

1 **DEVELOPMENT AGREEMENT**

2 THIS AGREEMENT is entered into this ____ day of _____, 2019 (the
3 “Effective Date”) by and between MGP XI Lynnwood, LLC, a Delaware limited liability company
4 (“Owner”), or its assignee, and the City of Lynnwood, a Washington municipal corporation
5 (“City”). Owner and the City are each a “Party” and collectively the “Parties” to this Agreement.

6 **RECITALS**

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

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

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

26 D. In May 2012, the City adopted the City Center Planned Action with Ordinance No.
27 2943 (“Planned Action”) to provide for a streamlined entitlement review of development projects
28 within City Center that are consistent with the Planned Action and the environmental impacts
29 evaluated and mitigation measures identified within the geographic and density level scope of the
30 City Center EIS.

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

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

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

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

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

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

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

52 AGREEMENT

53 1. Definitions.

54 1.1. “City Council” means the City Council of the City of Lynnwood.

55 1.2. “Development Regulations” means those sections of the Lynnwood
56 Municipal Code, Lynnwood Zoning Code, Lynnwood Comprehensive Plan,
57 Lynnwood Zoning Map, City Center Design Guidelines, and any implementing
58 policies, regulations, procedures or guidelines addressing the zoning, building and
59 site design, utilities, stormwater, transportation concurrency, environmental review
60 (including SEPA procedures and substantive authority), transportation
61 concurrency, multiple-unit housing property tax regulations, and any other
62 elements that govern the development of real property within the City. A term
63 defined in the Development Regulations shall have the meaning assigned to it
64 within the Development Regulations.

65 1.3. “Enhanced” means design elements that exceed the minimum requirements
66 of the Development Regulations. This term does not allow items identified or
67 required by the Development Regulations and Supplemental Site Design
68 Guidelines as defined in Exhibit F to be replaced with design elements that do not
69 exceed the minimum requirements.

70 1.4. “LMC” means the Lynnwood Municipal Code.

71 1.5. “MFTE” shall mean the Multiple-Unit Housing Property Tax Exemption
72 program administered by the City pursuant to LMC Ch. 3.82.
73

74 1.6. “Owner” means MGP XI Lynnwood, LLC, a Delaware limited liability
75 company, and its successors and permitted assigns pursuant to Section 24.

76 1.7. "PDR" means the Project Design Review process of the City as
77 administered by the Community Development Director under LMC Ch. 21.24.

78 1.8. "SEPA" means the State Environmental Policy Act, RCW 43.21C, and
79 implementing regulations at WAC Ch.197-11.

80 1.9. Each term defined within the Agreement shall have the meaning assigned
81 to it within the Agreement.

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

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

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

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

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

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

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

94 The Project also includes:

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

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

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

98 2.1. FAR Calculations. The Property, exclusive of public right of way,
99 comprises of 786,503 square feet of land area, as depicted in Exhibit B and Exhibit
100 C at page 42 (individual pages within Exhibit C are herein after referred to as
101 Exhibit C-page ## for clarity), exclusive of outparcels that are not currently owned
102 by Owner, attached herein and incorporated by reference. As provided in LMC
103 21.60.400.D, the maximum allowed development on the Property is expressed in
104 terms of the ratio of floor area ("FAR") to the total gross land area. Allowed FAR
105 for the Project shall thus be calculated for all purposes using 786,503 square feet of
106 land area as the total gross land area. Based on the allowed FAR and Allowable
107 Development Capacity, the Project FAR is shown in Exhibit I ("FAR Summary
108 Table"), attached herein and incorporated by reference. Future dedications of land
109 by Owner for public use or improvements shall not reduce the land area used for

110 calculating FAR or the development rights provided by this Agreement or the LMC.
111 Owner anticipates the potential future acquisitions of the outparcels as shown on
112 Exhibit C-42. In the event that Owner acquires one or more of the outparcels, the
113 Agreement and all entitlement rights therein shall be adjusted to reflect the allowed
114 FAR in accordance with Section 2.4 of this Agreement.

115 2.2. Flexibility. As a component of this Agreement, the City Council has
116 approved the Conceptual Guide Plan. The Project, as shown in the Conceptual
117 Guide Plan, is intended to be an overall master development approval and is
118 considered a conceptual guide by which development of the Project should
119 conform. Depictions of building footprints, land use densities, locations, bulk and
120 scale, height or other design features shown in the Conceptual Guide Plan are
121 illustrative only, except that Owner shall provide street level uses along 198th Street
122 Southwest and 45th Avenue West as shown generally at Exhibit C-17-22. Approved
123 uses in the Conceptual Guide Plan may be transferred and located anywhere on site
124 and the densities of uses may be modified, including increasing or decreasing the
125 square footage of land uses allowed, so long as the resulting proposal generates the
126 same or lesser trips as the Allowable Development Capacity as shown on the
127 transportation analysis accompanying the Conceptual Guide Plan and remains
128 within the City Center EIS and Planned Action envelope and consistent with the
129 Vested Code Provisions (as defined herein), as provided below.

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

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

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

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

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

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

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

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

156 2.3. Phasing. Owner may, at its sole discretion, elect to phase the Project
157 in one or more Project-phases. The required transportation, park and public space
158 and utility improvements shall be developed consistent with the corresponding
159 Project-phase as provided in Exhibit D (“Phased Onsite and Offsite Improvements
160 Plan”) and herein incorporated by reference, unless modified pursuant to Section
161 3.4.

162 (a) Subdivision or Binding Site Plan. The Parties agree that a
163 Subdivision or Binding Site Plan is necessary for the development of the
164 Project. Owner acknowledges that any Subdivision (either full or short, as
165 allowed by applicable laws) or Binding Site Plan for the Project shall be
166 required to comply with the applicable Development Regulations and
167 review procedures. The size, configuration and number of legal lots or
168 development parcels within the Property may be modified if approved by
169 the City without amendment of the Conceptual Guide Plan through
170 boundary line adjustments, lot consolidations, binding site plans, short
171 plats, subdivisions or creation of condominiums. Any future land division
172 or consolidation shall not impact the ultimate size of the Parks and Public
173 Space Improvements, Transportation Improvements, or other required
174 public benefits or improvements, unless permitted as an amendment to this
175 Agreement and the City obtains similar public benefit or infrastructure. The
176 Property shall be deemed “classified for commercial use” as this term is
177 used in RCW 58.17.040(4) for the purpose of legally dividing the property
178 through administrative approval of one or more binding site plans.

179 2.4. Additional Parcels. During the Term of Agreement, Owner may acquire
180 additional parcels adjacent to the Property (“Adjacent Parcels”) as shown on
181 Exhibit C-42. In the event Owner acquires Adjacent Parcels, the allowed FAR shall
182 be adjusted to include the lot area of the Adjacent Parcels and the Allowable
183 Development Capacity shall be adjusted accordingly. Any application for a Project
184 or Project-phase shall be reviewed consistent with Section 4.

185 2.5. Allowable Development Capacity Adjustments. The City and Owner
186 recognize the possibility that the commencement of operation of Sound Transit
187 light rail service to the Lynnwood City Center Station may result in reduced
188 vehicular traffic and/or mode shifts that would support further increases in transit-

189 oriented development density. At any time after the commencement of Sound
190 Transit light rail service to the City, the Owner may request a modification in the
191 Allowable Development Capacity. In support of such request, Owner shall provide
192 the City with information supporting the adjustment request including: (1)
193 transportation impact analysis demonstrating increased transit and multi-modal
194 ridership and a decrease in vehicular usage; (2) compliance with the Planned Action
195 and intent of the City Center Plan; and (3) other relevant factors as may be
196 reasonably requested by the City. Based on the foregoing criteria, the City may
197 administratively and upon review and approval of the Community Development
198 Director and Public Works Director approve an increase in the Allowable
199 Development Capacity of no more than 10 percent. If approved, the Allowable
200 Development Capacity shall be amended accordingly; however, all other provisions
201 of the Agreement remain in full effect. Adjustments of more than 10 percent of the
202 Allowable Development Capacity shall be governed pursuant to Section 3.4.

203 3. Vesting. Except as provided in Sections 3.1 and 3.2, Owner shall be entitled to
204 develop the Project under the Development Regulations and land use controls in effect as of the
205 Effective Date of this Agreement (“Vested Code Provisions”), which shall apply for the Term of
206 this Agreement as provided in Section 18.

207 3.1. Exemptions. The following are exempt from vesting under this Agreement:

- 208 (a) Plan review fees, inspection fees, and other land use application fees;
- 209 (b) Connection charges, general facilities charges and monthly service
210 charges;
- 211 (c) Amendments to building, plumbing, fire and other construction codes
212 adopted pursuant to RCW Ch. 19.27 or 19.27A;
- 213 (d) Impact fees authorized by state law, except that calculation of impact
214 fees methodologies shall be governed by the Development Regulations;
- 215 (e) City enactments that are adopted pursuant to state or federal mandates
216 (such as the City’s NPDES Municipal Stormwater Permits) that preempt the
217 City’s authority to vest regulations;
- 218 (f) City enactments that amend the nomenclature or noticing requirements
219 for the applicable entitlement review processes; and
- 220 (g) City enactments regarding MFTE that are adopted pursuant to a state
221 repeal, amendment or modification of RCW Ch. 84.14 or other applicable
222 state law terminating the City’s authority to implement an MFTE program.

223 3.2. Reserved Rights. Notwithstanding any provision in this Agreement, the
224 City reserves authority pursuant to RCW 36.70B.170(4) to impose new or
225 different Development Regulations to the extent required by a serious threat

226 to public health or safety, as determined by the City Council after written
227 notice and an opportunity to be heard by Owner.

228 3.3. Future Code Amendments. Owner may at its option, develop the
229 Property or Project-phases thereof in accordance with new Code provisions,
230 Development Regulations and other regulations, policies, or guidelines
231 hereinafter adopted by the City after the Effective Date, including but not
232 limited to future SEPA and/or Planned Action amendments for City Center,
233 without obligation to bring other portions of the Property into conformance
234 with newly-adopted Code provisions, Development Regulations and other
235 regulations. Application of any future Code amendments under this
236 provision shall be on a Project-phase basis.

237 3.4. Future Agreement Amendments. Owner may request amendments to this
238 Agreement. This Agreement may be amended administratively by the
239 Community Development Director if the request does not result in:

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

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

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

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

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

250 3.4.2. Amendment Procedures. Any amendment of terms under this
251 Agreement that is not eligible for administrative approval shall require
252 either: (1) an amendment to the Agreement that shall be processed pursuant
253 to LMC Ch. 21.29, including but not limited to a public hearing before the
254 City Council, but shall not require all the elements of LMC Ch. 21.29 if
255 those elements remain unchanged in the Agreement being amended; or (2)
256 as an application for a new development agreement pursuant to the Code.

257 3.5. Future Phased Onsite and Offsite Improvements Plan Modifications.
258 Owner may request modifications in the Phased Onsite and Offsite
259 Improvements Plan, as provided in Exhibit D. The Phased Onsite and
260 Offsite Improvements Plan may be administratively approved by the
261 Community Development Director after consultation with the Public Works
262 Director and Parks Director, as appropriate, so long as the proposed
263 modification results in an equal or better level of Transportation
264 Improvements and/or Parks and Public Space Improvements benefit(s) to

265 the lot(s) subject to modification, including any temporary, interim, or
266 phased condition that shall facilitate the development of the Project and fire
267 and life/safety access is provided with said modification.

268 3.6. Reporting. The Parties acknowledge a shared goal of the prompt
269 redevelopment of the Property. However, the Parties recognize that neither
270 Party is prescient enough to anticipate all of the economic, market,
271 construction, leasing and other factors that influence the real estate
272 development process. Accordingly, the Parties acknowledge that the
273 Project or Project-specific phases will proceed in the Owner's sole
274 discretion. In order to facilitate clear communication regarding the
275 Project's status and the potential timeline for Project or Project-phases,
276 Owner shall no less than annually on or before the anniversary of the
277 Effective Date of the Agreement provide a report to the City that includes,
278 but is not limited to, the following material:

279 (a) Status of any Project-related construction completed since the prior
280 report or in-progress at time of the report;

281 (b) Status of any Project Entitlement Applications;

282 (c) Status of any Capacity Reservation Certificates that are pending
283 applications, issued, and/or extinguished;

284 (d) Owner's evaluation of any relevant conditions, including but not
285 limited to economic, regulatory or otherwise, that may impact the current
286 or future Project or any Project-phases;

287 (e) Owner's marketing efforts for the Project; and

288 (f) Any other factor the Owner deems relevant for the report.

289 (collectively, the "Annual Project Report").

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

294 The City has the right, but not the obligation, to provide comments on the
295 Annual Project Report. If either Party wishes to confer regarding the
296 Annual Project Report, the Party shall request a meeting pursuant to Section
297 28 and the Parties shall meet, in good faith, within fourteen (14) days after
298 a Party's request or some other mutually agreed upon timeframe for such a
299 meeting to discuss relevant comments or concerns. Nothing in this Section
300 precludes the City Council or City staff from requesting information
301 regarding the Project consistent with the LMC.

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

312 4.1. Design Departures. Pursuant to RCW 36.70B.170 *et. seq.* and LMC
313 21.29.200.B, the City has approved the modifications to the Vested Code
314 Provisions specified in this section. Any Project Entitlement Application shall be
315 reviewed against the modifications. All other Vested Code Provisions shall still
316 apply.

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

318 For buildings that directly front the Promenade Street, except 44th Avenue
319 West, no less than 40 percent of the lineal frontage of any building shall be
320 occupied by a permitted, nonresidential use. For Project-phases adjacent to
321 44th Avenue West, the lineal frontage of any building may include up to 100
322 percent blank façade if the structure includes the following:

323 (i) Enhanced landscaping, including but not limited to green
324 walls, living walls or other similar treatments shown in Exhibit C-
325 57;

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

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

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

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

334 (vi) A minimum of 15 percent of the occupiable ground floor
335 space along 44th Avenue West, except if Owner shall redevelop the
336 existing Shell Station, the Owner shall provide a minimum of at least
337 60 feet of occupiable frontage.

338 Upon submission of a Project Entitlement Application, Owner and City
339 shall develop the final design that supports the following standards and

340 supports a high-quality interaction between the building and the streetscape.
341 A “high quality interaction” shall mean meeting the intent of the inspiration
342 facades as shown on Exhibit C-57.

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

344 Exception. A single-story building shall be permitted adjacent to, including
345 on Lot C as shown in Exhibit D, or within a park as identified by the City
346 Center Parks Master Plan. On Lot C as shown in Exhibit D, any single-
347 story building shall be consistent with the design guidelines of Exhibit C-
348 56.

349 4.2. Transportation Departures. The City agrees to consider Owner’s departure
350 requests to allow for the ability to: (1) install up to two (2) expanded entry
351 driveways up to 50 feet as may be required for commercial loading vehicle and
352 residential and non-residential parking access; (2) authorize turning radii of 45 feet
353 for at-grade roadway entrances; (3) add a third lane for left turning movements out
354 of the site on 198th Street Southwest to northbound 44th Avenue West when a new
355 signal is installed to maintain safety and traffic circulation; (4) authorize lane
356 widths of 13 feet rather than 10 feet to allow for adequate loading and truck turning
357 movements while maintaining pedestrian safety; (5) allow for double sided angled
358 parking to enhance retail viability along 45th Avenue West; and (6) any other such
359 departures from City right-of-way standards and guidelines (“Transportation
360 Departures”), as shown in Exhibit C-37. So long as the request is consistent with
361 the Conceptual Guide Plan, the City shall review and may approve any
362 Transportation Departures with the Project Entitlement Application.

363 5. SEPA Compliance. City has adopted the Planned Action pursuant to the City
364 Center EIS. The Project is within the scope of the maximum anticipated level of development in
365 the Planned Action and within the scope of environmental mitigations identified and conditioned
366 to mitigate that anticipated maximum level of development. The Parties agree that the
367 environmental impacts stemming from the Project and Conceptual Guide Plan, including the
368 potential development of the Additional Parcels, have been analyzed by the Planned Action and
369 City Center EIS. Except as provided in Section 5.2, individual projects implementing the
370 Conceptual Guide Plan and this Agreement shall be considered to have been reviewed pursuant to
371 SEPA and no individual SEPA determination for a Project or Project-phase shall be required, nor
372 shall additional conditions be imposed under the City’s SEPA authority. SEPA compliance for
373 any Project or Project-phase shall be limited to the submittal of a Planned Action SEPA process
374 checklist per LMC 17.02.300.

375 5.1. SEPA Mitigation. Mitigation specified in the Planned Action and City
376 Center EIS serve to adequately address the environmental impacts of the Project.
377 Consistent with this Agreement, no additional SEPA mitigation shall be imposed
378 for any Project or Project-phase.

379 5.2. Additional SEPA Review. Any application for development that exceeds
380 the Allowable Development Capacity, including any modifications as provided in

381 Section 2.5, may, in the City’s SEPA Responsible Officials’ discretion, require
382 additional SEPA review consistent with the Vested Code Provisions.

383 6. Transportation Concurrency. The City’s transportation concurrency ordinance was
384 adopted in accordance with a requirement of the Growth Management Act (“GMA”) (RCW
385 36.70A.060(6)(b)). The GMA requires the City to determine that transportation facility
386 improvements or strategies will be in place concurrently with land development. “Concurrent with
387 the development” is defined by the GMA to mean that any necessary “improvements or strategies
388 are in place at the time of development or that a financial commitment is in place to complete the
389 improvements or strategies within six years.” Pursuant to LMC Ch. 12.22, the City has determined
390 that the Allowable Development Capacity meets the City’s standards for transportation
391 concurrency and mitigates any significant adverse impacts to the City’s transportation system as
392 provided in Table 1 (“Phased Concurrency Capacity Allocation Schedule”) that establishes
393 concurrency for the Project over three phases (“Concurrency Phases”); provided that the Project
394 is developed in compliance with the terms of this Agreement, including any requirement that
395 Owner pay transportation impact fees as required. The City agrees that no further concurrency
396 review and/or mitigation of transportation impacts are required for 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 Concurrency</u> <u>Authorized</u>	<u>575</u>	<u>925</u>	<u>1080</u>

397
398 Within thirty (30) days of the effective date of this Agreement, the City shall issue a Capacity
399 Reservation Certificate with an expiration date that is the same as the expiration date of this
400 Agreement, except that Owner shall abide by the schedule set forth in Table 1 for allocation of
401 concurrency with respective Concurrency Phases. Owner shall have the right, in its sole discretion,
402 to apply all or a portion of the Cumulative Concurrency Authorized pursuant to Table 1 to any
403 Project or Project-phase.

404 6.1. Trip Cap. New development within the Project under this Agreement is
405 established as the Allowable Development Capacity, which corresponds to a net
406 new p.m. peak hour trips (inbound and outbound) (“Net New Trips”) limit of 1,080
407 Net New Trips (“Trip Cap”), as demonstrated on Owner’s Planned Action Trip
408 Generation Analysis depicted as Exhibit E and incorporated herein by reference.
409 The methodology for determining Net New Trips for any phase of the Project
410 (including assumed values for trip generation and trip reduction/mode-split
411 calculations) shall be consistent with Exhibit E. Trip counts shall be estimated at

412 the perimeter of the Property; trips internal to the Project shall not count against the
413 Trip Cap. The Trip Cap shall be reserved by the City for use by the Owner through
414 the Term of this Agreement. If Owner is in compliance with the Trip Cap, Owner
415 shall only be required to produce a study for each Project or Project-phase to
416 identify the associated Net New Trips with the specific proposal.

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

421 7.1. 198th Street Southwest. Owner shall develop 198th Street Southwest as a
422 private street as provided on Exhibit C-16 and consistent with applicable City
423 standards, with the exception of the Festival Street, which shall be designed as
424 shown on Exhibit C-16. Respective components of 198th Street Southwest shall be
425 completed with Lot B and Lot F as shown on the Phased Onsite and Offsite
426 Improvements Plan.

427 In the event that the adjacent western property currently operating as a self-storage
428 facility redevelops to allow the extension of 198th Street Southwest to the west,
429 Owner acknowledges the benefit of such potential extension of 198th Street
430 Southwest and shall, at no cost to the City, either: (i) grant roadway/utility
431 easements in a form approved by the City to allow vehicular and pedestrian access
432 across its private street area; or (ii) dedicate 198th Street Southwest as public right-
433 of-way, subject to review and approval as provided in the LMC. Owner reserves
434 all rights regarding the City’s review and approval of any 198th Street Southwest
435 extension project, including but not limited to any compensation as authorized
436 under applicable law for any takings of the Pocket Oasis and Owner’s reservation
437 of the right to install and maintain any private utilities within the future dedication
438 pursuant to a Utility Maintenance Agreement as explained in Section 13.1 and 14.1.
439 In no event shall Owner have any obligation to contribute towards the construction
440 of or dedicate any additional property towards a 198th Street Southwest expansion,
441 nor shall Owner be required to modify the setbacks for any Project or Project-phase
442 adjacent to a future 198th Street Southwest. In the event that a 198th Street
443 Southwest expansion adversely impacts the Pocket Oasis (as defined herein),
444 Owner shall not be required to replace the loss of Park space elsewhere in the
445 Project. Should the City and/or adjacent property owner elect to develop additional
446 park and public space adjacent to the Pocket Oasis, Owner shall provide cross-
447 access easements for use and enjoyment of the Pocket Oasis from an adjacent park
448 and/or public space areas. City reserves the right to exercise condemnation
449 authority, as authorized by applicable law.

450 7.2. 197th Street Southwest. Owner shall develop 197th Street Southwest as a
451 private street as provided in Exhibit C-16. 197th Street Southwest shall be
452 completed with Lot D as shown on the Phased Onsite and Offsite Improvements
453 Plan.

454 7.3. 46th Avenue West. Owner shall develop 46th Avenue West as a private
455 street as shown on Exhibit C-16 and consistent with applicable City standards. 46th
456 Avenue West shall be completed with Lot C and Lot A as shown on the Phased
457 Onsite and Offsite Improvements Plan. In the event that the westerly property
458 redevelops to allow the widening of 46th Avenue West, Owner shall, at no cost to
459 the City, either: (1) grant roadway/utility easements in a form approved by the City
460 to allow vehicular and pedestrian access across the private street area; or (2)
461 dedicate its portion of 46th Avenue West as public right-of-way, subject to review
462 and approval as provided in the LMC and Owner's reservation of the right to install
463 and maintain any private utilities within the future dedication pursuant to a Utility
464 Maintenance Agreement as explained in Section 13.1 and 14.1. In no event shall
465 Owner have any obligation to contribute or dedicate additional property towards
466 the widening of 46th Avenue West or to any signalization of the 46th Avenue West
467 and 196th Street Southwest intersection, if warranted, nor shall Owner be required
468 to modify the setbacks for any Project or Project-phase adjacent to a future 46th
469 Avenue West; however, Owner shall not object to the installation of a signal at 46th
470 Avenue West and 196th Street Southwest, if warranted. If City elects to construct
471 improvements for bicycle facilities or other traffic calming features along a future
472 46th Avenue West, at City's sole expense, Owner covenants not to object to
473 construction of said facilities so long as they conform to applicable City standards
474 and do not impede the ability for Owner to provide loading and access to the
475 Project.

476 7.4. 45th Avenue West. Owner shall develop 45th Avenue West as a private
477 street as shown on Exhibit C-16. Respective components of 45th Avenue West shall
478 be developed with Lot A, Lot E and Lot F as shown in the Phased Onsite and Offsite
479 Improvements Plan.

480 7.5. 198th Street Southwest/44th Avenue West Signal. The Parties anticipate that
481 a traffic signal at 198th Street Southwest and 44th Avenue West intersection
482 ("198th/44th Signal") may be warranted with the extension of 198th Street Southwest
483 into the Property. When Owner submits Project Entitlement Application for Lot F
484 or Lot G under the Phased Onsite and Offsite Improvements Plan, Owner shall
485 prepare a traffic signal warrant analysis for City review. If the 198th/44th Signal is
486 warranted, the Owner shall construct the 198th/44th Signal, which shall be eligible
487 for TrIF credits under Section 8 and the Vested Code Provisions. Construction of
488 the 198th/44th Signal shall be the responsibility of the City if the City's planned
489 improvements of 44th Avenue West precede Owner's submission of a Project
490 Entitlement Application for Lot F or Lot G under the Phased Onsite and Offsite
491 Improvements Plan. If the 198th/44th Signal is not constructed prior to or concurrent
492 with the construction for Lot F, a warrant analysis shall be required for subsequent
493 phases following construction of Lot F. The Parties shall use best efforts to
494 coordinate construction of the 198th/44th Signal, including but not limited to
495 providing conduit to facilitate installation of the 198th/44th Signal in any applicable
496 street improvements and cooperating in obtaining all applicable state, federal, and
497 local permits and approvals.

498 7.6. 196th Street Southwest/46th Avenue West Signal. The Parties do not
499 anticipate that a traffic signal at 196th Street Southwest and 46th Avenue West
500 intersection (“196th/46th Signal”) will be constructed during the Term of this
501 Agreement. Under this Agreement, Owner shall have no obligation to conduct a
502 warrant analysis, construct and/or contribute to a future 196th/46th Signal. All
503 potential construction, cost sharing or other elements related to a future 196th/46th
504 Signal, if warranted consistent with procedures under the LMC, shall be negotiated
505 in a separate agreement.

506 7.7. 200th Street Southwest/46th Avenue West. The Parties anticipate that a
507 traffic signal at 200th Street Southwest and 46th Avenue West intersection
508 (“200th/46th Signal”), will be constructed by Sound Transit as a component of the
509 Lynnwood Light Rail station (“Sound Transit Upgrades”). The Parties shall
510 cooperate in good faith to advocate to Sound Transit for the inclusion of the
511 200th/46th Signal, in the alignment shown on Exhibit C-38, to be developed with the
512 Sound Transit Upgrades.

513 7.8. 44th Avenue West Frontage. Owner shall develop 44th Avenue West
514 frontage improvements as provided on Exhibit C-26-27 (“44th Avenue
515 Improvements”).

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

534 7.9. 200th Street Southwest Frontage. Pursuant to an agreement between City
535 and Sound Transit, Sound Transit will construct improvements along 200th Street
536 Southwest that are consistent with the widening of the street. The Owner shall be
537 responsible for additional improvements of the streetscape as consistent with the
538 Vested Code Provisions and as shown on Exhibit C-18.

539 7.10. Emergency Access. Owner shall develop 198th Street Southwest, 197th
540 Street Southwest, 46th Avenue West, and 45th Avenue West (collectively, the
541 “Private Roads”) for emergency access consistent with applicable regulations. All
542 Private Roads shall be reviewed and considered by the City and Regional Fire
543 Authority as a component of the corresponding Project Entitlement Application.

544 7.11. General Provisions. The Transportation Improvements shall constitute the
545 entirety of the street and right-of-way improvements required for the Project,
546 including for concurrency and site access evaluations as provided by LMC 12.22.
547 Should Owner elect to construct Transportation Improvements designated for a
548 future Project-phase at an earlier time, such work will be coordinated with the City.
549 All Transportation Improvements shall be constructed in accordance with the City’s
550 standards and regulations at the time of site development or building permit, except
551 as required above for the private streets and except for Departures noted in this
552 Agreement.

553 8. Transportation Impact Fees (“TrIFs”). Pursuant to LMC Ch. 3.105, Owner
554 acknowledges that new development resulting in a net increase in trips from existing land uses
555 shall be subject to TrIF. The procedure for calculating TrIF shall be governed by LMC 3.105.060-
556 .070, except that Owner may, in its sole discretion, elect to use the City’s fee rate at time of issuance
557 of a building permit for a Project or Project-phase; however, Owner shall receive TrIF credits for
558 the existing development on the Property as of the Effective Date of this Agreement, which
559 includes 198,577 square feet of retail and restaurant use (“TrIF Existing Floor Area”). Owner may
560 elect to use the TrIF Existing Floor Area in whole or in part for a Project or Project-phase or be
561 assigned to a future Project-phase.

562 8.1. TrIF Credits. In consideration of Owner constructing or contributing to the
563 construction of the transportation improvements as set forth in this Agreement, City shall
564 credit the total project cost (including land value, design, permit fees, construction and
565 right-of-way dedications, if any) of each improvement listed in this Section as additional
566 TrIF Credits. The total amount of TrIF Credits shall not exceed the total amount of TrIF
567 that the Owner is required to pay for the Project. If the amount of TrIF Credits in a
568 particular Project-phase exceeds the amount of TrIF required for that phase, as determined
569 by LMC, Owner may apply the remaining TrIF Credit against TrIF for future phases. The
570 following improvements are eligible for TrIF Credits:

- 571 (a) Project #8 – 44th Avenue West improvements;
- 572 (b) Project #13 – 200th Street Southwest improvements, including but
573 not limited to the 200th/46th Signal and associated improvements (to the
574 extent completed by Owner and not as a component of the Sound Transit
575 Upgrades);
- 576 (c) Shared Use Path, if constructed by Owner subject to Section 7.8;
577 and/or

578 (d) Other Transportation Improvements provided in Section 7 that are
579 included in the Conceptual Guide Plan and identified in a future City’s TrIF
580 rate study, as may be amended and adopted by the City Council, during the
581 Term of this Agreement.

582 8.2. Additional Parcels. During the Term of this Agreement, Owner may
583 acquire Adjacent Parcels. In the event Owner acquires Adjacent Parcels, the TrIF
584 Credit calculations shall be adjusted to account for the additional existing structures
585 consistent with the LMC and procedures provided in Section 8.1.

586 8.3. City Center TrIF Exemption. The City agrees that the Execution of this
587 Agreement shall constitute “development approval” pursuant to LMC 3.105.040.H.
588 As demonstrated in the Conceptual Guide Plan, the Project meets the criteria of
589 LMC 3.105.080A.1. Accordingly, the Project shall qualify as exempt from the
590 payment of TrIF pursuant to LMC 3.105.080 (“City Center TrIF Exemption”).
591 Owner shall submit for the City Center TrIF Exemption with the first Project
592 Entitlement Application. In the event that the City Center TrIF Exemption exceeds
593 the TrIF required for the first Project Entitlement Application, the Owner may
594 allocate the remainder of the City Center TrIF Exemption to future Project-phases
595 in its sole discretion.

596 9. Parks and Public Space Improvements. As a component of the Project, Owner shall
597 construct the Parks and Public Space Improvements shown on Exhibit C-29, herein incorporated
598 by reference (collectively, the “Parks and Public Space Improvements”) which are to be privately
599 owned, except as provided for in Section 7.1, and publicly accessible subject to the Operations and
600 Maintenance Plan (“O&M Plan”) as described in Section 9.3. Each component of the Parks and
601 Public Space Improvements shall include at least the minimum number of design elements
602 identified in the Supplemental Site Design Guidelines attached as Exhibit F and herein
603 incorporated by reference. While only the minimum number of design elements specified in the
604 Supplemental Site Design Guidelines are required, Owner may propose the inclusion of additional
605 design elements in its sole discretion. The Parks and Public Space Improvements shall constitute
606 the entirety of parks and public space improvements required for the Project, and shall include:

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

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

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

615 9.1. Parks and Public Space Improvements Construction. The Parks and Public Space
616 Improvements shall be constructed no later than with the corresponding lot as
617 shown in the Phased Onsite and Offsite Improvements Plan as shown in Exhibit D.

618 In no event shall a certificate of occupancy for a Project-phase be issued prior to
619 the completion of the Parks and Public Space Improvements for the corresponding
620 lot. Should Owner elect to construct Park and Public Space Improvements
621 designated for a future Project-phase at an earlier time than required in the Phased
622 Onsite and Offsite Improvements Plan, such work will be coordinated with the City.

623 (a) Pocket Oasis Construction. Owner shall use best efforts to design and
624 construct the Pocket Oasis outside the likely right of way expansion
625 necessary for the 198th Street Southwest expansion to the west of the
626 Property, as discussed in Section 7.1.

627 9.2. Parks and Public Space Improvements Design and Review Procedures. Owner
628 shall be responsible for the design of the Parks and Public Space Improvements,
629 subject to the review and approval as a component of a Project Entitlement
630 Application pursuant to Section 4, except that the Owner shall present the Parks
631 and Public Space Improvements to the Parks and Recreation Board for its comment
632 prior to completing the PDR for any Project-phase when Parks and Public Space
633 Improvements will be required. To further the City's City Center Parks Master
634 Plan Update vision, the Parties have agreed to certain Supplemental Site Design
635 Guidelines that shall inform the design of the Parks and Public Space
636 Improvements. The Project or any Project-phase that requires construction of Parks
637 and Public Space Improvements shall comply with the applicable Supplemental
638 Site Design Guidelines. Substantial changes to Parks and Public Space
639 Improvements shall be governed by LMC 21.25.180.B, except that "substantial
640 changes" shall not include modifications to:

- 641 (i) any landscaping elements with similar vegetation;
- 642 (ii) any seating, bench or lighting elements with similar equipment;
- 643 (iii) change paving patterns; or
- 644 (iv) any water play/splash pad equipment or features so long as the
645 minimum size of the splash pad/water play area is not reduced.

646 9.3. Parks and Public Space Improvements Operations and Maintenance. The Parks
647 and Public Space Improvements shall be private property, except as provided for in
648 Section 7.1. Owner shall be responsible for the maintenance and operation of the
649 Parks and Public Space Improvements for so long as the Parks and Public Space
650 Improvement is private property. However, Owner shall make the Parks and Public
651 Space Improvements available for public access and enjoyment as governed by an
652 O&M Plan, which shall be substantially in the form as attached Exhibit G and
653 herein incorporated by reference, except that any O&M Plan shall be reviewed and
654 approved by the Parties prior to the issuance of a certificate of occupancy for the
655 corresponding Project or Project-phase. As a component of the O&M Plan, the
656 Parties agree that the City shall have the ability to use the Parks and Public Space
657 Improvements for special events and programming, the details of which shall be

658 mutually agreed upon between the City and Owner as part of a separate agreement
659 that may be mutually updated from time to time during the term of this Agreement.
660 Owner, in its sole discretion, may elect to govern the Parks Improvements
661 consistent with LMC Ch. 10.16. The Owner’s obligation to provide Parks
662 Improvements as available for public access as provided in this Section shall
663 survive the term of this Agreement.

664 10. Parks Impact Fees. Pursuant to LMC Ch. 3.107, Owner acknowledges that new
665 development shall be subject to a park impact fee (“PIF”). The Parties acknowledge that existing
666 uses and proposed Parks Improvements may be credited towards the Project’s PIF. Pursuant to
667 LMC 3.107.070, the Parties acknowledge that the Owner’s construction of the Parks
668 Improvements as set forth in Exhibit C-29, which includes access agreement value (or equivalent),
669 design, permit fees and construction may qualify for credits pursuant to LMC 3.107.090. If Owner
670 elects to request PIF Credits, such credits shall be determined and calculated at the time of Project
671 Entitlement Application consistent with Exhibit D. If a Project-phase is proposed prior to a Park
672 Improvement, the Director of the Department of Parks, Recreation and Cultural Arts (“Parks
673 Director”) may approve a surety, such as a bond, irrevocable letter of credit or other mutually
674 agreed financial instrument, for Parks Improvements to allow future credits to be applied.

675 11. Other Impact Fees. Pursuant to RCW 82.02.020, the City may impose certain
676 impact fees on development, limited to streets and roads, parks and open space, fire protection
677 facilities, and school facilities. The City currently imposes streets and roads through TrIF and park
678 impact fees through PIF; however, it does not currently impose fire protection and school facilities
679 impact fees (“Other Impact Fees”). The City acknowledges that the Project shall serve as a catalyst
680 for the City Center and that Other Impact Fees may impede the potential viability of the Project.
681 Owner acknowledges that third-party agencies initiate Other Impact Fees; however, the City must
682 adopt Other Impact Fees under the LMC. Accordingly, the City acknowledges that it shall provide
683 Owner with at least 30 days-notice prior to the City Council’s potential adoption of any Other
684 Impact Fees during the Term of this Agreement. If the City adopts Other Impact Fees pursuant to
685 RCW 82.02.020 or other enabling legislation during the Term of this Agreement, Owner will not
686 be assessed Other Impact Fees for any Project or Project-phase that submitted Project Entitlement
687 Application(s) prior to effective date of any Other Impact Fees.

688 12. MFTE Participation. Pursuant to LMC Ch. 3.82 and Ch. 84.14 RCW, the Parties
689 acknowledge that the Project is located within an eligible residential targeted area for participation
690 in the MFTE program. Owner shall be eligible to apply, in its sole discretion, for MFTE for all
691 phases of the Project or Project-phases; provided, that Owner acknowledges and agrees that if
692 RCW Ch. 84.14 or other applicable law relating to the MFTE program is repealed, amended or
693 modified such that the City may no longer implement the MFTE program, then the City’s authority
694 and MFTE program under LMC Ch. 3.82 shall also be repealed, amended or modified consistent
695 with the repeal, amendment or modification to RCW Ch.84.14 or other applicable laws, and the
696 MFTE program may no longer be available to the Owner for the Project. The City shall review
697 and approve an application pursuant to LMC 3.82.070-.100. Nothing in this Agreement shall
698 create an obligation for Owner to participate in a MFTE program.

699 13. Stormwater Detention and Treatment.

700 13.1 General Standards. Any required stormwater facilities, at no cost to City,
701 will be installed for all Project drainage as shown on Exhibit C-62. All
702 stormwater facilities shall meet current City, State and Federal regulations in
703 effect at the time of Project Entitlement Application triggering the need for
704 stormwater facilities. Said compliance includes adherence to the terms of the
705 then-current Western Washington Phase II NPDES Municipal Stormwater Permit
706 issued by the Department of Ecology (“DOE”) that is in effect at the time of the
707 Project Entitlement Application. No additional stormwater improvements shall
708 be required of Owner, except as required by law, regulations or DOE permit
709 requirements. If any private streets are dedicated to the City pursuant to Sections
710 7.1 or 7.3 above, the parties shall enter into a Utilities Maintenance Agreement
711 regarding any private stormwater facilities to be maintained in such dedicated
712 areas, at the time of subdivision or binding site plan approval or otherwise at the
713 time of such dedication.

714 13.2. Use of Future Technologies. The Parties recognize that stormwater
715 treatment science is evolving. Owner shall have the option, but not the
716 requirement, to use any treatment options contained in current or future
717 Washington Department of Ecology stormwater manuals and corresponding City
718 stormwater technical manuals that are approved for general use by the City so
719 long as the resulting use of technology would lead to stormwater treatment
720 equivalent to, or better than, other authorized stormwater treatment technologies
721 and so long as such technologies are consistent with Federal and State law,
722 including Ecology’s Phase II permit, as now exists or as may hereafter be
723 amended.

724 13.3. Acknowledgement of Sufficient Stormwater Capacity. It is anticipated that
725 Owner’s stormwater will discharge off-site to the natural environment consistent
726 with applicable local and State requirements. The City acknowledges that it is
727 not aware of capacity constraints in the natural conveyance system.

728 13.4. Existing Stormwater Line. The Parties acknowledge an existing stormwater
729 line located on the Property, which is partially governed by a stormwater line
730 easement between the City and Owner’s successor in interest under Snohomish
731 County Recorder No. 7601160038 (“Stormwater Line Easement”). The
732 Stormwater Line Easement covers only a portion of the stormwater line. Owner
733 shall extinguish the Stormwater Line Easement burdening the City. Based upon
734 review of the pipe condition the Parties acknowledge that the existing stormwater
735 line is sized appropriately for current site conditions and stormwater generated by
736 the Property, is in good condition and shall not be relocated, realigned or
737 otherwise altered as a component of the Project. On or before the submittal of a
738 Project Entitlement Application for a Project-phase that addresses the existing
739 stormwater line, Owner shall provide an Operations and Maintenance Plan for the
740 existing stormwater line for City review and comment to address continued best
741 efforts to maintain, patch and/or repair the existing stormwater line as necessary
742 under applicable law, regulation or DOE permit requirement.

743 14. Water/Sanitary Sewer.

744 14.1. General Standards. Any required water/sanitary sewer facilities, at no
745 cost to City, will be installed to serve the Project demands as shown in Exhibit C-
746 61; 63. The water/sanitary sewer facilities shall include:

747 (a) Upsized 8” water facilities along the 44th Avenue West/200 Street
748 Southwest vicinity as shown in Exhibit C-63;

749 (b) Upsized sewer facilities along either: (1) 200th Street Southwest to 46th
750 Avenue West or 48th Avenue West; or (2) along 46th Avenue West to 200th
751 Street Southwest as shown in Exhibit C-63.

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

757
758 No additional water/sanitary sewer improvements shall be required of Owner.
759 The construction of any water/sanitary sewer improvements shall be complete
760 according to the Phased Onsite and Offsite Improvements Plan. Should Owner
761 elect to construct water/sanitary sewer improvements designated for a future
762 Project-phase at an earlier time, such work will be coordinated with the City and
763 said capacity shall be reserved for the Project throughout the term of this
764 Agreement. If any private streets are dedicated to the City pursuant to Sections
765 7.1 or 7.3 above, the parties shall enter into a Utilities Maintenance Agreement
766 regarding any private water or sanitary sewer facilities to be maintained in such
767 dedicated areas, at the time of subdivision or binding site plan approval or
768 otherwise at the time of such dedication.

769 14.2. Future City Installation. To the extent that City install new water mains
770 adjacent to Property during the Term of the Agreement, City shall install 12” or
771 greater water mains stubs and associated infrastructure that can serve the Property
772 and sewer mains or stubs, if extensions are made. City shall consult with Owner
773 to determine location(s) for installation of mains and associated infrastructure that
774 are mutually agreeable to the Parties.

775 14.3. Acknowledgement of Sufficient Water Supply and Capacity to Serve Future
776 Development. The City and its consultants have analyzed its existing and future
777 water supply, capacity, and infrastructure. Based on its review for the next 15
778 years, the Designated Official acknowledges that there is sufficient public water
779 supply and City infrastructure planned or in place to serve the Master Plan
780 development, other than what Owner will have to construct on-site to connect to
781 the City’s water distribution system.

782 14.4. Acknowledgment of Sufficient Sanitary Sewer. The City and its consultants
783 have analyzed its existing and future sanitary sewer capacity and infrastructure.
784 Based on its review for the next 15 years, the Designated Official acknowledges
785 that there is sufficient local sanitary sewer capacity and City infrastructure in
786 place or planned to serve the Project.

787 14.5. Additional Water and Sewer Concurrency. If this Agreement is extended
788 pursuant to Section 18.1, within thirty (30) days of said extension, the City shall
789 acknowledge that there is sufficient local water and sanitary sewer capacity and
790 City infrastructure in place or planned to serve the Project for the remainder of
791 the Term. The City agrees that no further concurrency review and/or mitigation
792 of local water or sanitary sewer impacts are required.

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

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

812 17. Agreement to Run with the Land. For the term of this Agreement, the benefits and
813 obligations of this Agreement shall run with the land and continue following the subdivision,
814 leasing, or transfer of ownership to Owner's successors and assigns in accordance with Section
815 24.

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

824 18.1. Extended Term. Notwithstanding the foregoing, the term of this Agreement shall
825 automatically extend for an additional ten (10) years from the Expiration Date, for an
826 effective term of 25 years, if Owner completes one of following criteria prior to the
827 Expiration Date:

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

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

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

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

834 20. Recitals. The Recitals are incorporated herein as material terms of this
835 Agreement.

836 21. Indemnification. Except as otherwise specifically provided elsewhere in this
837 Agreement and any exhibits hereto, each Party shall protect, defend, indemnify and hold harmless
838 the other Party and their officers, agents, and employees, or any of them, from and against any and
839 all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever,
840 which are caused by or result from any negligent act or omission of the Party's own officers,
841 agents, and employees in performing services pursuant to this Agreement. In the event that any
842 suit based upon such a claim, action, loss, or damage is brought against a Party, the Party whose
843 sole negligent actions or omissions gave rise to the claim shall defend the other Party at the
844 indemnifying Party's sole cost and expense; and if final judgment be rendered against the other
845 Party and its officers, agents, and employees or be rendered jointly against the Parties and their
846 respective officers, agents, and employees, the Party whose sole negligent actions or omissions
847 gave rise to the claim shall satisfy the same; provided that, in the event of concurrent negligence,
848 each Party shall indemnify and hold the other Party harmless only to the extent of the indemnifying
849 Party's negligence. The indemnification to the City hereunder shall be for the benefit of the City
850 as an entity, and not for members of the general public.

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

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

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

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

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

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

883 28. Notices. All notices, requests, demands, and other communications called for or
884 contemplated by this Agreement shall be in writing, and shall be duly given by mailing the same
885 by certified mail, return receipt requested; or by delivering the same by hand, to the following
886 addresses, or to such other addresses as the Parties may designate by written notice in the manner
887 aforesaid:

888 Owner: MGP XI Lynnwood, LLC
889 c/o Merlone Geier Partners
890 Attn: Jamas Gwilliam
891 4365 Executive Drive, Suite 1400
892 San Diego, CA 92121
893 Phone: 858-258-9909
894 Email: jgwilliam@merlonegeier.com
895

896 And to its Attorney: McCullough Hill Leary, P.S.
897 Attn: Ian Morrison
898 701 5th Avenue, Suite 6600
899 Seattle, WA 98104
900 Phone: 206-812-3380
901 Email: imorrison@mhseattle.com
902

903 City of Lynnwood: Community Development Director
904 Attn: _____

905 20816 44th Ave W, Suite 230
906 Lynnwood, WA 98036
907 Phone: _____
908 Email: _____
909

910 And to its Attorney: Inslee Best, P.S.
911 Attn: Rosemary Larson
912 10900 NE 4th Street, Suite 1500
913 Bellevue, Washington 98004
914 Phone: 425-450-4249
915 Email: rlarson@insleebest.com
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919 29. Dispute Resolution. It is the Parties' intent to work cooperatively and to resolve
920 disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this
921 Agreement shall be resolved as follows:

922 29.1. Settlement Meeting. If any dispute arises between the parties relating to
923 this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith,
924 within ten (10) days after a Party's request for such a meeting. The City shall send the
925 Designated Official and persons with information relating to the dispute, and Owner shall
926 send an owner's representative and any consultant or other person with technical
927 information or expertise related to the dispute.

928 29.2. Mediation. If the Parties cannot resolve the issue within ten (10) days then
929 they shall mediate the matter using a mediator from Judicial Dispute Resolution, LLC or if
930 that entity fails or declines to serve, such other similar service or organization as agreed by
931 the parties, or as appointed by the court if the parties cannot agree (collectively "JDR"),
932 within seven (7) days of their failure to agree pursuant to Section 29.1. The Parties shall
933 evenly split any fees charged by JDR, regardless of the outcome of the mediation. Each
934 party shall bear its own attorneys' fees in connection with the mediation.

935 29.3. Arbitration. If the Parties have still not resolved the matter, then and only
936 then shall arbitration be permitted. "Arbitration" for purposes of this Agreement shall be
937 limited exclusively to arbitration by one arbitrator, administered by JDR in accordance
938 with the rules of practice and procedure from the American Association of Arbitration.
939 The arbitrator shall be someone other than the mediator who served under Section 29.2.
940 The arbitrator shall establish the procedures and allow presentation of written and oral
941 information but shall render its final decision within thirty (30) days after the matter is
942 referred to arbitration. The Parties shall pay equally the cost of the arbitration. Pursuant
943 to Section 32, the prevailing Party (or the substantially prevailing Party, if no one Party
944 prevails entirely) shall be entitled to an award of reasonable attorneys' and expert witness
945 fees and costs. The arbitration proceedings shall be binding, conclusive and, except as
946 provided below, not appealable, and any party to any award rendered in any such
947 arbitration proceeding shall be entitled to have judgment entered thereon. In no event,
948 however, shall mediation or arbitration be available pursuant to this Section after the date

949 when institution of legal or equitable proceedings based on such claim, dispute, or other
950 matter in question would be barred by the applicable statute of limitations.

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

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

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

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

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

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

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

- 975 a. Exhibit A - Legal Description of Property
- 976 b. Exhibit B – Existing Site Plan
- 977 c. Exhibit C – Conceptual Guide Plan
- 978 d. Exhibit D – Phased Onsite and Offsite Improvements Plan
- 979 e. Exhibit E – Trip Generation Analysis
- 980 f. Exhibit F – Supplemental Site Design Guidelines
- 981 g. Exhibit G – Draft Parks O&M Plan

982 h. Exhibit H – Conceptual Guide Plan excerpts cited in the Agreement

983 i. Exhibit I – FAR Summary Table

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

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

991 39. Final and Complete Agreement. This Agreement is integrated and constitutes the
992 final and complete expression of the Parties on all subjects relating to the development of the
993 Project. This Agreement may not be modified, interpreted, amended, waived or revoked orally,
994 but only by a writing signed by all Parties. This Agreement supersedes and replaces all prior
995 agreements, discussions and representations on all subjects discussed herein, without limitation.
996 No Party is entering into this Agreement in reliance on any oral or written promises, inducements,
997 representations, understandings, interpretations or agreements other than those contained in this
998 Agreement and the exhibits hereto.

999
1000 [SIGNATURE PAGE FOLLOWS]

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

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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: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

City Attorney

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STATE OF WASHINGTON

ss.

COUNTY OF KING

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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.

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

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(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

STATE OF WASHINGTON

ss.

COUNTY OF KING

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On this day personally appeared before me _____, to me known to be _____ 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 _____ is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

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

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(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

EXHIBIT A
LEGAL DESCRIPTION

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EXHIBIT B
EXISTING SITE PLAN

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EXHIBIT C
CONCEPTUAL GUIDE PLAN

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

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EXHIBIT D
PHASED ONSITE AND OFFSITE IMPROVEMENTS PLAN

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EXHIBIT E
TRIP GENERATION ANALYSIS

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EXHIBIT F
SUPPLEMENTAL SITE DESIGN GUIDELINES

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EXHIBIT G
DRAFT PARKS OPERATION & MAINTENANCE PLAN

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EXHIBIT H
CONCEPTUAL GUIDE PLAN EXCERPTS REFERENCED IN AGREEMENT

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EXHIBIT I
FAR SUMMARY TABLE

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