



ORDINANCE NO. 3030

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING THE LYNNWOOD PLACE PROJECT, PHASE 1 DEVELOPMENT AGREEMENT AS DEVELOPMENT REGULATIONS FOR THE LYNNWOOD PLACE SITE, AMENDING THE LYNNWOOD MUNICIPAL CODE BY ADDING A NEW SECTION 17.02.400 TO CHAPTER 17.02 LMC ENTITLED "LYNNWOOD PLACE PLANNED ACTION" AND DESIGNATING LYNNWOOD PLACE DEVELOPMENT AS A PLANNED ACTION, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

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, the Washington State Environmental Policy Act (SEPA) authorizes cities planning under the Growth Management Act (GMA) to designate planned actions that have had their significant impacts adequately addressed in an environmental impact statement (EIS) prepared in conjunction with a comprehensive plan, sub-area plan or a master planned development; and

WHEREAS, RCW 43.21C.031 and WAC 197-11-164, 168, and 172, and LMC 17.02.025 address planned actions and their designation; 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 184th 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, and 2978 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, Lynnwood Place is located within an Urban Growth Area, as defined in RCW 36.70A.030, and is a geographical boundary less extensive than the jurisdictional boundaries of the City of Lynnwood; and

WHEREAS, the EIS includes references to a future planned action designation for the Lynnwood Place; and

WHEREAS, designation of a project as a planned action streamlines subsequent review of such project by eliminating the need for a threshold determination or EIS for development consistent with the EIS and planned action designation; 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 of Lynnwood received a grant from the Washington State Transportation Improvement Board, TIB project number 9-P-140(006)-1, for the 33rd Avenue W, 184th Street SW to Alderwood Mall Parkway, referenced in the Development Agreement as the Perimeter Road Project; and

WHEREAS, on July 15, 2013, the City Council of the City of Lynnwood approved Ordinance No. 3002 establishing project funding for the 33rd Avenue W. Extension Project pursuant to the TIB Grant; and

WHEREAS, the City and the property owner recognize the need to segment the permit review processes for Lynnwood Place so that essential project infrastructure, including the perimeter road, and also the Costco Warehouse facility, may proceed expeditiously while development plans for the mixed-use component of Lynnwood Place are prepared; and

WHEREAS, on October 28, 2013 the City Council of the City of Lynnwood held a duly noticed public hearing on this Ordinance to accept public testimony; and

WHEREAS, the City of Lynnwood SEPA Responsible Official has confirmed that the environmental impacts of Lynnwood Place have been identified and adequately addressed in the EIS, and that there are no other specific mitigation measures, beyond compliance with applicable zoning code requirements, public works standards and requirements, and the terms of the Development Agreement needed in order for Lynnwood Place to be designated as a planned action; and

WHEREAS, after careful consideration of the evidence, testimony and record established during the October 28, 2013 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 1 Development Agreement (DA), dated _____, 2013 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 1, 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.

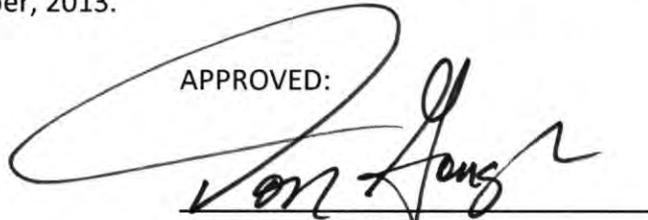
Section 3. Chapter 17.02 LMC is amended to add a new section to be codified as 17.02.400, as attached to this Ordinance as Exhibit "C".

Section 4. 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 5. 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.

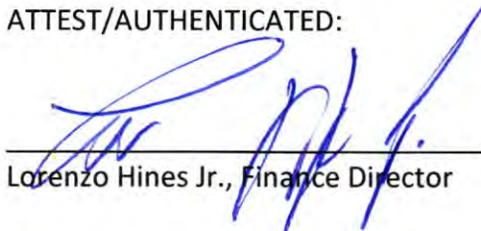
PASSED BY THE CITY COUNCIL, this 4th day of November, 2013, and signed in authentication of its passage this 6th day of November, 2013.

APPROVED:



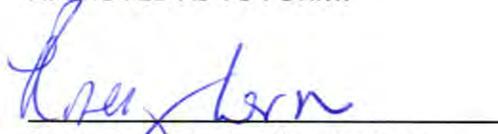
Don Gough, Mayor

ATTEST/AUTHENTICATED:



Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:



Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: 10/30/2013
PASSED BY THE CITY COUNCIL: 11/4/2013
PUBLISHED: 11/8/2013
EFFECTIVE DATE: 11/13/2013
ORDINANCE NUMBER: 3030

EXHIBIT A
ORDINANCE 3030

LYNNWOOD PLACE PROPERTY DESCRIPTION

Address: 3001 184th Street SW, Lynnwood, WA

Legal Description:

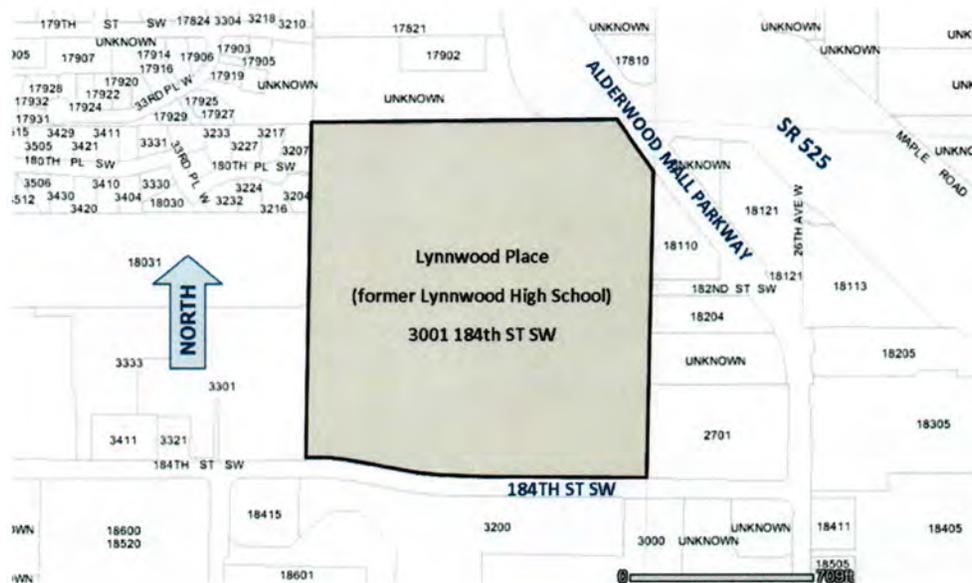
The northeast quarter of the northeast quarter of section 15, T. 27N. , R.4E. , W.M. Also known as "Bradner Park", according to the plat thereof recorded in Volume 14 of Plats on pages 60 and 61, records of Snohomish County, Washington.

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) F¹ 82+0 on the F¹ line survey line of SR 525, Swamp Creek Interchange to 164th St. S.W. and 50 feet southwesterly therefrom: Thence northwesterly to a point opposite HES F¹ 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 184th St. S.W.

Containing 41.20 acres more or less.

Tax Parcel Number: 27041500102900

Map:



**EXHIBIT B
ORDINANCE NO. 3030**

LYNNWOOD PLACE, CYCLE 2 PHASE 1, DEVELOPMENT AGREEMENT

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

6
7 THIS DEVELOPMENT AGREEMENT (Agreement) is made and entered into as of this ____
8 day of _____, 2013, by and between the **CITY OF LYNNWOOD**, a Washington
9 municipal corporation (“City”); **EDMONDS SCHOOL DISTRICT NO. 15**, a Washington
10 municipal corporation (“District”); **CYPRESS LYNNWOOD, LLC**, a Delaware limited
11 liability company (“Developer”); and **COSTCO WHOLESALE**, Corporation (Costco).

12
13 **RECITALS**
14

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

18
19 **B.** The Site has historically been used by the District for the operation of a high
20 school. As the existing improvements on the Site reached the end of their useful lifespan, the
21 District has constructed a new facility to house Lynnwood High School on a different parcel of
22 land located outside of the corporate boundaries of the City, and the District has demolished the
23 former high school building.

24
25 **C.** The District is planning to lease the Site to the Developer to allow for
26 redevelopment as a mixed-use project.

27
28 **D.** The Developer is planning to sublease a portion of the Site (for the Lynnwood
29 Place Project Phase 1) to Costco for the development by Costco of a Costco warehouse and
30 associated improvements (the “Costco Improvements”), which is more fully described in the
31 Lynnwood Place Design Guidelines. Phase 1, **Exhibit ##** and the Record of Survey and Binding
32 Site Plan, **Exhibit ##**.

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

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

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

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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.

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

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

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

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

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

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

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

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

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

122 **1.10** “Development Agreement” means the terms and conditions between the City of
123 Lynnwood, Edmonds School District No. 15, Cypress Lynnwood, LLC, and Costco Wholesale
124 for the development of the Lynnwood Place Project Phase 1.
125

126 **1.11** “Development Regulations” means those portions of the Lynnwood Municipal
127 Code and Lynnwood Zoning Code pertinent to zoning, land use, design, building construction,
128 landscape, signage, permitting, planning, traffic impact fees and other elements that govern real
129 estate development within the City.
130

131 **1.12** “District” means Edmonds School District No. 15.
132

133 **1.13** “Final Environmental Impact Statement (FEIS)” means the Draft Environmental
134 Impact Statement: Comprehensive Plan Amendment and Zoning Map and Text Amendment for
135 Lynnwood Crossing Mixed-Use Project, dated October 7, 2011, and the Final Environmental
136 Impact Statement: Comprehensive Plan Amendment and Zoning Map and Text Amendment for
137 Lynnwood Crossing Mixed-Use Project, dated March 30, 2012.
138

139 **1.14** “Force Majeure” means any circumstances or acts beyond the reasonable control
140 of the Parties to this Agreement which do not arise from a default by or collusion of the Party
141 seeking delay.
142

143 **1.15** “Franchise Utilities” means electricity, natural gas, telecommunications, solid
144 waste collection, and other utilities not provided by the City.
145

146 **1.16** “Intersections” means the general areas where two or more streets or roadways
147 join or cross, including the streets, roadways, driveway access, traffic signals, roadside facilities,
148 sidewalks, and trails for traffic movement within them.
149

150 **1.17** “JARPA” means a Joint Aquatic Resources Permit Application, Corps of
151 Engineers No. NWS-2011-331, to apply for hydraulic project approvals, shoreline management
152 permits, water quality certifications, and U.S. Army Corps of Engineers Section 404 and Section
153 10 permits, a copy of said application, documents and permits are incorporated into this
154 Agreement by reference.
155

156 **1.18** “LMC” means the City of Lynnwood Municipal Code.
157

158 **1.19** “LZC” means the City of Lynnwood Zoning Code.
159

160 **1.20** “Lynnwood Place Project Design Guidelines, Phase 1,” means a compendium of
161 design features dated September 13, 2013, prepared and submitted by the Developer for the
162 Project Phase 1, and approved by the City for the Project, and attached hereto as **Exhibit ##**.
163

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164
165 1.21 "Pedestrian and Non-Motorized Facilities" means pedestrian access, sidewalks,
166 trails and bikeways through and within the project site as referenced in the BSP and the Design
167 Guidelines.

168
169 1.22 "Perimeter Road Project" means the "33rd Avenue West Improvement Project" for
170 which the City has received a grant from the Washington State Transportation Improvement
171 Board, TIB Project Number 9-P-140(006)-1, a copy of said grant application and grant
172 participation agreements are incorporated into this Agreement by reference.

173
174 1.23 "Planned Action" means a designation made by the City Council pursuant to the
175 State of Washington RCW 43.21C.440 and WAC 197-11-164 through 172.

176
177 1.24 "Project" means the proposed development of the Site as described in Section 2.1
178 of this Agreement, and as further defined by the Project Phase 1, to include a mix of uses, types
179 and density of development, public and private infrastructure, signage, and amenities consistent
180 with the Project application and this Agreement.

181
182 1.25 "Project Phase 1" means the Lynnwood Place Project Phase 1 as specified in the
183 Binding Site Plan, Phase 1 Design Guidelines, and PDR Application prepared by the Developer
184 and approved by the City, as may be amended or revised from time-to-time, and which is
185 incorporated herein by reference. The Project Phase 1 contains information regarding the
186 Costco improvements, type and configuration of all other new structures, land uses,
187 infrastructure improvements, and site improvements, and the phasing and timing of the
188 construction of all Project Phase 1 improvements.

189
190 1.26 "SEPA" means the Washington State Environmental Policy Act, RCW 43.21c
191 and WAC 197-11.

192
193 1.27 "Site" means the real property formerly occupied by Lynnwood High School as
194 described in the legal description as referenced in this Agreement and attached as Exhibit ##, and
195 defined by the Binding Site Plan.

196
197 1.28 "Substantial Completion" means issuance of a certificate of occupancy, subject to
198 normal punch list items, and City administrative acceptance of the Project Phase 1. Substantial
199 Completion does not remove the responsibility of the Developer or Costco to complete Project
200 Phase 1 in compliance with the terms and conditions of this Agreement and applicable City
201 codes.

202
203 1.29 "Tenant" means an occupant of sub-leased space within the Project.
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208 **SECTION 2 GENERAL PROJECT DESCRIPTION**
209

210 **2.1 Project Description.** The improvements to be sited on the Property in
211 accordance with the Binding Site Plan, the terms and conditions of this Agreement and all other
212 applicable development regulations and standards are jointly called Lynnwood Place. As used in
213 this Agreement and as summarized in the FEIS, the Developer has proposed the following:
214
215

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

216
217
218 The Project applications for the Comprehensive Plan Amendment – Map Application
219 #2006CPL0003, Ordinance 2976; Comprehensive Plan Amendment Application – Text
220 Amendment, 2006CPL0003, action deferred; Rezone Application; Zoning Code Amendment
221 2012CAM0007, Ordinance No. 2977; Zoning Map Amendment, 2012RZN0003, Ordinance
222 2978 are incorporated into this Agreement by reference. This Development Agreement also
223 incorporates by reference the SEPA Planned Action; Binding Site Plan; Project Design Review;
224 and all other applications and actions required for the Project Phase 1 by the applicable
225 regulatory authorities.
226

227 **2.2 Project Phase 1:** The Developer proposes that the Project be undertaken in
228 phases, and has provided to the City as part of this Development Agreement a Binding Site Plan
229 and Design Guidelines that identify all Project Phase 1 components, elements, and features
230 proposed to be designed and constructed, and the responsible parties to complete each Project
231 Phase 1 component. The Project Phase 1 is further described in Section 3.5 of this Agreement.
232

233 2.2.1 The Project Phase 1 has been mutually approved by the Parties, and the
234 City shall review permit applications for compliance with Project Phase 1, and review and
235 approve permits for the components of the Project Phase 1 as authorized by this Agreement,
236 regulatory authorities, and the LMC.
237

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238 2.2.2 If after approval of this Agreement the Parties seek to amend Project
239 Phase 1, such amendments shall require review and amendment of this Agreement pursuant to
240 Section 16 of this Agreement.

241
242 2.2.3 The amendments to administrative matters associated with this e
243 Agreement ~~as identified in EXHIBIT ##~~ may be undertaken pursuant to their regulatory
244 authorities, process, and procedures.

245
246

247 SECTION 3 DEVELOPMENT PLANNING

248

249 **3.1 Consistency and Compliance with SEPA.** The City has conducted extensive
250 environmental review of the Project, and prepared an FEIS which includes within its scope the
251 maximum anticipated level of redevelopment included within the Project and the environmental
252 mitigations required to accommodate that level of development.

253

254 3.1.1 The environmental review conducted by the City specified the Project as
255 Alternative 2 Project Sponsor's Preferred Alternative Without Office.

256

257 3.1.2 Environmental impact and mitigations specific to the Preferred Alternative
258 are identified in the FEIS. These mitigations shall be addressed as part of the Project approval
259 documents prepared by the City, and incorporated into a planned action ordinance.

260

261 3.1.3 Mitigations specified in the FEIS serve to adequately address the
262 environmental impacts of the Project Phase 1. Any additional development determined by the
263 Community Development Director as the SEPA Responsible Official to be inconsistent with the
264 FEIS or planned action ordinance shall be subject to environmental review and SEPA threshold
265 determination requirements.

266

267 **3.2 Project Consistency with Land Use and Zoning.** The City has approved
268 amendments to the Comprehensive Plan, Zoning Ordinance and Zoning Map pursuant to the
269 Project application **FILE #####** submitted by the Developer. The City will review Project Phase 1
270 applications for consistency with Land Use and Zoning approvals.

271

272 3.2.1 Relationship to Comprehensive Plan. The City shall review the Project
273 Phase 1 application to determine that they are in compliance with the City's Comprehensive Plan
274 and the Future Land Use Plan Map, as amended by Ordinance No. 2976, adopted by the City
275 Council on February 25, 2013.

276

277 3.2.2 Relationship to Zoning. The City shall review the Project Phase 1
278 applications to determine that they are in compliance with the City's Zoning Code, as amended
279 by Ordinance No. 2977, adopted by the City Council on February 25, 2013.

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280
281 3.2.3 Relationship to Zoning Map. The City shall review the Project Phase 1
282 applications to determine that they are in compliance with the Zoning Map, as amended by
283 pursuant to Ordinance No. 2978, adopted by the City Council on February 25, 2013.
284

285 **3.3 Planned Action.** In conjunction with this Agreement, the City has adopted a
286 Planned Action Ordinance (Planned Action) that involved detailed SEPA review and
287 identification of mitigations consistent with RCW 43.21C.031 and WAC 197-11-164 through
288 WAS 197-11-172.
289

290 3.3.1 Developer shall submit Project Phase 1 applications for the Site that are
291 subject to the Planned Action.
292

293 3.3.2 Costco shall submit Project Phase 1 applications for the Costco Property
294 that are subject to the Planned Action.
295

296 **3.4 Project Design Review (PDR):** The Project Phase 1 improvements are required
297 to demonstrate consistency with all applicable Development Regulations and the terms of this
298 Agreement. The City shall use the PDR procedures set forth in Chapter 21.25 LMC as the
299 process by which the City determines Project Phase 1 improvements consistent with applicable
300 Development Regulations and the terms of this Agreement. The Project Phase 1 PDR
301 applications may be submitted to the City prior to the consideration and final approval of this
302 Agreement.
303

304 **3.5 Project Phase 1.** The Project Phase 1 is identified in the BSP, Design
305 Guidelines, and PDR applications. The Project Phase 1 shall not be substantively amended or
306 superseded without the mutual written consent of the Parties. In addition, any amendment to the
307 Project Phase 1 shall follow the process and procedures for such amendment that are in effect at
308 the time of the request; and shall be subject to environmental review. The schedule to implement
309 the Project Phase 1 improvements is included herein by reference. as Exhibit ##.
310

311 3.5.1 Site Work. Developer is responsible for all Site Work, including
312 demolition, site grading, wetland and critical area mitigation, and the installation of all associated
313 public and private infrastructure and improvements except as delineated in the Perimeter Road
314 Matrix of responsibilities. The City shall review Project Phase 1 Site Work applications for
315 consistency with this Agreement, the FEIS, the Project Plan, the Binding Site Plan, and the
316 LMC. Permits for Site Work improvements may be submitted by the Developer for approval by
317 the City prior to approval of this Agreement.
318

319 3.5.2 Developer Improvements Project Phase 1. Project Phase 1 shall include
320 development by the Developer of site improvements, utilities, etc. as identified on the Binding
321 Site Plan and as identified in the Perimeter Road Matrix of Responsibilities, including the Costco

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322 Development pad on the north portion of the site as identified by the **Binding Site Plan Tract ##.**
323 **(Include tract numbers from the BSP)** The City shall review administratively the permit
324 applications related to Project Phase 1 for consistency with this Agreement, the FEIS, the Project
325 Plan, the Lynnwood Place Design Guidelines, and the LMC. City approval of the Project Phase
326 1 shall be required prior to the issuance of City permits for Project Phase 1 development and the
327 initiation of construction by the Developer of Project Phase 1.

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

337 338 339 SECTION 4 PROJECT DESIGN AND APPROVALS 340

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

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. A
360 ~~Public access easement or easements~~ shall be required from the Developer, Costco and the
361 District ~~to ensure public access for Lynnwood Place Cycle 2 Phase 1 -which which~~ shall be
362 granted as a condition of PDR approval for the Costco Property. executed prior to the Certificate
363 ~~of Occupaney of any structure within each Project Phase 1.~~ Completion of all improvements

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364 pursuant to this section shall occur prior to the Certificate of Occupancy for Project Phase 1
 365 improvements. The Developer may defer installation of improvements until after Certificate of
 366 Occupancy at the sole discretion of the City and pursuant to the provisions of the LMC. Design
 367 of the improvements shall be consistent with this Agreement.

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

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

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

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

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

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

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4.5 Edge Treatments, Buffers and Screening.

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

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

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

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

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

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

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

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

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448 **4.6 Lighting Plan: Developer.** The Developer shall include a detailed lighting plan
449 as part of the submittal for their Project Phase 1 improvements. The Lighting Plan shall be
450 designed to use shielded fixtures so that there will be no direct views of the unscreened lighting
451 sources from off-site locations. The Lighting Plan shall be consistent with the FEIS, Project
452 Phase 1 Plan, Lynnwood Place Design Guidelines, and City Project Design Review, Chapter
453 21.25 LMC. Special attention shall be paid to ensure that lighting does not disturb adjacent
454 developments and residences, is shielded from critical areas and landscape buffers and that night
455 sky illumination effects are kept to a minimum.
456

457 **4.7 Lighting Plan: Costco.** Costco shall include a detailed lighting plan as part of
458 the submittal for their Project Phase 1 improvements. The Lighting Plan shall be designed to use
459 shielded fixtures so that there will be no direct views of the unscreened lighting sources from off-
460 site locations. The Lighting Plan shall be consistent with the FEIS, Project Plan, Lynnwood
461 Place Design Guidelines, and the City Project Design Review, Chapter 21.25 LMC. Special
462 attention shall be paid to ensure that lighting does not disturb adjacent developments and
463 residences, is shielded from critical areas and landscape buffers and that night sky illumination
464 effects are kept to a minimum.
465

466 **4.8 Sound Mitigation.**
467

468 4.8.1 The Developer shall include a detailed noise mitigation plan for
469 construction and on-going operation for Project Phase 1 improvements for which they are
470 responsible. This plan shall be submitted as part of the project review pursuant to the LMC.
471 The noise mitigation plan shall be consistent with the FEIS, Project Plan, Lynnwood Place
472 Design Guidelines, and the City Project Design Review, Chapter 21.25 LMC, and Chapter 10.12
473 LMC. HVAC equipment shall be screened and sources of related noise muffled to comply with
474 the LMC requirements. Trash facilities including compactors shall be located internally in
475 buildings or situated in screened areas that shall serve to minimize noise.
476

477 4.8.2 Costco shall include a detailed noise mitigation plan for construction and
478 on-going operation for Phase 1 Project Plan for which they are responsible. This plan shall be
479 submitted as part of the project review pursuant to the LMC. The noise mitigation plan shall be
480 consistent with the FEIS, Project Plan, Lynnwood Place Design Guidelines, and the City Project
481 Design Review, Chapter 21.25 LMC, and Chapter 10.12 LMC. HVAC equipment shall be
482 screened and sources of related noise muffled to comply with the LMC requirements. Trash
483 facilities including compactors shall be located internally in buildings or situated in screened
484 areas that shall serve to minimize noise.
485

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

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490 | **4.10 Stormwater.**

491 | 4.10.1 Stormwater impacts and mitigation shall be regulated by the City
492 | consistent with the National Pollutant Discharge Elimination System (NPDES) Permit Program.
493 | The requirements of the Department of Ecology 2005 Stormwater Management Manual for
494 | Western Washington shall govern the design for stormwater facilities and mitigations for all
495 | Phases of the Project. he Developer shall apply for a NPDES General Construction Permit from
496 | the Washington State Department of Ecology for any site work greater than one acre. The
497 | Developer shall comply with the process and stormwater facilities and mitigations consistent
498 | with the FEIS, Project Plan, Lynnwood Place Design Guidelines, and the City Project Design
499 | Review, and the LMC.
500 |

501 | _____ a) A partial transfer of coverage for the NPDES General Construction
502 | Permit shall be completed between the Developer and the City prior to beginning construction of
503 | the Perimeter Road Project.
504 |

505 | _____ b) 4.10.2 A partial transfer of coverage for the NPDES General
506 | Construction Permit shall be completed between the Developer and Costco prior to beginning
507 | construction of the Costco improvements.
508 |

509 | 4.10.2 The Developer is constructing a stormwater management facility on the
510 | Site, for use by Costco for the purpose of the detention and treatment of stormwater generated by
511 | the Costco Project, as depicted on the Binding Site Plan dated September 9, 2013, Proposed
512 | Tract B. The District, the Developer, Costco and the City shall negotiate in good faith and enter
513 | into a Detention Pond Maintenance Agreement regarding the detention and treatment of
514 | stormwater from the Costco Project and the Perimeter Road, which shall be executed prior to the
515 | City’s construction of the Perimeter Road under Sections 9 and 10 of this Agreement. The
516 | Detention Pond Maintenance Agreement shall allocate no more than 16% (calculate roadway
517 | proportionate share) of the costs of maintaining the stormwater management facilities to the City.
518 |

519 | **SECTION 5 SITE DEMOLITION AND GRADING PERMITS**

520 | **5.1 Permit Requirement.** The Developer and Costco shall apply for demolition and
521 | grading permits from the City for their respective Project Phase 1 improvements. These permits
522 | shall establish the terms and conditions for these activities pursuant to the LMC.
523 |

524 | **SECTION 6 CONSTRUCTION PERMITS AND INSPECTIONS**

525 | **6.1 Permits and Inspection.** The City shall review and approve all Project
526 | improvements to be constructed by the Developer and Costco pursuant to this Agreement, the
527 | LMC and other regulations as may be applicable to the Project at time of application.
528 |

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SECTION 7 FEES

7.1 Fees. All City fees not specifically addressed in this Agreement shall be paid by the Developer 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 33rd Avenue W, 184th 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

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574 Project. The City shall review and approve these improvements pursuant to this Agreement and
575 the LMC.

576

577 **9.2 Mitigations.**

578

579 9.2.1 Public and Private Improvements. The FEIS for the Project requires the
580 extension of 33rd Avenue West Perimeter Road Project around the west and north sides of the
581 Site as one of the mitigations for traffic impacts from the Project. The mitigation will be
582 addressed pursuant to the Perimeter Road Project improvements funded in part by the TIB grant,
583 Project Number 9-P-140(006)-1. The City has agreed to participate in this roadway extension as
584 it provides transportation system wide benefits.

585

586 9.2.2 Private Improvements. All other transportation improvements required by
587 the FEIS and the permitting process shall be the sole responsibility of the Developer. Such
588 improvements are identified pursuant to the Planned Action Ordinance, incorporated herein by
589 reference, and identified in **Exhibit ##**.

590

591 **9.3 Site Access Approval.** The Developer is required to apply and pay for Site Plan
592 and Right-of-Way Permits approval for the Project Phase 1. Approval of such permits shall be
593 required prior to performance of any work on construction of the roadway systems. The City,
594 acting as lead agency on constructing the Perimeter Road Project, shall apply for and pay with
595 project funds for all associated construction permits for the Perimeter Road Project.

596

597 **9.4 Perimeter Road Project.** The Perimeter Road Project is comprised of the
598 following:

599

600 9.4.1 Design. The City's design of the Perimeter Road pursuant to the TIB
601 Grant, Project Number 9-P-140(006)-1, shall conform to all requirements of the FEIS as well as
602 all City requirements and standards in the Lynnwood Place Design Guidelines, Citywide Design
603 Guidelines, and the LMC. The design for the Perimeter Road shall be coordinated with the civil
604 engineering documents prepared by the Developer for the grading of the site. A match line will
605 be identified in the Developer's civil drawings for review and acceptance by the City to identify
606 a "bench" above which the City will design the Perimeter Road improvements.

607

608 9.4.2 Design Approval Process. The City's design of the Perimeter Road shall
609 receive all required regulatory approvals prior to proceeding to roadway construction.

610

611 9.4.3 Conveyance of Right-of-Way for the Perimeter Road Project. The
612 Perimeter Road improvements shall be publicly owned and maintained. The District shall
613 provide the necessary right-of-way to the City for all Perimeter Road Project improvements
614 through the conveyance of a dedicated easement pursuant to the terms of a separate Dedicated
615 Easement Agreement attached hereto as **Exhibit ##** giving the City the right to construct, operate

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616 and maintain the roadway in perpetuity, or until such time that the City may determine that the
617 Perimeter Road is no longer required for the Lynnwood Place Project and the traffic needs of the
618 City.

619 **9.5 Construction Phasing.** Work on the Site shall occur in three major construction
620 phases:
621

622 9.5.1. The Developer shall perform rough grading of the Site including the land
623 required for the Perimeter Road right-of-way, and deliver to the City prior to City commencing
624 construction on the Perimeter Road a graded right-of way “bench” to a mutually agreed profile
625 and cross slope. The Developer is responsible for all associated grading, dewatering, and related
626 improvements below the established “bench” elevation that are needed to enable the City to
627 construct the Perimeter Road. The City is responsible to construct their underground work
628 below the “bench” in accordance with the Perimeter Road Matrix of Responsibilities.
629

630 9.5.2 The City shall construct the Perimeter Road above the established “bench”
631 pursuant to Perimeter Road design, Section 9.4.
632

633 9.5.3 The Developer and Costco Site Construction. Construction of the
634 Perimeter Road is anticipated to occur during construction by the Developer and Costco of their
635 improvements associated with the Project Phase 1. The parties to this agreement shall prepare a
636 construction sequencing and phasing schedule prior to construction commencing on the
637 Perimeter Road. If any of the Project improvements overlap with construction of the Perimeter
638 Road the involved Parties shall take reasonable efforts to coordinate as mutually agreed the
639 construction scheduling and activities prior to such overlapping work. Construction scheduling
640 for the Perimeter Road shall take precedent where coordination is required.
641

642 **9.6 Future Expansion of the Perimeter Road.** The Perimeter Road shall be
643 constructed pursuant to the FEIS and the TIB Grant participation agreements as a 3-lane roadway
644 with two travelled lanes and a center turn lane where necessary. Funding for construction of the
645 3-lane roadway is described in Section 10. The City’s long-range transportation plans anticipate
646 the expansion of the Perimeter Road by two additional travel lanes for a five lane configuration
647 as may be required to address future traffic demands.
648

649 9.6.1 The District shall convey by easement pursuant to the terms of a separate
650 Dedicated Easement Agreement attached here as **Exhibit ##** the necessary right-of-way for the
651 additional 2 travel lane sections at such time as required by the City to proceed with the
652 construction of the Perimeter Road expansion. The conveyance of such right-of-way shall occur
653 at such time as is required by the City to undertake the expansion of the Perimeter Road. This
654 requirement shall be stated in the Dedicated Easement Agreement, which will be recorded
655 against the property with the Snohomish County Auditor.
656
657

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658 9.6.2. The City shall be responsible for the future expansion of the Perimeter
659 Road to 5-lanes, which may be at least partially funded by a Local Improvement District that
660 includes the Site. Any future LID funding allocated to the District shall include a credit for cost
661 associated with the initial funding provided by the District including but not limited to right-of-
662 way dedication, direct cash or loan funding provided by the District as part of the initial
663 Perimeter Road project referenced in 10.1.2 and 10.1.3.
664

665 **9.7 Local Improvement District (LID) No-Protest Agreement.** The District agrees
666 to sign a No-Protest Agreement, **Exhibit ##**, for the formation of future LIDs that may be used to
667 provide funding for expansion of the Perimeter Road to 5-lanes, including all associated
668 improvements, which is incorporated into this Agreement by reference. The District shall retain
669 its right to contest its allocated share of any such LID, and to receive a credit toward the LID
670 obligations as described in Section 9.6.2. above.
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674 **SECTION 10 TRANSPORTATION IMPROVEMENT BOARD GRANT AND** 675 **IMPLEMENTATION OF BYPASS ROAD PROJECT**

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676 **10.1 Washington State Transportation Improvement Board (TIB) Grant.** The
677 City, Developer, and District shall enter into those agreements necessary for the Perimeter Road
678 Project including the terms and conditions of the TIB Grant. The TIB grant is incorporated into
679 this Agreement by reference.

681 **10.2 Purpose.** The purpose of the TIB Grant Agreement is to establish the formal
682 arrangements under which the City, Developer and District shall provide for the design, right-of-
683 way and construction of the Perimeter Road. The TIB Grant Agreement serves to allocate and
684 define the Parties' respective rights, obligations, costs and liabilities concerning the
685 establishment, operation and maintenance of this undertaking.
686

687 **10.3 Funding of Improvements.** Funding for all phases of the Perimeter Road Project
688 shall be made by the Parties pursuant to the TIB Grant Agreement and City of Lynnwood
689 Ordinance No. 3002 incorporated into this Agreement by reference.
690

691 **10.4 Participation Agreement.** The City and Developer have executed a Participation
692 Agreement, executed by the City on August 5, 2013, that provides for the funding of the
693 Perimeter Road design. This Participation Agreement delineates the responsibilities of the
694 Developer and the City and is incorporated into this Agreement by reference. The City, District
695 and Developer will enter into Participation Agreements as may be necessary to undertake the
696 terms and conditions of the TIB Grant.
697

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698 10.4.1 The Developer shall deposit with the City an amount equaling 10% of
699 their total project cash contributions at the time of project commencement in order for the City to
700 have adequate cash on hand to make ongoing project payments.
701

702 10.4.2 The Developer will undertake in-kind construction activities pursuant to
703 the TIB Grant Agreement, Ordinance No. 3002, and associated participation agreements. At the
704 end of construction the City shall use the Developer deposit as the Developer's last participation
705 payment.
706

707 **10.5 Construction Bid Acceptance.** Upon opening of construction bids, the City shall
708 notify the Developer prior to award of the Perimeter Road Project construction contract. Within
709 15 business days after bid opening and prior to acceptance of the bid and award of a contract, the
710 City shall inform the Developer of its financial responsibility. Notwithstanding the foregoing
711 Developer's financial responsibility shall be capped at \$926,000, which includes the previously
712 funded \$186,561 for design work.
713

714 **10.6 Construction Costs due to Change Orders.** The City shall be responsible for all
715 changes orders and associated costs for construction of the Perimeter Road Project.
716

717 10.6.1 The City shall assume construction cost risk for the Perimeter Road costs
718 associated with the area above the elevation of the "bench" sub-grade "bench" for the Perimeter
719 Road.
720

721 10.6.2 The Developer shall assume construction cost risk for the costs associated
722 with that area below the elevation of the "bench" including the sub-grade and dewatering for the
723 Perimeter Road.
724

725 10.6.3 Change order requests for the City portion of the Perimeter Road Project
726 shall be processed pursuant to the City's administrative policies and procedures at no additional
727 cost or financial responsibility to the Developer.
728

729 10.6.4 The City change orders involving a change in scope shall be undertaken
730 pursuant to the TIB Grant.
731

732 **10.7 Construction Claims and Disputes.** In the event construction claims for
733 additional payment are made by the construction contractor and/or disputes result, the City shall
734 endeavor to resolve the claims/disputes. The Developer shall assist in resolving claims/disputes
735 as necessary. Financial responsibility for legitimate construction claims/disputes arising from
736 the work performed by the Developer below the "bench" shall be the sole responsibility of the
737 Developer. In the event such claims exceed the financial parameters established in Exhibit ##,
738 the Developer shall authorize additional funding to cover the cost of the claim/dispute.
739

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740 **10.8 Construction Project Acceptance.** Upon satisfactory completion of the work,
 741 resolution of all claims for additional payment, and completion of all contract closeout
 742 documents, the City shall notify the Developer that final acceptance is to be issued for the
 743 Perimeter Road. Upon the Developer's concurrence, the City shall issue the final acceptance for
 744 the Perimeter Road Project; provided that the Developer shall not unreasonably withhold its
 745 concurrence.

746
 747 **10.9 Ownership of the Perimeter Road.** The new Perimeter Road Improvements,
 748 and all related appurtenances, constructed pursuant to the TIB Grant Agreement shall become
 749 and remain the exclusive property of the City upon completion. The land on which the Perimeter
 750 Road is constructed will be provided to the City as an easement in perpetuity by the District
 751 pursuant to the Dedication Agreement. The District shall retain ownership of the land.

752
 753 **10.10 Costco Funding Guarantee to City.** Costco and the City shall negotiate in good
 754 faith an agreement in which Costco guarantees sales and use tax revenues to be generated by the
 755 Costco Project ("Tax Revenue Guarantee Agreement"). The City shall not be obligated to
 756 construct the Perimeter Road under Sections 9 and 10 of this Agreement unless and until Costco
 757 and the City have entered into a mutually acceptable Tax Revenue Guarantee Agreement. Costco
 758 agrees to provide to the City a guarantee of sales and use tax revenues generated by the Costco
 759 Warehouse pursuant to the Revenue Guarantee Agreement, attached hereto as Exhibit ##.

760
 761
 762 **SECTION 11 TRAFFIC MITIGATION FEE**

763
 764 **11.1 Traffic Mitigation Fee Calculation and Fee Credits.** Traffic Mitigation Fees
 765 are required on all development projects that have a net increase in trips pursuant to the **LMC**.
 766 The TrIF Calculation Form for Lynnwood Place Project Phase 1 has been prepared and is
 767 incorporated herein by reference. The TrIF Calculation Form specifies the total credit available.
 768 The allocation of the credit shall be undertaken pursuant to a letter of agreement from the
 769 Developer, Costco, and the District, which will be incorporated herein by reference. A TrIF
 770 calculation form for Lynnwood Place Phase 2 will be calculated separately at such time as
 771 application is made for Phase 2 project improvements.

772
 773 **11.2 Effective Date.** The terms and conditions of the Traffic Mitigation Fee
 774 calculation will be undertaken pursuant to the LMC.

775
 776
 777 **SECTION 12 NON-MOTORIZED TRANSPORTATION INFRASTRUCTURE**

778
 779 **12.1 Non-Motorized Transportation Infrastructure Improvements.** The Developer
 780 and Costco are responsible for construction of non-motorized transportation infrastructure for

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781 their respective properties pursuant to the Binding Site Plan, Lynnwood Place Design
782 Guidelines, and City project approvals undertaken pursuant to the LMC.

783
784 **12.2 Completion of Non-Motorized Transportation Infrastructure.** The Developer
785 shall complete the installation of non-motorized transportation infrastructure, at its sole cost and
786 expense, in accordance with the Project Phase 1 prior to the issuance of a Certification of
787 Occupancy by the City for any structure in Project Phase 1.

788
789

790 SECTION 13 WATER

791
792 **13.1 Domestic Water Service Line and System Looping.** The Developer is
793 responsible for construction, at its sole cost and expense, of the water system improvements for
794 Phase 1 to connect to the City water system as indicated on the Binding Site Plan. All water
795 system design and construction shall meet City standards and require City review and approval.

796
797 **13.2 Fire Flow.** The Developer is responsible for providing water system
798 improvements, at its sole cost and expense, for the Project adequate to meet the City's fire flow
799 requirements. All water system design and construction shall meet City standards, and require
800 City review and approval.

801
802 **13.3 City Participation.** Depending on the final design of water lines the City may at
803 its sole discretion participate in upsizing or system connections that go beyond Project needs and
804 which benefit the City system.

805
806

807 SECTION 14 SANITARY SEWERS

808
809 **14.1 Developer Responsibilities.** The Developer is responsible for providing sanitary
810 sewer system improvements as indicated on the Binding Site Plan for the Project Phase 1. All
811 sanitary system design and construction shall meet City standards, and require City review and
812 approval.

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815 SECTION 15 PERMIT PROCESS

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817 **15.1 Responsible Official.** The Project review and permit approval shall be
818 undertaken pursuant to the City's rules, regulations, and the LMC. This process shall be
819 administrative and the Community Development Director shall be responsible for the
820 determination of Project Phase 1 compliance with this Agreement. Changes proposed by the
821 Developer or Costco that comprise less than 10% of the total square footage of any use category
822 within Project Phase 1 land or building area shall be reviewed by the Community Development

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823 Director for compliance to the City LMC. Changes to Project Phase 1 that exceed these
824 thresholds or change the approved design guidelines shall require an amendment to this
825 Agreement.

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828 **SECTION 16 VESTED RIGHTS**
829

830 **16.1 General Vesting.** The Project Phase 1 shall be vested to City of Lynnwood local
831 laws, regulations and resolutions existing on the effective date of this Agreement (“Vested
832 Laws”), including, but not limited to, the City’s Comprehensive Plan, Zoning Use Tables,
833 Development Regulations, Lynnwood Place Design Guidelines, and other provisions of the LMC
834 applicable to the Project.

835
836 **16.2 Amendments.** During the vested period, if any of the Vested Laws are amended,
837 modified or changed, Costco or the Developer, at their sole discretion, may elect to have a permit
838 or approval for the Project considered under all such Vested Laws, as amended, in effect on the
839 date of application for the permit or approval.

840
841 **16.3 City Reservation of Rights.** Notwithstanding the foregoing, the City reserves
842 the authority under RCW 36.70B.170(4) to impose new or different regulations, to the extent
843 required by the federal or state governments, or by a serious threat to public health and safety.
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846 **SECTION 17 PROJECT SCHEDULE**
847

848 **17.1 Project Phase 1 Schedule.** The Project Phase 1 schedule is incorporated into this
849 Agreement by reference. This schedule provides for the anticipated actions and improvements
850 associated with this Agreement. The schedule may be revised by the mutual consent of the
851 Parties to this Agreement; such consent shall not be unreasonably withheld.

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854 **SECTION 18 PARTIES REPRESENTATIVES**
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- 856 **18.1** Designation of City’s Representative
- 857 **18.2** Designation of Developer’s Representative
- 858 **18.3** Designation of District’s Representative
- 859 **18.4** Designation of Costco Representative

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862 **SECTION 19 COMPLIANCE WITH LAWS AND ORDINANCES**
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864 **19.1 Compliance with Laws and Ordinances.** Throughout the term, and subject to
 865 the provisions, of this Agreement, the District, the Developer, and Costco, at their sole cost and
 866 expense, shall promptly comply with all applicable laws and ordinances, as they relate to the Site
 867 and the Project, including but not limited to, the City's Comprehensive Plan, Zoning Use Code,
 868 Development Regulations, Lynnwood Place Design Guidelines, and other provisions of the LMC
 869 applicable to the Project Phase 1. To the extent that their compliance shall require the
 870 cooperation and participation of the City, the City agrees to use its best efforts to cooperate and
 871 participate. The City shall take any and all actions to achieve compliance pursuant to the LMC
 872 and any and all applicable regulations.

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SECTION 20 INSURANCE

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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 contractor(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.

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

907
908 (c) The policies shall be issued as primary policies; provided, however,
909 that the Developer, and general contractor(s) and subcontractors, may be insured under one (1) or
910 more blanket insurance policies, which shall be permitted and acceptable.

911
912 20.2.2 Attachments. To the extent reasonably available from insurers, each such
913 policy or certificate of insurance mentioned and required in this Article shall have attached
914 thereto:

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

920
921 (b) An endorsement to the effect that the insurance, as to anyone insured,
922 shall not be invalidated by any act or neglect of any other additional insured.

923
924 (c) An endorsement pursuant to which the insurance carrier waives all
925 right of subrogation against the Parties.

926
927 (d) An endorsement pursuant to which this insurance is primary and
928 noncontributory.

929
930 20.2.3 Certificates of Insurance. The certificates of insurance and insurance
931 policies shall be furnished to the Parties prior to commencing construction on the Project under
932 this agreement. The certificate(s) shall clearly indicate the insurance and the type, amount, and
933 the classification required.

934
935 20.2.4 Cancellation. Cancellation of any insurance or nonpayment by the
936 Developer or Costco of any premium for any insurance policies required by the Agreement after
937 written notice and an opportunity for time to cure within 30 (thirty) days shall constitute an
938 Event of Default of this Agreement.

939
940 **20.3 Adjustments.** The types of policies, risks insured, coverage amounts, deductibles
941 and endorsements may be adjusted from time to time as the Parties may mutually determine in
942 writing.

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947 **SECTION 21 ENVIRONMENTAL INDEMNIFICATION**
948

949 **21.1 Indemnification.** Subject to the limitations of Sections 23.2 and 23.3, of this
950 Agreement, the District shall indemnify and hold the City harmless from and against any and all
951 liability, loss, damage, cost, or expenses (including reasonable attorney’s fees and court costs,
952 amounts paid in settlements, and judgment) arising from or as a result of preexisting
953 environmental contaminants on or beneath the Site, and the portion dedicated to the City for the
954 Perimeter Road pursuant to this Agreement, including any such liability, loss, damage, costs or
955 expenses resulting from the past or future migration of such environmental contaminants from
956 the Site to any other property. As used in this section, “preexisting” means those environmental
957 contaminants that were present on or beneath the Site prior to the date of execution of the
958 Agreement. “Environmental contaminants” shall include without limitation.

959
960 21.1.1 Those substances included within the definitions of “hazardous
961 substances,” “hazardous materials,” “toxic substances,” or “solid waste” in the Comprehensive
962 Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec 9601 et seq.)
963 (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L.
964 99 499 100 Stat. 1613)(“SARA”), the Resource Conservation and Recovery Act of 1976 (42
965 U.S.C. Sec 6901 et seq.) (“RCRA”) and the Hazardous Materials Transportation Act, 49 U.S.C
966 Sec 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

967
968 21.1.2 Those substances listed in the United States Department of Transportation
969 Table (49 C.F.R. 172. 101 and amendments thereto) or by the Environmental Protection Agency
970 (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto);

971
972 21.1.3 Any material, waste, or substance which is (A) petroleum, (B) asbestos,
973 (C) polychlorinated biphenyls, (D) designated as a “hazardous substance “ pursuant to Section
974 3.11 of the Clean Water Act (33 U.S.C. Sec 1317); (E) flammable explosives, or (F) radioactive
975 materials;

976
977 21.1.4 Those substances defined as “dangerous wastes,” hazardous wastes,” or
978 as “hazardous substances” under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et
979 seq., the Water Pollution Control Act, RCW 90.48.010 et seq., the Hazardous Waste
980 Management Statute, RCW 70.105.0 10 et seq., the Toxic Substance Control Act, RCW 70.
981 105B.010 et seq., and the Model Toxics Control Act, RCW 70.105D.010 et seq., and in the
982 regulations promulgated pursuant to said laws, all as amended;

983
984 21.1.5 Storm water discharge regulated under any federal, state or local law,
985 ordinance or regulation relating to storm water drains, including, but not limited to Section
986 402(p) of the Clean Water act, 33 U.S.C. Section 1342 and the regulations promulgated
987 thereunder, all as amended.
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989 21.1.6 Such other substances, materials, and waster which are classified and
990 regulated as dangerous, hazardous, or toxic under applicable local, state or federal law.
991

992 **21.2 Third Parties.** This Agreement by the District to indemnify and hold the City
993 harmless applies to claims brought by an third party based upon state or federal statutory or
994 common law, resulting from the release, threatened release, or migration or preexisting
995 environmental contaminants and any property damage or damages for personal injury related
996 there to. As used in this section, "release" shall mean releasing, spilling, leaking, pumping,
997 pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or
998 dumping.
999

1000 **21.3 Existing Contaminants.** The provisions of this Section 22 to indemnify and hold
1001 harmless applies only to claims resulting from those environmental contaminants that were
1002 present on or beneath the Site prior to the date of execution of this Agreement. In addition, this
1003 Agreement to indemnify and hold harmless does not apply to any release, threatened release, or
1004 mitigation of environmental contaminants from City rights-of-way, including, but limited to
1005 public streets and roadways, or resulting from the actions of the City, its officers, agents, or
1006 employees.
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1008

1009 **21.4 Costco's Provision of Limited Environmental Indemnity.**
1010

1011 21.4.1 Costco shall indemnify and hold the City harmless from and against any
1012 and all liability, loss, damage, cost, or expenses (including reasonable attorney's fees and court
1013 costs, amounts paid in settlements, and judgment) arising from or as a result of the future release
1014 of environmental contaminants on or beneath the Costco Property that is caused by the sole
1015 negligence or intentional acts of Costco or its agents. Said indemnification shall include any
1016 liability, loss, damage, cost or expense resulting from the future migration of such environmental
1017 contaminants from the Costco Property to any other property. Costco's agreement to indemnify
1018 and hold the City harmless applies to claims brought by an third party based upon state or federal
1019 statutory or common law, resulting from the release, threatened release, or migration of
1020 environmental contaminants and any property damage or damages for personal injury related
1021 there to. As used in this section, "release" shall mean releasing, spilling, leaking, pumping,
1022 pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or
1023 dumping. Costco's obligations and environmental indemnification of the City under this
1024 Agreement is limited to future contamination of the Costco Property that is solely caused by
1025 Costco or its agents and shall not extend to pre-existing contamination of the Site or Costco
1026 property that was not caused by Costco or its agents.
1027

1028 21.4.2 Self-Insurance. Costco may, at its option, meet the insurance
1029 requirements set forth herein via commercial insurance, self-insurance, alternative risk financing
1030 techniques, or a combination of these options.

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21.5 Developer Provision of Limited Environmental Indemnity.

21.5.1 The Developer 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 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 TRANSER

COORDINATE WITH ESDCYPRESS DEVELOPMENT AGREEMENT, LEASE and REA

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.

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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.

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

SECTION 23 DEFAULT

23.1 Events of Default. The following shall constitute events of default under this Agreement by the respective Party responsible for such event of default (“Events of Default”):

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

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

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1114 23.1.3 The appointment of a receiver or trustee of the Site, which appointment
1115 shall not be vacated or stayed within six (6) months; and
1116

1117 23.1.4 The filing of a petition in bankruptcy by or against the District, the
1118 Developer, or Costco or for its reorganization under any bankruptcy or insolvency law which
1119 shall not be dismissed or stayed by the court within six (6) months after such filing.
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1121
1122 **23.2 Remedies in the Event of Default.** If an Event of Default shall occur, or in the
1123 event of a dispute, claim or controversy arising out of, or relating to this Agreement, then any
1124 Party shall have the right and remedies against the defaulting Party, and shall be required to
1125 proceed in accordance with, the Dispute Resolution provisions in Section 24; provided, however,
1126 that in the event Dispute Resolution is unsuccessful, the Parties shall have all rights, remedies
1127 and causes of action, at law or in equity, available under the laws of the State of Washington.
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SECTION 24 DISPUTE RESOLUTION

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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

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1156 the event that non-binding mediation is agreed upon, the site of the proceedings shall be
1157 Lynnwood, Washington, unless otherwise agreed in writing by the Parties. The rules for
1158 mediation, the selection of the mediator, and the timetable and procedures for mediation, shall be
1159 determined by mutual agreement of the Parties. The mediator shall be skilled in the legal and
1160 business aspects of the subject matter of this Agreement. The mediation shall be conducted
1161 without prejudice to any Party and in strict confidence. Each Party shall share equally in the
1162 costs of the mediation except that each Party shall bear its discretionary costs, including, but not
1163 limited to, its attorneys' fees and expenses. If the Dispute is settled through mediation, the terms
1164 of the settlement shall be recorded in writing and signed by the Authorized Representatives of
1165 the Parties. Unless otherwise mutually agreed by the Parties in writing, the mediator shall not be
1166 utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor
1167 shall the mediator be entitled to act as a fact or expert witness to any Party in any subsequent
1168 proceeding. If within forty-five (45) days after the date of the Dispute Notice, the mediation has
1169 not resulted in settlement of the Dispute, then the mediation shall, unless otherwise mutually
1170 agreed in writing by the Parties, be terminated. If any Party withdraws from the mediation at any
1171 time, the mediation shall be terminated.

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1173 **24.4 Arbitration.** If the Parties are unable to resolve a Dispute in accordance with the
1174 provisions of Section 24.3, the Parties may consider the use of voluntary binding arbitration;
1175 provided, however, that binding arbitration shall be required for any strictly monetary Dispute,
1176 the value or potential financial impact of which is agreed by the Parties to be less than
1177 \$50,000.00. In the event that binding arbitration is required, or mutually agreed upon, and unless
1178 otherwise mutually agreed by the Parties in writing, the site of the proceedings shall be
1179 Lynnwood, Washington, and Washington law shall govern the arbitration proceedings. Upon
1180 completion of the cooperative discussions set forth in Section 24.3, the arbitration process shall
1181 commence immediately. The Parties shall determine by mutual agreement the rules for
1182 arbitration, the selection of the arbitrator, and the timetable and procedures for arbitration,
1183 including, but not limited to, (i) the extent, form, and time limits applying to any documentary or
1184 oral evidence of the Parties to be submitted to arbitration; (ii) site visits or inspections; (iii)
1185 meetings with the Parties; and (iv) appointment of experts; provided, however, that in the event
1186 the Parties are unable to agree within twenty-five (25) days after the date of the Dispute Notice,
1187 then the Rules of the Judicial Arbitration and Mediation Service, Seattle office, shall apply. The
1188 arbitrator shall be skilled in the legal and business aspects of the subject matter of this
1189 Agreement. The arbitration shall be conducted without prejudice to any Party and in strict
1190 confidence. The arbitrator shall decide the Dispute acting impartially and in good faith. The
1191 arbitrator shall reach a decision and communicate the decision in writing to the Parties, providing
1192 the basis for the decision. The arbitrator's decision shall be final and binding on the Parties. The
1193 Parties shall implement the arbitrator's decision without delay. The arbitrator's fees and
1194 expenses, the other costs of arbitration, and the Parties' reasonable attorneys' fees and costs shall
1195 be borne by the Parties as the arbitrator shall specify in his decision; provided, however, that the
1196 "substantially prevailing" Party shall be entitled to recover its arbitration expenses and
1197 reasonable attorneys' fees and costs in preparation for, and during, the arbitration process.

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1198 Unless otherwise mutually agreed by the Parties in writing, the arbitrator shall render a final
 1199 decision on the Dispute within sixty (60) days after the date of the Dispute Notice. The arbitrator
 1200 shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the
 1201 Dispute, nor shall the arbitrator be entitled to act as a fact or expert witness to either Party in any
 1202 subsequent proceeding.

1203
 1204 **24.5 Litigation.** If the Parties are not required, or do not mutually agree, to submit a
 1205 Dispute to mediation under Section 24.3, or arbitration under Section 24.4, then after the time
 1206 period set forth in Section 24.2 for cooperative discussion, either Party shall have the right and
 1207 authority to commence litigation immediately, and primary jurisdiction for the resolution of any
 1208 Dispute relating to, or arising out of, this Agreement shall reside in the Washington State
 1209 Superior Court, Snohomish County, Washington. The Parties shall have all rights and remedies,
 1210 whether at law or in equity, under Washington law, including, but not limited to, specific
 1211 performance, damages and injunctive relief.

1212
 1213 **24.6 Equitable Proceedings.**

1214
 1215 24.6.1 In the event a Party desires to seek interim relief, whether affirmative or
 1216 prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim
 1217 equitable relief with respect to a Dispute either before or after the initiation of a dispute
 1218 resolution proceeding, that Party may initiate the proceeding necessary to obtain such relief
 1219 (“Equitable Proceeding”). Nothing in this Section 24.6 shall be construed to suspend or
 1220 terminate the obligation of the Parties to comply with the provisions of Sections 24.2, and 24.3
 1221 and 24.4 with respect to the Dispute that is the subject of such Equitable Proceeding while such
 1222 Equitable Proceeding is pending, including any appeal or review.

1223
 1224 24.6.2 Notwithstanding the decision of an arbitrator or mediator, as may be
 1225 applicable, any interim relief granted by such Equitable Proceeding shall not be reversed or
 1226 modified by the arbitrator’s or mediator’s determination, and any factual or legal determination
 1227 made in such Equitable Proceeding shall be binding upon the Parties in the Dispute before any
 1228 arbitrator or mediator.

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 1230
 1231 **SECTION 25 MISCELLANEOUS**
 1232 **(MANAGEMENT AND ADMINISTRATION)**
 1233

1234 **25.1 No Third Party Rights.** Except as specifically set forth in this Agreement, the
 1235 provisions of this Agreement are for the exclusive benefit of the City, the District, the Developer,
 1236 or Costco and their respective permitted successors and assigns and not for the benefit of any
 1237 third person. This Agreement shall not be deemed to have conferred any rights upon any third
 1238 person.

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

1240 **25.2 Severability.** If any term or provision of this Agreement or the application
 1241 thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the
 1242 remainder of this Agreement or the application of such term or provision to persons or
 1243 circumstances other than those as to which it is held invalid or unenforceable shall not be
 1244 affected thereby and shall continue in full force and effect.

1245
 1246 **25.3 Construction.** The section headings throughout this Agreement are for
 1247 convenience and reference only and the words contained in them shall not be held to expand,
 1248 modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All
 1249 pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter,
 1250 singular or plural as the identification of the person or persons, firm or firms, corporation or
 1251 corporations may require. The locative adverbs “herein”, “hereunder”, “hereto”, “hereby”,
 1252 “hereinafter”, etc., whenever the same appear herein, mean and refer to this Agreement in its
 1253 entirety and not to any specific section or subsection hereof.

1254
 1255 **25.4 Fair Construction.** The Parties acknowledge and agree that each was properly
 1256 represented by counsel, and that this Agreement was negotiated and drafted at arm’s length so
 1257 that the judicial rule of construction to the effect that a legal document shall be construed against
 1258 the draftsman shall be inapplicable to this Agreement.

1259
 1260 **25.5 Authority to Execute Agreement.** The parties represent to each other that they
 1261 possess sufficient and requisite jurisdiction and authority to enter into this Agreement.

1262
 1263 **25.6 Attorney’s Fees.** If any Party brings a claim suit to enforce or declare the
 1264 meaning of any provision of this Agreement through arbitration or in superior court, the
 1265 prevailing Party, in addition to any other relief, shall be entitled to recover its reasonable
 1266 attorneys’ fees and costs, including any incurred on appeal.

1267
 1268 **25.7 Survival.** The provisions of this Agreement shall survive the expiration of the
 1269 term of this Agreement to the extent involving environmental indemnification, maintenance of
 1270 public improvements or other matter involving rights or obligations is extend beyond the
 1271 expiration of the term of this Agreement.

1272
 1273 **25.8 Governing Law.** This Agreement shall be governed by and construed in
 1274 accordance with the Laws of the State of Washington. Venue for any legal action pertaining to
 1275 this Agreement shall be in the State of Washington with jurisdiction in Snohomish County,
 1276 Washington.

1277
 1278 **25.9 Amendment.** No modification or amendment of this Agreement may be made
 1279 except by written agreement signed by each of the Parties to this Agreement or as may be
 1280 provided otherwise in this Agreement.

1281

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1282 **25.10 Notices.** All notices which may be or are requested to be given, pursuant to this
 1283 Agreement, shall be deemed given when hand delivered, delivered by e-mail, delivered by
 1284 facsimile, or within 3 business days of when deposited as certified mail in the United States
 1285 Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and
 1286 addressed to the Parties at the following addresses unless otherwise provided for herein:
 1287

1288 To CITY: City of Lynnwood
 1289 Attn: TITLE
 1290 PO Box 5008
 1291 Lynnwood, WA 98046-5008
 1292 Facsimile #
 1293 E-mail:

1294
 1295 AND TO: City of Lynnwood
 1296 Attn: City Attorney
 1297 Mailing Address
 1298 Facsimile #
 1299 E-mail

1300
 1301
 1302 To DEVELOPER: Cypress Lynnwood LLC
 1303 C/O Cypress Equities
 1304 Attn: Stephen Schmidt
 1305 8343 Douglas Avenue, Suite 200
 1306 Dallas, TX 75225
 1307 Facsimile # 214-283-1600
 1308 E-mail

1309
 1310 AND TO:

1311
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 1313 To DISTRICT: Edmonds School District
 1314 Attn:
 1315 Mailing Address
 1316 Facsimile #
 1317 E-Mail:

1318
 1319 AND TO:

1320
 1321 To Costco: Costco Wholesale Corporation
 1322 Attn:
 1323 999 Lake Drive

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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.

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1366 **25.17 Binding Effect.** This Agreement shall be a covenant running with the land. The
 1367 terms contained in this Agreement shall bind and inure to the benefit of the Parties, and their
 1368 successors and assigns, except as may be other provided herein.

1370 **25.18 Counterparts.** This Agreement may be executed in multiple counterparts, all of
 1371 which, taken together, shall constitute one and the same instrument.

1373 **25.19 Time is of the Essence.** For the purposes of this Agreement and all transactions
 1374 contemplated thereunder, time is of the essence.

1376 **25.20 Term and Termination.** Subject to the survival provisions set forth in Section
 1377 25.7, the term of this Agreement is 99 years from the date signed by all Parties.

1379 **25.21 Extensions.**

CITY OF LYNNWOOD,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

EDMONDS SCHOOL DISTRICT NO. 4515,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

CYPRESS LYNNWOOD, LLC,
a Delaware limited liability company

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By: _____

Name: _____

Title: _____

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

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EXHIBITS

1. Ordinance: Development Agreement and Planned Action
2. Development Agreement, Cycle 2 Phase 1
3. Dedicated Easement Agreement
4. No Protest Agreement

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

EXHIBIT C
ORDINANCE NO. 3030

NEW SECTION ADDED TO CHAPTER 17.02 LMC

17.02.400 Lynnwood Place planned action

A. Purpose. The city declares that the purpose of this section is to:

1. Combine environmental analysis with land use planning; and
2. Designate the development known as "Lynnwood Place" at 3001 184th Street SW as a "planned action" consistent with state law (Chapters 36.70A RCW, 43.21C RCW and 197-11 WAC); and
3. Streamline and expedite the land use permit review process by relying on completed and existing environmental analysis for Lynnwood Place; and
4. Apply the Lynnwood Municipal Code and other applicable development standards, along with the mitigation framework of this section, to process project applications as planned actions.

B. Findings. The city council finds that:

1. The city is required to prepare and implement plans in accordance with the provisions of the Washington State Growth Management Act (GMA), Chapter 36.70A RCW.
2. The city has adopted a comprehensive plan in compliance with the GMA.
3. Based on the report prepared by Lynnwood's SEPA Responsible Official and reviewed by the city council in connection with the passage of the ordinance codified in this section, the environmental impacts of a planned action comprised of the Lynnwood Place project have been identified and adequately addressed in the Lynnwood Place Environmental Impact Statement (EIS) [consisting of the Draft EIS (DEIS) issued October 7, 2011 and the Final EIS (FEIS) issued March 30, 2012], and implementing development regulations, as supplemented by the Development Agreement between the City, the District and the Developer.
4. A planned action comprised of Lynnwood Place:
 - a. Is project or non-project action covered by the Lynnwood Crossing DEIS issued October 11, 2011, the Lynnwood Crossing FEIS issued March 30, 2012; and

b. Is not an essential public facility, as defined in RCW 36.70A.200 or the City of Lynnwood Comprehensive Plan; and

c. Is consistent with the City of Lynnwood Comprehensive Plan.

5. The EIS was prepared pursuant to RCW 43.21C.031 in anticipation of the Lynnwood Place Project being designated a planned action.

6. There are no specific mitigation measures, other than applicable development regulations, the mitigation specified in the EIS, and the terms of the Development Agreement that must be applied to a project application for development of Lynnwood Place.

7. A streamlined process for review of project applications for development in the Lynnwood Place project will benefit the public, protect the environment, and enhance economic development.

8. Opportunities for public involvement and review have been provided, and comments considered, as part of preparation of the DEIS and FEIS for Lynnwood Crossing (Lynnwood Place), the comprehensive plan and zoning code amendments related to Lynnwood Place, and the ordinance codified in this section.

C. Qualifying criteria for evaluating and determining projects as Lynnwood Place planned actions.

1. Planned Action Area. A proposed project must be located in or related to the 40.2-acre Lynnwood Place project area, located at 3001 184th Street SW, Lynnwood Washington as depicted in the diagram attached as Exhibit A to the Ordinance codified in this section.

2. Environmental Documents. Review of a project proposed as a Lynnwood Place planned action for a site-specific development permit application shall be based on the environmental analysis contained in the Lynnwood Place EIS and described therein as "Alternative 2".

3. Planned Action Qualifications. The following criteria and thresholds shall be used to determine whether a proposed project qualifies as a Lynnwood Place planned action:

a. Land Use. The project land uses and activities must be permitted in the Commercial-Residential Zoning District (Chapter 21.54 LMC). The project may include the site grading, demolition of existing buildings, and construction of associated infrastructure.

b. Scope of Development. Lynnwood Place development shall not exceed the amount of new building area identified and evaluated as Alternative 2 in the EIS,

and as provided in the following Lynnwood Place Development Table (Table 17.02.400C). Development is expected to occur over a 10-15 year period.

Table 17.02.400C Lynnwood Place Development

Land Use	Square Feet (sq. ft.) or Dwelling Units (d.u.)
Costco Wholesale with tire center and fueling facility	160,000 sq. ft.
Multi-family Residential	500,000 sq. ft. / 500 d.u.
Retail	192,000 sq. ft.
Restaurant	33,000 sq. ft.
Amusement/Recreation	105,00 sq. ft.
Health Club	40,000 sq. ft.
Movie Theater	35,000 sq. ft.
Bowling	30,000 sq. ft.
Total Build-Out (Gross Building Area)	990,000 sq. ft.

NOTES:

1. As specified by the EIS and Development Agreement, project includes construction of a new three-lane road through the site from 184th Street SW to Alderwood Mall Parkway at Maple Road.
2. The project may be constructed in phases, with infrastructure improvements made as specified by the Development Agreement(s).

c. Environmental Impacts. A project that would be likely to result in adverse environmental impacts that were not identified in the EIS shall not qualify as a planned action.

d. Significant changes. If requested by the owner, the City may consider project amendments that would have the effect of varying the proposed mix of uses described above. The owner will have the obligation of demonstrating that the cumulative impact of such an amendment is equal to or less than what was analyzed in the FEIS. If the owner proposes significant changes to the assumptions for the environmental analysis identified in the EIS, the project shall not qualify as a planned action and the SEPA responsible official shall require additional SEPA review.

D. Applications for planned actions shall be processed in accordance with LMC 17.020.029.

-End-



On the 4th day of November, 2013 the City Council of the City of Lynnwood, Washington, passed **Ordinance No. 3030**. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING THE LYNNWOOD PLACE PROJECT, PHASE 1 DEVELOPMENT AGREEMENT AS DEVELOPMENT REGULATIONS FOR THE LYNNWOOD PLACE SITE, AMENDING THE LYNNWOOD MUNICIPAL CODE BY ADDING A NEW SECTION 17.02.400 TO CHAPTER 17.02 LMC ENTITLED "LYNNWOOD PLACE PLANNED ACTION" AND DESIGNATING LYNNWOOD PLACE DEVELOPMENT AS A PLANNED ACTION, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

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

DATED this 8th day of November, 2013.



Lorenzo Hines Jr., Finance Director

Everett Daily Herald

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 No. 3030 525781 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 11/08/2013 and ending on 11/08/2013 and that said newspaper was regularly distributed to its subscribers during all of said period. The amount of the fee for such publication is \$ 26.22.

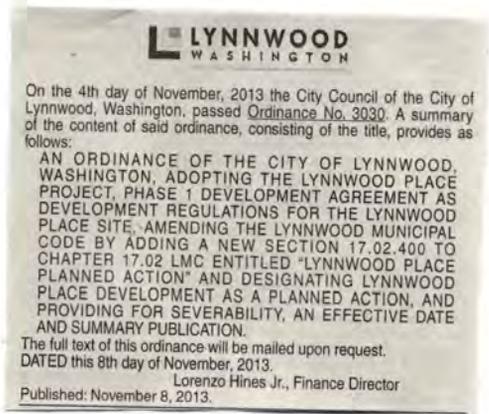
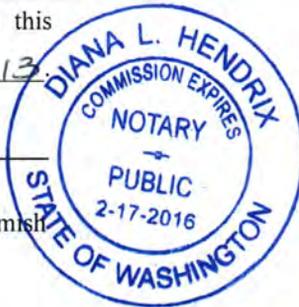
Karen E. Zomei

Subscribed and sworn before me on this 8 day of Nov, 2013.

Diana Hendrix

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

City of Lynnwood EDH127890 - PO: ORD. NO. 3030
ORDERED BY: DEBBIE KARBER





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. 3030 of the City of Lynnwood, Washington, entitled as follows:

ORDINANCE 3030

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING THE LYNNWOOD PLACE PROJECT, PHASE 1 DEVELOPMENT AGREEMENT AS DEVELOPMENT REGULATIONS FOR THE LYNNWOOD PLACE SITE, AMENDING THE LYNNWOOD MUNICIPAL CODE BY ADDING A NEW SECTION 17.02.400 TO CHAPTER 17.02 LMC ENTITLED "LYNNWOOD PLACE PLANNED ACTION" AND DESIGNATING LYNNWOOD PLACE DEVELOPMENT AS A PLANNED ACTION, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

That said ordinance was passed by the Council on November 4, 2013 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 November 8, 2013.



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