

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTH BEND AND PJO NW 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 PJO NW Development, LLC and/or assignees for parcel numbers 102308-9057, 102308-9052, 102308-9032 and 102308-9049 (hereinafter referred to as “Developer”), on the date indicated below for the purpose of constructing up to 56 townhomes and a minimum of 9,500 square feet of commercial frontage and cooperating and coordinating in the efficient processing of property development proposal(s) submitted to the City by Developer.

RECITALS

1. Developer own or control certain real property located within the City’s municipal boundary and which is more fully described in the attached Attachment “B” (hereinafter referred to as the “Property”).

2. The Property is zoned Neighborhood Mixed Use (NMU), and the development proposal contemplated by this Agreement is to construct a minimum of 9,500 square feet of commercial buildings along North Bend Way and 56 townhome units which will include parking, open space, street frontage, utility connections, landscaping, stormwater facilities and adherence to all other municipal code requirements (“Projects”).

3. The City recognizes Developer is requesting a deviation from the current zoning code restriction set forth in North Bend Municipal Code (NBMC) Table 18.10.030 (Table of Permitted and Conditional Uses, Row 1.54), which provides that only upper floor residential dwelling units are allowed, to allow for residential use of the ground level floor. Due to the significant depth of the site, the Developer’s proposal seeks to provide for buildings devoted for commercial use along the parcel’s entire frontage on North Bend Way, with residential townhome units extending to the ground level floor located behind the commercial frontage use as depicted in the Preliminary Site Plan included in Attachment A.

4. Developer will adhere to all guidelines and principles laid out in the updated North Bend 2024 Comprehensive Plan Update and NBMC except as expressly authorized in this Development Agreement.

5. The City recognizes Developer's proposal seeks to deliver upon the intent of the Comprehensive Plan and Zoning designations by providing several key public benefits, including: 1) increased housing stock and mid-entry point investment opportunities; 2) increased City revenue; 3) opportunity for new businesses and services for the community; 4) frontage improvements along SE North Bend Way; and 5) future trail connections.

6. The City is a Washington municipal corporation with land use planning and permitting authority over all land within its corporate limits.

7. 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).

8. Pursuant to RCW 36.70B.170 and 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.

9. 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 Developer and the City upon its approval by 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 five years unless it is extended or terminated as provided herein. Developer shall commence commercial construction and maintain active building permits by requesting regular, timely inspections prior to issuance of the second half of residential permits. If Developer has not commenced commercial construction and maintained active building permits by requesting regular, timely inspections after the City has issued 28 residential permits, no further residential permits will be permitted until Developer applies for and receives a clear and grade permit for the commercial development from the City. Developer expressly acknowledges this phasing requirement is essential to this Agreement and waives any claims, causes of actions, or lawsuits arising from chapter 64.40 RCW related to this phasing requirement.

Section 4. Public Health and Safety. Pursuant to RCW 36.70B.170(4), the City reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Section 5. Modification of Table 18.10.030, Table of Permitted and Conditional Uses, Row 1.54, of the North Bend Municipal Code. The City recognizes a deviation from the current zoning code restriction set forth in Table 18.10.030, Table of Permitted and Conditional Uses, Row 1.54, for this Property to allow up to 56 residential townhome units extending to the ground level floor. No other modification of the NBMC or the North Bend Comprehensive Plan is authorized by this Agreement. Developer shall be required to complete commercial frontage use as depicted in the Preliminary Site Plan included in Attachment A.

Section 6. Termination. This Agreement shall expire and be of no further force and effect if:

6.1 The Developer fails to submit a completed Site Plan Application including a Land Use Application form approved by the City within nine (9) months of the effective date of this Agreement, or fails to submit for a building permit within 5 years of the effective date of this Agreement.

6.2 The Project contemplated in this Agreement and in associated permits and/or approvals issued by the City is 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.

6.3 Developer does not construct the Project as contemplated by the Agreement and permits and approvals obtained for the Property, or submits applications for development of the Property that are inconsistent with this Agreement.

6.4 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 Developer'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.

6.5 This Agreement shall terminate upon Developer's abandonment of development of the Property. Developer shall be deemed to have abandoned development of the Property if:

- (1) A complete application for a Site Plan consistent with NBMC 18.14.040 and 20.02.003 has not been received by the City within nine (9) months of the Effective Date of this Agreement consistent with NBMC 18.13.020(E), provided that Developer may extend the deadline one time for filing a Site Plan application for an additional ninety (90) days upon a non-refundable payment of \$25,000 to the City before the nine (9) month deadline for filing this application expires. Failure to timely comply with the complete application submittal for a Site Plan consistent with NBMC 18.14.040 and 20.02.003 will terminate the Agreement.
- (2) If Developer timely completes a Site Plan application consistent with NBMC 18.14.040 and 20.02.003 and then fails to submit a complete application for a building permit for construction to the City within five (5) years of the Effective Date, then this Agreement will terminate.

Section 7. 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 8. 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 Developer 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 9. Performance and Waiver. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall 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 10. 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 11. 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 12. Inconsistencies. If any provisions of the NBMC are deemed inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.

Section 13. Recording. Developer shall record, against the real property described in Attachment A, a fully executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190 within four (4) months after the Effective Date, whichever date is first, and shall provide the City with a conformed copy of the recorded document within ten (10) days of recording.

Section 14. 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 15. Assignment. Developer may assign this Agreement as part of a real estate transaction or financing agreement, whereupon all Agreement rights and obligations shall be binding on and inure to the benefit of assignee.

Section 16. Amendments. This Agreement may only be amended by mutual agreement of the parties, and only after approval of the North Bend City Council.

Section 17. Entire Agreement. This document contains the entire agreement between the parties with respect to the subject matter of the Agreement.

Section 18. 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 19. Indemnification. Each party shall protect, defend, indemnify and hold harmless the other party and their officers, agents, and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever (“Claims”), which are caused by or result from any negligent act or omission of the party’s own officers, agents, and employees in performing obligations pursuant to this Agreement. Each party shall retain the right to select its own counsel for such defense. In the event of concurrent negligence, each party shall indemnify and hold the other party harmless only to the extent of that party’s negligence.

Section 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 the date of 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:

CITY: City of North Bend

Attn: _____

920 SE Cedar Falls Way, North Bend, WA 98045

Phone: _____

Email: _____

DEVELOPER: PJO NW Development, LLC

Attn: Philip O'Sullivan

Title: _____

Address: 17837 1st Ave S, #428, Normandy Park, WA 98148

Contact Phone: 253-223-0040

phil@pjoholdings.com

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

Section 26. No Third-Party Beneficiary. Unless expressly provided for herein, nothing in this Agreement is intended to create any third-party beneficiary relationships.

Section 27. 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:

CITY OF NORTH BEND

Mary Miller, Mayor

Date: _____

DEVELOPER:

PJO NW DEVELOPMENT, LLC

Name: _____

Title: _____

Date: _____

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Kendra Rosenberg, City Attorney

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

On this ____ day of _____, 2024, 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 _____, 2024.

Print name: _____

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

Commission expires: _____

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

On this ____ day of _____, 2024, 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.

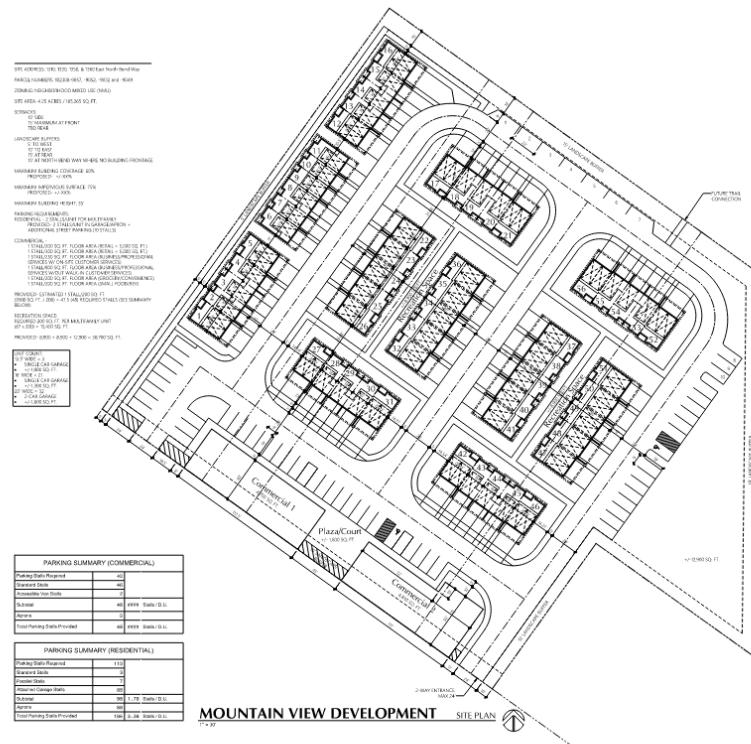
GIVEN under my hand and official seal this _____ day of _____, 2024.

Print name:

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

Commission expires:

Attachment A. Site Plan



MILBRANDT
ARCHITECTS

629 Kirkland Way, Suite 202 Kirkland, WA 98033 • 425.454.7130 • WWW.MILBRANDTARCH.COM

Mountain View Development

PJO NW
Development

Site Plan

Date:	4-7-25
Drawn By:	AJC
Job No.:	

S1

ATTACHMENT "B"

Legal Description

PARCEL A:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 614 FEET NORtheasterly of the quarter corner between sections 10 and 15, said township and range, said point being the southwest corner of the woodman of the world cemetery, as described in instrument recorded under recording number 225152; thence northwesterly along the northeasterly line of state road no. 2, 671 feet to the true point of beginning of the tract herein described; thence northeasterly along the northwesterly line of a tract conveyed to charles l. genson and ethel i. genson, his wife, by deed recorded january 17, 1926, in volume 1314 of deeds, page 567, under [recording number 2200038](#), 414 feet; thence southeasterly along the northeasterly line of said genson tract, 103 feet; thence southwesterly parallel to the northwesterly line of said genson tract, 414 feet, more or less, to the northeasterly line of said road; thence northwesterly along said road 103 feet to the true point of beginning;

situate in the county of king, state of washington.

PARCEL B:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 23 NORTH, RANGE 8 EAST W. M., IN KING COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 614 FEET NORtheasterly from the quarter corner between sections 10 and 15 in township 23 north, range 8 east, w. m., in king county, washington, said point being the southwest corner of the woodmen of the world cemetery, as described in instrument bearing recording number 225152; thence northwesterly along the northeasterly line of the us highway no. 10 a distance of 521.25 feet to the true point of beginning of the tract herein described; thence continuing northwesterly along said highway 45.75 feet to the most southerly corner of a tract of land conveyed to albert larson by deed bearing recording number 2814766; thence northeasterly along the southeasterly line of said larson tract, a distance of 414 feet, more or less to the northeasterly line of said larson tract projected southeasterly; thence southeasterly along said projected line a distance of 45.75 feet; thence southwesterly and parallel to the southeasterly line of said larson tract 414 feet more or less to the true point of beginning.

situate in the county of king, state of washington.

PARCEL C:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

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ATTACHMENT "B"

Legal Description

BEGINNING AT A POINT 614 FEET NORTHEASTERLY FROM THE QUARTER CORNER BETWEEN SECTIONS 10 AND 15, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, SAID POINT BEING THE SOUTHWEST CORNER OF THE WOODMAN OF THE WORLD CEMETERY AS DESCRIBED IN INSTRUMENT RECORDED UNDER RECORDING NUMBER 225152;

THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF UNITED STATES HIGHWAY NO 10, A DISTANCE OF 521.25 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE NORTHEASTERLY ALONG A LINE PARALLEL TO THE NORTHWESTERLY LINE OF A TRACT CONVEYED TO CHARLES L GENSON AND ETHEL I GENSON, HIS WIFE, BY DEED FILED JANUARY 17, 1926 AND RECORDED UNDER [RECORDING NUMBER 2200038](#) A DISTANCE OF 414 FEET;

THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID GENSON TRACT, 173.25 FEET, MORE OR LESS, TO A POINT ON SAID NORTHEASTERLY LINE 58.5 FEET NORTHWESTERLY FROM THE NORTHEAST CORNER;

THENCE SOUTHWESTERLY PARALLEL TO THE NORTHWESTERLY LINE OF SAID GENSON TRACT 414 FEET TO THE NORTHEASTERLY LINE OF UNITED STATES HIGHWAY NO. 10;

THENCE NORTHWESTERLY ALONG SAID HIGHWAY 173.25 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

PARCEL D:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE WOODMAN OF THE WORLD CEMETERY IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 500 FEET;

THENCE NORTHWESTERLY 58.5 FEET;

THENCE SOUTHWESTERLY 414 FEET;

THENCE SOUTHEASTERLY ALONG THE NORTH MARGIN OF COUNTY ROAD 348 FEET TO POINT OF BEGINNING;

EXCEPT THE FOLLOWING DESCRIBED PORTION:

BEGINNING AT THE SOUTHEAST CORNER;

THENCE NORTHWESTERLY ALONG THE COUNTY ROAD 268 FEET;

THENCE NORTHEASTERLY AT RIGHT ANGLES 150 FEET;

THENCE SOUTHEASTERLY AT RIGHT ANGLES 160 FEET, MORE OR LESS, TO THE EAST LINE OF THE ABOVE DESCRIBED TRACT;

THENCE SOUTH TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

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