

**SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NORTH BEND AND
BENDIGO PROPERTIES, L.L.C
FOR THE SNOQUALMIE VALLEY ATHLETIC COMPLEX**

This Second Amendment to Development Agreement Between the City of North Bend and Bendigo Properties, LLC for the Snoqualmie Valley Athletic Complex ("**Second Amendment**") is made and entered into as of October ____, 2021 (the "Effective Date"), by and between **CITY OF NORTH BEND**, a municipal corporation of the State of Washington ("**the City**"), and **BENDIGO PROPERTIES, L.L.C.** a Washington Limited Liability Company ("**Developer**").

RECITALS

WHEREAS, the City and Developer are parties to that certain Development Agreement dated November 1, 2016 (the "Development Agreement") and First Amendment to the Development Agreement dated February 26, 2020 ("First Amendment"); and

WHEREAS, Developer has proposed to construct four athletic fields and an athletic facility complex in the Neighborhood Business zoning district and within the Urban Separator Overlay 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 City has agreed to allow the Project to be built in two (2) separate phases; 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 chapter the Growth Management Act (RCW 36.70B.170(1)); and

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

WHEREAS, the City has agreed to an extension of time for Developer to construct vault toilet facilities serving the development, from October 31, 2021 to October 31, 2024, if sewer is not installed, given the timeframe necessary for the City's completion of the sewer line serving this area through the Meadowbrook Sewer Utility Local Improvement District (ULID); and

WHEREAS, the City has likewise agreed to an extension of the Development Agreement's Initial Term to June 30, 2025, in order to accommodate the extended time now authorized for construction of the vault toilet facilities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer consent and agree to amend the Development Agreement and First Amendment as follows:

1. Amendments.

1.1 Section 2(A)(11) of the Development Agreement, as amended by the First Amendment, shall be further amended to read as follows:

As an alternative to and in lieu of constructing the sewer improvements listed in Phase 2, Developer or Developer's agents shall construct an on-site vault waste system consisting of two (2) 1,000 gallon capacity vaults, with connection capability to a new sewer system, when available, and shall construct an on-site men's and women's restroom facility (attached to the Amendment as Exhibit E). Developer has signed an Interim Certificate of Future Sewer Connection and shall not protest the formation of a Utility Local Improvement District (ULID) or a Local Improvement District (LID) project (attached to the Amendment as Exhibit F). Developer shall construct the restroom facility by October 31, 2024 in lieu of Phase 2 or be obligated to fully construct all of Phase 2 (as more fully described in the Development Agreement). Developer shall keep the on-site waste system in good and safe working order. The City shall not be responsible for disposal of waste from the on-site waste system, nor shall the City accept waste from the on-site waste system. When sewer service is available to the Property, Developer shall immediately decommission the vault and connect the restroom facility to the City's sewer utility. Nothing in this Second Amendment shall excuse Developer from paying any applicable ULID assessments, general facilities charges, or any other rates, assessments, charges, and the like associated with the availability of sewer, connection to the City's sewer utility, or attributable for the provision of sewer service thereto.

1.2 Section 4 of the Development Agreement shall be amended to read as follows:

4. 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 until June 30, 2025 (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.

2. Miscellaneous.

2.1 This Second Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

2.2 Except as herein modified or amended, the provisions, conditions and terms of the Development Agreement and First Amendment shall remain unchanged and in full force and effect. In the case of any inconsistency between the provisions of the Development Agreement, First Amendment and this Second Amendment, the provisions of this Second Amendment shall govern and control.

2.3 Submission of this Second Amendment by the City is not an offer to enter into this Second Amendment but rather is a solicitation for such an offer by Developer. The City shall not be bound by this Second Amendment until the City Council has approved and the Mayor has executed and delivered the same to the Developer.

2.4 The remainder of the Development Agreement dated November 1, 2016 and First Amendment dated February 26, 2020 shall remain as stated therein.

2.5 As required by RCW 36.70B.390, Developer shall record a copy of this Second Amendment with King County, and provide a recorded copy to the City Clerk.

IN WITNESS WHEREOF, the City and Developer have entered into this Second Amendment effective as of the date first written above.

CITY OF NORTH BEND

BENDIGO PROPERTIES, L.L.C.

By: _____
Robert McFarland, Mayor

By: _____

Printed Name: _____

Title: _____

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Michael Kenyon, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2021, did personally appear before me, the undersigned Notary Public in and for the State of Washington, _____, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this ____ day of _____, 2021.

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

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2021, did personally appear before me, the undersigned Notary Public in and for the State of Washington, _____, who is known to me or produced satisfactory evidence that s/he is the person that executed the foregoing Development Agreement, and acknowledged that s/he signed the Agreement as his or her free and voluntary act for the uses and purposes mentioned therein.

GIVEN under my hand and official seal this ____ day of _____, 2021.

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