

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NORTH BEND
AND TELEGRAPH PROPERTIES, LLC. FOR BAKES MARINE BOAT AND
WATERCRAFT SALES**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2022, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and Telegraph Properties, Inc., development applicant for a proposed Bakes Marine Boat and Watercraft Sales (“Bakes”), jointly (the “Parties”).

WHEREAS, Telegraph Properties, LLC applied for Site Plan Approval on July 5, 2022, for Parcel 1323089065 (collectively, the “Property”) for a 29,165 square foot building (with 2,500sf mezzanine) for Boat and Watercraft Sales for Bakes Marine. The operation will be comprised of warehouse and office tenant; and

WHEREAS, along with a complete site plan application, Bakes provided a memorandum requesting an Agreement and a Site and Zoning Summary which is on file with the city. The legal description, site plan and initial design plans as shown in Exhibits A- C, attached hereto and incorporated herein; and

WHEREAS, Bakes is requesting an Agreement to allow for a deviation in the North Bend Municipal Code (NBMC) Chapter 18.34.070 North Bend Commercial and Industrial Design Guidelines A-3a. Ground Floor Commercial Tenant Space which allows for up to 15,000sf, and Bakes requests authorization to construct a building larger than 15,000 sf; and

WHEREAS, Bakes is also requesting a deviation from parking lot landscaping requirements in regard to landscape islands and design standards to position the building further from the street than is contemplated by the landscape requirements; both the parking lot and the landscaping deviations can be approved administratively but are included in the DA in order to provide a full record of the requested and approved deviations; and

WHEREAS, the North Bend City Council wishes to retain the greatest percentage of business and corresponding tax dollars within the city; and

WHEREAS, the North Bend City Council supports the brand statement to provide a variety of recreational opportunities; and

WHEREAS, the North Bend Municipal Code currently allows Boat and Watercraft Sales in the Neighborhood Business (NB) zone as a commercial use, and it is expected to bring employment and tax revenue which is a benefit to the city; and

WHEREAS, the adjacent lot to the east is zoned Employment Park II which does not limit commercial building size and a building larger than the Bakes building exists on the property line; and

WHEREAS, the Bakes development is consistent with North Bend’s Comprehensive Plan goals and policies for this area as it provides for increased use of underperforming commercial property, employment opportunities, and economic development within the City; and

WHEREAS, Chapter 18.27 of the NBMC and state law authorize 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, a development agreement must be approved by ordinance or resolution after a public hearing (RCW 36.70B.200); and

WHEREAS, a public hearing on this Agreement was held during a regular meeting of the Planning Commission on October 13, 2022; and

WHEREAS, the Bakes application will be reviewed for conformance with all other applicable City codes and standards including a State Environmental Policy Act (SEPA) Determination; and

WHEREAS, on _____, the City Council passed Resolution No. _____, 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 consists of certain real property commonly known as:

Vacant Parcel No. 1323089065 located along SE North Bend Way, North Bend, Washington, as legally described in the attached **Exhibit A** (collectively “the Property”).

2. **The Project.** The Project is the development and use of the Project Site as a Bakes Marine location in compliance with NBMC (except as otherwise approved by this Agreement) and compliance with all state regulations as now existing or hereafter amended. The Project consists of construction of a 29,165 square foot building for Boat and Watercraft Sales for Bakes Marine. The operation will be comprised of warehouse and office tenant space, manufacturing of parts, canvas production and

constructing associated site improvements including parking, street frontage improvements, stormwater, and landscaping.

Project Exceptions:

- a. Approval of this Agreement allows the applicant to build a 29,165 square foot building, exceeding the maximum 15,000 square feet allowed by NBMC Design Guidelines for Ground Floor Commercial in the NB zone. The additional commercial space will allow the owner to meet the demands of the current market.
- b. Approval of this Agreement allows the Director to approve a deviation in the City's design standards A-3 Streetscape Design Required Street Façade Building Line (RBL). The standards require the street façade to be built out to no less than 50% of the RBL for the first 10 feet of the depth of the lot. The remaining 50% may not be set back more than 10 feet from the RBL. The Site Plan shows the office/sales area in the center of the parcel at the RBL, but the remainder of the frontage is either access/parking or has the building setback in order to allow for a flagpole with landscaping and path. See Exhibit B. below.
- c. Approval of this Agreement allows the Director to approve a deviation in the City's landscape standards which require intermediate landscape islands within parking areas. The Project removes some of the islands but overall meets the required landscaping requirement allowances for the site by consolidating landscaping elsewhere. This will allow for larger vehicle and trailer maneuvering space and promotes sustainable landscape design by reducing water consumption with less small or strip surfaces. No landscaping is required on the east side adjacent to the EP-2 property, but additional landscaping Type 1 standard per NBMC shall be provided on the west property line.
- d. Approval of this Agreement requires Bakes requires Bakes to enter into a deferral improvement agreement and no protest (DIA) for frontage improvement fees.

Public/City Benefit:

In exchange for allowing a larger building footprint for ground floor commercial use the city anticipates the following benefits:

- a. Investment in the property and compliance with current codes will stimulate economic development.
- b. The Project will provide 12 jobs and approximately \$57,000 net sales per year resulting in a tax benefit to the city.
- c. Impact Fees from the Project are currently estimated at \$243,435. This includes impacts for stormwater, fire and transportation impact fees. General facility charges will also be paid for sewer, along with permitting and review fees to the city. Exact amount to be verified at permit issuance based on final permit details.

3. **Release of Liability and Hold Harmless.** Bakes shall execute a release of liability and hold harmless agreement (hereafter "Release") in a form approved by the City

Attorney, for itself, its agents, officers, elected officials and employees, from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution or seizure of property, or liabilities of any kind that result from any arrest or prosecution for violations of federal or state law. Additionally, within the Release, Bakes shall indemnify and hold harmless the City of North Bend and its agents, officers, elected officials, and employees from any claims, damages, or injuries brought by adjacent property owners or other third parties due to operations at Bakes and for any claims brought by employees, agents, guests, or invitees for problems, injuries, damages, or liability of any kind that may arise out of the operation.

5. **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 ten (10) 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 Bakes. Upon termination of this Agreement, Bakes and/or its successors under this Agreement shall have no protections as a legal non-conforming use pursuant to the City’s non-conforming use provisions currently adopted within NBMC Chapter 18.30 or as the NBMC is hereafter amended.
6. **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.
7. **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.
8. **Planning and Development; Vesting.** 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.
9. **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.

10. 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.

11. 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.

12. Amendment: Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of the parties as provided in Section 25 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.

13. 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 on the earlier of (1) the expiration of the Initial Term identified in Section 5 above, or (2) the Subject Property having been fully developed and all of Developer's obligations in connection therewith satisfied as determined in the City's sole reasonable discretion. 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.

- 14. 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, 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.
- 15. Effect of Termination on City.** Upon termination of this Agreement, the Agreement shall have no further force or effect except as expressly provided herein.
- 16. 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. Bakes 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. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Bakes 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 26 herein.
- 17. 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.
- 18. 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, Bakes shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all such claims, injuries, damages, losses or suits including attorney fees.
- 19. No Presumption Against Drafter.** Bakes 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.

- 20. Notices.** Notices, demands, or correspondence to the City and Bakes 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
 North Bend, WA 98045

TO: Bill Baker
 Telegraph Properties, LLC
 6424 East Lake Sammamish Parkway SE
 Issaquah, WA 98029

- 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.
- 21. Assignment.** This Agreement shall be binding and inure to the benefit of the parties. Bakes shall not assign its rights under this Agreement without the written consent of the City. Any assignment of this Agreement will be at the sole discretion of the City.
- 22. 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.
- 23. No Attorneys' Fees.** In the event of any litigation or dispute resolution process between the parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of costs or attorneys' fees or expert witness fees.
- 24. 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.
- 25. 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 12 herein shall be incorporated by written amendments or addenda signed by both parties and made.
- 26. Recording.** Bakes 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.

27. Reservation. Pursuant to Washington Administrative Code 365-196-845, the City hereby reserves the right to impose new or different regulations upon Bakes to the extent required by a serious threat to public health and safety.

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

Bill Baker

By: _____
Rob McFarland, Mayor

By: _____

Printed Name: Bill Baker

Title: Owner

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Lisa Marshall, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2022, 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 _____, 2020.

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 _____, 2022, 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 _____, 2020.

Print name: _____

NOTARY PUBLIC in and for the State of
Washington, residing at _____

Commission expires: _____

EXHIBIT A:

LEGAL DESCRIPTION:

PARCEL A:

THE NORTHWESTERLY 60 FEET OF THE SOUTHEASTERLY 310 FEET OF THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTHERLY MARGIN OF STATE HIGHWAY NO. 2, AS MEASURED ALONG SAID MARGIN AND AT RIGHT ANGLES THERETO;

EXCEPT THAT PORTION THEREOF LYING NORTHERLY OF A LINE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID SUBDIVISION WITH THE CENTERLINE OF STATE HIGHWAY NO. 2; THENCE NORTH 63°47'13" WEST ALONG SAID CENTERLINE A DISTANCE OF 733.84 FEET; THENCE AT RIGHT ANGLES, NORTH 26°12'47" EAST 616 FEET, MORE OR LESS, TO THE CENTER LINE OF A COUNTY ROAD KNOWN AS SURVEY NO. 1892 AND THE BEGINNING OF SAID LINE;

THENCE SOUTH 63°47'13" EAST TO THE EAST LINE OF SAID SUBDIVISION AND THE TERMINUS OF SAID LINE; AND EXCEPT THE SOUTHWESTERLY 120 FEET THEREOF.

PARCEL B:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING EASTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID SUBDIVISION AND THE NORTHERLY MARGIN OF STATE HIGHWAY NO. 2; THENCE NORTHWESTERLY ALONG SAID MARGIN 250 FEET TO THE BEGINNING OF SAID LINE; THENCE AT RIGHT ANGLES NORTH 26°12'47" EAST TO THE EAST LINE OF SAID SUBDIVISION AND THE TERMINUS OF SAID LINE; EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID SUBDIVISION WITH THE NORTHERLY MARGIN OF STATE HIGHWAY NO. 2; THENCE NORTHWESTERLY ALONG SAID MARGIN 250 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 150 FEET; THENCE AT RIGHT ANGLES SOUTHEASTERLY 178.85 FEET, MORE OR LESS, TO THE EAST LINE OF THE SUBDIVISION; THENCE SOUTHERLY ALONG SAID LINE 166.02 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

(ALSO KNOWN AS LOT B OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L93L0081 RECORDED UNDER KING COUNTY RECORDING NO. 9307139005)

PARCEL C:

THE NORTHWESTERLY 60 FEET OF THE SOUTHEASTERLY 310 FEET OF THE SOUTHWESTERLY 120 FEET OF THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF STATE ROAD NO. 2, AS MEASURED ALONG THE NORTHERLY MARGIN OF SAID ROAD AND AT RIGHT ANGLES THERETO.

PARCEL D:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID SUBDIVISION WITH THE NORTHERLY LINE OF THE SUNSET HIGHWAY; THENCE NORTHWESTERLY ALONG THE HIGHWAY 250 FEET;

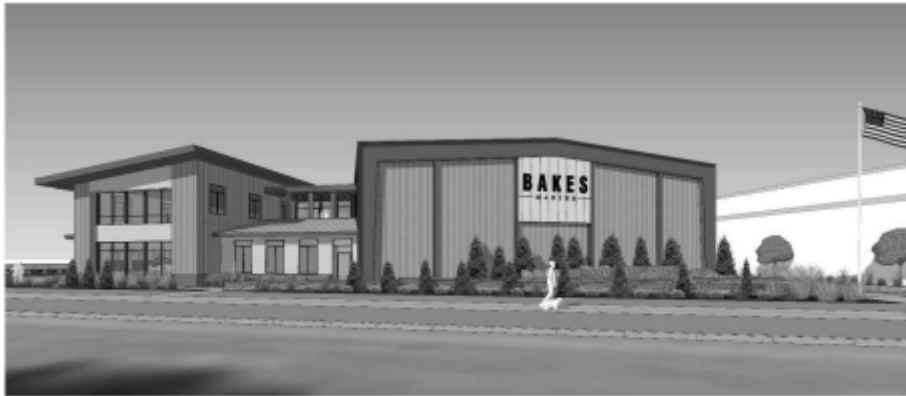
THENCE AT RIGHT ANGLES NORTHEASTERLY 150 FEET; THENCE AT RIGHT ANGLES SOUTHEASTERLY 178.85 FEET, MORE OR LESS, TO THE EAST LINE OF THE SUBDIVISION; THENCE SOUTHERLY ALONG SAID LINE 166.02 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

(ALSO KNOWN AS LOT A OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L93L0081 RECORDED UNDER KING COUNTY RECORDING NO. 9307139005.)

EXHIBIT B: Site Plan



EXHIBIT C: Initial Design Elevations



VIEW LOOKING NORTHWEST

