

RESOLUTION NO. 1524

A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN ADDENDUM TO A DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AT MAIN STREET AND THE CITY OF WILSONVILLE

WHEREAS, on February 20, 1997, Council approved Resolution No. 1358 authorizing the City Manager to enter into settlement agreements with the HomeBuilders Association of Metropolitan Portland and Matrix Development Corporation and to execute a Settlement Agreement and Development Agreement and associated documents with The Village at Main Street – Phase I LLC and Robert G. Johnson and Associates; and

WHEREAS, on April 8, 1997, the City Manager signed the Development Agreement with R.G. Johnson and Associates and The Village at Main Street for the City to pay its proportional share of the costs for widening Wilsonville Road, constructing Jessica and Rebekah Streets, oversizing a sewer line through the project and constructing a trail from The Village at Main Street to Memorial Park; and

WHEREAS, the costs for the City share of the project have increased and the background for this increase is in the recitals to the addendum to the Development Agreement and the records documents; and

WHEREAS, the community development director and city engineer have thoroughly reviewed the cost increases and recommend payment for the increases in the amount of \$150,753; and

WHEREAS, the community development director and city engineer recommend that \$128,526 in Phase II and Phase III credits be provided to the Village at Main Street by a payment

of \$79,699 in debt service payments and establishment of an SDC credit of \$48,827, thereby using the Phase II and Phase III credits during construction of Phase I; and

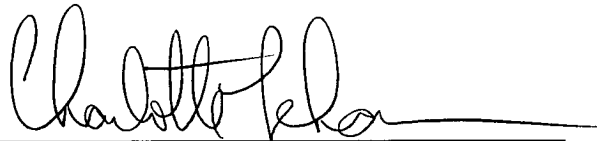
WHEREAS, funds are available in the supplemental street systems development charge account to pay for the increased cost; and

WHEREAS, the proposed addendum to the Settlement Agreement is attached to this resolution, has been reviewed by the City Council and is made a part of the record hereof; and

NOW, THEREFORE the City of Wilsonville resolves as follows:

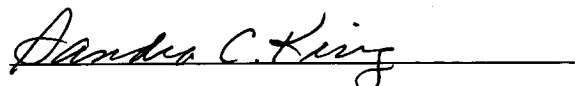
1. The City Council approves and authorizes the City Manager to sign the attached addendum to the Development Agreement between the City and The Village at Main Street, subject to the Village at Main Street simultaneously with the payment set forth in paragraph 2 below bringing current its installment payment on its SDC obligation to the City.
2. City Council authorizes payment of \$195,714 to The Village at Main Street following approval of this addendum and payment of \$34,739 to The Village at Main Street when the trail to Memorial Park is completed.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16th day of November 1998, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:



SANDRA C. KING, CMC, City Recorder

SUMMARY of Votes:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Helser	Yes
Councilor Barton	Yes
Councilor Luper	Yes

ADDENDUM TO DEVELOPMENT AGREEMENT

THIS ADDENDUM AMENDS AND SUPPLEMENTS THAT CERTAIN DEVELOPMENT AGREEMENT DATED APRIL 8, 1997, ("AGREEMENT") BETWEEN THE VILLAGE AT MAIN STREET - PHASE I LLC HEREIN REFERRED TO AS "DEVELOPER" AND THE CITY OF WILSONVILLE HEREINAFTER REFERRED TO AS "CITY". THIS ADDENDUM IS EFFECTIVE ON THE DATE EXECUTED. THE PARTIES AGREE THAT ANY CONFLICT BETWEEN THE TERMS OF THE AGREEMENT AND THIS ADDENDUM, THE ADDENDUM SHALL PREVAIL.

RECITALS

WHEREAS, this project involved City funding for its proportionate share of certain off-site improvements consisting of: widening of Wilsonville Road, construction of Jessica and Rebekah streets, oversizing of a sewer line through the site and construction of a trail from the Village at Main Street to Memorial Park; and

WHEREAS, the total construction costs for these projects were estimated at \$1,256,594 with the City share at \$957,997 as stated in Exhibit 7, Calculation of Costs of the Development Agreement; and

WHEREAS, subsequent changes in conditions resulted in an increase in project costs of \$321,077. Extensive review and analysis resulted in a staff and developer concurrence that the City share of the increase was \$150,753. Letters and memorandum summarizing the background for the increase will become a part of the record and include the following:

Letter from Village at Main Street dated October 29, 1998.

Memorandum from Eldon R. Johansen to Arlene Loble dated October 29, 1998.

Subject: Development Agreement between R.G. Johnson Associates and Village at Main Street With the City of Wilsonville for Widening of Wilsonville Road Adjacent to The Village at Main Street Project Construction of Jessica and Rebekah Streets, Oversizing of

a Sanitary Sewer Line and Construction of a Trail from the Village at Main Street Project to Memorial Park.

WHEREAS, based on the above, the Developer and the City have determined that the contract amount of \$957,997 is inadequate to complete the off-site improvements described in Section 5 of the Agreement and that the proportional share for the City as described in paragraph 5.3 and Exhibit 7 shall be increased from \$957,997 to \$1,108,750; and

WHEREAS, the Developer and the City have agreed that the additional funds provided by the City pursuant to this Addendum constitute the final funds to complete the off-site improvements described in Section 5 of the Agreement; and

WHEREAS, the Developer has completed the off-site improvements described in Exhibit 6 of the Agreement except for remaining punchlist items and the trail to the park; and

WHEREAS, the Settlement Agreement and Mutual Release (approved by Resolution 1358) dated February 21, 1997, provided reductions in SDCs of \$275,000 for The Village at Main Street; and

WHEREAS, the total loan and payment summary for The Village at Main Street as included at Exhibit 9 included that Phase II and Phase III loans totaling \$127,034 of a total payment of \$957,997; and

WHEREAS, the City anticipated that the use of \$127,034 of the \$957,997 total for Phase II and Phase III credits would result in SDC credits of \$127,034 per paragraph 5.2 of the agreement and The Village at Main Street anticipated they would be receiving the full \$957,997 for street construction per paragraph 5.1 of the Development Agreement in addition to the Phase II and Phase III credits; and

WHEREAS, the \$127,034 was subsequently adjusted upward to \$128,526 to bring credits and adjustments to exactly \$275,000 to match the Settlement Agreement; and

WHEREAS, The Village at Main Street is making debt service payments on the \$128,526 per paragraph 3.2 of the Settlement Agreement and Mutual Release between the City and The Village at Main Street; and

WHEREAS, The Village at Main Street has applied for building permits for Phase II and Phase III will be paying systems development charges so that the \$79,699 that The Village at Main Street desires to be paid and the previously established Phase I credit of \$48,877 will be quickly returned to the City; and

WHEREAS, the Community Development Director supports the additional payment of \$128,526 to Village at Main Street in lieu of establishing systems development charge credits; and

WHEREAS, The Village at Main Street and City recognizes that the \$128,526 of additional financing \$79,699 was applied to the note and \$48,827 was used for additional SDC credits; and

WHEREAS, The Village at Main Street recognizes that Phase II and Phase III credits have been used and are no longer available; and

WHEREAS, the Developer and City acknowledge that as the date of this addendum \$230,452 (total City share of \$1,108,750 less amount paid on project of \$878,298) is the remaining balance for the City share of improvements; and

WHEREAS, the Developer acknowledges receipt of \$878,298 to date for work completed pursuant to the Agreement and a transfer for a debt service payment of \$79,699 and establishment of an SDC credit of \$48,827; and

WHEREAS, the Developer and City acknowledge that, as of the date of this addendum, \$230,452 (total City share of \$1,108,750 less amount paid on project of \$878,298) is the remaining balance of the contract sum; and

WHEREAS, the City acknowledges that \$230,452 is unpaid; and

WHEREAS, the Recitals set forth above are contractual and are to be considered to be part of this Addendum and to be construed to effectuate this Addendum; and

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises hereinafter set forth, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Total Contract Sum. The City shall make available additional funds of \$230,452 to complete the off-site improvements described in Section 5 of the Agreement. The total City share of improvements will be \$1,108,750 and is exclusive of the Phase II and Phase II credits.
2. Completion of Remaining Punchlist Items. The Developer shall complete the remaining punchlist items on Wilsonville Road and the park improvements as described in Exhibit 6 of the Agreement date or condition.
3. Approval of Draw Amounts. The City agrees to disburse \$195,714 within five (5) days of the execution of this Addendum leaving \$34,739 as the remaining balance to be paid when the trail to the park is completed.
4. No Further Requests for Funds. Developer agrees to make no further request for funds beyond the total contract sum of \$1,108,750. Payment of this amount shall constitute full settlement and compromise of any dispute existing (on the effective date of this Addendum) between the parties for contract claims, offsets or sums owing involving the matters set forth above. Execution of this Addendum does not affect any dispute or claims the Developer may have related to issues not addressed in this Addendum, including but not limited to land use planning and conveyances of real property or any enforcement action or actions the City may

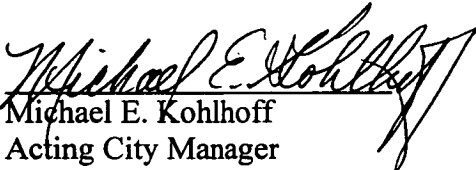
have against the developer, including but not limited to signage violations or indemnification from contractor claims.

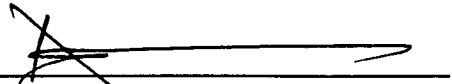
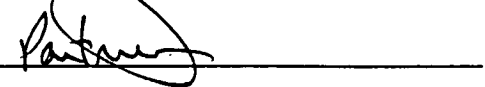
5. Time. TIME IS OF THE ESSENCE with respect to the performance of the duties and obligations of this Addendum.

6. Entire Agreement. This Addendum and the Development Agreement dated April 8, 1997, constitute the entire agreement between parties, integrate all of the terms and conditions mentioned herein or incidental hereto, and supersede all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

THE CITY OF WILSONVILLE

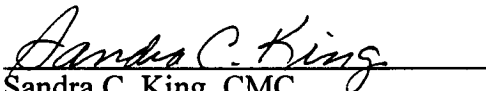
R.G. JOHNSON & ASSOCIATES


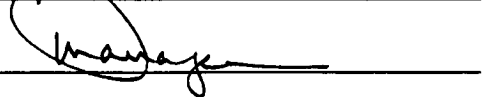
By: 
Michael E. Kohlhoff
Its: Acting City Manager

By: 
Its: 

ATTEST:

VILLAGE AT MAIN STREET –
PHASE I LLC


Sandra C. King, CMC
City Recorder

By: 
Its: 

Recording Requested by & After
Recording Return To
U.S. BANK NATIONAL ASSOCIATION
Commercial Real Estate Loan
Administration
111 SW Fifth Ave, Suite 700
Portland, OR 97204
Attn: Robyn

SUBORDINATION AGREEMENT

THIS AGREEMENT, Made and entered into this 26th day of October, 1998, by and between CITY OF WILSONVILLE, OREGON, an Oregon municipal corporation ("first party"), and U.S. BANK NATIONAL ASSOCIATION ("US Bank");

WITNESSETH:

On or about February 21, 1997, VILLAGE AT MAIN STREET - PHASE I, LLC, an Oregon limited liability company ("VILLAGE AT MAIN"), being the owner of the following described property in Clackamas County, Oregon, to-wit:

Proposed lots 1, 2, 3 and 4, MAIN STREET VILLAGE and more particularly described on City of Wilsonville Trust Deed hereinafter discribed.

executed and delivered to the first party his certain Trust Deed/Mortgage ("first party's lien") on said described property to secure the sum of TWO MILLION TWO HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED FORTY AND NO/100THS DOLLARS (\$2,218,740), which lien was recorded in the office of the County Clerk or Recorder of the County of Clackamas, State of Oregon on February 23, 1998 as Fee Number 98-013596. Reference to the document so recorded hereby is made. The first party has never sold or assigned his said lien and at all times since the date thereof has been and now is the owner and holder thereof and the debt thereby secured; and

US BANK has previously loaned ROBERT J. JOHNSON and VILLAGE AT MAIN \$5,800,000 secured by Trust Deed recorded May 6, 1996 as Fee No. 96-031903 (covers all of proposed MAIN STREET VILLAGE) and;

\$14,700,000 secured by Trust Deed recorded May 27, 1997 as Fee No. 97-039208 (covers proposed Lots 1, 2 & 3 MAIN STREET VILLAGE); and

\$14,163,750 secured by Trust Deed recorded May 27, 1997 as Fee No. 97-039209 (covers proposed Lot 4 MAIN STREET VILLAGE); and

which loans and liens are currently and will continue to be first, prior and superior to that of the first party's lien; and

US BANK is about to loan the additional sum of TWO MILLION ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$2,100,000.00) to VILLAGE AT MAIN, the present owner of the property above described, with interest thereon at a rate not exceeding a floating rate equal to US Bank Prime plus one and one-half percent per annum, said loan to be secured by the said present owner's Trust Deed/Mortgage ("US BANK's lien") upon said property and to be repaid within not more than eighteen months from its date.

To induce US BANK to make the loan last mentioned, the first party heretofore has agreed and consented to subordinate first party's lien to the lien about to be taken by US BANK as above set forth.

NOW, THEREFORE, for value received and for the purpose of inducing US BANK to make the loan aforesaid, the first party, for himself, his personal representatives (or successors) and assigns, hereby covenants, consents and agrees to and with US BANK, its personal representatives (or successors) and assigns, that the said first party's lien on said described property is and shall always be subject and subordinate to the lien about to be delivered to US BANK, as aforesaid, and that US BANK's said lien in all respects shall be first, prior and superior to that of the first party; provided always, however, that if US BANK's said lien is not duly filed or recorded within 45 days after the date hereof, this subordination agreement shall be null and void and of no force or effect.

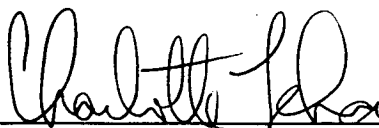
It is expressly understood and agreed that nothing herein contained shall be construed to change, alter or impair the first party's said lien, except as hereinabove expressly set forth.

In construing this subordination agreement and where the context so requires, the singular includes the plural; the masculine includes the feminine and the neuter, and all grammatical changes shall be supplied to cause this agreement to apply to corporations as well as individuals.

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed the day and year first above written and, if undersigned is a corporation, by an officer or officers duly thereunto authorized by its Board of Directors.

FIRST PARTY:

CITY OF WILSONVILLE, OREGON, an
Oregon municipal corporation

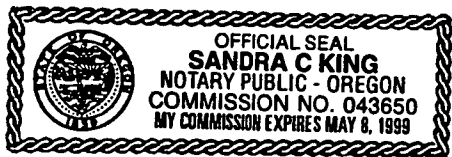
by 
Name: CHARLOTTE LEHAN
Title: MAYOR

SUBORDINATION AGREEMENT
Village at Main Street - Phase I, LLC

STATE OF OREGON)
) ss.
County of Clackamas)

On this the 16TH day of NOVEMBER, 1998, before me appeared CHARLOTTE LEHAN, to me personally known, who being duly sworn did say that he/she is the MAYOR of the CITY OF WILSONVILLE, OREGON, and that the said instrument was signed in behalf of said Corporation by authority of its Board of Directors, and he/she acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Sandra C. King
Notary Public for Oregon
My commission expires 5-8-99

SUBORDINATION AGREEMENT
Village at Main Street - Phase I, LLC