



**ORDINANCE NO. 3051**

**AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON,  
ADOPTING THE LYNNWOOD PLACE PROJECT, PHASE 2  
DEVELOPMENT AGREEMENT AS DEVELOPMENT REGULATIONS  
FOR THE LYNNWOOD PLACE SITE, AND PROVIDING FOR  
SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY  
PUBLICATION.**

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WHEREAS, Chapter 36.70B RCW authorizes local governments to enter into voluntary development agreements with property owners in order to specify development standards or regulations for the property, and to specify mitigation measures to be provided with development; and

WHEREAS, Edmonds School District No. 15 (District) owns the real property consisting of approximately 40.2 acres commonly known as the former Lynnwood High School (Site), located in the City, at 3001 184<sup>th</sup> Street SW, Lynnwood, Snohomish County, Washington as more fully described in Exhibit "A" attached; and

WHEREAS, the District is planning to lease the Site to Cypress Lynnwood, LLC (Developer) to allow for redevelopment as a mixed-use project also known as Lynnwood Place; and

WHEREAS, on October 7, 2011, a Draft Environmental Impact Statement (DEIS) was issued for Lynnwood Place (known then as "Lynnwood Crossing Mixed-Use Project"); and

WHEREAS, on March 30, 2012, the City issued the Final Environmental Impact Statement (FEIS) for Lynnwood Place (known then as "Lynnwood Crossing Mixed-Use Project"); and

WHEREAS, the DEIS and FEIS (EIS) established the scope, proposed land uses, infrastructure improvements, and identified environmental impacts and mitigation measures associated with Lynnwood Place; and

WHEREAS, on August 9, 2012 the Developer submitted revised applications for Lynnwood Place, requesting amendments to the City Comprehensive Plan, Comprehensive Plan Map, Zoning Code, and Zoning Map (Amendments); and

WHEREAS, on January 10, 2013, pursuant to public hearing and deliberation, the Lynnwood Planning Commission unanimously recommended to City Council approval of the proposed Amendments; and

WHEREAS, on February 25, 2013, pursuant to public hearing and deliberation, the City Council unanimously approved Ordinance 2976, amending the Comprehensive Plan Future Land Use Map, Ordinance 2977, amending the text of the Commercial-Residential Zone, and Ordinance 2978, amending the Zoning Map in order to enable further consideration of the Lynnwood Place development; and

WHEREAS, the recitals of Ordinances 2976, 2977, 2978, and 3030 are incorporated herein by reference; and

WHEREAS, Ordinances 2976 and 2978 require the execution and recording of a development agreement (Agreement) pursuant to RCW 36.70B.170-210 and Chapter 1.37 LMC prior to issuance of construction permits, and specifying certain provisions to be included in the Agreement; and

WHEREAS, the EIS identifies significant environmental impacts and mitigation measures associated with development of Lynnwood Place, and confirms that significant, adverse environmental impacts related to the Lynnwood Place development are adequately addressed and mitigated; and

WHEREAS, compliance with development regulations administered by Federal, State, and local governments, and also the terms of the Lynnwood Place Development Agreement will guide the location, form and intensity of development, and provide meaningful environmental protections; and

WHEREAS, the City and the property owner have recognized the need to segment the development agreements and permit review processes for Lynnwood Place to allow for phasing of the larger Lynnwood Place development; and

WHEREAS, Phase 1 of Lynnwood Place involves overall site grading and infrastructure, and the Costco Warehouse facility; and

WHEREAS, Phase 2 of Lynnwood Place involves two mixed-use buildings upon the southeast quadrant of the Site; and

WHEREAS, Phase 3 of Lynnwood Place involves mixed-use buildings to be located between Phase 2 and 33<sup>rd</sup> Ave W; and

WHEREAS, on November 4, 2013 the City Council of the City of Lynnwood approved Ordinance 3030 adopting the Lynnwood Place Project Phase 1 Development Agreement and amending the Lynnwood Municipal Code by adding a new section 17.02.400 entitled "Lynnwood Place Planned Action" designating Lynnwood Place development as a Planned Action; and

WHEREAS, on April 14, 2014 the City Council of the City of Lynnwood held a duly noticed public hearing on this Ordinance to accept public testimony; and

WHEREAS, after careful consideration of the evidence, testimony and record established during the April 14, 2014 public hearing, the Lynnwood City Council finds that the provisions of this Ordinance further the public's health, safety and welfare; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:

**Section 1.** The Lynnwood Place, Phase 2 Development Agreement (DA), dated \_\_\_\_\_, 2014 and attached hereto as Exhibit "B", is hereby approved. The provisions of the Development Agreement (DA), shall constitute development regulations for the portion of the Lynnwood Place site related to Lynnwood Place Project, Phase 2, having equivalence in material weight and force of law as the provisions of the Lynnwood Municipal Code.

**Section 2.** The Mayor or his/her designee is authorized to administer the provisions of this Ordinance consistent with the Development Agreement and the authority of the Mayor as set forth by LMC 2.10.010.

**Section 3.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

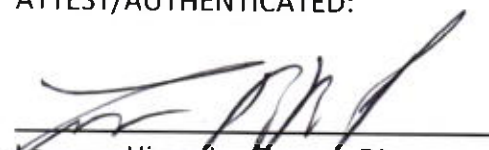
**Section 4.** This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED this 14<sup>th</sup> day of April, 2014, and signed in authentication of its passage this 21 day of April, 2014.

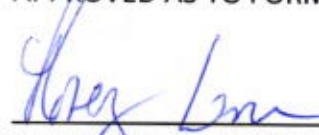
APPROVED:

  
\_\_\_\_\_  
Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: 04/10/2014  
PASSED BY THE CITY COUNCIL: 04/14/2014  
PUBLISHED: 04/21/2014  
EFFECTIVE DATE: 04/27/2014  
ORDINANCE NUMBER: 3051

**EXHIBIT A**  
**ORDINANCE 3051**

**LYNNWOOD PLACE PROPERTY DESCRIPTION**

**Address:** 3001 184<sup>th</sup> Street SW, Lynnwood, WA

**Legal Description:**

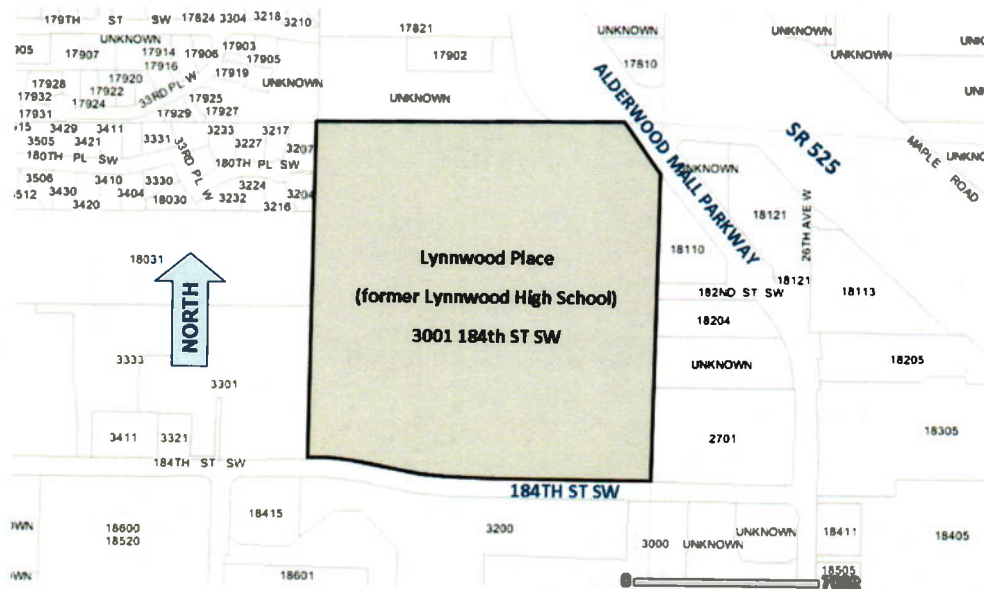
The northeast quarter of the northeast quarter of section 15, T. 27N. , R.4E. , W.M.  
Also known as "Bradner Park", according to the plat thereof recorded in Volume 14 of  
Plats on pages 60 and 61, records of Snohomish County, Washington.

EXCEPT: All that portion of the hereinafter described parcel lying northeasterly of the  
following described line: Beginning at a point opposite highway engineer's station  
(hereinafter referred to as HES) F<sup>1</sup> 82+0 on the F<sup>1</sup> line survey line of SR 525, Swamp  
Creek Interchange to 164<sup>th</sup> St. S.W. and 50 feet southwesterly therefrom: Thence  
northwesterly to a point opposite HES F<sup>1</sup> 85+50.9 and the end of this line description.  
And also EXCEPT: That part thereof conveyed to the City of Lynnwood by deed  
recorded march 18, 1971 under Auditor's File No. 2188576 for 184<sup>th</sup> St. S.W.

Containing 41.20 acres more or less.

**Tax Parcel Number:** 27041500102900

**Map:**



**EXHIBIT B**  
**ORDINANCE NO. \_\_\_\_\_**

**LYNNWOOD PLACE, CYCLE 2 PHASE 2, DEVELOPMENT AGREEMENT**



On the 14<sup>th</sup> day of April, 2014 the City Council of the City of Lynnwood, Washington, passed Ordinance No. 3051. A summary of the content of said ordinance, consisting of the title, provides as follows:

**ORDINANCE NO. 3051**

**AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON,  
ADOPTING THE LYNNWOOD PLACE PROJECT, PHASE 2  
DEVELOPMENT AGREEMENT AS DEVELOPMENT  
REGULATIONS FOR THE LYNNWOOD PLACE SITE, AND  
PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND  
SUMMARY PUBLICATION.**

The full text of this ordinance will be mailed upon request.

DATED this 2<sup>1st</sup> day of April, 2014.



\_\_\_\_\_  
Lorenzo Hines Jr., Finance Director




## **CERTIFICATE**

I, the undersigned, Lorenzo Hines Jr., the duly appointed City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3051 of the City of Lynnwood, Washington, entitled as follows:

### **ORDINANCE NO. 3051**

**AN ORDINANCE OF THE CITY OF LYNNWOOD,  
WASHINGTON, ADOPTING THE LYNNWOOD  
PLACE PROJECT, PHASE 2 DEVELOPMENT  
AGREEMENT AS DEVELOPMENT REGULATIONS  
FOR THE LYNNWOOD PLACE SITE, AND  
PROVIDING FOR SEVERABILITY, AN EFFECTIVE  
DATE AND SUMMARY PUBLICATION.**

That said ordinance was passed by the Council on April 14, 2014 of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on April 21, 2014.



\_\_\_\_\_  
Lorenzo Hines, Jr., City Clerk of the  
City of Lynnwood, Washington



# Everett Daily Herald

RECEIVED

APR 25 2014

CITY OF LYNNWOOD  
FINANCE DIRECTOR

## Affidavit of Publication

STATE OF WASHINGTON }  
COUNTY OF SNOHOMISH } ss

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice is a true copy of City Ordinances - Ordinance 3051 556970 a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

1 issue(s), such publication commencing on 04/21/2014 and ending on 04/21/2014 and that said newspaper was regularly distributed to its subscribers during all of said period. The amount of the fee for such publication is \$ 27.70.

*Karen E. Zorn*

Subscribed and sworn before me on this

21 day of April, 2014.

*Susan L. Stoltz*

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

City of Lynnwood - LEGAL ADS EDH1127890 - PO: ORD 3051  
ORDERED BY: DEBBIE KARBER

\* SUSAN L. STOLTZ \*  
STATE OF WASHINGTON  
NOTARY --- PUBLIC  
My Commission Expires 12-20-2017

**LYNNWOOD**  
WASHINGTON

On the 14th day of April, 2014 the City Council of the City of Lynnwood, Washington, passed Ordinance No. 3051. A summary of the content of said ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 3051  
AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING THE LYNNWOOD PLACE PROJECT, PHASE 2 DEVELOPMENT AGREEMENT AS DEVELOPMENT REGULATIONS FOR THE LYNNWOOD PLACE SITE, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

The full text of this ordinance will be mailed upon request.  
DATED this 21st day of April, 2014.  
Lorenzo Hines Jr., Finance Director  
Published: April 21, 2014.

Seattle Pacific Development, 12120 25th Ave SE, Everett, WA 98201, is seeking coverage under the Washington State Department of Ecology's Construction Stormwater NPDES and State Waste Discharge General Permit.

The proposed project, Ruggs Lake Villas, is located at 12120 25th Ave SE in Everett, in Snohomish County.

This project involves 2.26 acres of soil disturbance for Residential Subdivision and related underground utility and grading construction activities.

Stormwater will be discharged to Ruggs Lake.

Any persons desiring to present their views to the Washington State Department of Ecology regarding this application, or interested in Ecology's action on this application, may notify Ecology in writing no later than 30 days of the last date of publication of this notice. Ecology reviews public comments and considers whether discharges from this project would cause a measurable change in receiving water quality, and if so, whether the project is necessary and in the overriding public interest according to Tier II anti-degradation requirements under WAC 173-201A-320.

Comments can be submitted to:  
Department of Ecology  
Attn: Water Quality Program, Construction Stormwater  
P.O. Box 47696, Olympia, WA 98504-7696  
Published: April 14, 21, 2014.

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

THIS DEVELOPMENT AGREEMENT (Agreement) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **CITY OF LYNNWOOD**, a Washington municipal corporation ("City"); **EDMONDS SCHOOL DISTRICT NO. 15**, a Washington municipal corporation ("District"); **CYPRESS LYNNWOOD, LLC**, a Delaware limited liability company ("Developer"); and **COSTCO WHOLESALE, Corporation** (Costco).

**RECITALS**

**A.** The District owns approximately 40.22 acres of real property, commonly known as the former site of Lynnwood High School ("Site"), located in the City at 3001 – 184<sup>th</sup> Street SW, as more fully described in Exhibit # attached.

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

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

**D.** The Developer is planning to sublease a portion of the Site (for the Lynnwood Place Project Phase 1) to Costco for the development by Costco of a Costco warehouse and associated improvements (the "Costco Improvements"), which is more fully described in the Lynnwood Place Design Guidelines. Phase 1, **Exhibit ##** and the Record of Survey and Binding Site Plan, **Exhibit ##**.

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

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

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

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

46  
47           **I.**     On March 30, 2012, the City issued the Final Environmental Impact Statement  
48 (FEIS) for the Project. The FEIS established the scope, proposed land uses, infrastructure  
49 improvements, and identified environmental impacts and mitigation measures associated with  
50 the Project alternatives. All environmental documents prepared for the Project pursuant to SEPA  
51 are incorporated into this Agreement by reference, and are collectively referred to as the FEIS.  
52

53           **J.**     On August 9, 2012 the Developer submitted applications for the Project  
54 requesting, in part, amendments to the City's Comprehensive Plan, Comprehensive Plan Future  
55 Land Use Map, Zoning Code, and Zoning Map (Amendments). Those applications were  
56 assigned City of Lynnwood file numbers: 2006CPL0003, 2012CAM0007, and 2012RZN003  
57

58           **K.**     On January 10, 2013, pursuant to public hearing and deliberation, the Lynnwood  
59 Planning Commission recommended to the City Council approval of the proposed Amendments  
60 to the Comprehensive Plan Future Land Use Map, Zoning Code, and Zoning Map.  
61

62           **L.**     On February 25, 2013, after public hearing and deliberation, the City Council  
63 approved the proposed Amendments as recommended by the Planning Commission pursuant to  
64 Ordinance No. 2976 amending the Comprehensive Plan Future Land Use Map, Ordinance No.  
65 2977 amending the text of the Zoning Code relating to the Commercial-Residential Zone, and  
66 Ordinance No. 2978 amending the Zoning Map, incorporated herein by reference.  
67

68           **M.**     In accordance with Ordinance Nos. 2976 and 2978 the Amendments to the  
69 Comprehensive Plan Future Land Use Map and the Zoning Map are conditioned on the  
70 execution and recording of a development agreement (Agreement) between the District,  
71 Developer, Costco and City prior to issuance of construction permits. The Ordinances specify  
72 certain provisions to be included in the Agreement, and the Agreement is consistent with  
73 Ordinance Nos. 2976 and 2978.  
74

75           **N.**     Due to the nature and terms of Costco's sublease and financial contribution to the  
76 Project's infrastructure, it is necessary and appropriate to include Costco as a Party to this  
77 Agreement.  
78

79           **O.**     This Agreement is authorized pursuant to RCW 36.70B.170 through 36.70.B.210,  
80 and Chapter 1.37 of the Lynnwood Municipal Code, as established by City Ordinance No. 2626.  
81

82           **P.**     By this Agreement for the Lynnwood Place Project Phase 1, the parties intend to  
83 set forth their mutual agreement and understandings as they relate to their respective roles and  
84 responsibilities regarding the District's and Developer's redevelopment of the Property, and  
85 thereby facilitate the permitting and construction of the Project.  
86

87           **Q.**     As set forth in these Recitals, the City has determined that the terms and  
88 conditions set forth herein will serve a public purpose, and will promote the health, safety,  
89 prosperity and general welfare of the citizens of the City.  
90

## 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 #####, 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 “Costco Property” means for the purposes of this Agreement that portion of the Lynnwood Place Project Phase 1 as legally described and depicted in Exhibit ### (BSP), and included in the Lynnwood Place Project Design Guidelines, Exhibit ##.

1.8 “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.

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

1.10 “Development Agreement” means the terms and conditions between the City of Lynnwood, Edmonds School District No. 15, Cypress Lynnwood, LLC, and Costco Wholesale for the development of the Lynnwood Place Project Phase 1.

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

1.12 “District” means Edmonds School District No. 15.

1.13 “Final Environmental Impact Statement (FEIS)” means the Draft Environmental Impact Statement: Comprehensive Plan Amendment and Zoning Map and Text Amendment for Lynnwood Crossing Mixed-Use Project, dated October 7, 2011, and the Final Environmental



Impact Statement: Comprehensive Plan Amendment and Zoning Map and Text Amendment for Lynnwood Crossing Mixed-Use Project, dated March 30, 2012.

**1.14** “Force Majeure” means any circumstances or acts beyond the reasonable control of the Parties to this Agreement which do not arise from a default by or collusion of the Party seeking delay.

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

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

**1.17** “JARPA” means a Joint Aquatic Resources Permit Application, Corps of Engineers No. NWS-2011-331, to apply for hydraulic project approvals, shoreline management permits, water quality certifications, and U.S. Army Corps of Engineers Section 404 and Section 10 permits, a copy of said application, documents and permits are incorporated into this Agreement by reference.

**1.18** “LMC” means the City of Lynnwood Municipal Code.

**1.19** “LZC” means the City of Lynnwood Zoning Code.

**1.20** “Lynnwood Place Project Design Guidelines, Phase 1,” means a compendium of design features dated September 13, 2013, prepared and submitted by the Developer for the Project Phase 1, and approved by the City for the Project, and attached hereto as **Exhibit ##**.

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

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

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

**1.24** “Project” means the proposed development of the Site as described in Section 2.1 of this Agreement, and as further defined by the Project Phase 1, to include a mix of uses, types and density of development, public and private infrastructure, signage, and amenities consistent with the Project application and this Agreement.

1.25 "Project Phase 1" means the Lynnwood Place Project Phase 1 as specified in the Binding Site Plan, Phase 1 Design Guidelines, and PDR Application prepared by the Developer and approved by the City, as may be amended or revised from time-to-time, and which is incorporated herein by reference. The Project Phase 1 contains information regarding the Costco improvements, type and configuration of all other new structures, land uses, infrastructure improvements, and site improvements, and the phasing and timing of the construction of all Project Phase 1 improvements.

1.26 "SEPA" means the Washington State Environmental Policy Act, RCW 43.21c and WAC 197-11.

1.27 "Site" means the real property formerly occupied by Lynnwood High School as described in the legal description as referenced in this Agreement and attached as Exhibit ##, and defined by the Binding Site Plan.

1.28 "Substantial Completion" means issuance of a certificate of occupancy, subject to normal punch list items, and City administrative acceptance of the Project Phase 1. Substantial Completion does not remove the responsibility of the Developer or Costco to complete Project Phase 1 in compliance with the terms and conditions of this Agreement and applicable City codes.

1.29 "Tenant" means an occupant of sub-leased space within the Project.

## SECTION 2 GENERAL PROJECT DESCRIPTION

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

**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

The Project applications for the Comprehensive Plan Amendment – Map Application #2006CPL0003, Ordinance 2976; Comprehensive Plan Amendment Application – Text Amendment, 2006CPL0003, action deferred; Rezone Application; Zoning Code Amendment 2012CAM0007, Ordinance No. 2977; Zoning Map Amendment, 2012RZN0003, Ordinance 2978 are incorporated into this Agreement by reference. This Development Agreement also incorporates by reference the SEPA Planned Action; Binding Site Plan; Project Design Review; and all other applications and actions required for the Project Phase 1 by the applicable regulatory authorities.

**2.2 Project Phase 1:** The Developer proposes that the Project be undertaken in phases, and has provided to the City as part of this Development Agreement a Binding Site Plan and Design Guidelines that identify all Project Phase 1 components, elements, and features proposed to be designed and constructed, and the responsible parties to complete each Project Phase 1 component. The Project Phase 1 is further described in Section 3.5 of this Agreement.

2.2.1 The Project Phase 1 has been mutually approved by the Parties, and the City shall review permit applications for compliance with Project Phase 1, and review and approve permits for the components of the Project Phase 1 as authorized by this Agreement, regulatory authorities, and the LMC.

2.2.2 If after approval of this Agreement the Parties seek to amend Project Phase 1, such amendments shall require review and amendment of this Agreement pursuant to Section 16 of this Agreement.

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

### SECTION 3 DEVELOPMENT PLANNING

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

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

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

3.1.3 Mitigations specified in the FEIS serve to adequately address the environmental impacts of the Project Phase 1. Any additional development determined by the Community Development Director as the SEPA Responsible Official to be inconsistent with the

FEIS or planned action ordinance shall be subject to environmental review and SEPA threshold determination requirements.

**3.2 Project Consistency with Land Use and Zoning.** The City has approved amendments to the Comprehensive Plan, Zoning Ordinance and Zoning Map pursuant to the Project application **FILE #####** submitted by the Developer. The City will review Project Phase 1 applications for consistency with Land Use and Zoning approvals.

**3.2.1 Relationship to Comprehensive Plan.** The City shall review the Project Phase 1 application to determine that they are in compliance with the City's Comprehensive Plan and the Future Land Use Plan Map, as amended by Ordinance No. 2976, adopted by the City Council on February 25, 2013.

**3.2.2 Relationship to Zoning.** The City shall review the Project Phase 1 applications to determine that they are in compliance with the City's Zoning Code, as amended by Ordinance No. 2977, adopted by the City Council on February 25, 2013.

**3.2.3 Relationship to Zoning Map.** The City shall review the Project Phase 1 applications to determine that they are in compliance with the Zoning Map, as amended by Ordinance No. 2978, adopted by the City Council on February 25, 2013.

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

**3.3.1** Developer shall submit Project Phase 1 applications for the Site that are subject to the Planned Action.

**3.3.2** Costco shall submit Project Phase 1 applications for the Costco Property that are subject to the Planned Action.

**3.4 Project Design Review (PDR):** The Project Phase 1 improvements are required to demonstrate consistency with all applicable Development Regulations and the terms of this Agreement. The City shall use the PDR procedures set forth in Chapter 21.25 LMC as the process by which the City determines Project Phase 1 improvements consistent with applicable Development Regulations and the terms of this Agreement. The Project Phase 1 PDR applications may be submitted to the City prior to the consideration and final approval of this Agreement.

**3.5 Project Phase 1.** The Project Phase 1 is identified in the BSP, Design Guidelines, and PDR applications. The Project Phase 1 shall not be substantively amended or superseded without the mutual written consent of the Parties. In addition, any amendment to the Project Phase 1 shall follow the process and procedures for such amendment that are in effect at the time of the request; and shall be subject to environmental review. The schedule to implement the Project Phase 1 improvements is included herein by reference.



309  
310 3.5.1 Site Work. Developer is responsible for all Site Work, including  
311 demolition, site grading, wetland and critical area mitigation, and the installation of all associated  
312 public and private infrastructure and improvements except as delineated in the **Perimeter Road**  
313 **Matrix of responsibilities**. The City shall review Project Phase 1 Site Work applications for  
314 consistency with this Agreement, the FEIS, the Project Plan, the Binding Site Plan, and the  
315 LMC. Permits for Site Work improvements may be submitted by the Developer for approval by  
316 the City prior to approval of this Agreement.  
317

318 3.5.2 Developer Improvements Project Phase 1. Project Phase 1 shall include  
319 development by the Developer of site improvements, utilities, etc. as identified on the Binding  
320 Site Plan and as identified in the Perimeter Road Matrix of Responsibilities, including the Costco  
321 Development pad on the north portion of the site as identified by the **Binding Site Plan Tract ##.**  
322 **(Include tract numbers from the BSP)** The City shall review administratively the permit  
323 applications related to Project Phase 1 for consistency with this Agreement, the FEIS, the Project  
324 Plan, the Lynnwood Place Design Guidelines, and the LMC. City approval of the Project Phase  
325 1 shall be required prior to the issuance of City permits for Project Phase 1 development and the  
326 initiation of construction by the Developer of Project Phase 1.  
327

328 3.5.3 Costco Improvements. Costco is responsible for the construction of the  
329 Costco Improvements, which consist of a wholesale warehouse building, fuel station facility,  
330 associated parking, landscaping, and site and utility improvements, as described in this  
331 Agreement. The City shall review the Costco Improvements for consistency with this  
332 Agreement, the FEIS, the Project Plan, the Lynnwood Place Design Guidelines, and the LMC.  
333 City review shall be undertaken as required by the City's Project Design Review process as  
334 established in the LMC. City approval of the Costco Improvements shall be required prior to the  
335 issuance of City permits for the Costco Improvements.  
336  
337

## 338 SECTION 4 PROJECT DESIGN AND APPROVALS 339

340 4.1 **Binding Site Plan.** The Developer is required to submit a Binding Site Plan  
341 application for City approval in accordance with LMC Chapter 19.75 and LMC 19.10.020; RCW  
342 58.17.020 and 58.17.035. The Parties agree that a Binding Site Plan is necessary to facilitate  
343 development in accordance with this Agreement, the FEIS, the Project Plan, the Lynnwood Place  
344 Design Guidelines, and the City Project Design Review, and the determination by the City  
345 Community Development Director that the site plan satisfies the criteria of the LMC. The  
346 Binding Site Plan will identify the property boundary, leased parcel lot lines, common  
347 infrastructure, parking areas, and associated private codes, covenants, and restrictions (CC&Rs).  
348 The Binding Site Plan is intended to allow land tenants and building owners to develop  
349 individual parcels in accordance with the approved Design Guidelines, City administrative  
350 approvals, CC&Rs and such other conditions as may be a part of the Agreement or other actions  
351 or conditions of approval by the City. Upon approval by the City, the Binding Site Plan will be  
352 recorded with the Snohomish County Auditor's Office.  
353  
354

355           **4.2     Pedestrian Facilities and Public Access.**  
356

357           4.2.1   Developer shall provide, at Developer's sole cost and expense, public  
358   access and improvements as specified in this Agreement. The intent is to enable the general  
359   public to have access and use of pedestrian access, sidewalks, and trails within the Project.  
360   Public access shall be required from the Developer, Costco and the District for Lynnwood Place  
361   Cycle 2 Phase 1 which shall be granted as a condition of PDR approval for the Costco Property.  
362   Completion of all improvements pursuant to this section shall occur prior to the Certificate of  
363   Occupancy for Project Phase 1 improvements. The Developer may defer installation of  
364   improvements until after Certificate of Occupancy at the sole discretion of the City and pursuant  
365   to the provisions of the LMC. Design of the improvements shall be consistent with this  
366   Agreement.  
367

368           4.2.2   Pedestrian Connections to Interurban Trail. Developer shall provide a trail  
369   connection designed to City standards with a minimum width of eight feet for pedestrian and  
370   bicycles use from the intersection of Alderwood Mall Parkway and the Perimeter Road Project  
371   east to the Interurban Trail, generally located at the intersection of Maple Road and Ash Way.  
372   Design of the improvements shall be consistent with this Agreement and submitted to the City  
373   for approval. Developer's construction of the trail connection shall be coordinated with the  
374   construction of improvements to Ash Way as identified in FEIS and TIB Grant Application, and  
375   shall occur prior to the completion of the Project. The Pedestrian Connection will be the  
376   responsibility of the City to maintain.  
377

378           **4.3     Design – Costco Improvements.** Costco Improvements are on the Costco  
379   Property as identified on the Binding Site Plan. Such improvements include: the wholesale  
380   warehouse building, fuel station facility, associated parking, landscaping, and utility  
381   improvements that serve the building as described in this Agreement. Costco shall provide plans  
382   and specifications for all aspects of the improvements to the City for administrative review and  
383   approval pursuant to the LMC. Design of the improvements shall be consistent with this  
384   Agreement.  
385

386           4.3.1   Sustainability. Costco shall design and construct the Costco  
387   improvements in accordance with best practices to achieve sustainability for building and site  
388   design. Sustainability is defined as achieving or exceeding a rating equivalent to the U.S. Green  
389   Building Council, Leadership in Energy and Environmental Design (LEED). Costco shall  
390   submit verification of sustainability when applications are made for building permits.  
391

392           **4.4     Signage.** The signage for the Project Phase 1 shall be coordinated to provide a  
393   consistent and unifying theme for the Project Phase 1 site. Electronic flashing signage shall be  
394   prohibited.  
395

396           4.5.1   The Developer shall submit to the City a Gateway signage package for the  
397   Project Phase 1 for City review and permitting. Signage shall be consistent with the Project  
398   Phase 1 Design Guidelines, this Agreement, and the LMC.  
399

400 4.5.2 Costco Signage. Costco shall submit to the City a signage package for the  
401 Project Phase 1 Costco improvements for City review and permitting. The signage shall be  
402 consistent with the Project Phase 1 Design Guidelines, this Agreement, and the LMC.  
403  
404  
405

406 **4.5 Edge Treatments, Buffers and Screening.**  
407

408 4.5.1 Setbacks. Setbacks from Site boundary lines shall be provided in  
409 accordance with the zoning for the Property.  
410

411 4.5.2 Screening. Parking lots shall be screened from public and private streets  
412 in accordance with the Project Phase 1 Design Guidelines, City Design Requirements and the  
413 LMC.  
414

415 4.5.3 Western Landscape Buffer. The area between the Perimeter Road right-  
416 of-way and the north property line and the west property line shall serve as a buffer between the  
417 Project and adjacent development. A buffer of a minimum of 40' in width shall be maintained  
418 from the western property line. The design of this buffer shall be submitted as part of the  
419 Binding Site Plan for the project, and in accordance with LMC.  
420

421 a. The Developer shall provide a tree preservation plan prepared by a  
422 licensed arborist to the City for review and approval for the purposes of preserving existing trees  
423 to the fullest extent feasible, and in accordance with LMC.  
424

425 b. The Developer shall provide a forestation and landscape plan for  
426 areas disturbed by grading to the City for review and approval in accordance with the Project  
427 Phase 1, Lynnwood Place Design Guidelines, the JARPA, and the LMC.  
428

429 c. The Developer and Costco are responsible to provide at their sole  
430 cost and expense the edge treatments, buffers, screening and landscaping improvements for areas  
431 under their respective control as identified in this Agreement. The Developer and Costco will  
432 maintain all improvements on the Site that are under their respective control and not located  
433 within the public right of way.  
434

435 d. Upon completion of the work the Developer shall verify that the  
436 trees slated for preservation remain in good condition or provide replacement trees satisfactory to  
437 the City in accordance with the LMC.  
438

439 4.5.4 Western Boundary Line Screening. The Developer shall install, at the  
440 Developer's sole cost and expense, a screen wall at the western most property line with adjacent  
441 single family residential development. This screen wall shall serve to provide a buffer from the  
442 Project to the single family residential properties to the west. The Developer shall meet with  
443 neighboring property owners to gain their input and concurrence in the final design, location and  
444 landscaping of the screening. Completion of the screening shall occur prior to issuance of a  
445 Certificate of Occupancy for the Costco improvements.

446  
447       **4.6     Lighting Plan: Developer.** The Developer shall include a detailed lighting plan  
448 as part of the submittal for their Project Phase 1 improvements. The Lighting Plan shall be  
449 designed to use shielded fixtures so that there will be no direct views of the unscreened lighting  
450 sources from off-site locations. The Lighting Plan shall be consistent with the FEIS, Project  
451 Phase 1 Plan, Lynnwood Place Design Guidelines, and City Project Design Review, Chapter  
452 21.25 LMC. Special attention shall be paid to ensure that lighting does not disturb adjacent  
453 developments and residences, is shielded from critical areas and landscape buffers and that night  
454 sky illumination effects are kept to a minimum.  
455

456       **4.7     Lighting Plan: Costco.** Costco shall include a detailed lighting plan as part of  
457 the submittal for their Project Phase 1 improvements. The Lighting Plan shall be designed to use  
458 shielded fixtures so that there will be no direct views of the unscreened lighting sources from off-  
459 site locations. The Lighting Plan shall be consistent with the FEIS, Project Plan, Lynnwood  
460 Place Design Guidelines, and the City Project Design Review, Chapter 21.25 LMC. Special  
461 attention shall be paid to ensure that lighting does not disturb adjacent developments and  
462 residences, is shielded from critical areas and landscape buffers and that night sky illumination  
463 effects are kept to a minimum.  
464

465       **4.8     Sound Mitigation.**  
466

467               **4.8.1** The Developer shall include a detailed noise mitigation plan for  
468 construction and on-going operation for Project Phase 1 improvements for which they are  
469 responsible. This plan shall be submitted as part of the project review pursuant to the LMC.  
470 The noise mitigation plan shall be consistent with the FEIS, Project Plan, Lynnwood Place  
471 Design Guidelines, and the City Project Design Review, Chapter 21.25 LMC, and Chapter 10.12  
472 LMC. HVAC equipment shall be screened and sources of related noise muffled to comply with  
473 the LMC requirements. Trash facilities including compactors shall be located internally in  
474 buildings or situated in screened areas that shall serve to minimize noise.  
475

476               **4.8.2** Costco shall include a detailed noise mitigation plan for construction and  
477 on-going operation for Phase 1 Project Plan for which they are responsible. This plan shall be  
478 submitted as part of the project review pursuant to the LMC. The noise mitigation plan shall be  
479 consistent with the FEIS, Project Plan, Lynnwood Place Design Guidelines, and the City Project  
480 Design Review, Chapter 21.25 LMC, and Chapter 10.12 LMC. HVAC equipment shall be  
481 screened and sources of related noise muffled to comply with the LMC requirements. Trash  
482 facilities including compactors shall be located internally in buildings or situated in screened  
483 areas that shall serve to minimize noise.  
484

485       **4.9     Critical Areas.** The Developer shall apply to the City for a critical areas permit  
486 in compliance with Chapter 17 LMC. The permit shall identify anticipated impacts and  
487 mitigations to critical areas, and comply with the process and mitigations consistent with this  
488 Agreement, Chapter 21.25 LMC and Chapter 17 LMC.  
489  
490  
491  
492

#### 4.10 Stormwater.

4.10.1 Stormwater impacts and mitigation shall be regulated by the City consistent with the National Pollutant Discharge Elimination System (NPDES) Permit Program. The requirements of the Department of Ecology 2005 Stormwater Management Manual for Western Washington shall govern the design for stormwater facilities and mitigations for all Phases of the Project. The Developer shall apply for a NPDES General Construction Permit from the Washington State Department of Ecology for any site work greater than one acre. The Developer shall comply with the process and stormwater facilities and mitigations consistent with the FEIS, Project Plan, Lynnwood Place Design Guidelines, and the City Project Design Review, and the LMC.

a) A partial transfer of coverage for the NPDES General Construction Permit shall be completed between the Developer and the City prior to beginning construction of the Perimeter Road Project.

b) 4.10.2 A partial transfer of coverage for the NPDES General Construction Permit shall be completed between the Developer and Costco prior to beginning construction of the Costco improvements.

4.10.2 The Developer is constructing a stormwater management facility on the Site, for use by Costco for the purpose of the detention and treatment of stormwater generated by the Costco Project, as depicted on the Binding Site Plan dated September 9, 2013, Proposed Tract B. The District, the Developer, Costco and the City shall negotiate in good faith and enter into a Detention Pond Maintenance Agreement regarding the detention and treatment of stormwater from the Costco Project and the Perimeter Road, which shall be executed prior to the City's construction of the Perimeter Road under Sections 9 and 10 of this Agreement. The Detention Pond Maintenance Agreement shall allocate no more than 16% (calculate roadway proportionate share) of the costs of maintaining the stormwater management facilities to the City.

### SECTION 5 SITE DEMOLITION AND GRADING PERMITS

5.1 Permit Requirement. The Developer and Costco shall apply for demolition and grading permits from the City for their respective Project Phase 1 improvements. These permits shall establish the terms and conditions for these activities pursuant to the LMC.

### SECTION 6 CONSTRUCTION PERMITS AND INSPECTIONS

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

### SECTION 7 FEES

7.1 **Fees.** All City fees not specifically addressed in this Agreement shall be paid by the Developer or Costco, as applicable, in accordance with the City's adopted Fee Schedule.

## SECTION 8 JOINT AQUATIC RESOURCE PERMIT APPLICATION

8.1 **JARPA.** The Developer has submitted a Joint Aquatic Resource Permit Application (JARPA), Corps of Engineers No. NWS-2011-331, for the Project, which is incorporated herein by reference. Approval of the JARPA permits and all associated regulatory approvals by other governing authorities is required prior to any site work effecting identified wetlands or critical areas as identified in the JARPA or later discovered to exist.

8.2 **Coordination with Perimeter Road Project.** The City, in conjunction with the Developer and the District, were awarded a Washington State Transportation Improvement Board (TIB) grant, TIB Project Number 9-P-140(006)-1, as identified as the 33<sup>rd</sup> Avenue W, 184<sup>th</sup> Street SW to Alderwood Mall Parkway, to be used for design, right-of-way acquisitions and construction of the Perimeter Road. The terms of the TIB grant require the City to be the lead agency for design and construction of the Perimeter Road. As the alignment of the Perimeter Road includes regulated critical areas and their associated buffers, the City shall not proceed with construction of the Perimeter Road until such time as the Developer has obtained all associated regulatory approvals. Nothing in this section prohibits the Developer from undertaking demolition and preliminary grading as approved in accordance with the Project Plan to the extent that such work is not subject to the terms and conditions of the necessary regulatory approvals.

8.3 **Design and Improvements.** The Developer shall design and construct the Project consistent with the JARPA permits and associated regulatory approvals. All application, design, and permit approval documents shall be provided to the City.

8.4 **Developer Responsibility for JARPA Improvements.** The Developer shall undertake the design and construction of JARPA related improvements or mitigations at its sole responsibility and expense.

## SECTION 9 TRANSPORTATION

9.1 **Street and Site Circulation Plan.** To provide adequate access to adjacent arterials and interior circulation patterns, the Developer shall identify in the Project Phase 1 and the BSP those transportation improvements and pedestrian connections for Project Phase 1 that are the responsibility of the Developer, and which are not provided as part of the Perimeter Road Project. The City shall review and approve these improvements pursuant to this Agreement and the LMC.

### 9.2 **Mitigations.**

9.2.1 Public and Private Improvements. The FEIS for the Project requires the extension of 33<sup>rd</sup> Avenue West Perimeter Road Project around the west and north sides of the Site as one of the mitigations for traffic impacts from the Project. The mitigation will be



addressed pursuant to the Perimeter Road Project improvements funded in part by the TIB grant, Project Number 9-P-140(006)-1. The City has agreed to participate in this roadway extension as it provides transportation system wide benefits.

9.2.2 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, incorporated herein by reference, and identified in Exhibit ##.

**9.3 Site Access Approval.** The Developer is required to apply and pay for Site Plan and Right-of-Way Permits approval for the Project Phase 1. Approval of such permits shall be required prior to performance of any work on construction of the roadway systems. The City, acting as lead agency on constructing the Perimeter Road Project, shall apply for and pay with project funds for all associated construction permits for the Perimeter Road Project.

**9.4 Perimeter Road Project.** The Perimeter Road Project is comprised of the following:

9.4.1 Design. The City's design of the Perimeter Road pursuant to the TIB Grant, Project Number 9-P-140(006)-1, shall conform to all requirements of the FEIS as well as all City requirements and standards in the Lynnwood Place Design Guidelines, Citywide Design Guidelines, and the LMC. The design for the Perimeter Road shall be coordinated with the civil engineering documents prepared by the Developer for the grading of the site. A match line will be identified in the Developer's civil drawings for review and acceptance by the City to identify a "bench" above which the City will design the Perimeter Road improvements.

9.4.2 Design Approval Process. The City's design of the Perimeter Road shall receive all required regulatory approvals prior to proceeding to roadway construction.

9.4.3 Conveyance of Right-of-Way for the Perimeter Road Project. The Perimeter Road improvements shall be publicly owned and maintained. The District shall provide the necessary right-of-way to the City for all Perimeter Road Project improvements through the conveyance of a dedicated easement pursuant to the terms of a separate Dedicated Easement Agreement attached hereto as Exhibit ## giving the City the right to construct, operate and maintain the roadway in perpetuity, or until such time that the City may determine that the Perimeter Road is no longer required for the Lynnwood Place Project and the traffic needs of the City.

**9.5 Construction Phasing.** Work on the Site shall occur in three major construction phases:

9.5.1. The Developer shall perform rough grading of the Site including the land required for the Perimeter Road right-of-way, and deliver to the City prior to City commencing construction on the Perimeter Road a graded right-of way "bench" to a mutually agreed profile and cross slope. The Developer is responsible for all associated grading, dewatering, and related improvements below the established "bench" elevation that are needed to enable the City to

construct the Perimeter Road. The City is responsible to construct their underground work below the "bench" in accordance with the Perimeter Road Matrix of Responsibilities.

9.5.2 The City shall construct the Perimeter Road above the established "bench" pursuant to Perimeter Road design, Section 9.4.

9.5.3 The Developer and Costco Site Construction. Construction of the Perimeter Road is anticipated to occur during construction by the Developer and Costco of their improvements associated with the Project Phase 1. The parties to this agreement shall prepare a construction sequencing and phasing schedule prior to construction commencing on the Perimeter Road. If any of the Project improvements overlap with construction of the Perimeter Road the involved Parties shall take reasonable efforts to coordinate as mutually agreed the construction scheduling and activities prior to such overlapping work. Construction scheduling for the Perimeter Road shall take precedent where coordination is required.

**9.6 Future Expansion of the Perimeter Road.** The Perimeter Road shall be constructed pursuant to the FEIS and the TIB Grant participation agreements as a 3-lane roadway with two travelled lanes and a center turn lane where necessary. Funding for construction of the 3-lane roadway is described in Section 10. The City's long-range transportation plans anticipate the expansion of the Perimeter Road by two additional travel lanes for a five lane configuration as may be required to address future traffic demands.

9.6.1 The District shall convey by easement pursuant to the terms of a separate Dedicated Easement Agreement attached here as **Exhibit ##** the necessary right-of-way for the additional 2 travel lane sections at such time as required by the City to proceed with the construction of the Perimeter Road expansion. The conveyance of such right-of-way shall occur at such time as is required by the City to undertake the expansion of the Perimeter Road. This requirement shall be stated in the Dedicated Easement Agreement, which will be recorded against the property with the Snohomish County Auditor.

9.6.2. The City shall be responsible for the future expansion of the Perimeter Road to 5-lanes, which may be at least partially funded by a Local Improvement District that includes the Site. Any future LID funding allocated to the District shall include a credit for cost associated with the initial funding provided by the District including but not limited to right-of-way dedication, direct cash or loan funding provided by the District as part of the initial Perimeter Road project referenced in 10.1.2 and 10.1.3.

**9.7 Local Improvement District (LID) No-Protest Agreement.** The District agrees to sign a No-Protest Agreement, **Exhibit ##**, for the formation of future LIDs that may be used to provide funding for expansion of the Perimeter Road to 5-lanes, including all associated improvements, which is incorporated into this Agreement by reference. The District shall retain its right to contest its allocated share of any such LID, and to receive a credit toward the LID obligations as described in Section 9.6.2. above.



**SECTION 10 TRANSPORTATION IMPROVEMENT BOARD GRANT AND  
IMPLEMENTATION OF BYPASS ROAD PROJECT**

**10.1 Washington State Transportation Improvement Board (TIB) Grant.** The City, Developer, and District shall enter into those agreements necessary for the Perimeter Road Project including the terms and conditions of the TIB Grant. The TIB grant is incorporated into this Agreement by reference.

**10.2 Purpose.** The purpose of the TIB Grant Agreement is to establish the formal arrangements under which the City, Developer and District shall provide for the design, right-of-way and construction of the Perimeter Road. The TIB Grant Agreement serves to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

**10.3 Funding of Improvements.** Funding for all phases of the Perimeter Road Project shall be made by the Parties pursuant to the TIB Grant Agreement and City of Lynnwood Ordinance No. 3002 incorporated into this Agreement by reference.

**10.4 Participation Agreement.** The City and Developer have executed a Participation Agreement, executed by the City on August 5, 2013, that provides for the funding of the Perimeter Road design. This Participation Agreement delineates the responsibilities of the Developer and the City and is incorporated into this Agreement by reference. The City, District and Developer will enter into Participation Agreements as may be necessary to undertake the terms and conditions of the TIB Grant.

10.4.1 The Developer shall deposit with the City an amount equaling 10% of their total project cash contributions at the time of project commencement in order for the City to have adequate cash on hand to make ongoing project payments.

10.4.2 The Developer will undertake in-kind construction activities pursuant to the TIB Grant Agreement, Ordinance No. 3002, and associated participation agreements. At the end of construction the City shall use the Developer deposit as the Developer's last participation payment.

**10.5 Construction Bid Acceptance.** Upon opening of construction bids, the City shall notify the Developer prior to award of the Perimeter Road Project construction contract. Within 15 business days after bid opening and prior to acceptance of the bid and award of a contract, the City shall inform the Developer of its financial responsibility. Notwithstanding the foregoing Developer's financial responsibility shall be capped at \$926,000, which includes the previously funded \$186,561 for design work.

**10.6 Construction Costs due to Change Orders.** The City shall be responsible for all changes orders and associated costs for construction of the Perimeter Road Project.

10.6.1 The City shall assume construction cost risk for the Perimeter Road costs associated with the area above the elevation of the "bench" sub-grade "bench" for the Perimeter Road.

10.6.2 The Developer shall assume construction cost risk for the costs associated with that area below the elevation of the "bench" including the sub-grade and dewatering for the Perimeter Road.

10.6.3 Change order requests for the City portion of the Perimeter Road Project shall be processed pursuant to the City's administrative policies and procedures at no additional cost or financial responsibility to the Developer.

10.6.4 The City change orders involving a change in scope shall be undertaken pursuant to the TIB Grant.

**10.7 Construction Claims and Disputes.** In the event construction claims for additional payment are made by the construction contractor and/or disputes result, the City shall endeavor to resolve the claims/disputes. The Developer shall assist in resolving claims/disputes as necessary. Financial responsibility for legitimate construction claims/disputes arising from the work performed by the Developer below the "bench" shall be the sole responsibility of the Developer. In the event such claims exceed the financial parameters established in Exhibit ##, the Developer shall authorize additional funding to cover the cost of the claim/dispute.

**10.8 Construction Project Acceptance.** Upon satisfactory completion of the work, resolution of all claims for additional payment, and completion of all contract closeout documents, the City shall notify the Developer that final acceptance is to be issued for the Perimeter Road. Upon the Developer's concurrence, the City shall issue the final acceptance for the Perimeter Road Project; provided that the Developer shall not unreasonably withhold its concurrence.

**10.9 Ownership of the Perimeter Road.** The new Perimeter Road Improvements, and all related appurtenances, constructed pursuant to the TIB Grant Agreement shall become and remain the exclusive property of the City upon completion. The land on which the Perimeter Road is constructed will be provided to the City as an easement in perpetuity by the District pursuant to the Dedication Agreement. The District shall retain ownership of the land.

**10.10 Costco Funding Guarantee to City.** Costco and the City shall negotiate in good faith an agreement in which Costco guarantees sales and use tax revenues to be generated by the Costco Project ("Tax Revenue Guarantee Agreement"). The City shall not be obligated to construct the Perimeter Road under Sections 9 and 10 of this Agreement unless and until Costco and the City have entered into a mutually acceptable Tax Revenue Guarantee Agreement.

## SECTION 11 TRAFFIC MITIGATION FEE

**11.1 Traffic Mitigation Fee Calculation and Fee Credits.** Traffic Mitigation Fees are required on all development projects that have a net increase in trips pursuant to the LMC. The TrIF Calculation Form for Lynnwood Place Project Phase 1 has been prepared and is incorporated herein by reference. The TrIF Calculation Form specifies the total credit available. The allocation of the credit shall be undertaken pursuant to a letter of agreement from the Developer, Costco, and the District, which will be incorporated herein by reference. A TrIF calculation form for Lynnwood Place Phase 2 will be calculated separately at such time as application is made for Phase 2 project improvements.

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

## SECTION 12 NON-MOTORIZED TRANSPORTATION INFRASTRUCTURE

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

**12.2 Completion of Non-Motorized Transportation Infrastructure.** The Developer shall complete the installation of non-motorized transportation infrastructure, at its sole cost and expense, in accordance with the Project Phase 1 prior to the issuance of a Certification of Occupancy by the City for any structure in Project Phase 1.

## SECTION 13 WATER

**13.1 Domestic Water Service Line and System Looping.** The Developer is responsible for construction, at its sole cost and expense, of the water system improvements for Phase 1 to connect to the City water system as indicated on the Binding Site Plan. All water system design and construction shall meet City standards and require City review and approval.

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

**13.3 City Participation.** Depending on the final design of water lines the City may at its sole discretion participate in upsizing or system connections that go beyond Project needs and which benefit the City system.

## SECTION 14 SANITARY SEWERS

**14.1 Developer Responsibilities.** The Developer is responsible for providing sanitary sewer system improvements as indicated on the Binding Site Plan for the Project Phase 1. All sanitary system design and construction shall meet City standards, and require City review and approval.

## SECTION 15 PERMIT PROCESS

**15.1 Responsible Official.** The Project review and permit approval shall be undertaken pursuant to the City's rules, regulations, and the LMC. This process shall be administrative and the Community Development Director shall be responsible for the determination of Project Phase 1 compliance with this Agreement. Changes proposed by the Developer or Costco that comprise less than 10% of the total square footage of any use category within Project Phase 1 land or building area shall be reviewed by the Community Development Director for compliance to the City LMC. Changes to Project Phase 1 that exceed these thresholds or change the approved design guidelines shall require an amendment to this Agreement.

## SECTION 16 VESTED RIGHTS

**16.1 General Vesting.** The Project Phase 1 shall be vested to City of Lynnwood local laws, regulations and resolutions existing on the effective date of this Agreement ("Vested Laws"), including, but not limited to, the City's Comprehensive Plan, Zoning Use Tables, Development Regulations, Lynnwood Place Design Guidelines, and other provisions of the LMC applicable to the Project.

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

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

## SECTION 17 PROJECT SCHEDULE

**17.1 Project Phase 1 Schedule.** The Project Phase 1 schedule is incorporated into this Agreement by reference. This schedule provides for the anticipated actions and improvements associated with this Agreement. The schedule may be revised by the mutual consent of the Parties to this Agreement; such consent shall not be unreasonably withheld.

## SECTION 18 PARTIES REPRESENTATIVES

- 18.1 Designation of City's Representative
- 18.2 Designation of Developer's Representative
- 18.3 Designation of District's Representative
- 18.4 Designation of Costco Representative

## SECTION 19 COMPLIANCE WITH LAWS AND ORDINANCES

**19.1 Compliance with Laws and Ordinances.** Throughout the term, and subject to the provisions, of this Agreement, the District, the Developer, and Costco, at their sole cost and expense, shall promptly comply with all applicable laws and ordinances, as they relate to the Site and the Project, including but not limited to, the City's Comprehensive Plan, Zoning Use Code, Development Regulations, Lynnwood Place Design Guidelines, and other provisions of the LMC applicable to the Project Phase 1. To the extent that their compliance shall require the cooperation and participation of the City, the City agrees to use its best efforts to cooperate and participate. The City shall take any and all actions to achieve compliance pursuant to the LMC and any and all applicable regulations.

## SECTION 20 INSURANCE

**20.1 Insurance Requirements.** Until the completion of the Project Phase 1, the Developer and Costco shall maintain insurance, including but not limited to the following requirements.

20.1.1 Builders All Risk Comprehensive Coverage. The Developer and Costco shall carry, or shall require the general contractor(s) to carry, Builders All Risk Comprehensive Coverage Insurance, including earthquake and flood, and to include amounts sufficient to prevent the City, Developer, or Costco from becoming a co-insurer under the terms of the applicable policies but in any event in an amount not less than one-hundred percent (100%) of the then full Replacement Cost, being the cost of replacing the Project Improvements.

20.1.2 Commercial General Liability. The Developer and Costco shall carry, or shall require its general contractors(s) to carry, Commercial General Liability insurance providing coverage against claims for bodily injury, death, or property damage on the Site with broad form liability and property damage endorsement, such insurance to have combined single limits of liability of no less than **\$ AMOUNT**, per occurrence and aggregate.

**20.2 Insurance Policies.** Insurance policies required herein:

20.2.1 Qualifications. Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:



(a) The companies shall be rated no less than "A" as to general policy holders rating and no less than "X" as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated; provided, however, for any insurance requirements imposed upon subcontractors, a financial category no less than "VIII" shall be acceptable.

(b) To the extent reasonably available for insurers, the policies shall name the City as an additional insured.

(c) The policies shall be issued as primary policies; provided, however, that the Developer, and general contractor(s) and subcontractors, may be insured under one (1) or more blanket insurance policies, which shall be permitted and acceptable.

20.2.2 Attachments. To the extent reasonably available from insurers, each such policy or certificate of insurance mentioned and required in this Article shall have attached thereto:

(a) An endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to the Parties; provided, however, that such policy may be an annual or periodic policy, renewed on an annual or periodic basis, and the City shall be provided a renewal certificate therefor within thirty (30) days before the expiration date.

(b) An endorsement to the effect that the insurance, as to anyone insured, shall not be invalidated by any act or neglect of any other additional insured.

(c) An endorsement pursuant to which the insurance carrier waives all right of subrogation against the Parties.

(d) An endorsement pursuant to which this insurance is primary and noncontributory.

20.2.3 Certificates of Insurance. The certificates of insurance and insurance policies shall be furnished to the Parties prior to commencing construction on the Project under this agreement. The certificates(s) shall clearly indicate the insurance and the type, amount, and the classification required.

20.2.4 Cancellation. Cancellation of any insurance or nonpayment by the Developer or Costco of any premium for any insurance policies required by the Agreement after written notice and an opportunity for time to cure within 30 (thirty) days shall constitute an Event of Default of this Agreement.

**20.3 Adjustments.** The types of policies, risks insured, coverage amounts, deductibles and endorsements may be adjusted from time to time as the Parties may mutually determine in writing.

## SECTION 21 ENVIRONMENTAL INDEMNIFICATION

**21.1 Indemnification.** Subject to the limitations of Sections 23.2 and 23.3, of this Agreement, the District shall indemnify and hold the City harmless from and against any and all liability, loss, damage, cost, or expenses (including reasonable attorney's fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of preexisting environmental contaminants on or beneath the Site, and the portion dedicated to the City for the Perimeter Road pursuant to this Agreement, including any such liability, loss, damage, costs or expenses resulting from the past or future migration of such environmental contaminants from the Site to any other property. As used in this section, "preexisting" means those environmental contaminants that were present on or beneath the Site prior to the date of execution of the Agreement. "Environmental contaminants" shall include without limitation.

21.1.1 Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99 499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec 6901 et seq.) ("RCRA") and the Hazardous Materials Transportation Act, 49 U.S.C Sec 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

21.1.2 Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172. 101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto);

21.1.3 Any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance " pursuant to Section 3.11 of the Clean Water Act (33 U.S.C. Sec 1317); (E) flammable explosives, or (F) radioactive materials;

21.1.4 Those substances defined as "dangerous wastes," hazardous wastes," or as "hazardous substances" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., the Water Pollution Control Act, RCW 90.48.010 et seq., the Hazardous Waste Management Statute, RCW 70.105.0 10 et seq., the Toxic Substance Control Act, RCW 70.105B.010 et seq., and the Model Toxics Control Act, RCW 70.105D.O10 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

21.1.5 Storm water discharge regulated under any federal, state or local law, ordinance or regulation relating to storm water drains, including, but not limited to Section 402(p) of the Clean Water act, 33 U.S.C. Section 1342 and the regulations promulgated thereunder, all as amended.

21.1.6 Such other substances, materials, and waster which are classified and regulated as dangerous, hazardous, or toxic under applicable local, state or federal law.

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997       **21.2 Third Parties.** This Agreement by the District to indemnify and hold the City  
998 harmless applies to claims brought by an third party based upon state or federal statutory or  
999 common law, resulting from the release, threatened release, or migration or preexisting  
1000 environmental contaminants and any property damage or damages for personal injury related  
1001 there to. As used in this section, “release” shall mean releasing, spilling, leaking, pumping,  
1002 pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or  
1003 dumping.

1004  
1005       **21.3 Existing Contaminants.** The provisions of this Section 22 to indemnify and hold  
1006 harmless applies only to claims resulting from those environmental contaminants that were  
1007 present on or beneath the Site prior to the date of execution of this Agreement. In addition, this  
1008 Agreement to indemnify and hold harmless does not apply to any release, threatened release, or  
1009 mitigation of environmental contaminants from City rights-of-way, including, but limited to  
1010 public streets and roadways, or resulting from the actions of the City, its officers, agents, or  
1011 employees.

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1013  
1014       **21.4 Costco’s Provision of Limited Environmental Indemnity.**

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1016               21.4.1 Costco shall indemnify and hold the City harmless from and against any  
1017 and all liability, loss, damage, cost, or expenses (including reasonable attorney’s fees and court  
1018 costs, amounts paid in settlements, and judgment) arising from or as a result of the future release  
1019 of environmental contaminants on or beneath the Costco Property that is caused by the sole  
1020 negligence or intentional acts of Costco or its agents. Said indemnification shall include any  
1021 liability, loss, damage, cost or expense resulting from the future migration of such environmental  
1022 contaminants from the Costco Property to any other property. Costco’s agreement to indemnify  
1023 and hold the City harmless applies to claims brought by an third party based upon state or federal  
1024 statutory or common law, resulting from the release, threatened release, or migration of  
1025 environmental contaminants and any property damage or damages for personal injury related  
1026 there to. As used in this section, “release” shall mean releasing, spilling, leaking, pumping,  
1027 pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or  
1028 dumping. Costco’s obligations and environmental indemnification of the City under this  
1029 Agreement is limited to future contamination of the Costco Property that is solely caused by  
1030 Costco or its agents and shall not extend to pre-existing contamination of the Site or Costco  
1031 property that was not caused by Costco or its agents.

1032  
1033               21.4.2 Self-Insurance. Costco may, at its option, meet the insurance  
1034 requirements set forth herein via commercial insurance, self-insurance, alternative risk financing  
1035 techniques, or a combination of these options.

1036  
1037  
1038       **21.5 Developer Provision of Limited Environmental Indemnity.**

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1040               21.5.1 The Developer shall indemnify and hold the City harmless from and  
1041 against any and all liability, loss, damage, cost, or expenses (including reasonable attorney’s fees



and court costs, amounts paid in settlements, and judgment) arising from or as a result of the future release of environmental contaminants on or beneath the Developer Property that is caused by the sole negligence or intentional acts of the Developer or its agents. Said indemnification shall include any liability, loss, damage, cost or expense resulting from the future migration of such environmental contaminants from the Developer Property to any other property. The Developer agreement to indemnify and hold the City harmless applies to claims brought by an third party based upon state or federal statutory or common law, resulting from the release, threatened release, or migration of environmental contaminants and any property damage or damages for personal injury related there to. As used in this section, "release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping. The Developers obligations and environmental indemnification of the City under this Agreement is limited to future contamination of the Developer Property that is solely caused by the Developer or its agents and shall not extend to pre-existing contamination of the Site or Developer property that was not caused by the Developer or its agents.

21.5.2 Self-Insurance. The Developer may, at its option, meet the insurance requirements set forth herein via commercial insurance, self-insurance, alternative risk financing techniques, or a combination of these options.

## SECTION 22 RIGHT TO ASSIGN OR OTHERWISE TRANSFER

**22.1 Assignment Right.** During the term of this Agreement, the District, the Developer, or Costco shall have the right and privilege to sell, assign, or otherwise transfer their rights under this Agreement to such other persons, firm, corporation, partnerships, joint ventures, and federal, state, or municipal government or agency thereof, as the District, the Developer, or Costco shall select ("Transferee").

22.1.1 Prior to transfer the District, the Developer, or Costco shall obtain the prior written consent of the City to the proposed Transferee, which consent shall not be unreasonably withheld (after transfer, the future consent of the City shall not be required), provided that Developer may assign this Agreement without the consent of the City to any entity in which Developer or an affiliate of the Developer owns an ownership interest.

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

22.1.3 There shall be delivered to the City a duly executed and recordable copy of the document evidencing such transfer.

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

1088       **22.2 Succession.** The Transferee (and all succeeding and successor Transferees) shall  
1089 succeed to all rights and obligations of the City, District, the Developer, or Costco under this  
1090 Agreement, including the right to mortgage, encumber, and otherwise assign, subject, however,  
1091 to all duties and obligations of the District, the Developer, or Costco in and pertaining to the then  
1092 unperformed provision of this Agreement. Upon such transfer, or by a successor in accordance  
1093 with the requirements of this section, the District, the Developer, or Costco (and/or its successive  
1094 Transferee) as Transferor in such a transfer shall not be released and discharged from all of its  
1095 duties and obligations hereunder which pertain to the then underperformed provisions of this  
1096 Agreement, which are not then due and payable, without the written consent and release of the  
1097 City.  
1098  
1099

## 1100                                   **SECTION 23 DEFAULT**

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1102       **23.1 Events of Default.** The following shall constitute events of default under this  
1103 Agreement by the respective Party responsible for such event of default ("Events of Default"):  
1104

1105               23.1.1 A default by a Party in keeping, observing or timely performing any of its  
1106 duties and/or obligations under this Agreement, and such Party shall not have cured such default  
1107 within thirty (30) days after written notice thereof is given to such Party; unless such default  
1108 cannot reasonably be cured within thirty (30) days and such Party shall have commenced to cure  
1109 such default within thirty (30) days and continues diligently to pursue the curing of such default  
1110 until completed.  
1111

1112               23.1.2 The making by the District, the Developer, or Costco of an assignment for  
1113 the benefit of creditors or filing a petition in bankruptcy or of reorganization under any  
1114 bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to  
1115 pay its debts; and  
1116

1117               23.1.3 The appointment of a receiver or trustee of the Site, which appointment  
1118 shall not be vacated or stayed within six (6) months; and  
1119

1120               23.1.4 The filing of a petition in bankruptcy by or against the District, the  
1121 Developer, or Costco or for its reorganization under any bankruptcy or insolvency law which  
1122 shall not be dismissed or stayed by the court within six (6) months after such filing.  
1123  
1124

1125       **23.2 Remedies in the Event of Default.** If an Event of Default shall occur, or in the  
1126 event of a dispute, claim or controversy arising out of, or relating to this Agreement, then any  
1127 Party shall have the right and remedies against the defaulting Party, and shall be required to  
1128 proceed in accordance with, the Dispute Resolution provisions in Section 24; provided, however,  
1129 that in the event Dispute Resolution is unsuccessful, the Parties shall have all rights, remedies  
1130 and causes of action, at law or in equity, available under the laws of the State of Washington.  
1131  
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## SECTION 24 DISPUTE RESOLUTION

**24.1 Disputes and Coordination Issues.** Whenever any dispute arises between the Parties under this Agreement (“Dispute”), including any default, controversy or claim arising out of, or relating to, this Agreement, or any breach thereof, which are not resolved by routine meetings or communications, the provision of this Section 24 shall apply. Any Party shall have the right to commence a resolution process by issuing a written request to the other Parties, which request shall contain brief details of the Dispute (“Dispute Notice”), excepting only those disputes subject to Section 24.5, which shall not require a Dispute Notice.

**24.2 Cooperative Discussions.** The Authorized Representatives of the Parties shall seek in good faith to resolve any such dispute or concern within ten (10) days after the date of the Dispute Notice. The Authorized Representatives shall meet within five (5) days after the date of the Dispute Notice, and shall continue to meet thereafter, as reasonably requested by a Party, in an attempt to resolve the Dispute. If the Dispute is resolved by the Authorized Representatives, the resolution shall be recorded in writing and signed by the Authorized Representatives of each Party and that resolution shall be final and binding on both Parties. If the Parties are unable to resolve the Dispute through cooperative discussions within ten (10) days after the date of the Dispute Notice, then except as specifically provided in Section 25.4 for binding arbitration of monetary disputes less than \$50,000.00, the Parties may immediately pursue any remedies available under Washington law, and may commence litigation prior to, and without regard to, the provisions of Section 24.3 and 24.4, which shall be deemed entirely voluntary and discretionary.

**24.3 Mediation.** If the Parties are unable to resolve a Dispute in accordance with the provisions Section 24.2, the Parties may consider the use of voluntary non-binding mediation. In the event that non-binding mediation is agreed upon, the site of the proceedings shall be Lynnwood, Washington, unless otherwise agreed in writing by the Parties. The rules for mediation, the selection of the mediator, and the timetable and procedures for mediation, shall be determined by mutual agreement of the Parties. The mediator shall be skilled in the legal and business aspects of the subject matter of this Agreement. The mediation shall be conducted without prejudice to any Party and in strict confidence. Each Party shall share equally in the costs of the mediation except that each Party shall bear its discretionary costs, including, but not limited to, its attorneys’ fees and expenses. If the Dispute is settled through mediation, the terms of the settlement shall be recorded in writing and signed by the Authorized Representatives of the Parties. Unless otherwise mutually agreed by the Parties in writing, the mediator shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor shall the mediator be entitle to act as a fact or expert witness to any Party in any subsequent proceeding. If within forty-five (45) days after the date of the Dispute Notice, the mediation has not resulted in settlement of the Dispute, then the mediation shall, unless otherwise mutually agreed in writing by the Parties, be terminated. If any Party withdraws from the mediation at any time, the mediation shall be terminated.

**24.4 Arbitration.** If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 24.3, the Parties may consider the use of voluntary binding arbitration; provided, however, that binding arbitration shall be required for any strictly monetary Dispute,

the value or potential financial impact of which is agreed by the Parties to be less than \$50,000.00. In the event that binding arbitration is required, or mutually agreed upon, and unless otherwise mutually agreed by the Parties in writing, the site of the proceedings shall be Lynnwood, Washington, and Washington law shall govern the arbitration proceedings. Upon completion of the cooperative discussions set forth in Section 24.3, the arbitration process shall commence immediately. The Parties shall determine by mutual agreement the rules for arbitration, the selection of the arbitrator, and the timetable and procedures for arbitration, including, but not limited to, (i) the extent, form, and time limits applying to any documentary or oral evidence of the Parties to be submitted to arbitration; (ii) site visits or inspections; (iii) meetings with the Parties; and (iv) appointment of experts; provided, however, that in the event the Parties are unable to agree within twenty-five (25) days after the date of the Dispute Notice, then the Rules of the Judicial Arbitration and Mediation Service, Seattle office, shall apply. The arbitrator shall be skilled in the legal and business aspects of the subject matter of this Agreement. The arbitration shall be conducted without prejudice to any Party and in strict confidence. The arbitrator shall decide the Dispute acting impartially and in good faith. The arbitrator shall reach a decision and communicate the decision in writing to the Parties, providing the basis for the decision. The arbitrator's decision shall be final and binding on the Parties. The Parties shall implement the arbitrator's decision without delay. The arbitrator's fees and expenses, the other costs of arbitration, and the Parties' reasonable attorneys' fees and costs shall be borne by the Parties as the arbitrator shall specify in his decision; provided, however, that the "substantially prevailing" Party shall be entitled to recover its arbitration expenses and reasonable attorneys' fees and costs in preparation for, and during, the arbitration process. Unless otherwise mutually agreed by the Parties in writing, the arbitrator shall render a final decision on the Dispute within sixty (60) days after the date of the Dispute Notice. The arbitrator shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor shall the arbitrator be entitled to act as a fact or expert witness to either Party in any subsequent proceeding.

**24.5 Litigation.** If the Parties are not required, or do not mutually agree, to submit a Dispute to mediation under Section 24.3, or arbitration under Section 24.4, then after the time period set forth in Section 24.2 for cooperative discussion, either Party shall have the right and authority to commence litigation immediately, and primary jurisdiction for the resolution of any Dispute relating to, or arising out of, this Agreement shall reside in the Washington State Superior Court, Snohomish County, Washington. The Parties shall have all rights and remedies, whether at law or in equity, under Washington law, including, but not limited to, specific performance, damages and injunctive relief.

**24.6 Equitable Proceedings.**

24.6.1 In the event a Party desires to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a Dispute either before or after the initiation of a dispute resolution proceeding, that Party may initiate the proceeding necessary to obtain such relief ("Equitable Proceeding"). Nothing in this Section 24.6 shall be construed to suspend or terminate the obligation of the Parties to comply with the provisions of Sections 24.2, and 24.3

and 24.4 with respect to the Dispute that is the subject of such Equitable Proceeding while such Equitable Proceeding is pending, including any appeal or review.

24.6.2 Notwithstanding the decision of an arbitrator or mediator, as may be applicable, any interim relief granted by such Equitable Proceeding shall not be reversed or modified by the arbitrator's or mediator's determination, and any factual or legal determination made in such Equitable Proceeding shall be binding upon the Parties in the Dispute before any arbitrator or mediator.

## SECTION 25 MISCELLANEOUS (MANAGEMENT AND ADMINISTRATION)

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

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

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

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

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

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

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1272       **25.7 Survival.** The provisions of this Agreement shall survive the expiration of the  
1273 term of this Agreement to the extent involving environmental indemnification, maintenance of  
1274 public improvements or other matter involving rights or obligations is extend beyond the  
1275 expiration of the term of this Agreement.  
1276

1277       **25.8 Governing Law.** This Agreement shall be governed by and construed in  
1278 accordance with the Laws of the State of Washington. Venue for any legal action pertaining to  
1279 this Agreement shall be in the State of Washington with jurisdiction in Snohomish County,  
1280 Washington.  
1281

1282       **25.9 Amendment.** No modification or amendment of this Agreement may be made  
1283 except by written agreement signed by each of the Parties to this Agreement or as may be  
1284 provided otherwise in this Agreement.  
1285

1286       **25.10 Notices.** All notices which may be or are requested to be given, pursuant to this  
1287 Agreement, shall be deemed given when hand delivered, delivered by e-mail, delivered by  
1288 facsimile, or within 3 business days of when deposited as certified mail in the United States  
1289 Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and  
1290 addressed to the Parties at the following addresses unless otherwise provided for herein:  
1291

1292                   To CITY:                   City of Lynnwood  
1293   Attn: Administrative Services Director  
1294   PO Box 5008  
1295   Lynnwood, WA 98046-5008  
1296   Facsimile #  
1297   E-mail:  
1298

1299                   AND TO:                   City of Lynnwood  
1300   Attn: City Attorney  
1301   Mailing Address  
1302   Facsimile #  
1303   E-mail  
1304

1305  
1306                   To DEVELOPER:           Cypress Lynnwood LLC  
1307   C/O Cypress Equities  
1308   Attn: Stephen Schmidt  
1309   8343 Douglas Avenue, Suite 200  
1310   Dallas, TX 75225  
1311   Facsimile # 214-283-1600  
1312   E-mail  
1313

1314                   AND TO:  
1315  
1316



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To DISTRICT: Edmonds School District  
Attn:  
Mailing Address  
Facsimile #  
E-Mail:

AND TO:

To Costco: Costco Wholesale Corporation  
Attn:  
999 Lake Drive  
Issaquah, WA 98027  
Facsimile #  
Email:

AND TO:

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.

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

**25.12 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.

**25.13 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 understands between the Parties relating to the subject matter hereof.

**25.14 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.

**25.15 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.

**25.16 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 the this Agreement.

**25.17 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.

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

**25.19 Time is of the Essence.** For the purposes of this Agreement and all transactions contemplated thereunder, time is of the essence.

**25.20 Term and Termination.** Subject to the survival provisions set forth in Section 25.7, the term of this Agreement is 99 years from the date signed by all Parties.

**25.21 Extensions.**

**CITY OF LYNNWOOD,  
a Washington municipal corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**EDMONDS SCHOOL DISTRICT NO. 15,  
a Washington municipal corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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CYPRESS LYNNWOOD, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name: \_\_\_\_\_  
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\_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
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COSTCO WHOLESALE CORPORATION,  
a Washington corporation

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

EXHIBITS

1. Ordinance: Development Agreement and Planned Action

2. Development Agreement, Cycle 2 Phase 1

3. Dedicated Easement Agreement

4. No Protest Agreement

**Exhibit #1: Legal Description**

**Exhibit #2: Lynnwood Place Design Guidelines**

**Exhibit #3: Record of Survey and Binding Site Plan**

**Exhibit #4: Lynnwood Place Project Design Guidelines, Phase 1**

**Exhibit #5: Planned Action Ordinance**

**Exhibit #6: Dedicated Easement Agreement**

**Exhibit #7: No Protest Agreement**

**Exhibit #8:**