

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF NORTH BEND  
AND MIDDLE FORK PROPERTY DEVELOPMENT LLC**

This Development Agreement (the “Agreement”) is made and entered into by and between the City of North Bend, a Washington municipal corporation (hereinafter referred to as the “City”), and Middle Fork Property Development LLC, a Washington corporation (hereinafter referred to as “Owner”).

**RECITALS**

**WHEREAS**, Owner owns or controls certain real property which is located within the City’s municipal boundary and which is more fully described in the attached Exhibit “A” (hereinafter referred to as the “Property”); and,

**WHEREAS**, the City and the Owner recognize this Property will develop over a period of years and wish to provide predictability about the impact fees that will apply to the Property over the course of its full development by the Owner; and,

**WHEREAS**, the City is a Washington municipal corporation with land use planning and permitting authority over all land within its corporate limits; and,

**WHEREAS**, the Washington State Legislature has authorized the execution of development agreements between local governments and a person having ownership or control of real property within its jurisdiction pursuant to RCW 36.70B.170(1); and,

**WHEREAS**, pursuant to RCW 36.70B.170 and North Bend Municipal Code (“NBMC”) chapter 18.27, a development agreement is authorized which may set forth specific development provisions that shall apply to the Property development within the duration specified in the agreement; and

**WHEREAS**, the parties recognize the importance of jobs and commercial development within the City and particularly within the area that includes the Property; and,

**WHEREAS**, for the purposes of this Agreement, “Development Standards” includes, but is not limited to, all of the standards listed in RCW

36.70B.170(3), NBMC Titles 17, 18 and 19, and any development standards provided herein;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the parties hereto agree as follows:

## **AGREEMENT**

**Section 1. Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated by reference as if fully set forth herein.

**Section 2. Development Agreement.** This Agreement is a Development Agreement to be implemented under the authority of and in accordance with RCW 36.70B.170 through RCW 36.70B.210 along with chapter 18.27 of the NBMC, and it shall become a contract between the Owner and the City upon its approval by ordinance or resolution following a public hearing as provided for in RCW 36.70B.170 and NBMC 18.27.025 and upon execution by all parties.

**Section 3. Effective Date and Duration of Agreement.** 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 twenty (20) years unless extended or terminated as provided herein.

**Section 4. SEPA.** Pursuant to the State Environmental Policy Act (“SEPA”), piecemeal environmental review is discouraged. The Owner has not completed the Master Plan development process under NMBC Chapter 18.13, and therefore, SEPA review will not be conducted as part of this Agreement. The SEPA review will be tied to the development proposal and Master Plan.

**Section 5. Land Use Fees and Impact Fees.** Except as described in Sections 6 and 7 herein, the Owner shall pay 100% of the impact fees, connection fees, mitigation fees, charges, and future fees and charges required by the City for the Property. Owner acknowledges and agrees that land use, transportation, stormwater, parks, building, fire, public works and other fees and charges adopted by the City may be increased by the City from time to

time, and are applicable to permits and approvals for the Property, as long as such fees apply to similar applications and projects in the City.

**Section 6. Impact Fees Credits.** Upon the Effective Date of the Agreement, the parties agree that the impact fees for transportation and stormwater infrastructure improvements that mitigate for the development of the Property shall be reduced by fifty percent (50%) for a period of five (5) years. The calculation of the impact fees for transportation and stormwater infrastructure improvements shall be calculated at the time of the Effective Date of this Agreement and the City shall collect 50% from the Owner prior to building permit issuance.

**Section 7. Impact Fees Credits Offset.** It is intended that the impact fees credits described in Section 6 herein will be offset with sales taxes generated from businesses locating and relocating to the Property upon its development pursuant to the Master Plan. If during a period of five (5) consecutive years commencing on Effective Date of this Agreement, the dollar amount of the sales taxes obtained by the City from the Property is not equal or greater than the total impacts fees credits provided for the Property for five (5) years pursuant to Section 6 herein, the Owner shall, upon request from the City, directly and promptly reimburse the City for the balance of the impact fee credits received by the Owner.

**Section 8. Water Service to the Property.** Owner may choose, but is not required, to obtain public water utility service for the Property from Sallal Water Association (“Sallal”), and the City agrees not to raise objections to Sallal serving the Property, and this includes the City refraining from negatively commenting to applicable local, state and federal agencies regarding any proposal for Sallal to serve the Property with water.

## **Section 9. Termination.**

**9.1.** This Agreement shall expire and be of no further force and effect if:

**9.1.1.** The development contemplated in this Agreement and in associated permits and/or approvals issued by the City are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City; or

**9.1.2.** Owner does not construct the project as contemplated by the Master Plan and permits and approvals obtained for the Property and this Agreement, or submits applications for development of the Property that are inconsistent with this Agreement.

**9.2.** This Agreement shall terminate either (1) upon the expiration of the term identified in Section 3 above, or (2) when the Property has been fully developed *and* all of Owner's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney.

**9.3.** This Agreement shall terminate upon Owner's abandonment of development of the Property. Owner shall be deemed to have abandoned development of the Property if a complete application for a master plan has not been received by the City within six (6) months of the effective date of this Agreement consistent with NBMC 18.13.020(E) or if no building permit for construction of the Master Plan is submitted to the City within 2 years of the Effective Date noted above.

**Section 10. Effect of Termination.** Upon termination of this Agreement, the entitlements, conditions, limitations and any other terms and conditions vested herein shall no longer be vested hereby with respect to the Property (provided that vesting of such entitlements, conditions or fees may be established for the property pursuant to then-existing planning and zoning laws).

**Section 11. Remedies and Venue.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Washington. Should a disagreement arise between the City and Owner regarding the interpretation and application of this Agreement, the parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by judicial action for which the parties agree to venue in the Superior Court for King County, State of Washington.

**Section 12. Performance and Waiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall

Resolution 2127, Exhibit A

in no way affect the parties' rights hereunder to enforce the same, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

**Section 13. 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.

**Section 14. Severability.** If any portion of this Agreement is found to be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

**Section 15. Inconsistencies.** If any provisions of the North Bend Municipal Code are deemed inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.

**Section 16. Binding on Successors.** The rights and obligations created by this Agreement are assignable and shall be binding upon and inure to the benefit of Owner, the City, and their respective successors and assigns. Only Owner and the City or their successors and assigns shall have the right to enforce the terms of this Agreement.

**Section 17. Recording.** Owner shall record, against the real property described in Exhibit "A", 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.

**Section 18. No Joint Venture.** Nothing in this Agreement is intended to create any type of joint venture relationship between the parties as to the Property or its development.

**Section 19. Amendments.** This Agreement may only be amended by mutual agreement of the parties.

**Section 20. Entire Agreement.** This document contains the entire agreement between the parties with respect to the subject matter of the Agreement.

**Section 21. Voluntary Agreement.** The parties intend and acknowledge that this Agreement is entered into voluntarily without duress and is a voluntary contract binding upon the parties hereto, as well as their successors and assigns.

**Section 22. Indemnification.** The Owner shall protect, defend, indemnify and hold harmless the City and its officers, agents, and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever.

**Section 23. Attorneys' Fees and Costs.** In any judicial action to enforce or determine a party's rights under this Agreement, the prevailing party (or the substantially prevailing party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees and costs.

**Section 24. Mutual Drafting and Construction.** The parties agree that both parties participated fully in the negotiation and drafting of this Agreement and the rules of construction of ambiguities against the drafter shall not apply to either party.

**Section 25. Headings.** The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit, or otherwise modify the terms and contingencies of this Agreement.

**Section 26. Parties and Authority.** The signatories below to this Agreement represent that they have the full authority of their respective entities to commit to all of the terms of this Agreement, to perform the obligations hereunder and to execute the same.

**Section 27. Force Majeure.** Neither party shall be deemed to be in default where delays in performance or failures to perform are due to war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, epidemics, pandemics, or other

restrictions or bases for excused performance which is not within the reasonable control of the party to be excused.

**Section 28. Correspondence and Notice.** Notices or communications required or desired to be given under this Agreement shall be in writing and sent either by: (a) United States Postal Service first class mail, postage pre-paid; (b) recognized overnight courier service which customarily maintains a contemporaneous permanent delivery record; or (c) by e-mail to the e-mail addresses designated below, if the subject line indicates that the e-mail is formal notice under this Agreement. The notice shall be deemed delivered on the earlier of: (a) Actual receipt; (b) three (3) business days from deposit in the United States mail; (c) the delivery date as shown in the regular business records of the recognized overnight courier service; or (d) the day and time the email message is received by the recipient's email system, provided, however, that emails received between 4:30 PM and 8:30 AM will be considered delivered as of the start of the next business day. Notices shall be addressed as follows:

To CITY: City of North Bend  
Attn:  
Title  
[Address]  
[email address]

To OWNER: Middle Fork Property Development LLC  
Attn:  
Title  
Address  
email address

Either party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above.

**Section 29. No Third-Party Beneficiary.** Unless expressly provided for herein, nothing in this Agreement is intended to create any third-party beneficiary relationships.

**Section 30. Counterparts.** This Agreement may be executed in as many counterparts as may be deemed necessary or convenient, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

MIDDLE FORK PROPERTY  
DEVELOPMENT LLC

CITY OF NORTH BEND

By

\_\_\_\_\_  
Title

By

\_\_\_\_\_  
Title

STATE OF WASHINGTON )  
                          )  
                          ) ss.  
COUNTY OF KING       )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ 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 this instrument and acknowledged it as the \_\_\_\_\_ of Middle Fork Property Development LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2024.

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NOTARY PUBLIC for the State of  
Washington, residing in the County of  
King  
My Commission Expires:

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STATE OF WASHINGTON    )  
                                  ) ss.  
COUNTY OF KING            )

I certify that I know or have satisfactory evidence that  
\_\_\_\_\_ 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 this instrument and acknowledged it as the  
\_\_\_\_\_ of the CITY OF NORTH BEND, to be the free and  
voluntary act of such party for the uses and purposes mentioned in the  
instrument.

DATED: \_\_\_\_\_, 2024.

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NOTARY PUBLIC for the State of  
Washington, residing in the County of  
King  
My Commission Expires:

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## ATTACHMENT A

King County parcel number 132308-9020 of approximately 35 acres, zoned EP-2, located at SE 140th Street and 468th Avenue SE.

