

CITY OF LYNNWOOD

ORDINANCE # 844

AN ORDINANCE authorizing the Second Amendment to the Concomitant Zoning Agreement between the City of Lynnwood and Alderwood Mall Corporation.

WHEREAS, the City executed a Concomitant Zoning Agreement on August 25, 1969; an extension on July 31, 1972; and an amendment on August 27, 1973; and

An Environmental Impact Statement was previously prepared and filed with the City of Lynnwood and the proposal has not been significantly modified since the Environmental Impact Statement was prepared; and

The parties are agreed to an extension and amendment of the previous agreements on the terms and conditions contained in the attached Exhibit A,

NOW, THEREFORE,

The City Council of the City of Lynnwood do ordain as follows:


1. The Concomitant Zoning Agreement is hereby amended in accordance with the six-page agreement attached hereto as Exhibit A and incorporated herein by reference as though fully set forth and entitled "Second Amendment to the Concomitant Zoning Agreement".

2. Alderwood shall have thirty (30) days from the date of this Ordinance to signify its acceptance of this agreement in writing filed with the City Clerk.

3. The Mayor and Clerk are hereby authorized to execute the agreement on behalf of the City of Lynnwood.

PASSED BY THE CITY COUNCIL of the CITY OF LYNNWOOD this 12th day of April, 1976.

APPROVED AS TO FORM:

  
S. GAYLORD RIACH  
CITY ATTORNEY

  
MAYOR

  
CLERK

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Do not remove from  
the City Clerk's Office

SECOND AMENDMENT  
TO THE  
CONCOMITANT ZONING AGREEMENT

This is an amendment to the Concomitant Zoning Agreement dated August 25, 1969 ("Agreement"), extended on July 31, 1972 ("Extension"), and amended August 27, 1973 ("Amendment"), between the City of Lynnwood ("City") and Alderwood Mall Corporation ("Alderwood").

Economic conditions and federal and state environmental requirements precluded Alderwood from securing a building permit and commencing construction within the time period set forth in the Amendment. However, Alderwood's records indicate that it has made substantial expenditures to date in furtherance of the original objectives of the Agreement, to-wit: \$95,124.00 for improvements to 26th Avenue West and to Beech Road from 26th Avenue West to 28th Avenue West; \$211,000.00 for L.I.D. participation in and construction of 184th S.W.; \$61,106.00 for construction of a sewage pump station and forced sewage line; and \$33,000.00 for related architectural and engineering fees; all in the total sum of \$400,000.00.

The parties are agreed that the zoning on the property should remain PRC (Planned Regional Shopping Center) and RMHR (Multiple-Residence Highrise) and that the Concomitant Zoning Agreement should be extended and therefore agree as follows:

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1. Alderwood agrees to apply for a building permit for construction of Phase 1 by October 1, 1977; provided that Alderwood, after the exercise of due diligence as documented by Alderwood to the City, is able to obtain all federal, state and regional permits that could reasonably be construed as conditions precedent to actual construction. Otherwise, the October 1, 1977 date will be automatically extended to October 1, 1978. A grading permit shall not constitute a building permit for purposes of this paragraph.

2. Alderwood agrees to commence construction within two months after securing said building permit, unless prohibited by strikes or any other condition over which Alderwood has no reasonable means of control. Alderwood agrees to complete construction of Phase 1 of the center within three years after commencing construction unless prohibited by strikes or any other condition over which Alderwood has no reasonable means of control.

3. If required applications are not made or construction does not commence or is not completed within these time limitations, Alderwood shall submit a detailed, written report of the reasons for the delay to the City Council. The City Council may then choose to review the present zoning of the property. Alderwood agrees not to invoke the jurisdiction of any court in opposing proceedings to have the property reclassified, should that be the final decision of

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the City Council, and agrees to take no further action to construct building on the property other than to complete buildings that are under actual construction.

4. Nothing in this amendment shall be construed as authorizing the issuance of any permits. Alderwood agrees that the City specifically reserves the right to determine the permits that will be issued and the conditions of issuance of said permits as required by federal, state, regional and city laws, ordinances, or any other rules, codes, or regulations in effect at the time of Alderwood's application for any permit.

5. Notwithstanding any prior agreements or understandings between the parties or any proposals contained in the City's current six-year street construction program, it is hereby agreed and understood by Alderwood that the City makes no financial commitment as to the construction of streets or arterial highways or the formation of any Local Improvement Districts for such construction. Provided, however, that the City will use its best efforts with respect to obtaining financing for and construction of said streets and arterials and with respect to assisting in the formation of any Local Improvement Districts for such construction. Alderwood understands that the City Council's position on the formation of L.I.D.s is to entertain them by petition.

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6. Notwithstanding any prior agreements or understandings between the parties, or any proposals contained in any of the City's current plans, it is hereby agreed and understood by Alderwood that the City makes no financial commitment as to the construction of any water or sewage system or the formation of any Local Improvement Districts for such construction; provided, however, that the City will use its best efforts with respect to obtaining financing for and construction for such facilities and with respect to assisting in the formation of any Local Improvement Districts for such construction. Alderwood understands that the City Council's position on the formation of L.I.D.s is to entertain them by petition.

7. All previously projected construction sharing percentages or formulas are revoked. It is contemplated by the parties that if any sharing of financing is later agreed upon, it may be on a special benefits basis as is evidenced by the provisions contained in paragraph 9 hereof.

8. Alderwood agrees upon the execution of this amendment to pay the sum of \$6,688.81 as the second and final payment of its study expense obligation set forth in paragraph 5 of the Amendment.

9. Alderwood and the City agree to immediately commence the preliminary engineering studies and special benefit appraisals which will be required to determine the feasibility of Local Improvement Districts for certain of the

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streets and utilities referred to in the Agreement. Alderwood will reimburse the City for 50 percent of the costs thus incurred; provided, however, that Alderwood's contribution shall not exceed \$21,000.00. The City will credit Alderwood's contribution against Alderwood's L.I.D. assessment if the work proceeds.

10. Alderwood agrees that in the event any covenant or condition or restriction contained in this amendment is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction contained herein.

11. This amendment shall be recorded in the records of the Snohomish County Auditor and the covenants, duties and obligations of Alderwood under this agreement shall constitute as easement and servitude and covenant attaching to and running with the land subject to the Agreement and shall be binding upon Alderwood and its assigns or successors in interest.

12. This amendment is specifically enforceable by the City or by Alderwood and either may institute and prosecute any proceedings in law or in equity to enforce its provisions.

13. Alderwood agrees to pay reasonable attorneys' fees together with reasonable administrative costs, including time and expenses of the Public Works Department, Planning Department and financial consultants, incurred by the City for any subsequent amendment or extension of the Agreement

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necessitated by Alderwood's failure to comply with any of the terms and conditions of the Agreement as amended.

14. Alderwood agrees that except as modified by this amendment, all provisions of the Concomitant Zoning Agreement and the Amendment thereto remain in full force and effect.

15. Alderwood shall not sell or assign this agreement, or any interest therein, without first obtaining the written consent of the City to do so, provided, however, such consent shall not be unreasonably withheld as to any financially responsible assignee.

THIS AGREEMENT dated this 12 day of April,  
1976.

ALDERWOOD MALL CORPORATION

CITY OF LYNNWOOD

By \_\_\_\_\_

By M. J. Hrdlicka  
M. J. HRDLICKA, Mayor  
By \_\_\_\_\_

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