## RESOLUTION NO. 2930


#### Abstract

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERIM DEVELOPMENT AGREEMENT WITH TAYLOR MORRISON NORTHWEST, LLC REGARDING DESIGN, FUNDING AND CONSTRUCTION OF REGIONAL PARKS 5 AND 6 IN THE CLERMONT SUBDIVISION, VILLEBOIS.


WHEREAS, the Villebois Village Master Plan is a regulatory document that was adopted as a sub-element of the City's Comprehensive Plan; and

WHEREAS, Villebois is an example of a public - private partnership, where both the development community and the City's Urban Renewal Agency have collaborated to provide needed infrastructure commensurate with the many phases of development in Villebois; and

WHEREAS, the Villebois Village Master Plan contains a chapter on parks and recreation experiences in Villebois which includes a regional parks system that benefits citizens of the City; and

WHEREAS, there are significant efficiencies both in time and in financing that can be achieved when the park is built at the same time as the subdivision improvements; and

WHEREAS, Taylor Morrison Northwest, LLC has purchased property previously entitled by Polygon Northwest, commonly referred to as the Chang Property, now referred to as Clermont, which includes a small part of Regional Park 5, and all of Regional Park 6; and

WHEREAS, Clermont represents Preliminary Development Plan (PDP) - 5 of Specific Area Plan (SAP) North, also commonly referred to as PDP-5N; and

WHEREAS, the City desires to complete the Villebois regional park system with its private development partners to bring the park to completion in a financially efficient manner, which in this case is Taylor Morrison Northwest, LLC who is constructing the PDP-5N subdivision and the associated 87 single-family homes; and

WHEREAS, Condition of approval PFC 2 of Planning Case File No. DB18

0049 - DB18-0051 states "Applicant shall enter into a Development Agreement with the City that clarifies responsibilities, reimbursements and/or estimated costs for construction of Regional Park (RP-6), city sanitary sewer main between Tooze Road and Verdun Loop, and street improvements or modifications"; and

WHEREAS, Condition of approval PDC 3 states "All park and open space improvements approved by the DRB shall be completed prior to issuance of the $45^{\text {th }}$ house permit for PDP-5 North. If weather or other special circumstances prohibit completion, bonding for the improvements will be permitted. See Finding 54"; and WHEREAS, Regional Park - 6 is 6.42 acres in size, which is beyond the developer's proportional responsibility to fund and construct due to its regional size and amenities; and

WHEREAS, according to the Villebois Master Plan, one of the primary purposes of Regional Park - 6 is to preserve several large tree groves; and

WHEREAS, the park contains a significant segment of the Ice Age Tonquin Trail, a regional trail facility that is planned to connect the cities of Tualatin, Sherwood and Wilsonville, as well as two playgrounds and a dog park that serve the community's larger recreational needs; and

WHEREAS, the preliminary engineers cost estimate for the construction of Regional Park - 6 and the remainder of Regional Park - 5 is $\$ 960,000$; and

WHEREAS, the City has agreed to provide Taylor Morrison Northwest, LLC with Parks System Development Charge (SDC) credits up to the value of the parks SDC's that would otherwise be collected on the project, which total \$569,328 (87 lots X Parks SDC of \$6,544/lot); and

WHEREAS, the Developer is required to fund the balance of the Regional Park construction and is required to complete the park before the $45^{\text {th }}$ building permit is issued; and

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

Section 1. The City of Wilsonville authorizes the City Manager to enter into and execute an interim Development Agreement on behalf of the City of Wilsonville, with Taylor Morrison Northwest, LLC for a value of \$569,328 in substantially the form as attached hereto as Exhibit A.

Section 2. Within 30-days of adoption of this Resolution, the full Development Agreement will be sent to the City Council for review.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this $18^{\text {th }}$ day of October 2021, and filed with the Wilsonville City Recorder this date.

Julie Fitzgerald, Mayor

## ATTEST:


-E781DE102768498.
Kimberly Veliz, City Recorder

SUMMARY OF VOTES:
Mayor Fitzgerald Yes
Council President Akervall Yes
Councilor Lehan Yes
Councilor West Yes
Councilor Linville Excused

## EXHIBIT:

A. Interim Development Agreement with Taylor Morrison Northwest, LLC

# INTERIM DEVELOPMENT AGREEMENT (Park Development Only) 

THIS INTERIM DEVELOPMENT AGREEMENT ("Agreement") is entered into by the City of Wilsonville, a municipal corporation of the State of Oregon (the "City"), and Taylor Morrison Northwest, LLC, a Delaware limited liability company, as successor in interest to Polygon WLH, LLC ("Developer").

## RECITALS

A. In conjunction with the November 28, 2018 Development approval given by the City of Wilsonville Development Review Board ("DRB") for the Clermont Development-Phase 5 north of Villebois ("PDP-5"), pursuant to PFC2, Developer is required to enter into a Development Agreement with the City outlining all conditions of approval as required by the DRB ("Development Agreement").
B. Due to time constraints and Developer's wish to obtain a public works permit to begin certain construction activity, the City has agreed to issue the public works permit prior to execution of the full Development Agreement, subject to the terms and conditions of this Agreement, addressing only construction of Regional Park 6 ("RP6"), open space, and completion of the remainder of Regional Park 5 ("RP5").
C. The parties hereby agree to complete and enter into the more comprehensive required Development Agreement within 30 days after the effective date of this Agreement.

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

1. Construction and Completion of RP6 and Remainder of RP5. Developer shall construct and complete, or cause the construction and completion of, RP6 and the remainder of RP5, as set forth in the DRB conditions of approval and in accordance with the plans and specifications attached hereto as Exhibit A. In accordance with PDC3 and Finding C54, and this Agreement, the City shall not issue the building permit for the $45^{\text {th }}$ house within PDP-5 until RP6, the remainder of RP5, and all "open space improvements approved by the Development Review Board" within PDP-5 have been inspected and found to be complete by City Parks staff.
2. Payment of Design and Construction Costs for RP6 and Remainder of RP5. Developer shall initially bear the cost of designing and constructing RP6 and the remainder of RP5, at Developer's sole cost and expense.
3. City Grant of Credits. Construction and installation of RP6 is required as a condition of DRB approval. RP6 is identified in the City's adopted parks plan as a Regional Park. In consideration of Developer's construction and installation of RP6, the City will grant credits to the Developer against City Parks System Development Charges ("SDCs") that would otherwise be assessed against each home within PDP-5 until Parks SDC credits in an amount equal to $\$ 569,000$ ("Credits") have been given. As long as park and open space work is diligently underway, the City
will grant the Parks SDC credit to Developer on each building permit for each house by reducing the total building permit fee due by deducting the Parks SDC as paid until the above amount has been credited. If construction has not begun or is not progressing, the City reserves the right to hold the Parks SDC credits until reasonable progress on RP6 and open space is shown, in accordance with an agreed upon written construction schedule.
4. Modifications to Park Design or Amenities. The parties agree to collaborate with each other in good faith to update the park design, as needed or desired. No amendment, change, or modification of the park design and amenities, as depicted on $\operatorname{Exhibit} \mathbf{A}$, shall be valid unless agreed to by the City, in writing, and signed by both parties. If agreement cannot be reached, the park design will remain unchanged.
5. Other DRB Conditions of Approval. All DRB conditions of approval shall continue to be in full force and effect, as written. A more comprehensive Development Agreement, incorporating all DRB conditions, shall be negotiated within 30 days after the Effective Date of this Agreement. This Agreement is solely in consideration of the City issuing Developer public works permits to continue work on PDP-5 prior to execution of the comprehensive Development Agreement.

## 6. Default; Remedies.

6.1. Default by Developer; City Remedies. Developer shall be in default under this Agreement if Developer breaches any provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within 10 days after Developer receives written notice from the City specifying the breach. In the case of a breach that cannot, with due diligence, be cured within a period of 10 days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within 10 days after Developer receives written notice from the City and thereafter diligently work to complete the cure within an additional reasonable time, not to exceed an additional 20 days. No building permits will be issued until the default is cured. If the default remains uncured, the City may pursue any and all rights and remedies available to it for breach of contract, at law or in equity.
6.2. Default by City; Developer Remedies. The City shall be in default under this Agreement if the City breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within 10 days after the City receives written notice from Developer specifying the breach. In the case of a breach that cannot, with due diligence, be cured within a period of 10 days, the City shall be in default under this Agreement if the City does not commence the cure of the breach within 10 days after the City receives written notice from Developer and thereafter diligently work to complete the cure within an additional reasonable period of time, not to exceed 20 days. If the default remains uncured, Developer may pursue any and all rights or remedies available to it for breach of contract, at law or in equity.
7. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

| To City: | City of Wilsonville <br> Attn: Chris Neamtzu, Community Development Director <br> 29799 SW Town Center Loop East <br> Wilsonville, OR 97070 |
| :--- | :--- |
| To Developer: | Taylor Morrison Northwest, LLC <br> Attn: Curtis Huson <br> 703 Broadway Street, Suite 510 <br> Vancouver, WA 98660 |

## 8. Miscellaneous Provisions.

8.1. Integration. This Agreement contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements with respect only to the limited subject matter of this Agreement. In case of conflict among these or any other documents, the provisions of the Development Review Board Conditions of Approval and then this Agreement shall control.
8.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.
8.3. No Assignment. Developer may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.
8.4. Adherence to Law. This Agreement shall be subject to, and Developer shall adhere to, all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Developer is required by law to obtain or maintain in order to perform the work described in this Agreement shall be obtained and maintained throughout the term of this Agreement.
8.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.
8.6. Jurisdiction. Jurisdiction and venue for any dispute shall be in Clackamas County Circuit Court.
8.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code, any administrative
proceeding, trial and/or any appeal or petition for review) 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.
8.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.
8.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.
8.10. Modification. This Agreement shall not be modified except by written instrument executed by Developer and the City.
8.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.
8.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.
8.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
8.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.
8.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement.
8.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order
to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.
8.17. Interpretation. As a further condition of this Agreement, the City and Developer acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party.
8.18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original agreement but all of which together shall constitute one and the same instrument. The parties expressly agree that if the signature of Developer and/or the City on this Agreement is not an original, but is a digital, mechanical, or electronic reproduction (such as, but not limited to, a photocopy, fax, e-mail, PDF, Adobe image, JPEG, telegram, telex, or telecopy), then such digital, mechanical, or electrical reproduction is as enforceable, valid, and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by their signatory. Further, the parties may deliver executed signature pages to this Agreement by electronic means to the other party, and the electronic copy will be deemed to be effective as an original.
8.19. Nature of Agreement. The parties agree that this Agreement does not constitute or concern the adoption, amendment, or application of the Statewide Planning Goals, a comprehensive plan provision, or a land use regulation, the City and Developer acknowledging and agreeing that any and all land use approvals required for PDP-5, RP5, and RP6 are to be obtained (or have been obtained) in due course on another date in accordance with all applicable laws and regulations.
8.20. Relationship. Nothing in this Agreement shall be construed to create an agency relationship or a partnership or joint venture between the parties.
8.21. Termination. This Agreement shall terminate upon the parties' negotiation and mutual approval and execution of the Development Agreement.
8.22. Recitals. The introductory recitals of this Agreement are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.
8.23. Exhibits. All exhibits referenced in this Agreement are incorporated into and made a part of this Agreement as if fully set forth herein.
8.24. Effective Date. This Agreement shall take effect upon execution and approval by both parties. Notwithstanding the foregoing, however, the City cannot sign this Agreement until approved by the City Council, which approval is anticipated to be given on October 4, 2021. However, to prevent delay to Developer, Developer may sign before that date, agreeing to thereafter be fully bound, in order to allow Developer to obtain the public works permit.
8.25. Authority. Each party signing on behalf of Developer and the City hereby warrants actual authority to bind their respective party.

The Developer and the City hereby agree to all provisions of this Agreement.

## DEVELOPER:

TAYLOR MORRISON NORTHWEST, LLC,
a Delaware limited liability company

$\qquad$
Print Name: Curtis Huson
As Its: Vice President
Dated: 9/16/2021

## CITY:

CITY OF WILSONVILLE, a municipal corporation of the State of Oregon

By: $\qquad$
Print Name: $\qquad$
As Its: $\qquad$
Dated: $\qquad$

APPROVED AS TO FORM FOR THE CITY:

Barbara A. Jacobson, City Attorney


EXHIBIT A - Page 1 of 13


EXHIBIT A - Page 2 of 13

## EXHIBIT A

## Pacific Community Design

## LEGAL DESCRIPTION <br> Zone Change <br> Clermont

31 W 15AB 7200, 7290, 7300, 7400, 7500, and 7600
Parcels I, II, and III, of the land described in Document Nos. 91-08202 and 91-08203, Clackamas County Deed Records, in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

BEGINNING at the North quarter-corner of said Section 15;
thence along the North line of Samuel B. Franklin Donation Land Claim No. 50, South $88^{\circ} 35^{\prime \prime} 17^{\prime \prime}$ East, a distance of 1226.19 feet to the northeast corner of said Samuel B. Franklin Donation Land Claim No. 50;
thence along the East line of said Samuel B. Franklin Donation Land Claim No. 50, South $01^{\circ} 35^{\prime}$ 01 " West, a distance of 909.38 feet to a point on the northerly plat line of "Tonquin Meadows";
thence along the northerly plat line of "Tonquin Woods at Villebois No. 6", "Tonquin Meadows", "Fir Terrace", and "Calais East at Villebois", North $88^{\circ} 34^{\prime} 00^{\prime \prime}$ West, a distance of 1235.31 feet to a point on the easterly plat line of "Calais East at Villebois";
thence along said easterly plat line, and its extension, North $02^{\circ} 09^{\prime} 29^{\prime \prime}$ East, a distance of 909.00 feet to the POINT OF BEGINNING.

Containing 25.687 acres, more or less.
Basis of bearings being plat of "Calais East at Villebois", Clackamas County Plat Records.

Property Vested in:
Victor C. Chang et al.
31 W 15AB 7200, 7290, 7300, 7400, 7500, and 7600


## PHASE 5 NORTH <br> CLERMONT <br> FINAL DEVELOPMENT PLAN

TL 7200, 7290, 7300, 7400, 7500 \& 7600, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SECTION 15 W.M. CITY OF WILSONVILLE, OREGON


Pacific Community Design


Final
$\underset{\text { Development }}{\substack{\text { Pinal } \\ \text { Plan }}}$

| Plan |
| :--- |

PDP 5N
CLERMONT

COVER
SHEET
at Exhbitite of Wisconille







PDP 5N CLERMONT at Villebois






