

# DUNDEE URBAN RENEWAL AGENCY MEETING

## Board Meeting Agenda

Dundee Fire Station Community Room  
801 N. Highway 99W  
Dundee, OR 97115

TELECONFERENCED MEETING OPEN TO THE PUBLIC IN-PERSON OR VIA ZOOM

Join Zoom Meeting:

<https://us02web.zoom.us/j/84201963433>

Or Via Phone: +1-301-715-8592

Meeting ID: **842 0196 3433**

---

**June 4, 2024**

**8:30 PM\***

---

- 1. Call to Order**
- 2. Public Comment:** Speakers will be allowed up to 3 minutes to speak after being recognized by the Chair.
- 3. Approval of Minutes from May 7, 2024**
- 4. Approval of Development Agreement**
- 5. Agency Member Concerns**
- 6. Adjourn**

\*Or immediately following City Council meeting.

**Dundee Urban Renewal Agency  
Board Meeting Minutes  
May 7, 2024**

**Call to Order**

Chair David Russ called the meeting to order at 8:04 P.M.

**Attendance**

**Agency Member Attendance:**

Agency Members: Chair, David Russ, Storr Nelson, Bruce Starr, David Ford, Jeannette Adlong, and David Hinson. Absent: Tim Weaver.

**Staff Attendance:** Steve Dahl, City Administrator; and Kenzie Nagel, Administrative Assistant / Assistant City Recorder. Via Zoom: Matthew Kahl, City Attorney.

**Public Attendance**

None.

**Amendments to the Agenda**

None.

**Public Comments**

None.

**Approval of Minutes**

The Urban Renewal Agency Minutes from January 2, 2024, and March 5, 2024, were approved.

Motion: Storr Nelson

Second: Jeannette Adlong

Vote: Unanimous in favor

**Executive Session**

Chair David Russ called to order the Executive Session at 8:05 P.M. in accordance with ORS 192.660 (2) (e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions. Executive Session adjourned at 8:33 P.M. and the Urban Renewal Agency did not reconvene.

The Dundee Urban Renewal Agency meeting was adjourned at 8:33 P.M.

---

Storr Nelson, Chair

---

Steve Dahl, Executive Director

**URA RESOLUTION NO. 2024-1**

**A RESOLUTION APPROVING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DUNDEE, DUNDEE URBAN RENEWAL AGENCY, AND SOFAR, LLC**

**WHEREAS**, the Dundee Urban Renewal Agency (the “Agency”) is an urban renewal agency of the City of Dundee (the “City”) created under ORS Chapter 457 for the purpose of executing the City’s Urban Renewal Plan (the “Plan”).

**WHEREAS**, the Plan was adopted by the City via Ordinance 558-2017.

**WHEREAS**, the Plan provides the power to propose and act on plans and projects set forth in the Plan to eliminate areas of blight and stimulate development and redevelopment and allocates property tax increment revenue, as well as other revenues available, to the Agency to carry out redevelopment of area within the Plan; and

**WHEREAS**, SOFAR, LLC (the “Developer”) owns the real property located at 459 SW 9th Street, Dundee, Oregon, which is located within the Urban Renewal Area boundary.

**WHEREAS**, the Developer submitted a Site Design Review Application to the City for the development of a mixed-use project to be known as “Willamette Valley Village Project”.

**WHEREAS**, as part of the Willamette Valley Village Project, the Developer intends to construct a new road extension over and across the property, extending the existing Linden Lane from SW 9th Street to SW 10th Street, to construct a stormwater facility near SW 10th Street and Highway 99, and to construct a storm line from SW Linden Lane to said stormwater facility.

**WHEREAS**, the Developer requested the Agency’s financial assistance in the amount of \$749,900 relating to the construction of the street and stormwater improvements.

**WHEREAS**, the Agency reviewed the Developer’s request at its meeting on June 4, 2024 and believes the project achieves the overall goals and objectives of both the City’s Urban Renewal Plan, more particularly as described below.

**WHEREAS**, the Agency believes the requested financial assistance is a valuable investment for the Agency and the City of Dundee.

**NOW, THEREFORE, THE DUNDEE URBAN RENEWAL AGENCY RESOLVES AS FOLLOWS:**

**SECTION 1:** That the infrastructure and utility improvements and street construction and circulation improvements of the Willamette Valley Village Project are authorized activities that meet the goals and objectives of the Agency’s Plan.

**SECTION 2:** That the Linden Lane Extension, an identified project within the Plan and which will be dedicated to the City upon completion of construction by the Developer and approval of construction by the City, the street improvements and the stormwater improvements as part of the Willamette Valley Village Project benefit the Urban Renewal Area by improving public facilities and utilities within the Urban Renewal Area encouraging development and improving the visual appearance of the project area and by promoting a safe and convenient multi-modal transportation system within the Urban Renewal Area.

**SECTION 3:** That the Dundee Urban Renewal Agency agrees the terms and conditions of the Development Agreement attached hereto as Exhibit A.

**SECTION 4:** That the Dundee Urban Renewal Agency authorizes and directs the Agency's Chair to sign the Development Agreement on behalf of the Agency and such other documents as are necessary to carry out the Agency's decision, including but not limited to a Memorandum of Agreement.

**SECTION 5:** Further, as applicable to comply with State statutes, administrative rules or local ordinances, and to act in the best interest of the Agency, and without further action by the Agency, the City Administrator or designee are hereby authorized, directed, and responsible for fulfilling the ministerial functions as required for the effective administration and implementation of the Development Agreement, and to take any other action as may be advisable, convenient, necessary, or appropriate.

**SECTION 6:** The City Administrator or designee are authorized to disburse funds, subject to annual appropriations, as necessary to fulfill the Development Agreement obligations, and are further directed to implement all such actions necessary to ensure budgetary compliance.

**SECTION 7:** This resolution is effective immediately upon passage.

This resolution was PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2024.

---

David Russ, Chair

ATTEST:

---

Steve Dahl, City Administrator

**EXHIBIT A**  
**DEVELOPMENT AGREEMENT**

## **DEVELOPMENT AGREEMENT**

This Development Agreement (the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between the CITY OF DUNDEE, an Oregon municipal corporation (the “City”), the DUNDEE URBAN RENEWAL AGENCY (the “Agency”), and SOFAR, LLC, an Oregon limited liability company (the “Developer”). The City, the Agency, and the Developer may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

### **RECITALS**

A. The Agency is an urban renewal agency of the City created in accordance with ORS Chapter 457 for the purpose of executing the City’s Urban Renewal Plan (the “Plan”). The Plan provides the power to propose and act on plans and projects set forth in the Plan to eliminate areas of blight and stimulate development and redevelopment. The Plan allocates property tax increment revenue, as well as other revenues available, to the Agency to carry out redevelopment of area within the Plan.

B. The Developer is the legal owner of the real property located at 459 SW 9<sup>th</sup> Street, Dundee, Oregon, and more particularly described and depicted in Exhibit A (the “Property”), that is the subject of this Agreement.

C. The Property is located within the boundary of the Plan.

D. The Developer intends to partition the Property, consisting of 2.76 acres, into Parcel 1 and Parcel 2, which are depicted in Exhibit B.

E. The Developer further intends to develop Parcels 1 and 2 as a mixed-use development to be known as “Willamette Valley Village Project” (the “Project”) substantially in accordance with the development plan set forth in the Site Design Review Application, File No. SDR 24-04, subject to review and approval by the City pursuant to Section 2 below. The Project consist of 84 multi-family units in 16 buildings and six buildings fronting on SW 9<sup>th</sup> Street containing commercial space. The Project proposes to have 125 parking spaces. A preliminary site plan for the Project is attached hereto as Exhibit C.

F. As part of the Project, the Developer proposes to improve a new road extension over and across the Property. The Linden Lane Extension will consist of approximately 294 lineal feet of roadway extending from SW 9<sup>th</sup> Street to SW 10<sup>th</sup> Street.

G. In addition, as part of the Project the Developer proposes to construct a stormwater facility near SW 10<sup>th</sup> Street and Highway 99 as well as a storm line from SW Linden Lane to said stormwater facility.

H. Subject to the terms and conditions contained in this Agreement, the City and Agency desire to provide certain incentives to Developer to assist with the Project in exchange for Developer’s transfer, conveyance, and dedication of Public Improvements and Right-of-Way.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenant obligations of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. Definitions.** Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.
- 2. Land Use Application.** Developer has submitted the Application to the City for review and approval. The Application concerns the Project, Public Improvements, and Right-of-Way dedication described therein. The Application is a Type II Review and will be processed by the City in accordance with the procedure set forth in Section 17.401.030 of the Dundee Municipal Code. Prior to commencing construction of the Public Improvements, the Developer will provide the City's Public Works Department a list of contractors the Developer intends to hire to construct the Public Improvements. Each contractor must schedule and attend a preconstruction meeting with the Public Works Department before commencing construction of any Public Improvement.
- 3. Project Development.** Subject to the terms and conditions contained in this Agreement, the Developer will construct (or cause to be constructed) and complete, at Developer's cost and expense, the Project in accordance with all applicable land use approvals.
- 4. Public Improvements.**
  - 4.1. Design.** The Developer will design and complete the Public Improvements in accordance with the following: (a) all applicable land use and/or construction approvals, including the final Partition Plat; (b) the Public Improvement Design and Construction Standards; (c) the Public Improvement Plans and Specifications; and (d) the Laws. The Developer will obtain, at Developer's cost and expense, all necessary designs, plans and specifications, permits, licenses, reviews, inspections, reports (including, without limitation, environmental reports), and approvals required under the Law to design, develop, construct, and complete the Public Improvements.
  - 4.2. Construction.** The Developer will properly design, construct, and complete the Public Improvements prior to City's approval of the final Partition Plat; provided, however, if the Public Improvements are not completed and accepted by the City in accordance with this Agreement prior to the final Partition Plat's signing, then the City will not approve and/or sign the final Partition Plat unless and until the Developer submits to the City an itemized estimate of the total cost to construct the Public Improvements, including the costs of inspections, permits, licenses, and fees, and satisfactory evidence of the Bonds (provided, however, the City may waive the Bond requirement if permitted under the Law. Once commenced, the Developer will prosecute construction of the Public Improvements diligently, continuously, and in accordance with this Agreement. The Developer will cooperate with the City and promptly provide upon request any information or documentation reasonably requested by the City from time to time to determine compliance with this Agreement.

**4.3. Minimum Standards.** The Developer will perform (or cause to be performed) the following at Developer's cost and expense: (a) construct the Public Improvements expeditiously and in a good and workmanlike manner; (b) furnish, provide, and pay for all labor, materials, equipment, tools, supplies, machinery, transportation, and/or services necessary or appropriate to construct the Public Improvements; (c) properly manage and dispose of all waste, garbage, and debris resulting from construction of the Public Improvements subject to and in accordance with the Laws; (d) pay when due all charges for labor and materials used for construction of the Public Improvements; and (e) timely and properly pay any third-party contractors for any construction services concerning the Public Improvements subject to and in accordance with the Laws. The Developer will keep the Public Improvements free and clear of all Encumbrances. The Public Improvements will be free from deficiencies and/or defects in material and workmanship. The Developer will only use new and good quality materials and equipment for the Public Improvements. The Developer will require each contractor to maintain proper licensure with the Oregon Construction Contractors Board ("CCB") and maintain proper insurance and bonding as required under this Agreement and Laws. The Developer will conduct its operations and will perform or cause to be performed all work necessary to complete the Public Improvements, including, without limitation, all excavation and/or restoration related work, in accordance with the following: (i) all work will take into account the slope of the terrain on the Property; (ii) roads will be excavated and graded to minimize the impact of slope; (iii) all work will account for and safely divert water runoff; (iv) all utilities will be installed prior to pavement installation; (v) the work will be conducted in a manner intended to minimize any obstruction and/or disruption to traffic circulation; and (vi) the Developer will ensure the work does not obstruct and/or prevent necessary police and fire emergency routes.

**4.4. Inspection.** Developer will provide written notice to City (the "Notice of Completion") when Developer reasonably determines that the Public Improvements have been completed in accordance with this Agreement. Within a reasonable period of time after City's receipt of the Notice of Completion, the City will inspect the Public Improvements to determine if the Public Improvements have been completed in accordance with this Agreement. After completing the inspection, City will provide the Developer with a written notice (the "Correction Notice") if the City identifies any Public Improvements that require correction and/or completion. The Developer will perform any required corrections and/or completion identified in the Correction Notice within ten (10) days after the City's issuance of the Correction Notice (or such greater time as the City may permit, in its sole discretion, and identified in the Correction Notice) (the "Correction Period"). At the conclusion of the Correction Period, the City and the Developer will conduct a joint walk-through inspection for the purpose of confirming the Developer has properly completed any required corrections and/or construction of the Public Improvements. The Developer will pay all costs associated with the inspection and any other costs incurred by City in connection with Section 4.4.

**4.5. Acceptance.** City will provide the Developer a notice of acceptance upon completion of the Public Improvements (the "Acceptance Notice"). City's evaluation of the Public Improvements will be completed solely to protect the City's interests. City will not be a guarantor of, or responsible for, proper construction of the Public Improvements. City's



acceptance of the Public Improvements will not constitute a representation or warranty that the Public Improvements were properly designed or completed or create any City liability or obligation. Developer will transfer and convey the Public Improvements to City free and clear of all Encumbrances. Developer will take such actions and process and execute such documents, instruments, orders, and/or agreements necessary or appropriate to effectuate the transfer of the Public Improvements.

**4.6. Improvements and Right-of-Way Conveyance.** Developer will transfer, convey, and dedicate the Public Improvements and Right-of-Way to City immediately upon receipt of the Acceptance Notice. Developer will take such actions and process and execute such documents, instruments, orders, and/or agreements necessary or appropriate, as determined by the City in its sole discretion, to effectuate the transfer of the Public Improvements and Right-of-Way to City. Developer will transfer and convey the Public Improvements and Right-of-Way to City free and clear of all Encumbrances

**4.7. City Ownership.** Following transfer, conveyance, and dedication, City will own all Public Improvements constructed on the Property and/or designated as City or public property (including the underlying real property depicted in Exhibit B for the Public Improvements), including, without limitation, any street signs, trees, landscaping, sewer lines, water lines, stormwater facilities, conduit, curb and gutters, bridges, trails and sidewalks.

**4.8. Expenses and Taxes.**

**4.8.1.** Prior to the Developer's transfer and conveyance of the Public Improvements and Right-of-Way to the City, the Developer will pay all costs, expenses, utilities, taxes, and all other items and expenses with respect to the Public Improvements and Right-of-Way, including, without limitation, all Yamhill County real and personal property taxes. Expenses will not be prorated between the City and the Developer. Notwithstanding anything contained in this Agreement to the contrary, the City will not assume any liabilities, obligation, costs, and/or expenses arising out of or related to the Public Improvements and/or Right-of-Way. The Developer is liable for the timely payment and performance of all liabilities, obligation, costs, and/or expenses arising out of or related to the Public Improvements and/or Right-of-Way.

**4.8.2.** The City is a tax-exempt municipal corporation. Notwithstanding anything contained in this Agreement to the contrary, the City will not pay any real and/or personal property taxes concerning or related to the Public Improvements or Right-of-Way. In accordance with ORS 311.411, prior to the Developer's transfer and conveyance of the Public Improvements and Right-of-Way, the Developer will deliver to the City a certificate issued by the Yamhill County Assessor attesting that all "charges against the real property" (as defined under ORS 311.411) have been paid by the Developer in full.

**5. Project Incentives.** Subject to the terms and conditions contained in this Agreement, the City and/or Agency will provide the following financial and other incentives concerning or related to the Project (individually and collectively, the "Incentive(s)"). This is the sole financing

provided by the City and Agency related to the development of the Project and the Public Improvements.

**5.1. Expense Reimbursement.** Subsequent to the Developer's transfer and conveyance of the Public Improvements and Right-of-Way to City, Agency will reimburse the Developer's costs and expenses associated with the timely and proper completion of the Public Improvements (collectively, the "Expenses") up to an amount not exceeding \$749,900.00 (the "Reimbursement Obligation") but solely from the sources and on the terms described in Sections 5.2 and 5.3, below. This Reimbursement Obligation includes the upsizing of the storm water line and the storm water facility beyond what is required for the public improvements to SW Linden Lane. The City and Agency will not be responsible for any Expenses exceeding the Reimbursement Obligation; and the Developer will timely pay in full all Expenses exceeding the Reimbursement Obligation. Following the conveyance of the Public Improvements and Right-of-Way to City, the Developer will submit an invoice to the Agency concerning Expenses (and all Agency requested supporting documentation and information) for the Agency's review and approval.

**5.2.** The Agency's obligation to pay the Reimbursement Obligation is outlined in this section.

**5.2.1. Principal.** Assuming the Developer satisfies the requirements of Section 4.6, the Agency declares itself indebted and is obligated to pay the Reimbursement Obligation on the date that is five (5) years from the date of the conveyance of the Right of Way (the "Maturity Date").

**5.2.2. Prepayment.** The Agency may prepay all or any portion of the Reimbursement Obligation on any date without penalty or premium.

**5.2.3. Interest.** The Outstanding Balance, as defined in this subsection, shall bear interest at the Interest Rate, as defined in this subsection, from the date of the conveyance of the Right of Way until the Maturity Date or early prepayment. All then-accrued but unpaid interest is payable annually on the anniversary date of the conveyance of the Right of Way until the Maturity Date or early prepayment.

"Interest Rate" means a fixed annual interest rate of [six percent (6.00 %)] per annum, calculated on a 30/360-day basis.

"Outstanding Balance" means, at any time, the amount of the Reimbursement Obligation, less the sum of all principal payments and prepayments made.

**5.2.4. Application of Payments.** All payments from the Agency on the Reimbursement Obligation shall be applied first to pay accrued interest and second to pay principal.

**5.2.5. Source of Payments.** The Agency promises to pay the Reimbursement Obligation but solely from the TIF, as defined in Section 5.3.

**5.2.6. Payment Mechanics.** The Agency shall make the payments outlined in this section by check to the Developer.

**5.3.** Developer acknowledges the Agency's Reimbursement Obligation is totally dependent upon the production and collection of the revenues, if any, from the incremental revenue exceeding the base revenue generated by development and redevelopments projects in the Urban Renewal Area (the "TIF"). The Developer further acknowledges the City and Agency are in no way responsible for the amount of TIF actually generated; provided, however, the City and Agency shall be responsible for monitoring and working with the appropriate tax authorities to correct mistakes in calculating the TIF. Subject to the foregoing, the Developer agrees to assume the risk that insufficient TIF will be generated to satisfy the Reimbursement Obligation.

**6. Developer Representations; Warranties; Covenants.** In addition to all other Developer representations, warranties, and covenants contained in this Agreement, Developer represents, warrants, and covenants to City and Agency as follows:

**6.1. Authority; Binding Obligation; Conflicts.** Developer is an Oregon limited liability company duly organized and validly existing under the laws of the State of Oregon. Developer has full power and authority to sign and deliver this Agreement and to perform all its obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms. Developer's signing and delivery of this Agreement and performance of its obligations under this Agreement will not (a) breach any agreement to which Developer is a party, or give any person the right to accelerate any obligation of Developer, (c) violate any law, judgment, and/or order to which Developer is subject, and/or (d) require the consent, authorization, and/or approval of any person, including, without limitation, any governmental body. No action, arbitration, audit, hearing, investigation, litigation, suit, and/or other proceeding is pending or threatened against Developer. Developer owns the Property in fee simple, free and clear of all Encumbrances. No representation or warranty made by the Developer in this Agreement includes any untrue statement or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

**6.2. Sophistication; Investigation; Disclosure.** Developer has knowledge and experience in real estate development matters necessary to make Developer capable of evaluating the merits and risks of this Agreement. Developer has entered into this Agreement on the basis of its own examination and personal knowledge. Developer has had full opportunity to investigate and examine, and to ask questions and receive answers concerning this Agreement. Developer has obtained all information desired in connection with this Agreement. Developer has not relied on any representations or warranties made by City and/or Agency other than those expressly contained in this Agreement. Developer has reviewed all plans and specifications concerning the Public Improvements and Right-of-Way dedication and is satisfied with the nature, location, and all other aspects of the Public Improvements and Right-of-Way. Developer has disclosed this Agreement to all lenders and other persons or entities having a financial, ownership, and/or possessory interest in or to the Property.

**6.3. Transfers.** Developer will not Transfer in any manner whatsoever, whether voluntarily or involuntarily, any interest in or to this Agreement, the Public Improvements, the Right-of-

Way, the Property, and/or Incentives without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Subject to the immediately preceding sentence, the Developer will not Transfer any interest in or to this Agreement, the Public Improvements, the Right-of-Way, Property, and/or any Incentives unless and until the following conditions are met or satisfied: (a) the assignee or transferee agrees in writing (in form and substance reasonably satisfactory to City and Agency) to assume and abide by the terms and conditions contained in this Agreement; (b) Developer demonstrating to City's and Agency's satisfaction that the assignee or transferee is capable of successfully performing all Developer's obligations under this Agreement in accordance with this Agreement; and (c) Developer providing City and Agency no less than ninety (90) days' prior written notice of the proposed Transfer. Subject to the terms and conditions contained in this Section, this Agreement will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

**6.4. Independent Contractor.** The Developer is an independent contractor of, and not an employee of, the City. The Developer will be free from direction and control over the means and manner of constructing the Public Improvements, subject only to the right of City to specify the desired results. The Developer will pay all taxes arising out of or resulting from the completion of the Public Improvements, including, without limitation, income, social security, workers' compensation, and employment insurance taxes.

**6.5. Waiver of Remonstrance.** To facilitate installation of the Public Improvements upon the occurrence of an Event of Default, Developer hereby forever waives and releases all right to remonstrate against the formation of a local improvement district or reimbursement district by City and/or any third party for the purpose of constructing the Public Improvements. The term "right to remonstrate" refers to a property owner's right under applicable law to be counted as part of objecting property owners that can, in certain circumstances, suspend proceedings on the formation of a local improvement district or reimbursement district. This waiver does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding the formation of a local improvement district or reimbursement district, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project, or of the final assessment (or any other issue regarding the local improvement district or reimbursement district). **THIS WAIVER OF REMONSTRANCE RUNS WITH THE LAND AND IS BINDING ON ALL CURRENT AND FUTURE INTEREST HOLDERS IN THE PROPERTY.**

**7. City and Agency Representations; Warranties; Covenants.** In addition to all other City or Agency representations, warranties, and covenants contained in this Agreement, City and Agency represent, warrant, and covenant to Developer as follows:

**7.1.** The City shall process the above land use applications and petitions pursuant to the applicable requirements of ORS 197.797 and DMC Title 17 within the 120-day time period as provided for in ORS 227.178(1), unless extended or waived in writing by the Developers.

- 7.2. The City will conduct the site development review using a Type II Checklist Review process as provided in DMC 17.402.030.
- 7.3. The Agency is an urban renewal authority duly organized and existing under ORS Chapter 457 and has the power to enter into this Agreement and carry out its obligations hereunder.
- 7.4. The City's Urban Renewal Plan has been validly adopted in accordance with ORS Chapter 457 and is in full force and effect and has not been repealed.
- 7.5. Neither the City nor the Agency know of any litigation or threatened litigation, proceeding or investigation contesting the powers of the Agency or its officials with respect to this Agreement.

## **8. Term; Termination; Remedies.**

- 8.1. **Term.** Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until payment of the Reimbursement Obligation, unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties' mutual written agreement.
- 8.2. **Event of Default.** Subject to the terms and conditions contained in this Agreement, the occurrence of one or more of the following events constitutes a default by the Developer under this Agreement (each an "Event of Default"): (a) the Developer breaches and/or otherwise fails to perform any Developer representation, warranty, covenant, and/or obligation contained in this Agreement; (b) any proceeding under any bankruptcy and/or insolvency laws is commenced by or against Developer, a receiver is appointed for any part of the Property, or any attachment, seizure, and/or levy is made concerning the Property; (c) any Transfer of the Developer's interest in and to this Agreement and/or any Incentives, other than a Transfer receiving City's prior written consent in accordance with this Agreement; (d) the Developer fails to complete the Public Improvements in accordance with this Agreement; and/or (e) the Developer gives the City reasonable cause to doubt the Developer's ability to timely, fully, and properly complete the Public Improvements (or any other obligation hereunder). The City will make the determination as to whether an Event of Default has occurred.
- 8.3. **Prior Notice of Default.** Prior to the City declaring an Event of Default, the City will provide the Developer prior written notice of the alleged default (the "Default Notice"), which Default Notice will specify with reasonable particularity the default the City believes exists. Commencing on the Developer's receipt of the Default Notice, the Developer will have ten (10) days within which to cure or remedy the alleged default(s) (the "Cure Period"); provided, however, if the nature of the default(s) is such that it cannot be completely remedied or cured within the Cure Period, there will not be a default by the Developer under this Agreement if the Developer begins correction of the default within the Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable. Notwithstanding anything contained in this Agreement to the contrary, the City is not required to provide, and the Developer is not entitled to receive, a Default Notice upon the Developer's commitment of a default under this Agreement for

which the Developer has previously received a Default Notice within the immediately preceding twelve (12) months (commencing from the date of the previous default).

**8.4. Rights and Remedies.** Upon occurrence of an Event of Default, the City may, in addition to any other remedy provided to the City under this Agreement, terminate this Agreement and take over the prosecution of the construction work for the Public Improvements and complete the Public Improvements with its own forces or otherwise, or use such other measures the City determines necessary to prevent delay and/or damages. Notwithstanding anything contained in this Agreement to the contrary, the City's termination of this Agreement will not constitute a waiver of any rights, claims, and/or causes of action City may have against the Developer. Upon the occurrence of an Event of Default, (a) the Agency and the City will have no obligation to provide any Incentives to the Developer; and (b) the City may, in addition to any other remedy provided to the City under this Agreement, pursue all remedies available to the City at law or in equity, including, without limitation, the right of specific performance. Without otherwise limiting the generality of the preceding, if City terminates this Agreement due to Developer's default, City will recover the full cost and expense of any work performed by City to complete the Public Improvements, Public Improvements, and/or acquire the Right-of-Way, including, without limitation, construction, engineering, surveying, and legal fees, costs, and expenses (including costs of labor, equipment, machinery, and supplies). All available remedies are cumulative and may be exercised singularly or concurrently. No action taken by the City hereunder will affect any other rights or remedies of City or relieve the Developer from any consequences or liabilities arising from such acts or omissions.

**9. Indemnification.** The Developer releases and will defend, indemnify, and hold the City, the City's Representatives, the Agency, and the Agency's Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by the Developer or the Developer's Representatives; (b) any breach and/or inaccuracy of, and/or failure to perform any of the Developer's representations, warranties, covenants, and/or obligations contained in this Agreement; (c) design, construction, installation and/or completion of the Public Improvements and/or transfer and conveyance of the Right-of-Way; (d) the acts or omissions of the Developer or Developer's Representatives which arise in any manner out of the Developer's and/or Developer's Representatives construction of the Public Improvements; and (e) all clean-up, removal, and remediation work arising out of or resulting from any Hazardous Substances on the Property. The Developer's indemnification obligations will survive the termination of this Agreement.

## **10. Miscellaneous.**

**10.1. Assignment; Further Assurances; Memorandum.** Subject to Section 6.3, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. Developer will sign such other documents and instruments and take such other actions as City determines reasonably necessary or appropriate to further effect and evidence this

Agreement. The parties will execute and record the Memorandum contemporaneously with the parties' mutual execution of this Agreement.

**10.2. Costs; Attorney Fees.** Developer will bear Developer's own fees, costs, and expenses incurred in connection with this Agreement, including, without limitation, all attorney fees and costs incurred in the preparation, negotiation, signing, and performance of this Agreement. If any arbitration, action, suit, and/or proceeding is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

**10.3. Time of Essence; Notices.** Time is of the essence with respect to all dates and time periods in this Agreement. Any notice required under this Agreement must be in writing. All notices required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by electronic mail (with confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party listed below (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

**10.3.1.** In the case of a notice or communication to SOFAR, LLC, addressed as follows:

SOFAR, LLC  
Attn: Saj Jivanjee  
32230 NE Old Parrett Mountain Road  
Newberg, OR 97132  
Email:

**10.3.2.** In the case of a notice or communication to City and/or Agency, addressed as follows:

City of Dundee  
Attn: Steve Dahl, City Administrator  
620 SW 5<sup>th</sup> Street  
Dundee, OR 97115  
Email: steve.dahl@dundeecity.org

With copy to: Matthew L. Kahl  
Jordan Ramis, PC  
1211 SW 5<sup>th</sup> Avenue, 27<sup>th</sup> Floor  
Portland, OR 97205

- 10.4. Amendment; Waiver; Severability.** This Agreement may be amended only by a written document signed by both parties. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.
- 10.5. Further Assurances; Survival; Governing Law.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All provisions of this Agreement that would reasonably be expected to survive termination or expiration of this Agreement will do so. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Yamhill County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Yamhill County, Oregon.
- 10.6. Entire Agreement; Interpretation; Discretion.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. When a party is exercising any consent, approval, determination, and/or similar discretionary action under this Agreement, the standard will be the party's reasonable discretion, which consent, approval, determination, and/or similar discretionary action will not be unreasonably withheld, conditioned, and/or delayed.
- 10.7. No Partnership; No Agency.** This Agreement does not create an agency relationship between City, Agency, and/or Developer and does not establish a joint venture or partnership between City, Agency, and/or Developer. Developer does not have the authority to bind City and/or Agency and/or represent to any person that Developer is an agent of City and/or Agency. City and/or Agency will have no obligation with respect to



Developer's debts and/or liabilities in any nature whatsoever. Developer is not carrying out a function on behalf of City and/or Agency.

**10.8. Force Majeure.** City will not be responsible and/or liable for any failure to perform and/or delay in performance of an obligation under this Agreement caused by fire, civil unrest, labor unrest, material shortages, natural causes, war, and/or any other circumstances which may be beyond City's reasonable control. City will, however, make reasonable efforts to remove or eliminate such cause of failure to perform and/or delay in performance and will, upon the cessation of the cause, diligently pursue performance of its obligation under this Agreement.

*Signatures on following page.*

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

**DEVELOPER**

**SOFAR, LLC**

An Oregon limited liability company

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

Name: Saj Jivanjee

Title: Member

**CITY OF DUNDEE**

An Oregon municipal corporation

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

Name: David Russ

Title: Mayor

**DUNDEE URBAN RENEWAL AGENCY**

An Oregon urban renewal agency

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

Name: David Russ

Title: Chair

## **APPENDIX A DEFINITIONS**

"Acceptance Notice" has the meaning assigned to such term in Section 4.5.

"Agency" has the meaning assigned to such term in the preamble.

"Agreement" has the meaning assigned to such term in the preamble.

"Application" means Developer's Type II Review (Site Design Review) application (File No. SDR 24-04), received by the City on April 1, 2024.

"Bond(s)" means, individually and collectively, separate performance and payment bonds each in a sum equal to no less than 120% of the estimated total cost of the Public Improvements (or remaining cost to complete any unconstructed portion of the Public Improvements) in forms acceptable to City, executed by a corporate surety holding a certificate of authority to transact surety business in Oregon and otherwise acceptable to City.

"City" has the meaning assigned to such term in the preamble.

"Correction Notice" has the meaning assigned to such term in Section 4.4.

"Correction Period" has the meaning assigned to such term in Section 4.4.

"Cost Estimate" means an itemized estimate of the total cost to construct the Public Improvements, including the costs of inspections, permits, licenses, and fees.

"Cure Period" has the meaning assigned to such term in Section 7.3.

"Default Notice" has the meaning assigned to such term in Section 7.3.

"Developer" has the meaning assigned to such term in the preamble.

"Project" has the meaning assigned to such term under Recital C and depicted on the attached Exhibit C.

"Effective Date" has the meaning assigned to such term in the preamble.

"Encumbrance(s)" means any liens, mortgages, pledges, security interests, claims, rights, and/or other encumbrances.

"Environmental Law(s)" means any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment and/or designed to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment or public health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq., ORS 468B.195-197 (including any regulations promulgated thereunder), the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.

"Event of Default" has the meaning assigned to such term in Section 7.2.

"Expenses" has the meaning assigned to such term in Section 4.8.

"Hazardous Substances" means any hazardous, toxic, infectious, and/or radioactive substance, waste, and/or material as defined or listed by any Environmental Law, including, without limitation, pesticides, aviation fuel, paint, petroleum oil, and their fractions .

"Incentives" has the meaning assigned to such term in Section 5.

"Law(s)" means all applicable federal, state, and local policies, rules, regulations, leases, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, and/or regulations directly or indirectly affecting the Public Improvements, Development, and/or Right-of-Way, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), Environmental Laws, and City's building and zoning codes, all as now in force and/or which may hereafter be amended, modified, enacted, and/or promulgated.

"Memorandum" means a memorandum of this Agreement which will be recorded against the Property in the Yamhill County Official Records, which memorandum will be in form and substance acceptable to City.

"Notice of Correction" has the meaning assigned to such term in Section 4.4.

"Project" means, collectively, the Willamette Valley Village Project, Public Improvements, and conveyance of the Right-of-Way.

"Property" has the meaning assigned to such term under Recital A and is more particularly described and depicted on the attached Exhibit A.

"Public Improvement(s)" means those certain public infrastructure and/or improvements concerning or related to the Project identified and described in the Public Improvement Plans and Specifications.

"Public Improvement Design and Construction Standards" means City's Improvement Design Standards adopted by City Council on August 21, 2015, or the public improvement design and construction standards applicable at the time the Public Improvements are constructed, including, without limitation, all requirements applicable to curbs and gutters, aggregate road base, hot mix asphalt, signing, striping, storm drainage, improvements, public water and waste water improvements, landscaping, and lighting as defined in the Dundee Municipal Code and Development Code.

"Public Improvement Plans and Specifications" means the plans and specifications applicable as-built plans and specifications.

"Public Works Department" means City's public works department.

"Representative(s)" means each present and future officer, director, manager, member, employee, agent, contractor, and/or representative of the identified party.

"Right-of-Way" means the real property subject to the dedications identified in Section 4.6, depicted in Exhibit B and recorded on the final Partition Plat.

"Transfer" means any sale, assignment, mortgage, sublet, lien, conveyance, encumbrance, and/or other transfer (whether directly, indirectly, voluntarily, involuntarily, and/or by operation of law).

**EXHIBIT A**

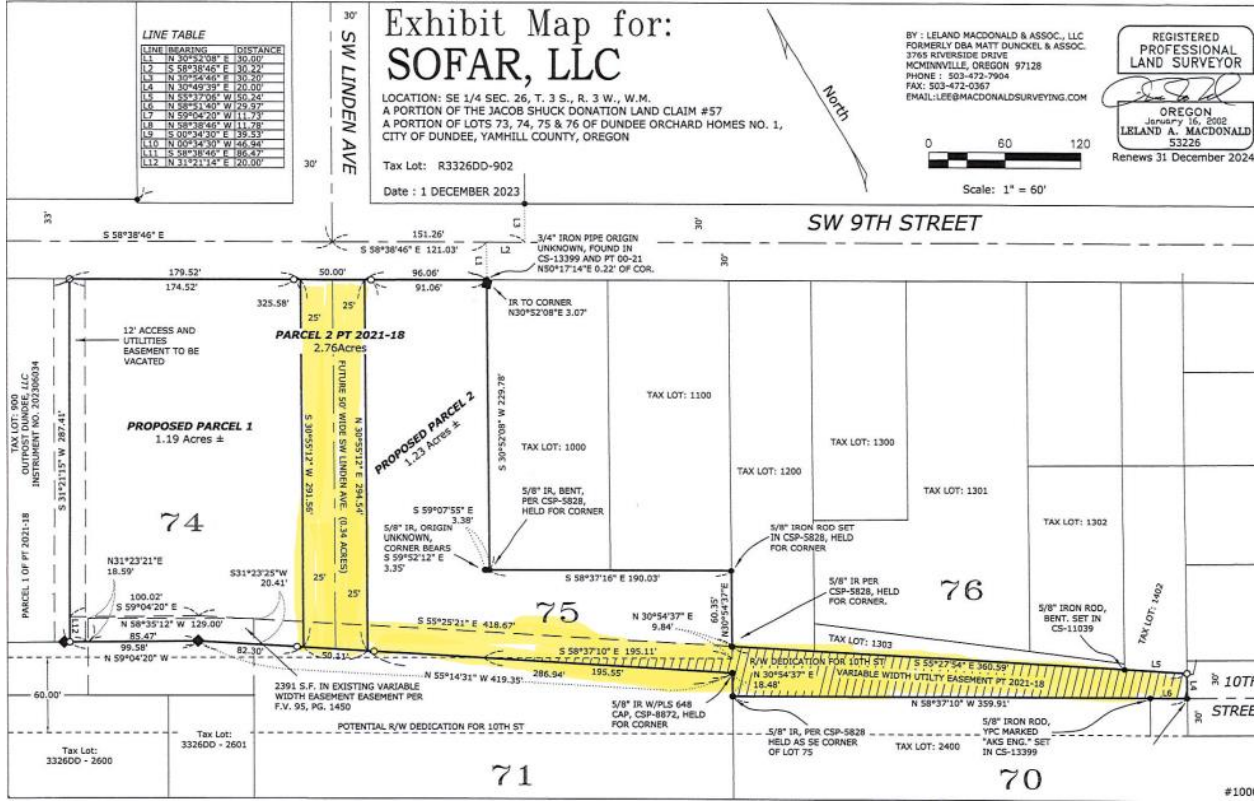
**LEGAL DESCRIPTION**

Situated in the County of Yamhill, State of Oregon, and described as follows:

Parcel 2 of Yamhill County Partition 2021-18, recorded on October 27, 2021, as Instrument No. 202121346, Official Yamhill County Records, Yamhill County, Oregon.

# EXHIBIT B

## DEPICTION OF PROPOSED PARTITION



# EXHIBIT C PRELIMINARY SITE PLAN

