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CITY OF LYNNWOOD
ORDINANCE NO. 3395

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON,
APPROVING THE NOVO ON 52ND DEVELOPMENT AGREEMENT;
PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND
SUMMARY PUBLICATION.

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

WHEREAS, Chapter 21.29 Lynnwood Municipal Code (“LMC”) establishes a process for the City of Lynnwood (“City”) to enter into a development agreement with a developer; and

WHEREAS, a development agreement provides the opportunity for the City and the developer to agree on the scope and timing of the project, applicable regulations and requirements, mitigation requirements and other matters relating to the development process; and

WHEREAS, a development agreement promotes the general welfare by balancing the public and private interests, providing reasonable certainty for a development project, and addressing other matters, including reimbursement over time for the financing of public facilities.

WHEREAS, on May 24, 2021, the City adopted Resolution 2021-05, adopting the City’s Housing Action Plan as a guiding document with recommendations for future housing policy, planning, and regulatory amendments; and

WHEREAS, the City has an interest in implementing the Housing Action Plan including encouraging new construction or rehabilitation of multifamily housing and to increase and improve housing opportunities for all income levels; and

WHEREAS, the City finds that there is a need for housing units that are safe and affordable across all income levels; and

WHEREAS, the HASCO 52nd Avenue West LLC (“HASCO”) owns the real property consisting of approximately 12.11 acres, located in the City, at 18225 52nd Ave W. in Lynnwood, Washington, bearing Snohomish County Assessor’s parcel number 27041600102800 (“Site”), as more fully described in the Development Agreement attached as “Exhibit A” to this Ordinance (the “Development Agreement”); and

WHEREAS, the Site’s Comprehensive Plan Future Land Use (FLU) designation is Medium Density (MF-2). The Site’s zoning designation is Multiple Family Residential Medium (RMM); and

WHEREAS, the Site was developed in 1968 and currently has 240 multifamily units; and

WHEREAS, the Site’s structures, building systems, and underlying infrastructure are reaching the end of their useful life; and

1 WHEREAS, HASCO has determined the cost of repairs and maintenance is not cost effective given
2 the age of the buildings and infrastructure; and

3 WHEREAS, HASCO has contracted with Inland novo on 52nd Manager, LLC (together with
4 HASCO, the “Developer”), to demolish existing structures and redevelop the Site as novo on 52nd
5 (“Development”); and

6 WHEREAS, on March 24, 2021, Inland novo on 52nd Manager, LLC, submitted applications for a
7 Project Design Review (PDR) permit, Administrative Parking Reduction (PAR) permit, Critical Areas
8 Permit, SEPA environmental review (ERC), and development agreement for a proposed 242 multifamily
9 units development with associated amenities; and

10 WHEREAS, the Lynnwood Municipal Code limits the Site to 219 units and 35 feet maximum
11 building height; and

12 WHEREAS, the Developer seeks flexibility through a Development Agreement to revise the
13 allowed maximum density to be consistent with the Comprehensive Plan maximum allowed density and
14 increase the maximum allowed height by three feet in order to develop housing that meets the needs of the
15 community and is aesthetically pleasing; and

16 WHEREAS, the Developer proposes all multifamily units will be restricted to households earning
17 60% or less of the Area Median Income for a minimum of 35 years; and

18 WHEREAS, on June 11, 2021, the Development and Business Services Department issued a
19 “Determination of Nonsignificance” (DNS) with comments due June 25, 2021, pursuant to RCW 43.21C
20 and WAC 197-11; and

21 WHEREAS, the City Council received a briefing on the materials on July 6, 2021 at the Council
22 work session; and

23 WHEREAS, the City Council held a duly advertised public hearing on July 12, 2021 at the Council
24 business meeting to take and consider public comment on this Ordinance and the Development Agreement
25 attached to this Ordinance; and

26 WHEREAS, after consideration of the testimony and other evidence presented at the public
27 hearing, the City Council finds that (1) this Ordinance and the Development Agreement are consistent with
28 the City’s Comprehensive Plan, the City’s development regulations, and the purpose of Chapter 21.29 of
29 the City code, and (2) the approval of the Development Agreement will further the public health, safety and
30 general welfare, and will be in the best interests of the City; and

31 WHEREAS, the City Council further finds that the Development Agreement (1) is consistent with
32 the City’s Comprehensive Plan; (2) provides for public benefits that would not otherwise be achieved under
33 the City code; (3) serves the public interest, including but not limited to implementing the Housing Action
34 Plan and affordable housing needs; (4) is applicable because the property is not zoned single-family
35 residential; and (5) is consistent with the purpose of Chapter 21.29 LMC; and

1 WHEREAS, the City Council has determined that the provisions of this Ordinance further the
2 public’s health, safety and welfare, and the Development Agreement attached as **Exhibit A** should be
3 approved;

4 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD HEREBY**
5 **RESOLVES AS FOLLOWS:**

6 **Section 1.** The novo on 52nd Development Agreement dated September 1, 2021, attached
7 hereto as **Exhibit A** (the “Development Agreement”), is hereby approved.

8 **Section 2.** The Mayor or her designee is authorized to finalize, conform, execute and
9 administer the provisions of this Ordinance and the Development Agreement.

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

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

17 PASSED BY THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, this 2nd
18 day of August 2021.

19 APPROVED:
20 *Nicola Smith* 9/2/2021
21 _____
22 Nicola Smith, Mayor
23
24

25 ATTEST/AUTHENTICATED:

26
27 *Karen Fitzthum*
28 _____
29 Karen Fitzthum, City Clerk
30
31
32

APPROVED AS TO FORM:

Rosemary Larson

Rosemary Larson, City Attorney

Return Name and Address:

City of Lynnwood
Attn: Kristen Holdsworth, Senior Planner, DBS
20816 44th Ave W, Suite 230
Lynnwood, WA 98036

Document Title: novo on 52nd Development Agreement

Grantor(s):

City of Lynnwood (Development and Business Services)

Grantee(s):

HASCO 52nd Avenue West LLC and Inland novo on 52nd Manager, LLC

Address:

18225 52nd Ave W.

Assessor's Tax Parcel Number(s):

27041600102800

Legal Description:

The Southwest quarter of the Northwest quarter of the Northeast quarter and the South half of the South half of the Northwest quarter of the Northwest quarter of the Northeast quarter of Section 16, Township 27 North, Range 4 East, W.M., in Snohomish County, Washington; Except the West 30 feet thereof.

Reference Numbers of Related Documents:

PR-00069-2021 (City of Lynnwood File Number)

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF LYNNWOOD,
HASCO 52ND AVENUE WEST LLC
AND INLAND NOVO ON 52ND MANAGER, LLC,
FOR THE NOVO ON 52ND DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this 1st day of September, 2021, by and between the City of Lynnwood, a Washington municipal corporation (the “City”), HASCO 52nd Avenue West LLC, a Washington limited liability company (“HASCO”), and Inland novo on 52nd Manager, LLC, a Washington limited liability company (“Inland”) (HASCO and Inland are referred to together as the “Developer”).

RECITALS

A. HASCO is the owner of the Whispering Pines apartments, located on real property having the address of 18225 52nd Ave W. in Lynnwood, Washington, and Snohomish County Assessor’s Tax Parcel Number 27041600102800 (“Property”).

B. The Property’s Comprehensive Plan Future Land Use (FLU) designation is Medium Density (MF-2). The Property’s zoning designation is Multiple Family Residential Medium (RMM).

C. HASCO has contracted with Inland novo on 52nd Manager, LLC, to accomplish the redevelopment of the Whispering Pines apartments into a residential development called novo on 52nd (the “Project”).

D. The Developer has proposed that in exchange for an increase in density and height limits applicable to the Project, the Project will provide public benefits that include income-restricted housing units, all as described in this Agreement. The Project meets the requirements to enter into a development agreement with the City pursuant to Lynnwood Municipal Code (LMC) 21.29.200 and RCW 36.70B.170 et seq.

E. The City and Developer desire to enter into this Development Agreement, to provide for the redevelopment of the Property with the Project in accordance with the terms and conditions stated below.

SECTION 1. GENERAL PROJECT DESCRIPTION

1.1 Project. The Project includes the demolition of the Whispering Pines apartments and construction of the novo on 52nd apartments, which will include 242 residential units, more than 20,000 square feet of residential outdoor amenity area, more than 6,000 square feet of indoor residential community area, and off-street parking spaces in garages, carports and uncovered surface stalls.

1.2 Site. The Property on which the Project will be located consists of 12.11 acres and is legally described in **Exhibit A**, attached hereto and incorporated herein by this reference.

1.3 Parties to Development Agreement. The parties to this Agreement are:

- a) The “City” is the City of Lynnwood, 19100 44th Avenue West, Lynnwood, Washington, 98046.
- b) The “Developer” is HASCO 52nd Avenue West, LLC, a limited liability company, whose principal office is located at 12711 4th Ave W., Everett, WA 98204, and which is the owner of the Property, and Inland novo on 52nd Manager, LLC, a limited liability company which is under contract to redevelop the Property for HASCO, and whose principal office is located at 120 W Cataldo Ave, Suite 100, Spokane, Washington 99201.

1.4 Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

1.5 Consistency with Development Regulations. Except as explicitly set forth in this Agreement, this Agreement is consistent with the applicable development regulations as required by RCW 36.70B.170(1).

1.6 City Reservation of Rights. Notwithstanding any other provision in this Agreement, pursuant to RCW 36.70B.170(4), the City reserves the authority to impose new or different regulations to the extent required by a serious threat to public health or safety, as determined by the City Council after written notice to and an opportunity to be heard by Developer.

SECTION 2. AGREEMENT

Consistent with Chapter 21.29 LMC, the parties agree as follows:

21 Density. The Property is within the Multiple Residential Medium Density (RMM) zone which allows for one (1) dwelling unit per 2,400 square feet of lot area pursuant to LMC 20.43.200. The parties acknowledge that this requirement would restrict the Project to 219 units, which would result in a loss of 21 income-restricted housing units. The Comprehensive Plan Future Land Use designation for the Property is Medium Density (MF-2), which calls for typical densities of 12-20 dwelling units per acre and buildings up to 4 stories in height. Therefore, the City agrees that the Project can exceed the number of units allowed by LMC 20.43.200 to replace the existing development with 242 units. The

Project density will be approximately 20 units per acre, which is consistent with the Comprehensive Plan and will result in no net loss of income-restricted housing units in Lynnwood.

22 **Height.** The Property is within the Multiple Residential Medium Density (RMM) zone which allows for a maximum height of 35 feet pursuant to LMC 20.43.200. The Developer contends that a taller height limit would allow better design and more comfortable living units, without negative impact to the surrounding neighborhood. The City agrees that the Project can exceed this maximum height by three (3) feet, allowing a total maximum height of 38 feet. Nine of the residential buildings along the Property's southern and eastern property lines shall be two-story carriage house buildings, approximately 28 feet in height, to provide a transition from single-family residential uses on adjacent properties. All structures in the Project shall be no more than three stories, which is consistent with the Comprehensive Plan.

23 **Other Development Standards.** Except as specifically set forth in this Agreement, the Project shall comply with all other requirements of the Multiple Residential Medium Density (RMM) zone (Chapter 20.43 LMC), all other relevant chapters of the Lynnwood Municipal Code, and all other applicable laws and regulations.

24 **Public Benefit.** The Project is proposed to consist of rent- and income-restricted affordable multi-family housing. In accordance with LMC 21.29.200.C, to balance the deviations from City code requirements stated in Sections 2.1 and 2.2 above, the Developer shall restrict the Project to multi-family housing units that are rent- and income restricted to households earning up to 60% of the Snohomish County Area Median Income. The Developer shall maintain this rent and income restriction for a minimum of 35 years. This rent and income restriction shall be evidenced by a restrictive covenant (the "Restrictive Covenant") in a form acceptable to and approved by the City's Director of Development and Building Services, and recorded against the Property prior to issuance of any building permit for the Project; provided, however, the Restrictive Covenant shall provide that during any period that the Project is subject to one or more Regulatory Agreements in favor of the Washington State Housing Finance Commission, compliance with such Regulatory Agreement(s) shall be deemed compliance with the Restrictive Covenant.

SECTION 3. DEFAULT

3.1 Developer Default. Developer shall be deemed to be in default ("Default") of this Agreement if, as determined by the City, (i) the City has not received a complete application for building permit within five (5) years of the Effective Date of this Agreement, a certificate of occupancy has not been issued for a Project building within three (3) years of issuance of the building permit for the building (unless the delay is due to Force Majeure, in which case the Developer's performance shall be excused for the period of such delay), or the Project has been abandoned by the Developer, and (ii) Developer fails to cure such Default

within sixty (60) days of City's written notice to Developer of the Default. Notwithstanding the foregoing, the Developer shall not be in Default if the work on the Project is not progressing substantially due to circumstances beyond Developer's control. For purposes of this Section, "Force Majeure" shall mean extraordinary natural events, or conditions such as war, riot, labor disputes, or other causes beyond the reasonable control of the Developer. The Developer's inability to fund, or decision not to fund, any of its obligations shall not be a Force Majeure or other excuse for nonperformance or delay in performance.

SECTION 4. REMEDIES

4.1 City's Remedies. If Developer is in Default and fails to cure such Default per Section 3.1 of this Agreement, then the City shall terminate the density and height allowances given in Sections 2.1 and 2.2 by issuing and recording a Notice of Termination. In the case of an abandoned or expired Project, any and all development of the Property shall be in compliance with the City code and other requirements, including the height and density permitted under the City code. If this Agreement is terminated, future considerations of height and density deviations pursuant to LMC 21.29 shall require a new Development Agreement application to the City. In addition, the City shall have all other remedies at law or in equity, including, without limitation, the award of damages, and/or an order requiring specific performance or the removal of structures.

SECTION 5. MISCELLANEOUS

5.1 Binding on Successors and Recording. This Agreement and each of its provisions shall be binding on and inure to the benefit of the parties and their successors and assigns, and shall be deemed to be covenants running with the land. This Agreement shall be recorded by the Developer with the recording office of Snohomish County at the cost and expense of Developer. Proof of recording shall be provided within 30 days of City Council approval of this Agreement. Upon issuance of the certificate of occupancy for the final building permit by City, the City shall record (at Developer's expense) a memorandum confirming satisfactory compliance with Developer's obligations hereunder with the office of Snohomish County at the cost and expense of Developer. Proof of recording(s) shall be provided within 30 days of issuance of the certificate of occupancy.

5.2 Amendments to Agreement. Any substantive amendments to this Agreement must be approved by City Council. The Mayor may amend this Agreement to resolve clerical or ministerial errors, provided the amendments do not alter the intent or effect of the action by City Council. Any amendment shall be made in a written instrument executed by the parties to this Agreement.

5.3 Indemnity. The parties agree to defend, hold harmless, and indemnify each other from and against any claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys' fees and costs incurred by the indemnitee for

liability resulting from any breach of the duties set forth in this Agreement by the indemnifying party, except to the extent the claims, demands, penalties, fees, liens, damages, losses, or expenses are caused by the indemnitee. This Section 5.3 shall survive expiration of this Agreement.

54 Assignment. Except as provided in this Agreement, Developer shall not assign, transfer, or encumber any rights, duties or interest accruing from this Agreement without the prior written consent of City; provided, however, Developer shall have the right upon written notice to the City to assign this Agreement to any entity that is controlled by or under common control with Inland and/or HASCO.

55 Written Notice. Except as otherwise provided herein, any and all notices provided under this Agreement must be in writing and shall be deemed given when delivered in person, or when deposited with Federal Express or other similar overnight service, return receipt requested, or when deposited in the United States mails, postage prepaid for certified mail, return receipt requested, or upon actual receipt of an email or other similar transmission (provided that a copy of the email is delivered or deposited within twenty-four (24) hours in the manner specified above), properly addressed to City and the Developer as follows:

	CITY:	AND TO:
By Mail:	City of Lynnwood Director, Development and Business Services 20816 44 th Ave W, Suite 230 Lynnwood, WA 98036	Rosemary Larson Lynnwood City Attorney P.O. Box C-90016 Bellevue, WA 980009-9016
In Person:	20816 44 th Ave W, Suite 230 Lynnwood, WA 98036	777 108th Ave. NE, Suite 1900 Bellevue, WA 98009-9016
By Electronic Transmission:	planning@lynnwoodwa.gov	rlarson@lynnwoodwa.gov
	INLAND:	HASCO:
By Mail:	Keith James Inland Group 120 W. Cataldo, Suite 100 Spokane, WA 99201	Duane Leonard HASCO 12711 4 th Ave W. Everett, WA 98204
In Person:	120 W. Cataldo, Suite 100 Spokane, WA 99201	12711 4 th Ave W. Everett, WA 98204
By Electronic Transmission:	keithj@inlandconstruction.com	dleonard@hasco.org

Any party may designate a different address for receiving notices hereunder by giving at least ten (10) days written notice thereof to the other parties.

5.6 Time of Essence. Time is expressly declared to be of the essence of this Agreement.

5.7 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue of any suit arising out of or related to this Agreement shall be in Snohomish County, Washington.

5.8 Counterparts and Electronic Transmission. This Agreement may be executed in counterparts, all of which together shall be deemed to be one original, even if the parties have not executed the same original. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of an original. At the request of either party, the parties will confirm electronic transmitted signatures by signing or original document.

5.9 Effective Date. This Agreement shall be effective on the date first written above.

5.10 Attorneys' Fees. The prevailing party in any lawsuit or proceeding between the parties arising out of this Agreement shall be entitled to receive from the non-prevailing party all reasonable costs and expenses of every type, including, but not limited to, mediation fees and actual attorneys' fees incurred, whether incurred in arbitration, trial, appeal or any bankruptcy or receivership proceeding.

CITY:

CITY OF LYNNWOOD
A Washington Municipal Corporation

By: NSmith
Nicola Smith, Mayor

Approved as to form:

By: Rosemary Larson
Rosemary Larson, City Attorney

STATE OF

WASHINGTON)

COUNTY OF Snohomish

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

SUBSCRIBED AND SWORN TO before me this 1st day of September 2021.



Leah M Jensen
NOTARY
Leah M Jensen

Print Name

My Commission expires: Nov 24, 2021

DEVELOPER:

HASCO 52nd Avenue West LLC,
a Washington limited liability company

By: Duane Leonard

Its: Manager

STATE OF

WASHINGTON)

COUNTY OF Snokomish)

On this day, personally appeared before me Duane Leonard the Manager of HASCO 52nd Avenue West LLC and stated that he is authorized to sign this instrument on behalf of said LLC for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN TO before me this 27 day of August, 2021.

Elizabeth Dewey

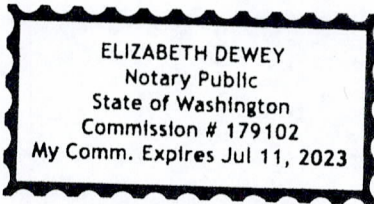
NOTARY

Elizabeth Dewey


Print Name

My Commission expires:

07/11/2023



INLAND NOVO ON 52nd MANAGER, LLC,
a Washington limited liability company

By: 
Darin Davidson
Its: Manager

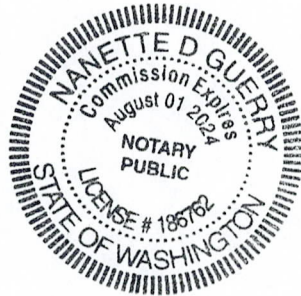
STATE OF

WASHINGTON)

COUNTY OF Spokane)

On this day, personally appeared before me Darin Davidson, the Manager of Inland novo on 52nd Manager, LLC and stated that he is authorized to sign this instrument on behalf of said limited liability company for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN TO before me this 23rd day of August, 2021.



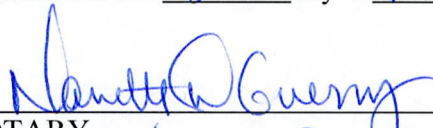

NOTARY
Nanette D Guerry
Print Name
My Commission expires: 08/01/2024

Exhibit A: Legal Description

The Southwest quarter of the Northwest quarter of the Northeast quarter and the South half of the South half of the Northwest quarter of the Northwest quarter of the Northeast quarter of Section 16, Township 27 North, Range 4 East, W.M., in Snohomish County, Washington;

Except the West 30 feet thereof.