

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF NORTH BEND  
AND HABITAT FOR HUMANITY  
SEATTLE-KING COUNTY FOR  
DEVELOPMENT AT 250 EAST 2<sup>nd</sup> STREET**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between the City of North Bend, a municipal corporation of the State of Washington (the “City”) and Habitat for Humanity Seattle King County, a public benefit corporation organized in the State of Washington (the “Developer”), jointly (the “Parties”).

**WHEREAS**, Developer has entered into an Agreement with the owner of certain real property located at 250 East 2<sup>nd</sup> Street, North Bend, Washington, King County Tax Parcel No. 2700600050 (“Property”) with the accompanying commitment to develop the Property under Developer’s land trust program in which Developer retains ownership of the land in perpetuity and sells homes to low income buyers pursuant to long term ground leases; and

**WHEREAS**, Developer proposes to construct 7 townhomes and improvements on the Property, located in the Downtown Commercial (DC) zoning district in the City of North Bend (the “Project”); and

**WHEREAS**, this form of development is consistent with North Bend’s Comprehensive Plan goals and policies for this area; and

**WHEREAS**, 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 RCW Chapter 36.70A; and

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

**WHEREAS**, on May 14, 2020 the Planning Commission held a Public Hearing on this Agreement; and

**WHEREAS**, on July 21, 2020 the City Council passed Resolution No. 1945, 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 Property.** The proposed site is a .3-acre (13,486 sf) parcel currently containing a single-family home. The remainder of the site has trees, shrubs grass and gravel or dirt drive areas. The site is more legally described in the attached **Exhibit A**, incorporated herein by this reference (“Property”).

**2. The Affordable Housing Project.** The Affordable Housing Project will be reviewed and approved through Binding Site Plan Approval to enable seven (7) townhomes to be sold separately and provide permanent affordability (“Project”). The Developer shall sell two (2) of the units at or below 50% area medium income (AMI) and the remaining five (5) units at 80% AMI or less. In the event the City receives any funds pursuant to Substitute House Bill 1406, the City will transfer one (1) years’ collection of such affordable housing funds to Developer in consideration of providing at least two (2) units at or below 50% AMI; provided, however, that Developer shall in all events sell two (2) of the units at or below 50% AMI. The land will be held in permanent trust by the Developer with restrictive covenants or trust restrictions running with the Property limiting home ownership to those persons meeting the foregoing AMI limits. Developer shall be solely responsible for all administrative functions associated with ensuring that any buyer meets such AMI limitations. Developer shall file a restrictive covenant running with the land, in form and content acceptable to the City Attorney.

**3. Sewer Concurrency.** Pursuant to NBMC 20.12.050.G. the Developer is required to obtain this Agreement due to the sewer concurrency limitations currently in place while the City performs improvements to the Wastewater Treatment Plant. NBMC 20.12.050.G would not allow sewer concurrency for the Project unless the City Council finds that the Project will result in a public benefit. The City Council hereby finds that the lack of affordable housing within North Bend has had an adverse impact on its ability to deliver housing for persons at or below 80% AMI. The City Council further finds that the Project will deliver seven (7) homes to be occupied by persons who may have been priced out of the home ownership market within North Bend and this also constitutes a public benefit. NBMC 20.12.050.G authorizes the City Council to approve sewer concurrency for such public benefit projects pursuant to this Agreement. The City Council hereby finds that the Project constitutes a public benefit and therefore, allocates sewer concurrency for the Project.

**4. Impact Fees.** The NBMC provides for various impact fees including transportation (NBMC 17.38.230), bicycle and pedestrian (Chapter 17.42 NBMC) and stormwater (NBMC 13.36.110) and the City’s Taxes, Rates and Fee Schedule set forth such fees for development projects. The Developer requests waiver or reduction of impact fees where possible to reduce the costs of the overall project to maintain affordability. In setting the eventual listing price for the townhomes in this project, Developer will include reductions in the asking price based upon the below waivers, credits or reductions from Impact Fees. In consideration of affordability of the homes in the Project as set forth in this Agreement, the City Council approves the following fees and charges for the Project:

<b>Item</b>	<b>Code Required</b> <i>*current rates</i>	<b>Code Section</b>	<b>Proposal</b>
1. Transportation Impact Fees	\$7,017.90 per unit/ Condominium	17.38.230	50% reduction in fee in effect at building permit issuance.
2. Bicycle and Pedestrian Fee	\$1,220 per unit SF	17.42	100% waiver in fee- no payment required.
3. Stormwater	\$2,680 per unit and a one time payment for all new impervious (2,920 square feet of new impervious surface)	13.36.110	50% reduction in fee in effect at the time of Engineering Plan Approval and building permit issuance.

**5. Parking.** The proposal is for seven (7) on-site parking spots, four (4) parking stalls on the 2<sup>nd</sup> Street public right-of-way and at least five (5) parking stalls on the Janet Avenue public right-of-way. NBMC 18.16.100.G. states: *Off-street parking requirements may be satisfied by use of parking spaces located on the public street or alley adjoining a residential or commercial site provided the road is improved to city standards and the width is sufficient to safely accommodate the parking and traffic in the sole determination of the city engineer.* The applicant is improving Janet Avenue by widening the paved road, and adding curb, gutter, landscaping and sidewalk. NBMC requires that each of the seven (7) units have two (2) parking spaces. The City Engineer finds pursuant to NBMC 18.16.100.G that the Developer will satisfy the required parking requirement by providing a minimum of seven (7) parking stalls on-site and a minimum of seven (7) more along the public rights-of-way fronting the property.

**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 two (2) years (the “Initial Term”) unless extended or terminated as provided herein. Following the expiration of the Initial Term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner. The Developer’s obligation to maintain affordability of the units in the Project as set forth in Section 2 and otherwise in this Agreement shall survive the expiration of this Agreement and continue permanently for the remaining life of the improvements within the Project.

**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 not commence prior to a sale, assignment, or conveyance, any subsequent Landowner shall not be obligated to this Agreement.

**9. Planning and Development; Vesting.** Development Standards. Except as may otherwise specifically be provided in this Agreement, the Project shall be completed in accordance with all development and design standards of the North Bend Municipal Code, and all applicable environmental, building, and construction codes, and regulations contained therein, in effect at the time of submittal of complete permit applications.

**10. Permits Required.** Developer shall obtain all permits and pay all fees required under the NBMC or any other local, state, or federal law for this Project.

**11. 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 SEPA. 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 proposed uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Project.

**12. Notice of Default/Opportunity to Cure/Dispute Resolution.** In the event that either party, acting in good faith, believes the other party has violated the terms of this Agreement, the aggrieved party shall give the other party written notice of the alleged violation by sending a detailed written statement of the claimed breach. The other party shall have thirty (30) days from receipt of written notice in which to cure the claimed breach. This notice requirement is intended to facilitate a resolution by the parties of any dispute prior to the initiation of litigation or other contested proceedings. Upon notice of a claimed breach, the parties agree first to meet and confer in an attempt to resolve any dispute arising out of this Agreement. If the parties are unable to resolve the claimed breach, and prior to engaging in litigation to resolve any claimed breach or otherwise to enforce any provision of this Agreement, the parties shall first engage in non-binding mediation with the cost of the mediation to be split evenly.

**13. Amendment; Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of the parties as provided in Section 27 herein, but only after a public hearing and other process required by RCW 36.70B. Nothing in this Agreement shall prevent the City Council from amending the Comprehensive Plan, Zoning Code, Official Zoning Map, or any other development regulations or ordinance as the City Council may deem necessary in the exercise of its legislative discretion as required by a serious threat to public health and safety.

**14. Termination.**

A. This Agreement shall expire and be of no further force and effect if Developer does not construct the Project as described in this Agreement, or submits applications for development of the Project Site that are inconsistent with this Agreement as determined in the City's sole reasonable discretion; or

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 in the City's sole reasonable discretion, whichever first occurs. Upon termination of this Agreement under this Subsection 14(B), the City shall record a notice of such termination in a form satisfactory to the City Attorney; or

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 2 years of the Effective Date noted above.

**15. 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; (b) any conditions or restrictions specified in this Agreement to continue after the termination of this Agreement including without limitation Developer's obligation to make the Project permanently affordable as set forth herein, and such obligations shall survive 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.

**16. Effect of Termination on City.** Upon termination of this Agreement, the Agreement shall have no further force or effect except as expressly provided herein.

**17. Covenants Running with the Land.** The conditions and covenants set forth in this Agreement shall run with the land, and the benefits and burdens shall bind and inure to the benefit of the parties. Developer and every subsequent owner, purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of the Developer contained in this Agreement, as such duties and obligations pertain to any portion of the Property assigned or transferred to it. A copy of the fully executed Agreement shall be recorded in accordance with Section 27 herein.

**18. Specific Performance.** The parties specifically agree that damages are not 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.

**19. Third Party Legal Challenge.** In the event any legal action is commenced by any person or entity other than a Party to this Agreement regarding any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer. The Developer shall not settle any lawsuit without the consent of the City, which consent shall not be

unreasonably withheld. This section shall survive the termination of this Agreement.

**20. 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, agree that it has been mutually and equally drafted, and no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

**21. 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  
                                  920 SE Cedar Falls Way  
                                  P.O. Box 896  
                                  North Bend, WA 98045

TO DEVELOPER:       Habitat for Humanity Seattle-King County  
                                  Patrick Sullivan, Director of Real Estate Development  
                                  560 Naches Avenue SE, Suite 100,  
                                  Renton WA 98057

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands, or correspondence.

**22. 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, which consent shall not unreasonably be withheld.

**23. 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 exclusively in King County, Washington, Superior Court.

**24. Attorneys' Fees.** In the event of any litigation between the Parties arising from this Agreement, the prevailing Party shall be entitled to an award of its costs, attorneys' fees, and expert witness fees.

**25. 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.

**26. 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 13 herein shall be incorporated by written amendments or addenda signed by both parties and recorded pursuant to Section 27, below.

**27. 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 mutual execution by the Parties and shall provide the City with a conformed copy of the recorded document within thirty (30) days thereafter.

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**

**HABITAT FOR HUMANITY SEATTLE  
KING COUNTY**

By: \_\_\_\_\_  
Rob McFarland, Mayor

By: \_\_\_\_\_  
Patrick Sullivan

**Attest/Authenticated:**

\_\_\_\_\_  
Susie Oppedal, City Clerk

**Approved As To Form:**

\_\_\_\_\_  
Michael R. Kenyon, City Attorney

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**EXHIBIT A:**  
**PROJECT SITE – LEGAL**  
**DESCRIPTION**

Lots 10, 11, 12 and 13, Block 1 Gardiner's Addition to North Bend, according to the Plat thereof recorded in Volume 43 of Plats, Page 24, records of King County, Washington