

# EXHIBIT A

## DISPOSITION AND DEVELOPMENT AGREEMENT (WILSONVILLE TOD PROJECT)

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”) is made as of \_\_\_\_\_, 2024 by the **CITY OF WILSONVILLE**, a municipal corporation (“**City**”) and **PALINDROME WILSONVILLE LIMITED PARTNERSHIP**, an Oregon limited partnership (“**Developer**”). City and Developer may be referred to jointly in this Agreement as “**Parties**” and individually as a “**Party**.”

### RECITALS

- A. In 2020, the City Council adopted the Equitable Housing Strategic Plan (“**Strategic Plan**”). The Strategic Plan identifies five (5) high-priority implementation actions to initiate within two (2) years of adoption. Action 1 A is to “explore implementation of transit-oriented development (TOD) at City-owned Wilsonville Transit Center property.”
- B. The City owns a parcel of real property, tax lot identification number 31W14B 00703, tax account no. 05020822, located in Wilsonville, Clackamas County, Oregon that it has identified as a potential site for a transit-oriented mixed use development (“**TOD**”). On behalf of the City, Developer is partitioning the property to create two parcels, including a development parcel the City intends to convey to Developer and which is depicted as Parcel 1 on the survey attached hereto as Exhibit A (the “**Property**”).
- C. On March 18, 2022, the City issued a Request for Qualifications (“**RFQ**”) soliciting developer teams to demonstrate their qualifications to construct a TOD on the Property and to provide information of past successfully constructed TOD projects. On June 3, 2022, the City further issued a Request for Proposals (“**RFP**”) to the respondents of the RFQ, seeking proposals to construct a TOD on the Property.
- D. A selection committee evaluated the proposals and, with the selection committee's review and input, the City Council selected Developer as the successful proposer on December 19, 2022.
- E. The City and Developer entered into a Memorandum of Understanding dated May 31, 2023, to facilitate and provide for further due diligence, design development, and the negotiation of this Agreement.
- F. On January 22, 2024, Developer received approval from the City of Wilsonville Development Review Board (“**DRB**”) to partition and develop the Property for the TOD pursuant to DRB Resolution No. 427 (“**DRB Approval**”).
- G. In furtherance of the City’s Strategic Plan, the City desires for Developer to purchase and develop the Property as a mixed use development with approximately 121 affordable housing units ranging from 30% area median income (AMI) to 80% AMI, with an average AMI of 60%, and to encumber the Property with deed restrictions and covenants restricting the future use of the Property to affordable housing and TOD supportive services (the “**Project**”). In connection with the Project, the parties acknowledge that tree preservation on the Property is a City priority and that they will preserve Douglas fir trees identified in the DRB Approval while meeting Project goals and requirements.

- H. The City acknowledges that significant benefits will accrue to the City from the development of the Property by Developer, including, without limitation, creating new affordable housing consistent with the City's Strategic Plan; supporting transit ridership through an on-site SMART (South Metro Area Regional Transit) transit center; encouraging community services and community-serving spaces including ground-floor space for Wilsonville Community Sharing and an anticipated on-site hospitality-related commercial tenant; furthering economic development within the City; and other tangible and intangible, direct and indirect, benefits to the City and its citizens.
- I. The City finds that the fulfillment, generally, of this Agreement and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its citizens.

## **AGREEMENT**

This Agreement incorporates by this reference the Recitals, the Definitions and all Exhibits hereto. The Parties, in consideration of the agreements set forth herein and for other valuable consideration the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

### **1. DEFINITIONS**

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Some defined terms are first defined in the text of this Agreement, and some are first defined in Exhibit D, which is a glossary of defined terms. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definition of a defined term in the text of this Agreement and the definition of that term in Exhibit D, the definition in the text controls. Defined terms may be used in the singular or the plural.

### **2. GENERAL TERMS OF CONVEYANCE**

2.1 **Conveyance of Property.** Upon satisfaction of the Conditions Precedent to Conveyance in Section 2.6 hereof, the City will convey the Property to Developer, or affiliate of Developer, pursuant to a Statutory Special Warranty Deed ("**Deed**") in substantially the form attached hereto as Exhibit B. The Closing shall occur in an escrow closing at the office of the Escrow Agent not later than the date set forth in the Schedule of Performance (see Section 3.3), unless the Parties agree to a later date.

2.2 **Purchase Price.** The Purchase Price for the Property shall be One Dollar (\$1.00). Developer will pay the Purchase Price in cash at Closing.

#### **2.3 Title Review.**

2.3.1 Within fifteen (15) days after the Effective Date, the City will deliver to Developer a preliminary title report for the Property from the Escrow Agent (the "**Title Report**")

together with copies of all documents listed as title exceptions as provided by the Escrow Agent. Within thirty (30) days following its receipt of the Title Report, Developer shall object to any exceptions to title by giving written notice to the City. Within twenty (20) days of Developer's written notice to the City described in the preceding sentence, the City shall notify Developer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If the City notifies the Developer of its intention to remove some or all of the objected to exceptions, City shall do so, or cause such removal(s) to occur, at or before Closing. If the City notifies the Developer of its intention to not remove some or all of the objected to exceptions, Developer may terminate this Agreement by giving the City notice of termination within twenty (20) days after the receipt of the City's notice given pursuant to this sentence, or Developer may proceed to Close subject to same.

2.3.2 Except as provided in the Deed and/or the DRB Approval, City covenants and agrees that it shall not further encumber the Property (other than those exceptions appearing on the Title Report on the date provided to Developer) without the written consent of Developer. Developer may obtain an update to the Title Report at any time prior to the Closing and Developer shall promptly provide City with a copy of any such updated Title Report. Within ten (10) days following its receipt of the updated Title Report, Developer shall object to City in writing to any exceptions to title. Within five (5) days after Developer's written notice to City described in the preceding sentence, City shall notify Developer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If the City notifies the Developer of its intention to not remove some or all of the objected to exceptions, Developer may terminate this Agreement by giving the City notice of termination within ten (10) days after the receipt of the City's notice given pursuant to this sentence, or Developer may proceed to Close subject to same.

2.3.3 Any exceptions to which Developer does not timely object in writing, or otherwise accepts at Closing, are the "**Final Permitted Exceptions.**"

## 2.4 **Title Insurance, Survey, Property Taxes and Closing Costs.**

2.4.1 The City, at its expense, shall provide to Developer with a standard coverage ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property insuring Developer in the amount of \$250,000.00 free and clear of encumbrances except the standard exceptions and the Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policies of title insurance, and the City agrees to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain such coverage.

2.4.2 The Developer will pay the costs for recording a Memorandum of this Agreement, the Deed, and any other documents required by Developer to be recorded.

2.4.3 Each of the Developer and the City shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. In addition, Developer shall be obligated to pay property taxes from and after the Closing Date subject to tax abatement as set forth in Section 4.1.1. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Clackamas County.

## 2.5 **Due Diligence and Inspections.**

2.5.1 Notwithstanding Section 2.3, on or before sixty (60) days from the Effective Date (the “**Due Diligence Period**”), Developer shall conduct an inspection of the Property and a review of the information relating to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer’s intended use.

2.5.2 Developer may conduct due diligence and inspections of the Property and the Project, including such physical, legal, and engineering inspections, tests, and investigations as it may deem necessary or desirable, including soils and environmental studies. Such studies and investigations may include, without limitation, zoning, land use, environmental, design review, covenants, conditions and restrictions, financing, leasing markets, project feasibility and related matters. The results of all soil tests, surveys, environmental site assessments, and other investigations of the Property undertaken by Developer shall not be disclosed to any third party or other governmental entity without the prior written consent of the City, unless such disclosure is required by law or is required in connection with obtaining any necessary permits or approvals; provided, however, that Developer shall be permitted to disclose such results to its design professionals, consultants, attorneys, and potential lenders and investors, provided that such parties have been advised of the foregoing confidentiality obligation.

2.5.3 The scope and cost of the due diligence and inspections shall be the responsibility of Developer. Developer will repair or restore any damage to the Property caused by the entry of or testing by Developer or its agents, contractors, or affiliates. City agrees to cooperate with Developer in connection with Developer’s due diligence and to provide information and documentation concerning the Property that Developer may request.

2.5.4 Developer shall indemnify, defend and hold the City harmless from and against any claims, damages or liability (including reasonable attorney fees) resulting from Developer’s entry on the Property, and shall repair any damage to the Property caused by the activities of Developer; provided, however, that Developer shall have no obligation to indemnify, defend, or hold harmless the City from any condition of the Property discovered by Developer, nor from any losses, including, without limitation, loss of marketability of the Property, as a consequence of such discovery or any pre-existing condition or feature of the Property. Developer’s repair and indemnity obligations shall survive the termination of this Agreement for a period of one (1) year.

2.5.5 Developer shall not take any action that results in any liens or encumbrances being placed against the Property and, if any liens or encumbrances are placed against the Property as the result of Developer’s actions, Developer shall cause them to be released by bond, payment or otherwise as provided in Section 3.11.

## 2.6 **Conditions Precedent to Conveyance.**

### 2.6.1 **Conditions.**

Developer and the City are not obligated to Close unless the following conditions are satisfied to the satisfaction of the benefited Party. Except where a Party is entitled to act in its sole discretion, the Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied. The Parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

(a) **Developer.** Developer is not obligated to purchase the Property until, to Developer's satisfaction:

(i) Developer shall be satisfied in its sole discretion with the results of its due diligence investigation, including but not limited to the condition of the Property, the economic feasibility of the Project, and all other factors Developer elects to consider;

(ii) The City shall have given Developer satisfactory proof of marketable title and the issuance of a preliminary title insurance commitment evidencing the willingness of a title insurance company to insure the Property, subject only to the standard exceptions and the Final Permitted Exceptions;

(iii) Developer has obtained financing and funding for the Project in an amount and under such terms as Developer, in its sole discretion, deems necessary or desirable to allow Developer to purchase the Property and develop and operate the Project;

(iv) Land use approval, as reflected in DRB Resolution No. 427 has occurred, the Partition has been completed and the Partition Plat recorded, and the appeal period for such approvals has passed without an appeal being filed; or, if an appeal has been filed, it has been satisfactorily resolved;

(v) The City has approved Final Construction Drawings for the Project pursuant to the process and criteria described in Section 3.2 below;

(vi) The City has issued all building permits for Project (other than for deferred submittals), and Developer has obtained all other governmental approvals necessary to construct and operate the Project;

(vii) Developer shall have approved the environmental condition of the Property (including, without limitation, the results of any Phase I Environmental Assessment existing as of the date of this Agreement and any Phase I or other testing completed after the date of this Agreement and before Closing, pursuant to Section 2.5 above);

(viii) Developer shall have entered into a lease or other form of occupancy agreement acceptable to Developer for the SMART Transit Center and Wilsonville Community Sharing;

(ix) No litigation is pending which prevents the City or Developer from performing their respective obligations under this Agreement; and

(x) The City has performed, or if performance is to occur after Closing has committed to perform, its obligations under Section 4 below.

(b) **City.** City is not obligated to sell the Property until, to City's satisfaction:

(i) The City has approved Final Construction Drawings for the Project pursuant to the process and criteria described in Section 3.2 below;

(ii) Developer is duly organized, existing Oregon limited partnership and has full authority to enter into and perform the obligations of this Agreement; and

(iii) Developer shall have entered into a lease or other form of occupancy agreement acceptable to Developer for the SMART Transit Center and Wilsonville Community Sharing;

(iv) No litigation is pending which prevents City or Developer from performing their respective obligations under this Agreement.

**2.6.2 Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 2.6.1 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for Closing, subject to any extension that may be granted pursuant to this Agreement, then such benefited Party or Parties may elect to:

(a) Terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is sent ("**Termination Date**") unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties; or

(b) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or

(c) Extend the Termination Date by which the applicable condition may be satisfied, but only if the other Party agrees in writing to the extension.

### **2.6.3 Final Termination Date.**

If all of the conditions precedent under Section 2.6.1. have not been satisfied, waived or otherwise resolved pursuant to this Agreement within three (3) years following the Effective Date, then this Agreement shall automatically terminate on that date ("**Final Termination Date**") unless the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the Final Termination Date, or unless the failure of satisfaction of the conditions precedent is the result of an Unavoidable Delay, as described in Section 8.2 below. Notwithstanding any language herein to the contrary, Developer shall have two options to extend the Final Termination Date for a period of twelve (12) months each, which Developer may exercise by providing written notice to the City not less than thirty (30) days prior to the then-applicable Final Termination Date.

If the Agreement is terminated for failure of satisfaction of the conditions precedent, without breach by the City or Developer, then the obligations of the Parties to each other under this Agreement shall terminate and neither the City nor the Developer shall have any other recourse against the other for failure of satisfaction of the conditions precedent without breach by either Party.

## 2.7 City Representations and Warranties.

City represents that:

2.7.1 The City has full power and authority to enter into and perform this Agreement in accordance with its terms, and the City has taken all requisite action in connection with the execution of this Agreement.

2.7.2 No representation, warranty or statement of the City in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or, to the City's knowledge, omits a material fact necessary to make the statements of facts contained herein not misleading.

2.7.3 As of the date hereof there are no breaches by the City under this Agreement or events that with the passage of time would constitute a breach of the City under this Agreement.

2.7.4 The City has received no notice from any municipal, state or federal government ("**Authority**") that the Property is in violation of, or subject to any existing, pending, or threatened investigation or inquiry by any Authority or of any remedial obligations under any applicable laws, statutes, regulations, rules, ordinances, codes, permits or orders of any governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and their political subdivisions and all applicable judicial, administrative and regulatory decrees and judgments pertaining to the protection of health or safety or the environment, and to the City's knowledge there do not exist any violations of such laws applicable to the Property.

2.7.5 Prior to the Closing Date, the City shall notify Developer of any material change in the City's representations and warranties or in any information furnished to Developer pursuant to this Agreement from the date hereof to the Closing Date. After such notification, Developer shall have thirty (30) days to give the City notice of termination of the Agreement based on the material change stated in the City's notice, with a termination date not less than ten (10) days after the date of the Developer notice. If Developer does not provide the notice of termination pursuant to this subsection, then the transaction shall proceed to Closing.

2.7.6 The Property is not subject to any leases which will survive Closing.

2.7.7 There is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property,

City's ability to perform its obligations under this Agreement, or Developer's ability to develop the Project according to all applicable laws, ordinances, rules and regulations.

## 2.8 Developer Representations and Warranties.

Developer represents that:

2.8.1 Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite entity action in connection with the execution of this Agreement and the transactions contemplated hereby.

2.8.2 No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

2.8.3 Developer has, or will have prior to Closing, sufficient working capital to fund the complete development of the Project together with (and subject to) the Obligations of City set forth in Section 4 of this Agreement.

## 3. DEVELOPMENT

3.1 **Project Managers.** The Developer's Project Manager is Robert Gibson. The City's Project Manager is Kimberly Rybold, who may be supported by other City staff or outside consultants. The Parties agree that regular engagement by the City and Developer is essential to Project success. Outside of any meetings the City may require as the regulatory authority for land use approvals, the Parties agree that the Developer's Project Manager and the City's Project Manager shall coordinate regularly regarding the Project. This will consist of telephone calls and may include in-person and on-site meetings as requested by Developer or the City. Prompt written notice of any re-designation of either Party's Project Manager will be provided to the other Party.

3.2 **Project Scope of Development.** The DRB has approved Developer's design identified in the DRB Approval (the "**Approved Design**"). Developer will prepare construction drawings and technical specifications for the Project (collectively, the "**Final Construction Drawings**") in general conformance with the Approved Design and submit them to the City for review and approval. The City will approve the Final Construction Drawings as long as they are in general conformance with the Approved Design, the approved Project described in DRB Resolution No. 427, and applicable building codes. The City hereby agrees not to impose any unusual or extraordinary plan or review requirements or conditions or stipulations on the Developer or on the Project; provided, however, that any modifications to the Approved Design may require additional regulatory review under the Wilsonville Development Code. Developer agrees that it will provide, as part of the Project, certain amenities, as listed in Exhibit G herein.

3.3 **Prevailing Wages.** The Parties hereby acknowledge that the Project is a "public work" subject to ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the "Oregon Prevailing Wage Law"). Developer shall comply, and shall require its general contractor and subcontractors to comply, with Oregon Prevailing Wage Law. To the extent



required under Oregon Prevailing Wage Law, workers shall be paid not less than the specified minimum hourly rate of wage as provided in the Oregon Bureau of Labor and Industries (BOLI) publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon." Developer will provide City with copies of payroll reports or other wage reporting that Developer is required to provide to BOLI and Metro.

**3.4 Schedule of Performance.** Developer has prepared and City has approved the Schedule of Performance attached hereto as Exhibit C, or, if such Schedule of Performance is not complete as of the Effective Date, the Parties shall attach such Schedule of Performance to this Agreement once approved by the Parties. The Parties may amend the Schedule of Performance as required to accommodate changed conditions, or otherwise. If an action on the Schedule of Performance is dependent on occurrence of an earlier action on the Schedule, the extension of the date to complete the earlier action shall automatically extend the date for completion of the dependent action. Either Party may, at any time, propose an integrated Schedule of Performance to reflect revisions earlier approved. The other Party shall approve or disapprove of the restated Schedule of Performance within ten (10) days after receipt from the proposing Party, provided however, that a Party may only disapprove a restated Schedule of Performance if the restated version has errors of calculation or is otherwise factually incorrect. Any approved revised Schedule of Performance will be deemed to replace Exhibit C. To the extent that the Parties agree upon changes to the Schedule of Performance that would impact the ability of the Parties to meet the Final Termination Date set forth in Section 2.6.3, the Final Termination Date shall be deemed extended accordingly.

**3.5 Financing.** Except for the obligations of the City in Section 4, Developer will be responsible for obtaining from third parties all funds and financing necessary to acquire the Property and complete construction of the Project. The City will cooperate and use its best efforts to support Developer in obtaining Project funding.

**3.6 City Approval.** Notwithstanding regulatory permits required to construct the Project or modifications that require approval under the Wilsonville Development Code, where this Agreement requires approvals from the City, the City will approve or disapprove in writing within ten (10) business days, beginning with the business day following the submission to the City of the material to be approved, except where a longer or shorter time period is expressly provided in this Agreement. Failure by the City to approve or disapprove within said period of time shall be deemed an approval. Any disapproval by the City shall state the reasons for such disapproval in sufficient detail to allow Developer to respond. Approvals by the City will not be unreasonably withheld, conditioned or delayed.

**3.7 Changes in Approved Drawings.** In the event Developer is required to submit an application to the City to approve a regulatory permit or a modification that requires approval under the Wilsonville Development Code, prior to official submittal to the City, Developer shall submit to City Project Manager for review any proposed changes to the approved Final Construction Drawings prior to any work being performed that relate to the change(s)..

**3.8 Diligent Completion.** Subject to the terms and conditions of this Agreement, after Closing, Developer will use commercially reasonable efforts to complete the Project in

general conformance with the Final Construction Drawings, and in compliance with the Schedule of Performance, subject to Unavoidable Delay as provided in Section 8.2.

3.9 **Cooperation.** The City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good faith and commercially reasonable efforts to pursue development of the Project as contemplated by this Agreement.

3.10 **Inspection and Property Access.**

3.10.1 **Before Conveyance of Property.** Before conveying the Property to Developer, the City shall allow Developer and Developer's employees, agents and consultants to enter upon the Property, at all reasonable times to perform due diligence and to carry out the purposes of this Agreement.

3.10.2 **After Conveyance of Property.** Except with regard to regulatory inspections and investigations, after conveying the Property to Developer during construction of the Project, and until a final Certificate of Occupancy is issued, Developer's work shall, upon reasonable notice, be accessible periodically and at reasonable times for inspection by representatives of the City. Except as related to its regulatory authority, City agrees not to interfere with the work occurring on the Property. In the event that City or its representatives enter the Property pursuant to this Section 3.9.2, they shall do so at their own risk and shall comply with all construction site rules established by Developer and Developer's contractors. In addition, City shall not be entitled to indemnification for any losses, liability or injury arising in connection with entry to the Property during construction, except to the extent the same arises out of the gross negligence or willful misconduct of Developer.

3.11 **Liens.**

Developer agrees that in the event any statutory lien shall be filed against the Property prior to the City's issuance of a final Certificate of Occupancy for the Project by reason of labor, services, or materials supplied to or at the request of Developer or pursuant to any construction in the Project, it shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Developer shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings, and so long as it shall furnish a bond, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable.

**4. OBLIGATIONS OF CITY.**

4.1 In addition to the obligation of good faith, cooperation and such other obligations set forth in this Agreement or as may be required of the City in connection with the Project, the City acknowledges and agrees that the Project would not be economically feasible without the City's performance of the following obligations, which the City hereby agrees to perform:

4.1.1 **Property Tax Abatement.** City agrees to assist in good faith in obtaining all local and state property tax abatement options that are available or can be made available through City action.

4.1.2 **System Development Charges (SDC) Subsidization.** City agrees to pay, or otherwise subsidize, a portion of the SDCs associated with the residential units of the Project as set forth on the Schedule of Subsidized Charges and Fees attached hereto as Exhibit E, which shall be in an amount not less than One Million Four Hundred Twenty Thousand Dollars (\$1,420,000.00). Charges and fees for the Project shall be paid at rates in effect as of the date the completed building permit application was accepted by the City. The City further agrees that any SDC's to be paid by Developer relating to the SDCs associated with the residential units of the Project shall be deferred pursuant to the terms and conditions of a SDC deferral agreement that complies with the City's SDC deferral program.

4.1.3 **State of Oregon Grant Funds.** The City shall provide \$1.9 million in State of Oregon grant funds to the Project, together with all accrued interest on such funds, for construction costs related to the transit customer service center on the ground floor of the Project. These funds were awarded to the Project in March 2022 by the Oregon Legislature to enable active ground floor spaces at the Project.

4.1.4 **Quiet Zone Designation.** The City will investigate, at no cost to Developer, whether applying for a quiet zone designation for the railroad crossing over SW Barber Street is feasible, including, without limitation, the funding and installation of required supplementary safety measures, alternative safety measures, and other improvements or requirements necessary for approval and implementation of such quiet zone (the "**Quiet Zone**"). If the City determines, in its sole and absolute discretion, that application for a Quiet Zone is feasible, within twelve (12) months from the Effective Date, the City will provide all required notices and submit an application for the establishment of the Quiet Zone. If the City determines, in its sole and absolute discretion, to apply for a Quiet Zone designation, the City shall diligently pursue establishment the Quiet Zone and shall use its best efforts to ensure that the Quiet Zone is established and in effect on or before the date a final certificate of occupancy is issued for the Project.

4.1.5 **Relocation of Bus Stops.** If Developer believes that bus stops and/or bus routes will be impacted by construction of the Project, Developer will coordinate with City of Wilsonville South Metro Area Regional Transit (SMART) to develop a staging plan that will accommodate temporary alternative bus stop locations and/or routes, as may be required. SMART retains sole and absolute discretion on determining appropriate transit routes and bus stops during construction of the Project. The City shall cooperate with Developer's efforts with regard to relocating bus stops and bus routes, and shall, upon the negotiation of terms and conditions acceptable to the City, grant Developer a temporary construction easement in the location depicted on Exhibit F attached hereto.

4.1.6 **Partition.** The City shall cooperate with Developer to complete and record a partition plat to partition Parcel 3, Partition Plat 2008-033, Clackamas County Plat Records, into two parcels, of which the newly created Parcel 1 is the Property referred to in this Agreement and must be a legal lot of record conveyable from the City to Developer as provided herein (the "**Partition**" and the recorded plat is the "**Partition Plat**").

## 5. ENVIRONMENTAL MATTERS

5.1 **Reports.** The City has delivered to Developer copies of all existing environmental reports and studies regarding the Property in City's possession or control. Developer may, at its cost, perform further environmental studies in connection with Developer's due diligence.

5.2 **Compliance with Laws.** Developer shall comply with all Environmental Laws with respect to its construction of the Project from and after the date of Conveyance and shall be liable for any violation of such Environmental Laws, except that Developer shall not be liable for pre-existing conditions at the Property or matters caused in whole or in part by the act or failure to act of the City or its employees, agents, contractors, or invitees.

5.3 **Contribution.** This Agreement is not intended to limit any rights of contribution that the Parties may have against others under applicable law or agreement, and is intended only as an allocation of responsibility between the Parties to this Agreement.

## 6. ASSIGNMENT PROVISIONS

6.1 **No Assignment.** Unless approved by the express written consent of City, no assignments of interest in this Agreement shall be permitted, or transfer of the Property shall be permitted, other than to affiliate of Developer at Closing, until after the City has issued a final Certificate of Occupancy for the Project.

6.2 **Permitted Assignment or Transfer.** Notwithstanding Section 6.1, "assignment or transfer" shall not include any Mortgage(s) which Developer may cause to attach to the Property. Any assignment or transfer permitted by this Section 6.2 shall not operate to relieve the Developer of the Developer obligations under this Agreement.

## 7. INDEMNITY AND INSURANCE

7.1 **Indemnity.** To the fullest extent permitted by law, for a period of two (2) years following issuance of a final certificate of occupancy, Developer shall defend, hold harmless, and indemnify the City from all claims, suits, or actions to the extent resulting from or arising out of the actions of, or the failure to act by, Developer or its officers, employees, consultants, general contractor, subcontractors, or agents, under this Agreement. This indemnification obligation expressly includes, but is not limited to, compliance with Oregon Prevailing Wage Law to the extent it applies to the Project. Nothing in this Agreement shall obligate Developer to indemnify the City from claims to the extent such claims arise from a negligent act, error, omission or willful misconduct of the City or its employees, consultants or agents; provided, however, the review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Developer shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City.

7.2 **Commercial General Liability Insurance.** Developer and any and all subcontractors, affiliates, agents, and consultants shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of \$2,000,000 for each occurrence and \$3,000,000

general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of \$2,000,000 per occurrence, Fire Damage (any one fire) in the minimum amount of \$50,000, and Medical Expense (any one person) in the minimum amount of \$10,000. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

**7.3 Professional Errors and Omissions Coverage.** For any and all professional services by Developer and/or its agents, consultants, contractors, or affiliates, including, but not limited to, architectural, engineering, surveying, appraising, and environmental testing services, such entity must carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than \$2,000,000 per claim. This insurance must be maintained for damages alleged to be as a result of errors, omissions, or negligent acts of the relevant entity. Such policy shall have a retroactive date effective before the commencement of any work by the relevant entity, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

**7.4 Business Automobile Liability Insurance.** If Developer or any subcontractors, affiliates, agents, or consultants will be using a motor vehicle in the performance of the work contemplated in this Agreement, Developer shall provide the City a certificate indicating that Developer and its subcontractors, affiliates, agents, and consultants have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

**7.5 Insurance Carrier Rating.** Coverages provided by Developer and its subcontractors, affiliates, agents, and consultants must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

**7.6 Additional Insured and Termination Endorsements.** The City will be named as an additional insured with respect to Developer's liabilities hereunder in insurance coverages. Additional Insured coverage under Developer's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Developer must be an additional insured on the insurance policies obtained by its subcontractors, affiliates, agents, and consultants performing any of the work contemplated in this Agreement.

**7.7 Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, Developer shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Developer agrees that it will not terminate or change its

coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice, and Developer will endeavor to obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

7.8 **Primary Coverage.** The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Developer shall be responsible for any deductible amounts payable under all policies of insurance.

## 8. **DEFAULT; REMEDIES**

### 8.1 **Default and Cure.**

8.1.1 **Default by Developer.** A default shall occur if Developer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from City specifying the breach. In the case of a breach which cannot with due diligence be cured within a period of thirty (30) days and which does not represent an immediate or emergent health, life, or safety concern, the Parties shall agree, in writing, to a reasonable extension to the cure period, which extension will not exceed ninety (90) days unless a longer period is approved by City, which approval shall not be unreasonably withheld. In the event of a default by Developer that is not cured as provided herein, the City shall be entitled to: (1) terminate in writing this Agreement; (2) prosecute an action for damages against Developer; (3) seek specific performance of this Agreement (provided, however, that in no event can Developer be required to construct the Project); and/or (4) exercise any other remedy permitted by law.

8.1.2 **Default by City.** A default shall occur if City breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after City receives written notice from Developer specifying the breach. The City's failure to act diligently and in good faith to satisfy conditions over which it has control is a breach. In the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, the Parties shall agree, in writing, to a reasonable extension to the cure period, which extension will not exceed ninety (90) days unless a longer period is approved by Developer, which approval shall not be unreasonably withheld. In the event of a default by City that is not cured as provided herein, Developer shall be entitled to: (1) terminate in writing this Agreement; (2) prosecute an action for damages against the City; (3) seek specific performance of this Agreement; and/or (4) exercise any other remedy permitted by law.

### 8.2 **Unavoidable Delay.**

8.2.1 Neither a Party nor Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "**Unavoidable Delay**") is due to causes that are unforeseeable or beyond such Party's reasonable control, including but not limited to acts of God, acts of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, or general sabotage or rationing or shortage of labor, equipment, facilities, sources of energy,

material or supplies in the open market, litigation involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation action, delays of litigation, and severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the reasonable control of such Party.

8.2.2 It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of the City or Developer as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall use commercially reasonable efforts to notify the other Party in writing of the cause or causes of the delay and the estimated time of correction promptly after becoming aware of the Unavoidable Delay.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1 Notice.**

9.1.1 Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail; postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

9.1.2 In the case of a notice or communication to Developer, addressed as follows:

Palindrome Wilsonville Limited Partnership  
Attn: Robert Gibson  
412 NW 5th Ave., Suite 500  
Portland, OR 97209

With a copy to:

Dunn Carney LLP  
Attn: Damien Hall  
851 SW Sixth Ave, Suite 1500  
Portland, OR 97204

9.1.3 In the case of a notice or communication to the City, addressed as follows:

City of Wilsonville  
Attn: Kimberly Rybold, Senior Planner  
29799 SW Town Center Loop E  
Wilsonville, OR 97070

With a copy to:

City of Wilsonville

Attn: Amanda Guile-Hinman, City Attorney  
29799 SW Town Center Loop E  
Wilsonville, OR 97070

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

9.2 **Headings.** 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.

9.3 **Waivers.** Except as otherwise expressly provided in this Agreement, no waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or Developer of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.4 **Attorneys' Fees.** If a suit, action, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

9.5 **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.

9.6 **Calculation of Time.** Except as otherwise expressly set forth in this Agreement, 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, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.

9.7 **Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9.8 **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.



9.9 **Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by a Party, implied or express, other than those contained in this Agreement.

9.10 **Modifications.** Any modifications to this Agreement shall be made in writing and executed by both Parties. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that the Agreement be amended from time to time. For this reason, each of the Parties will consider changes that may be proposed by the other during the term of this Agreement. The City may approve minor modifications to this Agreement without City Council approval. Minor modifications include:

9.10.1 Changes in the Schedule of Performance when deemed warranted by the City Project Manager which do not exceed 180 days; and

9.10.2 Changes to the Final Construction Plans that are reflected in any approved building permit revision or modification.

9.10.3 Minor modifications that do not change the substantive content of the Agreement in a material way, or the correction of errors or clerical matters.

9.11 **Successors and Assigns.** Subject to the provisions of Section 6, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

9.12 **Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives a Party "sole discretion" or the Party is allowed to make a decision in its "sole judgment."

9.13 **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.

9.14 **Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Clackamas County.

9.15 **No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.

9.16 **Approval by City Project Manager.** Unless specified to the contrary elsewhere in this Agreement as to a particular consent or approval, whenever consent or approval by City is

required under the terms of this Agreement, all such consents or approvals shall be given in writing from the City Project Manager, or from such other staff as the City has designated.

#### **9.17 Confidentiality and Communication with Public.**

9.17.1 The City and Developer agree that all information submitted by Developer during the term hereof, except for any materials, documents, or information submitted as part of a land use and building permit process, is submitted on the condition that the City keep said information confidential. The City agrees not to disclose said confidential information provided by Developer, including but not limited to financial statements regarding Developer or the Project, and pro forma information. This nondisclosure agreement shall survive termination of this Agreement, but shall not apply to the extent any such information is publicly available, has been disclosed by other parties, or is required to be disclosed by the Clackamas County District Attorney under Oregon public records laws. Should a third party request such confidential information from the City, the City will notify Developer not later than five (5) business days from the City's receipt of the request. Developer will be solely responsible to defend against disclosure should a third party challenge the nondisclosure of the confidential information. The City will cooperate with Developer if such a challenge is made by a third party.

9.17.2 Both Parties shall work in good faith to coordinate Project-related public communications, including press releases, statements to the media, and public testimony.

9.18 **Brokers.** Developer and City represent and warrant to one another that no commissions will be due any broker or entity in connection with the transactions contemplated by this Agreement.

9.19 **Recording of Memorandum of Agreement.** City shall provide for recording a Memorandum of this Agreement within thirty (30) days of the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit H to this Agreement. When the City issues to Developer a final Certificate of Occupancy or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN

ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Executed in multiple counterparts as of the day and year first above written.

**CITY OF WILSONVILLE, OREGON**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City General Counsel

**PALINDROME WILSONVILLE LIMITED PARTNERSHIP**

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

Its: \_\_\_\_\_

## EXHIBITS

Exhibit A – Property

Exhibit B – Special Warranty Deed

Exhibit C – Schedule of Performance

Exhibit D – Glossary of Defined Terms

Exhibit E – Schedule of Estimated Charges and Fees and Subsidized Portion of SDC's

Exhibit F – Relocated Transit Stops and Location of Temporary Construction Easement

Exhibit G – List of Mandatory Amenities

Exhibit H – Memorandum of Agreement

**EXHIBIT A**  
**(PROPERTY)**

**EXHIBIT B**  
**(SPECIAL WARRANTY DEED)**

**After recording return to:**

Dunn Carney LLP  
Attn: Damien R. hall  
851 SW Sixth Ave., Suite 1500  
Portland, OR 97204

**Until a tax change is requested, all  
tax statements shall be sent to:**

Palindrome Wilsonville Limited Partnership  
Attn: Robert Gibson  
412 NW 5th Ave., Suite 500  
Portland, OR 97209

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**STATUTORY SPECIAL WARRANTY DEED**

City of Wilsonville, a municipal corporation, (“Grantor”), conveys and specially warrants to Palindrome Wilsonville Limited Partnership, an Oregon limited partnership, (“Grantee”), the real property situated in the County of Clackamas, State of Oregon legally described in the attached Exhibit A (the “Property”), free and clear of all encumbrances created or suffered by Grantor, and subject to the encumbrances set out in the attached Exhibit B.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$1.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR

PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2024.

**GRANTOR:**

**CITY OF WILSONVILLE,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City General Counsel

**ACKNOWLEDGMENT**

STATE OF OREGON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Wilsonville, a municipal corporation.

\_\_\_\_\_  
Notary Public, State of Oregon

My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

[to be confirmed]

The Land referred to herein below is situated in the County of Clackamas, State of Oregon, and is described as follows:

[To Be Inserted]



**EXHIBIT B**  
**Exceptions**

[To Be Inserted]

## EXHIBIT C

### SCHEDULE OF PERFORMANCE

<u>Activity</u>	<u>Expected Completion Date</u>
Complete Design Development Drawings	November 1, 2023
Complete Design Development Cost Estimates	January 1, 2024
Complete Construction Drawings	February 1, 2024
Submit Final Construction Drawings for City Approval	February 1, 2024
Submit for Building Permits	March 1, 2024
Submit Construction Drawings Changes for City Approval, if required	March 1, 2024
Obtain Building Permits	May 1, 2024
Closing	August 1, 2024
Start Construction	September 1, 2024
Substantial Completion	February 1, 2026
Certificate of Occupancy	April 1, 2026

## EXHIBIT D

### GLOSSARY

1. “**Agreement**” means this Disposition and Development Agreement and all attached Exhibits.
2. “**Approved Design**” has the meaning as defined in Section 3.2 of the Agreement.
3. “**Developer**” means Palindrome Wilsonville Limited Partnership, an Oregon limited partnership
4. “**City**” means the City of Wilsonville, Oregon, a municipal corporation of the State of Oregon.
5. “**Close**” or “**Closing**” means the conveyance of the Property to Developer by the City by Deed and the simultaneous payment of the Purchase Price by Developer to the City, all as more specifically described in Section 2 of this Agreement.
6. “**Closing Date**” means the date on which City conveys the Property to Developer.
7. “**Deed**” means the form of Statutory Special Warranty Deed conveying fee simple title to the Property to Developer substantially in the form attached to this Agreement as Exhibit B.
8. “**Effective Date**” means the date that all Parties have executed this Agreement.
9. “**Environmental Laws**” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Hazardous Materials TransCityation Act, 49 U.S.C. §§ 1471 *et seq.*; Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; Refuse Act, 33 U.S.C. §§ 407 *et seq.*; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §§ 65 *et seq.*, to the extent it includes the emission of any Hazardous Material; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. §§ 136 *et seq.*; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; or any similar or analogous state or local statute or ordinance, or any regulation, order, rule, or requirement adopted thereunder which regulates Hazardous Substances.
10. “**Escrow Agent**” means Lawyers Title Company, Peggy Neikirk.
11. “**Final Construction Drawings**” means all plans and specifications required to complete the Project pursuant to the terms of this Agreement approved by the City and the appropriate City agencies.
12. “**Final Permitted Exceptions**” has the meaning set forth in Section 2.3.3.
13. “**Laws**” means any applicable governmental rule, regulation, code, law, statute, ordinance, order, policy, or similar binding pronouncement enacted by any local, state, or federal government agency, bureau, department, or government.

14. “**Mortgage**” means a mortgage or deed of trust against the Property, or any portion thereof securing the loan of funds for the purpose of Developer acquiring and developing the Property, recorded in the real property records of Clackamas County, Oregon.
15. “**Project**” generally means the Property, fixtures and the buildings, and other improvements to be newly constructed by Developer on the Property as initially described in the Approved Design and refined through the City-approved Drawings.
16. “**Property**” has the meaning set forth in Recital B and as identified in Exhibit A.
17. “**Schedule of Performance**” means the document describing the schedule by which the Developer’s obligations under this Agreement will be completed, attached hereto as Exhibit D.
18. “**Title Report**” has the meaning set forth in Section 2.3.1.

**EXHIBIT E**  
**SCHEDULE OF ESTIMATED CHARGES AND FEES**  
**AND SUBSIDIZED PORTION OF SDC'S**

Wilsonville	TOD	10/4/2023
Permits & SDC Fees		
Units	121	
Buildings	1	
Valuation per ICC		\$17,160,665.00
	<b>DU</b>	<b>Gross SF</b>
		<b>TGSF</b>
		<b>Total</b>
Parks SDC - Multifamily	5899	\$713,779.00
Parks SDC - Food Service/Shopping Center		\$5,295.00
Parks SDC - Retail/General Service		\$762.00
Sewer SDC - Multifamily	5199	\$629,079.00
Sewer SDC - Store		\$20,101.00
Sewer SDC - Restaurant		\$18,716.00
Sewer Permit SDC Fee (Multi-Family)		\$312.00
Transportation SDC	11575	\$1,400,575.00
SDC Water Fee		\$362,657.00
Storm SDC - per dwelling unit	2327	\$281,567.00
Storm SDC Fee (Impervious Drainage Area)		\$38,628.00
State Surcharge		\$11,068.52
<b>SDC Subtotal</b>		<b>\$3,471,471.00</b>
Building (Non-Residential) Permit Fee		\$92,237.63
Building Plan Review Fee		\$92,237.63
Fire Life Safety Plan Review Fee		\$64,566.34
Water Meter 2 inch		\$91,936.00
School Excise Tax (exempt)		\$0.00
Metro Excise Tax		\$20,592.80
<b>Other Fees Subtotal</b>		<b>\$361,570.40</b>
<b>Total SDC &amp; Permit Fees</b>		<b>\$3,833,041.40</b>

City-provided subsidy to SDCs related to multifamily residential units: \$1,420,000

**EXHIBIT F**  
**RELOCATED TRANSIT STOPS AND LOCATION OF TEMPORARY**  
**CONSTRUCTION EASEMENT**

[To Be Inserted]

**EXHIBIT G**  
**(LIST OF MANDATORY AMENITIES)**

**BUILDING AMENITIES**

- Roof top PV system
- EV charging stations
- On-site management office
- Community room
- Fitness room
- Bike storage room
- Parcel lockers
- Children's playground
- Laundry room
- Access control on primary building entrance
- Trash/recycling on each level

**RESIDENTIAL UNIT AMENITIES**

- Air-conditioning
- Operable windows
- Ceiling fans
- Microwaves
- Energy star appliances
- Programable thermostats
- Garbage disposals
- Kitchen/bath exhaust to outside

**EXHIBIT H**  
**(FORM OF MEMORANDUM OF AGREEMENT)**

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:

Damien R. Hall  
Dunn Carney LLP  
815 SW Sixth Avenue, Suite 1500  
Portland, OR 97204

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(Space above this line for Recorder's use only)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("**Memorandum**") is dated as of \_\_\_\_\_, 2024, by and between the **CITY OF WILSONVILLE**, a municipal corporation ("**City**"), and **PALINDROME WILSONVILLE LIMITED PARTNERSHIP**, an Oregon limited partnership ("**Developer**"), and together with City, each a "**Party**" and collectively the "**Parties**").

WHEREAS, the City owns a parcel of real property, tax lot identification number 31W14B 00703, tax account no. 05020822, located in Wilsonville, Clackamas County, Oregon, which is more particularly described on attached Exhibit A, that it has identified as a potential site for a transit-oriented mixed use development ("**TOD**"). Developer and the City are cooperating to partition the property to create two parcels, including a development parcel the City intends to convey to Developer and which is depicted as Parcel 1 on the partition survey attached hereto as Exhibit B (the "**Property**").

WHEREAS, the Parties entered into that certain Disposition and Development Agreement (Wilsonville TOD Project) (the "**Agreement**") relating to the portion of the TOD parcel known as the Property.

WHEREAS, pursuant to Section 9.19 of the Agreement, the Parties agreed to record this Memorandum with respect to certain rights and obligations of City and Developer under the Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenant contained herein, City and Developer hereby agree as follows:

1. **Declaration**. City and Developer have rights in and to the Property pursuant to the terms and conditions of the Agreement, including, without limitation, the right to acquire the Property by Developer on the terms and conditions contained therein.
2. **Successors and Assigns**. The Agreement binds the parties and their successors and assigns, including successor owners of the Property, until the termination date of the Agreement.
3. **Final Termination Date**. Pursuant to the terms and conditions contained in the Agreement, if all of the conditions precedent under Section 2.6.1. have not been satisfied, waived or



otherwise resolved pursuant to this Agreement within three (3) years following the Effective Date, then the Agreement shall automatically terminate on that date (“**Final Termination Date**”) unless extended by agreement of the Parties prior to the Final Termination Date or due to an Unavoidable Delay. Developer has two options to extend the Final Termination Date for a period of twelve (12) months each.

4. **Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, City and Developer have caused this Memorandum to be executed the day, month and year first above written.

CITY:

**CITY OF WILSONVILLE,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City General Counsel

DEVELOPER:

**PALINDROME WILSONVILLE LIMITED  
PARTNERSHIP,**  
an Oregon limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF OREGON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Wilsonville, a municipal corporation.

\_\_\_\_\_  
Notary Public, State of Oregon

My Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of the Palindrome Wilsonville Limited Partnership, an Oregon limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Clackamas, State of Oregon, and is described as follows:

Parcel 3 of Partition Plat No. 2008-033, in the City of Wilsonville, County of Clackamas, and State of Oregon.

**EXHIBIT B**

**LEGAL DESCRIPTION**

[to be confirmed]

The Land referred to herein below is situated in the County of Clackamas, State of Oregon, and is described as follows:

Parcel 1 of Partition Plat No. \_\_\_\_\_, in the City of Wilsonville, County of Clackamas, and State of Oregon.