AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Between the City of Everett and Port of Everett

For the
Waterfront Place Central Planned Development Overlay Zone
PDO-WC

CITY OF EVERETT

PORT OF EVERETT

1/21/2015

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AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement") is entered into on this 21st day of January 2015, by and between the Port of Everett, a Washington Port District (hereinafter the "Port") and the City of Everett, a municipal corporation under the laws of the State of Washington (hereinafter the "City").

RECITALS

1. The Port is the owner of property located in the City's central harborfront area containing approximately 119.62 acres of uplands and water, the legal description of which is contained in Section 2.2 (the " Property").

2. The Property includes the central portion of the Port's existing Marina, including the Central Marina water area and buildings leased to the Everett Yacht Club and Milltown Sailing Club, and Port-operated boat haul-out and wash-down facilities, boat repair work yards, and maintenance shop, impound yard, and net shed.

3. In 2005, the Port wished to develop the Property as the North Marina Redevelopment Project ("NMRP"). The NMRP planned development overlay was approved by the City in 2005, along with the Development Agreement by and between the City and the Port dated December 28, 2005 (the "2005 Development Agreement"). The NMRP was a multi-district, multi-phase master planned effort to create a new mixed-use development on the site.

4. Because of economic circumstances, the Port has revised the NMRP. As revised, the NMRP is renamed Waterfront Place Central.

5. Accordingly, the Port desires to modify the 2005 planned development overlay and the 2005 Development Agreement in accordance with its Waterfront Place Central plans.

6. Waterfront Place Central maintains the heights and densities approved by the City Council in 2005.

7. The Waterfront Place Central is consistent with and would implement the goals and policies of the Everett Comprehensive Plan.

8. Waterfront Place Central is consistent with the Port's Comprehensive Scheme of Harbor Improvements and Port Resolution No. 994.

9. Waterfront Place Central will recognize the district functions of the Central Marina area (an intensive mix of uses including the marina activities, boat sales and repair, restaurants, public access and recreation and other compatible mixed-uses) through an almost completely new combination of buildings, improvements, expanded marina facilities, public walkways and open space that creates a new public gathering place, a recreational boating destination and a residential and commercial mixed use district.

10. The City and Port agree that utilization of the planned development overlay ("PDO") process continues to be the most appropriate for a large-scale project with a complex mixture of uses and with the long-term effects that the development represents.

11. Consequently, the Port filed a PDO modification with the City in accordance with Chapter 19.41.160.D of the Everett Municipal Code ("EMC"), for the purposes of modifying the PDO adopted in 2005 by the City Council. On August 15, 2014, the Port provided a revised complete application to the City. The purpose of a PDO zone is to allow for:

> "...development that is innovative or otherwise beneficial to the community but which does not strictly comply with the provisions of the zone in which the property is located. This mechanism...is intended to promote high quality developments which benefit the city more than would a development which complies with the specific requirements of this title, while allowing greater flexibility in the design of such developments." EMC 19.29.010

12. Waterfront Place Central is proposed to be implemented through the PDO designation and the issuance of the necessary permits for construction.

13. The Port has structured a process, under the PDO as revised for Waterfront Place Central, wherein this Agreement and associated conceptual Site Plan (**Exhibit 1**) describe the fundamental location of structures, features and themes to be used in the design of improvements to be developed and incorporated into the Property. This Agreement outlines the review procedure to be used as more detailed designs become available and requires that such review take place before issuance of building permits for individual project elements.

14. This Agreement sets forth the mitigation measures, development standards and guidelines through which the Port intends to develop the Property in an innovative manner, which will be beneficial to the community. The intent is to provide for a high quality development, which will benefit the City more than would a development strictly in accordance with the underlying zoning standards. The public will be benefited by the establishment of development standards together with the implementation of mitigation measures through the planned development overlay process.

15. This Agreement is entered into pursuant to RCW 36.70B.170, .180 and .190. This Agreement replaces and supersedes the 2005 Development Agreement in its entirety. The intent of the parties is to describe in this Agreement the development standards and other provisions that shall apply to, govern and vest the redevelopment and use of the development

of the Property. This Agreement shall be construed in a manner that is consistent with applicable development regulations adopted by the City, except as modified herein.

16. The parties hereto agree that, as conditioned by this Agreement, the Port's proposed development of the Property satisfies the criteria for approval of alternative development standards under EMC 19.29.050.C.

17. The City Council has found that the conceptual site plan for Waterfront Place Central as proposed through the revised PDO is consistent with the City's vision for a new waterfront recreational and commercial destination in its central harbor front area.

18. The City Council approved the revised PDO rezone for Waterfront Place Central based on findings that:

    a. Waterfront Place Central is consistent with and would implement the goals and policies of the Everett Comprehensive Plan.

    b. Waterfront Place Central is compatible with Design Standards & Guidelines set forth in this Agreement. The policies of the Comprehensive Plan pertaining to compatibility of land uses, shoreline redevelopment, and urban design along the central harborfront were considered in the design of the project.

    c. The proposed Waterfront Place Central rezone bears a substantial relation to public health, safety or welfare; and promotes the best long-term interests of the Everett community.

    d. The new North Marina, the reconfiguration of the existing marina, boat repair facilities, new buildings and roadways, public walkways and urban plazas, will be compatible with the surrounding neighborhoods and harborfront areas.

    e. Waterfront Place Central, as developed over time, will meet or exceed the performance-based intent of the City's development standards in order to provide an exceptional civic and redeveloped shoreline environment.

    f. The elements of Waterfront Place Central will respond to and balance the needs of Everett residents and visitors, recreational boat owners, marine service businesses, the Port of Everett, the City of Everett, and other public agencies.

    g. The City and Port SEPA Responsible Officials determined that Waterfront Place Central is an appropriate subject of Phased Environmental Review.

    h. The City of Everett assumed lead agency status for the Phase 1 SEPA and the 2014 amended SEPA review related to the amendments to the City's Comprehensive Plan and Zoning, and the City assumed lead agency status for the Shoreline Master Plan limited amendment necessary for the Waterfront Place Central.

i. The City's Responsible Official issued a Mitigated Determination of Nonsignificance on September 26, 2014

j. Individual project proposals that are within the scope of action analyzed under City of Everett SEPA #14-027, as determined by the City Planning Director, may proceed without further SEPA analysis provided all mitigation measures identified in the MDNS that are relevant to the specific project are applied through the applicable project permit review process. Future project-specific SEPA reviews will be required to address the impacts of development activities that are not within the scope of action analyzed under SEPA #14-027.

k. The anticipated development schedule intends that all elements are to be completed by 2034. However, due to the different construction schedules and time frames for individual projects in the Waterfront Place Central each will proceed forward at different construction start times and are to be completed at different times.

l. The Everett City Council approved the revised PDO rezone for Waterfront Place Central subject to this Agreement.

19. The City Planning Commission held public workshops on September 16, 2014; November 4, 2014; and a public hearing on the proposed revisions to the PDO on December 2, 2014, which was continued to December 16, 2014. On December 16, 2014, the Planning Commission recommended amendment of the 2005 Development Agreement.

20. On January 21, 2015 the Everett City Council adopted Resolution No. 6814 authorizing execution of this Agreement.

SECTION ONE - INTRODUCTION

Now, THEREFORE, the parties herein do mutually agree as follows:

The City hereby adopts this Agreement in conjunction with the rezone of the Property described in Section Two of this Agreement to a PDO in accordance with provisions of Chapter 19.29 and 19.41.160 of the Everett Municipal Code. This Agreement supersedes and replaces the 2005 Development Agreement and any other development agreement between the Port and City relating to the Property.

The City and the Port agree that the purpose of this Agreement is to comply with the Everett Municipal Code and the Conditions of Approval for the PDO-WC Rezone. The City and the Port further agree that this Agreement establishes certain rights of the Port to develop the Property in accordance with the conditions specified herein. Provided, however, that additional SEPA review, and issuance of appropriate City approvals and permits are required as set forth below.

The City and the Port agree that each has entered into this Agreement knowingly and voluntarily and agree to be bound by its terms and conditions.

It is the intent of this Agreement that all of the major components of Waterfront Place Central will be completed in several phases beginning in 2014 and continuing to no later than 2034. The City and the Port recognize that phasing and construction time among the different components of the Waterfront Place Central will differ and that various structures and districts will be completed in different years. Nevertheless, the Port shall provide public infrastructure improvements in accordance with Section 4.4 below.

SECTION TWO – ACTION PROPOSED DESCRIPTION

2.1 PROPOSED ACTION

The proposed action is the approval by the City of a revised Planned Development Overlay (PDO) zone for the Property described in Section 2.2 for Waterfront Place Central. The PDO includes this Agreement and its exhibits.

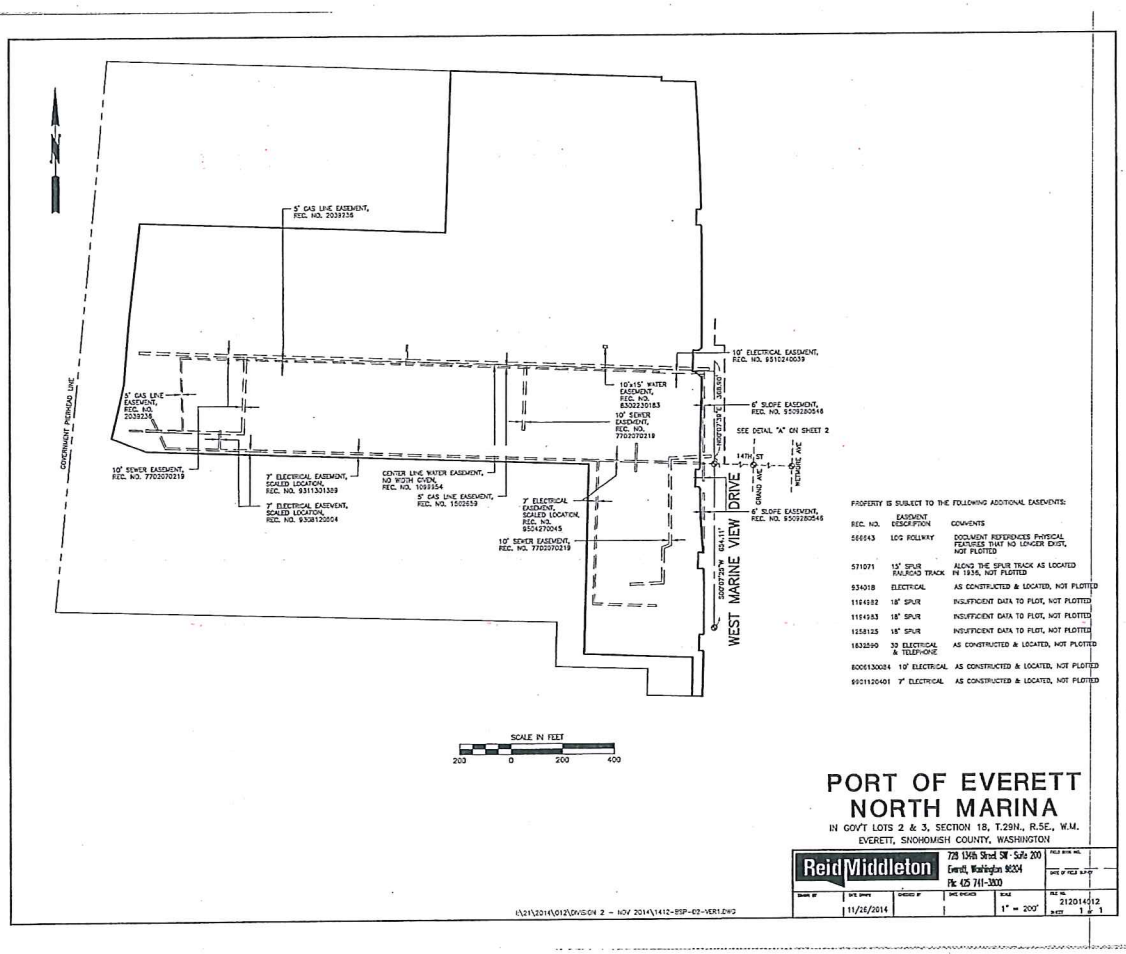
The general location of the proposed action is between the Port's existing marina, north of and adjoining the Waterfront – Commercial (W-C) zone boundary and the Jetty Landing Boat launch, and extending west of West Marine View Drive to the Snohomish River Channel.

2.2 PROPERTY DESCRIPTION

The Port property subject to the PDO is legally described and depicted as follows:

PORT OF EVERETT WATERFRONT PLACE CENTRAL

All division and segregation of land on the affected property shall be consistent with City regulations governing such actions.



LEGAL DESCRIPTION

That portion of Tide Lands conveyed to The Everett Land Company by the State of Washington in that certain instrument recorded in Volume 30 of Deeds starting at page 162, under Auditor's File No. 24048, records of Snohomish County, Washington, in and fronting Government Lots 2 and 3 of Section 18, Township 29 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the Standard City Monument at the intersection of 14th Street and Grand Avenue, which monument is shown on Plat of Everett, Division "R", according to the Plat thereof recorded in Volume 6 of Plats, page 33, records of Snohomish County, Washington, and which monument is positioned 14.00 feet North and 22.00 feet East of the intersection of the center lines of said streets, and from said monument the Standard City Monument at the intersection of 14th Street and Rucker Avenue, as shown on said plat, bears South 89°52'00" East a distance of 354.13 feet, and from said monument the Standard City Monument at the intersection of 14th Street and Wetmore Avenue, as shown on said plat, bears South 89°52'00" East a distance of 1396.16 feet; thence North 89°52'00" West, along the monument line of 14th Street projected Westerly, which monument line is 14.00 feet North of the center line of 14th Street, as measured at right angles to said center line, a distance of 369.16 feet to the center line of that certain road known as Marine View Drive; thence continuing North 89°52'00" West a distance of 217.29 feet to the point of intersection of said monument line with the Westerly Margin of the Northern Pacific Railway Company right of way; thence North 1°15'00" West, along said Westerly Margin, a distance of 1481.43 feet to the True Point of Beginning; thence North 89°52'00" West a distance of 2154.56 feet to the point of intersection with the Government Pierhead Line; thence South 3°41'45" West, along said Government Pierhead Line, a distance of 2124.28 feet; thence North 89°41'40" East a distance of 1950.45 feet; thence South 0°18'20" East a distance of 170.62 feet; thence North 89°41'40" East a distance of 354.78 feet; thence South 0°18'20" East a distance of 102.17 feet; thence North 89°41'40" East a distance of 215.66 feet to the point of intersection with the Westerly Margin of said Marine View Drive; thence in a Northerly direction, along said Westerly Margin of Marine View Drive, on the following courses: North 0°26'58" West a distance of 263.60 feet, North 1°44'43" West a distance of 285.96 feet, South 88°15'17" West a distance of 6.00 feet, North 1°44'43" West a distance of 230.62 feet, South 89°50'10" East a distance of 6.00 feet, North 1°44'43" West a distance of 46.00 feet, North 89°52'00" West a distance of 6.00 feet, North 1°44'43" West a distance of 64.00 feet, South 89°52'29" East a distance of 6.00 feet, North 1°44'43" West a distance of 3.00 feet to the point of intersection of said Westerly Margin with said Monument line of 14th Street projected Westerly; thence North 1°44'43" West, along said Westerly Margin, a distance of 26.01 feet to the point of intersection of said Westerly Margin with the North Margin of said 14th Street projected Westerly; thence in a Northerly direction, along said Westerly Margin of Marine View Drive, on the following courses: North 1°44'29" West a distance of 17.10 feet, North 89°52'29" West a distance of 6.00 feet, North 1°44'29" West a distance of 295.04 feet; thence North 1°52'10" East a distance of 95.27 feet; thence North 1°44'29" West, along said Westerly Margin, a distance of 215.66 feet; thence on a curve, to the left, of said Westerly Margin, having a radius of 11314.19 feet, through a central angle of 4°07'25", an arc distance of 814.25 feet; thence North 5°51'54" West, along said Westerly Margin, a distance of 5.13 feet to the North Margin of 11th Street projected Westerly; thence North 89°52'00" West, along said North Margin projected Westerly, a distance of 135.01 feet to said Westerly Margin of the Northern Pacific Railway Company right of way; thence North 1°15'00" West, along said Westerly Margin, a distance of 15.01 feet to the True Point of Beginning.
All containing 119.62 acres, more or less.

SUBJECT TO Easements of Record, Also SUBJECT TO City Street Rights of Way.
082003, 231920, CML-LS

SECTION THREE – DEVELOPMENT PLAN

3.1 INTRODUCTION

The provisions of this Agreement and the standards set forth herein shall govern and control the development of the Property. The City and Port recognize that development of the Property to conform to the conditions and project phasing objectives contained in this Agreement may be subject to third party permits and approvals outside of the control of the City or Port.

3.2 CONTROLLING DOCUMENTS

Several codes, plans, policies, and analyses provide the basis for the conditions contained in this Agreement. Where questions or need for interpretation arise during the permitting or construction of improvements on the Property, these documents, as reasonably interpreted by the City Planning Director, will control.

A. Everett Municipal Code, including but not limited to the Zoning Code (Title 19 EMC) and the Planned Development Overlay Zone (PDO) provisions.

B. Everett GMA Comprehensive Plan

The Planned Development Overlay zone was found to be compliant with the Everett Comprehensive Plan as required by EMC 19.29. An analysis of the consistency of the revised PDO with the Comprehensive Plan is found in the Environmental Checklist prepared for this PDO proposal and other annual docket process applications.

C. Phased SEPA Environmental Review

1. 2003 SEPA Review: The City of Everett issued a Mitigated Determination of Non Significance (MDNS) on March 18, 2003 that addressed the Comprehensive Plan, Zoning, and SMP amendments needed for the proposal. Comments were received from the public regarding noise and view impacts, to which the Port responded with noise and view impact studies acceptable to the City, and a Revised Mitigated Determination of Non Significance was issued on July 10, 2003.

2. 2005 SEPA Review: The Revised Mitigated Determination of Non Significance, Environmental Checklist, and attachments contain background material in support of several provisions of the revised 2005 Development Agreement, including land and shoreline use compatibility. On December 6, 2006, the Port of Everett Commission amended its Comprehensive Scheme of Harbor Improvements in accordance with its responsibilities as lead agency under the State Environmental Policy Act (SEPA) with the Final Environmental Impact Statement (FEIS) – North Marina Redevelopment Project issued May 2005. These amendments brought the North Marina Area into conformance with the series of land use changes approved by the Everett City Council on November

16, 2005 and embodied in the Development Agreement entitled: "North Marina Planned Development Overlay Zone."

3. 2014 SEPA Review: The 2014 Mitigated Determination of Non Significance, Environmental Checklist, and their attachments contain studies and background material in support of several provisions of this Agreement, including land and shoreline use compatibility. The Environmental Checklist also includes references to studies and background information from the 2005 North Marina Redevelopment Project FEIS. Mitigation measures specified in the 2014 environmental checklist and the Mitigated Determination of Non-Significance will be incorporated into individual Property development and building construction project approvals and permits, as applicable as determined by the City during individual permit review phases. Additional environmental review for individual site development or building construction projects may identify additional or different mitigation measures from those identified in the 2014 MDNS and environmental checklist. In the event of a conflict between mitigation measures identified in different phases of project development, the City SEPA Responsible Official shall determine how mitigation measures will be applied. A SEPA Mitigation Matrix from the 2014 SEPA Review has been attached to this Agreement as **Exhibit 12** for ease of reference and for informational purposes, but it is not a substantive provision of this Agreement and does not bind either party in any way.

3.3 RELATED AND CONCURRENT REDEVELOPMENT PROJECTS

Projects listed in the 2005 Wharf project under this section have been completed, as follows:

A. The 10th Street Boat Launch and Marine Park: The Port completed the parking and esplanade on the south side of the 10th Street Boat Launch.

B. 12th Street Marina: Marina has been constructed with esplanade on the north and east sides completed.

C. The Port will further reconfigure the existing marina: The Port will reconfigure the north east section of the existing Central Marina, which lies west of the south-easternmost PDO area, in conjunction with work in the uplands PDO area.

3.4 USE DISTRICTS

1. The Site Plan is included as **Exhibit 1** to this Agreement. This site plan is approved conceptually only. Revisions may be required to comply with the conditions of this Agreement, future SEPA environmental reviews, and specific regulations, including, but not limited to, the Shoreline Master Program, Zoning Code, Fire Codes, Public Works Standards, and mitigation requirements.

2. Planning Director may approve minor changes to the PDO, and may approve interim uses necessary, which are consistent with this Agreement, to facilitate continued operation of the

Port facilities and public access during construction. Major modifications to the PDO are considered by the Planning Commission and City Council.

3. This Agreement hereby approves and supports the Port's desire to create certain use "Districts" with associated themes within Waterfront Place Central. The following descriptions are not intended to regulate the development of uses, but to more generally describe the types of uses within the project.

   a. Craftsman District - The 20.25 acre Craftsman District provides for the majority of marine-related uses that accommodate marina services and commercial marine activities, including Marine Commercial, Retail, and Light Industrial uses.

   b. Fisherman's Harbor - The Fisherman's Harbor district includes 11.79 developable acres and includes commercial fishing, recreational boating, retail shopping, multi-family residential and restaurants.

   c. The Esplanade - The Esplanade commences at 14th Street and the Pacific Rim Plaza and wraps around the central pier to the Craftsman District.

   d. The Millwright District – This district includes 11.85 acres of developable land and is the primary commercial and office area within Waterfront Place.

   e. Wharf's Edge – This district includes 3.61 acres of residential property. The Wharf's Edge area is located in the western portion of the Property, mostly landward of the 200-foot shoreline management zone.

4. Location of the approved Districts will generally conform to **Exhibit 2**.

3.5 PERMITTED USES –SPECIAL PROVISIONS

1. Proposed uses shall be permitted in accordance with those listed in **Exhibit 11** Waterfront Place Central Land Use Table and in the City's Local Project Review Procedures, EMC Title 15.

2. At the completion of Buildout Period (defined in Section 5.1 below), each use in Waterfront Place Central must contain net building square footages within the ranges stated below:

Marine Sales & Service	98,000 s.f. to 155,900 s.f.
Office, retail, commercial	375,000 s.f. to 512,800 s.f.
Housing	330,300 s.f. (430 units) to 725,000 s.f. (660 units)

Hotel & Restaurant	100,000 to 165,200 s.f.
TOTAL BUILDING AREA	903,900 s.f. to 1,558,900 s.f.

* Includes uses such as theaters, research and development, and educational facilities.

So long as the ranges above are not altered, the allocation between different uses may be adjusted between uses, except that (i) the total square feet of net building area may not exceed 1,558,900 square feet and (ii) the number of residential units may not exceed 660.

3. Permitted uses not already listed in the current Shoreline Master Program shall not be permitted within the 200 foot shoreline overlay zone area until or unless the Shoreline Master Program is amended and approved by the State of Washington Department of Ecology.

3.6 GENERAL CONDITIONS:

1. Development of the Property shall be subject to all standards, and design guidelines of the Zoning Code, except as specifically modified in this Agreement (collectively the "Development Standards"). The Property is zoned Waterfront Commercial - Planned Development Overlay (WC-PDO). If there is conflict between the provisions of the WC Zone and the provisions of this Agreement, the provisions in this Agreement shall apply. Unless otherwise stated, all standards, guidelines, and other requirements of this Section 3.6 are in addition to those identified in the Zoning Code. It is the intent of this Agreement to set standards and guidelines for building height, landscaping, parking, design, allowed uses, number of housing units, maximum square footage of buildings, District areas, lighting, signage and view protection.
2. The following development standards apply to the Property.

ZONE STANDARDS	PDO-WC (1)
Min. Lot Area	5,000 sf
Min. Required Setbacks	(2)(3)
Lot Width, Min.	50
Lot Depth, Min.	80
Max. Lot Coverage by Building	N/A
Max. Building Height	35 to 65 (4)(6)(7)
Landscape Category	(5)

Sign Category	B

SPECIAL REGULATIONS FOR DEVELOPMENT STANDARDS TABLE

(1) See Section 6.080 of the City Zoning Code.
(2) See Section 39.150 of the Zoning Code for exceptions to required setback standards.
(3) 10 foot setbacks are required on West Marine View Drive street frontage.
(4) See **Exhibit 5** (Height Zone Map) and conditions in this Section for exceptions to building height.
(5) See **Exhibit 10** (Design Guidelines) for landscape standards.
(6) Workman's Clock Tower maximum height is 75 feet.
(7) The Weyerhaeuser Building which is 45 feet in height may be located within the Shoreline zone.

At the option of the Port, these standards may be applied to individual legal lots within the Property or collectively to any combination of such lots that are developed as an integrated unit.

3. Building heights on the site will be restricted to height zones by block as depicted in the Height Zone Map (**Exhibit 5**). Measurement of building heights will be determined at the time of the building pre-application conference with the City by an onsite verified method acceptable to the City. In the residential district, building heights will be measured from existing average grade of 17.0 feet above Mean Lower Low Water (MLLW). The Planning Director shall review all building plans to verify that the height of the building, rooftop appurtenances, and rooftop gardens comply with the terms of this agreement.

4. "Rooftop appurtenances" are allowed to exceed the permitted building height by up to ten feet, but shall be designed to be the lowest height necessary to screen mechanical equipment, house elevator shafts, stairwell access, and other similar building elements. The profile of rooftop appurtenances, landscaping trellises and landscaping materials located above the permitted maximum building height shall be designed to minimize visual impact as viewed from the east-west line that is perpendicular to West Marine View Drive.

5. The "2003 Port Gardner Wharf Design Guidelines" and the 2005 supplemental guidelines have been revised to describe Waterfront Place Central while maintaining the quality originally approved by the City Council. The "Waterfront Place Central Design Guidelines", which is **Exhibit 10** of this Agreement, supersedes and replaces the 2003 Port Gardner Wharf Design Guidelines" and the 2005 supplemental guidelines.

6. The Planning Director shall have the authority to determine if site layout and building designs proposed in each phase of implementation of Waterfront Place Central (including but not limited to shoreline permits, SEPA reviews, building permits, binding site plans, or other permits required by the EMC or State law) are consistent with the character and quality

represented in the site development plan identified as **EXHIBIT 1: CONCEPTUAL SITE PLAN**, and the Waterfront Place Central Standards & Design Guidelines, **Exhibit 10**.

7. The Planning Director is directed to reject any plan that does not provide the level of detail, architectural quality, and character represented by the site development plan identified as **Exhibit 1**, and the Waterfront Place Central Standards & Design Guidelines (**Exhibit 10**) A decision to reject a plan or permit based on inconsistency with such site development plan or the Waterfront Place Central Standards & Design Guidelines must not be arbitrary and must be made in writing and supported by detailed findings and outlining the identified inconsistency.

8. In reviewing plans for individual phases of development and individual buildings, the Planning Director shall have the authority, if he or she deems it necessary to determine consistency with the character and quality represented in the site development plan identified as **Exhibit 1** and the Waterfront Place Central Design Guidelines, to retain the services of an independent architect with appropriate expertise as an independent third party. The selection of the architect shall be mutually agreed upon by the City and the applicant.-

9. A view corridor shall be maintained to the western water's edge along the lengths and width of the existing 14th Street as depicted on **Exhibit 1**. In this corridor, construction of buildings will not be permitted, though landscaping and pedestrian improvements may be allowed. Elements that may encroach up to 5 feet into the view corridor include: decks and balconies, architectural features such as cornices and architectural terminations, roof eaves, and bay windows. Retail canopies and awnings may encroach 10 feet at the first building floor.

10. That portion of the Property fronting West Marine View Drive shall be treated as a City Gateway Corridor with the appearance and landscape standards established in the Waterfront Place Central Design Guidelines (**Exhibit 10**).

11. Curb cuts in the sidewalks along the westerly side of West Marine View Drive frontage no longer needed as a result of this project shall be removed, i.e., the sidewalk shall be restored to a level surface along the length of the removed curb-cut so it matches the existing sidewalk level and appearance at both ends of the cut area.

12. The attached public circulation map represents the conceptual layout (**Exhibit 3)** Roadway System – Right of Way Improvements) of this element of the project.

13. Public access corridors, walkways and plazas shall be substantially provided as conceptually depicted in **Exhibit 8** and **Exhibit 16,** in which 15 such linked and "expanded" public spaces are shown on the Property. Interim public access improvements will be provided in the first phase in accordance with Section 4.4 of this Agreement.

14. Design of the proposed outdoor theater shall be such that sound is carried away from residential areas as much as possible. Stage, seating and area lighting shall be directed down so as not to shine toward residential areas. The location of this feature may move to another location, the conditions of which must be acceptable to the City.

15. Pedestrian access to all parts of the shoreline touching the Central and North Marinas will be made available to the public, during the course of the phased development of the project. Boat launching and haul out areas may be restricted by the Port during the movement of boats.

16. Building and Site Development Permit Issuance - General: All site development and building construction subject to City permits shall be subject to the mitigation measures identified in the City of Everett Mitigated Determination of Non- Significance SEPA No. 14-027, as applicable, and the proposed mitigation measures listed in the Port of Everett SEPA Checklist contained in Section 6 of the Port of Everett notebook submitted to the City of Everett August 15, 2014. Subsequent SEPA review conducted for individual site development or building permits or approvals may include additional or different mitigation measures. In the event of a conflict between individual SEPA mitigation measures identified in different phases of environmental and permit review, the City's SEPA Responsible Official shall determine which mitigation measures apply.

17. Building Permit Issuance:

    a. Prior to issuance of permits for any residential units on the site, a noise study shall be completed by a qualified acoustical consultant and approved by the City. The study must describe any special construction on the buildings needed to ensure that interior noise levels in the residential units are no greater than 45dBA LDN or the ambient LDN level, whichever is higher. The qualified acoustical consultant must sign off on the plans submitted for building permits to ensure that the construction proposed is designed to be consistent with this condition.

    b. Prior to issuance of permits for any buildings over 35 feet in height along West Marine View Drive, a noise study shall be completed by a qualified acoustical consultant. The study must describe any special design and construction of the buildings needed to ensure that reflected noise from such building will not cause noise levels at the residential receiving properties to the east to exceed the existing noise levels described in the findings of the Greenbusch noise study provided by the Port to the City dated June 2, 2003 (after subtracting ambient noise sources not accounted for in the June 2, 2003 study). The noise study is attached to the original City SEPA document for the 2003-2005 action (Revised Mitigated Determination of Non Significance #02-058 and a review of the original noise study for the Waterfront Place Central site plan is attached to the 2014 Mitigated Determination of Non Significance #SEPA 14-027. All plans submitted for building permits must be consistent with the SEPA conditions.

18. All exterior lighting, including lighting of signs, shall be directed downward onto the site and away from other shoreline properties or nearby neighborhoods. Exterior lighting will be approved by the Planning Director.

19. The Port shall provide to the City a detailed parking management plan for approval by the Planning Director and City Engineer for each phase of development, prior to the issuance of any building permits or approvals within each phase. This requirement shall not apply to

demolition permits, or permits for street, utility and public access infrastructure improvements. The City shall have the authority to approve or reject the parking management plan as necessary so adequate parking is provided for the activities anticipated within the project. Provision shall be made to accommodate the public for normal weekend and peak season activities. The Port shall not be required to provide parking on-site to accommodate anticipated special events with an extraordinary parking demand, such as 4th of July fireworks exhibitions or Fresh Paint, but shall provide for alternative means of accommodating anticipated public access such as transit or shuttle service from off-site parking facilities.

20. Parking must be provided per Zoning Code requirements, except that the minimum requirement for residential parking shall be 1.8 parking spaces per dwelling unit, provided that not more than sixty percent of the dwelling units have three or more bedrooms. This residential parking requirement cannot be administratively modified unless the City, Port and applicant consent to its modification. The parking required for residential uses shall be addressed in the parking management plan for each phase of redevelopment. For each phase of redevelopment after the first phase, in making the determination as to accept or reject the parking management plan, the Planning Director and City Engineer shall consider whether to require a greater number, or allow a lesser number of non-residential parking spaces, based upon the mix and size of residential dwelling units, the presence or absence of regular public transit service, and experience with residential parking demand in preceding phases of development.

21. Traffic mitigation must be provided as required by EMC Chapter 18.40.

22. School district impact fees shall be paid in accordance with Ordinance No. 3396-14, or as it may be amended in the future.

23. All sales, lease and rental agreements for the residential units must include a clause that provides disclosure of vibrations that are caused by rail car impacts in the area, unless studies by a qualified consultant demonstrate to the City's satisfaction that such disclosure is not necessary.

24. Boat painting and sanding area(s) shall be screened/ fenced and landscaped (wind blocking foliage) such that drifting spray and debris is substantially contained within the work yard area.

25. Soil stability, seismic, load bearing tests and flood protection regulations and other requirements of the City engineer as necessary shall apply, including testing and studies where applicable.

26. An increase in building height from 35 feet up to 65 feet on portions of the Property outside the 200 feet shoreline jurisdiction zone will be permitted per the Height Zone Map in **Exhibit 5**. No building heights within 200 feet of the shoreline are allowed above 35 feet except the relocated Weyerhaeuser Building. No building along West Marine View Drive

will be above 45 feet. The Workman's Clock Tower will not exceed 75 feet and will not be more than 10 feet taller than the building surrounding it.

27. Non-water dependent and non-water related uses, such as retail, commercial and office, will be allowed within the 200 foot shoreline area. Residential uses shall not be allowed within the 200 foot shoreline area until or unless the Shoreline Master Program is amended and approved by the State of Washington Department of Ecology.

28. The dry boat storage building will use materials and architectural details which will reduce the perceived scale of the building and make it compatible with the architecture of the new buildings within the project.

29. The dry boat storage building will be set back 140 feet from the shoreline, the height of the building within the 200 feet shoreline jurisdiction shall be 35 feet or less, and the dry storage portion of the building will not exceed 140 feet wide and overall length less than 400 feet. Any increase in these dimensions, other than setback, will be reviewed by the Planning Commission and City Council. Portions of the building used for ancillary boat repair and services may exceed the 140 feet width dimension but will not exceed 35 feet in height.

30. The hours of operation of the dry boat storage facility will be 7 AM to 7 PM, seven days a week.

31. The transient moorage dock along the Snohomish River in the existing marina and the proposed new marina transient moorage will be open to the public at all times.

32. Rooftop appurtenances will be integrated into the architecture of the building and will be limited to vents, HVAC and elevator equipment, stair enclosures for roof access, parapets, and cornices or other architectural termination, guardrails/railings, skylights, and planters.

33. Any mechanical / air conditioning / HVAC equipment in new buildings will not increase the noise levels to affect residents on the bluff above the project.

34. The Port shall provide dedication of an easement to the public or other device acceptable to the City Attorney, to ensure that the spaces listed on the open space plan as "semi-public open space" in **Exhibit 6** will remain open during daylight hours from at least dawn to dusk.

35. The Port shall be responsible for proactive enforcement of all sign regulations within the Property, consistent with the terms of this Agreement and its exhibits. Solely for purposes of the sign standards of this Agreement and their enforcement, all streets within and abutting the Property shall be considered public streets. The City shall have the discretion to enforce the sign standards of this Agreement as allowed by the Everett Municipal Code in the event the Port fails to enforce such standards. The Port, on behalf of itself and on behalf of all of its successor-in-interest to the Property, consents to such City enforcement.

36. Development shall be in accordance with all Exhibits attached.

SECTION FOUR – PROCESS

4.1 PHASED SEPA REVIEW

1. The City of Everett assumed lead agency status and completed a detailed SEPA review (SEPA #14-027) that addressed the revisions to the Comprehensive Plan, Zoning, and Shoreline Master Program necessary for the approval of the proposed Waterfront Place Central conceptual master plan. The analysis of impacts and mitigation measures included those that could be identified at the master planning level and may address all impacts and mitigation associated with subsequent specific development activities.

2. Specific project proposals that are within the scope of action analyzed under City of Everett SEPA #14-027, as determined by the Planning Director, may proceed without further SEPA analysis provided all mitigation measures identified in the MDNS that are applicable to the project are applied through the City's project permit review process.

3. Additional environmental review shall be completed prior to City issuance of individual approvals and permits for specific site and/or building plans and development activities that are outside of the scope of actions analyzed under City of Everett SEPA #14-027. Such future environmental reviews shall include all elements of the environment required under SEPA. All studies shall be sufficient to address City regulations, including, but not be limited to, the requirements of this Agreement, the Shoreline Master Program, the Zoning Code, the Transportation Mitigation Ordinance (EMC 18.40), Stormwater Regulations and Standards, Land Division regulations, and Public Works Standards. Review and approval by appropriate City staff (Planning and Community Development Director, Traffic Engineer, Fire Marshal, City Engineer, etc.) is required prior to issuance of permits and other approvals. As more specific information is available for future development, new SEPA reviews or Addendums may be required to address the more detailed information.

4. To ensure that mitigation consistent with City SEPA policies and regulations is required of development within the PDO zone, conditions addressing interior noise levels in residential units, traffic mitigation, and school district mitigation are included in Section 3.6 of this Agreement (Development Standards & Design Standards and Mitigation Measures - Special Provisions).

5. Several developments planned by the Port could occur regardless of whether the Waterfront Place Central is implemented. SEPA reviews and permitting for these actions may be completed separately from the SEPA reviews and permitting for the master plan. These include projects identified in the Port's Capital Improvement Plan. While SEPA reviews may be completed separately for those projects, those reviews must be consistent with the requirements of this Agreement. This includes the option of completing many or all of these separate SEPA reviews by using the Planned Actions provisions established in RCW 43.21C.031.

4.2 FINAL DEVELOPMENT PLAN AND MODIFICATIONS

Within three years of approval of this Agreement by City Council, the Port shall submit the final conceptual site plan to the Planning Director for review and approval in accordance with EMC 19.29.090 - 19.29.130. The final conceptual site plan may be modified from time to time to reflect changing conditions. If the Port fails to submit the final plan within the specified time frame and requests an extension, the City may impose additional standards on the PDO if such changes are based on changes in the zoning code or any other ordinances which have occurred since the original PDO approval was granted. If submission of final conceptual site plan is delayed as a result of events or activities outside of the control of the Port, including any appeals or litigation related to the Property, SEPA compliance or the project, the time period for submission will be extended accordingly.

Modifications to the approved site plan shall be reviewed and approved according to EMC 19.29.120; except that:

- Any increases in building height beyond what is allowed in this Agreement shall be considered a major modification,
- Any changes from an area originally planned to be occupied by a structure to public open space or recreational use shall be considered a minor modification,
- Any relocation of buildings required in order to comply with City regulations or this Agreement shall be considered minor modifications.
- Construction of parking structures in areas shown for parking shall be considered minor modifications.
- Adjustments of the footprint of building structures that do not reduce open space or increase developed areas shall be considered minor modifications.

Minor modifications will be addressed administratively by the Planning Director, after consultation with affected departments and agencies.

Final development plans, i.e., landscaping, circulation, utilities building location, etc., for each phase of redevelopment shall include the details required by EMC 19.29.110, and shall be submitted for review prior to the issuance of any required land use approvals or building permits.

4.3 PERMIT/CONSTRUCTION PHASING REQUIREMENTS

The Port will construct Waterfront Place Central in accordance with the phasing requirements set forth in this Agreement. The Port will be requesting permit approvals for some Waterfront Place Central elements before other permits; and before the designs are completed on others. The City will allow approvals and permits to be issued in a timely manner, subject to compliance with applicable City policies, regulations and standards, and this Agreement. In the event the Port fails to comply with these requirements, the City is authorized to withhold permits or, in the event work has commenced, issue stop work orders in order to maintain or obtain compliance with the schedule.

1. The division of the residential property must occur prior to issuance of permits for the residential units.

2. Prior to issuance of occupancy permits for non-water-dependent uses, including residential use, improvements to 13th Street, West Marine View Drive, and the interim walkways along the shoreline edge must be usable by the public and linked to other walkways within Waterfront Place Central

3. The public access Esplanade abutting water's edge in the open space, as shown in **Exhibit 6**, shall be constructed concurrent with the first phase of buildings in the Fisherman's Harbor Area. The Planning Director may allow for interim level of improvements in accordance with the interim public access plan and in areas where future phases of development would require demolition of public access improvements. Any such interim improvements shall be replaced with permanent improvements consistent with the Design Guidelines concurrent with the phase of development abutting the public access facility. The Esplanade along the south side and improvements that make Boxcar Park usable as open space and for picnicking and events will be completed in the initial phase of the project.

   The Port agrees that "provision for public access" means the earliest possible linkage that can practically by provided for the public benefit between the Jetty Island boat launch area and the existing marina esplanade, even if some portions of the connection are temporary in nature.

4. Each phase of the development must construct improvements necessary to comply with provisions found herein for that phase, including, but not limited to, parking, utilities, fire access, landscaping, etc.

4.4 PROJECT PHASING

1. **General** – The timing of site improvements and amenities within Waterfront Place Central is tied to the occupancy of buildings within the development as different phases are developed. While the Port anticipates phasing of improvements to generally follow the numbering of the phases as stated below, certain uses or buildings located in a later phase may actually be proposed prior to the completion of an earlier phase. The timing of buildings, uses and site improvements is dependent on the real estate market demand. The intent of this Agreement is to tie completion of site improvements and amenities to the occupancy of buildings as development occurs and when public improvements are needed to serve development and the public. **Exhibit 9** identifies the areas within each phase. The following describes the improvements to be completed with each phase of development. In the event that buildings are proposed in a sequence that would result in permanent public access improvements having to be demolished when later buildings are constructed, the City may allow for interim public access improvements in order to maintain public access at all times.

2. **Craftsman District - Phase 1A** – When the boat yard is expanded on the AMERON site, then the improvements along West Marine View Drive must be completed north of the existing completed landscaping, together with all improvements around the boat yard and area buildings, as shown in the Waterfront Place Central Standards & Design Guidelines, **Exhibit 10**.

3. **Requirements for Occupancy of Fisherman's Harbor - Phase 1B** – Prior to occupancy of any building within Phase 1B, all improvements required to support the vertical development in the area shall be completed. These improvements include all of the following:

- Roadway, sidewalk, utilities and any marina parking to be located within phase 1B.
- Construction of the plaza street near 14th Street plaza.
- Reconstruct over water wharf and bulkhead near West Marine View Drive.
- Reconstruct bulkhead and add 20' wide pedestrian esplanade at the perimeter of Phase 1B.
- Replace existing over water wharf at south edge.
- Construct 14th Street Plaza
- Preliminary Improvements to Box Car park including site contours, grass and trail.

4. **Requirements for Occupancy of Phases 2, 3, and 4**

Prior to occupancy of any building within in Phase 2, 3, or 4, the following improvements must **all** be completed:

Improvements within The Esplanade -

- Roadways, sidewalks, public access improvements, parking and utilities.
- Marina parking and access plus esplanade improvements
- Toilet Rooms, showers and laundry facilities serving the marina
- 20' esplanade with public access and trails per **Exhibit 16**: Pedestrian Pathway Width Diagram.
- Sewer Pump Station
- Box Car Park improvements – parking, access roadway, and site furnishings

Improvements within the Mill Wright District:

- The road network to support development in the center of the site.
- Roadways, sidewalks, parking and utilities.
- Interior cross streets except the one through Phase 4
- Improvements to Box Car Park including Hardscaping and public restrooms.

5. **Additional Requirements for Occupancy of Phase 4**

In addition to the requirements above, the following improvements must be completed prior to occupancy of any building within in Phase 4. These improvements include all of the following:

- Interior cross street through Phase 4
- Relocation of existing Weyerhaeuser Building and renovation for public use / access.

SECTION FIVE – GENERAL TERMS

5.1 VESTING OF DEVELOPMENT STANDARDS

Pursuant to RCW 36.70B.170 et seq., all development within the Property shall be governed by this Agreement. A "Buildout Period" of twenty (20) years from the date of this Agreement is established for the development and construction of the uses on the Property permitted and carried out in accordance with the provisions of this Agreement.

During the Buildout Period, the City shall not modify or impose new or additional zoning standards beyond those set forth in this Agreement. To the extent this Agreement does not establish zoning standards addressing a certain subject, element or condition of the approved site plan, then the Project shall be governed by the zoning regulations in effect upon the date of this Agreement (i.e., those regulations set forth in Title 19 EMC). After the date of execution of this Agreement, the City may adopt new zoning standards or generally-applicable standards relating to particular subject matters specified under this Agreement or under presently-existing zoning standards. If, in adoption of the new zoning standards, the City elects to make such zoning standards available for development of the Property, then the Port, as an alternative to satisfying one or more of the zoning standards, may upon the approval of the City, develop the Property in accordance with the new zoning standards. To the extent that the Port proposes a major amendment to the Project (as defined in EMC 19.29 and in this agreement), the City may elect to make the Project, as amended, subject to the zoning standards in effect at the time of the City's approval of such amendment.

5.2 CHANGE OF DEVELOPER

The approval granted herein shall be binding upon the Port and any successors or assigns.

5.3 TERM

The term of this Agreement shall continue at a minimum through the Buildout Period, and shall continue after the Buildout Period unless and until the City gives a notice of termination. The City shall mail notice of termination to the Port under Section 5.4. No sooner than three (3) months after delivery of the notice of termination, the City shall hold public hearing(s) and shall adopt whatever zoning standards for the Property determined appropriate by the City. Such zoning standards shall consist of a continuation of the zoning standards in this Agreement, modification of such zoning standards, or new zoning standards. Upon such adoption, this Agreement shall terminate and thereafter the Property shall be governed by the newly adopted zoning standards.

5.4 NOTICES

Any notice, request, direction or other communication under this Agreement shall be in writing and shall be delivered by first class mail, properly addressed and with the required postage, or by facsimile, to the Director of Planning and Community Development and the Executive Director of the Port of Everett. Receipt shall be deemed to have occurred on the date of delivery, or on the date of a confirmed facsimile.

5.5 ENFORCEMENT; INTERPRETATION; DISPUTES

This Agreement and PDO-WC zoning designation represent the zoning standards for the Property and, therefore, this Agreement and the PDQ-WC zoning designation shall be enforced in accordance with the provisions of EMC Chapter 1.20 and interpreted by the Planning and Community Development Director (or his successor) in accordance with the provisions of the EMC, as these provisions of the EMC may hereafter be amended. A violation of any provision of this Agreement shall constitute a violation of the City of Everett Zoning Code, Title 19 EMC. The Port agrees that the City may withhold permits and administrative approvals pending compliance. For any disputes arising under this Agreement not subject to the above-cited provisions of the Everett Municipal Code, the parties retain all rights available under the law to resolve such disputes through negotiation and, if negotiation fails, through legal action. The venue for such action shall be in Snohomish County Superior Court. In any such action, each party shall have all rights and remedies provided by law to enforce this Agreement including, without limitation, damages, specific performance or writs to compel performance or require action consistent with this agreement.

5.6 ENTIRE AGREEMENT; AMENDMENTS

This Agreement sets forth the entire agreement of the parties. This Agreement shall be construed as a whole. No amendment, change or modification of any provisions of this Agreement shall be valid unless set forth in writing and signed by both parties.

5.7 NONWAIVER

The failure of either party to enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

5.8 COVENANT NOT TO CONTEST

The parties have entered into this Agreement voluntarily, after full consultation with their own respective independent counsel and consultants, and both parties agree not to contest the validity of this Agreement, directly or indirectly, in any administrative or judicial proceeding, now or at any time in the future; notwithstanding the foregoing, the Port reserves the right to challenge the enforcement of, or an interpretation of this Agreement by the City. Both parties agree to appear and defend this Agreement in the event of legal challenge by a third party.

5.9 RECORDING – IMPLEMENTATION AND PERFORMANCE; BINDING ON SUCCESSORS AND ASSIGNS:

Each party shall take such action (including, but not limited to the execution, acknowledgement and delivery of documents) as may be reasonably requested by the other party for the implementation or continuing performance of this Agreement. This Agreement shall be recorded with the Snohomish County Auditor's office, as necessary to be disclosed on title documents for the property and shall run with the land as binding on the parties and their successors and assigns. It is mutually agreed that the terms of this Agreement touch and concern the land and shall be covenants running with the land. The parties acknowledge that development of the Property likely will involve sale and assignment of portions of the Property to other persons who will, subject to this Agreement, own, develop and/or occupy portions of the Property and buildings thereon. Upon such assignment, the assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement. In the event of such sale, the Port shall thereafter be released of liability hereunder as to that portion of the Property so transferred only by written approval of the City, which consent shall not be unreasonably withheld. In considering such release of the Port from liability, the City must determine that the Port is in compliance at the time of transfer with all of its obligations under this Agreement, what the transferee has the experience and financial capability to perform its obligations under this Agreement, and/or that the City has been provided with adequate security to assume such performance.

IN WITNESS WHEREOF, the parties hereto executed this Agreement the day and year first above written.

CITY OF EVERETT

Ray Stephanson, Mayor

X
ATTESTED: City Clerk

Approved as to form:

City Attorney

PORT OF EVERETT

Les Reardanz, Executive Director

Approved as to form:

2/23/15

Port Attorney

STATE OF WASHINGTON)

STATE OF WASHINGTON
) ss.
COUNTY OF SNOHOMISH

On this day personally appeared before me Ray Stephanson and Sharon Fuller, to me known to be the Mayor and City Clerk of the City of Everett, the municipality that executed the within and foregoing instrument, and acknowledged to me the said instrument as the free and voluntary act and deed of said municipality for the uses and purposes therein mentioned, and an oath stated that he/she was authorized to execute the said instrument and or on its behalf.

SUBSCRIBED AND SWORN to me by Ray Stephanson and Sharon Fuller this 16th day of MARCH, 2015

Mariette Maychrzak

NOTARY PUBLIC in and for the State of Washington, residing at MARYSVILLE, WA Commission expires: MAY 19, 2018

MARIETTE MAYCHRZAK
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
MAY 19, 2018

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH

On this day personally appeared before me Les Reardanz, to me known to be the Executive Director of the Port of Everett, and acknowledged to me the said instrument as the free and voluntary act and deed of said Port for the uses and purposes therein mentioned, and an oath stated that he/she was authorized to execute the said instrument and or on its behalf.

SUBSCRIBED AND SWORN to me by Les Reardanz this 23rd day of February, 2015. 20__

NOTARY PUBLIC in and for the State of Washington

Washington, residing at Everett WA Commission expires: 1-29-2018

SUSAN C. BROKAW
COMMISSION EXPIRES
NOTARY
PUBLIC
01-29-2018
STATE OF WASHINGTON