

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF OLYMPIA
AND
WEST BAY DEVELOPMENT GROUP, LLC
AND
HARDEL MUTUAL PLYWOOD CORPORATION**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is effective as of the date of the last authorizing signature affixed hereto. The parties to this Agreement are the City of Olympia, a Washington municipal corporation (“City”), West Bay Development Group, LLC, a Washington limited liability company (“Developer”), and Hardel Mutual Plywood Corporation, a Washington corporation (“Property Owner”) (individually, “Party” and collectively, the “Parties”).

RECITALS

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

WHEREAS, a development agreement made pursuant to that authority must set forth the development standards and other provisions that will apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, the Parties recognize development agreements must be consistent with applicable development regulations adopted by a local government planning under Chapter 36.70A RCW; and

WHEREAS, this Agreement relates to the development of a mixed-use project known as West Bay Yards (the “Project”) on the former Hardel Mutual Plywood Brownfield industrial site located at:

1210 West Bay Drive NW
Olympia, Washington 98502

(the “Property” or “Subject Property”); and

WHEREAS, Developer is under contract to purchase the Property from Property Owner for purposes of developing the Project.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

GENERAL PROVISIONS

Section 1: The Project. The Project will re-develop the former Brownfield industrial property consisting of approximately seven upland acres (Thurston County Tax Parcel No. 7260-02-00100) in the City of Olympia with mixed-residential and commercial-uses. At full buildout, the Project will consist of approximately 478 market-rate rental housing units in five mixed-use buildings and approximately 20,500 square feet of complimentary retail, restaurant, and recreation uses.

The Project will include significant public access amenities, including a waterfront trail, and will also complete shoreline restoration along the Property boundary consistent with the recommendations identified in the *City of Olympia West Bay Environmental Restoration Assessment Final Report* (Coast & Harbor Engineering, 2016) for “Reach 5 – Hardel Plywood” and the City of Olympia Shoreline Master Program.

The Project is expected to be developed in phases as described in Section 11 of this Agreement. Developer will submit required shoreline, land use, and development applications to the City upon execution of this Agreement.

The Project will require review under the State Environmental Policy Act (“SEPA”) (RCW 43.21C) as well as a shoreline substantial development permit, site plan approval, design review, and issuance of construction, engineering, and building permits. The shoreline restoration component of the Project will also require approval and issuance of various federal and state permits.

Section 2: The Property. The Property is legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference.

Section 3: Definitions. As used in this Agreement, the following terms, phrases, and words have the meanings and be must interpreted as set forth in this Section.

“Adopting Resolution” means the Resolution which approves this Development Agreement, pursuant to RCW 36.70B.200.

“Council” means the duly elected legislative body governing the City of Olympia.

“Director” means the City’s Community Planning and Development Director.

“Effective Date” means the effective date of the Adopting Resolution.

“EDDS” means the Engineering Design and Development Standards adopted by the City of Olympia. See OMC 12.02.020.

“Existing Land Use Regulations” means the ordinances adopted by the City Council of Olympia in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards, and specifications applicable to the development of the Property, including, but not limited to, the Comprehensive Plan, the City’s Shoreline Master Program, the City’s Official Zoning Map and development standards, determinations made pursuant to SEPA, Concurrency Ordinance, the EDDS, and all other ordinances, codes, rules, and regulations of the City establishing standards in relation to the development of the Subject Property; and the divisions of land, whether through the subdivision process, the binding site plan process, or otherwise. This does not include any building or fire code that is state-mandated (*see* RCW 19.27.031); any other regulations resulting from superseding state or federal law; impact fees, mitigation fees; or any other fees or charges, except as specifically described or provided for in this Agreement.

“Property Owner” is the legal owner of the Property, Hardel Mutual Plywood Corporation, as of the Effective Date of this Agreement.

“Developer” is West Bay Development Group, LLC, the contract purchaser of the Property, as of the Effective Date of this Agreement.

“Project” means the anticipated development of the Property with the West Bay Yards mixed-use development, as further described in Section 11 below and **Exhibits B-F** attached hereto.

Section 4: Exhibits. Exhibits to this Agreement are as follows:

Exhibit A – Legal Description of the Subject Property

Exhibit B – Concept Site Plan – West Bay Yards

Exhibit C – Site Phasing Plan – West Bay Yards

Exhibit D – Building Phasing Plan – West Bay Yards

Exhibit E – Shoreline Conceptual Restoration Plan – West Bay Yards

Exhibit F – Construction Sequence – West Bay Yards

Section 5: Parties to Development Agreement. The Parties to this Agreement are:

“City”
City of Olympia
Post Office Box 1967
Olympia, Washington 98507

“Developer”
West Bay Development Group, LLC
Post Office Box 1376
Sumner, Washington 98390

“Property Owner”
Hardel Mutual Plywood Corporation
143 Maurin Road
Chehalis, Washington 98532

The Parties acknowledge that after the Effective Date the Property or a portion thereof may be sold or otherwise lawfully transferred to another party or parties, and unless otherwise expressly released, successor purchasers or transferees will remain subject to the applicable provisions of this Agreement related to such portion of the Property.

The Parties further acknowledge that the rights of the Property Owner under this Agreement terminate and will be of no further force and effect at such time as the Developer closes the pending transaction and becomes the legal owner of the Property.

Section 6: Term of Agreement. This Agreement commences upon the effective date of the Adopting Resolution approving this Agreement and continues in force for a period of fifteen (15) years, unless extended or terminated as provided herein. Following the expiration of the term or any extension thereof, or if sooner terminated, this Agreement has no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 7: Vested Rights or Developer; Uses and Standards. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms, and conditions specified in this Agreement are fully vested in the Developer under the Existing Land Use Regulations and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits attached hereto, or as expressly consented thereto by the Developer.

Section 8: Modifications. Any modifications from the approved permits or the Exhibits attached hereto requested by Developer may be approved in accordance with the provisions of the City’s code and under the Existing Land Use Regulations and do not require an amendment to this Agreement.

Section 9: Financing of Public Facilities. Developer acknowledges and agrees that it shall participate in the funding and/or development of its pro-rata share of the costs of public improvements in accordance with the city code and under the Existing Land Use Regulations.

Section 10: Land Use Development Application Fees. Land use application fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City, and applicable to permits and approvals for the Property, as long as such fees apply to similar applications and projects in the City.

Section 11: Phasing of Development

11.1 Site Development Phasing. The Developer shall construct and develop the Site improvements associated with the Project in two phases as generally depicted and described

in **Exhibit C**, subject to approval of all required shoreline, land use, and construction permits. Each phase will meet all applicable code requirements.

11.1.1 Phase 1. Phase 1 consists of construction of:

- frontage improvements on West Bay Drive from the southern Property boundary to north of the Woodard Trail pedestrian crossing;
- completion of a portion of shoreline restoration;
- construction of the waterfront trail;
- installation of public utility infrastructure (water, sewer, stormwater, roads, solid waste facilities) as generally depicted on **Exhibit C** and that will be specifically depicted on City approved construction permits; and
- any other site improvements required for Phase 1 to meet applicable code requirements as a “stand alone” project.

Construction of Phase 1 site improvements is anticipated to take approximately six months after issuance of required approvals and permits. Construction permits for Phase 1 site development may be issued once Developer receives all required City, state, and federal environmental and engineering approvals for Phase 1 shoreline restoration.

Completion bonding pursuant to Sections 2.050 and 2.030 of the Engineering Design and Development Standards will be required for the first three listed Site improvements in 11.1.2 prior to issuance of the first building permit for Phase 1. All of this work needs to be completed before a Certificate of Occupancy permit is issued for the last building in Phase 2, or 15 years after approval of this Agreement, whichever comes first.

11.1.2 Phase 2. Phase 2 of site development consists of:

- construction of remaining frontage improvements along West Bay Drive;
- completion of Phase 2 shoreline restoration;
- installation of remaining public utility infrastructure (water, sewer, stormwater, roads, solid waste facilities) as generally depicted on **Exhibit C** and described in Phase 2 narrative on Exhibit C, and that will be specifically depicted on City approved construction permits.; and
- any remaining Site improvements required for Phase 2 to meet applicable code requirements as a “stand alone” project.

Upon completion of Phase 1, the waterfront trail must remain open to the public except during periods of active adjacent site or building construction. Construction of Phase 2 site improvements is anticipated to take approximately six months after issuance of required approvals and permits. Construction permits for Phase 2 site development may be issued

once Developer receives all required City, state, and federal environmental and engineering approvals for Phase 2 shoreline restoration.

11.2 Building Phasing. The Developer shall construct and develop the site in three phases as generally depicted in **Exhibit D** and described below, subject to approval of all required shoreline, land use, and building permits. The Developer shall construct each phase within five (5) years from the date the first building permit issued for development of improvements within that phase is issued. It is expected that one or more building and site development phases may overlap. Building permits may be issued once Developer receives all required City, state, and federal environmental and engineering approvals for Phase 1 and 2 shoreline restoration described in the preceding Section. Each phase must meet all applicable code requirements.

11.2.1 Phase 1. Phase 1 consists of:

- the construction of the plaza level from south of Building 2 to north of Building 3;
- construction of Buildings 2 and 3; and
- construction of associated required parking and plaza level landscape, hardscape, and pedestrian amenities for Buildings 2 and 3.

11.2.2 Phase 2. Phase 2 consists of:

- the construction of the plaza level north of Building 3;
- construction of Buildings 4 and 5; and
- construction of associated required parking and plaza level landscape, hardscape, and pedestrian amenities for Buildings 4 and 5.

11.2.3 Phase 3. Phase 3 consists of:

- the construction of the plaza level from south of Building 2 to the southern boundary of the Property;
- construction of Building 1; and
- construction of associated required parking and plaza level landscape, hardscape, and pedestrian amenities for Building 1.

11.3 Duration of Phases. The building and site development phasing described in Section 11 of this Agreement must be included within the scope of the shoreline substantial development permit application submitted for the Project in order to set the time requirements for completion of improvements as part of the action on the shoreline substantial development permit as provided for in WAC 173-27-090.

11.4 Impact Fees. Notwithstanding any other provision of this Agreement to the contrary, the Developer vests to the City's impact fee schedule and ordinance (OMC Ch. 15) in effect at the time the first building permit is issued for the corresponding building permit

phase for the duration of that building phase. Vesting of impact fees under this provision lasts for the duration of the corresponding building phase only.

Section 12: Improvement of Public Lands. The Developer shall improve and, if necessary, dedicate to the City rights of way as required in the permits/approvals for each phase of the development, consistent with this Agreement and as set forth in its Exhibits.

Section 13: Default. Subject to extensions of time by mutual consent, in writing, failure or delay by any Party to this Agreement to perform any term or provision of this Agreement constitutes a default. In the event of an alleged default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice, in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30)-day period, the Party charged may not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30)-day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the complaining Party may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Olympia Municipal Code or state law for violations of this Agreement and the Code.

Section 14: Termination. This Agreement expires or terminates as provided below:

14.1 This Agreement automatically expires and is of no further force and effect if the development contemplated in this Agreement and all of the permits or approvals issued by the City for such development are not substantially underway prior to expiration of such permits or approvals. Such expiration requires no City Council action. Nothing in this Agreement extends the expiration date of any permit or approval issued by the City for any development.

14.2 This Agreement expires and is of no further force and effect if the Developer does not construct the Project substantially as described in this Agreement, or if the Developer submits applications for development of the Property that are inconsistent with this Agreement.

14.3 This Agreement terminates upon the expiration of the term identified in Section 6 or when the Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

14.4 If not earlier terminated, this Agreement terminates as provided upon the passage of the time periods set forth in Section 6 without City Council action.

Section 15: Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Property or any portion thereof does not affect any of the Developer's obligations to comply with the City of Olympia Shoreline Master Program, the Comprehensive Plan, or any applicable zoning codes or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees, or taxes.

Section 16: Effects of Termination on City. Upon termination of this Agreement as to the Developer of the Property, or any portion thereof, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement are no longer vested hereby with respect to the Property affected by such termination.

Section 17: Assignment and Assumption. The Developer may sell, assign, or transfer this Agreement with all its rights, title, and interests therein to any person, firm, or corporation at any time during the term of this Agreement.

Section 18: Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits, run with the land and the benefits and burdens bind and inure to the benefit of the Parties. The Developer, Property Owner, and every purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, is obligated and bound by the terms and conditions of this Agreement, and is the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred to it.

Section 19: Amendment to Agreement; Effect of Agreement on Future Actions

19.1 This Agreement may be amended by mutual written consent of all the Parties, provided that any such amendment must follow the process established by law for the adoption of a development agreement.

19.2 Nothing in this Agreement prevents the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations affecting the Property during the term of this Agreement to the extent required by a serious threat to public health and safety, or as a result of superseding state or federal law.

Section 20: Releases. Developer and Property Owner 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.

Section 21: Notices. Notices, demands, or correspondence to the City, Developer, or Property Owner are sufficiently given if sent by pre-paid First-Class U.S. mail to the addresses of the Parties as designated in Section 5. Notice to the City must be to the attention of both the City Manager and the Director of Community Planning and Development. The City is required to give notices to subsequent property owners only if the City is given written notice of their address for such Notice. The Parties may, from time to time, advise the other of new addresses for such Notices, demand, or correspondence.

Section 22: Applicable Law and Attorneys' Fees. This Agreement must be construed and enforced in accordance with the laws of the state of Washington. Venue for any action related to this Agreement is Thurston County Superior Court.

Section 23: Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a Party to challenge this Agreement or any provision herein, each Party will bear their own cost of defense and all expenses incurred in the defense of such actions, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing Party or Parties in such litigation.

Section 24: Specific Performance. The Parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and the Parties are entitled to compel specific performance of all material terms of this Agreement by any Party in default hereof.

Section 25: Severability. If any phrase, provision, or Section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the state of Washington that became effective after the effective date of the Resolution adopting this Agreement, and either Party in good faith determines that such provision or provisions are material to its entering into this Agreement, that Party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

[SIGNATURES ON NEXT PAGE]

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

**CITY:
CITY OF OLYMPIA**

Date: _____

By: _____
Steven J. Burney, City Manager

APPROVED AS TO FORM:

By _____
Deputy City Attorney

**DEVELOPER:
WEST BAY DEVELOPMENT GROUP,
LLC**

Date: _____

By: _____
L. Brandon Smith
Its: Governor

**PROPERTY OWNER:
HARDEL MUTUAL PLYWOOD
CORPORATION**

Date: _____

By: _____

Its: _____

[illegible]

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of the City of Olympia, a
Washington municipal corporation to be the free and voluntary act of such party for the
uses and purposes mentioned in the instrument.

DATED: this _____ day of _____, 2020.

Print Name: _____
 Notary Public in and for the state of _____
 Washington, residing at: _____
 My appointment expires: _____

[illegible]

I certify that I know or have satisfactory evidence that L. Brandon Smith is the person who appeared before me, said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Governor of West Bay Developer Group, LLC, a Washington limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: this day of , 2020.

Print Name: _____
Notary Public in and for the state of _____

Washington, residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss:
County of Thurston)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as _____ of Hardel Mutual Plywood Corporation, a Washington corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: this _____ day of _____, 2020.

Print Name: _____
Notary Public in and for the state of _____
Washington, residing at: _____
My appointment expires: _____