

**SIXTH AMENDMENT
TO
PROPERTY DISPOSITION AGREEMENT**

This Sixth Amendment to Property Disposition Agreement (“*Sixth Amendment*”) is dated as of July 6, 2013, and is made and entered into by and among the CITY OF EVERETT, a municipal corporation of the State of Washington (the “*City*”); OLIVERMCMILLAN, LLC, a California limited liability company (“*OM*”), and two Affiliated Entities of OM: (i) OM EVERETT, INC., a Washington corporation (“*OM INC*”); and (ii) OMH TRANSFER AGENT, LLC, a Delaware limited liability company (“*OMH*”) (OM, OM INC, and OMH collectively, the “*OM Entities*”).

A. OM INC and OMH (collectively “*Developer*”) acquired the Landfill Pad, Simpson Pad, and Mill Site (collectively “*Properties*”) described in that certain Property Disposition Agreement entered into on or about February 21, 2007 (“*Original PDA*”), between the City and Developer’s predecessor-in-interest, OM, as amended by a First Amendment to Property Disposition Agreement dated September 28, 2007, a Second Amendment to Property Disposition Agreement dated February 20, 2008, a Third Amendment to Property Disposition Agreement dated April 30, 2008 (the “*Third Amendment*”), a Fourth Amendment to Property Disposition Agreement dated October 28, 2009 (the “*Fourth Amendment*”); and a Fifth Amendment to Property Disposition Agreement dated June 27, 2011 (the “*Fifth Amendment*”) (the Property Disposition Agreement as amended by all such amendments, the “*PDA*” or the “*Agreement*”).

B. In connection with the PDA, the City, OM, and OM INC are parties to the Landfill and Environmental Indemnification Agreement dated April 30, 2008, a memorandum of which was recorded under Snohomish County recording number 200805140927 (“*Landfill Environmental Agreement*”). In addition, the City and the Department of Ecology (“*Ecology*”) are parties to the Consent Decree (Snohomish County Case No. 01-2-03640-6) entered April 2, 2001, as amended by Amendment No. 1 to Consent Decree entered April 23, 2008, with Ecology, OM INC, and the City as parties, including those Amended Environmental Covenants attached thereto as exhibits and separately recorded under Snohomish County Recording numbers 200805140921 and 200805140922 (collectively the “*Consent Decree*”). As described in the Consent Decree, the Consent Decree concerns certain property referred to herein as the “*Landfill Property*.”

C. In connection with the PDA, the City, OM, and OM INC are parties to the Development Agreement dated June 2, 2009, a memorandum of which was recorded under Snohomish County recording number 200911050290 (“*Development Agreement*”).

D. The OM Entities anticipate assigning the PDA, the Landfill Environmental Agreement, the Development Agreement and other agreements and instruments related to the Properties in connection with a sale of the Properties. In light of that, the City and the OM Entities desire to agree to the completion of certain of work, the status of obligations, and certain amendments to the PDA, all as set forth under the terms and conditions of this Sixth Amendment.

NOW THEREFORE, for and in consideration of the mutual promises as stated herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Sixth Amendment agree as follows:

1. Capitalized Terms. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in the PDA.

2. Agreements Regarding PDA Obligations. Developer and City have all thoroughly reviewed their obligations under the PDA and agree that Exhibit A attached to this Sixth Amendment accurately and completely sets forth the status of the obligations of, and performance by, Developer and the City under the PDA.

3. Development Agreement/FEIS Obligations. As of the date of this Amendment, "Plants and Animals A," as updated by the Shoreline Permit SMA-009-001, is the only item in Attachment I to the Development Agreement that has been completed. Developer shall deliver to the City the as-builts and monitoring reports required under "Plants and Animals A" no later than twenty (20) days after the date of this Amendment.

4. Payment of Amounts Due and Owing to the City. Developer owes the City \$172,138.32, which is in connection with (a) improvements installed at Developer's request during the City's 41st Street extension project and (b) Developer's share of the escrow fees in relation to the closing of the replacement mitigation easements and subordination agreements with BNSF Railway Company. Developer shall pay such \$172,138.32 to the City prior to or at the closing of the sale of any of the Properties.

5. New Markets Tax Credits. Section 11 of the Fifth Amendment is hereby terminated. In the event that the City makes an award of Allocation to one or more Recipients (as such terms are defined in the Fifth Amendment), the City will have no obligation to collect any amount from any Recipient or to pay Developer.

6. Estoppel. With respect to (i) the PDA, (ii) the Development Agreement, (iii) the Consent Decree, (iv) the Landfill Environmental Agreement, (v) all environmental agreements, easements, and subordination agreements in connection with the Properties in which the City and one or more OM Entities are parties thereto, and (vi) all permits, approvals or authorizations issued or approved solely by the City in connection with the OM Entities' development of the Properties (the PDA, Development Agreement, Consent Decree, Landfill Environmental Agreement and all such environmental agreements, easements, subordination agreements, permits, approvals and authorizations collectively, the "*Riverfront Agreements*"), the City and the OM Entities agree that: (A) as of the date of this Sixth Amendment, neither the City nor any of the OM Entities has committed or consented to any material default or breach of any provision of any Riverfront Agreement; (B) as of the date of this Sixth Amendment, there exists no condition, state of facts or event that, with the passing of time or the giving of notice, would constitute a material default or breach by the City or any of the OM Entities under any of the Riverfront Agreements; (C) there is no defense, offset, claim or counterclaim by or in favor of any party against the City or any of the OM Entities under any Riverfront Agreement or against the obligations of any Party other than the City or the OM Entities under any of the Riverfront

Agreements; and (D) none of the Riverfront Agreements has been assigned, modified or amended in any way except as described in this Sixth Amendment.

7. Acknowledgement of Expired Agreements. The City and the OM Entities acknowledge and agree that the following agreements have previously expired in accordance with their terms and have no further force or effect: (A) Assignment and Assumption of License for Use of City Property dated April 30, 2008, by and between the City and OMH; (B) Animal Shelter Lease dated April 30, 2008, by and between the City and OM INC; (C) Public Works Yard Lease dated April 30, 2008, by and between the City and OM INC; and (D) Memorandum of Understanding (New Markets Tax Credits) dated March 4, 2009, by and between the City and OM INC.

8. Other. Except as expressly modified in this Sixth Amendment, the PDA shall remain in full force and effect and the parties hereto acknowledge, confirm and ratify all of the terms and conditions of the PDA.

EXECUTED as of the date first above written by duly authorized officers of the parties hereto, intending to be legally bound hereby.

CITY:

CITY OF EVERETT

By: Ray Stephanson
Ray Stephanson, Mayor

ATTEST:

By: Sharon Fuller
Sharon Fuller, City Clerk

APPROVED AS TO FORM:

By: James D. Iles
James D. Iles, City Attorney

OM INC:

OM EVERETT, INC.

By: Richard P
Name: Richard Paul Buss
Title: President

OMH:

OMH TRANSFER AGENT, LLC

By: MDO Holding, LLC, Manager
By: Richard P
Name: Richard Paul Buss
Title: President

OM:

OLIVERMCMILLAN, LLC

By: Richard P
Name: Richard Paul Buss
Title: President

EXHIBIT A

AGREEMENTS REGARDING SPECIFIC PDA PROVISIONS

As of the date of the Sixth Amendment, Developer and the City agree as follows with respect to the following PDA provisions:

| PDA PROVISION | AGREEMENT |
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| <i>Animal Shelter</i> Section 3.5 | The City has satisfied all of its obligations under Section 3.5 and the City has no further obligations thereunder. |
| <i>Public Works Yard</i> Section 3.6 (as amended/supplemented by Third Amendment Section 16) | The City has satisfied all of its obligations under Section 3.6 and Third Amendment Section 16, and the City has no further obligations thereunder. |
| <i>Final Completion Date</i> Section 16.2.2 | Recital C of the Fourth Amendment states that "As of June 2, 2009, the Key Development Permits for the Project have been obtained by Developer and all applicable appeal periods have expired without appeal therefrom, and Developer hereby acknowledges that the terms and conditions of the Key Development Permits are acceptable." Accordingly, the Final Completion Date is June 2, 2017. |
| <i>Partial and Final Certificates of Completion</i> Section 16.2.3 | No partial or final certificates of completion have been requested or issued. No Mill Site Development Proposal has been submitted or approved. Both City and the Developer have remaining obligations under this Section. |
| <i>Minimum Retail Elements for Commencement of Construction on the Landfill and Mill Sites</i> Section 16.3 | No Minimum Retail Element proposal has been submitted or approved. Both City and Developer have remaining obligations under this Section. |
| <i>Main Road</i> Section 16.4 | Developer has not constructed the Main Road and has not provided the City assurance devices that ensure construction of the Main Road. |

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| <p><i>BNSF Track Relocation</i></p> <p>Section 18.1(a),(b) (as amended/supplemented by Third Amendment Section 22(a))</p> | <p>The City has satisfied all of its obligations under Sections 18.1(a) and (b) and Third Amendment Section 22(a), and the City has no further obligations thereunder.</p> |
| <p><i>Roundabout and 41st Street Extension</i></p> <p>Section 18.1(c) (as amended/supplemented by Third Amendment Section 22(c), Fourth Amendment Sections 1.b, 1.c, and 1.d, and Fifth Amendment Section 1)</p> | <p>Developer has received the record drawings by Perteet, Inc. dated March 21, 2013. Developer and City agree that the City has satisfied all of its obligations under Section 18.1(c); Third Amendment Section 22(c); Fourth Amendment Sections 1.b, 1.c, and 1.d; and Fifth Amendment Section 1, and the City and has no further obligations thereunder; <u>except</u> that the City remains responsible for repairs to the roadway cross section in accordance with Fifth Amendment Section 1.c.</p> |
| <p><i>Main Road Extension</i></p> <p>Section 18.1(d) (as amended/supplemented by Third Amendment Section 22(d), Fourth Amendment Section 1.e, and Fifth Amendment Section 2)</p> | <p>No Main Road Extension Notice has been delivered in accordance with Fifth Amendment Section 2.a. Both City and Developer have remaining obligations under this Section.</p> |
| <p><i>Grade, Fill, Surcharge of Landfill Pad</i></p> <p>Section 18.1(e) (North of 41st Street) (as amended/supplemented by Third Amendment Section 22(e) and Fifth Amendment Section 3)</p> <p>Fifth Amendment Section 4 (Lot 16 of Landfill Pad)</p> | <p>Developer and City agree that the City has satisfied all of its obligations under Section 18.1(e), Third Amendment Section 22(e) and Fifth Amendment Section 3, and the City has no further obligations thereunder.</p> <p>The City has satisfied all of its obligations under Fifth Amendment Section 4, and the City and has no further obligations thereunder.</p> |

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| <p>Fifth Amendment Section 5 and Attachment B (Additional Work)</p> | <p>The City has satisfied all of its obligations under Fifth Amendment Section 5 and Fifth Amendment Attachment B, and the City and has no further obligations thereunder.</p> |
| <p><i>Mill Site Fill and Grading</i></p> <p>Section 18.1(f) (as amended/supplemented by Third Amendment Section 22(f) and Fifth Amendment Section 6.a)</p> <p>Section 19.7.7 (as amended/supplemented by Third Amendment Section 23 and Fifth Amendment Section 6.b)</p> | <p>The City has satisfied all of its obligations under Section 18.1(f), Third Amendment Section 22(f) and Fifth Amendment Section 6.a., and the City has no further obligations thereunder.</p> <p>Developer has reviewed the “Eclipse Mill Site Existing Ground Contours Survey” dated November 2010 by Perteet, Inc. Developer acknowledges and does not object to, and hereby accepts, the fact that the Mill Site level is slightly less than “on average 2 feet above the 100 year floodplain elevation established by FEMA.” The City and Developer agree that the City has satisfied its obligations under the first sentence of Section 19.7.7 as amended by Third Amendment Section 23 and subsequently amended by Fifth Amendment Section 6.b.</p> <p>The City has filed and prosecuted, using reasonable and diligent efforts, an application with FEMA to have FEMA amend the applicable Flood Insurance Rate Map to re-designate the Mill Site Development Area within Zone X. The Parties have received the FEMA letter of map revisions dated February 14, 2012. The City has no further obligations to file or prosecute any additional FEMA applications related to the Mill Site.</p> <p>In accordance with the last sentence of Section 19.7.7, the City has delivered evidence satisfactory to Developer that the Mill Site Development Area has sufficient toe and bank protection to prevent the migration of materials caused by river flow, including flooding events.</p> |

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| <p><i>Sewer Improvements</i></p> <p>Section 18.1(g) (as amended/supplemented by Third Amendment Section 22(g) and (h), Fourth Amendment Section 1.f, and Fifth Amendment Section 7)</p> | <p>No Landfill Sewer Notice or Simpson Sewer Notice has been delivered in accordance with Fifth Amendment Section 7. Both City and Developer have remaining obligations under this Section.</p> |
| <p><i>Wetland Restoration</i></p> <p>Section 18.1(i) (as amended/supplemented by Fifth Amendment Section 8)</p> | <p>Except for the "Railroad Corridor Trail & Enhanced Drainage Channel Project" awarded by City Council to KLB Construction, Inc. on January 9, 2013, the City has not received any non-City governmental permits or approvals for the Wetland Restoration and has not commenced work on any portion of the Wetland Restoration.</p> |
| <p><i>MOU with Ecology</i></p> <p>Third Amendment Section 25</p> | <p>The City and Developer proposed an MOU to Ecology in 2009. Ecology responded by suggesting that it be put in the form of letter. Developer stated in August 2009 that it wished to study the letter concept. The City will take no further action until Developer completes this study and notifies City.</p> |
| <p><i>BNSF Wetland Mitigation Easement</i></p> <p>Third Amendment Section 10</p> | <p>The City has satisfied all of its obligations under Third Amendment Section 10, and the City has no further obligations thereunder.</p> |
| <p><i>Building and Fence Relocation</i></p> <p>Third Amendment Section 9</p> | <p>Developer and City agree that the reference in Third Amendment Section 9 to "Exception 24c" is incorrect and is hereby replaced with a reference to "Exception 14c & 14e". Developer and City agree that the encroachments listed in Exception 14c and 14e have been removed. Accordingly, the City has satisfied its obligations under Third Amendment Section 9, and the City has no further obligations thereunder.</p> |
| <p><i>New Markets Tax Credits</i></p> <p>Fifth Amendment Section 11</p> | <p>The City has not delivered any Allocation to any Recipient.</p> |