

**RESOLUTION NO. 1804**

**A RESOLUTION OF THE CITY OF WILSONVILLE, OREGON APPROVING A DEVELOPMENT AGREEMENT BETWEEN WILSONVILLE INVESTORS, LLC AND THE CITY OF WILSONVILLE PROVIDING FOR DEDICATION OF RIGHT OF WAY OVERSIZING OF A SANITARY SEWER AND CONSTRUCTION OF ROAD IMPROVEMENTS BEYOND THAT WHICH IS NECESSARY TO SERVE THE LOWRIE'S MARKETPLACE PROJECT; PROVIDING FOR CITY PAYMENT FOR SOME RIGHT OF WAY DEDICATION AND IMPROVEMENTS; PROVIDING FOR A REDUCTION IN SYSTEMS DEVELOPMENT CHARGES IN RECOGNITION OF PRIOR DEVELOPMENT ON THE PROPERTY AND IN APPROVING ADDITIONS TO THE CAPITAL IMPROVEMENTS PLAN.**

WHEREAS, WILSONVILLE INVESTORS, LLC has obtained planning approval for two different plans for development on the former Lowries grocery store property and the former Wilsonville grade school; and

WHEREAS, the planning for the development of the property limited the project scope to ensure that traffic from the Lowries Marketplace project was no greater than traffic from the property based on former use; 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 Lowrie Marketplace project and also essential to provide adequate capacity for future growth; and

WHEREAS, the Wilsonville grade school, the former Post Office and the two buildings that were used for commercial purposes on the Lowrie project had a substantial demand on the City infrastructure; and

WHEREAS, Ordinance No. 386, Article 8 allows an exemption from systems development charges for an alteration addition replacement or change in use that does not increase the use of capital improvements; and

WHEREAS, the specific background and legal basis for the exemption are provided in the recitals of the development agreement; 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 Lowries Marketplace project includes the following:

Dedication of additional right of way on Wilsonville Road, construction of an extension of Bailey Street, dedication of additional right of way on Boones Ferry Road and reconstruction and over sizing of a sewer line across the project; and

WHEREAS, the Bailey Street improvements and the Boones Ferry Road improvements are in the improvements as described in the 1991 Capital Improvements Plan; and

WHEREAS, the dedication of right of way for a potential future widening of Wilsonville Road and the reconstruction and over sizing of the sewer line across the property are not included in a Capital Improvements Plan; and

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

1. The City Council adopts the recital 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 Investors, LLC and the City.
3. The City Council authorizes addition of the reconstruction and over sizing of the sewer line across the project to the 2002/2003 Sewer Capital Improvements Plan with the City's share of the project at \$60,000 with payment for the over sizing from Sewer Systems Development Charges. Final payment subject to adjustment for actual costs.
4. City Council authorizes addition of the acquisition of additional Right of Way on Wilsonville Road to the Street Capital Improvement Plan for 2002/2003 with payment in an estimated amount of \$130,000 from Urban Renewal. This payment is subject to addition of this acquisition of Right of Way for potential street widening to the 1991 Transportation Master Plan. Payment subject to adjustment based on appraisal.
5. The City Council approves addition of the acquisition of right of way for ½ of the street widening of the extension of Bailey Street to the 2002/2003 Street Capital Improvements Plan with an estimated City cost of \$190,000 with payment from Urban Renewal Funds.


Payment subject to adjustment based on appraisal and actual construction costs. Payment subject to adjustment subject to construction cost and appraisal.

6. That City Council approves addition of approximately a 6 foot widening of Boones Ferry Road for the first 500 feet South of Wilsonville Road as in addition to the 2002/2003 Street Capital Improvements plan with an estimated City cost of \$40,000 right of way with the City share being 60% of the cost with payment from Urban Renewal Funds. Final cost subject to appraisal. Payment subject to adjustment subject to appraisal.
7. 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).
8. Appropriation of funds will require a supplemental budget amending the approved FY 02-03 Capital Projects Budget.
9. This resolution is effective upon adoption.

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

  
CHARLOTTE LEHAN, Mayor

ATTEST:

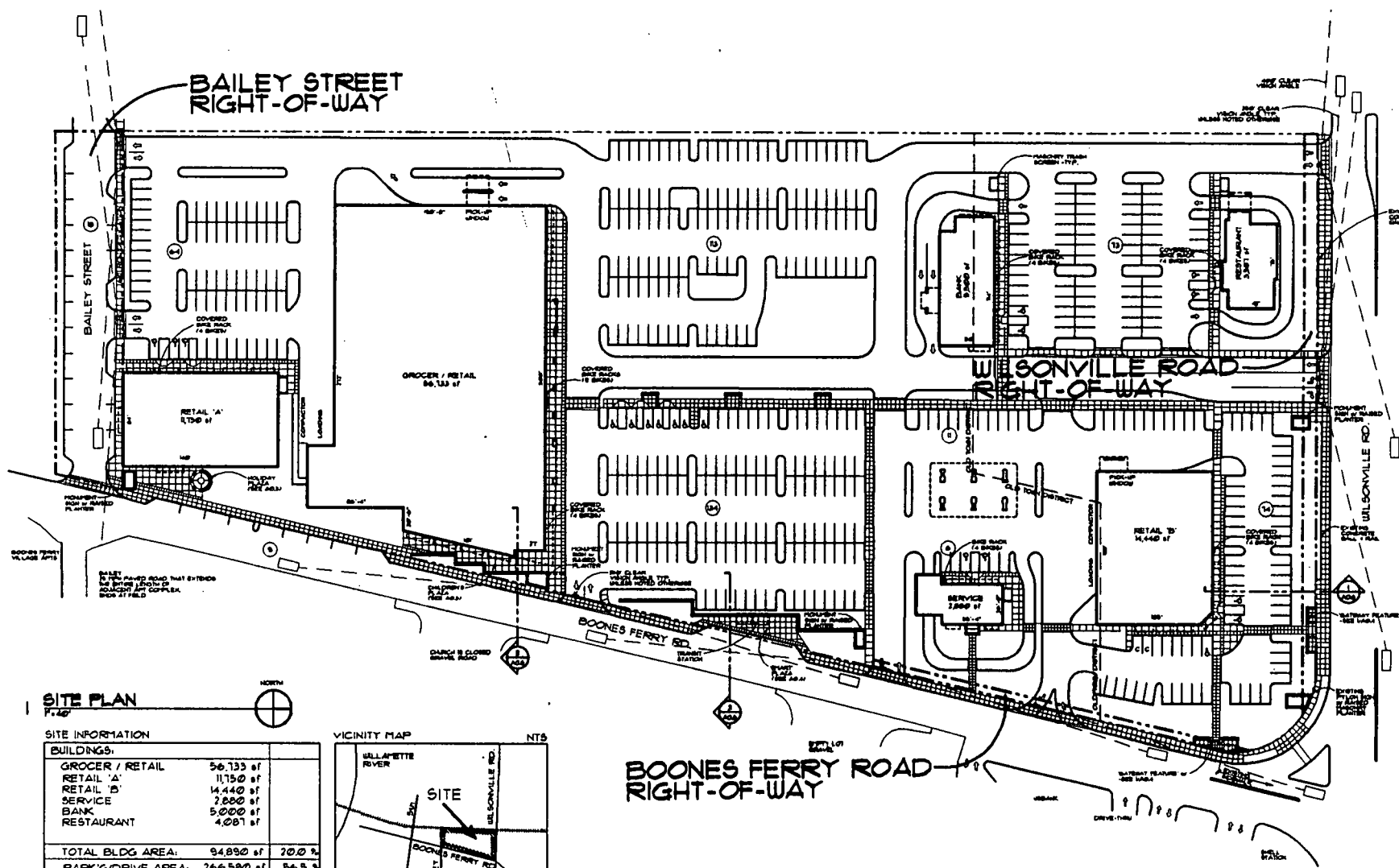
  
Sandra C. King, CMC, City Recorder

SUMMARY of votes:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Kirk	Abstain
Councilor Barton	Yes
Councilor Holt	__ Yes

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TILAND / SCHMIDT ARCHITECTS, P.A.  
 1430 SW PROSPECTOR  
 PORTLAND, OR 97201  
 PHONE: 503-253-2800  
 FAX: 503-253-2801  
 WWW.TSARCH.COM

LOWRIES MARKETPLACE  
 WILSONVILLE, OREGON  
 KILLIAN PACIFIC

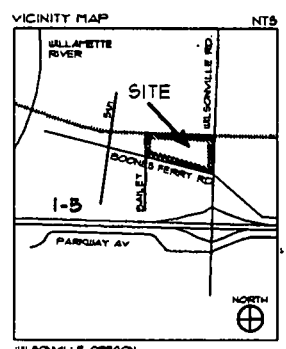
**SITE PLAN**  
 P124

**SITE INFORMATION**

BUILDINGS:	
GROCEER / RETAIL	86,133 sf
RETAIL 'A'	1,750 sf
RETAIL 'B'	14,440 sf
SERVICE	2,800 sf
BANK	5,000 sf
RESTAURANT	4,087 sf
<b>TOTAL BLDG AREA:</b>	<b>94,890 sf 20.0 %</b>
<b>PARK'G/DRIVE AREA:</b>	<b>266,580 sf 56.3 %</b>
<b>LANDSCAPING AREA:</b>	<b>111,252 sf 23.3 %</b>
<b>TOTAL SITE AREA:</b>	<b>472,762 sf</b>

**PARKING (ON SITE ONLY)**

TOTAL PARKING:	415
PARKING RATIO:	5011/000



**BOONES FERRY ROAD RIGHT-OF-WAY**

**EXHIBIT 'A'**

**SITE PLAN 'A'**  
 PROJECT NO. 211891  
 DATE: 07.15.01  
 DRAWN BY: [blank]  
 CHECKED BY: [blank]  
 REVISIONS

A	0.1
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## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement"), dated as of this \_\_\_ day of October 2002, is made by and between Wilsonville Investors, LLC, an Oregon limited liability company ("Investors") and the City of Wilsonville, an Oregon municipal corporation (the "City").

### RECITALS

A. Investors is developing Lowrie's Marketplace, an 11.28-acre neighborhood/service commercial center in the southwest quadrant of the intersection of Wilsonville Road and Boones Ferry Road in the City of Wilsonville (the "Development").

B. Investors has obtained City approval (hereafter "Approval" or "Approvals") of its land use applications for Zone Map Amendment and Stage I Preliminary Plan Approval (Zoning Order 02DB07(1); Resolution No. 1793) and Stage II Final Plan Approval, Site and Design Plan Approval and Type C Tree Removal Permits, all for alternative site plans A and B (Case File Nos. 02DB07(2), 02DB07(3)).

C. The Approvals have conditions limiting the Development's future traffic impacts. Condition PF24 states that "The current application shall not exceed the number of trips previously generated to the site by prior development," so that the conditions of the surrounding transportation system will not be worsened by the Development.

D. However, in anticipation of the need for future public improvements along the frontage of the Development, Conditions to the Approval PF20 and PF21 require certain public infrastructure improvements and/or right-of-way dedications which are either unrelated to or are not roughly proportional to the impacts of the Development.

E. The City's general Systems Development Charge ordinance (Ordinance 386, the "SDC Ordinance") also provides credits against SDCs for constructing qualified capital improvements required as a condition of development approval by the City, which reduce the development's demands upon existing capital improvements and a need for further capital improvements that would otherwise have to be constructed by the City.

F. Portions of the work to be performed under Conditions of Approval PF20 and PF21 would be creditable against SDCs. Specifically, PF20 recites that the south 24 feet of the construction costs of Bailey Street shall be creditable against street SDCs. Further, PF21 recites that partial SDC credits equal to the costs associated with over-sizing the pipe and the additional trenching/backfill costs will be available on the east/west line.

G. In conjunction with the SDC Ordinance, the City has adopted a number of additional ordinances that impose SDCs for infrastructure development, including, Sewer SDCs, Water SDCs, Parks SDCs, Street SDCs, and I-5 Supplemental SDCs. Due to earlier development of the subject property, the Development will be eligible for SDC credits when the subject property is re-developed.

H. Unless otherwise exempted by the provisions of the SDC Ordinance, SDCs are imposed upon all new development within the City. Because the Development is a redevelopment that does not increase the use of capital improvements beyond that used by the prior developments, the City has determined that the Development is exempt from certain SDCs imposed by the SDC Ordinance.

I. However, Section 3 of the SDC Ordinance recognizes the City's authority to provide a share of the cost of such improvements by means other than SDC credits, if the City so chooses.

J. Condition PF25 requires that "The applicant shall enter into negotiations with the City to reach a mutually acceptable development agreement with the City to address compensation to the applicant for the acquisition and dedications of right-of-way in the completion of the conditioned public/private improvements under PF20 and PF21 as related to the completion of the development."

K. Investors has accepted Conditions of Approval PF20 and PF21, subject to reaching a mutually acceptable development agreement with the City as contained in this Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

## **I. GENERAL PROVISIONS**

### **A. System Development Charges**

#### **1. Bailey Street Improvements**

The parties agree that the Development is exempt under the provisions of Section 7 of the SDC Ordinance, because the Development replaces existing developments on the site without exceeding the transportation impacts of the existing developments. The parties agree that Investors, as a measure of compensation provided in Section II.C.2 below, is entitled to reimbursement for the full value of all of the SDC credits otherwise available to the Development for the south 24 feet of the construction costs of Bailey Street under PF 20 and for the costs associated with oversizing the pipe and the additional trenching/backfill costs under PF 21.

#### **2. Street SDCs**

The City estimates that the total Street SDC charges for the full build-out of the Development would be \$995,544 based on the applicable Street SDC fees in effect at the time of approval of Investors' land use application. Due to earlier improvements on and adjacent to the Development, as well as the previous PM Peak Hour trips generated by the previous uses on the subject property, the total Street SDC charges shall be reduced by the amount of \$995,544.

#### **3. Sewer SDCs**

Due to earlier improvements on and adjacent to the Development, as well as the previous development and uses on the subject property, the total Sewer SDC charges shall be reduced by the amount of \$106,416.

#### **4. Storm SDCs**

The City estimates that the total Storm SDC charges for the full build-out of the Development would be \$65,590 based on the applicable Storm SDC fees in effect at the time of approval of Investors' land use application. Due to earlier improvements on and adjacent to the Development, as well as the previous development and uses on the subject property, the total Storm SDC charges shall be reduced by the amount of \$43,766.

## **5. Parks SDCs**

Due to earlier improvements on and adjacent to the Development, as well as the previous development and uses on the subject property, the total Parks SDC charges shall be reduced by the amount of \$9,048.

## **6. Water SDCs**

Due to earlier improvements on and adjacent to the Development, as well as the previous development and uses on the subject property, the total Water SDC charges shall be reduced by the amount of \$148,935.

## **7. I-5 Supplemental SDCs**

The City estimates that the total I-5 Supplemental SDC charges for the full build-out of the Development would be \$702,000 based on the applicable I-5 Supplemental SDC fees in effect at the time of approval of Investors' land use application. Due to earlier improvements on and adjacent to the Development, as well as the previous development and trip generation by the uses on the subject property, the total I-5 Supplemental SDC charges shall be reduced by the amount of \$702,000.

### **B. Future Improvements to Wilsonville Road and Boones Ferry Road**

#### **1. Wilsonville Road**

If Wilsonville Road is widened in the future by the City along the frontage of the Development, the City shall be solely responsible for the construction and costs of those improvements.

The City acknowledges that Investors plans to construct those improvements shown on Exhibit A within the newly acquired portion of Wilsonville Road. The City hereby grants Investors a permanent license to construct, maintain and repair such improvements. If relocation of the improvements is necessitated due to additional widening of Wilsonville Road, the City shall relocate such improvements at its sole cost and expense to a new location mutually agreed to by the parties.

#### **2. Boones Ferry Road**

If Boones Ferry Road is widened in the future by the City along the frontage of the Development, the City and Investors agree and acknowledge that the widening will not require additional right-of-way from the Development. In addition, the parties agree that when such widening occurs in the future, the City shall be solely responsible for the construction and costs of those improvements.



The City acknowledges that Investors plans to construct those improvements shown on Exhibit A within the newly acquired portion of Boones Ferry Road. The City hereby grants Investors a permanent license to construct, maintain and repair such improvements. If relocation of the improvements is necessitated due to additional widening of Boones Ferry Road, the City shall relocate such improvements at its sole cost and expense, to a new location mutually agreed to by the parties.

**C. Post Office Lease**

The amount of compensation to be paid by the City to Investors for the value of infrastructure improvements that exceed impacts of the Development and/or right-of-way acquisition under this Agreement shall be offset by sum of \$50,000.00, being the amount previously paid by the City for the value of the unexpired post office lease. If not previously executed by the City, the City shall, upon the execution of this Agreement, execute a form of lease termination agreement acknowledging the termination of the Post Office Lease and the obligation of Investors to pay the sum of \$50,000, which shall be offset against the City's obligations as provided herein.

**II. LOWRIE'S MARKETPLACE INFRASTRUCTURE IMPROVEMENTS**

**A. Wilsonville Road Frontage**

**1. Specific Right-Of-Way Dedications and Improvements**

(a) Dedications. PF 20 requires that Investors shall dedicate 12-feet of additional right-of-way and a 6-foot public utility easement along the Development's frontage on Wilsonville Road.

(b) Improvements. Neither PF 20 nor PF 21 require Investors to make any public infrastructure improvements to Wilsonville Road. The City shall be solely responsible for the construction of all required improvements and the costs thereof.

**2. Payment Provisions**

(a) Stipulated Proportionality Analysis. The parties stipulate that the dedication of right-of-way along the Wilsonville Road frontage of the Development for the future widening of Wilsonville Road is beyond the impacts of the Development regarding the City's desire to widen Wilsonville Road. The City's requirement to dedicate in conjunction with the payment of compensation is appropriate to avoid the need for future condemnation should the Development be allowed to proceed without regard to the anticipated widening of Wilsonville Road.

(b) Payment of Proportionate Share. The City shall compensate Investors for the fair market value of the required dedication strip along the frontage of the Development on Wilsonville Road. The exact area of the dedication strip will be subsequently determined by survey in the area currently estimated as shown on attached Exhibit A. The fair market value of the dedication strip shall be determined based upon comparable transactions, Investors, either by agreement between the parties, or through the use of a mutually acceptable appraiser but payment shall acknowledge that the fair market value is paid and the agreement to dedicate the property is under threat of condemnation. The City shall pay the agreed upon or appraised value of the dedication strip after receipt of Investors's dedication deed and in any event no later than March 31, 2003. The costs of the related survey, appraisal and deed recordation shall be borne by the City.

## **B. Boones Ferry Road Frontage**

### **1. Specific Right-Of-Way Dedications and Improvements**

(a) Dedications. PF 20 requires that Investors shall dedicate 6 feet of right-of-way (representing one-half of the width necessary for the future construction of an additional southbound lane) and a 6-foot public utility easement from Wilsonville Road south approximately 500 feet. (b) Improvements. PF 20 requires that Investors shall install a 5-foot bike lane, curb/gutter, 8-foot sidewalk (clear from any obstruction), and streetlights (appropriate for the Old Town area).

### **2. Payment Provisions**

(a) Stipulated Proportionality Analysis. The parties stipulate that the required dedication of right-of-way along the Boones Ferry Road frontage of the Development for the future widening of Boones Ferry Road is related to anticipated future impacts of the Development, but not roughly proportionate to those impacts. Instead, the parties stipulate that the projected impacts of the Development represent Investors 40% of the costs of the dedication, with the City being responsible for 60% of the costs (including the land value). The City's requirement to dedicate in conjunction with the payment of compensation for the City's proportionate share is appropriate to avoid the need for future condemnation should the Development be allowed to proceed without regard to the anticipated widening of Boones Ferry Road.

(b) Payment of Proportionate Share. The City shall compensate Investors for the fair market value of the City's proportionate share of the costs of the required dedication strip along the frontage of the Development on Boones Ferry Road. The exact area of the dedication strip will be subsequently determined by survey in the area currently estimated as shown on Exhibit A. The fair market value

of the dedication strip shall be determined based upon comparable transactions, , either by agreement between the parties, or through the use of a mutually acceptable appraiser but payment shall acknowledge that the fair market value is paid and the agreement to dedicate the property is under threat of condemnation. The City shall pay the agreed upon or appraised value of its proportionate share of the dedication strip within ten days after receipt of Investors' dedication deed. The costs of the related survey, street design and engineering, appraisal and deed recordation shall be borne by the City.

**C. Bailey Street Extension From Brown Road to Boones Ferry Road**

**1. Specific Right-Of-Way Dedications and Improvements**

(a) Dedications. PF 20 requires that Investors shall dedicate 60 feet of right-of-way along the frontage of the Development for the eventual extension of Bailey Street from Brown Road to Boones Ferry Road, as more particularly identified on Exhibit A.

(b) Improvements. PF 20 requires that Investors shall construct a 48-foot street improvement within a 60-foot right-of-way. The street improvement shall consist of pavement, curb/gutter, 5-foot sidewalks, and streets lights (appropriate for the Old Town area) along the north side.

**2. Payment Provisions**

(a) Stipulated Proportionality Analysis. The parties stipulate that the dedication of right-of-way to allow the construction of the extension of Bailey Street from Brown Road to Boones Ferry Road is based, in part, upon the impacts of the Development, with 50% of the land and improvement costs for Bailey Street being the Development's roughly proportionate share, with the City being responsible for the other 50% of the costs.

(b) Payment of Proportionate Share.

(i) Dedication. The City shall compensate Investors for 50% of the fair market value of the required 60-foot dedication along the southern frontage of the Development for the construction of Bailey Street. The specific area of the dedication strip will be subsequently determined by survey, in the area currently estimated as shown on attached Exhibit A. The fair market value of the dedication strip shall be determined based upon comparable transactions , either by agreement between the parties, or through the use of a mutually acceptable appraiser but payment shall acknowledge that the fair market value is

paid and the agreement to dedicate the property is under threat of condemnation. The City shall pay the agreed upon or appraised value of the dedication strip within ten days after receipt of Investors' dedication deed. The costs of the related survey, street design and engineering, appraisal and deed recordation shall be borne equally by Investors and the City.

(ii) Road Construction. The City shall also reimburse Investors for one-half (50%) of the costs of constructing the 48-foot Bailey Street improvement, with curb and gutter, except that Investors shall be responsible for 100% of the costs of the 5-foot sidewalk and street lights along the north side of Bailey Street. Costs subject to reimbursement shall include, but not be limited to, all costs incurred in surveying, testing, inspections, permit fees, landscaping, design, engineering, street trees and other direct construction costs. Payment of the construction of Bailey Street shall be made by the City to Investors within ten days of the City's acceptance of the work following construction.

#### **D. Sewer Line Replacement**

##### **1. Specific Improvements.**

PF21 requires that Investors shall relocate the existing 30-inch wastewater sewer line that runs east/west through the site, which is shown in the Wastewater Collections System Master Plan as Segment No. UD-10 and UD-9, and replace it with a new 36-inch wastewater sewer line.

##### **2. Payment Provisions.**

(a) Stipulated Proportionality Analysis. The parties stipulate that the need to relocate the existing wastewater sewer line is related to the Development, but that the requirement to upsize the line is not. Accordingly, the parties agree that Investors shall be responsible for the costs associated with relocating the wastewater line and that the City shall be responsible for all costs associated with oversizing the pipe and the additional trenching/backfill costs which are related to the oversizing.

(b) Payment of Proportionate Share. The City shall reimburse Investors for the costs of oversizing the 30-inch pipe to a 36-inch pipe and, further, for the additional trenching/backfill costs related to such oversize. The

City shall pay those costs at the time that the City approves the work to relocate the oversized wastewater sewer line.

### **III. GENERAL OBLIGATIONS**

#### **A. Landscaping**

Investors shall install all required landscaping along the entire frontage of the Development consistent with all applicable City ordinances and conditions of Approval.

#### **B. Plans and Construction**

Other than the costs associated with the Bailey Street improvements set forth in Section II.C. required to be paid by the City, Investors is solely responsible for the design and construction of all improvements required under this Agreement. The City shall be responsible for reviewing and approving all plans, which approval shall occur within 30 days after the City's receipt of satisfactory plans, and shall inspect the Development and all required improvements. Investors shall be responsible for the coordination all materials testing for improvements required under this Agreement. Investors shall be responsible for the payment of all applicable public work permit fees. Notwithstanding anything to the contrary in this Agreement or any City ordinance, Investors shall only be required to install asphalt pavement when making the Bailey Street improvements.

#### **C. Costs**

Both parties acknowledge that the costs set forth in this Agreement are estimates only and that the final costs of the improvements required under this Agreement may vary based on final design approval and actual construction costs.

### **IV. MISCELLANEOUS PROVISIONS**

#### **A. 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.

#### **B. Modification or Amendment**

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

**C. Relationship**

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

**D. 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 and shall run with the land. Notwithstanding the above, any unused system development charge exemptions provided in Article I.A.1-7 hereof shall expire ten (10) years from the date hereof. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

**E. No Continuing Waiver**

The waiver of either party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

**F. Applicable Law**

This Agreement shall be interpreted under the laws of the State of Oregon.

**G. Legal Fees**

If either party commences legal proceedings for any relief against the other party arising out of or related to this Agreement, 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.

**H. Time of Essence**

Time is expressly declared to be of the essence of this Agreement.

**I. Notices**

All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the 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 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Investors:

West Coast Bank Building 500 E.  
Broadway, Suite 110

Vancouver, WA 98660

**J. Rights Cumulative**

All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

**K. Counterparts**

This Agreement 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.

**L. No Third Party Beneficiaries**

None of the duties and obligations of any party under this Agreement shall in any way or in any manner be deemed to create any rights in, any person or entity other than the parties hereto.

**M. Dispute Resolution**

**1. Mediation**

All disputes arising out of this Agreement 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, then either any party may make demand for arbitration pursuant to the following paragraph.

**2. Arbitration**

Any dispute arising under this Agreement, which is not resolved through mediation, may be submitted by either any party to arbitration conducted in Portland, Oregon before a single arbitrator with substantial experience in commercial real estate disputes pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). In the event the parties cannot agree on an arbitrator within 10 days from the date of the arbitration demand, the arbitrator shall be selected pursuant to the standard procedures of the AAA. Judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter. The parties shall each have the right to require that any such arbitration be conducted before a panel of three arbitrators instead of before a single arbitrator, and such election must be made by written notice from the party making the election to the other party, given within 10 days of the date of the arbitration demand.

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

**WILSONVILLE INVESTORS, LLC:**

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

**CITY OF WILSONVILLE:**

City of Wilsonville, an Oregon municipal corporation

By *Arlene Loble*

Arlene Loble

Its City Manager

Date: November 6, 2002