequent Contract Addendum No. 3 to the Development Agreement.
- G. The Conditions of Approval impose upon Developer and Polygon an obligation to improve a portion of Grahams Ferry Road that runs adjacent to PDP-4S, PDP-5S, and PDP1-N, as more particularly shown on drawings attached hereto as **Exhibit A** and incorporated by reference herein. Developer or Polygon may elect to construct the Road Improvements in two (2) phases, as outlined below. The City has already paid a substantial portion of its share of soft costs for a portion of the Road Improvement work already started by Developer.
- H. This Addendum No. 2 is not a land use decision and it is not the result of the application of the Comprehensive Plan or implementing ordinances. Rather, it is an agreement capturing the Road Improvements construction conditions of the predicate land use decisions, development plan approvals, and site design review for the Villebois Property.

- I. The City, Polygon, and Developer have agreed to enter into this Addendum No. 2, reflecting all of the above as a Condition of Approval for development of PDP-5S and PDP-1N. PDP-5S is approved for approximately twenty-seven (27) lots, PDP-1N, Phase 1, is approved for approximately eighty-two (82) lots, adjacent to SAP Central, and PDP-1N, Phase 2, is approved for approximately sixty (60) lots. The 27 lots in PDP-5S and the 82 lots in PDP-1N, Phase 1 are, collectively, referred to as "Phase 1" in this Addendum No. 2 and the 60 lots in PDP-1N, Phase 2 are referred to as "Phase 2" in this Addendum No. 2.
- J. It is understood that if Polygon does not purchase Phase 1 of the Villebois Property on or before December 31, 2011, this Addendum No. 2 will become null and void, without liability to any party hereto as a result thereof. The parties may agree, in writing, to modify this Addendum No. 2 on or before the December 31, 2011 deadline date.
- K. Developer agrees that Polygon is entitled to purchase the Villebois Property in two (2) phases and may also elect to only purchase Phase 1 on or before December 31, 2011. Therefore, notwithstanding anything contained in the Settlement Agreement that could be construed to the contrary, the Settlement Agreement will remain in full force and effect and binding on the parties as long as Polygon purchases Phase 1 of the Villebois Property on or before December 31, 2011.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, incorporating all of the above Recitals by reference herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. CONSTRUCTION OBLIGATIONS

If Polygon acquires Phase 1, Polygon will be required to construct Road Improvements to Phase 1 of Grahams Ferry Road as follows in Section 1.1:

Section 1.1 – Phase 1 Roadwork: PDP-5S and PDP-1N (Phase 1)

- 1.1.1** Polygon will construct the Road Improvements, referred to herein as the Phase 1 Road Improvements, which shall run from PDP-4S through Surrey Street, and then transitioning through PDP-5S, with a temporary taper a short distance beyond the southern border of Phase 1 North, with the temporary taper to be replaced with permanent Road Improvements as a part of the Phase 2 Road Improvements outlined below and replacement of the temporary taper area shall be at Polygon's sole cost due to its election to build the Road Improvements in two (2) Phases. A drawing of the Phase 1 Road is attached hereto as **Exhibit B** and is incorporated by reference herein.
- 1.1.2** All of Polygon's obligations in this Section 1.1 are dependent on Polygon purchasing Phase 1 of the Villebois Property on or before December 31, 2011.

- 1.1.3** Polygon will begin construction on the Phase 1 Road Improvements by no later than June 1, 2012, with completion required by November 1, 2012.
- 1.1.4** The City will advance the estimated costs of the Phase 1 Road Improvements, based upon an agreed deposit and draw down schedule, as described in **Exhibit C**, attached hereto and incorporated by reference herein. The City's estimated share of the Road Improvements is One Hundred Fifty-Four Thousand Three Hundred Eleven Dollars and Eighty Cents (\$154,311.80) ("City's Share") and Polygon's estimated share of the Road Improvements, assumed on behalf of Developer, is Three Hundred Fifty-Four Thousand One Hundred Forty-Five Dollars and Sixty-Six Cents (\$354,145.66) ("Polygon's Share"), are set forth on **Exhibit C**, and are subject to true-up based on actual reasonable cost, which Polygon agrees to manage. Polygon will provide the City with itemized invoices, bid documents, or other documentation reasonably satisfactory to the City to verify the actual reasonable costs of construction.
- 1.1.5** Polygon will repay the City for the total cost of Polygon's Share of the Phase 1 Road Improvements by imposing a surcharge of approximately Three Thousand Two Hundred Forty-Nine Dollars (\$3,249) per lot on every lot sold in PDP-5S and PDP-1N, Phase 1, at the time building permits are taken down, until paid in full ("Surcharge"); provided, however, if not enough building permits have been taken down by July 1, 2014 to fully repay the City for Polygon's Share, then Polygon will repay the City the entire remaining balance of Polygon's Share in one lump sum payment on or before July 1, 2014. Polygon may elect, at any time, to repay the City for Polygon's Share of the Road Improvements with a lump sum payment, and thereafter no Surcharge will be required. Polygon will provide a completion bond that guarantees completion of the Phase 1 Road Improvements by November 1, 2012. The Surcharge payment option is in recognition of the changed economic conditions affecting financing of exactions and Polygon's picking up PDP-4S road exactions on behalf of Developer. Developer retains all responsibility to pay the contractor for work that Developer previously contracted to have performed, and neither Polygon nor the City will have any responsibility therefor.
- 1.1.6** Polygon will enter into a construction contract for the Phase 1 Road Improvements. If Polygon wishes to use Northwest Earthmovers, Inc. ("NEI"), Polygon will provide the City with advance notice of this desire in order to allow the City to meet all public contracting requirements pertaining to sole source contracting. To the extent allowed under public contracting laws, the City will use good faith efforts to support a sole source to NEI because NEI has already started the work, is familiar with all plans and designs, and it would be substantially less cost than to try to mobilize and coordinate between a City contractor for the City's portion and a Developer's contractor for Developer's portion. Because the City is advancing the funds and because a portion of the

road is a City obligation, as provided in the current City/Villebois LLC Development Agreement, prevailing wages will be paid in accordance with Bureau of Labor and Industries (“BOLI”) requirements. If NEI is not selected for the foregoing reasons, then the Phase 1 Road Improvements work will need to be put out to bid, in accordance with public contracting requirements. The City and Polygon will work together to ensure all applicable public contracting requirements are satisfied.

- 1.1.7** Polygon, or its contractor, will supply payment and performance bonds, in a form acceptable to the City, in the full amount of the contract price for the Phase 1 Road Improvements.
- 1.1.8** Developer and Polygon agree that Polygon, as successor in interest to Developer, who had the obligation to build the Phase 1 Road Improvements abutting PDP-4S but did not complete that obligation, will assume the responsibility for completion of the Phase 1 Road Improvements abutting PDP-4S in partial consideration for the purchase of the Villebois Property. All parties agree that the exaction for the Phase 1 Road Improvements for the development that has already occurred on PDP-4S is proportionate to the development of PDP-4S. The parties also agree that the exaction for the Phase 1 Road Improvements abutting PDP-5S and PDP-1N, described in **Section 1.2**, is proportionate to the development that has occurred in PDP-4S and will occur in PDP-5S and PDP-1N, Phase 1.
- 1.1.9** Because the City is paying its share of the Phase 1 Road Improvements as the Road Improvements are constructed and in accordance with the draw down schedule on **Exhibit C**, no SDC credits will be given to Polygon, and SDCs will be due from Polygon to the City at the time of issuance of each building permit.
- 1.1.10** A detailed cost breakdown for Phase 1 Road Improvements is attached hereto as **Exhibit D** and incorporated by reference herein.

Section 1.2 – Phase 2 Roadwork: PDP-1N, Phase 2

- 1.2.1** If Polygon purchases Phase 2, Polygon agrees that it will undertake responsibility for that portion of Grahams Ferry Road that abuts PDP-1N, Phase 2, as shown on **Exhibit E**, attached hereto and incorporated by reference herein. This Phase 2 of Grahams Ferry Road includes certain roundabout work that will be paid for by the City through SDC credits, in accordance with the City’s standard practices. Phase 2 will also include replacement of the temporary tie-in of Phase 1 with a permanent connection of the two (2) Phases.
- 1.2.2** Using the above-described SDC credit system, the City will pay for additional road capacity, including the roundabout construction, as indicated on **Exhibit F**, attached hereto and incorporated by reference herein.

- 1.2.3** Polygon will construct the Phase 2 Road Improvements as soon as it has pulled twenty-five percent (25%) of the building permits for PDP-1N, Phase 2, or twenty-four (24) months from the date the first building permit is issued for PDP-1N, Phase 2, whichever shall first occur. Construction must thereafter be completed within twelve (12) months.
- 1.2.4** For Phase 2 Road Improvements, the City's estimated contribution will be One Hundred Seventy-Six Thousand Seven Hundred Twenty-Nine Dollars and Four Cents (\$176,729.04) ("City Share"), and the balance will be paid by Polygon. Polygon's contribution is estimated to be One Hundred Ninety-Three Thousand One Hundred Twenty Dollars and Thirty-Seven Cents (\$193,120.37). Both of the foregoing numbers include a proportionate share of the soft costs that have been or will be incurred in conjunction with the Phase 2 Road Improvements.
- 1.2.5** At the time of building permit issuance, Polygon will receive Street SDC and other related credits for the Phase 2 Road Improvements that it has agreed to build pursuant to this Addendum No. 2, that are set forth as the City Share above and on **Exhibit F**, in accordance with the City Code and standard City practice, as described in the Development Agreement. The amount of Street SDC credits for the eligible Phase 2 Road Improvements is estimated above but will be trued up upon completion and based on the actual costs incurred by Polygon in the construction of the Phase 2 Road Improvements, as evidenced by itemized invoices, bid documents, or other documentation reasonably satisfactory to the City to determine the actual costs of construction and the appropriate credit therefor. The parties have agreed that this is an equitable allocation of Phase 2 Road Improvement costs. None of the costs already incurred by Developer past due to NEI may be included. Those past due amounts remain the responsibility of Developer and are not covered by this Addendum No. 2.
- 1.2.6** If Polygon acquires Phase 2, Polygon will enter into a construction contract for the Phase 2 Road Improvements. If Polygon wishes to use NEI, Polygon will provide the City with advance notice of this desire in order to allow the City to meet all public contracting requirements pertaining to sole source contracting. To the extent allowed under public contracting laws, the City will use good faith efforts to support a sole source to NEI because NEI has already started the work, is familiar with all plans and designs, and it would be substantially less cost than to try to mobilize and coordinate between a City contractor for the City's portion and a Developer's contractor for Developer's portion. Because a portion of the road is a City obligation, as provided in the current City/Villebois LLC Development Agreement, prevailing wages will be paid in accordance with BOLI requirements. If NEI is not selected for the foregoing reasons, then the Phase 2 Road Improvements work will need to be put out to bid in accordance with public contracting requirements. The City and Polygon will work together to ensure all applicable public contracting requirements are satisfied.

- 1.2.7** Polygon, or its contractor, will supply payment, performance, and completion bonds, in a form acceptable to the City, in the full amount of the contract price.
- 1.2.8** Developer will dedicate the land needed for all Road Improvements and for the Easements described in **Section III** to the City as a part of the closing of the sale of Phase 1 to Polygon to assure the City and Polygon that the land is available for the Road Improvements, and Developer agrees that the dedication of this land, including land for the roundabout, is a reasonable and proportionate exaction to allow for the development of PDP-1N. The parties also agree that the exaction for the Phase 2 Road Improvements described in this **Section 1.2** is proportionate to the development that will occur in PDP-1N, Phases 1 and 2.
- 1.2.9** Since the time the approved plans were issued for the Road Improvements, Developer proposed that the roundabout shift north and east to avoid impacts to private land west of the Grahams Ferry Road right-of-way. Final approval was never obtained from the City. Therefore, Polygon or whoever is obligated to construct the Road Improvements adjacent to PDP-1N, Phase 2, will be required to submit revised completed plans to the City for approval.

II. INFRASTRUCTURE IMPROVEMENTS PHASE 1 AND PHASE 2

Section 2.1 – Specific Improvements

Polygon will be responsible for making the Road Improvements to Grahams Ferry Road allocated to the respective Phases purchased by Polygon, as shown in the approved permitted plans (PW08-0018), excepting modifications anticipated pursuant to Section 1.2.9. All Road Improvements shall comply with all applicable City standards. Per the initial agreement to split soft costs between Developer and the City, with soft costs estimated to be Five Hundred Eleven Thousand Nine Hundred Thirty-Six Dollars and Forty-One Cents (\$511,936.41) for both Phase 1 and Phase 2 of Road Improvements, the agreed upon City obligation was One Hundred Eighty-Nine Thousand Nine Hundred Sixty-Two Dollars and Forty-Three Cents (\$189,962.43) or approximately 37.1% of the soft costs. The City made a partial soft costs payment of One Hundred Twenty-Six Thousand Seven Hundred and Eighty-Eight Dollars (\$126,788.00) to Developer in March 2010. The remaining balance of the City Share of soft costs is therefore Sixty-Three Thousand One Hundred Seventy-Four Dollars and Forty-Three Cents (\$63,174.43), to be split on a pro-rata basis, based on street length between Phase 1 and Phase 2 Road Improvements.

Section 2.2 – Obligation Personal to Polygon and to Land

If Polygon acquires Phase 1, Polygon will be personally obligated to complete the Phase 1 Road Improvements as soon as the City makes a payment to Polygon toward the Road Improvements or Polygon applies for a building permit in PDP-1N or PDP-5S. If Polygon does not undertake the Phase 2 Road Improvements because, for whatever

reason, Polygon takes down no building permits in Phase 2, then the obligation to build the Phase 2 Road Improvements will run with the land and will not be Polygon's obligation. A Memorandum of this Addendum No. 2 will be executed by the parties and recorded at the closing of the sale between Developer and Polygon. If Polygon takes down any building permit in Phase 2, Polygon will also become personally obligated to build the Phase 2 Road Improvements.

Section 2.3 – Construction Completion

PDP-1N, Phase 1 consists of eighty-two (82) lots, and PDP-1N, Phase 2 consists of sixty (60) lots. All construction work, including Road Improvements, associated with the Public Works Permit and the Project Correction List, as applicable to each Phase, as described in the Application Staff Report, shall be completed prior to the City Building Division issuing a certificate of occupancy or a building permit for the housing units in excess of fifty percent (50%) of the total for each Phase.

III. EASEMENTS / RIGHT-OF-WAY

Section 3.1 – Estimated Public Storm Drainage Easement

The parties acknowledge that a Public Storm Drainage Easement on the west side of Grahams Ferry Road has already been dedicated to the City.

Section 3.2 – Estimated Franchise Utility Easements

The parties acknowledge that a Franchise Utility Easement, in City form, will be provided by Developer to the City without charge before closing of Polygon's acquisition of Phase 1. The Franchise Utility Easement will be approximately a ten foot (10 ft.) wide strip of land running the entire length of the Villebois Property that adjoins Grahams Ferry Road.

Section 3.3 – Road Dedication

Developer will dedicate all right-of-way needed for construction of the Road Improvements, and such dedication will occur at the time Developer closes the sale of Phase 1 of the Villebois Property to Polygon and as an integral part of that closing transaction. The estimated amount of land to be dedicated is as follows: Phase 1: 967 square feet; Phase 2: 20,286 square feet.

IV. GENERAL OBLIGATIONS

Section 4.1 – Landscaping

Polygon shall install all required landscaping and irrigation along the entire frontage of the Road Improvements applicable to the Phase(s) acquired by Polygon, consistent with all applicable City ordinances, approved plans (PW08-0018) and Conditions of Approval.

Section 4.2 – Plans and Construction

Polygon is solely responsible for the design and construction of all Road Improvements required under this Addendum No. 2 for the Phase(s) acquired by Polygon. The City shall be responsible for reviewing and approving all plans, which approval shall occur within thirty (30) days after the City's receipt of satisfactory plans, and shall inspect the Villebois Property and all Road Improvements. By reviewing and approving the plans and design for the Road Improvements required under this Addendum No. 2, and issuing permits for the construction of such Road Improvements, the City shall be deemed to have concluded that the Road Improvements identified as eligible for SDC credits for the Phase 2 Road Improvements under this Addendum No. 2 are, in fact, eligible for such SDC credits.

Section 4.3 – Costs

Both parties acknowledge that the costs set forth in this Addendum No. 2 are estimates only and that the final costs of the Road Improvements required under this Addendum No. 2 may vary based on final design approval and actual construction costs.

V. MISCELLANEOUS PROVISIONS

Section 5.1 – Further Assurances

Each party shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the parties hereto. In order to ensure timely completion of the Road Improvements, Polygon will provide the City with a completion bond, issued by a surety acceptable to the City applicable to the Phase(s) acquired by Polygon, in the full amount of the Road Improvement costs or such other form of payment guarantee as the City is willing to accept.

Section 5.2 – Modification or Amendment

No amendment, change, or modification of this Addendum No. 2 shall be valid unless in writing and signed by the parties hereto.

Section 5.3 – Relationship

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the parties.

Section 5.4 – Burden and Benefit; Assignment

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties and their successors and assigns. Polygon and Developer covenant and agree that they shall notify any successor in interest or any tenant on the Villebois Property of Polygon's and Developer's obligations under this Addendum No. 2. Neither party may assign this Addendum No. 2 without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. However, Polygon shall be permitted to assign this Addendum No. 2 to an affiliate of Polygon or an entity managed or controlled by the same people who manage Polygon.

Section 5.5 – No Continuing Waiver

The waiver of either party of any breach of this Addendum No. 2 shall not operate or be construed to be a waiver of any subsequent breach.

Section 5.6 – Applicable Law

This Addendum No. 2 shall be interpreted under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 5.7 – Legal Fees

If any party commences legal proceedings, including arbitration, mediation, or bankruptcy, for any relief against the other party arising out of or related to this Addendum No. 2, or the breach thereof, the losing party shall pay the prevailing party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees, and expert witness fees as determined by the court or the arbitrator, at the trial level or on any appeal.

Section 5.8 – Time of Essence

Time is expressly declared to be of the essence of this Addendum No. 2.

Section 5.9 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any party to each 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 (3) 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 Bowers, Community Development Director
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Developer: Wayne Rembold
Villebois LLC
1022 SW Salmon Street, Suite 450
Portland, OR 97205

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

With a copy to: Barbara W. Radler
Ball Janik LLP
101 SW Main Street, Suite 1100
Portland, OR 97204

Section 5.10 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Addendum No. 2 on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 5.11 – Counterparts

This Addendum No. 2 may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 5.12 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any party under this Addendum No. 2 shall in any way or in any manner be deemed to create any rights in any person or entity other than the parties hereto. The URA is executing this Addendum No. 2 solely to approve this Addendum No. 2 to the Development Agreement, but it assumes no obligations hereunder by doing so. This Agreement may not be assigned by Developer or Polygon without the express written consent of the City, which may be granted or denied in the City's sole discretion. However, Polygon shall be permitted to assign this Agreement to an affiliate of Polygon or an entity managed or controlled by the same people who manage Polygon.

Section 5.13 – Dispute Resolution

5.13.1 Mediation. All disputes arising out of this Addendum No. 2, save and except for acquisition of property subject to eminent domain, shall first be submitted to mediation. Either party desiring mediation shall provide the other party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the parties, in the parties' sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the parties, any party may make demand for arbitration pursuant to the following paragraph.

5.13.2 Arbitration. Any dispute arising under this Addendum No. 2, save and except for acquisition of property subject to eminent domain, which is not resolved through mediation, may be submitted by any party to arbitration conducted in Portland, Oregon before a single arbitrator selected by mutual agreement of the parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the parties are unable to mutually select an arbitrator within twenty (20) days, then each party shall select an arbitrator and the two arbitrators shall select a single arbitrator. Judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

Section 5.14 – Guarantee

Guarantor hereby absolutely and unconditionally guarantees all of the obligations of Polygon, or any assignee of Polygon pursuant to Section 5.12.

ALL CONSTRUCTION COSTS, CITY CREDITS, AND SDCs ARE ESTIMATES AND ARE SUBJECT TO TRUE-UP BASED ON ACTUAL BID CONTRACT COSTS AND SDCs AT TIME OF ISSUANCE OF BUILDING PERMITS.

EXCEPT AS PROVIDED HEREIN, ALL OTHER PROVISIONS OF THE DEVELOPMENT AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT. IN THE EVENT ANY PROVISION OF THIS ADDENDUM NO. 2 DIRECTLY CONFLICTS WITH THE DEVELOPMENT AGREEMENT, THIS ADDENDUM NO. 2 WILL CONTROL.

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

Villebois, LLC

By: _____

Print Name: _____

As Its: _____

Polygon at Villebois, 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

As Its: Assistant Vice President

(additional signatures on next page)

GUARANTOR:

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

By: **Brentview, Inc.**, a Washington corporation,
Its: Manager

By: _____
Print Name: _____
As Its: _____

City of Wilsonville,
an Oregon municipal corporation

By: _____
Bryan Cosgrove
As Its: City Manager

Urban Renewal Agency of the City of Wilsonville

By: _____
Bryan Cosgrove
As Its: Executive Director

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