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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
CITY OF EVERETT, and RIVERFRONT  
COMMERCIAL INVESTMENT, LLC,  
  
Defendants.

No. 01-2-03640-6  
  
AMENDMENT NO. 3 TO  
CONSENT DECREE

**I. INTRODUCTION AND STATEMENT OF CURRENT CONDITIONS**

A. In April 2001, the Snohomish County Superior Court approved the Consent Decree in this matter entered into by the Plaintiff, Washington State Department of Ecology (“Ecology”), and Defendant, City of Everett (the “City” or “City of Everett”).

B. The Consent Decree was a negotiated settlement between Ecology and the City under the Model Toxics Control Act (“MTCA”), RCW 70A.305, which provided for remedial action at the Everett Landfill/Tire Fire Site (“Site”), a closed municipal landfill, where there has been a release of hazardous substances.

C. The Consent Decree, including the Cleanup Action Plan (“CAP”) attached thereto, required the City to conduct certain remedial actions to prevent environmental exposure to contaminants under then-existing conditions at the Site. Some of those activities are ongoing, including the City’s continued operation and maintenance of a leachate collection

1 system, continued monitoring of landfill gas and groundwater at the Site, and inspection and  
2 maintenance of the landfill cover.

3 D. The Consent Decree contemplated that the Property (the “Property”), which is  
4 depicted on Exhibit A and legally described in Exhibit B of the Consent Decree, as amended  
5 by Amendment No. 1 (approved by Snohomish County Superior Court on April 23, 2008)  
6 would be developed in the future. The Consent Decree and Amendment established criteria  
7 that future development would need to meet under MTCA as well as a process for review of  
8 future development plans to ensure consistency with the Consent Decree. The Consent Decree  
9 also contemplated that the entity conducting the development could become a party to the  
10 Consent Decree.

11 E. In 2007, the City sold a portion of the Property to OM Everett, Inc. (“OME”).  
12 The Consent Decree was amended (Amendment No. 1) to add OME as a party, update the  
13 current status of the cleanup, and describe the division of responsibility between OME and the  
14 City.

15 F. In 2013, OME’s interest in the landfill portion of the Property was transferred to  
16 Riverfront Commercial, LLC, and the Consent Decree was amended (Amendment No. 2,  
17 approved by Snohomish County Superior Court on July 8, 2013). Riverfront Commercial,  
18 LLC, was substituted for OME for all further obligations and liabilities existing after transfer  
19 of the Property. The text of Amendment No. 2 erroneously refers to an entity called PNW  
20 Riverfront, LLC, as the party assuming OME’s obligations and liabilities, although the  
21 signature block for the amendment correctly identifies Riverfront Commercial, LLC, as the  
22 entity executing the agreement. The undersigned parties agree that Riverfront Commercial,  
23 LLC, assumed OME’s obligations and liabilities in Amendment No. 2. Riverfront Commercial,  
24 LLC, changed its name to Riverfront Commercial Investment, LLC, in January 2014. In late  
25 2019, Riverfront Commercial Investment, LLC, assigned several specific parcels of the  
26

1 Property to different affiliates of Riverfront Commercial Investment, LLC. As used herein,  
2 “Riverfront” refers to Riverfront Commercial Investment, LLC, together with these affiliates.

3 G. The Consent Decree imposes specific remedial requirements to prevent landfill  
4 gas from entering confined spaces of future buildings and from reaching potentially explosive  
5 levels. As detailed in the Cleanup Action Plan, those requirements include:

6 1. A site-wide active gas collection system that uses vacuum extraction to  
7 collect landfill gas.

8 2. Geomembranes beneath or integrated into the building slab system,  
9 booted and sealed around piles and utility penetrations.

10 3. A continuous monitoring system in all ground floor rooms to  
11 automatically notify operations and maintenance personnel and to activate increased  
12 ventilation if flammable gas is detected at 1,000 ppm (2% of Lower Explosive Limit  
13 (LEL)) and to activate evacuation alarms if flammable gas is detected at 10,000 ppm  
14 (20% of LEL).

15 4. Periodic monitoring, with a handheld detection device, of all buildings  
16 and outdoor public spaces, conducted every two weeks after areas are open to the  
17 public, then every three months if no exceedances, with any results exceeding 100 ppm  
18 indoors or 500 ppm outdoors requiring corrective contingency measures (leak location  
19 and repair).

20 5. A low-permeability barrier across all developed areas to prevent landfill  
21 gas from migrating up or surface water from infiltrating down.

22 6. Coating and sealing of utilities, manholes, and catch basins to prevent  
23 gas intrusion.

24 Another requirement of the existing Consent Decree, and of the restrictive  
25 Environmental Covenant recorded on the Property, is that ground floor uses of residential units  
26 are restricted solely to garage, storage, and laundry.

1 H. The Parties now wish to enter this Amendment No. 3 to allow for the  
2 construction of street level residential units and to clarify how those units will be constructed  
3 consistent with the Consent Decree by requiring:

4 1. Living spaces to be separated from the slab-on-grade by unoccupied and  
5 isolated monitoring/ventilation spaces.

6 2. Installation of landfill gas detectors, meeting the requirements of section  
7 6.2.1 of the Cleanup Action Plan (Consent Decree, Exhibit C) and Section 3.5.1 of the  
8 Compliance Monitoring and Contingency Plan (Attachment 2 to the Cleanup Action  
9 Plan) in the first floor and loft of each such street level residential unit, and in each  
10 monitoring/ventilation space beneath a street level residential unit.

11 The proposed street level residential unit design will provide a margin of safety comparable or  
12 superior to that of restricting ground floor residential uses to garage, storage and laundry.

## 13 II. AMENDMENTS TO CONSENT DECREE

14 Based on the foregoing, the Parties stipulate and agree that the Consent Decree and  
15 Amendment Nos. 1 and 2 shall be amended as follows:

16 A. **Section III of Amendment No. 1 to the Consent Decree, AMENDMENTS**  
17 **TO CLEANUP ACTION PLAN AND OTHER CONSENT DECREE EXHIBITS,**  
18 **paragraph 31,** shall be amended in its entirety to read as follows:

19 31. Riverfront may develop residential units at the Property with ground floor uses  
20 restricted solely to garage, storage, and laundry; provided however, that street level residential  
21 units shall not be considered ground floor, and shall instead be considered upper level units, if  
22 they are separated from the slab-on-grade by unoccupied and isolated monitoring/ventilation  
23 spaces meeting the requirements of this paragraph. If ground floor residential units are  
24 individually owned, the homeowners will not be allowed to make any living area  
25 improvements within the ground floor area and individual homeowners shall be prohibited  
26 from penetrating the slab-on-grade or membrane, but an owners' association or building owner

1 | may engage in such activities so long as the activity continues to comport with the  
2 | requirements of this Decree and its exhibits. For activities that would penetrate the slab-on-  
3 | grade or membrane, the owners' association or building owner, as applicable, shall give  
4 | Ecology prior notice of the activity, except in the case of emergency in which case the notice  
5 | shall be given as soon as practicable but no later than two work days thereafter. Individual  
6 | owners and renters of ground floor and street level residential units will be prohibited from  
7 | improving, modifying, or removing the landscaping located exterior to their residential units,  
8 | but an owners' association or building owner may engage in such activities so long as the  
9 | activity continues to comport with the requirements of this Decree and its exhibits. Methane  
10 | monitoring detectors shall be installed in each ground floor area of a residential unit, the first  
11 | floor and loft of each street level residential unit, and in each monitoring/ventilation space  
12 | beneath a street level residential unit. Consistent with requirements for all "ground floor  
13 | rooms" and "ground floor spaces" set forth in section 6.2.1 of the Cleanup Action Plan  
14 | (Consent Decree, Exhibit C) and Section 3.5.1 of the Compliance Monitoring and Contingency  
15 | Plan (Attachment 2 to the Cleanup Action Plan), the methane monitoring detectors shall have a  
16 | low level (1,000 ppm) response that will trigger exhaust fans and notify maintenance  
17 | personnel. In addition, a high level (10,000 ppm) alarm is required that will trigger evacuation  
18 | notification. Methane monitoring controls for the residential units shall be located externally  
19 | and available for 24-hour operation and inspection. Homeowners and renters shall be required  
20 | to provide access for routine monitoring as well as for emergencies. Riverfront shall include  
21 | the above use restrictions and a description of the methane monitoring process in all  
22 | appropriate documents for each homeowner (e.g. CC&Rs and purchase documents). Upon  
23 | execution of Amendment No. 3 to the Consent Decree, Riverfront shall ensure that the  
24 | Environmental Covenant, as amended by this Amendment No. 3, is properly recorded and shall  
25 | send Ecology the amended Environmental Covenant(s) as recorded, or a copy if the original is  
26 | retained by the county auditor, within thirty (30) days of the recording date. This paragraph 31

1 is intended to apply only to residential uses. The term “ground floor residential unit” as used in  
2 this paragraph means the ground floor of a residential unit that is not separated from the slab-  
3 on-grade by unoccupied and isolated monitoring/ventilation spaces meeting the requirements  
4 of this paragraph, and therefore is restricted solely to garage, storage, and laundry uses. The  
5 term “street level residential unit” means a residential unit that is separated from the slab-on-  
6 grade by unoccupied and isolated monitoring/ventilation spaces meeting the requirements of  
7 this paragraph.

8 B. **Section 1** of the **Environmental Covenant**, attached as Exhibit D to  
9 Amendment No. 1 to the Consent Decree, shall be amended in its entirety to read as follows:

10 Section 1: Uses of the ground floor in residential units on the Property, if any, shall be  
11 restricted to garage, storage, and laundry; provided however, that street level residential units  
12 shall not be considered ground floor, and shall instead be considered upper level units, if they  
13 are separated from the slab-on-grade by unoccupied and isolated monitoring/ventilation spaces  
14 meeting the requirements of Amendment No. 3 to the Consent Decree. Overnight camping  
15 shall not be permitted. The owner must notify and obtain approval from Ecology, or from a  
16 successor agency, prior to any use of the Property that is inconsistent with this Section.  
17 Ecology or its successor agency may approve such a use only after public notice and comment.

18 C. **Amendment No. 2** to the Consent Decree shall be amended to correct a  
19 scrivener’s error and to reflect a name change, and all references to the name “PNW Riverfront  
20 LLC” or “Riverfront Commercial LLC” shall be amended to “Riverfront Commercial  
21 Investment, LLC.”

22 **III. EFFECT OF AMENDMENT TO CONSENT DECREE**

23 The terms and conditions of this Amendment No. 3 shall supersede any prior  
24 inconsistent provisions of the Consent Decree, including all exhibits, attachments to the  
25 Consent Decree, and prior Amendments and exhibits and attachments to the Consent Decree.

26 //

1 Unless otherwise modified herein, the original terms of the Consent Decree shall  
2 remain in full force and effect.

3 STATE OF WASHINGTON  
4 DEPARTMENT OF ECOLOGY

5  
6 By: \_\_\_\_\_ Date \_\_\_\_\_

7  
8 ROBERT W. FERGUSON  
Attorney General


9  
10 By: \_\_\_\_\_ Date \_\_\_\_\_  
11 JONATHAN C. THOMPSON  
WSBA #26375  
Assistant Attorney General

12 RIVERFRONT COMMERCIAL  
13 INVESTMENT, LLC

14   
15 By: \_\_\_\_\_ Date 6/16/21  
16 Its Authorized Signatory

17 CITY OF EVERETT,  
18 A Washington municipal corporation

Office of the City Attorney  
APPROVED AS TO FORM  
David C. Hall, City Attorney

19   
20 By: \_\_\_\_\_ Date 6.22.21  
21 Cassie Franklin,  
Mayor

22  
23 So ordered on this date: \_\_\_\_\_

24  
25 \_\_\_\_\_  
26 JUDGE/COMMISSIONER