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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.

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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 By: [Signature] Date 9/29/21
6

7 ROBERT W. FERGUSON
8 Attorney General

9 By: [Signature] Date 10/12/21
10 JONATHAN C. THOMPSON
11 WSBA #26375
12 Assistant Attorney General

13 RIVERFRONT COMMERCIAL
14 INVESTMENT, LLC

15 By: [Signature] 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 By: [Signature] Date 6.22.21
20 Cassie Franklin, Mayor
21

22
23 So ordered on this date: _____

24
25 _____
26 JUDGE/COMMISSIONER