

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2021 (the “**Effective Date**”) by and between **AM/DRI Willamette LLC**, a Delaware limited liability company (“**Developer**”) and the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon (“**City**”). Developer and City are sometimes referred to in this Agreement individually as a “**Party**” and collectively as “**Parties**.”

### RECITALS

A. Developer is the owner of certain real property in the City of Portland, Multnomah County, Oregon, more particularly described in that certain preliminary subdivision decision Case File No. LU 17-160442 LDS AD (“**Subdivision Approval**”).

B. Developer intends to proceed with the subdivision development approved by the Subdivision Approval, which is the development of Blocks 41 (Lot 1), 42 (Lot 2), 44 (Lot 4), 45 (Lot 3), Tract A and Tract B (the “**Site**”) for a mix of residential and retail uses along with greenway improvements, more particularly described in that certain design review with modifications, an adjustment and greenway approval in City Case File No. LU 20-102914 DZM AD GW (the “**Project**”). Attached as **Exhibit A** is a depiction of the Site.

C. The Subdivision Approval conditions of approval were based upon the phasing assumption that Blocks 41 (Lot 1) and 44 (Lot 4) would be developed as the first phase, followed by Blocks 42 (Lot 2) and 45 (Lots 3) as a second phase. Developer’s phasing of the Project differs from the Subdivision Approval conditions and instead includes the following three phases: “**Phase 1**” includes Blocks 41 (Lot 1) and 42 (Lot 2); “**Phase 2**” includes two buildings on Block 45 (Lot 3); and “**Phase 3**” includes Block 44 (Lot 4).

D. The Subdivision Approval includes a certain condition of approval, which may be satisfied according to the terms of a development agreement between Developer and the City.

E. Developer and the City wish to enter into this Agreement for purposes of satisfying such condition of approval as more fully set forth in, and subject to the terms and conditions of, this Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated into the agreements of the Parties herein, and of the terms and conditions of this Agreement, the Parties agree as follows.

#### 1. **South Portal Transportation Improvements.**

1.1. **Description.** The Subdivision Approval, in condition C1, requires that prior to approval of building permits on Lots 2 (Block 42) and 3 (Block 45), the Developer must install a new traffic signal and reconfigure the intersection geometry and signal phasing at S Macadam and S Bancroft to allow the eastbound and westbound left turn movements to occur simultaneously, prohibit the eastbound through movement, and construct any improvements

necessary to accommodate a second eastbound left turn lane with a 75 foot long storage (initially to be striped as a single left turn lane), to the satisfaction of the City Engineer (such improvements, the “**South Portal Transportation Improvements**”). Condition C1 of the Subdivision Approval also provides that, alternatively, the Developer may execute a development agreement with the City, acting by and through its Bureau of Transportation (“**PBOT**”), that insures that the South Portal Transportation Improvements will be installed. The Parties intend and agree that this Agreement satisfies such condition.

1.2. **Design and Approval of Plans.** Developer shall be responsible for completing the design and plans for the South Portal Transportation Improvements. Developer has provided the City with partial plans and specifications for the South Portal Transportation Improvements (the “**Initial Plans and Specifications**”), and the City has approved such Initial Plans and Specifications. Developer will cause the final plans and specifications for the South Portal Transportation Improvements (the “**Final Plans and Specifications**”), including all construction drawings, to be prepared for review and approval by the City.

1.3. **Construction.** After the City’s approval of the Final Plans and Specifications, Developer will construct the South Portal Transportation Improvements.

1.4. **Performance Guarantee.** Prior to issuance of the first building permit in Phase 2, Developer shall obtain approved 30% public works concept plans for the South Portal Transportation Improvements and Developer shall provide a performance guarantee as required by City Code guaranteeing performance of the South Portal Transportation Improvements. Once such performance guarantee is provided by Developer, completion of the South Portal Transportation Improvements will not be a condition of any Projects permits or approvals. With the exception of any applicable permit or Code enforcement requirements, recourse to the performance guarantee will be the City’s sole and exclusive remedy for Developer’s failure to timely construct the South Portal Transportation Improvements.

1.5. **Transportation SDC Credit.** Developer will seek approval for immediate transportation system development charge (“**TSDC**”) credit for the full anticipated cost of designing, constructing, and installing the South Portal Transportation Improvements (including, without limitation, hard construction costs and soft costs, e.g. without limitation, design fees, traffic consultant fees, development fees and civil engineering fees; environmental remediation costs and/or right of way acquisition costs) (the “**TSDC Credit**”), and will seek a subsequent adjustment based upon actual costs following completion of the South Portal Transportation Improvements (“**TSDC Completion Adjustment**”). The City will review receipts for actual costs submitted by the Developer after construction of the South Portal Transportation Improvements is complete, and provide for a subsequent adjustment in accordance with City Code.

1.5.1. **Qualified Public Improvement.** City and Developer agree and specifically provide that the South Portal Transportation Improvements are capital improvements listed on the City’s TSDC Project List, are not located on or contiguous to the Site, and are intended to be a “qualified public improvement” as defined in PCC 17.15.020.II. This Section does not entitle Developer to any grant of a TSDC Credit. The eligibility for such a TSDC Credit associated with any Project will be determined pursuant to the standards and process in PCC Chapter 17.15.

1.5.2. **TSDC Credits Available for Entire Project.** City and Developer agree and specifically provide that the “initial development site” for “New Development” as described in PCC 17.15.060.A.3 is intended to include the entire Site so that TSDC Credit is available to each phase of the Project. The City may provide TSDC Credit prior to construction of the South Portal Transportation Improvements as long as all conditions set in PCC 17.15.060.A.2.b are met.

1.6 **Right-of-Way Acquisition.** Notwithstanding any other provision of this Agreement, all required construction and installations for the South Portal Transportation Improvements will be made within existing rights-of-way or walkway easements.

2. **Notices.** All notices given under this Agreement shall be in writing and may be delivered by personal delivery, by courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

If to Developer:

AM/DRI Willamette, LLC  
 Attn: Matt Segrest  
 3012 Fairmount Street, Suite 100  
 Dallas, Texas 75201  
 Phone: (469) 941-4510  
 Facsimile: (469) 941-4505

With a copy to:

Stoel Rives LLP  
 Attn: Dana Krawczuk  
 760 SW 9th Avenue, 30th Floor  
 Portland, OR 97205  
 Phone: (503) 294-9218  
 Facsimile: (503) 220-2480

If to City:

Portland Bureau of Transportation  
 1120 SW 5<sup>th</sup> Ave, Suite 1331  
 Portland, OR 97204  
 Phone: (503) 823-5185  
 Facsimile: (503) 823-7576

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

3. **No Obligation to Develop.** Notwithstanding any provision of this Agreement, Developer's agreements in this Agreement are not to be construed as obligations to develop all or any part of the Project, but rather as the terms under which Developer may satisfy certain conditions of approval of the Subdivision Approval.

4. **Calculation of Time.** Unless referred to as "business days," all periods of time shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. "**Business days**" shall mean Monday through Friday, and "**Legal Holiday**" shall mean any holiday observed by the State of Oregon.

5. **City Approvals or Consents.** Whenever Developer requests an approval, consent or decision from the City in accordance with this Agreement and the Portland City Code does not require action in a specified period of time, the City agrees to respond to such request as quickly as is reasonably possible, in the judgment of the City. If the City responds with a disapproval, it will provide each specific reason for such disapproval so as to allow Developer to address such items in a timely manner.

6. **Force Majeure and Third Party Delay.** If a Party is delayed in its ability to satisfy an obligation or condition of this Agreement by a Force Majeure Event or Third Party Delay, each as defined below, then the date for performance of such obligation or satisfaction of such condition shall be deferred for the period that such Force Majeure Event or Third Party Delay continues to delay such performance or satisfaction. As used in this Agreement, "**Force Majeure Event**" means the occurrence of an event beyond the reasonable control of the Party claiming such delay, including, without limitation, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, permitting delays, riots, insurrection, war, epidemic, pandemic, severe weather, and/or acts of God. As used in this Agreement, "**Third Party Delay**" means failure by the other Party to timely perform according to any timelines required under this Agreement.

7. **Partial Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If a material provision of this Agreement is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the other Parties shall renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties' agreement herein.

8. **Headings.** The section headings in this Agreement are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

9. **Counterparts.** This Agreement may be executed in counterparts, including by electronic means, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties as to the condition of approval for the Subdivision Approval.

11. **Amendments.** This Agreement may be amended only by a writing executed by the Parties.

12. **Successors and Assigns.** The terms and conditions of this Agreement shall extend to Developer's successors-in-interest of the Parties, including the transferees and assignees.

13. **Interpretation of Agreement and Status of Parties.** This Agreement is not intended to and does not override any provision of City Code. In case of conflict between a term of this Agreement and a provision of City Code, City Code will prevail. This Agreement is the result of arm's-length negotiations between the Parties, each with benefit of legal counsel, and shall not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement shall be construed as creating the relationship of principal and agent, partners, joint ventures, or any other similar relationship between the Parties.

14. **Capacity to Execute.** The Parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing authority and, in the case of City, the Portland City Council, has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to the other that neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, government agency, or court to which it is subject or any provision of its charter or bylaws; or conflict with, result in a breach of, or constitute a default under any other agreement to which it is a party or by which it is bound. No Party needs to give any notice to, make any filing with, or obtain the consent of any other entity or person to consummate the transactions contemplated by this Agreement other than recording of instruments as contemplated by this Agreement or any agreements ancillary thereto.

[SIGNATURE PAGES FOLLOW]

THIS DEVELOPMENT AGREEMENT has been duly executed by the Parties as of the Effective Date.

**DEVELOPER:**

**CITY:**

AM/DRI Willamette LLC

City of Portland

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney for the City of Portland

Exhibit A  
Depiction of the Site

