

RESOLUTION NO. 1805

A RESOLUTION OF THE CITY OF WILSONVILLE OREGON APPROVING A DEVELOPMENT AGREEMENT BETWEEN WILSONVILLE LTC PROPERTIES AND THE CITY OF WILSONVILLE PROVIDING FOR A CREDIT AGAINST STREET SYSTEMS DEVELOPMENT CHARGES AND A PAYMENT TO WILSONVILLE LTC PROPERTIES FOR CONSTRUCTION OF ROAD IMPROVEMENTS BEYOND THAT WHICH IS NECESSARY TO SERVE THE VINTAGE SUITES PROJECT AND APPROVING AN ADDITION TO THE CAPITAL IMPROVEMENTS PLAN.

WHEREAS, Wilsonville LTC Properties has obtained Stage II final approval for the Vintage Suites residential community site and this approval had conditions requiring improvements on Parkway Avenue; and

WHEREAS, the Development Review Board has conditioned the project to provide improvements which are in excess of those which are required to serve the Vintage Suites project; and

WHEREAS, a project needs to be in an approved Capital Improvements Plan before the City can participate in project funding; and

WHEREAS, the conditions for development of the Vintage Suites project includes the reconstruction and widening of Parkway Avenue adjacent to and south of the Vintage Suite project; and

WHEREAS, the Parkway Avenue improvements are not included in a Capital Improvements Plan; and

WHEREAS, Wilsonville LTC Properties has paid \$66,903 in street systems development charges.

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


1. The City Council adopts the recitals as findings and incorporates by reference for this resolution.
2. The City Council approves and authorizes the City Manager to sign the Development Agreement between Wilsonville LTC Properties and the City of Wilsonville.

3. The City Council authorizes addition of the reconstruction and widening of Parkway Avenue to the 2002/2003 Street Capital Improvements Plan, with payment of the City's share of the project of \$120,000 from street systems development charges. Payment subject to adjustment based on actual costs.
4. The invalidity of any section cause or provision of this resolution shall not affect the validity of any other part or section of this resolution which can be in effect without such invalid part(s).
5. Appropriation of funds will require a supplemental budget amending the approved FY 02-03 Capital Projects Budget.
6. This resolution is effective upon adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 4th day of November 2002, and filed with the Wilsonville City Recorder this same date.


CHARLOTTE LEHAN, Mayor

ATTEST:


Sandra C. King, CMC, City Recorder

SUMMARY of votes:

| | |
|------------------|-----|
| Mayor Lehan | Yes |
| Councilor Helser | Yes |
| Councilor Kirk | Yes |
| Councilor Barton | Yes |
| Councilor Holt | Yes |

AGREEMENT

This Agreement is made by and between Wilsonville LTC Properties, LLC ("Owner"), and the City of Wilsonville ("City"), and is entered into as the last date of execution. Owner and City may be referred to herein individually as a "Party," and collectively as the "Parties."

RECITALS

1. Owner holds fee title to that real property described on Exhibit A hereto (the "Site"), which lies adjacent to and east of Parkway Avenue.
2. Pursuant to Wilsonville Code ("Ordinance") § 386 and Council Resolution No.842 City assesses Street System Development Charges (the "SDCs") that are payable upon receipt of building permit applications. The design and construction of the Parkway Improvement (defined below) is a segment of the Parkway Avenue Improvement Project on the City's Capital Improvement Plan. Section 1 of Article V of Resolution No. 842 provides that an applicant for a building permit is eligible for credit against the SDCs for constructing a qualified capital improvement, as provided in Ordinance No. CB-0-156-91, at Article IX. Section 3 of Article IX of such Ordinance authorizes the City to provide credits which exceed the SDC charged for the type of improvement being constructed and, further, authorizes the City to provide a share of the cost of such improvement by other means, if the City so chooses. Section 4 of Article IX of such Ordinance further provides that the City Council may also provide reimbursement of the credit from the appropriate SDCs collected in accordance with the payback provisions for extension of services under Wilsonville Code 3.116 and, in conjunction with transportation SDC credits, provides that the extension of the provision of streets and roads and attendant facilities shall be included as being subject to credit reimbursement from transportation system development charges under the reimbursement provisions set forth in Wilsonville Code 3.116. Section 7 of Article IX of such Ordinance also provides that credits provided for under the Ordinance are assignable so long as they apply to the property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned.
3. The Owner obtained Stage II Final Plan approval (City File No. 99DB15) for the Vintage Suites Residential Community Site which required certain improvements on Parkway Avenue and Memorial Drive. The motion upon which the Development Review Board approved the Owner's final plan and design plans stated specific conditions of approval. The conditioned improvements on Parkway Avenue and Memorial Drive are described in Condition PF 13 as amended and adopted by the Development Review Board on July 26, 1999, and extended by the Development Review Board on June 27, 2001 (case file number 99DB15 Extension). The full text of PF 13 is attached as Exhibit B.

The aforementioned improvements described in PF 13 shall be hereinafter referred to as the Improvements.

4. The Parties wish to complete construction of the Improvements in a manner that fully satisfies the conditions of approval described in Recital 3 pursuant to the terms of this Agreement.
5. The Improvements are in compliance with the above recited land use requirements. The City's contracting officer has determined the construction of the Improvements by the Owner and its designated contractor is exempt from competitive bidding in that (1) it is unlikely that such

exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

AGREEMENT

1. The Owner's Obligations. The Owner will:

- A. Timely take all action reasonably necessary to assist the other Parties and each of them, their agents and assigns, in completing their respective obligations under this Agreement.
- B. Design and construct the Improvements to the City's public works standards. The Owner shall use reasonable best efforts to complete such construction by December 31, 2002. If The Owner is delayed in any way in progress toward completion of such construction, by any cause outside of the Owner's control, then this completion date may be extended for an amount of time commensurate with such cause. Upon written acceptance of the Improvements by the City, the Owner has fully performed the obligations set forth in this subsection of the Agreement.
- C. Maintain access to adjacent properties during the construction of the Improvements.

2. City's Obligations. City will:

- A. Timely take all action reasonably necessary to assist the other Parties and each of them, their agents and assigns, in completing their respective obligations under this Agreement. Such action shall include, but not be limited to, expeditious processing of any request for permits or other approvals that the Owner, its agents and assigns, need in order to construct the Improvement.
- B. Subject to City inspection and compliance with City street design and public works standards, accept completion of the Improvement. City shall affirmatively acknowledge in writing that such acceptance constitutes full satisfaction with the conditions of permit approval described in Recitals 3.
- C. Grant the Owner SDC Credits for the construction cost of the Improvement as follows:
 - 100% of construction costs associated with improvements on Parkway Avenue beyond the first 24 feet of pavement width. Pavement width to be measured west from the eastern curb line.
 - 100% of construction costs associated with improvements on Parkway Avenue south of a line drawn between the southerly boundary of the Owner's property and the north property line of tax lot 306 of Kalyca Terrace.
 - A pro-rata share of actual engineering fee, permit fees, bond costs, testing and special inspection costs, project administration, and other direct project costs.
 - Construction costs will be determined by the itemized bid costs submitted by the Owner's contractor and actual contracts and/or invoices for the other project costs described above.

- The scope of the work is defined by the Construction Documents approved by the Community Development department of the City of Wilsonville under permit # P-02022.
 - The total project cost and SDC Credits are shown in the attached Exhibit C.
- D. Upon acceptance of the Improvement, reimburse the Owner for SDC fees already paid in an amount of the SDC credit described above.
- E. In the event City receives any funds for the construction of the Improvement set forth herein or for the acquisition of such real property interests by way of grants, tax increment, or other funding beyond that received normally and customarily by the City, the City shall apply at least 100 percent of the funds received for the construction of said improvements to the cost of the improvements borne by the Owner net of applicable credit. This shall be accomplished either by financial reimbursement to the Owner or direct assumption by the City of the construction obligations as mutually agreed by both parties.
- F. Assist the Owner in pursuing vacation of unused portions of the Right-Of-Way along the east side of Parkway Avenue.
3. Indemnity: Each Party agrees to indemnify the other Parties and hold them harmless from and against any and all claims of liability arising out of the Party's actions under this Agreement to the extent such claims allege that the Party has either failed to perform as required in the Agreement or performed negligently. The Owner hereby specifically indemnifies the City against any obligation to pay contractors or suppliers of the Improvement.
4. Dispute Resolution: Controversies among the Parties and/or between any two of them shall be resolved, to the extent possible, by informal meetings and discussions in good faith between them. If a dispute cannot be resolved in that manner with five (5) business days of the first such meeting, any part may elect to exercise its right to require mediation of the dispute.

During mediation, the Parties agree to negotiate in good faith as to the matter submitted to mediation. In such event, the Party requesting mediation shall appoint a recognized mediator. No mediator shall be an employee, officer, board member, consultant, supplier or customer, or otherwise be affiliated with any of the Parties. The mediator shall be reasonably qualified to act as a mediator with respect to construction contracts. Each Party shall share equally in the out-of-pocket costs for mediation; provided that the mediator shall be empowered to require one Party to pay more than its pro rata share of the expenses if the mediator determines that such Party is not negotiating in good faith in the mediation process. In no instance, however, shall any Party be required to pay attorneys' fees incurred in the mediation by the other Party. The location of the mediation and specific procedures relating to the mediation shall be determined by the mediator, and each Party agrees to comply with all decisions, directions, instructions and procedures made or established in good faith by the mediator.

If the Parties are unable to resolve a controversy using mediation within fifteen (15) days after commencement thereof, the dispute shall be settled by binding arbitration, and a corresponding judgment may be entered in a court of competent jurisdiction. Arbitration of any dispute may be initiated by any Party by sending a written demand for arbitration to the other Party. This demand will specify the matter in dispute and request the appointment of an arbitrator. The mailing of the demand to the Parties at the address set forth herein will be deemed personal

service and accepted by the Parties for any arbitration or proceeding with respect to this Agreement. The arbitrator will be selected from a list provided by the arbitration service selected by the Party initiating arbitration. The arbitration hearing will be conducted in accordance with the procedural rules set forth in the arbitration rules of the arbitration service selected. The situs of the arbitration will be in the Portland-Metropolitan Area or such other place as the Parties agree. The arbitrator shall not be empowered to award punitive or exemplary damages to any Party. The decision of the arbitrator shall be binding on the Parties and may be enforced by any court of competent jurisdiction.

5. Notices. All notices under this Agreement shall be in writing and delivered in person, by facsimile, or by first-class mail to the following:

If to the Owner:
Tony Koach
2301 NW Thurman, Suite K
Portland, Oregon 97210

If to City:
Michael Kohlhoff, City Attorney
City of Wilsonville
3000 SW Town Center Lp E
Wilsonville, OR 97070

6. Assignment. The Agreement is binding upon each Party, their successors, heirs or assigns including, but not limited to, any successor interest in Exhibit A. The rights and obligations of any Party to this Agreement may be assigned to any other entity without the prior written consent of the other Parties.
7. Attorney Fees. In the event of any suit, action or arbitration concerning the subject matter of the Agreement, the losing party agrees to pay such sum as the trial court, appellate court or arbitrator may adjudge reasonable as attorneys' fees together with all reasonable costs expended therein. In no instance, however, shall any Party be required to pay attorneys' fees incurred by the other Party in mediation.
8. Integration/Modification. This Agreement represents the entire agreement between the Parties and each of them on the issues described herein and supersedes all prior negotiations, representations, or agreements. This Agreement may be amended only by a written document signed by all Parties.
9. Severability. Should any provision of this Agreement at any time be determined by competent government or judicial authority to conflict with any law, ruling or regulation, and be unenforceable, then such provision shall continue in effect only to the extent that it remains valid and the remainder of this Agreement shall nevertheless remain in full force and effect.

10. Authority. Each signatory hereto represents that he or she is authorized to obligate the Party on whose behalf he or she executes this Agreement to perform that Party's obligations hereunder.

Dated: _____

Wilsonville LTC Properties, LLC

By: _____

Its: _____

Dated: Nov. 6, 2002

CITY OF WILSONVILLE

By: [Signature]

Its: CITY MANAGER

Approved as to form:

By: [Signature]

Michael E. Kohlhoff
Wilsonville City Attorney

Fully executed agreement is in the contract section of the vault.

**Developer's Agreement
City of Wilsonville and Wilsonville LTC Properties, LLC
Exhibit A**

LEGAL DESCRIPTION OF PROPERTY

**A portion of the NW 1/4 of the SW 1/4 of Section 23, TWP. 3S., RNG. 1W., W.M.
City of Wilsonville, Clackamas County, State of Oregon**

PF 13. Parkway Avenue was originally constructed as a "frontage road" adjacent to I5 and lacks conformance with current street standards. Corrective measures include on-site and off-site improvements. The applicant has prepared preliminary off-site cost estimates indicating that the value of the improvements is in excess of the creditable street system development charges. Staff is proposing the following improvements and construction timelines.

Improvements

- A. 28-ft improvement adjacent to the project frontage (curbs on east side only).
- B. A public storm drainage system that extends north from the existing 48" storm pipe located in Parkway Avenue to Memorial Drive sized to convey all storm water passed by the upstream contributing drainage basins. The applicant shall coordinate with the design team of the Village at Main Street Project to determine the location and quantity of storm water.
- C. Streetlights.
- D. Reconstruction of the existing curves to the south end on Parkway Avenue to meet AASHTO design standards for a 25 mph design speed.
- E. Reconstruction of the existing roadway adjacent to the Willamette Inn and the proper transition to the existing improvement along Memorial Drive.
- F. A five-foot meandering concrete sidewalk adjacent to the project frontage on parkway Avenue and from the existing sidewalk on Memorial Drive west to the project's east property line.

Developer's Agreement
City of Wilsonville and Wilsonville LTC Properties, LLC

| Construction Costs | Total Cost | Credit | Notes |
|---------------------------------|-------------------|------------------|--|
| Supervision | \$3,000 | \$540 | |
| Support Costs | \$2,000 | \$360 | |
| Surveying | \$5,000 | \$900 | |
| Clean Up | \$1,000 | \$180 | |
| Contingency | \$25,000 | \$4,500 | |
| Contractor's Fee | \$31,430 | \$5,657 | |
| Site Testing General | \$5,250 | \$945 | |
| Subtotal | \$72,680 | \$13,082 | Based on pro rated share of construction costs below |
| Site Clearing/Mobilization | \$16,150 | \$4,296 | |
| Erosion Control | \$8,779 | \$1,317 | |
| Storm System | \$166,182 | \$10,151 | |
| Street Lighting | \$21,252 | \$2,125 | |
| Street Improvements | \$144,705 | \$38,500 | |
| Sidewalks | \$15,421 | \$3,084 | |
| Curb and Gutter | \$10,166 | \$2,234 | |
| Driveway Apron | \$3,985 | \$0 | |
| Water | \$28,610 | \$14,305 | |
| Sanitary Sewer | \$21,833 | \$9,576 | |
| Franchise Utilities | \$53,500 | \$6,816 | |
| Landscape | \$39,581 | \$2,771 | |
| Subtotal | \$530,164 | \$95,175 | 18% |
| Total Construction Costs | \$602,844 | \$108,257 | |
| Other Costs | | | |
| Engineering | \$44,345 | \$7,982 | |
| Permit | \$17,186 | \$3,093 | |
| Bond | \$0 | \$0 | |
| Maintenance Bond | \$773 | \$139 | |
| Subtotal | \$62,304 | \$11,215 | Based on pro rated share of construction costs above |
| Grand Total | \$665,148 | \$119,472 | |