

RESOLUTION NO. 2387

A RESOLUTION APPROVING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND REDUS OR LANDS, LLC.

WHEREAS, REDUS OR LANDS, LLC is the owner of the property now known as Retherford Meadows, which received development approval under the Villebois Master Plan as SAP – E, PDP-2; and

WHEREAS, a condition of approval of the Retherford Meadows subdivision was the construction of Coffee Lake Drive across the subdivision; and

WHEREAS, the City's construction of Coffee Lake Drive Sewer Trunk Line in the proposed Coffee Lake Drive provided an opportunity to also construct the base rock portion of Coffee Lake Drive at a cost savings and prevent potential damage to the trunk line by base rock construction at a later date as recited in the Development Agreement Between the City of Wilsonville and REDUS OR LANDS, LLC, a copy of the Development Agreement is marked **Exhibit 1**, attached hereto, and incorporated by reference herein, and

WHEREAS, approval of the Development Agreement assists in the marketing of the subdivision and allows for the orderly reimbursement to the City for the costs associated with construction of the base rock less applicable street systems development charges upon development of Retherford Meadows by REDUS OR LANDS, LLC or its successor in interest.

NOW THEREFORE THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The above mentioned recitals are incorporated by reference herein.
2. The Development agreement between the City of Wilsonville and REDUS OR LANDS, LLC a copy of which is attached as Exhibit 1, and incorporated by reference herein, is approved, and the City Manager is authorized to execute the Development Agreement on behalf of the City.
3. The resolution shall take effect upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this ____ day of December, 2012 and filed with the Wilsonville City Recorder this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Núñez	Yes
Councilor Goddard	Yes
Councilor Starr	Yes
Councilor Fitzgerald	Yes

Attachments:

Exhibit 1 – Development Agreement

**DEVELOPMENT AGREEMENT BETWEEN
CITY OF WILSONVILLE AND REDUS OR LAND, LLC**

RECITALS

WHEREAS, the City of Wilsonville (City) is a duly authorized municipal corporation under the laws of the State of Oregon; and

WHEREAS, REDUS OR Land, LLC (REDUS) is a duly authorized corporation under the laws of the state of Delaware and is the owner of a certain parcel of property within the Villebois Village Master Plan area, City of Wilsonville, Clackamas County, Oregon; and

WHEREAS, REDUS has applied for and received approval, with conditions, from the City of Wilsonville for the development of an 88-lot subdivision, known as Retherford Meadows; and

WHEREAS, as a part of the aforementioned conditions of approval, REDUS is conditioned, in conjunction with development of Retherford Meadows, to construct a segment of the roadway known as Coffee Lake Drive (also referenced as Villebois East 2 Road) to service the development in conformance with the Villebois Village Master Plan, which segment traverses the property in a general south to north direction; and

WHEREAS, the City and REDUS previously agreed that a 15" trunk sewer line would be constructed within a 50-foot wide easement REDUS provided to the City, which easement is generally coterminous with the right of way for Coffee Lake Drive; and

WHEREAS, due to the need to provide sewer service from the trunk line to adjacent property to serve a grade school that was planned to be constructed, the construction of the sewer trunk line was set to precede development of Retherford Meadows and, in fact, is now constructed, and due to the further circumstances that in addition to sewer service benefits from the trunk line for the school and eventually Retherford Meadows, the sewer line would also benefit the future development of other property, the City financed and advanced the construction of the sewer line, subject to being reimbursed through the formation of a Coffee Lake Drive Sewer Reimbursement District. REDUS is subject to paying its pro rata share of the sewer line reimbursement under the terms of the Reimbursement District adopted November 5, 2012, separate and apart from its obligations to construct Coffee Lake Drive; and

WHEREAS, with the construction of the sewer trunk line, there was an opportunity to construct the base rock portion of Coffee Lake Drive at the same time under one contract, and avoid potential greater cost from having to come back, remobilize, and construct the roadway base around the constructed sewer line; and

WHEREAS, the City and REDUS took advantage of the timing and costs savings, and the base rock was constructed together with the sewer trunk line; and

WHEREAS, it is the intent of the City and REDUS that, at the time of pulling building permits to build homes on the lots within Retherford Meadows, REDUS shall have the option to reimburse the City on a per lot pro rata basis for the City's cost in constructing the base rock for Coffee Lake Drive, subject to an offset for Street System Development Charges credit for extra capacity beyond the benefits and impacts for the subdivision (as set forth in Exhibit 1, attached hereto and incorporated herein), and subject to an interest charge equal to interest earned by the City on its funds in the Oregon Local Government Investment Pool as of October 31, 2012, subject to being adjusted commencing July 1, 2013 and adjusted each July 1 thereafter, based upon the preceding year annual average (July 1 to June 30) for interest earned by the City on its funds in the Oregon Local Government Investment Pool; and

WHEREAS, the City and REDUS acknowledge that the balance of Coffee Lake Drive on its property will be constructed at REDUS, or its successor in interest's, expense at the time of site development for the Retherford Meadows subdivision.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and REDUS agree as follows:

TERMS AND CONDITIONS

1. **Recitals Incorporated.** The recitals set forth above, inclusive of Exhibit 1, are incorporated by reference as general terms of this agreement to provide for the intent of the parties in developing the Terms and Conditions of this Development Agreement.

2. **Reimbursement.** REDUS shall reimburse the City for costs of the base rock construction of Coffee Lake Drive for the Retherford Meadows subdivision in the principal sum of \$196,052 (\$227,968 cost less SDC credit of \$31,916, as set forth in Exhibit 1), together with a per annum interest rate equal to the interest rate earned by the City on its funds in the Oregon Local Government Investment Pool as of October 31, 2012, which is six-tenths of one percent (0.6%), and which interest shall be adjusted July 1, 2013, and July 1 of each succeeding year, based upon the preceding annual average (July 1 to June 30) for interest earned by the City on its funds in the Oregon Local Government Investment Pool, payable as follows:

2.1 At any time, REDUS may pay in full the unpaid principal of \$196,052, or any part thereof, together with the accrued interest as set forth above; or

2.2 At the time of applying for a building permit, REDUS may pay on an installment per lot basis as to only those lots for which a building permit is applied. The installment payment on a building permit for each lot, 1-87, shall be \$2,227.86, together with accrued interest as set forth above on the \$2,227.86, and for the 88th lot there shall be paid an installment of \$2,228.18, together with accrued interest as set forth above on the \$2,228.18.

2.3 In the event the number of lots to be built upon are less than 88, the installment payment, together with accrued interest as set forth above, shall be prorated

accordingly and any deficiency in payment in full as a result thereof shall be paid at the time of the last building permit, unless otherwise agreed to by the parties in writing.

3. **Miscellaneous Provisions.**

3.1 **Assignment.** The terms and conditions contained herein shall be binding upon and inure to the benefit of the parties and their successors and assigns. REDUS intends to market its property, and REDUS shall have the right to assign this Development Agreement to the purchaser as a successor in interest. REDUS shall notify any successors in interest and assigns of the obligations hereunder, and REDUS shall notify the City of any assignment and provide contact information for the assignee.

3.2 **Applicable Law, Venue, and Jurisdiction.** The laws of the State of Oregon shall govern this Development Agreement and Clackamas County Circuit Court shall be the venue and shall have jurisdiction for any claim, suit, or action, arising out of this Development Agreement, save and except for any matter arising under the U.S. Bankruptcy Code.

3.3 **Attorney Fees and Costs.** If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law.

3.4 **Notice.** Whenever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by nationally recognized overnight express delivery service, or by U.S. registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below or at such other addresses as are specified by written notice in accordance herewith:

If to City: Michael E. Kohlhoff, City Attorney
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

If to REDUS: Stephen K. Miller, VP
Commercial Owned Real Estate
Wells Fargo Bank
MAC A0119-170
333 Market St 17th Fl
San Francisco CA 94105

Coffee Lake Drive
Sewer Improvement - 2077

CONSTRUCTION COSTS

Updated 4-30-2012

Item	Alternate Bid	Change Order	Construction Cost	SS Trunk Line	VB East 2 Road thru Wetland		VB East 2 Road thru Wetland	VB East 2 Road thru Wetland
							East 3.5 feet City SDC Eligible	Developer Obligation
DESIGN & ENGINEERING								
Pacific Community Design	\$29,110.00	\$5,479.66	\$34,589.66	\$24,517.74	\$10,071.92		\$1,410.07	\$8,661.85
Geo Conn North West	\$29,349.66	\$8,631.76	\$37,981.42	\$26,921.88	\$11,059.54		\$1,548.34	\$9,511.21
		Sub Total	\$72,571.08	\$51,439.62	\$21,131.46	29.1% of Construction Cost	\$2,958.41	\$18,173.06
MITIGATION EXPENSES								
Mud Slough Mitigation	\$24,583.00		\$24,583.00	\$11,222.67	\$13,360.33		\$1,870.45	\$11,489.88
		Sub Total	\$24,583.00	\$11,222.67	\$13,360.33	21 ft SS line, 46 ft roadway	\$1,870.45	\$11,489.88
CONSTRUCTION CONTRACT EXPENSE								
Kerr Contractors Inc.	\$557,622.20	\$23,195.64	\$580,817.84	\$411,693.56	\$169,124.28		\$23,677.40	\$145,446.88
		Sub Total	\$580,817.84	\$411,693.56	\$169,124.28	29.1% of Construction Cost	\$23,677.40	\$145,446.88
OTHER EXPENSES								
DJC Add - RFQ, SOQ	\$336.88		\$336.88	\$336.88				
DJC Add - Bid	\$635.25		\$635.25	\$635.25				
World Courier	\$169.61		\$186.27	\$186.27				
Willamette Aviation	\$35.30		\$35.30	\$35.30				
BOLI Fee	\$571.76		\$571.76	\$571.76				
ABC Transcription	\$170.00		\$170.00	\$170.00				
Bulk Water	\$856.40		\$856.40	\$856.40				
Westlake Consultants	\$3,895.40		\$3,895.40	\$3,895.40				
City Const. Mgt. & Inspection Time	\$95,644.27		\$95,644.27	\$95,644.27				
City Wetland Permitting Staff Time	\$44,807.55		\$44,807.55	\$20,455.62	\$24,351.93	21 ft SS line, 46 ft roadway	\$3,409.27	\$20,942.66
		Sub Total	\$147,139.08	\$122,787.15	\$24,351.93		\$3,409.27	\$20,942.66
			Construction Cost	SS Trunk Line	VB East 2 Road through Wetland		VB East 2 Road through Wetland - City	VB East 2 Road through Wetland Developer
GRAND TOTAL:			\$825,111	\$597,143	\$227,968		\$31,916	\$196,052