

When Recorded Return to:  
 McCullough Hill Leary, P.S.  
 701 Fifth Avenue, Suite 6600  
 Seattle, WA 98104  
 Attn: Ian S. Morrison



202001130480 56 PGS  
 01/13/2020 3:36pm \$158.50  
 SNOHOMISH COUNTY, WASHINGTON

CHICAGO TITLE INSURANCE COMPANY HAS PLACED  
 THIS DOCUMENT OF RECORD AS A CUSTOMER  
 COURTESY AND ACCEPTS NO LIABILITY FOR THE  
 ACCURACY OR VALIDITY OF THE DOCUMENT.

500095304

Document Title:	Development Agreement	50/162.50
Grantor:	MGP XI Lynnwood, LLC, a Delaware limited liability company	
Grantee:	City of Lynnwood	
Legal description (abbreviated):	Portions of Lots 1, 2 and 3, Block 6, Alderwood Manor, Vol. 9, Pg. 71, Snohomish County  See <u>Exhibit A</u> for additional legal description	
Assessor's Tax Parcel Numbers:	00372600600106	
Reference number(s) of document(s) modified, assigned or released (if applicable):	N/A	

1 **DEVELOPMENT AGREEMENT**

2 THIS AGREEMENT is entered into this 21<sup>st</sup> day of December, 2019  
3 (the "Effective Date") by and between MGP XI Lynnwood, LLC, a Delaware limited  
4 liability company ("Owner"), or its assignee, and the City of Lynnwood, a Washington  
5 municipal corporation ("City"). Owner and the City are each a "Party" and collectively  
6 the "Parties" to this Agreement.

7 **RECITALS**

8 A. The Washington State Legislature has authorized the execution of  
9 development agreements between a local government and an entity having ownership or  
10 control of real property within its jurisdiction, pursuant to RCW 36.70B.170 through  
11 36.70B.210 ("Development Agreement Statute"). This Agreement is authorized pursuant  
12 to the Development Agreement Statute and Lynnwood Municipal Code ("LMC") Chapter  
13 21.29, as established by Ordinance 3340.

14 B. Owner owns approximately 18 acres of real property in the City, located  
15 generally at 19800 44<sup>th</sup> Avenue West ("Property"), legally described on Exhibit A and  
16 depicted on Exhibit B, both of which are attached hereto and incorporated herein by  
17 reference. The Property is located within the City's City Center Subarea ("City Center")  
18 as adopted by Ordinance 2553 on March 14, 2005. The City's Future Land Use Map  
19 designated the Property as "City Center" and the Property is classified as "City Center -  
20 West" on the Official Zoning Map dated August 14, 2017 per Ordinance 3270.

21 C. In 2004, the City prepared draft and supplemental environmental impact  
22 statements for the City Center Subarea ("FSEIS") that envisioned a development threshold  
23 of 9.1 million square feet of development within City Center. On May 24, 2011, City  
24 prepared an addendum to the FSEIS that evaluated updated storm drainage, greenhouse  
25 gas emissions, transportation and utilities (e.g., water, sewer and storm) information, but  
26 did not change the analysis or mitigation measures identified in the FSEIS ("Addendum"  
27 and collectively with FSEIS, "City Center EIS").

28 D. In May 2012, the City adopted the City Center Planned Action with  
29 Ordinance No. 2943 ("Planned Action") to provide for a streamlined entitlement review of  
30 development projects within City Center that are consistent with the Planned Action and  
31 the environmental impacts evaluated and mitigation measures identified within the  
32 geographic and density level scope of the City Center EIS.

33 E. Owner is planning the redevelopment of the Property consistent with the  
34 Planned Action with a mix of land uses. The redevelopment plan provides for parks and  
35 open space, multifamily housing units, office, retail, market/grocery, entertainment, and  
36 restaurant uses, among other potential uses subject to market demand and phasing  
37 ("Project").

38 F. Owner has prepared a conceptual plan entitled the "Conceptual Guide Plan"  
39 dated as revised November 13, 2019 and filed under City File ERC 007709-2019 to  
40 provide for the coordinated redevelopment of the Property over time ("Conceptual Guide  
41 Plan") as depicted in Exhibit C, which is attached hereto and incorporated herein by  
42 reference.

43 G. Environmental impacts of the Project as proposed by the Conceptual Guide  
44 Plan were identified, considered and mitigation measures proposed through the City Center  
45 EIS, the Planned Action and the Planned Action Determination for the Project issued on  
46 March 13, 2019.

47 H. Completion of the Project in accordance with the Conceptual Guide Plan  
48 will promote the goals and policies of the Comprehensive Plan.

49 I. Completion of the Project in accordance to the Conceptual Guide Plan will  
50 promote the goals and policies of the Lynnwood City Center Parks Master Plan and City  
51 Center Parks Master Plan Update adopted on October 8, 2018.

52 J. By this Agreement, the Parties intend to set forth their mutual agreement  
53 and understandings as they relate to the development of the Property and the Project.

54 NOW THEREFORE, in consideration of the mutual benefits and agreements  
55 contained herein, as well as other valuable consideration, the receipt and sufficiency of  
56 which are hereby acknowledged, the Parties agree as follows:

57 AGREEMENT

58 1. Definitions.

59 1.1. "City Council" means the City Council of the City of Lynnwood.

60 1.2. "Development Regulations" means those sections of the Lynnwood  
61 Municipal Code, Lynnwood Zoning Code, Lynnwood Comprehensive  
62 Plan, Lynnwood Zoning Map, City Center Design Guidelines, and any  
63 implementing policies, regulations, procedures or guidelines addressing the  
64 zoning, building and site design, utilities, stormwater, transportation  
65 concurrency, environmental review (including SEPA procedures and  
66 substantive authority), transportation concurrency, multiple-unit housing  
67 property tax regulations, and any other elements that govern the  
68 development of real property within the City. A term defined in the  
69 Development Regulations shall have the meaning assigned to it within the  
70 Development Regulations.

71 1.3. "Enhanced" means design elements that exceed the minimum  
72 requirements of the Development Regulations. This term does not allow  
73 items identified or required by the Development Regulations and

74 Supplemental Site Design Guidelines as defined in Exhibit F to be replaced  
75 with design elements that do not exceed the minimum requirements.

76  
77 1.4. "LMC" means the Lynnwood Municipal Code.

78 1.5. "MFTE" shall mean the Multiple-Unit Housing Property Tax  
79 Exemption program administered by the City pursuant to LMC Ch. 3.82.

80 1.6. "Owner" means MGP XI Lynnwood, LLC, a Delaware limited  
81 liability company, and its successors and permitted assigns pursuant to  
82 Section 24.

83 1.7. "PDR" means the Project Design Review process of the City as  
84 administered by the Community Development Director under LMC Ch.  
85 21.24.

86 1.8. "SEPA" means the State Environmental Policy Act, RCW 43.21C,  
87 and implementing regulations at WAC Ch.197-11.

88 1.9. Each term defined within the Agreement shall have the meaning  
89 assigned to it within the Agreement.

90 2. Project. Owner shall have the right to develop the Property with up to:

91 (a) 1,370 multifamily residential units, which may be apartment, townhouse  
92 or condominium uses as determined in the Owners' sole discretion;

93 (b) 207,000 sf. of retail uses (including but not limited to grocery, retail,  
94 drug store and restaurant uses, or other retail uses permitted by LMC);

95 (c) 522,000 sf. of office use (including but not limited to 60,000 sf. of  
96 medical office use or other office uses permitted by LMC);

97 (d) 50,500 sf. of entertainment use (or other entertainment uses permitted  
98 by LMC); and

99 (e) Parking for residential and non-residential uses listed above as required  
100 by the LMC.

101 (collectively, the "Allowable Development Capacity").

102 The Project also includes:

103 (f) Parks and public space improvements as provided in Section 9;

104 (g) Transportation improvements as provided in Section 7; and

105

(h) Utilities improvements as provided in Sections 13-15.

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

2.1. FAR Calculations. The Property, exclusive of public right of way, comprises of 786,503 square feet of land area, as depicted in Exhibit B and Exhibit C at page 42 (individual pages within Exhibit C are herein after referred to as Exhibit C-page ## for clarity), exclusive of outparcels that are not currently owned by Owner, attached herein and incorporated by reference. As provided in LMC 21.60.400.D, the maximum allowed development on the Property is expressed in terms of the ratio of floor area ("FAR") to the total gross land area. Allowed FAR for the Project shall thus be calculated for all purposes using 786,503 square feet of land area as the total gross land area. Based on the allowed FAR and Allowable Development Capacity, the Project FAR is shown in Exhibit I ("FAR Summary Table"), attached herein and incorporated by reference. Future dedications of land by Owner for public use or improvements shall not reduce the land area used for calculating FAR or the development rights provided by this Agreement or the LMC. Owner anticipates the potential future acquisitions of the outparcels as shown on Exhibit C-42. In the event that Owner acquires one or more of the outparcels, the Agreement and all entitlement rights therein shall be adjusted to reflect the allowed FAR in accordance with Section 2.4 of this Agreement.

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

2.2. Flexibility. As a component of this Agreement, the City Council has approved the Conceptual Guide Plan. The Project, as shown in the Conceptual Guide Plan, is intended to be an overall master development approval and is considered a conceptual guide by which development of the Project should conform. Depictions of building footprints, land use densities, locations, bulk and scale, height or other design features shown in the Conceptual Guide Plan are illustrative only, except that Owner shall provide street level uses along 198<sup>th</sup> Street Southwest and 45<sup>th</sup> Avenue West as shown generally at Exhibit C-17-22. Approved uses in the Conceptual Guide Plan may be transferred and located anywhere on site and the densities of uses may be modified, including increasing or decreasing the square footage of land uses allowed, so long as the resulting proposal generates the same or lesser trips as the Allowable Development Capacity as shown on the transportation analysis accompanying the Conceptual Guide Plan and remains within the City Center EIS and Planned Action envelope and consistent with the Vested Code Provisions (as defined herein), as provided below.

142

143

(a) Owner Modifications. The Owner shall, in its sole discretion, have the right to transfer the square footage of land as follows:

144

i. Non-residential uses to non-residential uses; or

145  
146  
147  
148  
149

ii. Non-residential uses to residential uses at a conversion rate of 1,200 sf. (as identified in the City Center EIS) of non-residential use per each additional residential unit up to a maximum of 10 percent of permitted residential uses.

150  
151  
152

In no event shall more than 136 additional residential units be permitted under this subsection. No additional City action is needed for modifications under this subsection.

153  
154  
155  
156  
157  
158  
159

(b) Administrative Modifications. The Owner may request transfer of non-residential uses for residential use at a conversion rate of 1,200 sf. of non-residential use per each additional residential unit of between 10 and 20 percent of the permitted residential use. The City may administratively approve the modification upon the review and approval of the Community Development Director, Parks Director, and Public Works Director so long as the modification:

160  
161

i. Does not result in a reduction in the parks and public space provided by the Project; and

162  
163  
164

ii. Is consistent with the City Center EIS and Planned Action as of the Effective Date of this Agreement, except as provided in Section 3.3.

165  
166

In no event shall more than 274 additional residential units be permitted under this subsection.

167  
168  
169  
170

(c) Council Modifications. Any request for transfer of non-residential uses to residential uses that do not qualify for modification under Sections 2.2(a)-(b) shall be governed by Section 3.4.

171  
172  
173  
174  
175  
176

2.3. Phasing. Owner may, at its sole discretion, elect to phase the Project in one or more Project-phases. The required transportation, park and public space and utility improvements shall be developed consistent with the corresponding Project-phase as provided in Exhibit D ("Phased Onsite and Offsite Improvements Plan"), and herein incorporated by reference, unless modified pursuant to Section 3.4.

177  
178  
179  
180  
181  
182

(a) Subdivision or Binding Site Plan. The Parties agree that a Subdivision or Binding Site Plan is necessary for the development of the Project. Owner acknowledges that any Subdivision (either full or short, as allowed by applicable laws) or Binding Site Plan for the Project shall be required to comply with the applicable Development Regulations and review procedures. The size

183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195

configuration and number of legal lots or development parcels within the Property may be modified if approved by the City without amendment of the Conceptual Guide Plan through boundary line adjustments, lot consolidations, binding site plans, short plats, subdivisions or creation of condominiums. Any future land division or consolidation shall not impact the ultimate size of the Parks and Public Space Improvements, Transportation Improvements, or other required public benefits or improvements, unless permitted as an amendment to this Agreement and the City obtains similar public benefit or infrastructure. The Property shall be deemed "classified for commercial use" as this term is used in RCW 58.17.040(4) for the purpose of legally dividing the property through administrative approval of one or more binding site plans.

196  
197  
198  
199  
200  
201  
202

2.4. Additional Parcels. During the Term of Agreement, Owner may acquire additional parcels adjacent to the Property ("Adjacent Parcels") as shown on Exhibit C-42. In the event Owner acquires Adjacent Parcels, the allowed FAR shall be adjusted to include the lot area of the Adjacent Parcels and the Allowable Development Capacity shall be adjusted accordingly. Any application for a Project or Project-phase shall be reviewed consistent with Section 4.

203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222

2.5. Allowable Development Capacity Adjustments. The City and Owner recognize the possibility that the commencement of operation of Sound Transit light rail service to the Lynnwood City Center Station may result in reduced vehicular traffic and/or mode shifts that would support further increases in transit-oriented development density. At any time after the commencement of Sound Transit light rail service to the City, the Owner may request a modification in the Allowable Development Capacity. In support of such request, Owner shall provide the City with information supporting the adjustment request including: (1) transportation impact analysis demonstrating increased transit and multi-modal ridership and a decrease in vehicular usage; (2) compliance with the Planned Action and intent of the City Center Plan; and (3) other relevant factors as may be reasonably requested by the City. Based on the foregoing criteria, the City may administratively and upon review and approval of the Community Development Director and Public Works Director approve an increase in the Allowable Development Capacity of no more than 10 percent. If approved, the Allowable Development Capacity shall be amended accordingly; however, all other provisions of the Agreement remain in full effect. Adjustments of more than 10 percent of the Allowable Development Capacity shall be governed pursuant to Section 3.4.

223  
224

3. Vesting. Except as provided in Sections 3.1 and 3.2, Owner shall be entitled to develop the Project under the Development Regulations and land use controls in effect.

225 as of the Effective Date of this Agreement (“Vested Code Provisions”), which shall apply  
226 for the Term of this Agreement as provided in Section 18.

227 3.1. Exemptions. The following are exempt from vesting under this  
228 Agreement:

229 (a) Plan review fees, inspection fees, and other land use application  
230 fees;

231 (b) Connection charges, general facilities charges and monthly  
232 service charges;

233 (c) Amendments to building, plumbing, fire and other construction  
234 codes adopted pursuant to RCW Ch. 19.27 or 19.27A;

235 (d) Impact fees authorized by state law, except that calculation of  
236 impact fees methodologies shall be governed by the Development  
237 Regulations;

238 (e) City enactments that are adopted pursuant to state or federal  
239 mandates (such as the City’s NPDES Municipal Stormwater  
240 Permits) that preempt the City’s authority to vest regulations;

241 (f) City enactments that amend the nomenclature or noticing  
242 requirements for the applicable entitlement review processes; and

243 (g) City enactments regarding MFTE that are adopted pursuant to a  
244 state repeal, amendment or modification of RCW Ch. 84.14 or other  
245 applicable state law terminating the City’s authority to implement  
246 an MFTE program.

247 3.2. Reserved Rights. Notwithstanding any provision in this Agreement,  
248 the City reserves authority pursuant to RCW 36.70B.170(4) to  
249 impose new or different Development Regulations to the extent  
250 required by a serious threat to public health or safety, as determined  
251 by the City Council after written notice and an opportunity to be  
252 heard by Owner.

253 3.3. Future Code Amendments. Owner may at its option, develop the  
254 Property or Project-phases thereof in accordance with new Code  
255 provisions, Development Regulations and other regulations,  
256 policies, or guidelines hereinafter adopted by the City after the  
257 Effective Date, including but not limited to future SEPA and/or  
258 Planned Action amendments for City Center, without obligation to  
259 bring other portions of the Property into conformance with newly-  
260 adopted Code provisions, Development Regulations and other



261  
262

regulations. Application of any future Code amendments under this provision shall be on a Project-phase basis.

263  
264  
265  
266

3.4. Future Agreement Amendments. Owner may request amendments to this Agreement. This Agreement may be amended administratively by the Community Development Director if the request does not result in:

267  
268

(a) Increase in the Allowable Development Capacity, except as authorized in Sections 2.5 or 6.1;

269

(b) A use not authorized by the Development Regulations;

270  
271

(c) Reduction in the parks and public space provided in the Project pursuant to Section 9; or

272  
273

(d) Increased trip generation above the Trip Cap, based on the methodology provided in Section 6.1.

274  
275  
276

The Community Development Director's decision on an administrative amendment to the Agreement is final and is not subject to administrative appeal.

277  
278  
279  
280  
281  
282  
283  
284

3.4.1. Amendment Procedures. Any amendment of terms under this Agreement that is not eligible for administrative approval shall require either: (1) an amendment to the Agreement that shall be processed pursuant to LMC Ch. 21.29, including but not limited to a public hearing before the City Council, but shall not require all the elements of LMC Ch. 21.29 if those elements remain unchanged in the Agreement being amended; or (2) as an application for a new development agreement pursuant to the Code.

285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296

3.5. Future Phased Onsite and Offsite Improvements Plan Modifications. Owner may request modifications in the Phased Onsite and Offsite Improvements Plan, as provided in Exhibit D. The Phased Onsite and Offsite Improvements Plan may be administratively approved by the Community Development Director after consultation with the Public Works Director and Parks Director, as appropriate, so long as the proposed modification results in an equal or better level of Transportation Improvements and/or Parks and Public Space Improvements benefit(s) to the lot(s) subject to modification, including any temporary, interim, or phased condition that shall facilitate the development of the Project and fire and life/safety access is provided with said modification.

297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
  
309  
310  
  
311  
  
312  
313  
  
314  
315  
316  
  
317  
  
318  
  
319  
  
320  
321  
322  
323  
324  
  
325  
326  
327  
328  
329  
330  
331  
332  
333

3.6. Reporting. The Parties acknowledge a shared goal of the prompt redevelopment of the Property. However, the Parties recognize that neither Party is prescient enough to anticipate all of the economic, market, construction, leasing and other factors that influence the real estate development process. Accordingly, the Parties acknowledge that the Project or Project-specific phases will proceed in the Owner's sole discretion. In order to facilitate clear communication regarding the Project's status and the potential timeline for Project or Project-phases, Owner shall no less than annually on or before the anniversary of the Effective Date of the Agreement provide a report to the City that includes, but is not limited to, the following material:

- (a) Status of any Project-related construction completed since the prior report or in-progress at time of the report;
  - (b) Status of any Project Entitlement Applications;
  - (c) Status of any Capacity Reservation Certificates that are pending applications, issued, and/or extinguished;
  - (d) Owner's evaluation of any relevant conditions, including but not limited to economic, regulatory or otherwise, that may impact the current or future Project or any Project-phases;
  - (e) Owner's marketing efforts for the Project; and
  - (f) Any other factor the Owner deems relevant for the report.
- (collectively, the "Annual Project Report").

The Annual Project Report shall be provided pursuant to Section 28. Nothing in this Section shall obligate Owner to disclose proprietary or confidential information regarding the Project's financial status or current or potential tenants or partners as a component of the Annual Project Report.

The City has the right, but not the obligation, to provide comments on the Annual Project Report. If either Party wishes to confer regarding the Annual Project Report, the Party shall request a meeting pursuant to Section 28 and the Parties shall meet, in good faith, within fourteen (14) days after a Party's request or some other mutually agreed upon timeframe for such a meeting to discuss relevant comments or concerns. Nothing in this Section precludes the City Council or City staff from requesting information regarding the Project consistent with the LMC.

334 4. Project Review. Owner shall be responsible to apply for PDR and associated  
335 permits, including but not limited to applications for planning and zoning permits, clearing  
336 and grading permits, tree permits, building permits and other such permits and approvals  
337 required under the LMC and necessary to authorize development of the Project or each  
338 respective Project-phase (“Project Entitlement Application”). Each Project Entitlement  
339 Application must demonstrate consistency with the Development Regulations and this  
340 Agreement, including any Design Departures and Transportation Departures as provided  
341 herein. The City will review the Project Entitlement Application as provided by the LMC;  
342 however, the Parties may agree to expedited review procedures for a Project Entitlement  
343 Application subject to Owner’s commitment to pay for expedited permitting review.

344 4.1. Design Departures. Pursuant to RCW 36.70B.170 *et. seq.* and LMC  
345 21.29.200.B, the City has approved the modifications to the Vested Code  
346 Provisions specified in this section. Any Project Entitlement Application  
347 shall be reviewed against the modifications. All other Vested Code  
348 Provisions shall still apply.

349 (a) Use Limitations. LMC 21.60.350.B is modified as follows:

350 For buildings that directly front the Promenade Street, except 44<sup>th</sup>  
351 Avenue West, no less than 40 percent of the lineal frontage of any  
352 building shall be occupied by a permitted, nonresidential use. For  
353 Project-phases adjacent to 44<sup>th</sup> Avenue West, the lineal frontage of  
354 any building may include up to 100 percent blank façade if the  
355 structure includes the following:

356 (i) Enhanced landscaping, including but not limited to  
357 green walls, living walls or other similar treatments shown  
358 in Exhibit C-57;

359 (ii) Architectural features, including but not limited to  
360 screening or other similar treatments as shown in Exhibit C-  
361 57;

362 (iii) Project shall not include any of the design or  
363 landscaping techniques as shown in Exhibit C-58;

364 (iv) Project shall not include any “faux” occupiable  
365 spaces;

366 (v) Structured parking shall not be for principal use as  
367 parking and shall be accessory to a principal residential,  
368 office, retail and/or entertainment use; and

369 (vi) A minimum of 15 percent of the occupiable ground  
370 floor space along 44<sup>th</sup> Avenue West, except if Owner shall

371 redevelop the existing Shell Station, the Owner shall provide  
372 a minimum of at least 60 feet of occupiable frontage.

373 Upon submission of a Project Entitlement Application, Owner and  
374 City shall develop the final design that supports the following  
375 standards and supports a high-quality interaction between the  
376 building and the streetscape. A “high quality interaction” shall  
377 mean meeting the intent of the inspiration facades as shown on  
378 Exhibit C-57.

379 (b) Height. LMC 21.60.400A.1.a is modified as follows:

380 Exception. A single-story building shall be permitted adjacent to,  
381 including on Lot C as shown in Exhibit D, or within a park as  
382 identified by the City Center Parks Master Plan. On Lot C as shown  
383 in Exhibit D, any single-story building shall be consistent with the  
384 design guidelines of Exhibit C-56.

385 4.2. Transportation Departures. The City agrees to consider Owner’s  
386 departure requests to allow for the ability to: (1) install up to two (2)  
387 expanded entry driveways up to 50 feet as may be required for commercial  
388 loading vehicle and residential and non-residential parking access; (2)  
389 authorize turning radii of 45 feet for at-grade roadway entrances; (3) add a  
390 third lane for left turning movements out of the site on 198<sup>th</sup> Street  
391 Southwest to northbound 44<sup>th</sup> Avenue West when a new signal is installed  
392 to maintain safety and traffic circulation; (4) authorize lane widths of 13  
393 feet rather than 10 feet to allow for adequate loading and truck turning  
394 movements while maintaining pedestrian safety; (5) allow for double sided  
395 angled parking to enhance retail viability along 45<sup>th</sup> Avenue West; and (6)  
396 any other such departures from City right-of-way standards and guidelines  
397 (“Transportation Departures”), as shown in Exhibit C-37. So long as the  
398 request is consistent with the Conceptual Guide Plan, the City shall review  
399 and may approve any Transportation Departures with the Project  
400 Entitlement Application.

401 5. SEPA Compliance. City has adopted the Planned Action pursuant to the  
402 City Center EIS. The Project is within the scope of the maximum anticipated level of  
403 development in the Planned Action and within the scope of environmental mitigations  
404 identified and conditioned to mitigate that anticipated maximum level of development. The  
405 Parties agree that the environmental impacts stemming from the Project and Conceptual  
406 Guide Plan, including the potential development of the Additional Parcels, have been  
407 analyzed by the Planned Action and City Center EIS. Except as provided in Section 5.2,  
408 individual projects implementing the Conceptual Guide Plan and this Agreement shall be  
409 considered to have been reviewed pursuant to SEPA and no individual SEPA determination  
410 for a Project or Project-phase shall be required, nor shall additional conditions be imposed  
411 under the City’s SEPA authority. SEPA compliance for any Project or Project-phase shall

412 be limited to the submittal of a Planned Action SEPA process checklist per LMC  
413 17.02.300.

414 5.1. SEPA Mitigation. Mitigation specified in the Planned Action and  
415 City Center EIS serve to adequately address the environmental impacts of  
416 the Project. Consistent with this Agreement, no additional SEPA mitigation  
417 shall be imposed for any Project or Project-phase.

418 5.2. Additional SEPA Review. Any application for development that  
419 exceeds the Allowable Development Capacity, including any modifications  
420 as provided in Section 2.5, may, in the City's SEPA Responsible Officials'  
421 discretion, require additional SEPA review consistent with the Vested Code  
422 Provisions.

423 6. Transportation Concurrency. The City's transportation concurrency  
424 ordinance was adopted in accordance with a requirement of the Growth Management Act  
425 ("GMA") (RCW 36.70A.060(6)(b)). The GMA requires the City to determine that  
426 transportation facility improvements or strategies will be in place concurrently with land  
427 development. "Concurrent with the development" is defined by the GMA to mean that any  
428 necessary "improvements or strategies are in place at the time of development or that a  
429 financial commitment is in place to complete the improvements or strategies within six  
430 years." Pursuant to LMC Ch. 12.22, the City has determined that the Allowable  
431 Development Capacity meets the City's standards for transportation concurrency and  
432 mitigates any significant adverse impacts to the City's transportation system as provided  
433 in Table 1 ("Phased Concurrency Capacity Allocation Schedule") that establishes  
434 concurrency for the Project over three phases ("Concurrency Phases"); provided that the  
435 Project is developed in compliance with the terms of this Agreement, including any  
436 requirement that Owner pay transportation impact fees as required. The City agrees that  
437 no further concurrency review and/or mitigation of transportation impacts are required for  
438 the Concurrency Phases.

<u>Concurrency Phase</u>	<u>Phase One</u> <u>(Years 1-5)</u>	<u>Phase Two</u> <u>(Years 6-10)</u>	<u>Phase Three</u> <u>(Years 11-25)</u>
<u>Available Capacity</u> <u>Reservation (Trips)</u>	<u>575</u>	<u>350</u>	<u>155</u>
<u>Cumulative</u> <u>Concurrency Authorized</u>	<u>575</u>	<u>925</u>	<u>1080</u>

439

440 Within thirty (30) days of the effective date of this Agreement, the City shall issue a  
441 Capacity Reservation Certificate with an expiration date that is the same as the expiration  
442 date of this Agreement, except that Owner shall abide by the schedule set forth in Table 1  
443 for allocation of concurrency with respective Concurrency Phases. Owner shall have the  
444 right, in its sole discretion, to apply all or a portion of the Cumulative Concurrency  
445 Authorized pursuant to Table 1 to any Project or Project-phase.

446 6.1. Trip Cap. New development within the Project under this  
447 Agreement is established as the Allowable Development Capacity, which  
448 corresponds to a net new p.m. peak hour trips (inbound and outbound) (“Net  
449 New Trips”) limit of 1,080 Net New Trips (“Trip Cap”), as demonstrated  
450 on Owner’s Planned Action Trip Generation Analysis depicted as Exhibit  
451 E and incorporated herein by reference. The methodology for determining  
452 Net New Trips for any phase of the Project (including assumed values for  
453 trip generation and trip reduction/mode-split calculations) shall be  
454 consistent with Exhibit E. Trip counts shall be estimated at the perimeter  
455 of the Property; trips internal to the Project shall not count against the Trip  
456 Cap. The Trip Cap shall be reserved by the City for use by the Owner  
457 through the Term of this Agreement. If Owner is in compliance with the  
458 Trip Cap, Owner shall only be required to produce a study for each Project  
459 or Project-phase to identify the associated Net New Trips with the specific  
460 proposal.

461 7. Transportation Improvements. Owner will construct on-site street and right-  
462 of-way improvements (“Transportation Improvements”) as shown on Exhibit C-16 and  
463 further described in the Phased Onsite and Offsite Improvements Plan. The Transportation  
464 Improvements shall include:

465 7.1. 198<sup>th</sup> Street Southwest. Owner shall develop 198<sup>th</sup> Street Southwest  
466 as a private street as provided on Exhibit C-16 and consistent with  
467 applicable City standards, with the exception of the Festival Street, which  
468 shall be designed as shown on Exhibit C-16. Respective components of  
469 198<sup>th</sup> Street Southwest shall be completed with Lot B and Lot F as shown  
470 on the Phased Onsite and Offsite Improvements Plan.

471 In the event that the adjacent western property currently operating as a self-  
472 storage facility redevelops to allow the extension of 198<sup>th</sup> Street Southwest  
473 to the west, Owner acknowledges the benefit of such potential extension of  
474 198<sup>th</sup> Street Southwest and shall, at no cost to the City, either: (i) grant  
475 roadway/utility easements in a form approved by the City to allow vehicular  
476 and pedestrian access across its private street area; or (ii) dedicate 198<sup>th</sup>  
477 Street Southwest as public right-of-way, subject to review and approval as  
478 provided in the LMC. Owner reserves all rights regarding the City’s review  
479 and approval of any 198<sup>th</sup> Street Southwest extension project, including but  
480 not limited to any compensation as authorized under applicable law for any  
481 takings of the Pocket Oasis and Owner’s reservation of the right to install

482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495

and maintain any private utilities within the future dedication pursuant to a Utility Maintenance Agreement as explained in Section 13.1 and 14.1. In no event shall Owner have any obligation to contribute towards the construction of or dedicate any additional property towards a 198<sup>th</sup> Street Southwest expansion, nor shall Owner be required to modify the setbacks for any Project or Project-phase adjacent to a future 198<sup>th</sup> Street Southwest. In the event that a 198<sup>th</sup> Street Southwest expansion adversely impacts the Pocket Oasis (as defined herein), Owner shall not be required to replace the loss of Park space elsewhere in the Project. Should the City and/or adjacent property owner elect to develop additional park and public space adjacent to the Pocket Oasis, Owner shall provide cross-access easements for use and enjoyment of the Pocket Oasis from an adjacent park and/or public space areas. City reserves the right to exercise condemnation authority, as authorized by applicable law.

496  
497  
498  
499

7.2. 197<sup>th</sup> Street Southwest. Owner shall develop 197<sup>th</sup> Street Southwest as a private street as provided in Exhibit C-16. 197<sup>th</sup> Street Southwest shall be completed with Lot D as shown on the Phased Onsite and Offsite Improvements Plan.

500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523

7.3. 46<sup>th</sup> Avenue West. Owner shall develop 46<sup>th</sup> Avenue West as a private street as shown on Exhibit C-16 and consistent with applicable City standards. 46<sup>th</sup> Avenue West shall be completed with Lot C and Lot A as shown on the Phased Onsite and Offsite Improvements Plan. In the event that the westerly property redevelops to allow the widening of 46<sup>th</sup> Avenue West, Owner shall, at no cost to the City, either: (1) grant roadway/utility easements in a form approved by the City to allow vehicular and pedestrian access across the private street area; or (2) dedicate its portion of 46<sup>th</sup> Avenue West as public right-of-way, subject to review and approval as provided in the LMC and Owner's reservation of the right to install and maintain any private utilities within the future dedication pursuant to a Utility Maintenance Agreement as explained in Section 13.1 and 14.1. In no event shall Owner have any obligation to contribute or dedicate additional property towards the widening of 46<sup>th</sup> Avenue West or to any signalization of the 46<sup>th</sup> Avenue West and 196<sup>th</sup> Street Southwest intersection, if warranted, nor shall Owner be required to modify the setbacks for any Project or Project-phase adjacent to a future 46<sup>th</sup> Avenue West; however, Owner shall not object to the installation of a signal at 46<sup>th</sup> Avenue West and 196<sup>th</sup> Street Southwest, if warranted. If City elects to construct improvements for bicycle facilities or other traffic calming features along a future 46<sup>th</sup> Avenue West, at City's sole expense, Owner covenants not to object to construction of said facilities so long as they conform to applicable City standards and do not impede the ability for Owner to provide loading and access to the Project.

524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547

7.4. 45<sup>th</sup> Avenue West. Owner shall develop 45<sup>th</sup> Avenue West as a private street as shown on Exhibit C-16. Respective components of 45<sup>th</sup> Avenue West shall be developed with Lot A, Lot E and Lot F as shown in the Phased Onsite and Offsite Improvements Plan.

7.5. 198<sup>th</sup> Street Southwest/44<sup>th</sup> Avenue West Signal. The Parties anticipate that a traffic signal at 198<sup>th</sup> Street Southwest and 44<sup>th</sup> Avenue West intersection (“198<sup>th</sup>/44<sup>th</sup> Signal”) may be warranted with the extension of 198<sup>th</sup> Street Southwest into the Property. When Owner submits Project Entitlement Application for Lot F or Lot G under the Phased Onsite and Offsite Improvements Plan, Owner shall prepare a traffic signal warrant analysis for City review. If the 198<sup>th</sup>/44<sup>th</sup> Signal is warranted, the Owner shall construct the 198<sup>th</sup>/44<sup>th</sup> Signal, which shall be eligible for TrIF credits under Section 8 and the Vested Code Provisions. Construction of the 198<sup>th</sup>/44<sup>th</sup> Signal shall be the responsibility of the City if the City’s planned improvements of 44<sup>th</sup> Avenue West precede Owner’s submission of a Project Entitlement Application for Lot F or Lot G under the Phased Onsite and Offsite Improvements Plan. If the 198<sup>th</sup>/44<sup>th</sup> Signal is not constructed prior to or concurrent with the construction for Lot F, a warrant analysis shall be required for subsequent phases following construction of Lot F. The Parties shall use best efforts to coordinate construction of the 198<sup>th</sup>/44<sup>th</sup> Signal, including but not limited to providing conduit to facilitate installation of the 198<sup>th</sup>/44<sup>th</sup> Signal in any applicable street improvements and cooperating in obtaining all applicable state, federal, and local permits and approvals.

548  
549  
550  
551  
552  
553  
554  
555

7.6. 196<sup>th</sup> Street Southwest/46<sup>th</sup> Avenue West Signal. The Parties do not anticipate that a traffic signal at 196<sup>th</sup> Street Southwest and 46<sup>th</sup> Avenue West intersection (“196<sup>th</sup>/46<sup>th</sup> Signal”) will be constructed during the Term of this Agreement. Under this Agreement, Owner shall have no obligation to conduct a warrant analysis, construct and/or contribute to a future 196<sup>th</sup>/46<sup>th</sup> Signal. All potential construction, cost sharing or other elements related to a future 196<sup>th</sup>/46<sup>th</sup> Signal, if warranted consistent with procedures under the LMC, shall be negotiated in a separate agreement.

556  
557  
558  
559  
560  
561  
562

7.7. 200<sup>th</sup> Street Southwest/46<sup>th</sup> Avenue West. The Parties anticipate that a traffic signal at 200<sup>th</sup> Street Southwest and 46<sup>th</sup> Avenue West intersection (“200<sup>th</sup>/46<sup>th</sup> Signal”), will be constructed by Sound Transit as a component of the Lynnwood Light Rail station (“Sound Transit Upgrades”). The Parties shall cooperate in good faith to advocate to Sound Transit for the inclusion of the 200<sup>th</sup>/46<sup>th</sup> Signal, in the alignment shown on Exhibit C-38, to be developed with the Sound Transit Upgrades.

563  
564  
565

7.8. 44<sup>th</sup> Avenue West Frontage. Owner shall develop 44<sup>th</sup> Avenue West frontage improvements as provided on Exhibit C-26-27 (“44<sup>th</sup> Avenue Improvements”).



566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584

(a)The City is evaluating the potential for a shared use path along 44<sup>th</sup> Avenue (“Shared Use Path”) that may result in modifications to 44<sup>th</sup> Avenue Improvements. In the event the City elects to pursue the Shared Use Path, the Parties acknowledge that the City may modify the 44<sup>th</sup> Avenue Improvements required to be constructed by Owner subject to the following limitations: (i) Owner shall have right to maintain a minimum 8 foot planting strip adjacent to the Property along the 44<sup>th</sup> Avenue West frontage; (ii) any Shared Use Path shall be designed and installed as shown on Exhibit C-26-27; and (iii) in no event shall the 44<sup>th</sup> Avenue Shared Use Path result in any right of way modifications that adversely affect the Project or Project-phases design, site orientation, building orientation or “built-to” dimensions for any structure. Owner’s obligation is limited to construction of the 44<sup>th</sup> Avenue Improvements as shown on Exhibit C-26 or some mutually agreed Shared Use Path alternative design that complies with the design standards set forth in this Section. In event that City requires Owner to construct the Shared Use Path or some mutually agreed modification thereof, Owner shall be eligible for TrIF Credits pursuant to the procedures of Section 8.

585  
586  
587  
588  
589  
590

7.9. 200<sup>th</sup> Street Southwest Frontage. Pursuant to an agreement between City and Sound Transit, Sound Transit will construct improvements along 200<sup>th</sup> Street Southwest that are consistent with the widening of the street. The Owner shall be responsible for additional improvements of the streetscape as consistent with the Vestad Code Provisions and as shown on Exhibit C-18.

591  
592  
593  
594  
595  
596

7.10. Emergency Access. Owner shall develop 198<sup>th</sup> Street Southwest, 197<sup>th</sup> Street Southwest, 46<sup>th</sup> Avenue West, and 45<sup>th</sup> Avenue West (collectively, the “Private Roads”) for emergency access consistent with applicable regulations. All Private Roads shall be reviewed and considered by the City and Regional Fire Authority as a component of the corresponding Project Entitlement Application.

597  
598  
599  
600  
601  
602  
603  
604  
605

7.11. General Provisions. The Transportation Improvements shall constitute the entirety of the street and right-of-way improvements required for the Project, including for concurrency and site access evaluations as provided by LMC 12.22. Should Owner elect to construct Transportation Improvements designated for a future Project-phase at an earlier time, such work will be coordinated with the City. All Transportation Improvements shall be constructed in accordance with the City’s standards and regulations at the time of site development or building permit, except as required above for the private streets and except for Departures noted in this Agreement.

606  
607

8. Transportation Impact Fees (“TrIFs”). Pursuant to LMC Ch. 3.105, Owner acknowledges that new development resulting in a net increase in trips from existing land

608 uses shall be subject to TrIF. The procedure for calculating TrIF shall be governed by  
609 LMC 3.105.060-.070, except that Owner may, in its sole discretion, elect to use the City's  
610 fee rate at time of issuance of a building permit for a Project or Project-phase; however,  
611 Owner shall receive TrIF credits for the existing development on the Property as of the  
612 Effective Date of this Agreement, which includes 198,577 square feet of retail and  
613 restaurant use ("TrIF Existing Floor Area"). Owner may elect to use the TrIF Existing  
614 Floor Area in whole or in part for a Project or Project-phase or be assigned to a future  
615 Project-phase.

616 8.1. TrIF Credits. In consideration of Owner constructing or  
617 contributing to the construction of the transportation improvements as set forth in  
618 this Agreement, City shall credit the total project cost (including land value, design,  
619 permit fees, construction and right-of-way dedications, if any) of each improvement  
620 listed in this Section as additional TrIF Credits. The total amount of TrIF Credits  
621 shall not exceed the total amount of TrIF that the Owner is required to pay for the  
622 Project. If the amount of TrIF Credits in a particular Project-phase exceeds the  
623 amount of TrIF required for that phase, as determined by LMC, Owner may apply  
624 the remaining TrIF Credit against TrIF for future phases. The following  
625 improvements are eligible for TrIF Credits:

- 626 (a) Project #8 – 44<sup>th</sup> Avenue West improvements;
- 627 (b) Project #13 – 200<sup>th</sup> Street Southwest improvements,  
628 including but not limited to the 200<sup>th</sup>/46<sup>th</sup> Signal and associated  
629 improvements (to the extent completed by Owner and not as a  
630 component of the Sound Transit Upgrades);
- 631 (c) Shared Use Path, if constructed by Owner subject to Section  
632 7.8; and/or
- 633 (d) Other Transportation Improvements provided in Section 7  
634 that are included in the Conceptual Guide Plan and identified in a  
635 future City's TrIF rate study, as may be amended and adopted by  
636 the City Council, during the Term of this Agreement.

637 8.2. Additional Parcels. During the Term of this Agreement, Owner  
638 may acquire Adjacent Parcels. In the event Owner acquires Adjacent  
639 Parcels, the TrIF Credit calculations shall be adjusted to account for the  
640 additional existing structures consistent with the LMC and procedures  
641 provided in Section 8.1.

642 8.3. City Center TrIF Exemption. The City agrees that the Execution of  
643 this Agreement shall constitute "development approval" pursuant to LMC  
644 3.105.040.H. As demonstrated in the Conceptual Guide Plan, the Project  
645 meets the criteria of LMC 3.105.080A.1. Accordingly, the Project shall  
646 qualify as exempt from the payment of TrIF pursuant to LMC 3.105:080

647 (“City Center TrIF Exemption”). Owner shall submit for the City Center  
648 TrIF Exemption with the first Project Entitlement Application. In the event  
649 that the City Center TrIF Exemption exceeds the TrIF required for the first  
650 Project Entitlement Application, the Owner may allocate the remainder of  
651 the City Center TrIF Exemption to future Project-phases in its sole  
652 discretion.

653 9. Parks and Public Space Improvements. As a component of the Project, Owner  
654 shall construct the Parks and Public Space Improvements shown on Exhibit C-29, herein  
655 incorporated by reference (collectively, the “Parks and Public Space Improvements”)  
656 which are to be privately owned, except as provided for in Section 7.1, and publicly  
657 accessible subject to the Operations and Maintenance Plan (“O&M Plan”) as described in  
658 Section 9.3. Each component of the Parks and Public Space Improvements shall include  
659 at least the minimum number of design elements identified in the Supplemental Site Design  
660 Guidelines attached as Exhibit F and herein incorporated by reference. While only the  
661 minimum number of design elements specified in the Supplemental Site Design Guidelines  
662 are required, Owner may propose the inclusion of additional design elements in its sole  
663 discretion. The Parks and Public Space Improvements shall constitute the entirety of parks  
664 and public space improvements required for the Project, and shall include:

665 (a) Village Green. The Village Green is approximately 0.68 acres and  
666 will provide for flexible lawn space for leisure as well as event space for  
667 festivals, seasonal events, concerts and holiday gatherings.

668 (b) Pocket Oasis. The Pocket Oasis is approximately 0.52 acres and  
669 will provide for active recreation and a dog park.

670 (c) Festival Street. The Festival Street is approximately 0.51 acres and  
671 will include specialty street paving and widened walkways to promote  
672 pedestrian use and allow for special events such as farmer’s markets.

673 9.1. Parks and Public Space Improvements Construction. The Parks and Public  
674 Space Improvements shall be constructed no later than with the  
675 corresponding lot as shown in the Phased Onsite and Offsite Improvements  
676 Plan as shown in Exhibit D. In no event shall a certificate of occupancy for  
677 a Project-phase be issued prior to the completion of the Parks and Public  
678 Space Improvements for the corresponding lot. Should Owner elect to  
679 construct Park and Public Space Improvements designated for a future  
680 Project-phase at an earlier time than required in the Phased Onsite and  
681 Offsite Improvements Plan, such work will be coordinated with the City.

682 (a) Pocket Oasis Construction. Owner shall use best efforts to  
683 design and construct the Pocket Oasis outside the likely right of way  
684 expansion necessary for the 198<sup>th</sup> Street Southwest expansion to the  
685 west of the Property, as discussed in Section 7.1.

686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
  
701  
  
702  
  
703  
  
704  
705  
  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724

- 9.2. Parks and Public Space Improvements Design and Review Procedures. Owner shall be responsible for the design of the Parks and Public Space Improvements, subject to the review and approval as a component of a Project Entitlement Application pursuant to Section 4, except that the Owner shall present the Parks and Public Space Improvements to the Parks and Recreation Board for its comment prior to completing the PDR for any Project-phase when Parks and Public Space Improvements will be required. To further the City's City Center Parks Master Plan Update vision, the Parties have agreed to certain Supplemental Site Design Guidelines that shall inform the design of the Parks and Public Space Improvements. The Project or any Project-phase that requires construction of Parks and Public Space Improvements shall comply with the applicable Supplemental Site Design Guidelines. Substantial changes to Parks and Public Space Improvements shall be governed by LMC 21.25.180.B, except that "substantial changes" shall not include modifications to:
- (i) any landscaping elements with similar vegetation;
  - (ii) any seating, bench or lighting elements with similar equipment;
  - (iii) change paving patterns; or
  - (iv) any water play/splash pad equipment or features so long as the minimum size of the splash pad/water play area is not reduced.
- 9.3. Parks and Public Space Improvements Operations and Maintenance. The Parks and Public Space Improvements shall be private property, except as provided for in Section 7.1. Owner shall be responsible for the maintenance and operation of the Parks and Public Space Improvements for so long as the Parks and Public Space Improvement is private property. However, Owner shall make the Parks and Public Space Improvements available for public access and enjoyment as governed by an O&M Plan, which shall be substantially in the form as attached Exhibit G and herein incorporated by reference, except that any O&M Plan shall be reviewed and approved by the Parties prior to the issuance of a certificate of occupancy for the corresponding Project or Project-phase. As a component of the O&M Plan, the Parties agree that the City shall have the ability to use the Parks and Public Space Improvements for special events and programming, the details of which shall be mutually agreed upon between the City and Owner as part of a separate agreement that may be mutually updated from time to time during the term of this Agreement. Owner, in its sole discretion, may elect to govern the Parks Improvements consistent with LMC Ch. 10.16. The Owner's obligation to provide Parks Improvements as available for public access as provided in this Section shall survive the term of this Agreement.

725 10. Parks Impact Fees. Pursuant to LMC Ch. 3.107, Owner acknowledges that  
726 new development shall be subject to a park impact fee ("PIF"). The Parties acknowledge  
727 that existing uses and proposed Parks Improvements may be credited towards the Project's  
728 PIF. Pursuant to LMC 3.107.070, the Parties acknowledge that the Owner's construction  
729 of the Parks Improvements as set forth in Exhibit C-29, which includes access agreement  
730 value (or equivalent), design, permit fees and construction may qualify for credits pursuant  
731 to LMC 3.107.090. If Owner elects to request PIF Credits, such credits shall be determined  
732 and calculated at the time of Project Entitlement Application consistent with Exhibit D. If  
733 a Project-phase is proposed prior to a Park Improvement, the Director of the Department  
734 of Parks, Recreation and Cultural Arts ("Parks Director") may approve a surety, such as a  
735 bond, irrevocable letter of credit or other mutually agreed financial instrument, for Parks  
736 Improvements to allow future credits to be applied.

737 11. Other Impact Fees. Pursuant to RCW 82.02.020, the City may impose  
738 certain impact fees on development, limited to streets and roads, parks and open space, fire  
739 protection facilities, and school facilities. The City currently imposes streets and roads  
740 through TrIF and park impact fees through PIF; however, it does not currently impose fire  
741 protection and school facilities impact fees ("Other Impact Fees"). The City acknowledges  
742 that the Project shall serve as a catalyst for the City Center and that Other Impact Fees may  
743 impede the potential viability of the Project. Owner acknowledges that third-party agencies  
744 initiate Other Impact Fees; however, the City must adopt Other Impact Fees under the  
745 LMC. Accordingly, the City acknowledges that it shall provide Owner with at least 30  
746 days-notice prior to the City Council's potential adoption of any Other Impact Fees during  
747 the Term of this Agreement. If the City adopts Other Impact Fees pursuant to RCW  
748 82.02.020 or other enabling legislation during the Term of this Agreement, Owner will not  
749 be assessed Other Impact Fees for any Project or Project-phase that submitted Project  
750 Entitlement Application(s) prior to effective date of any Other Impact Fees.

751 12. MFTE Participation. Pursuant to LMC Ch. 3.82 and Ch. 84.14 RCW, the  
752 Parties acknowledge that the Project is located within an eligible residential targeted area  
753 for participation in the MFTE program. Owner shall be eligible to apply, in its sole  
754 discretion, for MFTE for all phases of the Project or Project-phases; provided, that Owner  
755 acknowledges and agrees that if RCW Ch. 84.14 or other applicable law relating to the  
756 MFTE program is repealed, amended or modified such that the City may no longer  
757 implement the MFTE program, then the City's authority and MFTE program under LMC  
758 Ch. 3.82 shall also be repealed, amended or modified consistent with the repeal,  
759 amendment or modification to RCW Ch.84.14 or other applicable laws, and the MFTE  
760 program may no longer be available to the Owner for the Project. The City shall review  
761 and approve an application pursuant to LMC 3.82.070-.100. Nothing in this Agreement  
762 shall create an obligation for Owner to participate in a MFTE program.

763 13. Stormwater Detention and Treatment.

764 13.1 General Standards. Any required stormwater facilities, at no cost to  
765 City, will be installed for all Project drainage as shown on Exhibit C-62.  
766 All stormwater facilities shall meet current City, State and Federal

767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778

regulations in effect at the time of Project Entitlement Application triggering the need for stormwater facilities. Said compliance includes adherence to the terms of the then-current Western Washington Phase II NPDES Municipal Stormwater Permit issued by the Department of Ecology (“DOE”) that is in effect at the time of the Project Entitlement Application. No additional stormwater improvements shall be required of Owner, except as required by law, regulations or DOE permit requirements. If any private streets are dedicated to the City pursuant to Sections 7.1 or 7.3 above, the parties shall enter into a Utilities Maintenance Agreement regarding any private stormwater facilities to be maintained in such dedicated areas, at the time of subdivision or binding site plan approval or otherwise at the time of such dedication.

779  
780  
781  
782  
783  
784  
785  
786  
787  
788

13.2. Use of Future Technologies. The Parties recognize that stormwater treatment science is evolving. Owner shall have the option, but not the requirement, to use any treatment options contained in current or future Washington Department of Ecology stormwater manuals and corresponding City stormwater technical manuals that are approved for general use by the City so long as the resulting use of technology would lead to stormwater treatment equivalent to, or better than, other authorized stormwater treatment technologies and so long as such technologies are consistent with Federal and State law, including Ecology’s Phase II permit, as now exists or as may hereafter be amended.

789  
790  
791  
792  
793

13.3. Acknowledgement of Sufficient Stormwater Capacity. It is anticipated that Owner’s stormwater will discharge off-site to the natural environment consistent with applicable local and State requirements. The City acknowledges that it is not aware of capacity constraints in the natural conveyance system.

794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808

13.4. Existing Stormwater Line. The Parties acknowledge an existing stormwater line located on the Property, which is partially governed by a stormwater line easement between the City and Owner’s successor in interest under Snohomish County Recorder No. 7601160038 (“Stormwater Line Easement”). The Stormwater Line Easement covers only a portion of the stormwater line. Owner shall extinguish the Stormwater Line Easement burdening the City. Based upon review of the pipe condition the Parties acknowledge that the existing stormwater line is sized appropriately for current site conditions and stormwater generated by the Property, is in good condition and shall not be relocated, realigned or otherwise altered as a component of the Project. On or before the submittal of a Project Entitlement Application for a Project phase that addresses the existing stormwater line, Owner shall provide an Operations and Maintenance Plan for the existing stormwater line for City review and comment to address continued best efforts to maintain, patch and/or repair.

809

810

the existing stormwater line as necessary under applicable law, regulation or DOE permit requirement.

811

14. Water/Sanitary Sewer.

812

813

814

14.1. General Standards. Any required water/sanitary sewer facilities, at no cost to City, will be installed to serve the Project demands as shown in Exhibit C-61; 63. The water/sanitary sewer facilities shall include:

815

816

(a) Upsized 8" water facilities along the 44<sup>th</sup> Avenue West/200 Street Southwest vicinity as shown in Exhibit C-63;

817

818

819

(b) Upsized sewer facilities along either: (1) 200<sup>th</sup> Street Southwest to 46<sup>th</sup> Avenue West or 48<sup>th</sup> Avenue West; or (2) along 46<sup>th</sup> Avenue West to 200<sup>th</sup> Street Southwest as shown in Exhibit C-61.

820

821

822

823

824

825

(i) The Parties recognize that coordination of projects is beneficial to the public to minimize impacts. If the Owner elects in its sole discretion that the City will design and install the infrastructure required for Northline Village; the Owner and City may enter into a reimbursement agreement as authorized by state law and LMC.

826

827

828

829

830

831

832

833

834

835

836

837

No additional water/sanitary sewer improvements shall be required of Owner. The construction of any water/sanitary sewer improvements shall be complete according to the Phased Onsite and Offsite Improvements Plan. Should Owner elect to construct water/sanitary sewer improvements designated for a future Project-phase at an earlier time, such work will be coordinated with the City and said capacity shall be reserved for the Project throughout the term of this Agreement. If any private streets are dedicated to the City pursuant to Sections 7.1 or 7.3 above, the parties shall enter into a Utilities Maintenance Agreement regarding any private water or sanitary sewer facilities to be maintained in such dedicated areas, at the time of subdivision or binding site plan approval or otherwise at the time of such dedication.

838

839

840

841

842

843

844

14.2. Future City Installation. To the extent that City install new water mains adjacent to Property during the Term of the Agreement, City shall install 12" or greater water mains stubs and associated infrastructure that can serve the Property and sewer mains or stubs, if extensions are made. City shall consult with Owner to determine location(s) for installation of mains and associated infrastructure that are mutually agreeable to the Parties.

845

846

847

14.3. Acknowledgement of Sufficient Water Supply and Capacity to Serve Future Development. The City and its consultants have analyzed its existing and future water supply, capacity, and infrastructure. Based on

848

849

850

851

852

its review for the next 15 years, the Designated Official acknowledges that there is sufficient public water supply and City infrastructure planned or in place to serve the Master Plan development, other than what Owner will have to construct on-site to connect to the City's water distribution system.

853

854

855

856

857

858

14.4. Acknowledgment of Sufficient Sanitary Sewer. The City and its consultants have analyzed its existing and future sanitary sewer capacity and infrastructure. Based on its review for the next 15 years, the Designated Official acknowledges that there is sufficient local sanitary sewer capacity and City infrastructure in place or planned to serve the Project.

859

860

861

862

863

864

865

14.5. Additional Water and Sewer Concurrency. If this Agreement is extended pursuant to Section 18.1, within thirty (30) days of said extension, the City shall acknowledge that there is sufficient local water and sanitary sewer capacity and City infrastructure in place or planned to serve the Project for the remainder of the Term. The City agrees that no further concurrency review and/or mitigation of local water or sanitary sewer impacts are required.

866

867

868

869

870

871

872

15. Utility Charges. Owner shall pay standard connection charges to connect to the City's utilities, including all water, sewer, or stormwater facilities provided by City, including all local and general facility charges and regional connection charges. The City shall not impose any additional requirements to construct off-site utility infrastructure for Conceptual Guide Plan projects. However, Owner remains responsible for the costs associated with alteration or extension of on-site utility infrastructure necessary to connect to the City's infrastructure.

873

874

875

876

877

878

879

880

881

882

883

884

885

886

16. Public Benefit. The Parties acknowledge that the Project is advancing the City Center vision, including but not limited to the policies and goals identified at Exhibit C-8-9. The Project, including the Transportation Improvements and Park and Public Space Improvements benefits the City through the redevelopment of one of the largest contiguous parcels in City Center with multifamily housing, retail, entertainment and office uses that will support the City Center vision of mixed-use, transit-oriented development. The City agrees that the Owner's redevelopment efforts, Transportation Improvements, and Park and Public Space Improvements are a sufficient public benefit and is in the City's best interest pursuant to LMC, including but not limited to providing parks and public spaces, public infrastructure, sustainability features, potential for public art and placemaking, potential for affordable housing through voluntary participation in the MFTE program, and economic benefits through the redevelopment of an underutilized retail facility, among other benefits. No additional public benefits shall be required for the Project or any Project-phases.

887

888

17. Agreement to Run with the Land. For the term of this Agreement, the benefits and obligations of this Agreement shall run with the land and continue following



889 the subdivision, leasing, or transfer of ownership to Owner's successors and assigns in  
890 accordance with Section 24.

891 18. Term. The term of this Agreement shall be fifteen (15) years from the  
892 Effective Date of this Agreement ("Expiration Date"). The City, acting through the  
893 Community Development Director, Parks Director and Public Works Director, and Owner  
894 may mutually agree in writing to extend the term of the Agreement. The Parties recognize  
895 that neither Party is prescient enough to anticipate all of the potential changes in Owner's  
896 business needs, lease matters, construction techniques, or architectural design that may  
897 occur during that time period. The Vested Code Provisions are not intended to preclude  
898 future interpretations and adjustments in conjunction with specific development  
899 applications for a Project-phase as provided in Section 3.3.

900 18.1. Extended Term. Notwithstanding the foregoing, the term of this Agreement  
901 shall automatically extend for an additional ten (10) years from the Expiration Date,  
902 for an effective term of 25 years, if Owner completes one of following criteria prior  
903 to the Expiration Date:

904 (a) Initiates construction of two or more Project-phases;

905 (b) Completes construction of the Village Green as provided in Section 9;

906 or

907 (c) Completes construction of the Pocket Oasis as provided in Section 9.

908 19. Construction of Documents. In the event there are any conflicts or  
909 ambiguities between the terms of the body of this Agreement and the terms in any of the  
910 Exhibits, the terms of the body of this Agreement shall control.

911 20. Recitals. The Recitals are incorporated herein as material terms of this  
912 Agreement.

913 21. Indemnification. Except as otherwise specifically provided elsewhere in  
914 this Agreement and any exhibits hereto, each Party shall protect, defend, indemnify and  
915 hold harmless the other Party and their officers, agents, and employees, or any of them,  
916 from and against any and all claims, actions, suits, liability, loss, costs, expenses, and  
917 damages of any nature whatsoever, which are caused by or result from any negligent act or  
918 omission of the Party's own officers, agents, and employees in performing services  
919 pursuant to this Agreement. In the event that any suit based upon such a claim, action,  
920 loss, or damage is brought against a Party, the Party whose sole negligent actions or  
921 omissions gave rise to the claim shall defend the other Party at the indemnifying Party's  
922 sole cost and expense; and if final judgment be rendered against the other Party and its  
923 officers, agents, and employees or be rendered jointly against the Parties and their  
924 respective officers, agents, and employees, the Party whose sole negligent actions or  
925 omissions gave rise to the claim shall satisfy the same; provided that, in the event of  
926 concurrent negligence, each Party shall indemnify and hold the other Party harmless only

927 to the extent of the indemnifying Party's negligence. The indemnification to the City  
928 hereunder shall be for the benefit of the City as an entity, and not for members of the  
929 general public.

930 22. Agreement Consistency with RCW 82.02.020. The Owner agrees that the  
931 improvements, mitigation payments and dedications established by this Agreement shall  
932 be consistent with the requirements of RCW 82.02.020 and mitigate the direct impacts that  
933 have been identified as a consequence of Owner's proposed Conceptual Guide Plan  
934 projects.

935 23. Recording. This Agreement shall be recorded by Owner with the  
936 Snohomish County Auditor's Office, Recording Division.

937 24. Binding Effect; Assignability. This Agreement shall bind and inure to the  
938 benefit of the Parties hereto and their respective successors, heirs, legatees, representatives,  
939 receivers, trustees, successors, transferees and assigns. Owner shall have the right, in its  
940 sole discretion, to assign or transfer its rights, in whole or in part, under this Agreement.  
941 Owner shall provide City with written notice of any transfer or assignment at least thirty  
942 (30) days prior to the closing of any transaction.

943 25. Interpretation. This Agreement has been reviewed and revised by legal  
944 counsel for both Parties, and no presumption or rule construing ambiguity against the  
945 drafter of the document shall apply to the interpretation or enforcement of this Agreement.  
946 Nothing herein shall be construed as a waiver of the City's constitutional and statutory  
947 powers. Nothing herein shall be construed or implied that the City is contracting away its  
948 constitutional and statutory powers, except as otherwise authorized by law.

949 26. Authority. Each signatory to this Agreement represents and warrants that  
950 he or she has full power and authority to execute and deliver this Agreement on behalf of  
951 the Party for which he or she is signing, and that he or she will defend and hold harmless  
952 the other Parties and signatories from any claim that he or she was not fully authorized to  
953 execute this Agreement on behalf of the person or entity for whom he or she signed. Upon  
954 proper execution and delivery, this Agreement will have been duly entered into by the  
955 Parties, will constitute as against each Party a valid, legal and binding obligation that shall  
956 run with the land, and will be enforceable against each Party in accordance with the terms  
957 herein.

958 27. Delays. If either Party is delayed in the performance of its obligations in  
959 this Agreement due to Force Majeure, then performance of such obligation shall be excused  
960 for the period of delay. Force Majeure means extraordinary natural events or conditions  
961 such as war, riot, labor disputes, or other causes beyond the reasonable control of the  
962 obligated party. The City's or Owner's inability to fund, or decision not to fund, any of its  
963 obligations shall not be an acceptable reason for delay.

964 28. Notices. All notices, requests, demands, and other communications called  
965 for or contemplated by this Agreement shall be in writing, and shall be duly given by

966 mailing the same by certified mail, return receipt requested; or by delivering the same by  
967 hand, to the following addresses, or to such other addresses as the Parties may designate  
968 by written notice in the manner aforesaid:

969 Owner: MGP XI Lynnwood, LLC  
970 c/o Merlone Geier Partners  
971 Attn: James Gwilliam  
972 4365 Executive Drive, Suite 1400  
973 San Diego, CA 92121  
974 Phone: 858-258-9909  
975 Email: [jgwilliam@merlonegeier.com](mailto:jgwilliam@merlonegeier.com)  
976

977 And to its Attorney: McCullough Hill Leary, P.S.  
978 Attn: Ian Morrison  
979 701 5<sup>th</sup> Avenue, Suite 6600  
980 Seattle, WA 98104  
981 Phone: 206-812-3380  
982 Email: [imorrison@mhseattle.com](mailto:imorrison@mhseattle.com)  
983

984 City of Lynnwood: Community Development Director  
985 Attn: David Kleitsch  
986 20816 44th Ave W, Suite 230  
987 Lynnwood, WA 98036  
988 Phone: 425-670-5042  
989 Email: [dkleitsch@lynnwoodwa.gov](mailto:dkleitsch@lynnwoodwa.gov)  
990

991 And to its Attorney: Inslee Best, P.S.  
992 Attn: Rosemary Larson  
993 10900 NE 4th Street, Suite 1500  
994 Bellevue, Washington 98004  
995 Phone: 425-450-4249  
996 Email: [rlarson@insleebest.com](mailto:rlarson@insleebest.com)  
997  
998  
999

1000 29. Dispute Resolution. It is the Parties' intent to work cooperatively and to  
1001 resolve disputes in an efficient and cost-effective manner. All disputes arising out of or  
1002 relating to this Agreement shall be resolved as follows:

1003 29.1. Settlement Meeting. If any dispute arises between the parties  
1004 relating to this Agreement, then the parties shall meet and seek to resolve the  
1005 dispute, in good faith, within ten (10) days after a Party's request for such a meeting.  
1006 The City shall send the Designated Official and persons with information relating  
1007 to the dispute, and Owner shall send an owner's representative and any consultant  
1008 or other person with technical information or expertise related to the dispute.

1009                   29.2. Mediation. If the Parties cannot resolve the issue within ten (10)  
1010 days then they shall mediate the matter using a mediator from Judicial Dispute  
1011 Resolution, LLC or if that entity fails or declines to serve, such other similar service  
1012 or organization as agreed by the parties, or as appointed by the court if the parties  
1013 cannot agree (collectively "JDR"), within seven (7) days of their failure to agree  
1014 pursuant to Section 29.1. The Parties shall evenly split any fees charged by JDR,  
1015 regardless of the outcome of the mediation. Each party shall bear its own attorneys'  
1016 fees in connection with the mediation.

1017                   29.3. Arbitration. If the Parties have still not resolved the matter, then  
1018 and only then shall arbitration be permitted. "Arbitration" for purposes of this  
1019 Agreement shall be limited exclusively to arbitration by one arbitrator,  
1020 administered by JDR in accordance with the rules of practice and procedure from  
1021 the American Association of Arbitration. The arbitrator shall be someone other  
1022 than the mediator who served under Section 29.2. The arbitrator shall establish the  
1023 procedures and allow presentation of written and oral information but shall render  
1024 its final decision within thirty (30) days after the matter is referred to arbitration.  
1025 The Parties shall pay equally the cost of the arbitration. Pursuant to Section 32, the  
1026 prevailing Party (or the substantially prevailing Party, if no one Party prevails  
1027 entirely) shall be entitled to an award of reasonable attorneys' and expert witness  
1028 fees and costs. The arbitration proceedings shall be binding, conclusive and, except  
1029 as provided below, not appealable, and any party to any award rendered in any such  
1030 arbitration proceeding shall be entitled to have judgment entered thereon. In no  
1031 event, however, shall mediation or arbitration be available pursuant to this Section  
1032 after the date when institution of legal or equitable proceedings based on such  
1033 claim, dispute, or other matter in question would be barred by the applicable statute  
1034 of limitations.

1035                   30. Governing Law and Venue. This Agreement shall be governed by and  
1036 construed in accordance with the laws of the State of Washington. To extent permitted,  
1037 venue for any judicial action arising out of or relating to this Agreement shall lie in  
1038 Snohomish County Superior Court.

1039                   31. Specific Performance. The Parties specifically agree that damages are not  
1040 an adequate remedy for breach of this Agreement and that the Parties are entitled to compel  
1041 specific performance of all material terms of this Agreement by any Party in default hereof.  
1042 All terms and provisions of this Agreement are material.

1043                   32. Attorneys' Fees. In any arbitration or judicial action to enforce or determine  
1044 a party's rights under this Agreement, the prevailing party (or the substantially prevailing  
1045 party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees, expert  
1046 witness fees, and costs, including fees and costs incurred in the appeal of any ruling of a  
1047 lower court.

1048 33. No Third-Party Beneficiary. This Agreement is made and entered into for  
1049 the sole protection and benefit of the parties hereto and their successors and assigns. No  
1050 other person shall have any right of action based upon any provision of this Agreement.

1051 34. Severability. This Agreement does not violate any federal or state statute,  
1052 rule, regulation or common law known; but any provision which is found to be invalid or  
1053 in violation of any statute, rule, regulation or common law shall be considered null and  
1054 void, with the remaining provisions remaining viable and in effect.

1055 35. Cooperation in Execution of Documents. The Parties agree to properly and  
1056 promptly execute and deliver any and all additional documents that may be necessary to  
1057 render this Agreement practically effective. This Paragraph shall not require the execution  
1058 of any document that expands, alters or in any way changes the terms of this Agreement.

1059 36. Exhibits. This Agreement includes the following exhibits which are  
1060 incorporated by reference herein:

- 1061 a. Exhibit A - Legal Description of Property
- 1062 b. Exhibit B - Existing Site Plan
- 1063 c. Exhibit C - Conceptual Guide Plan
- 1064 d. Exhibit D - Phased Onsite and Offsite Improvements Plan
- 1065 e. Exhibit E - Trip Generation Analysis
- 1066 f. Exhibit F - Supplemental Site Design Guidelines
- 1067 g. Exhibit G - Draft Parks O&M Plan
- 1068 h. Exhibit H - Conceptual Guide Plan excerpts cited in the Agreement
- 1069 i. Exhibit I - FAR Summary Table

1070 37. Full Understanding. The Parties each acknowledge, represent and agree  
1071 that they have read this Agreement; that they fully understand the terms thereof; that they  
1072 have had the opportunity to be fully advised by their legal counsel and any other advisors  
1073 with respect thereto; and that they are executing this Agreement after sufficient review and  
1074 understanding of its contents.

1075 38. No Joint Venture. This Agreement is not intended to and nothing in this  
1076 Agreement shall create any partnership, joint venture or other arrangement between the  
1077 Parties.

1078 39. Final and Complete Agreement. This Agreement is integrated and  
1079 constitutes the final and complete expression of the Parties on all subjects relating to the

1080 development of the Project. This Agreement may not be modified, interpreted, amended,  
1081 waived or revoked orally, but only by a writing signed by all Parties. This Agreement  
1082 supersedes and replaces all prior agreements, discussions and representations on all  
1083 subjects discussed herein, without limitation. No Party is entering into this Agreement in  
1084 reliance on any oral or written promises, inducements, representations, understandings,  
1085 interpretations or agreements other than those contained in this Agreement and the exhibits  
1086 hereto.

[SIGNATURE PAGE FOLLOWS]

1087  
1088  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1120  
1121  
1122

1123 IN WITNESS WHEREOF, the parties have executed this Agreement on the date  
1124 first set forth above.

1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166

MGP XI Lynnwood, LLC,  
a Delaware limited liability company


By: Merlone Geier XI, LLC,  
a California limited liability  
company

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

CITY OF LYNNWOOD,  
A Washington municipal code city

By: N Smith  
Name: Nicola Smith  
Its: Mayor

APPROVED AS TO FORM:

  
City Attorney

STATE OF WASHINGTON

ss.

COUNTY OF SNOHOMISH

1186

1187

1188

1189

1190

1191

1192

1193

1194

1195

1196

1197

1198

1199

1200

1201

1202

1203

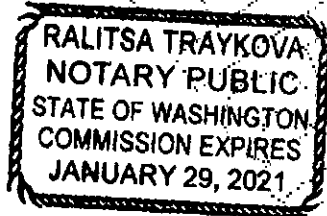
1204

1205

On this day personally appeared before me Nicola Smith to me known to be the MAYOR of the CITY OF LYNNWOOD, a Washington optional municipal code city that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN under my hand and official seal this 8<sup>th</sup> day of January, 2020. <sup>(4)</sup>

[Signature]  
(Signature of Notary)



RALITSA TRAYKOVA  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at Lynnwood, WA 98036  
My appointment expires January, 29, 2021.



STATE OF WASHINGTON

ss.

COUNTY OF SNOHOMISH

1167

1168

1169

1170

1171

1172

1173

1174

1175

1176

1177

1178

1179

1180

1181

1182

1183

1184

1185

On this day personally appeared before me \_\_\_\_\_, to me known to be \_\_\_\_\_ of MGP XI LYNNWOOD, LLC, a Delaware limited liability company, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

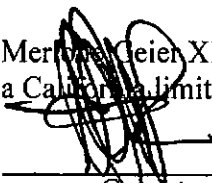
My appointment expires \_\_\_\_\_

1024 IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set  
1025 forth above.

1026  
1027  
1028  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059

MGP XI Lynnwood, LLC,  
a Delaware limited liability company

By: ~~Merrilee Geier XI, LLC,~~  
a California limited liability company

By:   
Name: Scott A. McPherson  
Title: Executive Managing Director

CITY OF LYNNWOOD,  
A Washington municipal code city

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

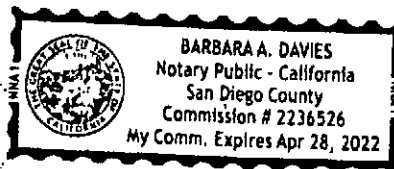
STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On December 12, 2019 before me, Barbara A. Davies, Notary Public, personally appeared Scott A, McPherson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Barbara A. Davies (Seal)



# EXHIBIT - A

## LEGAL DESCRIPTION OF PROPERTY

### LEGAL DESCRIPTION

(PER FIRST AMERICAN TITLE INSURANCE COMPANY, FILE NO. NCS-686242-ONT1, DATED OCTOBER 29, 2014 AND FILE NO. NCS-686242-A-ONT1, DATED JANUARY 28, 2015)

**PARCEL 1:**

ALL THOSE PORTION OF LOTS 1, 2, AND 3, BLOCK 6, ALDERWOOD MANOR, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 71, IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 3;  
THENCE NORTH 0°18'10" EAST ALONG THE WEST LINE OF SAID LOT 3 A DISTANCE OF 829.99 FEET TO AN INTERSECTION WITH THE SOUTH MARGIN OF 196TH ST. S.W. (S.R. 524) SAID MARGIN BEING 50.00 FEET SOUTH OF AND PARALLEL TO THE CENTERLINE OF SAID STREET;  
THENCE SOUTH 87°47'40" EAST, ALONG SAID SOUTH MARGIN, A DISTANCE OF 607.92 FEET TO THE WEST LINE OF THE EAST 160.00 FEET OF SAID LOT 1;  
THENCE SOUTH 0°18'10" WEST ALONG THE WEST LINE OF SAID EAST 160.00 FEET A DISTANCE OF 155.09 FEET TO THE SOUTH LINE OF THE NORTH 175.00 FEET OF SAID LOT 1;  
THENCE SOUTH 87°47'40" EAST ALONG THE SOUTH LINE OF SAID NORTH 175.00 FEET A DISTANCE OF 130.07 FEET TO THE WEST MARGIN OF 44TH AVENUE WEST, SAID MARGIN BEING 50.00 FEET WEST OF AND PARALLEL TO THE CENTERLINE OF SAID AVENUE;  
THENCE SOUTH 0°18'10" WEST AND FOLLOWING SAID WEST MARGIN A DISTANCE OF 63.73 FEET;  
THENCE NORTH 89°41'50" WEST AND FOLLOWING THE MARGIN OF 44TH AVENUE WEST A DISTANCE OF 10.00 FEET;  
THENCE SOUTH 0°18'10" WEST AND FOLLOWING SAID WEST MARGIN A DISTANCE OF 529.17 FEET TO THE NORTH LINE OF THE SOUTH 81.95 FEET OF SAID LOT 1;  
THENCE NORTH 87°47'40" WEST ALONG THE NORTH LINE OF SAID SOUTH 81.95 FEET, A DISTANCE OF 215.98 FEET TO THE WEST LINE OF SAID LOT 1;  
THENCE SOUTH 0°18'10" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 82.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1;  
THENCE NORTH 87°47'40" WEST ALONG THE SOUTH LINE OF SAID LOTS 2 AND 3, A DISTANCE OF 512.00 FEET TO THE POINT OF BEGINNING.

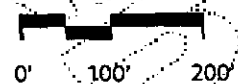
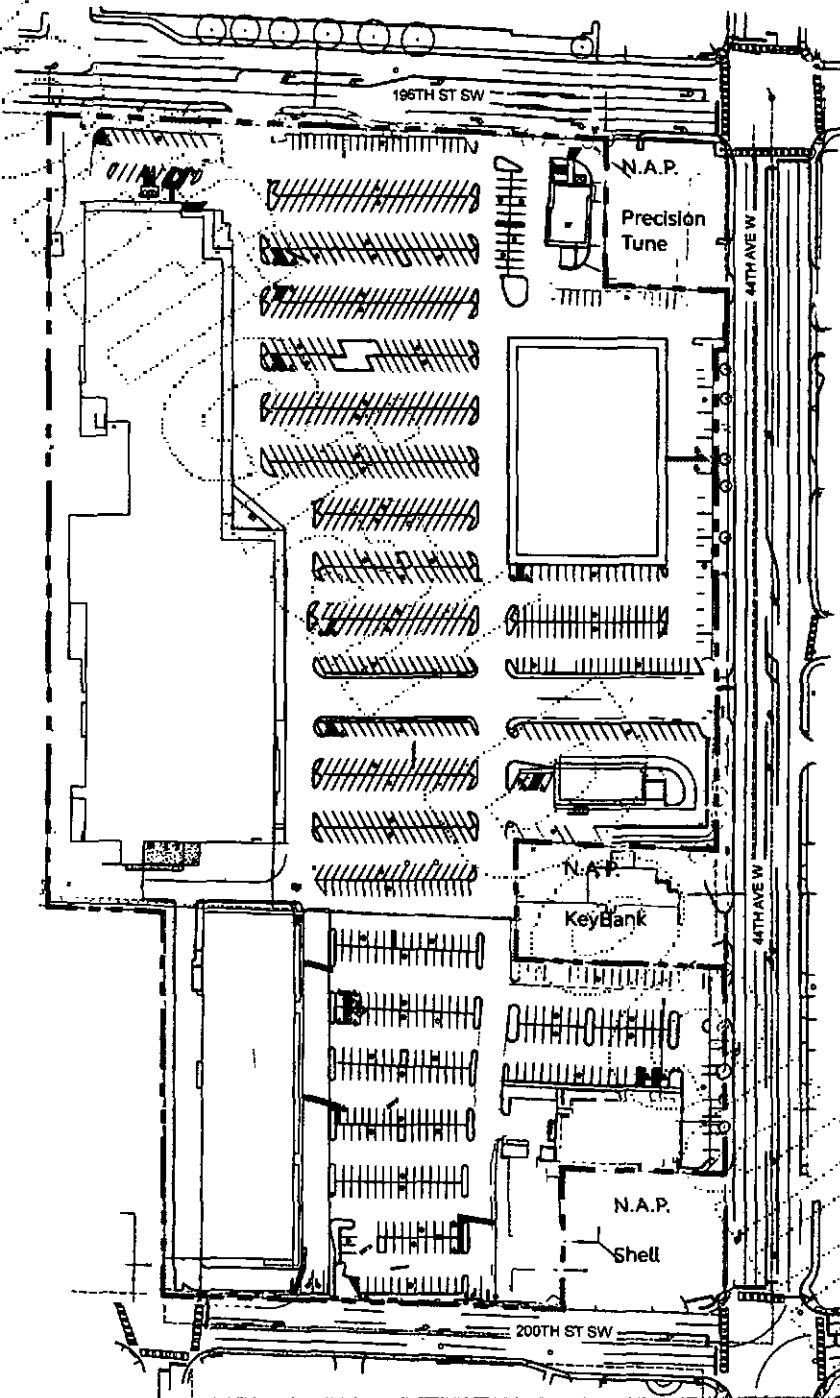
EXCEPTING THEREFROM ALL IMPROVEMENTS INCLUDING WITHOUT LIMITATION ALL EXISTING BUILDINGS, STRUCTURES, APPURTENANCES AND UTILITIES SERVING SAID IMPROVEMENTS:

**PARCEL 2:**

AN EASEMENT FOR INGRESS AND EGRESS ONTO THOSE PUBLIC STREETS SET FORTH THEREIN AND FOR VEHICULAR AND PEDESTRIAN TRAFFIC AND INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT RECORDED APRIL 8, 1976 AS 7604080164 OF OFFICIAL RECORDS.

# EXHIBIT - B

## EXISTING SITE PLAN



DATE: 2019.11.13

EXHIBIT C  
CONCEPTUAL GUIDE PLAN

1294

1295

1296

1297 Conceptual Guide Plan available at City of Lynnwood under File No. ERC-007709-2019

1298

1299

1300

1301

1302

1303

1304

1305

1306

1307

1308

1309

1310

1311

1312

1313

1314

1315

1316

1317

1318

1319

1320

1321

1322

1323

1324

1325

1326

1327

1328

1329

1330

1331

1332

1333

1334

1335

1336

1337

1338

EXHIBIT D  
PHASED ONSITE AND OFFSITE IMPROVEMENTS PLAN

- 1339
- 1340
- 1341
- 1342
- 1343
- 1344
- 1345
- 1346
- 1347
- 1348
- 1349
- 1350
- 1351
- 1352
- 1353
- 1354
- 1355
- 1356
- 1357
- 1358
- 1359
- 1360
- 1361
- 1362
- 1363
- 1364
- 1365
- 1366
- 1367
- 1368
- 1369
- 1370
- 1371
- 1372
- 1373
- 1374
- 1375
- 1376
- 1377
- 1378
- 1379
- 1380
- 1381
- 1382
- 1383

On file with City and available at City of Lynnwood under File No. ERC-007709-2019

# EXHIBIT - E

---

## TRIP GENERATION ANALYSIS

Umoja's Document



## MEMORANDUM

**Date:** June 28, 2019 **TG:** 1.16349.02

**To:** David Mach, City Of Lynnwood

**From:** Michael Swenson PE, PTOE – Transpo Group

**cc:** James Gwilliam, Merlone Geier  
Ian Morrison, McCullough Hill Leary, PS

**Subject:** Lynnwood Square – Planned Action SEPA Land Use and Trip Generation Review

This memorandum provides a review of the proposed land use and associated trip generation, as compared to the assumptions documented in the Final Supplemental Environment Impact Statement for the Lynnwood City Center Sub-Area Plan.

### Development Proposal

The proposed project includes the development of a mixed-use project that includes residential and commercial uses. Trip generation estimates for the project are based on the following land uses. The proposed project includes the following:

- Grocery – 42,500 gsf
- Health/Fitness Club – 40,086 gsf
- Cinema – 50,250 gsf
- Drugstore - 15,300 gsf
- Retail – 108,494 gsf
- General Office – 461,460 gsf
- Medical Office – 60,000 gsf
- Residential - 1,369 dwelling units

### Existing Trip Generation Estimates

Many of the buildings on-site are currently vacant. As such, counting existing trip generation to the site is not feasible. For purposes of this analysis, the weekday daily, AM peak hour, and PM peak hour existing trips were estimated using trip rates referenced for Land Use #820 (Shopping Center), Land Use #850 (Grocery), Land Use #912 (Drive-Thru Bank), Land Use #932 (Restaurant), Land Use #934 (Fast Food Restaurant – Drive-Thru) and Land Use #943 (Automobile Parts and Service Center) from the *Trip Generation Manual*, 10th Edition, Institute of Transportation Engineers (ITE), 2017. Specific land use types, and land use sizes were determined using the Snohomish County Online Property Information tool. Pass-by trip rates were based on data in the *ITE Trip Generation Handbook*, 3rd Edition. Pass-by trip rates were deducted from gross AM and PM peak hour trips where data was available.

Table 1 summarizes the weekday vehicle trip generation. Detailed trip generation calculations including the internal capture and pass-by adjustments are provided in Attachment A.

**Table 1. Existing Trip Generation Estimates**

Land Use	Size <sup>1</sup>	Trip Rate	Total Primary Trips <sup>2</sup>		
			In	Out	Total
<b>Weekday Daily</b>					
Shopping Center (LU 820)	151,826 sf	37.75	2,866	2,866	5,732
Grocery (LU 850)	26,506 sf	106.78	1,415	1,415	2,830
Drive-Thru Bank (LU 912)	5,662 sf	100.03	283	283	566
Restaurant (LU 932)	14,273 sf	112.18	801	801	1,602
Fast Food Restaurant - Drive Thru (LU 934)	5,161 sf	470.95	1,215	1,215	2,430
Automobile Parts and Service Center (LU 943)	6,619 sf	16.28	54	54	108
<b>Total</b>			<b>6,634</b>	<b>6,634</b>	<b>13,268</b>
<b>Weekday AM Peak Hour</b>					
Shopping Center (LU 820)	151,826 sf	0.94	89	54	143
Grocery (LU 850)	26,506 sf	3.82	61	40	101
Drive-Thru Bank (LU 912)	5,662 sf	9.5	24	16	40
Restaurant (LU 932)	14,273 sf	9.94	78	64	142
Fast Food Restaurant - Drive Thru (LU 934)	5,161 sf	40.19	68	47	115
Automobile Parts and Service Center (LU 943)	6,619 sf	1.96	7	6	13
<b>Total</b>			<b>327</b>	<b>227</b>	<b>554</b>
<b>Weekday PM Peak Hour</b>					
Shopping Center (LU 820)	151,826 sf	3.81	175	199	374
Grocery (LU 850)	26,506 sf	9.24	82	77	159
Drive-Thru Bank (LU 912)	5,662 sf	20.45	38	38	76
Restaurant (LU 932)	14,273 sf	9.77	63	30	93
Fast Food Restaurant - Drive Thru (LU 934)	5,161 sf	32.67	73	32	105
Automobile Parts and Service Center (LU 943)	6,619 sf	2.26	9	6	15
<b>Total</b>			<b>440</b>	<b>382</b>	<b>822</b>

Notes sf= square feet

1. Existing development sizes taken from Snohomish County Online Property Information tool.

2. Total existing trips includes reduction of pass-by trips for AM and PM peak trips.

The existing site is expected to currently generate 13,268 daily trips, 554 AM peak hour trips, and 822 PM peak hour trips with improved utilization.

## Proposed Trip Generation Estimates

Weekday daily, AM peak hour, and PM peak hour trips were estimated for the proposed development using trip rates referenced for Land Use #221 (Multifamily Housing (Mid-Rise)), Land Use #710 (General Office Building), Land Use #720 (Medical Office Building), Land Use #445 (Cinema), Land Use #492 (Health/Fitness Club), Land Use #820 (Shopping Center), Land Use #850 (Grocery) and Land Use #880 (Drugstore) from the *Trip Generation Manual*, 10th Edition, Institute of Transportation Engineers (ITE), 2017. Internal capture rates were applied per methodology described in *ITE Trip Generation Handbook*, 3rd Edition. Pass-by trip rates were based on data in the *ITE Trip Generation Handbook*, 3rd Edition. Pass-by trip rates were deducted from AM and PM peak hour trips where data was available.



Table 2 summarizes the weekday vehicle trip generation. Detailed trip generation calculations including the internal capture and pass-by adjustments are provided in Attachment A.

**Table 2: Lynnwood Square Trip Generation Estimates**

Land Use	Size <sup>1</sup>	Trip Rate	Total Primary Trips <sup>2</sup>		
			In	Out	Total
<b>Weekday Daily</b>					
Grocery (LU 850)	42,500 sf	106.78	2,269	2,269	4,538
Health/Fitness Club (LU 492) <sup>3</sup>	40,086 sf	-	-	-	-
Cinema (LU 445) <sup>3</sup>	50,250 sf	-	-	-	-
Drugstore (LU 880)	15,300 sf	90.08	689	689	1,378
Shopping Center (LU 820)	108,494 sf	37.75	2,048	2,048	4,096
General Office (LU 710)	461,460 sf	9.74	2,247	2,247	4,494
Medical Office (LU 720)	60,000 sf	34.80	1,044	1,044	2,088
Multifamily Housing (LU 221)	1,369 du	5.44	3,724	3,724	7,448
<b>Total</b>			<b>12,021</b>	<b>12,021</b>	<b>24,042</b>
<b>Weekday AM Peak Hour</b>					
Grocery (LU 850)	42,500 sf	3.82	79	51	130
Health/Fitness Club (LU 492)	40,086 sf	1.31	27	26	53
Cinema (LU 445) <sup>4</sup>	50,250 sf	-	-	-	-
Drugstore (LU 880)	15,300 sf	8.51	24	12	36
Shopping Center (LU 820)	108,494 sf	0.94	51	30	81
General Office (LU 710)	461,460 sf	1.16	436	53	489
Medical Office (LU 720)	60,000 sf	2.78	123	28	151
Multifamily Housing (LU 221)	1,369 du	0.36	125	354	479
<b>Total</b>			<b>865</b>	<b>554</b>	<b>1,419</b>
<b>Weekday PM Peak Hour</b>					
Grocery (LU 850)	42,500 sf	9.24	106	73	179
Health/Fitness Club (LU 492)	40,086 sf	3.45	79	59	138
Cinema (LU 445)	50,250 sf	4.91	134	66	200
Drugstore (LU 880)	15,300 sf	8.51	49	44	93
Shopping Center (LU 820)	108,494 sf	3.81	109	109	218
General Office (LU 710)	461,460 sf	1.15	70	411	481
Medical Office (LU 720)	60,000 sf	3.46	53	136	189
Multifamily Housing (LU 221)	1,369 du	0.44	224	180	404
<b>Total</b>			<b>824</b>	<b>1,078</b>	<b>1,902</b>

Notes: sf= square feet, du= dwelling unit

1. Proposed development sizes taken from Lynnwood Square Development Agreement – Conceptual Guide Plan Submittal February 08, 2019

2. Total project trips includes reduction of internal capture trips and pass-by trips for AM and PM peak trips

3. No daily trip rate data in the *Trip Generation Manual*, 10th Edition, Institute of Transportation Engineers (ITE), 2017.

4. No AM trip rate data in the *Trip Generation Manual*, 10th Edition, Institute of Transportation Engineers (ITE), 2017

The proposed project site is expected to generate 24,042 daily trips, 1,419 new AM peak hour trips, and 1,902 new PM peak hour trips.



To calculate the anticipated net new project generated traffic and account for existing site traffic, the trip generation was adjusted for the existing on-site traffic generation. Table 3 summarizes the net new project generated traffic generation.

**Table 3. Weekday AM and PM Peak Hour Trip Generation (Net New Primary Trips)**

Scenario	Weekday AM Peak Hour			Weekday PM Peak Hour		
	In	Out	Total <sup>1</sup>	In	Out	Total <sup>1</sup>
Proposed Project	865	554	1,419	824	1,078	1,902
Existing Development	327	227	554	440	382	822
Net New Trips	538	327	865	384	696	1,080

1 Total trips shown are primary trips after accounting for reductions for internal trips between uses and pass-by trips on adjacent roadways.

2. No AM trip rate data in the *Trip Generation Manual*, 10th Edition, Institute of Transportation Engineers (ITE), 2017

The proposed project is estimated to generate 865 net new weekday AM peak hour trips and 1,080 net new weekday PM peak hour trips.

### Planned Action Trip Generation Comparison

City of Lynnwood staff provided information regarding the peak hour trip generation totals from the 2035 modeling that was conducted for the EIS. The information provided by the City is attached to this memorandum. The information provided by the City indicates that the modeling assumed a total (primary) trip generation of 1,924 weekday PM peak hour trips. As such, the trip generation forecast for the proposed development plan is less than the total trip generation evaluated for this site within the planned action SEPA analysis. As such, the off-site transportation related impacts were previously addressed in that environmental review.

# EXHIBIT - F

---

## SUPPLEMENTAL SITE DESIGN GUIDELINES

Unofficial's Document

# 1 Exhibit F: Supplemental Site Design Guidelines

## 2 I. Parks and Public Space Improvements Overview

3 The Parks and Public Space Improvements are depicted in the Conceptual Guide Plan, Exhibit C-21-27;  
4 to the Agreement, to function as publicly accessible spaces that are privately owned and maintained.  
5 The Parks and Public Space Improvements are intended to support the goals described in the Parks Master  
6 Plans under a revised approach from a single park location to a system consisting of several public spaces.  
7 This approach is to provide a series of park and public spaces that include multiple urban-scale parks and  
8 public spaces including features and programming elements for public use and enjoyment. Incorporated  
9 into this system are lawn areas for summer picnics and movies, plazas and promenades skirting  
10 restaurants and retail shops, comfortable pedestrian amenities and creative landscape and hardscape  
11 elements.

12 The following supplemental design guidelines are established to aid review of the Project Entitlement  
13 Application for design of the two different types of Parks and Public Space Improvements: Park Spaces  
14 (Village Green and Pocket Oasis) and the Public Spaces (Festival Street, Enhanced Streetscape and Entry  
15 Plazas).

Park Spaces		Public Space	
Village Green	0.68 acres	Festival Street	0.51 acres
Pocket Oasis	0.52 acres	Enhanced Streetscape	0.63 acres
		Entry Plazas	0.49 acres
<b>Sub - Total</b>	<b>1.20 acres</b>	<b>Sub - Total</b>	<b>1.63 acres</b>
		<b>Total</b>	<b>2.83 acres</b>

16  
17 The total Park Spaces shall be a minimum of 1.20 acres and total Public Space shall include  
18 approximately 1.63 acres as depicted in the Conceptual Guide Plan. The Park Spaces (Village Green and  
19 Pocket Oasis) shall be required and shall include the distinct characteristics related to each specific use as  
20 described below in these Supplemental Site Design Guidelines (SSDG).

21 The SSDG articulates for each portion of the Park Spaces and Public Space Improvements: 1) a list of  
22 basic design elements that are required to be incorporated; and 2) a menu of additional design elements  
23 from which the Owner will select a defined subset to incorporate, in Owner's sole discretion.

## 24 II. Requirements of Park Spaces:

25 The Parks Spaces shall be designed for functionality and accessibility with commercial grade  
26 hardscaping, fixtures and playground equipment which shall be selected by the process outlined herein.

### 27 A. Parks Elements

28 (1) **Village Green:** The Village Green will provide for informal recreation use as well as more prescribed  
29 uses (i.e. festivals, community gatherings, concerts and similar event opportunities).

30 The following Village Green design elements **must be** provided:

Required Characteristics	Metric –
a. Minimum Size	No less than 29,400 square feet (sf.)
b. Location	Generally as shown on Lot C of Exhibit D

c. Edges to Buildings	Activated ground floor uses including retail, restaurants and other active uses. Residential uses such as lobbies or stoops are disfavored adjacent to Village Green but may be allowed if they are designed to provide active engagement with pedestrian realm.
d. Programmable hardscape open space	Minimum of 3,000 sf.
e. Benches / Integral seating	Shall provide seating for 30 people minimum throughout the Village Green Integral seating shall be at least 15" in height.
f. Lawn Area	Minimum of 10,000 sf.
g. Integrated lighting (example)	Achieve at least 0.5-foot candles throughout the Village Green
h. Pedestrian scale light fixtures	1 fixture per 50 lineal feet (lf.) along paths
i. Varied paving patterns in pedestrian pathways and plaza	Village Green to comply with Streetscape Standards as component of the Development Regulations
j. Street trees and landscaping	Village Green to comply with Streetscape Standards as component of the Development Regulations
k. Widened Sidewalks and pathways	Minimum 8 ft. width
l. Splash pad/water play area	Minimum size of 300 sf.
m. Public Restroom	At least one (1) all gender restroom provided immediately adjacent to Village Green.
n. Pavilion: A pavilion, gazebo or pergola structure ("Pavilion") shall be constructed within the Village Green. This is to be a distinctive park structure that may be used as a covered picnic space, performance area, or a venue for recreational programming such as concerts, movies in the park, and other performances.	<ol style="list-style-type: none"> <li>1. Minimum of 600 square feet (floor surface)</li> <li>2. At least 2 electrical outlets with one supplying at least 220 volts of power</li> <li>3. A hard-surfaced raised platform that can serve as a stage</li> <li>4. Covered roof which at a minimum provides protection from the elements</li> <li>5. Capabilities for video projection; and</li> <li>6. Rigging for stage curtains, lighting, or decoration</li> </ol> <p>The Pavilion shall be designed to be:</p> <ol style="list-style-type: none"> <li>7. Multi-use; and</li> <li>8. Complementary in architecture to the surrounding development</li> </ol>
<b>Other features that may be incorporated at Owner's discretion, including but not limited to:</b>	
<ol style="list-style-type: none"> <li>o. Enhanced moveable furniture</li> <li>p. A deciduous tree canopy that provides solar access in winter and shade in summer</li> </ol>	

32 B. **Pocket Oasis:** The Pocket Oasis will have a park-like character and allow for active play,  
 33 seating and comfortable enjoyment as well as an enclosed dog park. The following Pocket Oasis design  
 34 elements **must be** provided:

Minimum Characteristics	Metric
a. Minimum Size	No less than 22,600 sf.
b. Location	Generally as shown on Lot B of Exhibit D
c. Enclosed Dog Park	Minimum of 2,500 sf. with a minimum one (1) water source for dogs
d. Play Area	Minimum of one (1) play structure consistent with Parks Department standards such as being geared to ages 5-12 years and accommodating a minimum number of 20 users.
e. Benches and Seating	Shall provide seating for 40 people minimum throughout the Pocket Oasis. Integral seating shall be at least 15" in height.
f. Varied Canopy of Trees	At full maturity, canopy should reach a minimum of 15% coverage of the site with a mixture of native conifers and deciduous. (Can be reduced subject to a future 198 <sup>th</sup> Street SW extension)
g. Animal clean up station with trash	At minimum, 1 station per entrance to enclosed dog park.
h. Fountain	A minimum of one (1) drinking fountain.
i. Integrated lighting	Achieve at least 0.5-foot candles throughout the Pocket Oasis
<b>At least two of the following additional design elements for inclusion at Owner's sole discretion:</b>	
j. Pedestrian path/ramping walkway	Minimum width of 6 ft width
k. Dog park equipment such as obstacle course;	To be reviewed and approved pursuant to Section 4 of the Agreement with corresponding Project Entitlement Application
l. Integral color concrete paving.	Continuous extension of Festival Street Design in width and character.
m. Enlarged Enclosed Dog Park	Additional 1,500 sf. (or more) provided contiguous to Enclosed Dog Park
<b>At least one of the following additional design elements for inclusion at Owner's sole discretion:</b>	
n. Water Feature	To be reviewed and approved pursuant to Section 4 of the Agreement with corresponding Project Entitlement Application.
o. Art installation	To be reviewed and approved pursuant to Section 4 of the Agreement with corresponding Project Entitlement Application except any art installation shall be presented to the Arts Commission for its review and comment.
<b>Other features that may be incorporated at Owner's discretion, including but not limited to:</b>	
p. Enhanced landscape areas in addition to required landscape buffer;	
q. Enhanced moveable furniture;	
r. Enhanced pedestrian lighting.	

35

36 C. **Public Space Element**

37 (3) **Festival Street (198<sup>th</sup> Street SW between 45<sup>th</sup> Avenue and 46<sup>th</sup> Avenue):** The Festival Street will  
 38 serve residents, visitors, and pedestrians as a web knitting the site together through a series of spaces.



39 allowing for moments of leisure and special events such as farmer’s markets and street festivals. The  
 40 following Festival Street elements **must be** provided to implement the Conceptual Guide Plan:

Minimum Characteristics	Metric
a. Minimum Size & Location	Generally as shown on Lots F and B of Exhibit D Phased Onsite and Offsite Improvement Plan.
b. Flush Curb OR Raised Wooneerf-Style Street	Sidewalk design level with street separated by paving change such as integrated brick or stamped concrete.  Use of truncated domes should be minimized to crossing locations only or as required by ADA.
c. Paved Pedestrian Walkways	Minimum width of 10 ft. along Festival Street
d. Building Edges	Activated ground floor uses (e.g. retail, residential lobbies and amenity spaces, townhomes with stoops) that respond to the Festival Street and encourage pedestrian activity and “spill-out” interactions with Festival Street users.
e. Benches/integral seating	Shall provide seating for at least 20 people throughout Festival Street. Integral seating shall be at least 15” in height.
f. Pedestrian Lighting	Achieve at least 0.5-foot candles throughout the Festival Street and adequate lighting for vehicular traffic
g. Landscaping	Refer to Streetscape Standards
<b>Other features that may be incorporated at Owner’s discretion, including but not limited to:</b>	
h. Enhanced trash receptacles i. Enhanced pedestrian lighting j. A deciduous tree canopy that provides solar access in winter and shade in summer. k. Wayfinding Signs	

41

42 **III. Parks and Public Space Review Process**

43 Owner or its assignee agrees to construct the Parks and Public Space Improvements as shown in Exhibit  
 44 D – Phased Onsite and Offsite Improvements Plan as privately maintained space that is available for  
 45 public access and enjoyment subject to rules and regulations for conduct as set forth in the Agreement as  
 46 Exhibit G – Draft Parks O&M Plan.

47 The Owner shall present the proposed Parks and Public Spaces Improvements with each corresponding  
 48 Project Entitlement Application as provided in Section 4 of the Agreement, including a presentation to the  
 49 Parks and Recreation Board for its review and comment in its advisory capacity prior to a PDR decision.

50 The Owner may, in its sole discretion, conduct additional voluntary outreach to the community, including  
 51 requesting additional opportunities to present to the Parks and Recreation Board for additional feedback.

52 While only a minimum number of design elements listed in Section II above shall be required, the Owner  
 53 may propose as many of the design elements as may be feasible to create a unique sense of place that will

54 enhance the probability of success for the Project. The ultimate design of the Parks and Public Space  
55 Improvements will be reviewed through the corresponding PDR for Project or Project-phases.

56 In the event of a conflict between the Development Regulations and the SSDG for a Project-phase, the  
57 SSDG shall control.

58 Owner shall be responsible for maintenance and operations of the Parks and Open Space consistent with  
59 the framework of an Operations and Maintenance Plan, Exhibit G of this Agreement.

60

Unofficial Draft Document

# EXHIBIT - G

---

## DRAFT PARKS O&M PLAN

Umoonga's Document

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38

**DRAFT Parks and Public Space Improvements  
Operations & Maintenance Plan (“O&M Plan”)**

4 **I. Introduction and Purpose**

5 As a component of the Project, Owner shall construct the Parks and Public Space Improvements  
6 shown on Exhibit C-29, herein incorporated by reference (collectively, the “Parks and Public  
7 Space Improvements”), which are to be privately owned but publicly accessible subject to this  
8 Operations and Maintenance Plan (“O&M Plan”).

9 The Parks and Public Space Improvements shall be private property. Owner shall be responsible  
10 for the maintenance and operation of the Parks and Public Space Improvements in accordance  
11 and consistent with all City Codes, Regulations, and Policies, except as otherwise provided in  
12 Section 9.3 of the Development Agreement. However, Owner shall make the Parks and Public  
13 Space Improvements available for public access and enjoyment subject to the Park Guidelines as  
14 provided in Section II of this O&M Plan.

15 **II. Parks Guidelines**

16 a. **Purpose.** Subject to the conditions of this O&M Plan, the Parks Improvements  
17 will be available for open space, pedestrian and recreational use and access by the public. Owner  
18 may modify these Parks Guidelines to facilitate specific programmed events, such as and not  
19 limited to Oktoberfest, Holiday Tree Lighting, or Movie in the Park.

20 b. **Hours of Operation.** Owner and the City acknowledge that unlike other Parks in  
21 the City of Lynnwood, the Parks and Public Space Improvements will be located within an urban  
22 village with immediately adjacent residents and operating businesses that will significantly  
23 contribute to their vitality and frequency of use. As such, Owner and City agree that the Parks  
24 and Public Space Improvements will be open to the public without charge, for a minimum of ten  
25 (10) hours each day of the year between October and April and twelve (12) hours each day of the  
26 year between May and September (“Access Hours”).

27 Owner may extend the Access Hours. Owner shall also have the right to temporarily  
28 suspend the Access Hours for all or a portion of the Parks and Public Space Improvements and  
29 close, obstruct, limit access, or establish temporary hours of public access to the Parks and Public  
30 Space Improvements for: (1) maintenance and repair; (2) construction; and (3) emergency  
31 circumstances beyond Owner’s control. Should such a closure extend for more than seventy two  
32 (72) hours, Owner shall coordinate with the Parks Director to address the impacts and solutions  
33 related to public access.

34 c. **Limitations.** The following activities shall be prohibited in the Parks  
35 Improvements:

- 36 • Camping;
- 37 • Loitering in, remaining in or otherwise being on the Parks Improvements
- 38 outside of the hours of operation;

- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- Solicitation of any kind;
  - Smoking, lighting or otherwise using of any tobacco product, including, but not limited to, the smoking or carrying of any kind of lighted tobacco in the form of a cigarette, cigar, pipe, or other lighted smoking equipment, or the activation or other use of any electronic smoking device;
  - Off-leash pets except in the Dog Park portion of the Pocket Oasis or as may be permitted for special events;
  - Organized sporting activities, unless otherwise approved by Owner;
  - Posting of signs or notices (but not the holding of signs or signature gathering);
  - Possession of alcoholic beverages, except when authorized pursuant to all applicable state and local regulations regarding provision of alcohol;
  - Possession of illegal drugs pursuant to the Revised Code of Washington;
  - Mutilate, deface, injure, steal or damage any building, installation, personal property or piece of equipment;
  - Sexual activity or misconduct;
  - Urination or defecation;
  - Assault or fighting;
  - Use of amplified sound above that permitted in LMC Ch. 10.12., except when consistent with all applicable City noise regulations and only if such activities have prior written approval of Owner; and
  - Any other activity which may result in injury to persons or damage to property or which intentionally interrupts with the enjoyment of the Parks and Public Space Improvements by others or obstructs access to Parks and Public Space Improvements, including but not limited to violations of the Parks Rules provided in LMC Ch. 10.16.

65 (collectively, the "Prohibited Activities"). As the Parks and Public Space Improvements  
66 operator, Owner reserves the right to take such lawful action as it deems necessary or advisable  
67 under the circumstances to prevent, respond to or terminate any Prohibited Activities, including  
68 but not limited to temporary closure of the Parks and Public Space Improvements.

69 d. **Events.** Events to be held or located within the Parks and Public Space  
70 Improvements shall be required to obtain all permits required by the LMC and Owner shall  
71 comply with all applicable conditions imposed pursuant to LMC 5.30.030. Owner shall have  
72 the option, but not the obligation, to maintain and manage a farmer's market or similar seasonal  
73 or ongoing event in the Parks and Public Space. In event Owner elects to operate a farmer's  
74 market, Owner may request that the City grant the necessary permits, licenses, approvals to  
75 facilitate seasonal or ongoing events including but not limited to waiving any obligation to obtain  
76 a bond for said activities due to Owner's ongoing maintenance obligations pursuant to the  
77 Development Agreement.

78 **III. Maintenance.** Owner shall be responsible for maintenance of the Parks and Public Space  
79 Improvements, including keeping the Parks Improvements in a reasonably neat, safe, and orderly

80 condition. Any modifications of the Parks and Public Space Improvements shall be subject to  
81 the City's approval, consistent with Section 9.2 of the Development Agreement, and shall be  
82 governed by applicable Lynnwood Municipal Code ("LMC") procedures with the corresponding  
83 Project Entitlement Application, except that if a modification is required under the LMC, Owner  
84 shall present to the Parks and Recreation Board for its review and comment prior to the City  
85 issuing a decision on the modification. Owner shall also create rules, regulations, and codes of  
86 conduct ("Park Rules") for such Park Improvements. Park Rules are subject to change from time  
87 to time with written approval of the Parties.

88 The Owner's obligations to maintain the Parks and Public Space Improvements shall survive the  
89 termination or expiration of the Development Agreement, and may be included in the conditions  
90 of approval of any subdivision, binding site plan, or other land use approval for the Project.

91 **IV. Enforcement.** Owner acknowledges that the ongoing maintenance and operations of the  
92 Parks and Public Space Improvements consistent with the O&M Plan is required pursuant to the  
93 Agreement. The City reserves all rights under the LMC to ensure enforcement of the O&M Plan  
94 as a condition of the Agreement. The Parties acknowledge that in order for the O&M Plan to  
95 remain effective, certain modifications and revisions may be necessary from time to time.  
96 Accordingly, the O&M Plan may be modified only with the written approval of the Parties.

97

98

EXHIBIT H  
CONCEPTUAL GUIDE PLAN EXCERPTS REFERENCED IN AGREEMENT

- 1519
- 1520
- 1521
- 1522
- 1523
- 1524
- 1525
- 1526
- 1527
- 1528
- 1529
- 1530
- 1531
- 1532
- 1533
- 1534
- 1535
- 1536
- 1537
- 1538
- 1539
- 1540
- 1541
- 1542
- 1543
- 1544
- 1545
- 1546
- 1547
- 1548
- 1549
- 1550
- 1551
- 1552
- 1553
- 1554
- 1555
- 1556
- 1557
- 1558
- 1559
  
- 1560
  
- 1561

On file with City and available at City of Lynnwood under File No. ERC-007709-2019

# EXHIBIT - I

## FAR SUMMARY TABLE

### CALCULATION WITHOUT ABOVE GRADE PARKING

	PROGRAM	TOTAL SITE AREA	PROPOSED SUBTOTAL GFA <sup>1</sup>	PROPOSED FAR <sup>4</sup>	MAX FAR <sup>4</sup>
LAND AREA OF CURRENT SITE	Residential	786,503	1,344,294	1.71	3.00
	Commercial		744,259	0.95	2.00
	Combined		2,088,553	2.66	5.00
CURRENT SITE + PRECISION TUNE	Residential	806,664 <sup>2</sup>	1,344,294	1.67	3.00
	Commercial		771,333	0.96	2.00
	Combined		2,115,627	2.62	5.00
CURRENT SITE + PRECISION TUNE + KEYBANK	Residential	833,646 <sup>3</sup>	1,344,294	1.61	3.00
	Commercial		775,313	0.93	2.00
	Combined		2,119,607	2.54	5.00

### CALCULATION WITH ABOVE GRADE PARKING<sup>1</sup> (for comparison only)

	PROGRAM	TOTAL SITE AREA	SUBTOTAL GFA <sup>1</sup>	FAR <sup>4</sup>	MAX FAR <sup>4</sup>
LAND AREA OF CURRENT SITE	Residential	786,503	1,869,106	2.37	3.00
	Commercial		1,240,627	1.58	2.00
	Combined		3,109,733	3.95	5.00
CURRENT SITE + PRECISION TUNE	Residential	806,664 <sup>2</sup>	1,869,106	2.32	3.00
	Commercial		1,288,095	1.60	2.00
	Combined		3,157,201	3.92	5.00
CURRENT SITE + PRECISION TUNE + KEYBANK	Residential	833,646 <sup>3</sup>	1,869,106	2.25	3.00
	Commercial		1,393,085	1.67	2.00
	Combined		3,262,191	3.92	5.00

1. Space dedicated to parking is excluded from floor area calculations per LMC Table 21.60.1: Floor Area Ratio (FAR) note b.
2. Precision Tune parcel = 20,161 sf
3. Precision Tune parcel + KeyBank parcel = 47,144 sf
4. Per LMC 21.60.400.D. note c, allowable FAR for non-residential and residential use shall be added together for the respective use types within a mixed use residential project, to provide for a combined FAR total.