# MULTIPLE-UNIT HOUSING PROPERTY TAX EXEMPTION AGREEMENT BY AND BETWEEN THE CITY OF LYNNWOOD AND LYNNWOOD OWNER, LLC FOR THE LYNNWOOD 40th 

THIS AGREEMENT ("Agreement") is made and entered into this $\qquad$ day of $\qquad$ 2021, by and between the City of Lynnwood, a Washington municipal corporation, hereinafter the "City," and Lynnwood Owner, LLC, a LIMITED LIABILITY CORPORATION, hereinafter the "Developer."

## RECITALS

A. On March 14, 2005, the City Council adopted the City Center Sub-Area Plan (Ordinance 2553) and the City Center zoning and design guidelines (Ordinance 2554), and on July 10, 2006, the Council adopted Ordinance 2625 amending the Official Zoning Map.
B. The City has an interest in encouraging new construction or rehabilitation of multifamily housing in Residential Target Areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and to encourage development densities supportive of transit use.
C. On May 29, 2007, the City Council adopted Ordinance 2681 under the authority granted to it under Chapter 84.14 RCW designating the City Center Sub-Area as a Designated Residential Target Area and establishing the Multiple-Unit Housing Property Tax Exemption.
D. Ordinance 2681 enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Snohomish County Assessor that the owner is eligible to receive a limited property tax exemption.
E. On September 25, 2020, the Developer submitted for Project Design Review (the "PDR"), for a 359 unit multiple-unit building with structure parking development known as Lynnwood 40th ("Project") to be located at $1982040^{\text {TH }}$ AVENUE WEST in Lynnwood, Washington and consisting of existing Tax Parcel Number(s) 00372600701310(the "Property").
F. On October 27, 2020, the City determined the PDR application was technically complete.
G. On October 30, 2020 the City circulated the PDR for public comment in compliance with LMC 1.35 including opportunity for comment on the Project.
H. On DATE (PENDING) the City advertised a SEPA Determination of Non-Significance (DNS) and no appeals were received.
I. On October 27, 2020, the Developer submitted an application for the Multiple-Unit Housing Property Tax Exemption to the City for the Project.
J. On DATE (PENDING), the City approved the PDR application for the Project.
K. In order to satisfy requirements under LMC 3.82.080.A qualifying the Project for the Multiple-Unit Housing Property Tax Exemption ("MFTE"), the City and Developer desire to enter into this Multiple-Unit Housing Property Tax Exemption Agreement ("Agreement") for the Project.

## SECTION 1. GENERAL PROJECT DESCRIPTION

1.1 Parties to Development Agreement. The parties to this Agreement are:
a) The "City" is the City of Lynnwood, $1910044^{\text {th }}$ Ave West, Lynnwood Washington 98046.
b) The "Developer" is Lynnwood Owner, LLC, a LIMITED LIABILITY CORPORATION (or its assignees as permitted under Section 2.11 and Section 3.2 below) which is a private enterprise that owns or is under contract to purchase the Property in fee, and whose principal office is located at 1420 Fifth Avenue, Suite 2200, Seattle, WA 98101.
1.2 Site. The Property on which the Project will be located consists of approximately 108,112 square feet and is legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Property is located within the City Center-Core zone. There are no structures listed on the City of Lynnwood’s historic register located on the Property.
1.3 Existing Uses. The Project site contains a 1-story commercial structure. There are no residential units currently on the Project site.
1.4 Project. The PDR application received by the City on September 25, 2020 describes the Project as the development and use of the Property with 359 new multi-family residential units with approximately 233,866 square feet of residential unit area, 9,922 square feet of commercial area, 57,273 square feet of storage and common area, and 82,141 square feet of garage area containing $100 \%$ of the off-street parking for the Project. The Project is further illustrated in Exhibit B, attached hereto and incorporated by this reference.
1.4.1 Flexibility. The Project shall be allowed minor flexibility of up to a $5 \%$ increase of identified units and square footages identified in Section 1.4; however, the Project must substantially be of the same character as that approved in the PDR. The Development Business Services Director, or designee, shall have the authority to determine whether the Project will be substantially of the same character as the Project approved in the PDR, which decision shall be final. If a significant alteration of the PDR is required to accommodate public infrastructure projects, such an alteration may be approved by the Development \& Business Services Director, or designee, to accommodate public improvements. All other significant changes to the Project would require an amendment to the Agreement approved by City Council.
1.5 Project is a Private Undertaking. It is agreed among the parties that the Project is a private development, and that the City has no interest therein except as authorized in the exercise of its governmental functions.

## SECTION 2. MULTIPLE-UNIT HOUSING PROPERTY TAX EXEMPTION AGREEMENT

To carry out the language and intent of LMC 3.82, the parties agree as follows:
2.1 Application. The Developer submitted a complete Multiple-Unit Housing Property Tax Exemption application that satisfied the requirements of LMC 3.82.070, a copy of which is attached hereto as Exhibit C, on October 27, 2020, prior to application for building permit pursuant to LMC 3.82.070.
2.1.1 Housing Construction. The Developer agrees to construct on the Property at least 359 of new or additional multi-family residential housing units [Reviewer to verify eligibility per LMC 3.82.060.D(3)] for permanent residential occupancy, as defined in LMC 3.82.030(E), as part of PDR Application File No. PDR-0095322020 submitted September 25, 2020. The multiple-unit housing constructed as part of the Project must provide for a minimum of fifty percent of the space for permanent residential occupancy.
2.1.2 Building Design. Such housing shall be of high quality and finish materials appropriate to the design standards in the City Center Design Guidelines. The intention for the exterior design and materials is demonstrated by the Project approved in the PDR and the intention for the interior design and materials are demonstrated by the images in Exhibit B.
2.1.3 Construction Standards. The proposed multiple-unit housing units in the Project must be constructed to standards established for condominium construction or better as illustrated in Exhibit D.
2.1.4 Green Building. The Project shall be designed to the LEED ${ }^{\text {TM }}$ Silver Standard as established by the U.S. Green Building Council (USGBC) as demonstrated in Exhibit E.
2.2 MFTE Program. The Developer shall apply to the City for a Final Certificate of Tax Exemption prior to the three-year expiration of the Conditional Certificate, including any extension of the Conditional Certificate under Section 2.5 below.

For 12 successive years of exemption from ad valorem property taxation, beginning January $1^{\text {st }}$ of the year immediately following the calendar year after issuance of the Final Certificate of Tax Exemption, the Developer shall commit to renting or selling at least twenty percent ( $20 \%$ ) of the multifamily housing units as affordable housing to low-income and moderate income households, in accordance with RCW 84.14.020(1)(a). For purposes of this Agreement, the terms "affordable housing," "low income household" and "moderate income household" shall have the meanings stated in RCW 84.14.010, as now existing and as may be amended in the future.
2.3 Compliance with Codes. The Developer agrees to maintain the Property including all improvements in compliance with all applicable City codes and requirements. The Project must comply with all applicable provisions of the comprehensive plan, development regulations, building code, fire code, housing code, zoning code, and any development guidelines for the Residential Targeted Area. For the duration of the property tax exemption authorized under this Agreement, the Property shall have no violations of applicable city codes and ordinances, including but not limited to zoning requirements, land use regulations and building and housing requirements for which a notice of violation has been issued and is not resolved by compliance, withdrawal or other final resolution.
2.4 Conditional Certificate of Acceptance. The City agrees to issue the Developer a Conditional Certificate of Acceptance of Tax Exemption upon execution of this Agreement by both parties, in accordance with LMC 3.82.080.
2.5 Term of Conditional Certificate of Acceptance. The Developer agrees to complete construction of the Project within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption pursuant to LMC 3.82.080, or within any extension thereof granted by the City in its sole discretion, with any extension not to exceed 24 consecutive months. The Conditional Certificate of Acceptance shall expire three years after the date of its issuance, or upon the conclusion of any extension period. Upon the City's issuance of the Conditional Certificate of Acceptance, if requested by Developer, the City and Developer shall execute a voluntary covenant setting forth the restrictions on the Property set forth in the Conditional Certificate of Acceptance and the term of such restrictions on the Property, in such form as reasonably acceptable to Developer and the City (the "Covenant"). Developer may, as determined in Developer's sole discretion, record such Covenant with the recording office of Snohomish County at the cost and expense of Developer.
2.6 Final Certificate. For application for the Final Certificate, the Developer agrees, upon completion of the Project improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Community Development Director, or the Director's designee, the following:
2.6.1 A statement of expenditures made with respect to each multiple housing unit in the Project and the total expenditures made with respect to the entire Property;
2.6.2 A description of the completed Project work and a statement of qualification for the exemption;
2.6.3 A statement that the Project meets the affordable housing requirements; and
2.6.4 A statement that the Project work was completed within the required three-year period or any authorized extension. Within 30 days of receipt of all materials required for the Final Certificate, the Community Development Director, or designee, shall determine whether the Project improvements satisfy the requirements of LMC 3.82.
2.7 Filing of Final Certificate of Tax Exemption. The City agrees, conditioned on the Developer's successful completion of the Project improvements in accordance with the terms of this Agreement and LMC 3.82, and on the Developer's filing of the materials described in Section 2.6 above, to file a Final Certificate of Tax Exemption with the Snohomish County Assessor within 10 days following the expiration of the 30-day period specified in LMC 3.82.090(D).
2.8 Annual Reporting. The Developer agrees, within 30 days following the first anniversary of the City's filing of the Final Certificate of Tax Exemption and each year thereafter for the period of the tax exemption, to file a notarized declaration with the Development Business Services Director, or designee, as required by the Washington State Department of Commerce indicating, but not limited to, the following subsections. The City may require the Developer to provide the identified information on specific forms for reporting.
2.8.1 A statement identifying the total number of occupied and vacant multi-family housing units in the Project receiving a property tax exemption during the previous year; and
2.8.2 A description of any improvements or changes to the Property constructed after the issuance of the Final Certificate of Tax Exemption; and
2.8.3 The total monthly rent for each unit; and
2.8.4 A certification that the Property continues to be in compliance with this Agreement, has not changed use, and is in compliance with the affordable housing requirements of Chapter 84.14 RCW for a twelve year tax exemption; and
2.8.5 Documentation of the income of each renter household at the time of initial occupancy; and
2.8.6 Documentation showing that at least twenty percent of the units were and are being rented as affordable housing units to low and moderate income households as defined in RCW 84.14.010 and in compliance with RCW 84.14.020; and
2.8.7 Any additional information requested by the City relating to the Property receiving or the continued qualification for the tax exemption under this Agreement.

The Development \& Business Services Director, or designee, may conduct on-site verification of the declaration and the City is authorized to enter the Property for purposes of the verification. Failure to submit the annual declaration may result in the tax exemption being canceled.
2.9 Maintenance of Records. The Developer agrees to maintain records supporting all information provided to the City and to make those records and the multi-family units available for inspection by the City for the duration of the tax exemption authorized by this Agreement and for three years after the expiration, cancellation or other termination of the tax exemption.
2.10 Conversion of Units. If the Developer converts to another use any of the new residential housing units constructed under this Agreement or if the Developer discontinues compliance with the affordable housing requirements, the Developer shall notify the City's Development \& Business Services Director and the Snohomish County Assessor within 60 days of the change in use or discontinuance. (See also Section 2.13 Cancellation of Multiple-Unit Housing Property Tax Exemption below.)
2.11 Transfer of Ownership. The Developer agrees to notify the City promptly of any transfer of Developer's ownership interest in the Property or in the improvements made to the Property under this Agreement.
2.12 Tax Liability. The Developer acknowledges its awareness of the potential tax liability involved if and when the Property ceases to be eligible for the incentive provided pursuant to this Agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. Developer further acknowledges its awareness and understanding of the process implemented by the Snohomish County Assessor's Office for the appraisal and assessment of property taxes. Developer agrees that
the City is not responsible for the property value assessment imposed by Snohomish County.
2.13 Cancellation of Multiple-Unit Housing Property Tax Exemption. If at any time the City’s Development \& Business Services Director determines that the Developer has not complied with or that the Property no longer complies with the terms of this Agreement or with the requirements of LMC 3.82, or for any reason no longer qualifies for the tax exemption authorized in this Agreement, the tax exemption shall be canceled and additional taxes, interest and penalties shall be imposed pursuant to state law. This cancellation may occur in conjunction with the annual review or at any other time when noncompliance has been determined. If the Developer intends to convert the multipleunit housing to another use or to discontinue compliance with the affordable housing requirements, the Developer shall notify the Development \& Business Services Director and the Snohomish County Assessor within 60 days of the change in use or intended discontinuance. Upon such change in use, the tax exemption shall be canceled and additional taxes, interest and penalties shall be imposed pursuant to state law.
2.14 Effect of Cancellation. If a tax exemption is canceled due to a change in use or other noncompliance, the Snohomish County Assessor shall comply with applicable state law to impose additional taxes, interest and penalties on the Property, and a priority lien may be placed on the land, pursuant to state law.
2.15 Notice and Appeal. Upon determining that a tax exemption is to be canceled, the Development \& Business Services Director, or designee, shall notify the Developer by certified mail, return receipt requested. The Developer may appeal the determination to cancel the tax exemption in accordance with the provisions of LMC 3.82.120B.

## SECTION 3. MISCELLANEOUS

3.1 Covenant Running with the Land/Recording. This Agreement and each of its provisions shall be a covenant running with the Property, and shall be binding on and inure to the benefit of the parties. This Agreement shall be recorded by City with the recording office of Snohomish County at the cost and expense of Developer. The exhibits attached to this Agreement shall be maintained by the City in in Planning File PR-000652-2020.
3.2 Assignment. The City acknowledges that Developer may assign this Agreement, without the prior written consent of the City but upon written notice to the City, to Lynnwood Owner, LLC, a LIMITED LIABILITY CORPORATION (the "Owner") immediately prior to the acquisition of the Property, and thereafter, Owner shall assume all obligations of "Developer" under this Agreement and any reference to "Developer" under this Agreement shall mean the Owner. Any other such transfer of this Agreement or conveyance of Developer's (or Owner's) interest in the Property shall be governed by Section 2.11 of this Agreement.
3.3 Indemnity. The Developer agrees to defend, hold harmless, and indemnify the City, and its officers, officials, employees, agents, and consultants from and against any claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys’
fees and costs incurred by the City for liability resulting from any breach of or failure to comply with the duties set forth in this Agreement, except to the extent the claims, demands, penalties, fees, liens, damages, losses, or expenses are caused by the City. This indemnity provision shall survive expiration of this Agreement.
3.4 Written Notice. Except as otherwise provided herein, any and all notices provided under this Agreement must be in writing and shall be deemed given when delivered in person, or when deposited with Federal Express or other similar overnight service, return receipt requested, or when deposited in the United States mail, postage prepaid for certified mail, return receipt requested, properly addressed to City and the Developer as follows:

## CITY:

City of Lynnwood
Director, Development \& Business Services
By Mail:

In Person: $2081644^{\text {th }}$ Ave. W, Suite 230
Lynnwood, WA 98036
By Fax: 425.771.6585

DEVELOPER:
Lynnwood Owner, LLC
Attn: Trent Mummery
By Mail: C/O Trent Development
1420 Fifth Avenue, Suite 2200
Seattle, WA 98101
By Fax: N/A
Any party may designate a different address for receiving notices hereunder by giving at least ten (10) days written notice thereof to the other parties.
3.5 Time of Essence. Time is expressly declared to be of the essence of this Agreement.
3.6 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue of any suit arising out of or related to this Agreement shall be in Snohomish County, Washington.
3.7 Counterparts and Digital Transmission. This Agreement may be executed in counterparts, all of which together shall be deemed to be one original, even if the parties have not executed the same original. Digital transmission of any signed original document, and retransmission of any signed digital transmission, shall be the same as delivery of an original. At the request of either party, the parties will confirm digital transmitted signatures by signing or original document.
3.8 Effective Date. This Agreement shall be effective on the date first written above.
3.9 Attorneys' Fees. The prevailing party in any lawsuit or proceeding between the parties arising out of this Agreement shall be entitled to receive from the non-prevailing party all
reasonable costs and expenses of every type, including, but not limited to, mediation fees and actual attorneys' fees incurred, whether incurred in arbitration, trial, appeal or any bankruptcy or receivership proceeding.
3.10 Conflicts and Severability. Developer agrees that this Agreement is subject to the requirements for the Lynnwood Multi-Family Housing Tax Exemption set forth in the Lynnwood Municipal Code, Chapter 3.82. To the extent that any provision of this Agreement conflicts with any applicable ordinance, law, or regulation, (1) the provisions of the ordinance, law or regulation shall control; and (2) such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause, and to this end, the terms of the Agreement are declared to be severable.
3.11 Amendments. No amendment to or modification of this Agreement shall be made unless mutually agreed upon by the parties in writing.
[SIGNATURE PAGE FOLLOWS]

## CITY:

CITY OF LYNNWOOD
A Washington Municipal Corporation

By: $\qquad$
Nicola Smith, Mayor

Approved as to form:

By:
Rosemary Larson, City Attorney

DEVELOPER:

LYNNWOOD OWNER, LLC, a LIMITED LIABILITY CORPORATION

By:
Name: TRENT MUMMERY
Its: AUTHORIZED AGENT
[ACKNOWLEDGEMENT PAGES FOLLOW]

STATE OF WASHINGTON)

COUNTY OF $\qquad$ _)

On this day, personally appeared before me $\qquad$ the Mayor of the City of Lynnwood, Washington and stated that she is authorized to sign this instrument on behalf of said company for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN TO before me this $\qquad$ day of $\qquad$ 2021.

## NOTARY

## Print Name

My Commission expires: $\qquad$

## STATE OF WASHINGTON)

COUNTY OF $\qquad$ _)

On this day, personally appeared before me Trent Mummery, the authorized agent of Lynnwood Owner, LLC, a Limited Liability Corporation and stated that he is authorized to sign this instrument on behalf of said company for the uses and purposes therein mentioned.

SUBSCRIBED AND SORN TO before me this $\qquad$ day of $\qquad$ , 2021.

## NOTARY

Print Name
My Commission expires: $\qquad$

EXHIBIT A
[Site Legal Description and Vicinity Map]
THAT PORTION OF LOTS 13 AND 14, BLOCK 7, ALDERWOOD MANOR, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 71, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF 198TH STREET S W AND 40TH AVENUE WEST, AS SAID CORNER IS ESTABLISHED BY DEEDS TO CITY OF LYNNWOOD RECORDED UNDER RECORDING NUMBERS 2090925, 2175786 AND 2175788; THENCE NORTH $89^{\circ} 2^{\prime} 00^{\prime \prime}$ WEST ALONG THE SOUTH LINE OF 198TH STREET 308.99 FEET TO THE WEST LINE OF SAID LOT 14; THENCE SOUTH 0101'20" WEST ALONG SAID WEST LINE 350 FEET TO THE SOUTHWEST CORNER OF SAID LOT 14; THENCE SOUTH 89º $0{ }^{\prime}$ '00' EAST 308.85 FEET TO THE WEST LINE OF 40TH AVENUE; THENCE NORTH 0102'45" EAST ALONG SAID WEST LINE 350 FEET TO THE POINT OF BEGINNING; SITUATE IN THE CITY OF LYNNWOOD, COUNTY OF SNOHOMISH, STATE OF WASHINGTON


## EXHIBIT B

[Site Plan, Elevations, Floor Plans, and Renderings]




## general notes








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