

DEVELOPMENT AGREEMENT
between
JJ Real Estate LLC and the City of Oregon City

This Development Agreement (“Agreement”) is made and entered into this _____ day of _____, 2006 by and between the City of Oregon City (“City”) and JJ Real Estate LLC (“JJ Real Estate”) pursuant to ORS 94.504 to 94.528 for the purpose of implementing a Site Plan and Design Review and Variances (“Site Plan”) for the demolition of an existing service station and the construction of a new service station and amenities in connection with the development of the site during the period of the Agreement.

RECITALS

A. JJ Real Estate LLC intends to demolish the existing service station located at 1002 McLoughlin Boulevard and construct a new service station on the site. The property was zoned General Commercial, which identified service stations as a permitted use. The zoning of the property was changed to Mixed Use Downtown (MUD), which does not allow service stations. The applicant filed for, and the City approved, a measure 37 waiver to allow a service station on the site.

B. This Agreement is intended to provide certainty for future redevelopment of the site, which will include a building and site improvements that are designed to compliment the historical characteristics of downtown Oregon City.

C. In conjunction with this Agreement, JJ Real Estate has submitted an application for a Site Plan and Design Review permit, Variance and Water Resource Exemption for the proposed development on the site to demonstrate compliance with the applicable sections of the Oregon City Municipal Code.

D. This Agreement has been a cooperative effort between JJ Real Estate, the City and the Oregon Department of Transportation (ODOT). The provisions of this agreement have been coordinated with ODOT and the City and JJ Real Estate desire to enter into this Agreement to establish the obligations and responsibilities of JJ Real Estate in undertaking the development of the site.

E. The subject of this Agreement is the development of 1002 McLoughlin Boulevard, identified as Clackamas County Map 2S-2E-31AB, tax lot 2800 (Exhibit A), consisting of approximately 13,500 square feet and located at the northeast corner of McLoughlin Boulevard and 10th Street. The site is currently zoned Mixed Use Downtown under section 17.34 of the Oregon City Municipal Code.

F. This Agreement was authorized by Oregon City Ordinance No.____. That Ordinance was adopted by the City Commission following hearings held on _____. Notice of the hearings was provided to nearby property owners and affected agencies consistent with ORS 94.513. The execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the Oregon City Comprehensive Plan and implanting regulations.

AGREEMENT

In consideration of the mutual promises and performance obligations of each party set out in this Agreement, the City and JJ Real Estate hereby agree to the following terms and conditions.

1. **Duration of the Agreement.**

This Agreement shall be effective upon adoption of the City ordinance approving this Agreement pursuant to ORS 94.508. As used herein, "approval" means the granting of the approval and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal to the satisfaction of JJ Real Estate. The Agreement shall continue in effect for a period of one (1) year after its effective date unless cancelled by the parties as provided in Section 12 below. If construction has not begun within one year from the date of the Agreement, the Agreement shall expire unless an extension is requested from the Community Development Director and granted as required by the Oregon City Municipal Code. An extension of up to one (1) additional year may be granted.

2. **Permitted Uses.**

JJ Real Estate shall continue the service station use currently established on the site, including the demolition of the existing service station and construction of a new service station. The property is improved with a gas station located in the Mixed Use Downtown district, which does not allow service stations as a permitted use. At the time the claimant purchased the property on October 30, 2002, the applicable code section was Chapter 17.32 General Commercial District which allowed service stations as a permitted use. Accordingly, the enactment of ordinance 03-1014 which rezoned the subject site from General Commercial to Mixed Use Downtown places additional limits on the property that were not in existence at the time claimant purchased the property. The applicant applied for, and the City Commission approved, a measure 37 waiver to allow the site to be used as a service station.

The applicant is proposing to demolish and rebuild the existing service station located at 1002 McLoughlin Boulevard. The applicant will build a single story convenience store of approximately 2,670 square feet with two fuel islands and a canopy, provide on-site bicycle and automobile parking spaces, remove the southern most driveway along McLoughlin Boulevard, reduce the width of the existing driveway from 10th Street, dedicate 5 feet of property along McLoughlin Boulevard, construct the sidewalk improvements and street trees being finalized by ODOT and the City and repair the 10th Street sidewalk as necessary.

It appears that the site drainage from the site cross connects with the sanitary sewer. The site drainage shall be separated, ran through a water quality manhole, and the applicant shall work with Public Works to direct the stormwater into an appropriate location. The City has also identified the need to either upsize the existing water line in 10th Street or use the existing water line in the alley to the north of the property for water service to the site.

The applicant has worked closely with City Staff to create a development that is not a prototype gas station and convenience store, but rather a unique design that compliments the historic character of downtown Oregon City. The applicant has proposed amenities and design components to help meet the intent of the MUD-Downtown District and minimize any requests for variances, such as increased landscaping along 10th Street and McLoughlin Boulevard and a

pedestrian scale monument price sign, which is approximately 3' wide, 7'6" long and 7'8" tall. The applicant has proposed to build an 8" tall by 8" wide basalt curb behind the 10th Street and McLoughlin Boulevard sidewalks, a 1'6" tall basalt wall between four 3'8" tall basalt columns near the 10th Street and McLoughlin Boulevard intersection and will use mountain red and desert sand colored structural brick for the façade of the building, the garbage screening and the monument price sign (Exhibit B).

The applicant has requested three variances as part of this application. The variances are from the interior parking lot landscaping requirements and the 0.5 minimum floor area and 25-foot minimum height requirements of the MUD zone. The Variance approval criteria are outlined in section 17.60 of the Oregon City Municipal Code and the findings are included in this Agreement as exhibit 2. The applicant has demonstrated that the proposed variances will not cause substantial damage to adjacent properties by reducing light, air, safe access, that the request is the minimum necessary to alleviate the hardship, the proposal will equal or exceed the purpose of the regulation being modified, the impacts resulting from the adjustment are mitigated, that no practical alternatives have been identified which would accomplish the same purpose and not require a variance, and the variances conforms to the comprehensive plan and the intent of the ordinance being varied.

The applicant has proposed a Developer's Agreement to guarantee the design styles and features are included in the development of the new facility. The building is not currently within a regulated historic area; however, the applicant has proposed to incorporate design amenities and pedestrian enhancements to compliment the historic downtown district and mitigate the impacts of the variances. The improvements to the site will allow the building to continue to conform to the historic nature of downtown Oregon City as future redevelopment occurs.

3. Density or Intensity of Use and Height of Structures.

The applicant will to develop an 18-foot tall, 2,670 square foot building, a 47.5-foot by 34-foot canopy over the fueling area, 6 parking stalls, and landscaping and design features to the building and perimeter walls that are historically consistent with the Oregon City Downtown District. JJ Real Estate has submitted a Site Plan and Design Review and Variance application, findings and condition of approval for the proposed development, which have been included in this Agreement as Exhibit B.

4. Provisions for Reservations or Dedication of Land for Public Purposes.

The applicant will remove the southern most driveway along McLoughlin Boulevard, reduce the width of the existing driveway from 10th Street, dedicate 5 feet of property along McLoughlin Boulevard and construct the sidewalk improvements and street trees being finalized by ODOT and the City and repair the 10th Street sidewalk as necessary.

5. A Schedule of Fees and Charges.

JJ Real Estate shall pay all required system development charges, transportation impact fees and application fees for land use, land development approvals and building permit fees.

6. Compliance Review.

The proposed development shall be reviewed in the manner provided in Chapter 17.50 of the Oregon City Municipal Code. The City Building Official may issue a certificate of occupancy only after the improvements required by this Agreement have been completed, or a schedule for

completion and a surety or other financial guarantee have been accepted by the City. If construction has not begun within one year from the date of the approval, such approval shall expire unless an extension is requested and granted.

7. Responsibility for Providing Infrastructure and Services.

JJ Real Estate shall be responsible for providing all infrastructure and services as identified and conditioned in the attached Site Plan and Design Review and Variance applications (Exhibit B).

8. Continuing Effect of Agreement.

In the case of any change in city regulations, regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under the Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then the parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If the parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of change in policy, law or circumstance, the Agreement fails of its essential purpose (incorporating historical design characteristics into the design of the site to mitigate compliance with certain design requirements of the MUD zone), then the parties shall be placed into their original positions to the extent practical.

9. Assignability of Agreement.

This Agreement shall be fully assignable, in whole or in part, by either party and shall bind and inure to the benefit of the parties. The Measure 37 waiver shall be effective and in duration and in availability to the owner to the extent, but only the extent necessary to avoid the obligation to pay compensation under Measure 37. If, a court with jurisdiction over the City, including the Oregon Court of Appeals or Oregon Supreme Court interprets Measure 37 to be invalid in this or another case, as to which there is no further right of appeal, the owner is not entitled to compensation in relation to Ordinance 03-1014 for which this waiver has been granted, then this waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Commission's final order granting this waiver. Any invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.

10. Future Discretionary Approvals.

JJ Real Estate has submitted a Site Plan and Design Review, Water Resource Exception and Variance application for the proposed development on the site to demonstrate compliance with the applicable code criteria and the staff report is included as Exhibit B of this Agreement. Alterations to the proposed development reviewed as part of this Agreement would require additional discretionary approvals as required by the Oregon City Municipal Code.

11. Default / Remedy.

Default/Cure. The following shall constitute defaults on the part of a party:

A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot

with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or

Any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

12. Amendment or Termination of Agreement.

This Agreement may be amended or terminated by the mutual consent of the parties. Any amendment of this Agreement which relates to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for the reservation or dedication of land or any conditions of the Site Plan and Design Review and Variance application relating to the use and/or design of the site shall require a public hearing before the parties may execute an Agreement.

Exhibit A Site Map

Exhibit B Staff Report SP 06-05, WR 06-08 & VR 06-08

Executed as of the day and year first above written.

By: _____
JJ Real Estate LLC

By: _____
City of Oregon City

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____ as an authorized member of JJ Real Estate LLC and on behalf of said corporation.

Notary Public for Oregon

My Commission expires: _____

The foregoing instrument was acknowledged before me this _____ day of _____,
2006, by _____ as _____ of Oregon City,
on behalf of said City.

Notary Public for Oregon
My Commission expires: _____