



ORDINANCE NO. 4000-24

An Ordinance Amending the Development Agreement for the Everett Riverfront District Properties Related to the Landfill Site, Amending Section 1 of Ordinance No. 3121 -09, as previously amended

WHEREAS,

- A.** In 2009, the City approved a Planned Development Overlay rezone for the Everett Riverfront District Properties pursuant to Ordinance 3121-09, implemented through a Development Agreement, for properties commonly referred to as the Simpson site, the Landfill site, and the Eclipse Mill site.
- B.** In 2014, a First Amendment to the Development Agreement was approved by City Council pursuant to Ordinance 3373-14. The First Amendment only concerned the Simpson site and the Eclipse Mill site and did not concern the Landfill site.
- C.** In 2019, a Second Amendment to the Development Agreement was approved by City Council pursuant to Ordinance 3674-19. The Second Amendment only concerned the Landfill site and did not concern the Simpson site or the Eclipse Mill site. The Second Amendment, among other matters, contained a cinema in the First Phase of Landfill development.
- D.** In 2021, in response to the COVID-19 pandemic, the City Council approved an addendum to the Second Amendment to the Development Agreement. This addendum postponed the cinema from the First Phase to the Third Phase.
- E.** In 2023, as anticipated by the 2021 addendum, the developer of the Landfill proposed to change the cinema use. In general, the proposal is to change the cinema use to an anchor food and recreational use.
- F.** The specifics of the developer's proposed change to the Development Agreement for the Landfill are contained in the Second Addendum to the Second Amendment to Development Agreement, which is attached as Exhibit 1 to this Ordinance and is referred to herein as the "Second Addendum." The Second Addendum does not contain any revision to the Development Agreement with respect to the Simpson site or the Eclipse Mill site.
- G.** The Planning Commission considered the Developer's proposed change at its meeting October 17, 2023, during which the Planning Commission recommended approval of the proposed changes.
- H.** The City Council held a public hearing on January 17, 2024, before passage of this ordinance.

NOW, THEREFORE, the City Council adopts the foregoing recitals as its findings, and the City Council therefore concludes the following:

1. The amendments in the Second Addendum approved by this Ordinance follow and are based on an appropriate land use and environmental review process that has included meaningful opportunities for public participation; and

2. The proposed change to the Planned Development Overlay zone and Development Agreement, and the resultant master plan for the Landfill site:
 - a. promote the best long term interests of the community and satisfy the criteria of EMC 19.29.050.C and EMC 15.03.200, to the extent such provisions are applicable;
 - b. is consistent with the Everett Growth Management Comprehensive Plan; and
 - c. bears a substantial relation to the public health, safety and welfare, implement conditions established in the original master plan and mitigation required in the revised EIS, which mitigates potential adverse impacts upon existing and anticipated land uses in the immediate vicinity of the subject property.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. The Second Addendum is approved and the Mayor is authorized to execute the Second Addendum substantially in the form as provided in Exhibit 1.

Section 2. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 3. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 4. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 5. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 6. The City Council public hearing on January 17, 2024 is deemed to satisfy any applicable public hearing requirements under chapter 19.29 EMC. A copy of this Ordinance, and an executed copy of the Second Addendum, shall be recorded with the Snohomish County Auditor's Office and shall constitute a covenant running with the land.

//

//

//



Cassie Franklin, Mayor

ATTEST:



Marista Jorve, City Clerk

PASSED: 1/17/2024

VALID: 01/18/2024

PUBLISHED: 1/20/2024

EFFECTIVE DATE: 2/1/2024

EXHIBIT 1

SECOND ADDENDUM TO SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT

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

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.

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:

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 Drawings

[Remainder of page intentionally left blank; signatures begin on following page]

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

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

Riverfront:

Riverfront Commercial Investment, L.L.C.
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the _____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires _____

[Remainder of page intentionally left blank; signatures continue on following page]

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

Riverfront Phase 1 LLC.
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the _____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires _____

[Remainder of page intentionally left blank; signatures continue on following page]

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

Riverfront:

Riverfront Phase 2 LLC.
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the ____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires _____

[Remainder of page intentionally left blank; signatures continue on following page]

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

Riverfront:

Riverfront Phase 3 LLC
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the ____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires _____

[Remainder of page intentionally left blank; signatures continue on following page]

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

Riverfront:

Riverfront Phase 4 LLC
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the ____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires ____

[Remainder of page intentionally left blank; signatures continue on following page]

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

Riverfront:

Riverfront Grocer LLC
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the ____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires ____

[Remainder of page intentionally left blank; signatures continue on following page]

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

Riverfront:

Riverfront Theater LLC
a Washington limited liability company,
by its authorized signatory:

By: _____
Name:
Title:

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this, the ____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires ____

[Remainder of page intentionally left blank; signatures continue on following page]

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: _____
Cassie Franklin, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
_____, City Clerk

By: _____
_____,
City Attorney

STATE OF WASHINGTON :
: SS.
COUNTY OF SNOHOMISH :

On this, the ____ day of _____, 2023, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

My commission expires ____

SITE PLAN

RIVERFRONT

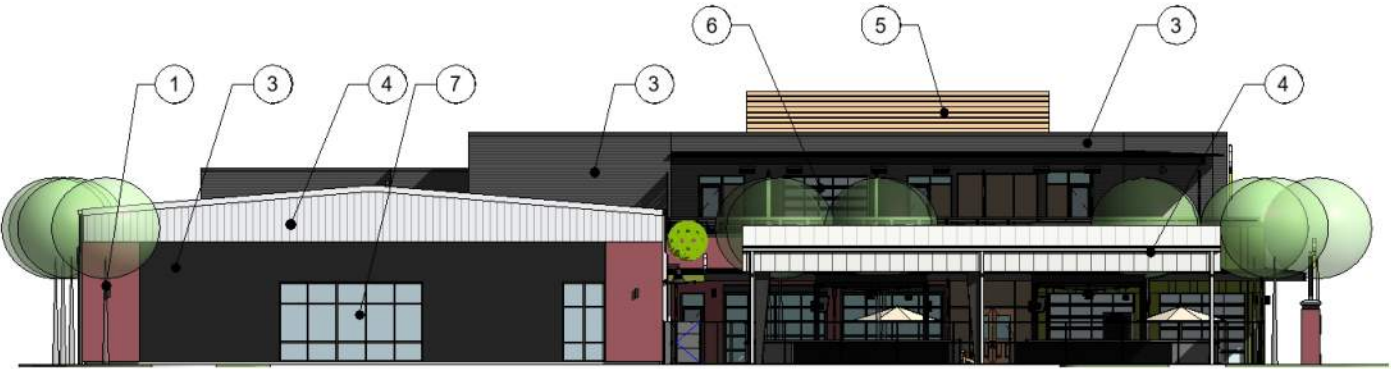


ELEVATIONS

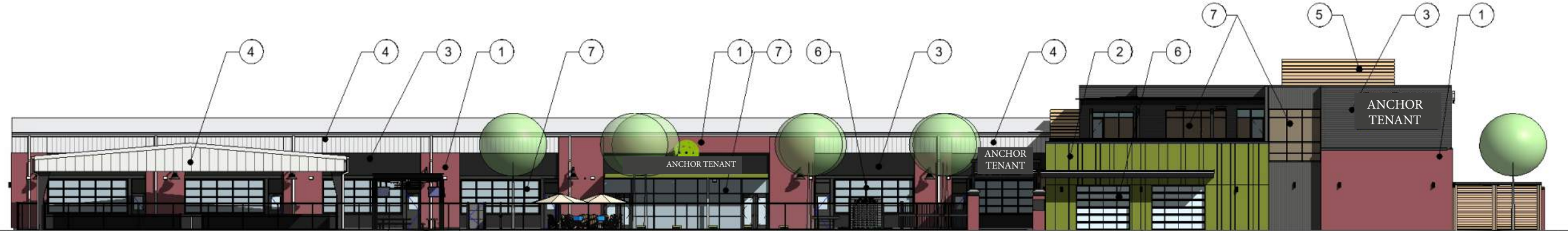
Exhibit B

RIVERFRONT

2 West Elevation



1 South Elevation



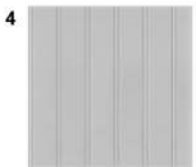
BRICK VENEER



FLAT METAL PANEL



HORIZONTAL METAL PANEL



VERTICAL METAL PANEL



HORIZONTAL WOOD



OPERABLE DOORS

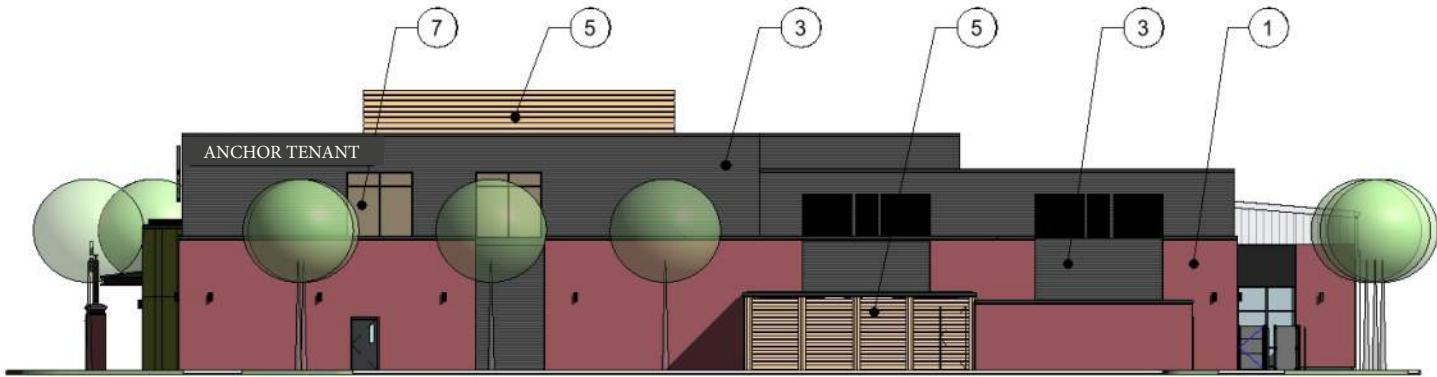


ALUMINIUM STOREFRONT

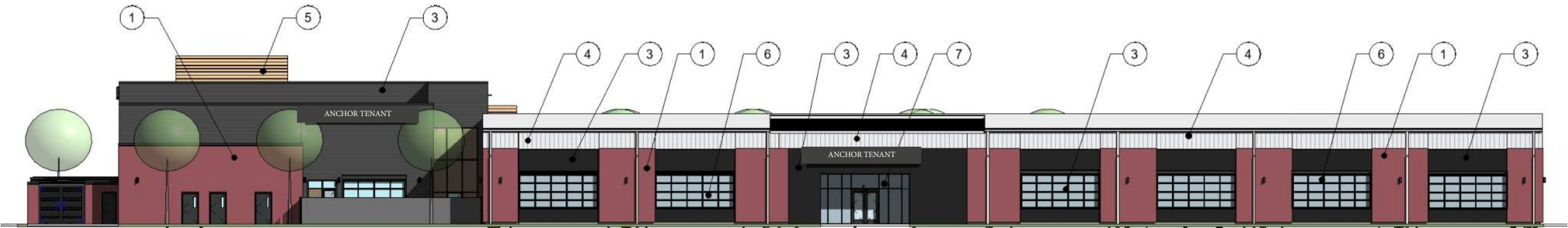
ELEVATIONS

Exhibit B

RIVERFRONT



4 East Elevation



3 North Elevation



BRICK VENEER



FLAT METAL PANEL



HORIZONTAL METAL PANEL



VERTICAL METAL PANEL



HORIZONTAL WOOD



OPERABLE DOORS



ALUMINIUM STOREFRONT












ORD 4000-24_CB 2130-59_FINAL with Exhibits

Final Audit Report

2024-01-18

| | |
|-----------------|--|
| Created: | 2024-01-18 |
| By: | Ashleigh Scott (AScott@everettwa.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAyhPQhkUX49eU5iyfoMBobPWzLSOOpBP0 |

"ORD 4000-24_CB 2130-59_FINAL with Exhibits" History

-  Document created by Ashleigh Scott (AScott@everettwa.gov)
2024-01-18 - 5:11:50 PM GMT
-  Form filled by Ashleigh Scott (AScott@everettwa.gov)
Form filling Date: 2024-01-18 - 5:13:57 PM GMT - Time Source: server
-  Document emailed to Cassie Franklin (cfranklin@everettwa.gov) for signature
2024-01-18 - 5:13:58 PM GMT
-  Email viewed by Cassie Franklin (cfranklin@everettwa.gov)
2024-01-18 - 5:36:33 PM GMT
-  Document e-signed by Cassie Franklin (cfranklin@everettwa.gov)
Signature Date: 2024-01-18 - 5:36:46 PM GMT - Time Source: server
-  Document emailed to Marista Jorve (mjorve@everettwa.gov) for signature
2024-01-18 - 5:36:47 PM GMT
-  Document e-signed by Marista Jorve (mjorve@everettwa.gov)
Signature Date: 2024-01-18 - 5:44:59 PM GMT - Time Source: server
-  Document emailed to Ashleigh Scott (AScott@everettwa.gov) for filling
2024-01-18 - 5:45:01 PM GMT
-  Email viewed by Ashleigh Scott (AScott@everettwa.gov)
2024-01-18 - 5:54:18 PM GMT
-  Form filled by Ashleigh Scott (AScott@everettwa.gov)
Form filling Date: 2024-01-18 - 5:54:55 PM GMT - Time Source: server
-  Agreement completed.
2024-01-18 - 5:54:55 PM GMT