



CITY OF EVERETT

Planning

STAFF MEMORANDUM

TO: Planning Commission
FROM: Rebecca McCrary, Long Range Planning Manager
DATE: October 13, 2023
MEETING DATE: October 17, 2023
SUBJECT: Limited amendment to Riverfront Planned Development Overlay and Development Agreement

BACKGROUND

The Riverfront development is a reclamation and redevelopment project along the Snohomish River governed by a planned development overlay, development agreement, the amended and restated property disposition agreement, a consent decree with the Department of Ecology, and other agreements. The Riverfront development agreement and planned development overlay have been amended several times since originally adopted and executed in 2009, including a first amendment in 2014 (regarding the residential Simpson and Eclipse Mill Site areas), a second amendment in 2019 (regarding the central former landfill area), and an addendum to the second amendment in 2021 (adjusting certain timelines in light of the impact of COVID-19). The 2021 addendum also stated that the pandemic made the viability of the cinema/theater use provided in the PDO and development agreement uncertain.

Development at two of the three subareas has been completed: the Simpson pad to the south has been redeveloped with 238 detached houses and a neighborhood park, and the Eclipse Mill site to the north has been redeveloped with townhouses. The first phase of the central portion of the site (the former landfill) is currently under construction with most of the site work complete and two mixed-use buildings ready for occupancy.

PROPOSAL

The proposed action would change the Cinema use to an “Anchor Food and Recreation” use in the central area of the development (the former landfill). (For reference, this change only affects the use of the dark/blue green rectangle area shown in the attached current Final Development Plan.) This change reflects the state of the market for new entertainment development while still providing for an anchor development that will include significant investment and will attract significant customer traffic that will help support other commercial uses in Riverfront.

Amendment of the Planned Development Overlay and Development Agreement requires recommendation from the planning commission to the city council under [EMC 19.29.120.B](#) and/or [EMC 15.02.090](#).

PUBLIC NOTICE AND COMMENTS

Open public hearing in front of the planning commission under [EMC 19.29.120.B](#) and/or [EMC 15.02.090](#). For notice purposes, the city will use processes described under [EMC 15.02.090](#).



EMC 15.02.090(C) Public Notice Requirements. Public notice shall include notice of the public hearing or meeting and opportunity to comment on the application, and a notice of the final city council action taken.

1. Notice of the public hearing or meeting, including notice of opportunity to comment, shall be provided in the same manner for the planning commission and city council public hearings or meeting on the application, as follows:

- a. Posting notice on or near the property with signs no less than twenty-four inches by thirty-six inches in size, as specified by Section 15.02.110(A)(1);
- b. Posting additional signs if the project is a linear project, as specified by Section 15.02.110(A)(2);
- c. Mailing notice to the property owners located within five hundred feet;
- d. Mailing notice to the SEPA mailing list (unless the project is categorically exempt);
- e. Mailing notice to the neighborhood leader mailing list if applicable; and
- f. Publishing notice in the official city newspaper.

EXHIBITS

Exhibit A – Riverfront site plan

Exhibit B – Proposed Second Addendum to Second Amendment to Riverfront Development Agreement



EXHIBIT B – SITE MAP



**EXHIBIT B – PROPOSED SECOND ADDENDUM TO SECOND
AMENDMENT TO RIVERFRONT DEVELOPMENT AGREEMENT**

**SECOND ADDENDUM
TO
SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT**

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This Second Addendum to the Second Amendment to Development Agreement (this "Addendum") is dated as of last signature below (the "Effective Date"), and is made and entered into by and among **RIVERFRONT COMMERCIAL INVESTMENT, L.L.C.** ("Riverfront"), a Washington limited liability company and **RIVERFRONT PHASE 1, LLC**, a Washington limited liability company, with respect to the Phase 1 Lots, **RIVERFRONT PHASE 2, LLC**, a Washington limited liability company, with respect to the Phase 2 Lots, **RIVERFRONT PHASE 3, LLC**, a Washington limited liability company, with respect to the Phase 3 Lots, **RIVERFRONT PHASE 4, LLC**, a Washington limited liability company, with respect to the Phase 4 Lots, **RIVERFRONT GROCER LLC**, a Washington limited liability company, with respect to the Grocer Lot, **RIVERFRONT THEATER, LLC**, a Washington limited liability company, with respect to the Theater Lot (collectively, "Developer"); and (ii) the **CITY OF EVERETT**, a municipal corporation of the State of Washington (the "City").

RECITALS

The City and Developer are parties to the Development Agreement dated June 2, 2009, which was amended by the First Amendment dated April 3, 2014, the Second Amendment to Development Agreement dated May 17, 2019, and the Addendum to Second Amendment dated as of May 4, 2021 (the 2021 addendum, the "Initial Addendum"; the 2019 amendment the "Second Amendment"; the development agreement as amended by both amendments and the Initial Addendum, the "Development Agreement"). Unless otherwise defined herein, all capitalized terms in this Addendum have the meaning set forth in the Second Amendment. The names of the lots in the paragraph above are as defined in the Assignment and Assumption Agreement by and among the parties dated December 20, 2019, recorded under Snohomish County recording no. 202001090614 ("Assignment Agreement").

On October 21, 2019, the City approved a minor amendment to the Final Development Plan in accordance with EMC 19.29, which revised the second page of Attachment E-1 to the Second Amendment. The amended version of the second page of Attachment E-1 was attached to the Initial Addendum as Exhibit A. Now the parties are further amending the Final Development Plan as set forth in this Addendum. The revised Attachment E-1 Final Development Plan is attached to this Addendum as Exhibit A.

As acknowledged in the Initial Addendum the COVID-19 pandemic has occurred since the execution of the Second Amendment and has impacted the viability and timing of certain elements of the Everett Riverfront Development. Specifically, Developer has determined that the Cinema Element of the Everett Riverfront Development is no longer viable. As further contemplated by the Initial Addendum, Developer has proposed and the City desires to approve, replacement of the Cinema Element with an anchor food and recreational use, as set forth in this Addendum.

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On August 1, 2013, PNW Riverfront, LLC assigned and Riverfront assumed all of the rights, obligations and liabilities of PNW Riverfront with respect to the Development Agreement and other agreements related to the Property pursuant to that Riverfront Assignment and Assumption Agreement recorded under Snohomish County recording no. 201311180486. Riverfront has subsequently assigned and Riverfront Phase 1, LLC, Riverfront Phase 2, LLC, Riverfront Phase 3, LLC, Riverfront Phase 4, LLC, Riverfront Grocer, LLC and Riverfront Theater, LLC have assumed rights, obligations and liabilities under the Development Agreement as more particularly set forth in the Assignment Agreement. PNW Riverfront does not hold any interest in the Property or under the Development Agreement. The parties now desire to remove PNW Riverfront as a party to the Development Agreement

AGREEMENT

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 are hereby acknowledged, PNW, Riverfront, and the City hereby agree as follows:

1. Amendment of the Cinema Element Phase to the Anchor Food and Recreation (AFR) Phase.

A. The Cinema Element Property is renamed the “Anchor Food and Recreation Property” (or “AFR Property”) with no changes to the location or boundaries of such property. The Cinema Phase is renamed the Anchor Food and Recreation Phase (or “AFR Phase”). The Cinema use that was contemplated as part of the Cinema Phase is hereby replaced with an Anchor Food and Recreation Use (or “AFR Use”).

1. An Anchor Food and Recreation (AFR) Use means *an anchor establishment with indoor and outdoor spaces covering a substantial majority of the AFR Property that provides restaurant quality food and beverage service combined with active recreational options, such as, for example, table tennis, pickleball, tennis, handball, golf, squash, volleyball, or racquetball. An AFR Use does not include fitness centers or health spas.*

2. The revised Final Development Plan attached to this Addendum as Exhibit A, is hereby approved by the City.

B. As defined in the Initial Addendum, the AFR Phase is one of the Remaining Phases. Prior to the completion of the Third Phase Developer will complete the AFR Phase, which will include construction of an AFR Use on the AFR Property. Drawings of the AFR Element are attached as Exhibit B (“AFR Drawings”). Figure 11 and Figure 12 of the First Phase Drawings that were attached as part of Exhibit 1 to the Second Amendment are hereby deleted. The AFR Drawings shall also be incorporated into subsection I: Supplemental Examples of the Mixed Use Design Guidelines that are Attachment G to the Second Amendment, as approved renderings for the AFR Phase under such guidelines.

2. Amendment of Section 5.2: Developer Property – Use Restriction. The new Section 5.2.1.1 of the Second Amendment which was added by the Initial Addendum is hereby amended to read as follows:

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5.2.1.1 Anchor Food and Recreation Phase. Notwithstanding anything to the contrary in this Agreement, the sole permitted use of the AFR Property prior to issuance of a Partial Certificate of Completion for the AFR Phase is as follows: development and construction of an AFR Use substantially as shown in the AFR Drawings and the revised Final Development Plan and in accordance with applicable provisions of the Second Amendment. Modifications to the Final Development Plan approved by the Planning Director using the criteria for administrative modification of the Final Development Plan as specified in the City's Planned Development Overlay regulations as set forth in EMC Chapter 19.29 shall be deemed to be "substantially as shown in the Final Development Plan" as that term is used in this Section. The Planning Director shall have the sole authority to determine if final site layout and building designs proposed for AFR Phase are "substantially as shown in the AFR Drawings." A decision to reject a plan or permit based on not being "substantially as shown in the AFR Drawings" must not be arbitrary and must be made in writing and supported by detailed findings. Second Amendment Section 5.2.2 does not apply to the AFR Phase. However, if Developer proposes a design that is not substantially as shown in the approved AFR Drawings, then such proposal will be subject to Planning Director approval on the basis of whether the proposed design meets the definition of an AFR Use, complies with the Design Guidelines, and provides at least the level of quality represented by the AFR Drawings. A decision to reject a plan or permit based on non-compliance with the preceding sentence must not be arbitrary and must be made in writing and supported by detailed findings.

3. Park Project. The deadlines for the Eclipse Mill Park project and the First Phase Park Project are as set forth in the Restated PDA, as amended.

4. Removal of PNW Riverfront LLC. For the Reasons set forth in Recital D above, PNW Riverfront LLC is hereby removed as a party to the Development Agreement.

5. General Provisions.

5.1 Counterparts; pdf Signatures. This Addendum may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. AdobeSign or other electronic or pdf signatures on this Agreement shall constitute original signatures of the Parties.

5.2 Recording. Either party may arrange for the recording of this Addendum with the Snohomish County Auditor's office, as necessary to disclose this Addendum on title documents for the affected property.

6. Other. Except as expressly modified in this Addendum, the Second Amendment shall remain in full force and effect.

EXHIBITS:

Exhibit A – Revised Attachment E-1: Final Development Plan

Exhibit B – AFR Drawing

Note: Exhibits to Proposed Second Addendum to Second Amendment to Riverfront Development Agreement to be added later