

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A THIRD AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF ADDISON AND CO-DEVELOPERS AMLI RESIDENTIAL PARTNERS, L.L.C. AND STREAM REALTY ACQUISITION, L.L.C. FOR THE ADDISON CIRCLE AREA TRANSIT ORIENTED MIXED-USE DEVELOPMENT PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDED AND RESTATED MOU; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2018 Special Area Study commissioned by the City Council for the Town of Addison (“Town”) envisioned the creation of a distinctive and creative regional destination linking the new DART Silver Line rail station with Addison Circle Park, combining a mix of non-residential and residential uses and urban densities appropriate for the location, and compatible with Addison Circle and the surrounding area; and

WHEREAS, in April 2021, the City Council solicited proposals from qualified developers that included a conceptual development plan for the project consistent with the Town’s vision; and

WHEREAS, on April 12, 2022, the City Council accepted the proposal submitted by co-developers AMLI Residential Partners, L.L.C. and Stream Realty Acquisition, L.L.C. (collectively, “Co-developers”) and authorized the execution of a Memorandum of Understanding (the “MOU”) with Co-developers approving a master concept plan and preliminary schedule for various components of the project; and

WHEREAS, the Town and Co-developers executed a First Amendment to the MOU on November 8, 2022 extending due diligence and submittal schedules set forth in Section 3.1 of the MOU to correspond with the current anticipated completion dates for the outstanding due diligence items; and

WHEREAS, the Town and Co-developers executed a Second Amendment to the MOU on January 10, 2023 to update the proposed development program, master concept plans, and development schedules; and

WHEREAS, the Town and Co-developers now wish to further amend and restate the MOU to amend the economic development incentive program and to amend the schedule to complete the due diligence period and completion of the definitive agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The City Council hereby approves the Third Amended and Restated Memorandum of Understanding between the Town of Addison and Co-Developers AMLI Residential Partners, LLC and Stream Realty Acquisition, L.L.C. for the Addison Circle Area Transit Oriented Development Project, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute the same.

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SECTION 2. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **25th** day of **APRIL** 2023.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

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THIRD AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF ADDISON, AMLI RESIDENTIAL, AND STREAM REALTY FOR THE ADDISON CIRCLE AREA TRANSIT ORIENTED DEVELOPMENT PROJECT

This Third Amended and Restated Memorandum of Understanding (“MOU”) is effective as of April 25, 2023 (the “Effective Date”) between the Town of Addison, Texas (“City” or “Addison”), and AMLI Residential Partners, LLC (“AMLI”) and Stream Realty Acquisition, L.L.C. (“Stream”) as co-developers, collectively referred to herein as (“Co-Developers”) (each a “party” and collectively the “parties”), acting by and through their authorized representatives.

RECITALS

WHEREAS, the parties entered into this MOU to engage in negotiations related to a proposed mixed-use development within the City that will create a first-class regional destination by extending Addison Circle to the new DART Silver Line rail station (the “Project”); and

WHEREAS, the purpose of this MOU is to set forth the general understanding of the parties with regard to the Project and the terms and conditions of the Definitive Agreements that will ultimately govern the development of the Project; and

WHEREAS, the parties executed a First Amendment to the MOU approved by the City on November 8, 2022, and a Second Amendment to the MOU approved by the City on January 10, 2023, and now find it necessary to make additional amendments to the MOU; and

NOW, THEREFORE, in consideration of the expressions of intent and representations set forth herein, the parties agree as follows:

1. PROJECT DESCRIPTION

1.1. **Master Concept Plan.** The Project will be a transit-oriented (herein “TOD”), mixed-use development consisting of three (3) phases that will be developed in general conformance with the formal proposal submitted by Co-Developers, including all agreed amendments thereto (the “Proposal”), and the revised Master Concept Plan attached as Exhibit A to this MOU (the “Master Concept Plan”), subject to the terms, covenants, and conditions contained in the Definitive Agreements (defined herein). It is acknowledged and agreed by City and Co-Developers that the Master Concept Plan is subject to additional modification upon mutual agreement of the parties prior to execution of the Definitive Agreements.

1.2. **Project Improvements.** The completed Phase 1 of the Project will, at a minimum, include the following improvements: (i) Class A office building, (ii) Class A residential high-rise facilities, (iii) high-quality retail/restaurant/entertainment facilities designed to encourage activation of Project site, (iv) outdoor park and open space activation features, (vii) upgraded hardscapes, landscapes and pedestrian areas, (viii) and other features customarily found in a first-class urban mixed-use development in general conformance with the Proposal in design and quality (subject to City staff review and the Definitive Agreements), as further described in Section 2 of this MOU. The completed Phases 2 & 3 of the Project will, at a minimum include the following improvements: (i) Class A office building, (ii) a DART transit station and associated parking, (iii) a boutique hotel, (iv) upgraded hardscapes, landscapes and pedestrian areas, (v) and other features customarily found in a first-class urban mixed-use development in general conformance with the Proposal in design and quality (subject to negotiation of deal terms between the Parties, City staff review and the Definitive Agreements), as further described in Section 2 of this MOU.

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The minimum required improvements described in this section are collectively referred to herein as the "Improvements".

1.3. Project Administration. Co-Developers will be generally responsible for Project administration and agrees that it will finance, design, develop, construct and market the Project in conformance with this MOU and the Definitive Agreements. Co-Developers will be required to consult with City regarding the administration of the Project in conformance with the terms of the Definitive Agreements.

1.4. Minimum Developer Investment; Incentives. The parties anticipate that the Project will be developed in three (3) phases with a total development cost of not less than \$469,540,000, including a minimum investment of \$371,273,000 by Co-Developers in phase 1 of the Project (inclusive of incentives), as more particularly described in Section 2 of this MOU. For all purposes of this MOU, the minimum investment amount includes hard construction costs as well as soft costs attributable to the Project (including design costs, development fees, feasibility studies, legal costs, permitting, contributions, incentives, operating deficit reserves, internal financing and fees). The parties acknowledge that maintaining the agreed minimum investment in the Project is essential to the successful development of the Project and shall be a condition precedent to City's obligation to provide the various public incentives set forth in this MOU. Co-Developers will therefore be required to certify the development costs for each component and phase of the Project. In the event Co-Developers' minimum investment is below the agreed minimum investment for any component of the Project, the City's incentives related to that component of the Project will be offset by an amount equal to the difference between the agreed minimum investment and the actual investment (e.g., the cap on permit fees and/or infrastructure costs may be increased in an equivalent amount).

1.5. Definitive Agreements. Promptly following the Effective Date of this MOU, the parties will negotiate in good faith mutually satisfactory Definitive Agreements and related documents with respect to the Project (the "Definitive Agreements"), which shall provide for construction of the Improvements and be phased in conformance with Section 2, below. The parties anticipate that the Definitive Agreements will include the following:

- (a) AMLI Tower Ground Lease
- (b) AMLI Podium Ground Lease
- (c) AMLI Retail Ground Lease
- (d) Stream Purchase and Sale Agreement
- (e) Stream Master Office Lease with Addison
- (f) Stream Parking Agreement(s) with Addison
- (g) Master Incentive Agreement between AMLI, Stream and Addison
- (h) AMLI and Stream Form of Guarantee
- (i) Addison License Agreement (for activation of Festival Way, Quorum Drive, and park/open space area)
- (j) POA and CCR for Phase 1
- (k) Approved Phase 1 Concept Plans
- (l) Addison PD Ordinance Number O-23-8 (including any subsequent amendments thereto)

2. PROJECT PHASES; SCOPE AND ECONOMICS

2.1 Phase 1 Scope:

- (a) *Minimum Investment*. Co-Developers will invest a minimum of \$371,273,000 in connection with the Improvements for phase 1 of the Project. The parties anticipate that

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Stream will invest a minimum of \$78,500,000 and AMLI will invest a minimum development cost of \$292,773,000 for phase 1 of the Project.

- (b) *Platting; Governing Property Agreements.* The parties anticipate that each component of the development will be platted as a separate lot to accommodate future disposition of the various components. The parties (together with DART) will agree to amenable CC&Rs allowing for a cohesive class-A TOD mixed-use development that provides superior connectivity, security, and maintenance obligations commensurate to other high-quality, similar TOD developments in DFW. The parties will also create a property owner's association (POA) to maintain the open/shared space in the development, which the parties anticipate will outline Addison's obligations for the maintenance, security, public events (festivals), and daily programming of Addison Circle Park.
- (c) *City License Agreement.* The parties anticipate entering into a license agreement for the park/open space area and along Festival Way and Quorum to support activation of the retail connection and programming in Addison Circle Park.
- (d) *Office.* Stream will construct an office building with ground level retail and 623 stall public parking garage ("Stream Phase 1"), further described as follows:

Land Area:	Approximately 2.4 acres (subject to mutual agreement of Addison and Stream).
Minimum Area:	160,000 sf of office floor area, inclusive of approximately 157,000 net rentable square feet of office space. The exact square footage is to be adjusted based on BOMA calculations by the architect and again at construction completion, tolerance to be within one percent (1%); there will be approximately 3,800 sf of retail at the ground level of the office building.
Parking Garage:	623 stall parking garage to be initially financed and owned by Addison and subject to one or more parking agreements with Stream, which shall include such terms as necessary to comply with the City's public financing requirements and restrictions and satisfy the requirements for Stream's tenants as described in Section 2.2(a)(3) below. The final number of spaces shall be subject to the parking study described in Section 2.2(a)(2) below.
Other:	The project shall be built substantially as shown in PD O23-8 in design and quality, subject to City staff review and the Definitive Agreements; Stream may utilize a condominium structure to allow for the parceling of specific units within a platted lot (i.e., office, shared parking, retail components, etc.). Stream and City agree that amendment of this MOU shall not be required for minor

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modifications to the square footage or number of parking spaces provided for in this MOU (not to exceed 10%), provided that such modifications are agreed upon by both parties and memorialized in a written 'side letter' to this MOU, which shall become an addendum hereto. Notwithstanding the foregoing, there shall be no reduction in building height, net rentable office area, or retail floor area without written amendment of this MOU approved by the City Council.

- (e) *Multifamily/Retail/Entertainment.* AMLI will construct multifamily buildings with ground level retail and a stand-alone retail/restaurant/entertainment parcel ("AMLI Phase 1"), further described as follows:

AMLI Phase 1 Land Details:

The AMLI Phase 1 will be constructed upon the three parcels of real property generally described below and depicted on the Master Concept Plan attached hereto as Exhibit A (to be more particularly defined in the Definitive Agreements). AMLI will be responsible for all required survey and platting required for the below properties.

<u>Parcel</u>	<u>Description</u>	<u>Anticipated Use</u>
Lot 3, Block A:	Approximately 1.79 acres	13-story residential tower with 10,000 sf of ground level retail
Lot 1, Block B and Lot 1X, Block C:	Approximately 3.32 acres	7-story residential podium project with 5,000 sf of ground level retail on approximately 2.88 acres; with realignment of Spectrum Drive and approximately 0.44 acres of public open space
Lot 2, Block A:	Approximately 1.9 acres	Stand-alone retail/restaurant/entertainment operation as shown on the latest Master Concept Plan with a minimum twenty percent (20%) of the total lot area to serve as public open space.

AMLI Phase 1 Multifamily Building Details:

Number of Buildings: 2 residential structures consisting of:

- 13-story tower (the "Tower") with:
 - Units: 270
 - NRSF: 250,000 – 300,000 sf
 - Ground level retail: 10,000 sf
 - Parking spaces: 380 – 420, where compliance with the UC zoning district residential parking standards is achieved, and where public parking is provided in the parking

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garage in accordance with the requirements specified below

- 7-story podium (the “Podium”) building with:
 - Units: approximately 412
 - NRSF: 330,000 – 375,000 sf
 - Ground level retail: 5,000 sf
 - Parking spaces: 590 - 630, where compliance with the UC zoning district residential parking standards is achieved, and where public parking is provided in the parking garage in accordance with the requirements specified below

Multifamily Building
Development Parameters:

Minimum
Units: 682 residential units
NRSF: 580,000 sf
Parking spaces: 970 parking spaces in two structures;

Maximum
Units: 700 residential units
NRSF: 675,000 sf
Parking spaces: 1,050 parking spaces in two structures.

Net Rentable Area:

15,000 sf of retail below residential; 25,000 sf retail/restaurant/entertainment component and associated outdoor space exclusively dedicated to programming for entertainment and other authorized activation.

Parking Garage:

2-separate parking garages for each residential building for residences, to include +/- 60 public parking spaces to support the ground level retail and guest parking.

Other:

The project shall be built substantially as shown in the Master Concept Plan and in general conformance with Proposal in design and quality, subject to City staff review and the Definitive Agreements. AMLI and City agree that amendment of this MOU shall not be required for minor modifications that do not exceed a ten percent (10%) total reduction to the square footage or number of parking spaces provided for in this MOU, a reduction in the number of residential units to not less than 650 leasable units, or an increase in the number of

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residential units to not more than 700 leasable units. Any such modifications shall be agreed upon by both parties and memorialized in a written 'side letter' to this MOU, which shall become an addendum hereto. Notwithstanding the foregoing, there shall be no reduction in multifamily building height or net rentable floor area for the ground floor retail integrated within the multifamily buildings, nor any increase in the number of residential units beyond the maximum number of units currently identified herein without written amendment of this MOU approved by the City Council.

2.2 Phase I Economics

- (a) *Stream Phase I Economics (Office)*. The parties agree to the following general economic terms for the Stream Phase 1, which shall be defined in further detail in the Definitive Agreements:
- (1) City will initially (A) convey to Stream for nominal consideration approximately 1.24 acres of land for the office building (the market value of which land the Town estimates is \$1,024,793 (\$18.97 per sq. ft.)), and (B) retain the land for the parking garage. The final acreage shall be as mutually agreed and set forth in the definitive purchase and sale agreement between Addison and Stream.
 - (2) Stream has commissioned a parking study at its sole cost and expense to ensure the proper amount of parking for the Stream Phase 1 development. The result of that parking study shows that 623 parking spaces is adequate. The parking study has been submitted to City for its review and approval.
 - (3) City and Stream will execute one or more parking agreements whereby public parking (including reserved parking spaces for Stream's office tenants [not to exceed 10% of the total parking spaces in the garage]) is available in the parking garage per Section 2.2(a)(6) below. The use of available parking spaces within the parking garage by office tenants and the installation of signage in the parking garage designating such parking spaces as "Office Building Parking" to facilitate the leasing of the office building at market rates will be subject to an agreed-upon parking management plan and all necessary requirements and restrictions under the City's public financing for the parking garage.
 - (4) City will commit to a 3-year master lease (the "Master Lease") for 60,000 square feet of space (40% of the building) at \$57.50 per square foot gross (\$3,450,000 per year). The Master Lease shall commence upon final certificate of occupancy of the office building and shall not provide the City with the right to physically occupy any space in the office building, except for City's rights with respect to the Optional Permanent Lease (as defined below). During the term of the Master Lease, the City will have an option to lease all or a portion of City's leased space at market rate, plus triple net and will include a tenant allowance in the amount of \$65 per square foot ("Optional Permanent Lease"). The term of the Optional Permanent Lease shall be for a minimum of seven (7) years. If City elects to enter into the Optional Permanent

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Lease, all payments made by the City under such Optional Permanent Lease will be credited against the City's obligation to pay rent under the Master Lease.

- (5) City's lease obligations will be reduced on a 50/50 basis until City's lease obligation is removed entirely. Reduction of City's lease obligation will take place three (3) months after lease commencement date for leases less than 50,000 RSF and six (6) months after lease commencement date for leases greater than 50,000 RSF. For example purposes only, if Stream leases 20,000 square feet to a 3rd party tenant, City's lease obligation will be reduced by 10,000 square feet and will continue to have a lease obligation of 50,000 square feet. Once Stream has executed leases for 120,000 square feet, City's lease obligations will be removed entirely. As a material inducement for the City's lease obligation incentive, Stream, as developer, agrees that it will use commercially reasonable efforts to market and lease (including pre-leasing during construction) the Stream Phase 1 office to prospective tenants. Stream further acknowledges that it is the intent of the parties to limit competing projects in the area and agrees that it will not build a competitive project within a 1.5 mile radius of the Project until such time as the City's lease obligation has been removed entirely, by way of lease up or terminated by mutual agreement between both parties. The parties do not intend to limit Stream's third-party service business from leasing or managing speculative new-build office buildings nor exclude Stream from developments where Stream has no financial investment (i.e., fee developments). The foregoing will be fully documented in the Definitive Agreements.
- (6) The City will finance, build, and initially own the parking garage, until such time as it is conveyed to Stream under the terms of a definitive agreement between City and Stream. The City will engage Stream to manage the construction of the parking garage under a construction management agreement, in consideration of an agreed-upon market rate construction management fee to be included as part of the overall construction budget for the parking garage and not as a separate fee that is paid by City. The parties acknowledge that City intends to issue debt to fund the parking garage and, to legally qualify as city-issued debt, the funds are required to be used for public infrastructure; meaning the parking garage will need to be available for public use in the manner required by the terms of such financing. City will finance the cost of the garage through a 20-year amortizing loan at the City's borrowing costs (the "Financing Period"). City will pay one hundred percent (100%) of the debt service payments on \$6,000,000 of such debt and Stream will pay one hundred percent (100%) of the debt service payments on the amount of such debt above \$6,000,000 (with the characterization of such payment obligations to be agreed upon by City and Stream). By way of example and not limitation, if the total debt for the garage is \$15,000,000, City will pay 100% of the debt service payments allocable to \$6,000,000 of the total \$15,000,000 debt and Stream will pay 100% of the debt service payments allocable to \$9,000,000 of the total \$15,000,000 debt. During the Financing Period, City and Stream will enter into a one or more parking agreements whereby Stream will have certain management authority for, and be responsible for, operations and maintenance of the parking garage, including all costs associated therewith, including, without limitation, the parking rights of the general public and rights with respect to reserved and unreserved spaces for tenants of the office building described in Section 2.2(a)(2) above. Upon completion of the Financing Period (i) City will convey fee simple ownership of the garage and land to Stream (or its authorized successor in interest) for nominal consideration in conformance with the definitive agreement between City and Stream, and (ii) contemporaneous

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with closing, City and Stream will terminate the parking agreements and enter into a perpetual parking license or other agreement whereby all parking spaces in the garage (other than the 10% reserved spaces for office tenants) will be made available for retail tenants and customers during the day and all patrons and public users of the Addison Circle development during nights, weekends and for special events.

- (7) In lieu of providing retail space at the ground floor of the parking garage at the Festival Way frontage, Stream will provide increased office area in accordance with Section 2.1(d), as well as alternative forms of street activation and screening as depicted in the final approved development plans.
 - (8) Stream will activate the 0.23 acre Lot 4X, Block A by constructing and installing fitness-oriented improvements (e.g., outdoor fitness court(s), pavilion, pickle ball court(s), etc.) and associated site furnishings and landscape, as determined by City in its reasonable discretion and subject to an agreed-upon cap on Stream's obligation to fund such construction costs. City will retain fee title ownership to the foregoing parcel. Maintenance of the fitness and site furnishings, and site landscape improvements constructed on this parcel will be the responsibility of City following final inspection and acceptance.
 - (9) Stream will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Stream's obligations under the Definitive Agreements and will apply to the Stream Phase 1 office and parking facilities.
 - (10) City agrees that its permit fees will be capped at \$150,000 and Stream will not have an obligation for offsite infrastructure costs for the office component of the Project.
 - (11) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.
- (b) *AML Phase 1 Economics for Multifamily with Ground Level Retail.* The parties agree to the following general economic terms for the multifamily and retail components of the AML Phase 1, which shall be defined in further detail in the Definitive Agreements:
- (1) Ground Lease: AMLI will enter into a 99-year ground lease with City for approximately 7 acres of land that includes the general terms and conditions set forth in this Section 2.2(b).

Deposit and Pre-Paid Ground Rent: AMLI will pay to City \$2,000,000 as pre-paid ground rent for the three (3) AML Phase 1 properties (subject to the provisions of this Section 2.2) in the form of a single, lump sum payment pursuant to the negotiated terms of the Definitive Agreements (the "Pre-Paid Ground Rent"). The Pre-Paid Ground Rent will initially be held in escrow and applied to rent in conformance with the respective ground leases. The Pre-Paid Ground Rent will be non-refundable, provided, upon AMLI's timely submittal (and City's acceptance) of both a

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completed infrastructure plan reasonably acceptable to City and AMLI on or before December 15, 2023 and application for a building permit for the Tower on or before June 30, 2024, AMLI will be entitled to a refund of the Pre-Paid Ground Rent during the period of time commencing upon AMLI's submittal of its application for a building permit for the Tower and ending ninety (90) days following submittal, but in no event later than September 30, 2024.

- (2) Ground Rent: The initial ground rent will be \$500,000 which will be adjusted annually by CPI, with a maximum annual increase of no greater than 3.0% on a non-cumulative basis.
- (3) Rent Commencement Date: The earlier of (i) 84 months from commencement of construction of AMLI Phase 1 or (ii) December 30, 2032 (as used herein, the "Rent Commencement Date"). Addison will receive the first ground rent payment no later than January 30, 2035, after the Pre-Paid Ground Rent is depleted.
- (4) Economic Development Incentive Grant: Beginning the first full year following stabilization of the AMLI Tower (defined as 94.25% occupancy), City will provide to AMLI five (5) consecutive annual economic development grants from the City's ad valorem taxes actually collected by City for the applicable grant year, subject to the payment terms set forth herein and in the Master Incentive Agreement. Each year of the grant period AMLI will provide their Net Operating Income per GAAP before ground lease payments, capital expenditures, tenant improvement allowances and leasing commissions, certified by their Chief Financial Officer (the "Certified NOI"). The Certified NOI (numerator) will be divided by AMLI's Actual Certified Construction Costs (denominator) to calculate an Annual Return on Cost (ROC) for the Project. If the Annual Return on Cost is below the ROC thresholds outlined in the schedule below, AMLI will be entitled to receive a grant not to exceed \$1.6 million each year there is a gap between the computed Actual ROC and the Required ROC threshold. The ROC thresholds for each grant year shall be:

Grant Year	Threshold (%)
Year 1	6.91
Year 2	6.98
Year 3	7.20
Year 4	7.42
Year 5	7.45

AMLI will be entitled to roll over any amount greater than the \$1.6 million each year to the following grant year, but in no event shall the reimbursement amount exceed \$1.6 million annually and \$6,500,000 cumulatively for the entire grant period. AMLI will provide annual audited financial statements for each grant year.

- (5) Other AMLI Phase 1 Terms:
 - (i) In order to consistently maintain a Class A mixed-use TOD project to City's standards throughout the term of the ground lease, AMLI (or future tenant) may be required to make capital improvements from time to time. Ten years after the Rent Commencement Date, AMLI will have the right, with City's approval, not to be unreasonably withheld, to offset the cost of certain capital improvements in excess of \$1 million (as adjusted for inflation) against the

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annual ground lease rent once every 10 years. The amount of offset shall not exceed the ground rent in the year the capital improvement project is undertaken. The offset assumes AMLI (or future tenant) has spent the first \$1 million and will be paid on any amounts above the first \$1 million. A detailed description of allowable capital improvement projects will be further defined in the ground lease.

- (ii) If City elects to offer its fee interest in the residential or retail/restaurant/entertainment parcel for sale, then AMLI will have the right of first refusal (ROFR) to purchase the fee simple interest in such parcels at the determined fair market value (FMV) to be further defined in the Definitive Agreements.
- (iii) AMLI will be prohibited from transferring its interest in the ground lease for a period of 10 years after the Rent Commencement Date without City's approval unless to a qualified owner, such as an institutional owner having similar experience managing over 1 million square feet of similar "Class A" TOD, mixed-use developments or ownership of over \$500 million of "Class A" multifamily properties (to be further defined in the ground lease).
- (iv) The timelines and deadlines in the ground leases and other Definitive Agreements shall be subject to change based on events of force majeure and other unforeseen circumstances outside of AMLI's reasonable control which affect construction progress (to be defined in the Definitive Agreements).
- (v) AMLI has completed (and City has approved) a Master Streetscape Development Plan ("Streetscape Plan") prepared for the office, retail, park, and streetscape plan in the surrounding areas from the North Dallas Tollway to Addison Road and from Addison Circle to Beltline Road. The purpose of this Streetscape Plan is to enhance and promote the retail and transit experience to "Complete the Circle." This will include but is not limited to tree relocation along Festival Way, burying power lines along +/- 150' of Quorum Drive, and the realignment of Spectrum Road. Other potential improvements addressed in the Streetscape Plan are enhanced paving, planting, improved lighting, signage, and wayfinding to attract more patrons to the circle. The Streetscape Plan will include all offsite infrastructure improvements for the office component of the Project, including the parking garage. All infrastructure improvements shall be as reasonably agreed by City and AMLI and the characterization of items as infrastructure improvements shall not conflict with other components of this MOU.
- (vi) The respective obligations of Addison and AMLI will be documented in the Definitive Agreements based on the Streetscape Plan. AMLI's contribution to infrastructure costs contemplated by the Streetscape Plan will not exceed \$1.5 million (plus up to, but not to exceed, \$250,000 in multifamily permit fees for phase 1) with Addison incurring all infrastructure and multifamily permit costs in excess thereof, subject to the final terms of the Definitive Agreements. If Spectrum Road is unable to be re-aligned, the parties agree to discuss alternative design options that will maintain the quality and overall vision for the affected components of the Project. The parties may

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further agree to equitably share in the additional costs or savings associated with the alternative design.

- (vii) AMLI will provide payment and completion guarantees from a reputable entity(ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of AMLI's obligations under the Definitive Agreements and will apply to AMLI phase 1 facilities.
- (viii) There will be no construction or permanent debt placed on the residential property of any kind through final certificate of occupancy. All residential construction and development costs will be financed using equity provided by AMLI on the residential development.
- (ix) Within twelve (12) months after issuance of the initial multifamily building permit, AMLI will donate \$200,000 to the Addison Arbor Foundation to fund public art in the right of way and public spaces within the development (to be further defined in the Definitive Agreements).
- (x) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

(c) *AMLI Phase 1 Economics for Other Retail, Restaurants, and Entertainment*

- (1) Lot 2, Block A of AMLI Phase I (approximately 1.9 acres) will be subject to a ground lease on substantially the same terms as the ground leases for Lot 3, Block A, Lot 1, Block B, and Lot 1X, Block C of AMLI Phase 1; provided, that subject to mutual agreement of the parties, the retail/restaurant/entertainment area may be sub-leased (not assigned) to a third-party developer and/or operator. Notwithstanding, AMLI will be required to obtain the written consent of Addison (which shall not be unreasonably withheld) prior to entering into a sub-lease for the foregoing property and/or its operation by a third party.
- (2) The City and AMLI will work in good faith to select the operator/developer, and to establish deadlines for AMLI to apply for and obtain permits and commence construction of the improvements on Lot 2 following selection of the operator/developer. The City and AMLI will define said deadlines and establish penalties for noncompliance within the Definitive Agreements.
- (3) The following incentive is intended to support the recruitment of a high-quality retail/restaurant/entertainment operator to implement a concept that meets the intent of this first class urban mixed-use development. Application of this incentive is subject to evaluation of and consideration of the merits of the proposed retail/restaurant/entertainment operation, and final approval of the same by the City:

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- (i) City will reimburse up to \$3 million for public infrastructure costs associated with phase 1 of the Project (on terms to be further defined in the Definitive Agreements).
- (4) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

2.3 Phase 2 Scope:

- (a) *Minimum Investment.* Co-Developers will invest a minimum of \$104,200,000 in connection with the Improvements for phase 2 of the Project.
- (b) *Stream Phase 2 (Office).* Stream will construct an office building with ground level retail and a public parking garage ("Stream Phase 2"), further described as follows:

Land Area:	3.966 acres
Net Rentable Area:	150,000 sf of office; 4,000 sf of DART Station Improvements
Parking Garage:	850 stall public parking garage
Other:	The project shall be built substantially as shown in the Proposal in design and quality, subject to City staff review and the Definitive Agreements.

2.4 Phase 2 Economics:

- (a) *Phase 2 Economics.* The parties agree that the following general economic terms shall apply to phase 2 of the Project, which shall be defined in further detail in the Definitive Agreements:
 - (1) Stream will sub-lease from City as defined in the DART Interlocal Agreement.
 - (2) All ground lease rent will be abated until one year after substantial completion of the Stream Phase 2 office tower.
 - (3) City incentives (if any) for Stream Phase 2 will be negotiated based on current market dynamics and required timeframe to develop the asset. In addition, the projects will be heavily coordinated with City and DART to ensure the proper level of service and amenities are provided.
 - (4) The costs of the additional 300 parking spaces required in the garage for Phase 2 and any other DART specific requirements will be addressed in the Definitive Agreements.
 - (5) The parties anticipate construction of a ground enclosed DART Station (not just a platform) that will be in conformance with the quality and vision of the other Project

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elements. Stream commits to funding a portion of the development costs consistent with its submitted proposal, which provides for Stream committing \$160,000 based upon a construction cost of \$1,600,000 (to be further defined in the Definitive Agreements). The station will replace the existing DART platform and provide service for all DART riders (subject to DART's approval).

- (6) DART, City and Stream will enter into a perpetual parking agreement whereby public parking is available for DART and retail patrons during the day and the entire Addison Circle development on nights and weekends and for special events, subject to the final interlocal agreement with DART and as subject to the terms of the Definitive Agreements.
- (7) Stream will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Stream's obligations under the Definitive Agreements and will apply to Stream's phase 2 office and parking facilities.
- (8) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

2.5 Phase 3 Scope:

- (a) *Minimum Investment.* Co-Developers will invest a minimum of \$23,500,000 in connection with the Improvements for phase 3 of the Project.
- (b) *Scope.* The Definitive Agreements shall include the following general terms and conditions with regard to the scope for phase 3 of the Project:

Boutique Hotel:

Land Area:	1.156 acres
Number of Rooms:	120
Other:	The project shall be built substantially as shown in the Proposal in design and quality, subject to City staff review and the Definitive Agreements.

2.6 Phase 3 Economics:

- (a) *Phase 3 Economics.* The parties agree that the following general economic terms shall apply to phase 3 of the Project, which shall be defined in further detail in the Definitive Agreements:

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- (1) Stream will sub-lease from City as defined in the DART Interlocal Agreement.
- (2) City incentives (if any) for this phase will be negotiated based on current market dynamics and required timeframe to develop the asset. In addition, the projects will be heavily coordinated with City and DART to ensure the proper level of service and amenities are provided.
- (3) Stream will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Stream's obligations under the Definitive Agreements and will apply to phase 3 hotel and related development.
- (4) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

3. PROJECT SCHEDULE; DUE DILIGENCE PERIOD

3.1. Project Schedule. The parties acknowledge that time is of the essence with regard to the Project and agree that each will use its best efforts to proceed in conformance with the proposed Project schedule set forth below:

PHASE 1	Date of Completion
Zoning entitlements approved by City Council	March 14, 2023
Execution of all Definitive Agreements	June 30, 2023
AML I submittal of infrastructure plan	December 2023
Stream construction start on office/parking	October 2024
AML I submittal of Tower building permit application	June 2024
AML I construction start on Tower	October 2024
AML I construction start on Podium	January 2026

PHASES 2 & 3	Date of Completion
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Stream construction start on office/parking	TBD*
Stream construction start on hotel	TBD
Office/parking final CO issued	TBD
Hotel final CO issued	TBD

**The parties acknowledge that a required date of completion will be established for Phase 2 as soon as practicable and will be subject, in part, to the interlocal agreement between DART and Addison.*

3.2. Modification of Project Schedule. The dates for completion identified in the Project schedule set forth in Section 3.1, above, may not be modified or extended, except by mutual written agreement of the parties. Notwithstanding the foregoing, a party shall be entitled to an extension when the party unable to comply with the Project schedule as a direct result of an event of Force Majeure. As used in this section, the term "Force Majeure" shall mean that the party is prevented or delayed in performing in compliance with the Project schedule, in whole or in part, to such an extent that the party would not be able to meet a required date of completion therein by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the party's control and not attributable to its malfeasance, neglect or nonfeasance. The party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (a) how and why their performance was so prevented, (b) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this MOU as soon as reasonably practicable.

3.3. Due Diligence Period. The Due Diligence Period will commence on the Effective Date and expire on the earlier of (i) June 30, 2023, or (ii) the date upon which the parties have mutually executed all Definitive Agreements required for the Project. The parties will conduct all due diligence with respect to the Project as the parties may deem necessary or appropriate, and the parties shall fully cooperate with each other in this regard. Each party shall be solely responsible for its own costs in connection with the due diligence required for the Project, except as otherwise mutually agreed by the parties. The Due Diligence Period may be extended by mutual written agreement of the parties.

3.4. Exclusivity. During the Due Diligence Period, City will negotiate exclusively with Co-Developers in good faith to execute the Definitive Agreements for the Project, and will not engage any party other than Co-Developers to act as a developer (or co-developer) of the Project; however, notwithstanding the foregoing, during the Due Diligence Period, City shall have the right to solicit proposals from, and discuss the terms for, other parties to act as a developer (or co-developer) of the Project or a portion thereof. Further, from and after the expiration of the Due Diligence Period, if the Definitive Agreements have not been finalized and executed, City shall have the right to terminate this MOU as to one or both Co-Developers and thereafter engage (or seek to engage) one or more other parties to act as a developer (or co-developer) of the Project or a portion thereof.

3.5. Project Feasibility Assessments. Co-Developers agree that each will promptly, and without undue delay, conduct the feasibility assessments described below during the Due Diligence Period:

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- (a) *Property Inspections.* All property due diligence (title examination, surveys, environmental site assessments, soil conditions tests and other physical inspections and similar items) relating to the feasibility of the development of the Project;
- (b) *Zoning and Entitlements.* All required zoning and real property entitlements necessary to develop the Project in conformance with the terms of this MOU and the Definitive Agreements; and
- (c) *Financial Due Diligence.* All financial due diligence reasonably necessary to ensure Co-Developers will be able to secure firm commitments from all lenders, investors, and/or other financing sources related to the design, development, construction, and administration of the Project as contemplated by the parties.

Co-Developers acknowledge that each has already engaged all consultants and/or other third-parties necessary to complete the above-referenced feasibility assessments.

4. MISCELLANEOUS

4.1. Mutual Cooperation; Site Access. The parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other, and maintain at all times a formal representative who shall serve as a point of contact for communications related to this MOU. City will furnish such rights-of-access to the Project site as reasonably necessary for the parties to conduct their respective due diligence obligations under this MOU.

4.2. Costs and Expenses. Each party shall be responsible for all costs and expenses associated with the preparation and adoption of this MOU, the preparation and adoption of the Definitive Agreements, and future actions related thereto.

4.3. Certification of No Conflicts. Co-Developers hereby warrant to City that each has made full disclosure in writing of any existing or potential conflicts of interest related to its participation in the Project as contemplated in this MOU. In the event that any conflicts of interest arise after the Effective Date of this MOU, Co-Developers hereby agree to immediately disclose the same to City.

4.4. Public Information Act. Co-Developers acknowledge that this MOU, and all documents provided to City in connection with the Project are subject to the legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information received by City in connection with the same unless a party has previously notified City in writing that it considers the information to be confidential or proprietary trade secrets and has clearly marked all such information as "Confidential" and/or "Proprietary – Trade Secret" at the time it is delivered or made accessible to City (including City's officers, officials, employees, consultants, attorneys and/or other authorized representatives). In the event City delivers to Co-Developers information that it has expressly marked "Confidential" or has notified Co-Developers is confidential or is the proprietary information of a third-party, Co-Developers agree neither shall disclose to anyone directly or indirectly during the term of this MOU or at any time thereafter, any such information, nor shall either

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use any such information for any purpose other than in connection with the Project contemplated in this MOU.

4.5. Governing Law. This MOU shall be construed and governed by the laws of the State of Texas; and venue for any action concerning this MOU shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

4.6. Exhibits. The exhibits to this MOU are incorporated herein.

4.7. Amendment. This MOU may only be amended by mutual written agreement executed by all parties.

4.8. Counterparts. This MOU may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

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IN WITNESS WHEREOF, the parties have executed and delivered this Third Amended MOU as of the Effective Date.

For City:

TOWN OF ADDISON, TEXAS

By: _____
David Gaines, City Manager

Date: _____

NOTICE ADDRESS:

Town of Addison
Attn: City Manager
P.O. Box 9010
Addison, Texas 75001
E: dgaines@addisontx.gov

For Co-Developer AMLI:

AMLI RESIDENTIAL PARTNERS, LLC
a Delaware limited liability company

By: _____
Taylor Bowen, Authorized Signatory

Date: _____

NOTICE ADDRESS:

AMLI Residential Partners, LLC
5057 Keller Springs Road, Suite 250
Addison, TX 75001
Attn: Taylor Bowen and Joe Bruce
E: TBowen@amli.com and JBruce@amli.com

For Co-Developer Stream:

STREAM REALTY ACQUISITION, L.L.C.
a Texas limited liability company

By: _____
Ramsey March, Managing Director

Date: _____

NOTICE ADDRESS:

Stream Realty Acquisition, L.L.C.
2001 Ross Avenue, Suite 400
Dallas, Texas 75201
Attn: Ramsey March
E: rmarch@streamrealty.com

