

THIRD AMENDMENT
to
PROPERTY DISPOSITION AGREEMENT

This Third Amendment to Property Disposition Agreement ("Amendment") is dated as of April 30, 2008, and is 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").

A. The City and OM entered into a certain Property Disposition Agreement dated as of February 21, 2007, which was amended by a First Amendment to Property Disposition Agreement dated September 28, 2007 and a Second Amendment to Property Disposition Agreement dated as of February 20, 2008 (as amended, the "Agreement").

B. The City and OM now desire to confirm certain matters pertaining to the Agreement and amend and supplement the Agreement in certain material respects, which matters, amendments and supplements are acceptable to OM INC and OMH.

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 Amendment agree as follows:

1. **The City Property/Landfill Property/Simpson Pad/Mill Property.** Pursuant to Section 16.6 of the Agreement, the City and OM anticipated the possibility that the City would retain ownership of the wetlands surrounding the buildable area located on the Simpson Pad rather than receiving at Closing a dedication of these areas or conservation or other easement rights for such wetland and non-buildable areas (collectively the "Simpson Wetlands" or "City Owned Simpson Parcels"). The parties to this Amendment now agree that the City will retain fee ownership of the Simpson Wetlands. Accordingly, "City Property" shall be and is hereby revised to refer to the property described or graphically depicted in Exhibit A attached hereto; the "Landfill Site" shall be referred to as the "Landfill Pad" and is revised to refer to the property described in Exhibit B attached hereto (which includes properties referred to as the "Former RR ROW/River Parcels" south of 36th Street), the "Simpson Site" shall be referred to as the "Simpson Pad" and is revised to refer to the property described in Exhibit C attached hereto, and the "Mill Site" shall be referred to as the "Mill Property" and refers to the property described in Exhibit D attached hereto (which includes properties referred to as the "Former RR ROW/River Parcels" north of 36th Street). The graphic description of the City Property set forth in Exhibit A shall replace the description in Exhibit B-1 to the Agreement. All other references in the Agreement, including without limitation recital A, shall be and are hereby changed to reflect the forgoing descriptions. For the avoidance of doubt, the Parties acknowledge and agree that OM and its Affiliated Entities have no right to purchase the properties described in Exhibit A as the

“City-retained parcels,” which shall consist of the City Owned Simpson Parcels (Lots 10, 11, 12, 14, 18, 30 and 34) and the 41st Street Overpass and Roundabout (Lots 17 and 20).

2. **Survey/Permitted Exceptions.** The Survey prepared and signed by Pertect Inc. dated April 25, 2008 shall be and constitute the Survey referenced in the Agreement and its delivery to OM compliance with and fulfillment of the City's obligation to deliver an ALTA survey under Section 3.1 of the Agreement. The parties to this Amendment also acknowledge and agree that the exceptions set forth in the Proforma Title Policies attached to this Amendment as Exhibits E-1 and E-2 are and shall be Permitted Exceptions as described in Section 3.4 of the Agreement and shall replace Exhibit D to the Agreement.

3. **Boundary Line Adjustment.** To accommodate the revised descriptions referred to in Section 1 above, the City has prepared and filed, in cooperation with OM, a boundary line adjustment application and survey (BLA 08-004), recorded on April 8, 2008 under recording number 200804085006 (the "BLA"). The BLA and the revised legal lots described therein are acceptable to OM. The cost of preparing, prosecuting and recording the BLA shall be paid for equally by OM and the City, with appropriate reimbursements being made at Closing; provided, however, in no event shall OM's share of the BLA costs exceed \$25,000.

4. **KLB License.** The parties to this Amendment agree that, contrary to the Agreement, the City shall retain at Closing the License granted to KLB referred to in Section 3.4(v) of the Agreement, which has been amended, with the consent of the parties, pursuant to a certain Amendment to License For Use of City Property dated April 9, 2008, a copy of which is attached to this Amendment as Exhibit F (hereinafter the “Amended KLB License”). Accordingly, subsection (v) of Section 3.4 of the Agreement is revised to read as follows:

(v) the Licenses for Use of City Property granted to Atkinson-CH2M Hill and to KLB Construction, Inc. related to the I-5 HOV Project (the “Contractor License”); provided, however, only the Atkinson-CH2M Hill License shall be assigned to OM by the City and assumed by OM at Closing;

5. **Environmental Indemnification Agreements.** The parties to this Amendment agree that the Agreements forms attached to this Amendment as Exhibit G shall be and constitute, collectively, the Environmental Indemnification and Landfill Agreement referred to in the Agreement and shall be signed, delivered and recorded at Closing by the appropriate parties to this Amendment. The documents attached to this Amendment as Exhibit G include (i) the Landfill and Environmental and Indemnification Agreement, (ii) the Simpson Pad Environmental Indemnification Agreement, (iii) the Mill Property Environmental and Indemnification Agreement and (iv) the Former RR ROW/River Parcels Environmental and Indemnification Agreement.

6. **Consent Decree Assurance.** OM has received all of the assurances they required to satisfy the Environmental Agreement and Consent Decree Assurance Contingency and hereby waives the Environmental Agreement and Consent Decree Assurance Contingency set forth in Section 6.1.4 of the Agreement. The Parties agree that the closing condition set forth in Section 6.2.2 has been satisfied.

7. **Simpson Site Environmental Assurance.** The Department of Ecology has or agreed to issue in "NFA" letter for the Simpson Pad acceptable to OM. Accordingly, OM hereby waives the "Simpson Site NFA Contingency" described in Section 6.1.8 of the Agreement. No party to this Amendment shall seek or have any right of reimbursement against any other party with respect to any costs or expenses incurred in connection with their respective efforts to obtain a No Further Action Letter or written confirmation that the Simpson Pad is not a MTCA site (an "Environmental Assurance") prior to Closing.

8. **Stuchell and Newland Access.** After Closing, the City shall construct driveways linking the Main Road to be constructed through the Mill Property with the western property line of the Stuchell property and the Newland Property as identified in Exhibit A provided the owner of the property located between the Main Road and the western boundary lines of the Stuchell and Newland Properties grants an driveway easement to the owner's of the Stuchell and Newland Properties or dedicates such property to the City. The location of the driveway easement or dedication of the driveway areas shall be reasonably acceptable to OM or the then owner of the Mill Property and the City shall complete the driveway improvement work described herein by May 1, 2011 provided sufficient time is provided to the City after the conveyance of the interests necessary to connect the Stuchell and Newland Properties with the completed and dedicated Main Road across the Mill Property. The obligation described in this Section 8 shall survive Closing and shall inure to the benefit of OM and its successors and assigns in interest.

9. **Building and Fence Relocation.** If the building and fence encroachments referenced as Exception 24c in Exhibit E-2 attached hereto are not removed or cured prior to Closing, then the City agrees to take reasonable steps to compel the owner of the improvements causing the encroachment to move the improvements so as to eliminate the encroachments. The obligation described in this Section 9 shall survive Closing and shall inure to the benefit of OM and its successors and assigns in interest.

10. **BNSF Wetland Mitigation Easement.** If, after Closing, the easement located in the general location east of Lots 35 through 38 (the "BNSF Wetland Mitigation Easement") creates an impediment to the completion of the Development as required by the Agreement, the City agrees to use its best efforts to have BNSF agree to relocate the BNSF Wetland Mitigation Easement to another location on the Simpson Wetlands; provided, however, the City's obligations pursuant to this Section 10 shall not require the City to take any action that would impair the City's ability to comply with its planned wetland enhancements, public amenities or other obligations under the Agreement, and the City shall have no obligation to convey any property or interest to OM or any of its Affiliated Entities in violation of any other agreement or applicable law. The obligation described in this Section 10 shall survive Closing until the Final Completion Date and shall inure to the benefit of OM and its successors and assigns in interest

11. **41st Street Overpass and Roundabout.** The City and OM acknowledge and agree that the City will retain, at Closing, ownership of the property on which the newly constructed and improved 41st Street overpass and the Roundabout (as defined in Section 18.1(c) of the Agreement) is located, which property is identified as New Lots 17 and 20 in the BLA Application (collectively, "41st Street Overpass and Roundabout" or "41st Street ROW"). The

roadway to be constructed within the 41st Street Overpass and Roundabout shall be available, when completed, as a public right of way owned and maintained by the City.

12. **Retention of Wetlands on Former Simpson Site.** The City's retention of the Simpson Wetlands shall not be construed to limit the City's right to obtain easements for, or to otherwise retain rights to, other wetlands pursuant to the Agreement (including, without limitation, Section 16.6 therein).

13. **OM Affiliated Entities**

(a) Prior to Closing, OM will assign its right to purchase the Simpson Pad and the Mill Property under the Agreement to OMH, which OM represents and warrants to be an Affiliated Entity pursuant to Section 14.1 of the Agreement (the "OMH Assignment"). OMH desires to acquire the Simpson Pad and the Mill Property from the City and, by signing this Amendment, represents and warrants that it is an Affiliated Entity of OM and does hereby assume the rights, obligations and liabilities of OM under the Agreement, without releasing OM from any such rights, obligations or liabilities. OM hereby affirms that it is not and shall not be released or relieved of any obligations under the Agreement as a consequence of the OMH Assignment.

(b) Prior to Closing, OM will assign its right to purchase the Landfill Property under the Agreement to OM INC, a newly formed Washington corporation, which OM represents and warrants to be an Affiliated Entity pursuant to Section 14.1 of the Agreement (the "OM INC Assignment"). OM INC desires to acquire the Landfill Property from the City and, by signing this Amendment, represents and warrants that it is an Affiliated Entity of OM and does hereby assume the rights, obligations and liabilities of OM under the Agreement, , without releasing OM from any such rights, obligations or liabilities. OM hereby affirms that it is not and shall not be released or relieved of any obligations under the Agreement as a consequence of the OM INC Assignment.

(c) For the avoidance of doubt, the assumptions by OMH and OM INC of the Agreement shall not extend to the Environmental Agreements referenced in Section 5 above or the easements and agreements referenced in Section 14 below unless they are expressly identified as a party to such agreements.

14. **Easements.** At Closing, the easements and agreements in substantially the forms attached hereto as Exhibit H shall be signed, delivered and recorded by the parties to this Amendment that are described therein. The easements and agreements, when signed, delivered and recorded at Closing shall satisfy the requirements of Sections 3.7, 3.8, 3.9 and 3.10 of the Agreement. Such easements and agreements shall include a Reciprocal Temporary Construction Easements Agreement, a Reciprocal Access, Utilities and Trail Easement and Agreement (Simpson Property), a Secondary Fire Access Easement and an Easement for Existing Landfill Systems and Related Utilities, all of which shall be executed by the parties and recorded at Closing.

15. **Dedication Agreement.** The Parties agree that the Dedication, Easement and Maintenance Agreement form attached to this Amendment as Exhibit I shall be signed, delivered and recorded by the parties described therein at Closing and shall constitute the Dedication, Easement and Maintenance Agreement referred to in Sections 7.2.9 and 16.6 of the Agreement.

16. **Public Works Yard.** The second sentence in Section 3.6 of the Agreement is hereby amended to read as follows:

The City agrees to relocate the equipment and other personal property items on the Public Works Yard as soon as reasonably possible after Closing but in no event later than sixty (60) days after the Closing Date, and OM agrees to enter into a lease with the City at Closing to permit the City to continue to use the Public Works Yard, without the payment of rent but with an obligation to pay for all taxes, insurance (which insurance shall include OM, its agents, employees, contractors and consultants as additional insureds), utilities and other operational costs, until the Public Works Yard is vacated by the City as provided herein (the "**Public Works Yard Lease**").

17. **Floodplain Clarification.** The Parties acknowledge and agree that the Rate Map has been clarified to OM's satisfaction, the City has fulfilled its obligations under Section 5.3 and that the contingency described in Section 6.1.3 has been satisfied. Section 5.3 is hereby amended to read as follows, and the figure in Exhibit B-2 is replaced by the current FEMA Rate Map of the Simpson Pad:

"The Federal Emergency Management Agency ("FEMA") has corrected its Flood Insurance Rate Map (the "**Rate Map**") to reflect the determination by the Flood Insurance Study (effective September 16, 2005), and the current designation shown on **Exhibit B-2** has been clarified to OM's satisfaction."

18. **Development Expenditures.** The Parties acknowledge and agree that OM has complied with and fulfilled its obligations under Section 5.4.

19. **The Development Plan.** The following shall amend and qualify Section 1.b. of the Development Plan and Section 1 and 2 of the Conceptual Layout of the Everett Riverfront Development component set forth in Exhibit G of the Agreement:

If the Simpson Pad or the Mill Property cannot be used for residential development because of the presence of any Hazardous Substances located thereon, then the Conceptual Layout of the Everett Riverfront Development would allow the development of the Simpson Pad or Mill Property for a high quality mixed use, high technology business park, educational or office type facilities in a campus setting, consistent with the Everett Shoreline Master Program, provided it is otherwise compatible with the uses and other elements of the Development as described in Exhibit G and all applicable legal restrictions, including but not limited to the Everett Shoreline Master Program.

20. **Current LEED-ND Rating System.** The fourth sentence of Section 16.5 is hereby amended to read as follows:

OM's failure to incorporate the elements necessary to meet the Silver level certification requirements and criteria under the Current LEED Rating System shall be deemed to be a reasonable basis for the City to withhold any consent or approval required by this Agreement or under any Development Permit to the extent the City reasonably believes that the consent, approval or permit as proposed by OM fails to include necessary LEED-ND elements and criteria as contemplated under this Agreement; provided, however, the City agrees not to withhold any such consent or approval solely due to OM's failure to satisfy either the LEED-ND prerequisite for "compact development" or the prerequisite a 100 foot wetland buffer area, or both, as long as (i) OM has and is using reasonable and diligent efforts to have these two LEED-ND prerequisites eliminated or amended to a standard compatible with the site plan for the Development and that will allow the Development to obtain LEED-ND certification and (ii) OM's Development plans, when considered together with the applicable elements of the Current LEED Rating System in the City Work, include elements that would result in at least fifty (50) points under the Current LEED Rating System.

21. **Key Development Permits.** The Parties acknowledge and agree that OM has prepared and filed its Key Development Permit applications. The second sentence in Section 16.9 is deleted.

22. **City Work.** The following sections only of Section 18.1 are hereby amended:

The City and OM anticipate that, in conjunction with the development of the City Property, the City will concurrently undertake certain public works (the "City Work") in order to provide roadways, conduct certain grading and surcharging, wetland restoration, and various public amenities on and around the City Property, aid in collecting and recovering leachate from the Landfill Property and comply with the City's obligations under the Landfill Environmental Indemnification Agreement, CAP/CD as amended including its environmental covenants. The scope of the City Work and the time frames for substantial completion of each task are as follows:

(a) The City will use its best efforts to cause BNSF to relocate its track pursuant to the BNSF Agreement so as to allow for construction of a bridge to the Simpson Pad or to otherwise provide OM with a crossing to allow access to the Simpson Pad across the BNSF tracks. OM acknowledges and agrees that this work has now been completed by the City in compliance with this Agreement.

.....

(c) The City will construct a two (2) lane roundabout (including curb, gutter, sidewalk, streetlights and storm drainage improvements) on 41st Street east of the 41st Street/BNSF overcrossing (the "Roundabout") and extend 41st

Street to the northwest corner of the Simpson Pad (the “**41st Street Extension**”) with a roadway that includes curb, gutter, pedestrian and bicycle way, streetlights and storm drainage improvements. By January 31, 2009, the City will provide a proposed design to OM for the Final Roundabout and 41st Street Extension. If OM accepts the City's proposed design by February 28, 2009, then The City shall use its best efforts to substantially complete the Roundabout and 41st Street Extension by May 30, 2010 but in no event later than July 2010. The City will provide OM with temporary construction access to the Landfill Pad and Simpson Pad from September 1, 2008 until the Roundabout and 41st Street Extension are completed.

(d) The City will construct an extension of the roadway from Pacific Avenue to 36th Street (the “**Main Road Extension**”). The Main Road Extension shall provide for at minimum two (2) paved travel lanes each 14 feet in width (28 feet in total width), together with pedestrian and vehicular improvements at Chestnut and Pacific Avenue as shown and described in Exhibit J attached hereto. The Main Road Extension shall include storm water collection at the road shoulder, treatment and outfall system. Existing and future utilities will align under the Main Road Extension. The City will install a sanitary sewer line for discharge at the 36th Street pump station. Substantial completion of the Main Road Extension shall occur by May 1, 2011.

(e) The City shall grade, fill and surcharge all Landfill Pad north of 41st Street, including demolition of designated utilities and structures and clearing and grubbing. Surcharge shall be conducted in two phases according to the grading and surcharge plans and specifications prepared by OM and submitted to City for inclusion in the City's grading and surcharge contract documents (the "Grading/Surcharge Plans"). The Phase 1 surcharge shall occur in the area generally defined by the Main Road connecting 41st Street and 36th Street. The Phase 2 surcharge shall occur in the remaining areas north of 41st Street on the Landfill Pad. Grading for both Phases shall include but are not limited to: removal/replacement of cap and balance soils across site, importing fill as needed for drainage and grade, with the City providing temporary erosion and sediment control plan for both Phase 1 and Phase 2 per City of Everett Standards. Surcharge is estimated to be fifteen (15) feet high and for a 10 month duration from the last placement of surcharge soils on the Phase. Surplus material from Phase 1 meeting the Grading/Surcharge Plans specifications may be used for surcharge of Phase 2. Substantial completion of Phase 1 grading and surcharge shall occur within thirteen (13) months (excluding any time lost due to grading activity weather restrictions imposed by the OM site grading plan) after OM's submittal of the Grading/Surcharge Plans for Phase 1 and the date the final EIS is issued. Substantial completion of Phase 2 grading and surcharge shall occur by the date that is the later of (i) the date that is thirteen (13) months after OM's submittal of the Grading/Surcharge Plan for Phase 2 and (ii) the date that is twenty-six (26) months after the date the final EIS is issued. The City shall be entitled to use the fill received from the Amended KLB License to fulfill its

obligations described herein. Any fill material shall be compacted in accordance with the Grading/Surcharge Plans, including any surcharge materials that remain on the Landfill Pad following surcharge activities. The upper 18 inches of soil at the finished grade following surcharge shall be of all-weather surface and to a 95% compaction standard. The upper 18 inches of soil may be cement augmented in order to achieve the all-weather and 95% compaction standards.

(f) Complete fill and grading of the Mill Site as set forth in the Amended KLB License attached to the Third Amendment to this Agreement (“Mill Site Grading”). Grading shall include but not be limited to grading, grubbing and balance of soils across the Mill Property. The City shall provide and implement a temporary erosion and sediment control plan for the Mill Property per City standards.

(g) The City shall provide a sanitary sewer collection system that will accommodate the preferred alternative development identified in the EIS for the Landfill Pad (with a 40 foot setback on the eastern boundary and assuming construction of a minimum of 100 residential units) and the Simpson Pad. The City sanitary sewer system shall be located along the eastern boundary of the Landfill Pad so as to allow for gravity sewer flow to the City pump stations from the Landfill Pad development. The City shall provide all required pump stations and modifications to existing pump stations as part of the collection system to accommodate sewer capacity for the Landfill Pad and the Simpson Pad. In addition, the City shall provide all modifications to the City Pump Station #33 located approximately at 36th Street and the Main Road Extension as required to accommodate the sanitary sewer flow from the preferred alternative development identified in the EIS for the Mill Property. The City shall be responsible for all maintenance of the sanitary sewer collection system. Substantial completion of the sanitary sewer system shall occur within eight (8) months after completion and removal of the Phase 1 surcharge soils.

(h) The City shall provide a storm water sewer system that will accommodate the preferred alternative development identified in the EIS for the Landfill Pad (with a 40 foot setback on the eastern boundary and assuming construction of a minimum of 100 residential units). Storm water collected from a “six month storm water event” will either be treated prior to discharge to the City’s outfall system or discharge into the City’s combined sewer system. The storm sewer system shall be located along the eastern boundary of the Landfill Pad so as to allow for gravity sewer flow to the City storm sewer collection system from the Landfill Pad development. The City shall provide for all required treatment, pump stations and outfalls as part of the collection system for the Landfill Pad. The City shall be responsible for all maintenance of the storm sewer collection system. Substantial completion of the storm water sewer collection system shall occur within eight (8) months after completion and removal of the phase 1 surcharge soils.

.....

23. **Mill Property Fill.** The first sentence of Section 19.7.7 of the Agreement is hereby amended to read as follows:

The City, as part of its License to Use City Property with KLB Construction, Inc. dated October 7, 2005, which was later amended by an Amendment dated on or about April 9, 2008 (the "**Amended KLB License**"), shall place engineered fill material on the Mill Site consistent with the terms of the Amended KLB License attached to the Third Amendment to this Agreement (the "**Mill Site Development Area**") to a level that is 2 feet above the 100 year floodplain elevation established by FEMA although the profile of the Main Road extension through to Pacific Avenue shall be constructed at the 100 year floodplain elevation. The covenant of the City as set forth herein shall survive Closing and shall inure to the benefit of OM and its successor and assigns in interest.

24. **OMHs use of Net Sale Proceeds.** OMH shall contribute to OM INC any net sales proceeds from the sale of the Simpson Pad and Mill Property to an unaffiliated third party to fund certain infrastructure and improvements to the Landfill Site ("Landfill Improvements") by OM INC, all of which Landfill Improvements shall become the property of the City upon their completion, acceptance by the City and dedication (in the same manner as the Main Road). "Net Sales Proceeds" as used herein shall mean net sales proceeds realized from the resale after deduction for all sales and closing costs in connection with such resale including but not limited to title and escrow premiums, real estate excise and other transfer taxes, prorated closing costs, real estate commissions or brokerage fees and any other closing costs payable by OMH, and further minus all carrying costs, predevelopment and acquisition costs relating to the Simpson Pad and Mill Property plus the costs of the Main Road and Wet and Gas Utilities required under the Agreement. The Landfill Improvements may include the new, expanded landfill gas management system, roads and sidewalks, utilities (other than those dedicated to service providers), parking lots within the Landfill Property, including (non-residential) subterranean garage areas, and identified landscape/open space areas. OME INC shall grant any necessary easements to the City for the location/maintenance of the Landfill Improvements. The parking lots and (non-residential) subterranean garage areas on the Landfill Pad would be owned by the City following their completion and acceptance by the City and open to the public for parking; provided, however, that such parking areas would be subject to a covenant, with terms and conditions acceptable to the City, providing for their continued use at no cost by tenants, visitors, tenant employees, agents, and other invitees of the retail center. Notwithstanding their ownership by the City, OM INC (or a substitute owner's entity acceptable to the City) would be required to maintain and repair all public parking (provided however, such repair obligations shall not include obligations, if any, otherwise addressed in the Landfill Environmental and Indemnity Agreement), (non-residential) subterranean garage space and identified landscape/open space areas dedicated to the City as contemplated herein. The City acknowledges that OMH presently intends to convey either or both of the Simpson Pad or Mill Property to a third party residential developer pursuant to the Post Closing Sales and Transfer provisions of Section 19.15.1 of the Agreement in order to fund the Landfill Improvements.

25. **Memorandum of Understanding with Department of Ecology.** The City agrees to work with the Washington Department of Ecology with regard to wetland mitigation work within the Simpson Wetlands.

26. **Lender and Developer Cooperation.** The City agrees to act in good faith with regard to any reasonable information requests made by any future developer or lender with whom OM has a contractual relationship and who may be involved in the Development. In addition, upon the written request of either party, the party to whom the request is made shall deliver to the requesting party, within a reasonable period of time, a certificate stating whether, without having undertaken any investigation: (a) it knows if any material default under the Agreement has been alleged; (b) to its knowledge, the Agreement has been assigned, modified, or amended in any way (or if it has, then stating the nature thereof), and (c) to its knowledge, whether any party has notified the other of any attempted termination of the Agreement.

27. **Correction of Typographical Error.** The parties acknowledge that the two references in Section 19.15 of the Agreement to Section 19.16 are typographical errors and were intended to reference Section 19.15 of the Agreement.

28. **Deletion of OM Rescission Right.** Section 16.7.2 is hereby deleted in its entirety. Accordingly, the first sentence of Section 16.7.3 is revised to read as follows:

If the Key Development Permits have not been issued and all applicable appeal periods expired or waived by the third anniversary of the Effective Date then, for a period of six (6) months thereafter (the "**City Option Election Period**"), the City shall have the right to re-purchase the City Property from OM.

Likewise the initial clause of Section 16.7.4 is revised to read as follows:

If the Key Development Permits have not been issued and all applicable appeal periods expired or waived by the third anniversary of the Effective Date without OM having breached its obligations under this Agreement, and the City thereafter does not elect to exercise the City Option described in Section 16.7.3 above, ...

29. **Consent to Encumbrance.** Notwithstanding anything in Section 19.2 of the Agreement to the contrary, provided OM delivers to the City the form attached hereto as Exhibit K signed by each lender taking a security interest in the City Property, the City will consent to a waiver of the prohibition on encumbrances requiring more than the payment of amounts in excess of \$10,000,000.00.

30. **Closing.** If the final Closing Date set forth in the Agreement can not occur due to administrative, ministerial or logistical reasons and OM and the City are otherwise in a position to close the purchase and sale transaction described in the Agreement, then the Parties may consent to allowing the Closing Date to occur up ten (10) business days after the final Closing Date currently set forth in the Agreement.

31. **Entire Agreement.** Except as expressly modified in this Amendment, the Agreement shall remain in full force and effect and the parties hereto acknowledge, confirm, and ratify all of the terms and conditions of the Agreement. This Amendment, together with the Agreement (including the exhibits and schedules thereto, as amended herein), contains the entire agreement between the parties with respect to the transactions contemplated hereunder and thereunder.

32. **Counterparts.** This Amendment may be executed in one (1) or more counterparts, either of which may be transmitted by facsimile and each of which, when taken together, shall be deemed an original with the same effect as if the signatures thereto were upon one and the same instrument.

- Exhibit A Revised Property Map
- Exhibit B Legal Description of Landfill Pad
- Exhibit C Legal Description of Simpson Pad
- Exhibit D Legal Description of Mill Property
- Exhibit E-1 Title Policy Proforma for Property to be acquired by OM INC
- Exhibit E-2 Title Policy Proforma for Property to be acquired by OMH
- Exhibit F Amendment to License for Use of City Property (KLB)
- Exhibit G Final forms of:
 - Landfill Environmental Indemnification Agreement
 - Simpson Pad Environmental and Indemnification Agreement
 - Mill Property Environmental and Indemnification Agreement
 - Former RR ROW/River Parcels Environmental Agreement
- Exhibit H Easements and Agreements
- Exhibit I Form of Public Amenities Dedication, Easement and Maintenance Agreement
- Exhibit J Section of Main Road Extension (PDA Section 18.1(d))
- Exhibit K Lender Acknowledgement

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

CITY:

OM:

CITY OF EVERETT

OLIVERMCMILLAN, LLC

By: Ray Stephanson
Ray Stephanson, Mayor

By: Richard Paul Bass
Name: Richard Paul Bass
Title: President

ATTEST:

By: Sharon Marks
Sharon Marks, City Clerk

APPROVED AS TO FORM:

Perkins Coie LLP

By 

Craig H. Shrontz, Special City Attorney

OM INC:

OM EVERETT, INC.

By: 
Name: Richard Paul Bess
Title: President

OMH:

OMH TRANSFER AGENT, LLC

By: 
Name: Richard Paul Bess
Title: President

LENDER ACKNOWLEDGEMENT AND AGREEMENT

The undersigned, being the lender (the "Lender") under the loan to _____ dated _____ (the "Loan") and beneficiary under the Deed of Trust dated as of the same date (the "Deed of Trust"), hereby agrees that pursuant to the Property Disposition Agreement, as amended (the "PDA"), and notwithstanding any other provision of the PDA, the City's option rights set forth in Section 16.7.3 are prior to any mortgage or deed of trust on the City Property (including the Deed of Trust) and hereby agrees that in the event the City timely exercises its option pursuant to the terms and conditions of Section 16.7.3, Lender and Lender's assigns or successors in interest shall cause the Deed of Trust and any interest Lender may have at that time to all or any portion of the City Property to be released and reconveyed upon the payment by the City of the purchase price set forth in Section 16.7.3. Lender further acknowledges and agrees that in the event that during the period (and no other period) that the City has the option to acquire the City Property pursuant to Section 16.7.3 OM

a) abandons or substantially suspends all material work on the Development for a period of twelve (12) consecutive months after written notice of such abandonment or suspension from the City (subject to any extension allowed under Section 20.2); or

b) assigns, transfers or suffers any involuntary transfer of the City Property or any part thereof or any rights under this Agreement in violation of this Agreement, then

then Lender shall, in connection with the City's exercise of its rights under Section 17.1 of the PDA, release its Deed of Trust upon the City's payment of an amount equal to the fair market value of the City Property as described in Section 17.1.
