

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NORTH BEND
AND NORTH BEND ASSOCIATES, L.L.C.**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2019, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and North Bend Associates, L.L.C., a limited liability company organized under the laws of the State of Washington (“Developer”).

WHEREAS, Chapter 18.27 of the North Bend Municipal Code (“NBMC”) and the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use and mitigation of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by local government planning under the Growth Management Act (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing (RCW 36.70B.200); and

WHEREAS, the purpose of this Development Agreement in part is to freeze impact fees to the January 1, 2019 rate to address the Applicant’s HUD loan constraints and provide predictability; and

WHEREAS, an additional purpose of this Development Agreement is to increase the number of trees retained from that which was authorized under the previous administrative approval; and

WHEREAS, on November 23, 2018, a Mitigated Determination of Non-Significance was issued regarding this Agreement and the project described herein; and

WHEREAS, a public hearing on this Agreement was held during a regular meeting of the North Bend Planning Commission on December 13, 2018; and

WHEREAS, on January 22, 2019, the City Council passed Resolution No. 1865, approving and authorizing the Mayor to enter into this Agreement on behalf of the City;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. The Project Site. The Project Site is a 5.93 acre (256,907sf) parcel legally described on Exhibit A. The Project Site consists of the following three legal parcels:

King County Tax Parcel No: 142308-9136, 142308-9135, and 142308-9132.

2. The Project. The Project is the development and use of the Project Site for construction of a new median income, multi-family housing development commonly known as the River Run Apartments. The site plan for the Project was previously approved on November 14, 2017.

3. Site Plan, Revised. The site plan for the Project, as approved on November 14, 2017 and attached hereto as Exhibit B, shall be amended to reduce the number of apartment units from 129 to 128:

a. The number of apartment units within each of the nine stacked flat buildings shall increase from ten (10) units each to twelve (12) units each, with the additional units located on the ground floor, requiring the removal of parking stalls within those buildings to accommodate the additional units. Developer shall add on-grade parking to replace the removed parking stalls within the outdoor parking lot and the proposed site plan proposes 256 stalls meeting the code; and

b. Developer shall remove three (3) of the townhouse apartment buildings fronting on SE 136th Street (buildings 4, 6, & 7); and

c. Developer shall increase the number of apartments that are affordable (as defined for families making no greater than 80% of the King County median income, adjusted for family size) from 25 to 28 units. Further, Developer shall increase the term and tax abatement of affordability from 12 years to 24 years for the Project. Developer is required to ensure that the apartment management agency provides to the North Bend Department of Community and Economic Development an annual survey of the affordable unit tenants verifying that the income restrictions are met. This information can be kept confidential but income tax returns, W-2 forms or other credible income verification is essential. This shall be provided to the City every year on January 30th.

d. Additional tree preservation is a key element to this Development Agreement and is shown on Exhibit C. The Applicant must seek approval from the City's Community and Economic Development Director if it wishes to deviate from the tree retention shown on Exhibit C.

The amended site plan is depicted on the attached Exhibit C.

4. Water. The City can provide water to the Project if Sallal Water Association is unable or unwilling to provide water in a timely and reasonable manner. In such case, the Developer shall install a 16-inch diameter ductile iron water main pipe and appurtenances from the current terminus of the City's water system at Salish Avenue and Southeast Cedar Falls Way, traversing southeast along Cedar Falls Way to the Project Site approximately 1-2 blocks south of the intersection of Cedar Falls Way and 436th Avenue Southeast. Once on the Project Site, the water main diameter

may be reduced to 8-inches. It is the Developer's responsibility to notify Sallal Water Association in writing that Developer intends to connect to the City water system instead of the Sallal system and shall initiate review with King County for a timely and reasonable appeal under the Public Water System Coordination Act (RCW Ch. 70.116). The Developer shall ensure that a copy of the notification is provided to the City. The Developer shall provide a copy of that written notification to the City before the City reviews and approves the offsite watermain extension design. Further, Developer shall execute the City's standard Developer Extension Agreement (DEA) with respect to design and installation of water infrastructure to be owned by the City and connected to the City's water system.

5. Impact Fees. The Developer shall pay the park, transportation, and fire impact fees in effect January 1, 2019, provided that:

- a. With the exception of the 3 fees above, Developer shall pay all other water connection charges, meter charges, taxes, rates and fees at the appropriate rate calculated at the time of payment; and
- b. Developer's building permit is issued in 2019. If Developer's building permit is not issued in 2019, Developer shall pay all park, transportation, and fire impact fees as calculated as of the time they come due per the North Bend Municipal Code, and according to the then current Taxes, Rates, and Fees Schedule.
- c. Developer shall pay transportation impact fees in accordance with that certain Traffic Mitigation Agreement dated June 22, 2018.

6. Effective Date and Duration. This Agreement shall commence upon the effective date of the City Council resolution approving this Agreement (the "Effective Date") and shall continue in force for a period of five (5) years (the "Initial Term") unless extended or terminated as provided herein. Following the expiration of the Initial Term or extension thereof, or sooner if terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer.

7. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

8. Agreement Binding on Future Landowners. From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Project Site to a person or entity ("Landowner") who, unless otherwise released by the City, shall be subject to the applicable provisions of this Agreement related to such portion of the Project Site. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee, or transferee expressly assumes the obligations under this Agreement as provided herein. Notwithstanding, should construction of the Project not commence prior to a sale, assignment, or conveyance, any subsequent Landowner shall not be obligated to this Agreement.

9. Planning and Development. Except as otherwise specifically provided in this Agreement, the Project shall be completed in accordance with all development and design

standards of the NBMC, and all applicable environmental, building, and construction codes, and regulations contained therein in effect at the time of permit submittal.

10. Vested Rights.

a. During the term of this Agreement, Developer is assured, and the City agrees, that the development rights, obligations, terms, and conditions specified in this Agreement, are fully vested in Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented to by Developer; and

b. This Development Agreement only covers those specific development standards addressed herein. The City's Development Regulations, including but not limited to: building, fire, public works, land use, and signage regulations shall govern unless specifically addressed in this Agreement. No vesting is created by this Agreement for any other development regulation that is not included in this Agreement. Notwithstanding the foregoing, Developer shall have the full benefit of the vested rights doctrine in Washington State and shall only be bound by those laws, statutes, regulations, ordinances and codes in effect at the time of permit submittal by Developer.

11. Permits Required. Developer shall obtain all permits required under the NBMC for this Project.

12. Further Discretionary Actions. Developer acknowledges that the City's land use regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under the State Environmental Protection Act. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Project Site.

13. Existing Land Use Fees and Impact Fees.

a. Developer acknowledges and agrees that land use, building, fire, public works, and sign fees adopted by the City as of the Effective Date of this Agreement may be increased by the City from time to time, and are applicable to permits and approvals for the Project Site, as long as such fees apply to similar applications and projects in the City, notwithstanding Section 5 above ; and

b. Except as provided otherwise in this Agreement, all impact fees shall be paid as set forth in the approved permit or approval, in accordance with Title 17 of the NBMC, and City will exercise reasonable efforts to explore mitigation of such fees, consistent with other applications and Projects in the City.

14. Notice of Default/Opportunity to Cure/Dispute Resolution.

a. In the event a party, acting in good faith, believes the other party has violated the terms of this Agreement, the aggrieved party shall give the alleged offending party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending party shall have thirty (30) days from receipt of written notice in which to cure the alleged breach. This notice requirement is intended to facilitate a resolution by the parties of any dispute prior to the initiation of litigation. Upon notice of an alleged breach, the parties agree to meet and agree upon a process for attempting to resolve any dispute arising out of this Agreement. A lawsuit to enforce the terms of this Agreement shall not be filed until the latter of either: (1) the end of the 30-day cure period; or (2) the conclusion of any dispute resolution process; and

b. After proper notice and expiration of the 30-day cure period, if the alleged default has not been cured or is not being diligently cured in the manner set forth in the notice, the aggrieved party may, at its option, institute legal proceedings in accordance with this Agreement. Additionally, the City may decide to enforce the City code violations and obtain penalties and costs as provided in applicable provisions of the NBMC.

15. Release of Liability and Hold Harmless. The Developer agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees, volunteers, and agents, from and against any and all third-party claims, injuries, damages, losses or suits including reasonable attorneys' fees, arising out of or in connection with this Agreement.

16. Amendment; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of the parties as provided in Section 29 herein, provided that any such amendment shall follow the process established by law for the adoption of a development agreement. However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations affecting the Project Site as the City Council may deem necessary to the extent required by a serious threat to public health and safety.

17. Termination.

a. This Agreement shall expire and be of no further force and effect if Developer does not construct the Project as contemplated by the permits and approvals obtained in connection with the Project and this Agreement, or submits applications for development of the Project Site that are inconsistent with this Agreement; and

b. This Agreement shall terminate either: (1) upon the expiration of the Initial Term identified in Section 6 above, or (2) when the Subject Property has been fully developed *and* all of Developer's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement under this Subsection 17(b), the City shall record a notice of such termination in a form satisfactory to the City Attorney; and

c. This Agreement shall terminate upon Developer's abandonment of the Project. Developer shall be deemed to have abandoned the Project if the Project has not begun construction within three (3) years of the Effective Date noted above.

18. Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect any of Developer's obligations to comply with (a) the City Comprehensive Plan or any applicable zoning code(s), subdivision maps or other land use entitlements approved with respect to the Project Site; (b) any conditions or restrictions specified in this Agreement to continue after the termination of this Agreement; or (c) obligations to pay assessments, liens, fees, or taxes, unless the termination or abandonment of the Project nullifies such obligations.

19. Effect of Termination on City. Upon termination of this Agreement, the entitlements, conditions of development, limitations on fees and any other terms and conditions vested pursuant to this Agreement herein shall no longer be vested hereby with respect to the Project Site (provided that vesting of such entitlements, conditions, or fees may be established for the property pursuant to then-existing planning and zoning laws).

20. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land, and the benefits and burdens shall bind and inure to the benefit of the parties. Developer and every Landowner, purchaser, assignee, or transferee of an interest in the Project Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, unless the Landowner or subsequent Landowner assignee or transferee has abandoned the project and no party has started construction of the Project, and shall be the beneficiary thereof and a party thereto, but only with respect to the Project Site, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Project Site sold, assigned or transferred to it. A copy of the fully executed Agreement shall be recorded in accordance with Section 30 herein.

21. Specific Performance. The parties specifically agree that money damages may not be an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

22. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, Developer and/or Landowner shall tender the defense of such lawsuit or individual claims in the lawsuit to City. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle. This section shall survive the termination of this Agreement.

23. No Presumption Against Drafter. Developer represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement, that it has carefully read the foregoing Agreement, and knows the contents thereof, and signs the same as its own free act, and that it fully understands and voluntarily accepts the terms and conditions of this Agreement. Both parties have had the opportunity to have this Agreement

reviewed and revised by legal counsel, and the parties agree that no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

24. Notices. Notices, demands, or correspondence to the City and Developer shall be sufficiently given if dispatched by prepaid first-class mail to the following addresses:

TO CITY: City Administrator
 City of North Bend
 P.O. Box 896
 North Bend, WA 98045

TO DEVELOPER: North Bend Associates LLC
 Robert E. Hibbs
 3301 Monte Villa Pkwy, Suite 101
 Bothell, WA 98021

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

25. Assignment. This Agreement shall be binding and inure to the benefit of the parties. Developer shall not assign its rights under this Agreement without the written consent of the City.

26. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in King County Superior Court.

27. Attorneys' Fees. In the event of any litigation or dispute resolution process between the parties regarding an alleged breach of this Agreement, the prevailing Party shall be entitled to an award of costs or attorneys' fees or expert witness fees.

28. Severability. The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

29. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Changes made in accordance with Section 16 herein shall be incorporated by written amendments or addenda signed by both parties and made.

30. Recording. Developer shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date and shall provide the City with a conformed copy of the recorded document within thirty (30) days of the Effective Date.

31. Independent Status. The parties to this Agreement, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever and shall not make any representations or otherwise hold out as such.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind their respective organizations, and that such organizations have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

CITY OF NORTH BEND

NORTH BEND ASSOCIATES, L.L.C.

Kenneth G. Hearing, Mayor

Printed Name: _____
Title: _____

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved as To Form:

Eileen Keiffer, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Kenneth G. Hearing is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of North Bend to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ___ day of _____, 2019.

Print name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
(name of person) is the person who appeared before me, and said person acknowledged that
(he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the
instrument and acknowledged it as the _____ (type of authority, e.g., officer,
trustee, etc.) of North Bend Associates, L.L.C., to be the free and voluntary act of such party for
the uses and purposes mentioned in the instrument.

DATED this ___ day of _____, 2019.

Print name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
Commission expires: _____

EXHIBIT A: Project Site Legal Description

**LOTS 1, 2 AND 3 OF KC SHORT PLAT NO 982016 RECORDING NO 8303150541 SD
SHORT PLAT DAF - POR SW 1/4 OF NW 1/4 - BAAP OPPOSITE HWY ENGR STA
CFR 37 + 50 ON CFR-LN SURVEY OF ST HWY PROPERTY ADDRESS 43600 SE
136TH ST**