

1 **DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF**
2 **LYNNWOOD, EDMONDS SCHOOL DISTRICT NO. 15, AND CYPRESS**
3 **LYNNWOOD, LLC, FOR THE DEVELOPMENT OF THE LYNNWOOD**
4 **PLACE PHASE 2 MIXED-USE PROJECT**

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8 THIS DEVELOPMENT AGREEMENT (Agreement) is made and entered into as of this ____ day of
9 _____, 2014, by and between the **CITY OF LYNNWOOD**, a Washington municipal corporation
10 (“City”); **EDMONDS SCHOOL DISTRICT NO. 15**, a Washington municipal corporation (“District”); and
11 **CYPRESS LYNNWOOD, LLC**, a Delaware limited liability company (“Developer”).
12

13 **RECITALS**

14
15 **A.** The District owns approximately 40.22 acres of real property, commonly known
16 as the former site of Lynnwood High School (“Site”), located in the City at 3001 – 184th Street
17 SW, as more fully described in Exhibit # attached.
18

19 **B.** The Site has historically been used by the District for the operation of a high
20 school. As the existing improvements on the Site reached the end of their useful lifespan, the
21 District has constructed a new facility to house Lynnwood High School on a different parcel of
22 land located outside of the corporate boundaries of the City, and the District has demolished the
23 former high school building.
24

25 **C.** The District is planning to lease the Site to the Developer to allow for
26 redevelopment as a mixed-use project.
27

28 **D.** The Developer is planning to sublease building area (for the Lynnwood Place
29 Project Phase 2) for occupancy (the “Sublease Improvements”), which is more fully described
30 in the Lynnwood Place Design Guidelines. Phase 2, **Exhibit ##** and the Record of Survey and
31 Binding Site Plan, **Exhibit ##**.
32

33 **E.** The District and Developer entered into a Development Agreement in October
34 2007, as amended, to develop the Site into a mixed-use land development project (Project).
35

36 **F.** In February 2009, the City was prepared to issue a Draft Environmental Impact
37 Statement (DEIS) for development of the Site. The Developer requested that the City cease
38 further work on the DEIS due to changes in the economy resulting in potential Project changes.
39

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40 **G.** In December 2010, the District and Developer requested the City resume
41 processing the DEIS for the redevelopment of the Site. The DEIS project description reflected
42 changes to the project components proposed by the Developer.
43

44 **H.** On October 7, 2011, the DEIS was issued for the Project.
45

46 **I.** On March 30, 2012, the City issued the Final Environmental Impact Statement
47 (FEIS) for the Project. The FEIS established the scope, proposed land uses, infrastructure
48 improvements, and identified environmental impacts and mitigation measures associated with
49 the Project alternatives. All environmental documents prepared for the Project pursuant to SEPA
50 are incorporated into this Agreement by reference, and are collectively referred to as the FEIS.
51

52 **J.** On August 9, 2012 the Developer submitted applications for the Project
53 requesting, in part, amendments to the City's Comprehensive Plan, Comprehensive Plan Future
54 Land Use Map, Zoning Code, and Zoning Map (Amendments). Those applications were
55 assigned City of Lynnwood file numbers: 2006CPL0003, 2012CAM0007, and 2012RZN003
56

57 **K.** On January 10, 2013, pursuant to public hearing and deliberation, the Lynnwood
58 Planning Commission recommended to the City Council approval of the proposed Amendments
59 to the Comprehensive Plan Future Land Use Map, Zoning Code, and Zoning Map.
60

61 **L.** On February 25, 2013, after public hearing and deliberation, the City Council
62 approved the proposed Amendments as recommended by the Planning Commission pursuant to
63 Ordinance No. 2976 amending the Comprehensive Plan Future Land Use Map, Ordinance No.
64 2977 amending the text of the Zoning Code relating to the Commercial-Residential Zone, and
65 Ordinance No. 2978 amending the Zoning Map, incorporated herein by reference.
66

67 **M.** In accordance with Ordinance Nos. 2976 and 2978 the Amendments to the
68 Comprehensive Plan Future Land Use Map and the Zoning Map are conditioned on the
69 execution and recording of a development agreement between the District, Developer, Costco
70 and City prior to issuance of construction permits. The Ordinances specify certain provisions to
71 be included in the development agreement.
72

73 **N.** On November 4, 2013, consistent with Ordinance Nos. 2976 and 2978, the City of
74 Lynnwood approved a development agreement with the District, the Developer, and Costco
75 Wholesale for Lynnwood Place Phase 1, pertaining to the project infrastructure and development
76 of a Costco Wholesale project, with execution of the Lynnwood Place Phase 1 Development
77 Agreement anticipated by May 31, 2014.
78

79 **O.** The District and the Developer have now requested that the City enter into a
80 development agreement with the District and the Developer, pertaining to infrastructure and
81 mixed-use development for Phase 2 of the Lynnwood Place Project (this Agreement)

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P. This Agreement is authorized pursuant to RCW 36.70B.170 through 36.70.B.210, and Chapter 1.37 of the Lynnwood Municipal Code, as established by City Ordinance No. 2626. This Agreement is consistent with Ordinances Nos. 2976 and 2978.

Q. By this Agreement for the Lynnwood Place Project Phase 2, the parties intend to set forth their mutual agreement and understandings as they relate to their respective roles and responsibilities regarding the District’s and Developer’s redevelopment of the Property, Phase 2 portion of the Site, and thereby facilitate the permitting and construction of the Project.

R. As set forth in these Recitals, the City has determined that the terms and conditions set forth herein will serve a public purpose, and will promote the health, safety, prosperity and general welfare of the citizens of the City.

SECTION 1 DEFINITIONS

1.1 “Agreement” means this development agreement as may be amended in accordance with the terms hereof.

1.2 “Binding Site Plan” (or BSP) means a binding site plan as defined by RCW-59.17.020(7); and LMC 19.10.020, dated #####, and approved under City File No. _____, which defines the project, site improvements, and delineates the phasing of development.

1.3 “Certificate of Occupancy” means final inspection and certification by the City that the Project is in compliance with the International Building Code, the LMC, and other ordinances enforced by the City.

1.4 “City” means the City of Lynnwood, Washington.

1.5 “City Council” means the City Council of the City.

1.6 “City Financial Participation” means City’s commitment of financial resources to construct public improvements pursuant to this Agreement.

1.7 “Design Review” means the Project Design Review (PDR) process of the City as administered by its Community Development Department under Chapter 21.25 of the Lynnwood Municipal Code.

1.8 “Developer” means Cypress Lynnwood, LLC, a Delaware limited liability company or its successors and assigns.

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123 **1.9** “Development Agreement” means the terms and conditions between the City of
124 Lynnwood, Edmonds School District No. 15, and Cypress Lynnwood, LLC, for the development
125 of the Lynnwood Place Project Phase 2.
126

127 **1.10** “Development Regulations” means those portions of the Lynnwood Municipal
128 Code and Lynnwood Zoning Code pertinent to zoning, land use, design, building construction,
129 landscape, signage, permitting, planning, traffic impact fees and other elements that govern real
130 estate development within the City.
131

132 **1.11** “District” means Edmonds School District No. 15.
133

134 **1.12** “Final Environmental Impact Statement (FEIS)” means the Draft Environmental
135 Impact Statement: Comprehensive Plan Amendment and Zoning Map and Text Amendment for
136 Lynnwood Crossing Mixed-Use Project, dated October 7, 2011, and the Final Environmental
137 Impact Statement: Comprehensive Plan Amendment and Zoning Map and Text Amendment for
138 Lynnwood Crossing Mixed-Use Project, dated March 30, 2012.
139

140 **1.13** “Franchise Utilities” means electricity, natural gas, telecommunications, solid
141 waste collection, and other utilities not provided by the City.
142

143 **1.14** “Intersections” means the general areas where two or more streets or roadways
144 join or cross, including the streets, roadways, driveway access, traffic signals, roadside facilities,
145 sidewalks, and trails for traffic movement within them.
146

147 **1.15** “LMC” means the City of Lynnwood Municipal Code.
148

149 **1.16** “LZC” means the City of Lynnwood Zoning Code.
150

151 **1.17** “Lynnwood Place Project Design Guidelines Mixed Use Phase,” means a
152 compendium of design features dated **Month Day, 2014**, prepared and submitted by the
153 Developer for the Project Phase 2, and approved by the City for the Project on **DATE**, and
154 attached hereto as **Exhibit ##**.
155

156 **1.18** “Pedestrian and Non-Motorized Facilities” means pedestrian access, sidewalks,
157 trails and bikeways through and within the project site as referenced in the BSP and the Design
158 Guidelines.
159

160 **1.19** “Perimeter Road Project” means the “33rd Avenue West Improvement Project” for
161 which the City has received a grant from the Washington State Transportation Improvement
162 Board, TIB Project Number 9-P-140(006)-1, a copy of said grant application and grant
163 participation agreements are incorporated into this Agreement by reference.
164

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165 **1.20** “Planned Action” means a designation made by the City Council pursuant to the
166 State of Washington RCW 43.21C.440 and WAC 197-11-164 through 172.

167
168 **1.21** “Project” means the proposed development of the Site as described in Section 2.1
169 of this Agreement, and as further defined by the Project Phase 2, to include a mix of uses, types
170 and density of development, public and private infrastructure, signage, and amenities consistent
171 with the Project application and this Agreement.

172
173 **1.22** “Project Phase 2” means the Lynnwood Place Project Phase 2, as specified in the
174 Binding Site Plan as Lot 2 and Lot 3, dated **Month Day, 2014**, Lynnwood Place Design
175 Guidelines Mixed-Use, as dated **Month Day, 2014**, and PDR Applications prepared by the
176 Developer and approved by the City, as may be amended or revised from time-to-time, and
177 which are incorporated herein by reference. The Project Phase 2 contains information regarding
178 the improvements, type and configuration of all other new structures, land uses, infrastructure
179 improvements, and site improvements, and the phasing and timing of the construction of all
180 Project Phase 2 improvements.

181
182 **1.23** “SEPA” means the Washington State Environmental Policy Act, RCW 43.21c
183 and WAC 197-11.

184
185 **1.24** “Site” means the real property formerly occupied by Lynnwood High School as
186 described in the legal description as referenced in this Agreement and attached as **Exhibit ##**, and
187 defined by the Binding Site Plan.

188
189 **1.25** “Substantial Completion” means issuance of a certificate of occupancy, subject to
190 normal punch list items, and City administrative acceptance of the Project Phase 2. Substantial
191 Completion does not remove the responsibility of the Developer to complete Project Phase 2 in
192 compliance with the terms and conditions of this Agreement and applicable City codes.

193
194 **1.26** “Tenant” means an occupant of sub-leased space within the Project Phase 2.

195
196

197 **SECTION 2 GENERAL PROJECT DESCRIPTION**

198
199 **2.1 Project Description.** The improvements to be sited on the Site in accordance
200 with the Binding Site Plan, the terms and conditions of this Agreement and all other applicable
201 development regulations and standards are jointly called Lynnwood Place. As used in this
202 Agreement and as summarized in the FEIS, the Developer has proposed the following:

203

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Table 1. Lynnwood Place Project Summary

	9/11/12 Submittal & EIS Alternative 2 (3/30/12)
Site size (acres)	~ 40.22
Developed area (including roads)	~35 acres
Gross building area	990,000 sq. ft.
Uses: Multifamily Residential	Up to 500 units (500,000 sq. ft.)
Retail anchor (Costco)	~160,000 sq. ft.
Retail shops	192,000 sq. ft.
Amusement/Recreation	105,000 sq. ft.
Restaurant	33,000 sq. ft.
Parking spaces	3,548

205

206

207 The Project applications for the Comprehensive Plan Amendment – Map Application
 208 #2006CPL0003, Ordinance 2976; Comprehensive Plan Amendment Application – Text
 209 Amendment, 2006CPL0003, action deferred; Rezone Application; Zoning Code Amendment
 210 2012CAM0007, Ordinance No. 2977; Zoning Map Amendment, 2012RZN0003, Ordinance
 211 2978 are incorporated into this Agreement by reference. This Development Agreement also
 212 incorporates by reference the SEPA Planned Action; Binding Site Plan; Project Design Review;
 213 and all other applications and actions required for the Project Phase 2 by the applicable
 214 regulatory authorities.

215

216 **2.2 Project Phase 2:** The Developer proposes that the Project be undertaken in
 217 phases, and has provided to the City as part of this Development Agreement a Binding Site Plan
 218 and Design Guidelines that identify all Project Phase 2 components, elements, and features
 219 proposed to be designed and constructed, and the responsible parties to complete each Project
 220 Phase 2 component. The Project Phase 2 is further described in Section 3.5 of this Agreement.

221

222 2.2.1 The Project Phase 2 has been mutually approved by the Parties, and the
 223 City shall review permit applications for compliance with Project Phase 2, and review and
 224 approve permits for the components of the Project Phase 2 as authorized by this Agreement,
 225 regulatory authorities, and the LMC.

226

227 2.2.2 If after approval of this Agreement the Parties seek to amend Project
 228 Phase 2, such amendments shall require review and amendment of this Agreement pursuant to
 229 Section 13 and Section 21.9 of this Agreement.

230

231 2.2.3 The amendments to administrative matters associated with this Agreement
 232 may be undertaken pursuant to their regulatory authorities, process, and procedures.

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SECTION 3 DEVELOPMENT PLANNING

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237
238 **3.1 Consistency and Compliance with SEPA.** The City has conducted extensive
239 environmental review of the Project, and prepared an FEIS which includes within its scope the
240 maximum anticipated level of redevelopment included within the Project and the environmental
241 mitigations required to accommodate that level of development.

242
243 3.1.1 The environmental review conducted by the City specified the Project as
244 Alternative 2 Project Sponsor's Preferred Alternative Without Office.

245
246 3.1.2 Environmental impact and mitigations specific to the Preferred Alternative
247 are identified in the FEIS. These mitigations shall be addressed as part of the Project approval
248 documents prepared by the City, and incorporated into a planned action ordinance.

249
250 3.1.3 Mitigations specified in the FEIS serve to adequately address the
251 environmental impacts of the Project Phase 2. Any additional development determined by the
252 Community Development Director as the SEPA Responsible Official to be inconsistent with the
253 FEIS or planned action ordinance shall be subject to environmental review and SEPA threshold
254 determination requirements.

255
256 **3.2 Project Consistency with Land Use and Zoning.** The City has approved
257 amendments to the Comprehensive Plan, Zoning Ordinance and Zoning Map described above in
258 Section 2.1. The City will review Project Phase 2 applications for consistency with Land Use
259 and Zoning approvals.

260
261 3.2.1 Relationship to Comprehensive Plan. The City shall review the Project
262 Phase 2 application to determine that they are in compliance with the City's Comprehensive Plan
263 and the Future Land Use Plan Map, as amended by Ordinance No. 2976, adopted by the City
264 Council on February 25, 2013.

265
266 3.2.2 Relationship to Zoning. The City shall review the Project Phase 2
267 applications to determine that they are in compliance with the City's Zoning Code, as amended
268 by Ordinance No. 2977, adopted by the City Council on February 25, 2013.

269
270 3.2.3 Relationship to Zoning Map. The City shall review the Project Phase 2
271 applications to determine that they are in compliance with the Zoning Map, as amended by
272 pursuant to Ordinance No. 2978, adopted by the City Council on February 25, 2013.

273
274 **3.3 Planned Action.** In conjunction with this Agreement, the City has adopted a
275 Planned Action Ordinance (Planned Action) that involved detailed SEPA review and
276 identification of mitigations consistent with RCW 43.21C.031 and WAC 197-11-164 through
277 WAS 197-11-172.

Draft Development Agreement, Cycle 2 Phase 2, Final Draft w/ Changes Accepted, 03.31.2014 Page 7 of 25

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278
279 3.3.1 Developer shall submit Project Phase 2 applications for the Site that are
280 subject to the Planned Action.
281

282
283 **3.4 Project Design Review (PDR):** The Project Phase 2 improvements are required
284 to demonstrate consistency with all applicable Development Regulations and the terms of this
285 Agreement. The City shall use the PDR procedures set forth in Chapter 21.25 LMC as the
286 process by which the City determines Project Phase 2 improvements consistent with applicable
287 Development Regulations and the terms of this Agreement. The City's evaluation of PDR
288 submittals will also be based upon consistency with the Project Phase 2 Design Guidelines
289 attached to this document as **Exhibit ##** and approved by the City Council as part of this
290 Agreement. The Project Phase 2 PDR applications may be submitted to the City prior to the
291 consideration and final approval of this Agreement.
292

293 **3.5 Project Phase 2.** The Project Phase 2 Mixed-Use is identified in the BSP, Design
294 Guidelines, and PDR applications. The Project Phase 2 shall not be substantively amended or
295 superseded without the mutual written consent of the Parties. In addition, any amendment to the
296 Project Phase 2 Mixed-Use shall follow the process and procedures for such amendment that are
297 in effect at the time of the request; and shall be subject to environmental review. The schedule to
298 implement the Project Phase 2 Mixed-Use improvements is included herein by reference.
299

300 3.5.1 Site Work. Developer is responsible for all Site Work, including
301 demolition, site grading, and the installation of all associated public and private infrastructure
302 and improvements as delineated in the Design Guidelines, PDR approval, and all other
303 regulatory requirements for Project Phase 2. The City shall review Project Phase 2 Site Work
304 applications for consistency with this Agreement, the FEIS, the Project Plan, the Binding Site
305 Plan, and the LMC. Permits for Site Work improvements may be submitted by the Developer
306 for approval by the City prior to approval of this Agreement.
307

308 3.5.2 Developer Improvements Project Phase 2. Project Phase 2 shall include
309 development by the Developer of site improvements, utilities, etc. as identified on the Binding
310 Site Plan and as identified in the Design Guidelines, PDR approvals, and all other regulatory
311 requirements for the mixed use Project Phase 2. The City shall review administratively the
312 permit applications related to Project Phase 2 for consistency with this Agreement, the FEIS, the
313 Project Plan, the Lynnwood Place Design Guidelines, and the LMC. City approval of the Project
314 Phase 2 shall be required prior to the issuance of City permits for Project Phase 2 development
315 and the initiation of construction by the Developer of Project Phase 2.
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SECTION 4 PROJECT DESIGN AND APPROVALS

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321
322 **4.1 Binding Site Plan.** The Developer is required to submit a Binding Site Plan
323 application for City approval in accordance with LMC Chapter 19.75 and LMC 19.10.020; RCW
324 58.17.020 and 58.17.035. The Parties agree that a Binding Site Plan is necessary to facilitate
325 development in accordance with this Agreement, the FEIS, the Project Plan, the Lynnwood Place
326 Design Guidelines, and the City Project Design Review, and the determination by the City
327 Community Development Director that the site plan satisfies the criteria of the LMC. The
328 Binding Site Plan will identify the property boundary, leased parcel lot lines, common
329 infrastructure, parking areas, native growth and critical areas, easements and encumbrances.
330 Codes, covenants, and restrictions are included in a separate document with a reference number
331 in the BSP. The Binding Site Plan is intended to allow land tenants and building owners to
332 develop individual parcels in accordance with the approved Design Guidelines, City
333 administrative approvals, CC&Rs and such other conditions as may be a part of the Agreement
334 or other actions or conditions of approval by the City. Upon approval by the City, the Binding
335 Site Plan will be recorded with the Snohomish County Auditor's Office.

336
337 **4.2 Pedestrian Facilities and Public Access.**

338
339 4.2.1 Developer shall provide, at Developer's sole cost and expense, public
340 access and improvements. The intent is to enable the general public to have access and use of
341 pedestrian access, sidewalks, and trails within the Project Phase 2. Public access shall be
342 required from the Developer and the District for Lynnwood Place Project Phase 2, which shall be
343 granted as a condition of PDR approvals. Completion of all improvements pursuant to this
344 Section 4.2 shall be phased pursuant to PDR approvals, and shall be completed prior to the
345 Certificate of Occupancy for such approvals. The Developer may defer installation of
346 improvements until after Certificate of Occupancy at the sole discretion of the City and pursuant
347 to the provisions of the LMC. Design of the improvements shall be consistent with this
348 Agreement.

349
350 **4.3 Sustainability.** Developer and Tenants shall design and construct the mixed use
351 improvements in accordance with best practices to achieve sustainability for building and site
352 design. Verification of sustainability shall be submitted upon applications for building permits.

353
354 4.3.1 Sustainability for Project Phase 2 site improvements, commercial building
355 shell and core, and parking structures is defined as achieving or exceeding equivalency with
356 Leadership in Energy and Environmental Design (LEED).

357
358 4.3.2 Sustainability for Project Phase 2 residential buildings is defined as
359 achieving or exceeding an equivalency with the U.S. Green Building Council, Built Green 3-
360 Star ranking.

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362 **4.4 Signage.** The signage for the Project Phase 2 shall be coordinated to provide a
363 consistent and unifying theme for the Project Phase 2 site. Electronic flashing signage shall be
364 prohibited. Developer has submitted to the City a signage package (as part of the Design
365 Guidelines) for the Project Phase 2 improvements for City review and permitting. The signage
366 shall be consistent with the Project Phase 2 Design Guidelines, this Agreement, the LMC, and
367 the City Memorandum regarding building signs dated March 3, 2014.

368

369 **4.5 Edge Treatments, Buffers and Screening.**

370

371 4.5.1 Setbacks. Setbacks from Site boundary lines shall be provided in
372 accordance with the Project Phase 2 Design Guidelines, PDR approvals, and the LMC.

373

374 4.5.2 Screening. Parking shall be screened from public streets in accordance
375 with the Project Phase 2 Design Guidelines, City Design Requirements, PDR approvals, and the
376 LMC.

377

378 **4.6 Lighting Plan: Developer.** The Developer shall include a detailed lighting plan
379 as part of the submittal for their Project Phase 2 improvements. The Lighting Plan shall be
380 designed to meet IESNA (Illuminating Engineers Society of North America) standards for Full
381 Cut Off from private properties adjoining the site. The Lighting Plan shall be consistent with the
382 FEIS, Project Phase 2 Plan, Lynnwood Place Design Guidelines, and City Project Design
383 Review, Chapter 21.25 LMC.

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385 **4.7 Sound Mitigation.**

386

387 4.7.1 The Developer shall include a detailed noise mitigation plan for
388 construction and on-going operation for Project Phase 2 improvements. This plan shall be
389 submitted as part of the project review pursuant to the LMC. The noise mitigation plan shall be
390 consistent with the FEIS, Project Plan, Lynnwood Place Design Guidelines, and the City Project
391 Design Review, Chapter 21.25 LMC, and Chapter 10.12 LMC. HVAC equipment shall be
392 screened and sources of related noise muffled to comply with the LMC requirements. Trash
393 facilities including compactors shall be located internally in buildings or situated in screened
394 areas that shall serve to minimize noise.

395

396 **4.8 Stormwater.**

397

398 4.8.1 Stormwater impacts and mitigation shall be regulated by the City
399 consistent with the National Pollutant Discharge Elimination System (NPDES) Permit Program.
400 The requirements of the Department of Ecology 2005 Stormwater Management Manual for
401 Western Washington shall govern the design for stormwater facilities and mitigations for all
402 Phases of the Project. The Developer shall apply for a NPDES General Construction Permit
403 from the Washington State Department of Ecology for any site work greater than one acre. The

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404 Developer shall comply with the process and stormwater facilities and mitigations consistent
405 with the FEIS, Project Plan, Lynnwood Place Design Guidelines, and the City Project Design
406 Review, and the LMC.

407

408 4.8.2 Partial transfer of coverage for the NPDES General Construction Permit
409 shall be completed between the Developer and the City prior to beginning construction of the
410 Perimeter Road Project.

411

412 4.8.3 The Developer is constructing a stormwater management facility on the
413 Site for the purpose of the detention and treatment of stormwater generated by Lynnwood Place
414 Phase 2. This facility will be of sufficient size to accommodate City stormwater requirements
415 pursuant this Agreement, the LMC, and other regulations as may be allocable to the Project at
416 time of application.

417

418 **4.9 Parking.** The Developer has requested and received approval from the City on
419 **Month Day, 2014**, for decreased parking provisions based upon the submitted Heffron parking
420 studies per LMC 21.18.820 and attached hereto as **Exhibit** _____. The accuracy of these
421 projections will be assessed after completion of the Project Phase 2 Lot 2, and prior to permit
422 issuance for Project Phase 2 Lot 3. If parking shortfalls are determined by the City to occur after
423 Certificate of Occupancy for Phase 2 Lot 2, Phase 2 Lot 3 must be designed with a surplus of
424 parking to satisfy the overall demand for Lynnwood Place Project Phase 2.

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427 SECTION 5 SITE DEMOLITION AND GRADING PERMITS

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429 **5.1 Permit Requirement.** The Developer shall apply for demolition and grading
430 permits from the City for the Project Phase 2 improvements. These permits shall establish the
431 terms and conditions for these activities pursuant to this Agreement, the LMC, and other
432 regulations as may be applicable to the Project Phase 2 at time of application.

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435 SECTION 6 CONSTRUCTION PERMITS AND INSPECTIONS

436

437 **6.1 Permits and Inspection.** The City shall review and approve all Project Phase 2
438 improvements to be constructed by the Developer pursuant to this Agreement, the LMC and
439 other regulations as may be applicable to the Project at time of application.

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SECTION 7 FEES

7.1 Fees. All City fees not specifically addressed in this Agreement shall be paid by the Developer in accordance with the City's adopted Fee Schedule applicable to the Project at time of application.

SECTION 8 TRANSPORTATION

8.1 Street and Site Circulation Plan. To provide adequate access to adjacent arterials and interior circulation patterns, the Developer shall identify in the Project Phase 2 and the BSP those transportation improvements and pedestrian connections for Project Phase 2 that are the responsibility of the Developer. The City shall review and approve these improvements pursuant to this Agreement and the LMC. The private Lynnwood Place road will not extend or connect to 33rd West until development of Phase 2 Lot 3 as designated on the BSP.

8.2 Mitigations.

8.2.1 Dedicated Right Turn Lane. The FEIS for the Project requires the construction of a dedicated right turn lane from 33rd Ave. W. into the development entrance for the Project Phase 2, as identified in the Design Guidelines. Construction of this improvement shall occur prior to the issuance of a Certificate of Occupancy for the Project Phase 2, Lot 3.

8.2.2 Infrastructure Improvements. The Developer is constructing infrastructure improvements as mitigations for Lynnwood Place Project Phase 1 and 2. These infrastructure improvements are: 1) a right turn land from Alderwood Mall Parkway southbound to 33rd Avenue West Perimeter Road Project westbound; 2) a travel / right turn lane from Maple Road westbound to Alderwood Mall Parkway northbound; and 3) a connection of the Interurban Trail from Alderwood Mall Parkway to Ash Way. These mitigations will be the sole responsibility of the Developer to fund, design, and construct per the City approved plans and construction documents. Completion of these improvements shall occur prior to the issuance of a Certificate of Occupancy for the Project Phase 2. These improvements are noted on the design documents prepared by BCRA, **DATE**, incorporated herein by reference.

8.2.3 Private Improvements. All other transportation improvements required by the FEIS and the permitting process shall be the sole responsibility of the Developer. Such improvements are identified pursuant to the Planned Action Ordinance Number #####-##, incorporated herein by reference.

8.3 Site Access Approval. The Developer is required to apply and pay for Site Plan and Right-of-Way Permits for the Project Phase 2. Approval of such permits shall be required prior to performance of any work associated with this Agreement.

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488
489 **8.4 Construction Phasing.** The Developer shall prepare a construction sequencing
490 and phasing schedule prior to construction commencing. If any of the Project improvements
491 overlap with construction of the Perimeter Road, the involved Parties shall take reasonable
492 efforts to coordinate, as mutually agreed, the construction scheduling and activities prior to such
493 overlapping work. Construction scheduling for the Perimeter Road shall take precedent where
494 coordination is required.

495
496

497 **SECTION 9 TRAFFIC MITIGATION FEE**

498
499 **9.1 Traffic Mitigation Fee Calculation and Fee Credits.** Traffic Mitigation Fees
500 are required on all development projects that have a net increase in trips pursuant to the LMC.
501 The TrIF Calculation Form for Lynnwood Place Project Phase 2 has been prepared and is
502 incorporated herein as **Exhibit ##**. The TrIF Calculation Form specifies the total credit available.
503 The allocation of the credit shall be undertaken pursuant to a letter of agreement from the
504 Developer, and the District, which will be incorporated herein by reference.

505

506 **9.2 Effective Date.** The terms and conditions of the Traffic Mitigation Fee
507 calculation will be undertaken pursuant to the LMC.

508
509

510 **SECTION 10 NON-MOTORIZED TRANSPORTATION INFRASTRUCTURE**

511

512 **10.1 Non-Motorized Transportation Infrastructure Improvements.** The Developer
513 is responsible for construction of non-motorized transportation infrastructure for their respective
514 properties pursuant to the Binding Site Plan, Lynnwood Place Design Guidelines, and City
515 project approvals undertaken pursuant to the LMC.

516

517 **10.2 Completion of Non-Motorized Transportation Infrastructure.** The Developer
518 shall complete the installation of non-motorized transportation infrastructure, at its sole cost and
519 expense, in accordance with the Project Phase 2 Binding Site Plan, Lynnwood Place Design
520 Guidelines, and City PDR approvals. Completion of Non-Motorized Transportation
521 Infrastructure is required prior to issuance of a Certification of Occupancy by the City for any
522 structure in Project Phase 2 Lot 2 and Project Phase 2 Lot 3, respectively.

523

524

525

525 **SECTION 11 WATER**

526

527 **11.1 Domestic Water Service Line and System Looping.** The Developer is
528 responsible for construction, at its sole cost and expense, of the water system improvements for

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529 Phase 2 to connect to the City water system as indicated on the Binding Site Plan. All water
530 system design and construction shall meet City standards and require City review and approval.
531

532 **11.2 Fire Flow.** The Developer is responsible for providing water system
533 improvements, at its sole cost and expense, for the Project adequate to meet the City's fire flow
534 requirements. All water system design and construction shall meet City standards, and require
535 City review and approval.
536

537

538 SECTION 12 SANITARY SEWERS

539

540 **12.1 Developer Responsibilities.** The Developer is responsible for participating in the
541 design and construction of the sanitary sewer system improvements for the Project Phase 2. All
542 sanitary system design and construction shall meet City standards, and require City review and
543 approval.
544

545

546 **12.2 Participation Agreement for Sanitary Lift Stations Number 4 and Number 8.**
547 The City and Developer have executed a Participation Agreement that provides for the funding
548 of Sanitary Lift Stations Number 4 and Number 8. The Participation Agreement delineates the
549 responsibilities of the Developer and the City and is incorporated into this Agreement by
550 reference and attached hereto as **Exhibit ##.**

551

552

553 SECTION 13 PERMIT PROCESS

554

555

556 **13.1 Responsible Official.** The Project Design Review and permit approvals shall be
557 undertaken pursuant to the City's rules, regulations, and the LMC. This process shall be
558 administrative and the Community Development Director shall be responsible for the
559 determination of Project Phase 2 compliance with this Agreement. Changes proposed by the
560 Developer that comprise less than 10% of the total square footage of any use category within
561 Project Phase 2 land or building area shall be reviewed by the Community Development
562 Director for compliance to the City LMC. Changes to Project Phase 2 that exceed these
563 thresholds or change the approved design guidelines shall require an amendment to this
564 Agreement. Determinations made by the Community Development director may be appealed to
565 the City Hearing Examiner per the LMC, Chapter 1.22 LMC.
566

567

568

569 SECTION 14 VESTED RIGHTS

570

571 **14.1 General Vesting.** The Project Phase 2 shall be vested to City of Lynnwood local
572 laws, regulations and resolutions existing on the effective date of this Agreement ("Vested

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571 Laws”), including, but not limited to, the City’s Comprehensive Plan, Zoning Use Tables,
572 Development Regulations, Lynnwood Place Design Guidelines, and other provisions of the LMC
573 applicable to the Project.
574

575 **14.2 Amendments.** During the vested period, if any of the Vested Laws are amended,
576 modified or changed, the Developer, at their sole discretion, may elect to have a permit or
577 approval for the Project considered under all such Vested Laws, as amended, in effect on the date
578 of application for the permit or approval.
579

580 **14.3 City Reservation of Rights.** Notwithstanding the foregoing, the City reserves
581 the authority under RCW 36.70B.170(4) to impose new or different regulations, to the extent
582 required by the federal or state governments, or by a serious threat to public health and safety.
583

584 SECTION 15 PROJECT SCHEDULE

585
586
587 **15.1 Project Phase 2 Schedule.** The Project Phase 2 schedule is incorporated into this
588 Agreement by reference and attached hereto as **Exhibit ##**. This schedule provides for the
589 anticipated actions and improvements associated with this Agreement. The Developer will keep
590 the District and City apprised of any revisions to the schedule.
591

592 SECTION 16 PARTIES REPRESENTATIVES

- 593
594
595 **16.1** Designation of City’s Representative
596 **16.2** Designation of Developer’s Representative
597 **16.3** Designation of District’s Representative
598

599 SECTION 17 COMPLIANCE WITH LAWS AND ORDINANCES

600
601
602 **17.1 Compliance with Laws and Ordinances.** Throughout the term, and subject to
603 the provisions, of this Agreement, the District, and the Developer, at their sole cost and expense,
604 shall promptly comply with all applicable laws and ordinances, as they relate to the Site and the
605 Project, including but not limited to, the City’s Comprehensive Plan, Zoning Use Code,
606 Development Regulations, Lynnwood Place Design Guidelines, and other provisions of the LMC
607 applicable to the Project Phase 2. To the extent that their compliance shall require the
608 cooperation and participation of the City, the City agrees to use its best efforts to cooperate and
609 participate. The City shall take any and all actions to achieve compliance pursuant to the LMC
610 and any and all applicable regulations.
611

612

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SECTION 18 RIGHT TO ASSIGN OR OTHERWISE TRANSFER

613
614
615 **18.1 Assignment Right.** During the term of this Agreement, the District or the
616 Developer shall each have the right and privilege to sell, assign, or otherwise transfer their
617 respective rights under this Agreement to such other persons, firm, corporation, partnerships,
618 joint ventures, and federal, state, or municipal government or agency thereof, as the District or
619 the Developer shall select, subject to the conditions stated in this Section 18 (“Transferee”).
620

621 18.1.1 Such sale, assignment, or transfer shall be made expressly subject to the
622 terms, covenants, and conditions of this Agreement.
623

624 18.1.2 There shall be delivered to the City a duly executed and recordable copy
625 of the document evidencing such transfer.
626

627 18.1.3 Such transfer shall not be effective to bind the City until the Transferee
628 has assumed all obligations of the District or the Developer under this Agreement and notice
629 thereof is given to the City, and such notice shall designate the name and address of the
630 Transferee.
631

632 **18.2 Succession.** The Transferee (and all succeeding and successor Transferees) shall
633 assume all rights and obligations of the City, District, or the Developer under this Agreement,
634 including the right to mortgage, encumber, and otherwise assign, subject, however, to all duties
635 and obligations of the District or the Developer in and pertaining to the then unperformed
636 provisions of this Agreement.
637

SECTION 19 DEFAULT

638
639
640 **19.1 Events of Default.** The following shall constitute events of default under this
641 Agreement by the respective Party responsible for such event of default (“Events of Default”):
642

643 19.1.1 A default by a Party in keeping, observing or timely performing any of its
644 duties and/or obligations under this Agreement, and such Party shall not have cured such default
645 within thirty (30) days after written notice thereof is given to such Party; unless such default
646 cannot reasonably be cured within thirty (30) days and such Party shall have commenced to cure
647 such default within thirty (30) days and continues diligently to pursue the curing of such default
648 until completed.
649

650 19.1.2 The making by the District or the Developer of an assignment for the
651 benefit of creditors or filing a petition in bankruptcy or of reorganization under any bankruptcy
652 or insolvency law or filing a petition to effect a composition or extension of time to pay its debts;
653 and
654

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655 19.1.3 The appointment of a receiver or trustee of the Site, which appointment
656 shall not be vacated or stayed within six (6) months; and
657

658 19.1.4 The filing of a petition in bankruptcy by or against the District or the
659 Developer or for its reorganization under any bankruptcy or insolvency law which shall not be
660 dismissed or stayed by the court within six (6) months after such filing.
661

662
663 **19.2 Remedies in the Event of Default.** If an Event of Default shall occur, then any
664 Party shall have the right and remedies against the defaulting Party at law or in equity, and shall
665 be required to proceed in accordance with, the Dispute Resolution provisions in Section 20;
666 provided, however, that in the event Dispute Resolution is unsuccessful, the Parties shall have all
667 rights, remedies and causes of action, at law or in equity, available under the laws of the State of
668 Washington.
669

670 SECTION 20 DISPUTE RESOLUTION

671
672
673 **20.1 Disputes and Coordination Issues.** Whenever any dispute arises between the
674 Parties under this Agreement (“Dispute”), including any event of default, controversy or claim
675 arising out of, or relating to, this Agreement, or any breach thereof, which are not resolved by
676 routine meetings or communications, the provision of this Section 20 shall apply. Any Party
677 shall have the right to commence a resolution process by issuing a written request to the other
678 Parties, which request shall contain brief details of the Dispute (“Dispute Notice”), excepting
679 only those disputes subject to Section 20.5, which shall not require a Dispute Notice.
680

681 **20.2 Cooperative Discussions.** The Authorized Representatives of the Parties shall
682 seek in good faith to resolve any such dispute or concern within ten (10) days after the date of
683 the Dispute Notice. The Authorized Representatives shall meet within five (5) days after the
684 date of the Dispute Notice, and shall continue to meet thereafter, as reasonably requested by a
685 Party, in an attempt to resolve the Dispute. If the Dispute is resolved by the Authorized
686 Representatives, the resolution shall be recorded in writing and signed by the Authorized
687 Representatives of each Party and that resolution shall be final and binding on both Parties. If
688 the Parties are unable to resolve the Dispute through cooperative discussions within ten (10) days
689 after the date of the Dispute Notice, then except as specifically provided in Section 20.4 for
690 binding arbitration of monetary disputes less than \$50,000.00, the Parties may immediately
691 pursue any remedies available under Washington law, and may commence litigation prior to, and
692 without regard to, the provisions of Section 20.3 and Section 20.4 , which shall be deemed
693 entirely voluntary and discretionary.
694

695 **20.3 Mediation.** If the Parties are unable to resolve a Dispute in accordance with the
696 provisions Section 20.2, the Parties may consider the use of voluntary non-binding mediation. In

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697 the event that non-binding mediation is agreed upon, the site of the proceedings shall be
698 Lynnwood, Washington, unless otherwise agreed in writing by the Parties. The rules for
699 mediation, the selection of the mediator, and the timetable and procedures for mediation, shall be
700 determined by mutual agreement of the Parties. The mediator shall be skilled in the legal and
701 business aspects of the subject matter of this Agreement. The mediation shall be conducted
702 without prejudice to any Party and in strict confidence. Each Party shall share equally in the
703 costs of the mediation except that each Party shall bear its discretionary costs, including, but not
704 limited to, its attorneys' fees and expenses. If the Dispute is settled through mediation, the terms
705 of the settlement shall be recorded in writing and signed by the Authorized Representatives of
706 the Parties. Unless otherwise mutually agreed by the Parties in writing, the mediator shall not be
707 utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor
708 shall the mediator be entitled to act as a fact or expert witness to any Party in any subsequent
709 proceeding. If within forty-five (45) days after the date of the Dispute Notice, the mediation has
710 not resulted in settlement of the Dispute, then the mediation shall, unless otherwise mutually
711 agreed in writing by the Parties, be terminated. If any Party withdraws from the mediation at any
712 time, the mediation shall be terminated.

713
714 **20.4 Arbitration.** If the Parties are unable to resolve a Dispute in accordance with the
715 provisions of Section 20.3, the Parties may consider the use of voluntary binding arbitration;
716 provided, however, that binding arbitration shall be required for any strictly monetary Dispute,
717 the value or potential financial impact of which is agreed by the Parties to be less than
718 \$50,000.00. In the event that binding arbitration is required, or mutually agreed upon, and unless
719 otherwise mutually agreed by the Parties in writing, the site of the proceedings shall be
720 Lynnwood, Washington, and Washington law shall govern the arbitration proceedings. Upon
721 completion of the cooperative discussions set forth in Section 20.2, the arbitration process shall
722 commence immediately. The Parties shall determine by mutual agreement the rules for
723 arbitration, the selection of the arbitrator, and the timetable and procedures for arbitration,
724 including, but not limited to, (i) the extent, form, and time limits applying to any documentary or
725 oral evidence of the Parties to be submitted to arbitration; (ii) site visits or inspections; (iii)
726 meetings with the Parties; and (iv) appointment of experts; provided, however, that in the event
727 the Parties are unable to agree within twenty-five (25) days after the date of the Dispute Notice,
728 then the Rules of the Judicial Arbitration and Mediation Service, Seattle office, shall apply. The
729 arbitrator shall be skilled in the legal and business aspects of the subject matter of this
730 Agreement. The arbitration shall be conducted without prejudice to any Party and in strict
731 confidence. The arbitrator shall decide the Dispute acting impartially and in good faith. The
732 arbitrator shall reach a decision and communicate the decision in writing to the Parties, providing
733 the basis for the decision. The arbitrator's decision shall be final and binding on the Parties. The
734 Parties shall implement the arbitrator's decision without delay. The arbitrator's fees and
735 expenses, the other costs of arbitration, and the Parties' reasonable attorneys' fees and costs shall
736 be borne by the Parties as the arbitrator shall specify in his decision; provided, however, that the
737 "substantially prevailing" Party shall be entitled to recover its arbitration expenses and
738 reasonable attorneys' fees and costs in preparation for, and during, the arbitration process.

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739 Unless otherwise mutually agreed by the Parties in writing, the arbitrator shall render a final
740 decision on the Dispute within sixty (60) days after the date of the Dispute Notice. The arbitrator
741 shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the
742 Dispute, nor shall the arbitrator be entitled to act as a fact or expert witness to either Party in any
743 subsequent proceeding.
744

745 **20.5 Litigation.** If the Parties are not required, or do not mutually agree, to submit a
746 Dispute to mediation under Section 20.3, or arbitration under Section 20.4, then after the time
747 period set forth in Section 20.2 for cooperative discussion, either Party shall have the right and
748 authority to commence litigation immediately, and primary jurisdiction for the resolution of any
749 Dispute relating to, or arising out of, this Agreement shall reside in the Washington State
750 Superior Court, Snohomish County, Washington. The Parties shall have all rights and remedies,
751 whether at law or in equity, under Washington law, including, but not limited to, specific
752 performance, damages and injunctive relief.
753

754 **20.6 Equitable Proceedings.**
755

756 20.6.1 In the event a Party desires to seek interim relief, whether affirmative or
757 prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim
758 equitable relief with respect to a Dispute either before or after the initiation of a dispute
759 resolution proceeding, that Party may initiate the proceeding necessary to obtain such relief
760 (“Equitable Proceeding”). Nothing in this Section 20.6 shall be construed to suspend or
761 terminate the obligation of the Parties to comply with the provisions of Sections 20.3 and 20.4
762 with respect to the Dispute that is the subject of such Equitable Proceeding while such Equitable
763 Proceeding is pending, including any appeal or review.
764

765 20.6.2 Notwithstanding the decision of an arbitrator or mediator, as may be
766 applicable, any interim relief granted by such Equitable Proceeding shall not be reversed or
767 modified by the arbitrator’s or mediator’s determination, and any factual or legal determination
768 made in such Equitable Proceeding shall be binding upon the Parties in the Dispute before any
769 arbitrator or mediator.
770

771
772 **SECTION 21 MISCELLANEOUS**
773 **(MANAGEMENT AND ADMINISTRATION)**
774

775 **21.1 No Third Party Rights.** Except as specifically set forth in this Agreement, the
776 provisions of this Agreement are for the exclusive benefit of the City, the District, or the
777 Developer and their respective permitted successors and assigns and not for the benefit of any
778 third person. This Agreement shall not be deemed to have conferred any rights upon any third
779 person.
780

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781 **21.2 Severability.** If any term or provision of this Agreement or the application
782 thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the
783 remainder of this Agreement or the application of such term or provision to persons or
784 circumstances other than those as to which it is held invalid or unenforceable shall not be
785 affected thereby and shall continue in full force and effect.
786

787 **21.3 Construction.** The section headings throughout this Agreement are for
788 convenience and reference only and the words contained in them shall not be held to expand,
789 modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All
790 pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter,
791 singular or plural as the identification of the person or persons, firm or firms, corporation or
792 corporations may require. The locative adverbs “herein”, “hereunder”, “hereto”, “hereby”,
793 “hereinafter”, etc., whenever the same appear herein, mean and refer to this Agreement in its
794 entirety and not to any specific section or subsection hereof.
795

796 **21.4 Fair Construction.** The Parties acknowledge and agree that each was properly
797 represented by counsel, and that this Agreement was negotiated and drafted at arm’s length so
798 that the judicial rule of construction to the effect that a legal document shall be construed against
799 the draftsman shall be inapplicable to this Agreement.
800

801 **21.5 Authority to Execute Agreement.** The parties represent to each other that they
802 possess sufficient and requisite jurisdiction and authority to enter into this Agreement.
803

804 **21.6 Attorney’s Fees.** If any Party brings a claim suit to enforce or declare the
805 meaning of any provision of this Agreement through arbitration or in superior court, the
806 prevailing Party, in addition to any other relief, shall be entitled to recover its reasonable
807 attorneys’ fees and costs, including any incurred on appeal.
808

809 **21.7 Survival.** The provisions of this Agreement shall survive the expiration of the
810 term of this Agreement to the extent involving maintenance of public improvements or other
811 matters involving rights or obligations extends beyond the expiration of the term of this
812 Agreement.
813

814 **21.8 Governing Law.** This Agreement shall be governed by and construed in
815 accordance with the Laws of the State of Washington. Venue for any legal action pertaining to
816 this Agreement shall be in the State of Washington with jurisdiction in Snohomish County,
817 Washington.
818

819 **21.9 Amendment.** No modification or amendment of this Agreement may be made
820 except by written agreement signed by each of the Parties to this Agreement or as may be
821 provided otherwise in this Agreement.
822

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823 **21.10 Notices.** All notices which may be or are requested to be given, pursuant to this
 824 Agreement, shall be deemed given when hand delivered, delivered by e-mail, delivered by
 825 facsimile, or within 3 business days of when deposited as certified mail in the United States
 826 Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and
 827 addressed to the Parties at the following addresses unless otherwise provided for herein:
 828

829 To CITY: City of Lynnwood
 830 Attn: TITLE
 831 PO Box 5008
 832 Lynnwood, WA 98046-5008
 833 Facsimile #
 834 E-mail:

836 AND TO: City of Lynnwood
 837 Attn: City Attorney
 838 Mailing Address
 839 Facsimile #
 840 E-mail

842
 843 To DEVELOPER: Cypress Lynnwood LLC
 844 C/O Cypress Equities
 845 Attn: Stephen Schmidt
 846 8343 Douglas Avenue, Suite 200
 847 Dallas, TX 75225
 848 Facsimile # 214-283-1600
 849 E-mail

851 AND TO: Liecthy & McGinnis, LLP
 852 Attn: Kevin McGinnis
 853 1910 Greenville, Ave Ste. 400
 854 Dallas, TX 75240
 855 Email: Kmcginnis@lmlawyers.com

857
 858 To DISTRICT: Edmonds School District
 859 Attn:
 860 Mailing Address
 861 Facsimile #
 862 E-Mail:

863
 864 AND TO:

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The Parties shall have the right to change the address or contact information for notice purposes at any time during the term of the Agreement upon prior written notification to the other Parties.

21.11 Incorporation by Reference. All exhibits and appendices annexed hereto are hereby incorporated by reference herein.

21.12 No Joint Venture. This Agreement is not intended to and nothing in this Agreement shall create any partnership, joint venture or other arrangement between the Parties.

21.13 Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between the Parties relating to the subject matter hereof.

21.14 Waiver. The waiver by one Party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition, or promise hereunder. The waiver by any or all Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

21.15 Exculpation. Notwithstanding anything contained to the contrary in any provision of this Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability of the part of any individual officers or directors of the Parties with respect to any of the obligations, terms, covenants, and conditions of this Agreement; and each Party shall look solely to the other Party or any such assignee or successor in interest for the satisfaction of each and every remedy available to a Party in the event of any breach by another Party or by any such assignee or successor in interest of any of the obligations, terms, covenants, and conditions of this Agreement to be performed by a Party, such exculpation of personal liability to be absolute and without any exception whatsoever.

21.16 Recording. This Agreement shall be recorded with the Real Property Records Division of the Snohomish County Auditor's Office; provided, that upon the mutual consent of the Parties, a memorandum of this Agreement may be recorded in place of this Agreement.

21.17 Binding Effect. This Agreement shall be a covenant running with the land. The terms contained in this Agreement shall bind and inure to the benefit of the Parties, and their successors and assigns, except as may be other provided herein.

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907 **21.18 Counterparts.** This Agreement may be executed in multiple counterparts, all of
908 which, taken together, shall constitute one and the same instrument.

909
910 **21.19 Time is of the Essence.** For the purposes of this Agreement and all transactions
911 contemplated thereunder, time is of the essence.

912
913 **21.20 Term and Termination.** Subject to the survival provisions set forth in Section
914 21.7, the term of this Agreement is 99 years from the date signed by all Parties.

915
916 **21.21 Extensions.**

CITY OF LYNNWOOD,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

EDMONDS SCHOOL DISTRICT NO. 4515,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

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CYPRESS LYNNWOOD, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

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EXHIBITS

NOTE: This draft development agreement proposes anticipated terms and language for discussion purposes. The draft development agreement is subject to a public hearing by the Lynnwood City Council, and City Council's deliberation and action on the draft development agreement. By providing this draft agreement, City staff makes no representation as to the City Council's position on the final terms and language of the agreement.