

RESOLUTION NO. 643

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RATIFYING THE CITY COUNCIL'S AUTHORIZATION FOR THE MAYOR TO SIGN THE PURCHASE AND SALE AGREEMENT AND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT FOR THE PROPERTY COMMONLY KNOWN AS THE EDDON BOAT PROPERTY.

WHEREAS, on January 10, 2005, the City Council authorized the Mayor to sign the Purchase and Sale Agreement for the purchase of the Eddon Boat Property (which is attached hereto as Exhibit A): and

WHEREAS, on January 11, 2005, the Mayor signed the Purchase and Sale Agreement (Exhibit A): and

WHEREAS, on March 14, 2005, the City Council authorized the Mayor to sign the Amendment to the Purchase and Sale Agreement for the Eddon Boat Property (which is attached hereto as Exhibit B); and

WHEREAS, on March 14, 2005, the Mayor signed the Amendment to the Purchase and Sale Agreement (Exhibit B); and

WHEREAS, closing of the sale of the Eddon Boat Property occurred on March 17, 2005; Now, Therefore,

BE IT HEREBY RESOLVED BY THE GIG HARBOR CITY COUNCIL AS FOLLOWS:


The Gig Harbor City Council hereby ratifies their previous authorizations (as set forth in the "whereas" sections above) for the Mayor to sign the Purchase and Sale Agreement (Exhibit A) and the Amended Purchase and Sale Agreement (Exhibit B) for the Eddon Boat Property.

(Exhibit A-1) and the Amended Purchase and Sale Agreement (Exhibit B-1) for the Eddon Boat Property.

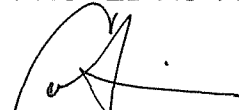
PASSED THIS 28th day of March, 2005.


MAYOR GRETCHEN WILBERT

ATTEST:


Molly Towslee, City Clerk

APPROVED AS TO FORM:


Carol A. Morris, City Attorney

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, (hereinafter the "Agreement,") is entered into this 11th day of January, 2005, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "Purchaser") and Eileen Tellefson and Marsan, LLC, tenants in common, d/b/a Harbor Cove Group, whose address is 108 South Jackson, Seattle, Washington, 98104 (hereinafter collectively called the "Seller");

WHEREAS, Seller is the owner of that certain real property, including tidelands, with improvements consisting of a Tudor-style house, concrete block building, and marine-oriented outbuilding, located at 3711, 3801, 3803 and 3805 Harborview Drive, in Gig Harbor, Washington, more particularly described in Exhibit A, attached hereto and made a part hereof by this reference (which exhibit may be amended if necessary to reflect the proper legal description) (the "Property"); and

WHEREAS, the Seller desires to sell the property upon the terms and conditions set forth herein; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Purchase and Sale of the Property. Upon the terms and conditions hereinafter set forth, Seller agrees to sell and Purchaser agrees to purchase the Property, including tidelands, described in Exhibit A, together with:

- a. All rights, licenses, privileges, easements, rights-of-way (herein referred to collectively as the "Rights");
- b. The marine-oriented outbuilding, the Tudor-style house building and the concrete block building and all other improvements and appurtenances, subject to Seller's right to demolish certain structures as set forth in Section 8.4 below;
- c. All of Seller's right, title and interest in and to any street or road abutting the Property, if any.

2. Purchase Price and Manner of Payment for the Property.

2.1 Purchase Price. The total purchase price for the Property (the "Purchase Price") shall be Three Million Two Hundred Fifty Thousand Dollars and No Cents (\$3,250,000.00), payable at Closing, which includes the earnest money paid to the Escrow Agent after execution of this Agreement by both parties; provided, however, that (i) if the transaction contemplated by this Agreement does not close on or before February 15, 2005, the amount of the Purchase Price shall increase by One Hundred Thousand Dollars and No Cents (\$100,000), and (ii) if the transaction contemplated by this Agreement does not close on or before March 15, 2005, the amount of the Purchase Price shall increase by an additional One Hundred Thousand Dollars and No Cents (\$100,000).. The earnest money shall be Fifty Thousand Dollars and No Cents (\$50,000.00) which shall be paid to and held by Escrow Agent until Closing or earlier termination of this Agreement, or as otherwise provided herein.

2.2 Prorations. Any prorations as determined in Section 6 herein shall be reflected in the amount paid to the Seller at Closing.

2.3 Closing Date for Property. The parties will close the purchase and sale of the Property ("Closing") on or before February 15, 2005, in the office of Fidelity National Title Insurance, 2727 Holycroft Street, Suite 460, Gig Harbor, Washington (the "Escrow Agent" or "Title Company"). Purchaser shall have the right to extend the date of Closing to and including April 15, 2005 conditioned upon the increases in the Purchase Price as set forth in Section 2.1 above. This Agreement shall terminate if the Closing does not occur on or before April 15, 2005. The Seller agrees to maintain the Property and its improvements in their present condition, normal wear and tear excepted and except as permitted pursuant to Section 8.4 below, until Purchaser is entitled to Possession at Closing. In the event that this sale cannot be closed by the date provided herein (including any permitted extensions) due to the unavailability of either party, the Escrow Agent, or financing institution to sign any necessary document, or to deposit any necessary money, because of the interruption of available transport, strikes, fire, flood, or extreme weather, governmental relations, incapacitating illness, acts of God, or other similar occurrences, the Closing Date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fourteen (14) days beyond the Closing as provided herein without the written agreement of the parties.

3. **Deliveries at Closing of Property.** At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the Property and all improvements thereon, by statutory warranty deed (the "Deed"), duly executed and in recordable form and insurable as such by the Title Company, on an ALTA form B Owner's form of title insurance policy, or if Purchaser so desires and pays any additional premium, an ALTA Extended Policy (the "Title Policy"). Title to the Property shall be conveyed by Seller to Purchaser free of all liens, leases and encumbrances other than the Permitted Exceptions, as defined in Section 10 hereof. Seller shall deliver to Purchaser at Closing, the following documents (all of which shall be duly executed and acknowledged where required and,

unless otherwise agreed, deposited with the Escrow Agent): (a) the Deed; (b) the Title Policy, or the irrevocable commitment of the title insurer in writing to Purchaser to deliver same in a form satisfactory to Purchaser; (c) such other documents, if any, as may be reasonably requested by the Purchaser to enable the Purchaser to consummate and close the transactions contemplated by this Agreement pursuant to the terms and provisions and subject to the limitations hereof. The parties shall execute a real estate excise tax affidavit showing that the Property was acquired for a public use under threat of condemnation.

4. Possession. Possession of the Property shall be delivered by Seller to Purchaser at the Closing.

5. Closing Costs Relating to the Property. Title insurance premiums, loan fees and all other costs or expenses of escrow shall be paid as follows: (a) the full cost of securing the title insurance policy for Purchaser referred to herein shall be paid by Seller, provided that Purchaser shall be responsible for all costs associated with any ALTA extended coverage; (b) the cost of recording the Deed to Purchaser shall be paid by Purchaser; (c) all other expenses of escrow and recording fees shall be shared equally by Seller and Purchaser. Encumbrances to be discharged by Seller to provide clear title for the Property shall not be expenses of escrow.

6. Prorations. The following items shall be prorated between Purchaser and Seller as of midnight the day immediately preceding the Closing Date; such prorations favoring Purchaser shall be credited against the Purchase Price payable by Purchaser at Closing, and such prorations favoring Seller shall be payable by Purchaser at Closing in addition to the cash portion of the Purchase Price payable by Purchaser at Closing in the event the total amount of prorations in favor of Seller exceed those favoring Purchaser:

6.1 Any applicable City, state and county ad valorem taxes for the calendar year of Closing based on the ad valorem tax bill for the Property, if then available, for such year, or if not, then on the basis of the ad valorem tax bill for the Property for the immediately preceding year. Taxes for all years prior to the calendar year of Closing shall be paid by Seller at or prior to Closing;

6.2 Utility charges, including water, telephone, cable television, garbage, storm drainage, sewer, electricity and gas, and maintenance charges, if any, for sewers. In conjunction with such prorations, Purchaser will notify, or cause to be notified, all utilities servicing the Property of the change of ownership and direct that all future billings be made to Purchaser at the address of the Property, with no interruption of service. Seller shall use its best efforts to procure final meter readings for all utilities as of the Closing Date and to have such bills rendered directly to Seller. Any utility deposits previously paid by Seller shall remain the property of Seller, and to the extent necessary for Seller to receive such payments, Purchaser shall pay over such amounts to Seller at Closing and take assignment of such deposits;

6.3 Said prorations shall be based on the actual number of days in each month and twelve (12) months in each calendar year. Any post closing adjustment due either party shall be promptly made.

6.4. The parties shall reasonably agree on a final prorations schedule prior to Closing and shall deliver the same to Escrow Agent. Based in part on the prorations statement, Escrow Agent shall deliver to each party at the Closing a closing statement containing a summary of all funds, expenses and prorations passing through escrow.

7. Conditions Precedent to Parties' Obligation to Close.

7.1 Purchaser. Purchaser's obligation to acquire the Property shall be conditioned upon the satisfaction, or waiver by Purchaser of the following conditions: (a) approval of this Agreement by the Gig Harbor City Council; (b) inspection by the Purchaser of the Property for Hazardous Substances as more fully described below; (c) receipt and approval by the Gig Harbor City Council of the Environmental Reports (as defined below), as necessary, from the Purchaser's Consultant; (d) completion by Seller of all deliveries required of Seller prior to the Closing; (e) that there has been no breach by Seller of any of the warranties and/or covenants of this Agreement; (f) approval by the voters of a bond measure for the purchase of the Property in an amount equal to or greater than the Purchase Price for the Property, and (g) receipt of an MAI appraisal for the Property. The Gig Harbor City Council (on behalf of Purchaser) shall make the decision whether the conditions (a) through (g) in this Section have been satisfied, which shall lie in the City Council's sole and absolute discretion.

Seller acknowledges that there has been a release of Hazardous Substances (as defined in Section 9.2) on the Property and that a Geotechnical Engineering-Phase II Environmental Investigation Report conducted by Krazan & Associates dated July 21, 2003 on both the upland and tideland portions of the Property has been submitted to the Purchaser. Seller agrees that the Purchaser has the option to perform additional inspections and testing at, on, under, and adjacent to the Property and receive reports from the Purchaser's own Consultant on the nature and extent of the contamination of the Property, the estimated cost of an action to clean up the Hazardous Substances from the Property, and such other matters as the Purchaser deems reasonable and necessary ("Environmental Reports"). Upon receipt of any final Environmental Reports, Purchaser shall provide to Seller copies of such final reports. Upon receipt and consideration of the Environmental Reports, the Purchaser may wish to renegotiate the terms of this Agreement, as an alternative to termination of the Agreement for the City Council's failure to approve, or otherwise based upon the matters set forth in, the Environmental Reports from the Purchaser's Consultant. The Seller shall not be obligated to renegotiate the terms of this Agreement. If the Purchaser finds that any of the conditions in Section 7.1(a) through (g) have not been satisfied in its sole and absolute discretion at any time prior to the date of Closing (including any extensions), the Agreement shall terminate

without consequences to either party, except that Escrow Agent shall return the earnest money to Purchaser, as provided in Section 11.4 herein.

7.2 Conditions Subsequent to Closing. Because the boathouse (marine-oriented outbuilding) on the Property purchased by the Purchaser under this Agreement is in poor aesthetic condition, the Purchaser agrees to paint the exterior of the structure within four (4) months after Closing. The Purchaser further agrees to use its reasonable best efforts to remove garbage and other litter on the surface of the Property within six (6) months after Closing. The Purchaser shall have no obligation to perform any activity described in this Section 7. 2 if Closing does not occur.

8. Seller's Covenants.

8.1 Right of Inspection. At all times prior to Closing, Seller shall (a) permit Purchaser and such persons as Purchaser may designate to undertake such investigations and inspections of the Properties (including, without limitation, physically invasive testing) as Purchaser may in good faith require to inform itself of the condition or operation of the Property and (b) provide Purchaser with complete access to Seller's files, books and records relating to the ownership and operation of the Property, including, without limitation, contracts, permits and licenses, zoning information, during regular business hours upon reasonable advance notice. Seller agrees to cooperate in connection with the foregoing and agrees that Purchaser, its agents, employees, representatives or contractors shall be provided promptly upon request such information as shall be reasonably necessary to examine the Property and the condition thereof.

8.2 Encumbrances. At no time prior to Closing shall Seller encumber the Property or any portion thereof with encumbrances, liens or other claims or rights (except such as may exist as of the date hereof) .

8.3 Material Changes. Seller shall: (a) promptly notify Purchaser of the occurrence of any fact, circumstance, condition or event that would cause any of the representations made by Seller in this Agreement no longer to be true or accurate and (b) deliver to Purchaser any notices of violation of law promptly upon receipt by Seller.

8.4 Additional Improvements. Seller shall not enter into any agreements regarding, or take any other action with respect to, construction of additional improvements or demolition of any existing structures at the Property following the Effective Date and prior to Closing, without the prior approval from Purchaser, which shall be granted or withheld in Purchaser's sole and absolute discretion; provided, however, that Seller may lawfully – at its sole expense, risk, and responsibility – demolish the Wild Bird and Pandora's Box buildings.

8.5 Compliance with Applicable Law. Seller agrees that it will not permit or cause, as a result of any intentional or unintentional act or omission on the Seller's part, or on the part of any agent of the Seller, or any third party, any release or further release of Hazardous Substances at, on, or under the Property.

9. Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

9.1 Title to Property. Seller owns fee simple title to the Property, free and clear of all restrictions, liens, easements, mortgages, covenants, exceptions and restrictions of any kind, Uniform Commercial Code financing statements, security interests, and other encumbrances, except for the Permitted Exceptions (as described in Section 10).

9.2. Hazardous Substances on the Property.

9.2.1 Definitions. (a) "Hazardous Substances" means any hazardous, toxic or dangerous substance, waste or material that is regulated under any federal, state or local law pertaining to environmental protection, contamination remediation or liability. The term includes, without limitation, (i) any substance designated a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Model Toxics Control Act (Chapter 70.105D RCW), the Hazardous Waste Management Act (Chapter 70.105 RCW), and regulations promulgated thereunder, as these statutes and regulations shall be amended from time to time, and (ii) any substance that, after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through the food chain, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities in humans, plants or animals. For the purposes of this definition, the term "Hazardous Substances" includes, but is not limited to, petroleum chemicals, asbestos-containing material and lead paint. (b) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, air, soils, surface water and ground water.

9.2.2 Hazardous Substances. Seller acknowledges that there has been a release or disposal of Hazardous Substances on the Property, and that Hazardous Substances have been stored, generated or disposed of on the Property. Seller warrants that it has informed the Washington State Department of Ecology of the presence of Hazardous Substances on the Property and has enrolled the Property in the Voluntary Cleanup Program.

9.2.3 Violations. Other than the existence of the Hazardous Substances on the Property, Seller has not received any notice of, and is not aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other

law. Seller warrants that no action or proceeding is pending before or appealable from any court, quasi-judicial or administrative agency relating to the Hazardous Substances emanating from, caused by or affecting the Property, except any action or proceeding arising from or relating to informing the Washington State Department of Ecology of the presence of Hazardous Substances on the Property and enrollment in the Voluntary Cleanup Program relating to such substances.

9.2.4 Underground Storage Tanks. Seller represents that, to the best of its knowledge, the Property contains no underground storage tanks for the storage of fuel oil, gasoline, and/or other petroleum products or by-products, other than that stated in the Krazen report referenced herein.

9.2.5 No Assessments. No assessments have been made against the Property that are unpaid, whether or not they have become liens.

9.2.6 Boundary Lines of Property. To the best of Seller's knowledge, the improvements on the Property are located entirely within the boundary lines of the Property, and to the best of Seller's knowledge there are no disputes concerning the location of the lines and corners of the Property.

9.2.7 Litigation. Seller has no actual knowledge of any, and there is no actual or pending litigation or proceeding by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property other than any appeal that may be filed relating to the permit application submitted to the City of Gig Harbor for the Property. There are no outstanding claims on Seller's insurance policies, which relate to the Property other than any appeal that may be filed relating to the permit application submitted to the City of Gig Harbor for the Property. Seller has not received any notice of any claim of noncompliance with any laws, from any governmental body or any agency, or subdivision thereof bearing on the construction of the improvements, the landscaping or the operation, ownership or use of the Property other than any appeal that may be filed relating to the permit application submitted to the City of Gig Harbor for the Property and communication with the Washington State Department of Ecology and the City of Gig Harbor relating to the presence of Hazardous Substances on the Property.

9.2.8 Authorization. Seller has the full right and authority to enter into this Agreement and consummate the sale, transfers and assignments contemplated herein; and each of the persons signing this Agreement and any other document or instrument contemplated hereby on behalf of Seller is authorized to do so. All of the documents executed by Seller which are to be delivered to Purchaser at Closing are and at the time of Closing will be duly authorized, executed, and delivered by Seller, are and at the time of Closing will be legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

9.2.9 Liens. All expenses in connection with the construction of the Property and any reconstruction and repair of the Property have been fully paid, such that there is no possibility of any mechanics' or materialmen's liens being asserted or filed in the future against the Property in respect of activities undertaken prior to Closing.

9.2.10 Defects. Seller has not failed to disclose in full any physical defect or condition of disrepair whether concealed or visible, with respect to the Property of which Seller has knowledge.

9.2.11 True and Accurate Representations. No representation or warranty of Seller contained in this Agreement contains or at Closing will contain an untrue statement of material fact, or omits or at Closing will omit to state a material fact necessary to make the statements and facts contained therein not misleading. If any event or circumstance occurs which renders any of Seller's representations or warranties herein untrue or inaccurate in any material respect, then Seller shall notify Purchaser of the event or circumstance when Seller becomes aware of it.

9.2.12 No Action. Seller will refrain from taking any action which would cause any of the foregoing representations and warranties to become incorrect or untrue at any time prior to the date of Closing. At the Closing, Seller shall reaffirm and restate such representations and warranties, subject to disclosure of any changes in facts or circumstances, which may have occurred since the date hereof. Such restated representations and warranties shall survive the Closing. If any change in any foregoing representation is a material change not caused in whole or in part by Seller or persons under the control or direction of Seller, and Seller does not elect to cure all such material changes prior to Closing, then notwithstanding anything herein to the contrary, Purchaser, at its sole option, may either (a) close and consummate the acquisition of the Property pursuant to this Agreement, reserving any and all necessary action to specifically enforce Seller's obligations hereunder; or (b) terminate this Agreement by written notice to Seller, and neither of the parties hereto shall have any rights or obligations hereunder whatsoever, except such rights or obligations that, by the express terms hereof, survive any termination of the Agreement.

10. Title Examination and Objections.

10.1 Title Review. Seller shall cause the Title Company to furnish to Purchaser, at Seller's expense, a title insurance commitment, on an ALTA approved form for the Property (the "Title Report"); provided, however, that Purchaser shall be responsible for the additional cost of any ALTA extended coverage policy. Purchaser shall have fifteen (15) days after receipt of such Title Report to conduct an examination of Seller's title to the Property and to give written notice to Seller of any title matters, which affect title to the Property and which are unacceptable to Purchaser (the "Title Objections"). If Purchaser fails to object to any matter which is of record as of the date hereof prior to the expiration of such fifteen (15) day period, then, except with respect to any security instrument or lien affecting the Property, Purchaser shall be deemed to have waived its right to object to any

such matter and all of such matters shall be deemed a permitted title exception for purposes of this Agreement (collectively, with those matters described in Section 10.4, the "Permitted Exceptions").

10.1.1 Upon receipt from the Purchaser of a written notice of any Title Objection, together with a copy thereof, the Seller shall, within fifteen (15) days of receiving such notice, provide written notice to Purchaser that Seller (a) will satisfy or correct, at Seller's expense, such Title Objection, or (b) refuses to satisfy or correct, in full or in part, such Title Objection, stating with particularity which part of any Title Objection will not be satisfied. The above notwithstanding, Seller may not refuse to satisfy security interests, liens or other monetary encumbrances affecting the Properties, including, but not limited to, the Deed of Trust recorded February 17, 2003 naming The Peninsula Group as beneficiary. As to those Title Objections which Seller agrees to satisfy or cure, or is required to satisfy or cure, Seller shall, on or before the Closing Date, (i) satisfy, at Seller's expense, security interests, liens or other monetary encumbrances affecting the Property (and all of Seller's obligations under or relating to each of the foregoing), and (b) satisfy or correct, at Seller's expense, all other Title Objections affecting the Property.

10.2 Failure to Cure. In the event that Seller fails to satisfy or cure any Title Objection of which it is notified, whether or not Seller has provided timely written notice that it refuses to satisfy or correct such objections, then on or before the Closing Date, the Purchaser shall by written notice to the Seller elect one of the following:

10.2.1 To accept Seller's interest in the Property subject to such uncured Title Objections, in which event such Title Objections shall become part of the Permitted Exceptions, and to close the transaction contemplated hereby in accordance with the terms of this Agreement; provided that in the event any such uncured Title Objections results from a breach by Seller of any of the covenants contained herein, a monetary charge or lien, or from a Title Objection other than a monetary charge or lien for which Seller has not given timely notice of its refusal to satisfy or correct, then (a) such acceptance by Purchaser of Seller's interest in the Property shall be without prejudice to Purchaser thereafter seeking monetary damages from Seller for any such matter which Seller shall have failed to so correct, and (b) if such Title Objection is a monetary charge or lien which can be satisfied or cured by the payment of a liquidated sum of money, Purchaser may cause such Title Objection to be so cured or satisfied by paying the same out of the Purchase Price to be paid; or

10.2.2 To terminate this Agreement in accordance with the provisions herein; provided however, that if the Purchaser elects to terminate this Agreement because of the existence of any Title Objection which results from a breach by Seller of its covenants herein, or any other Title Objection which Seller is required to satisfy or correct, Purchaser's cancellation shall be without prejudice to any other rights of the Purchaser herein.

10.3 Removal of Liens. Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing, Seller shall (a) pay in full and cause to be cancelled

all loan security documents which encumber the Property as of the date hereof, and as of the Closing Date, and (b) pay in full and cause to be cancelled and discharged or otherwise bond and discharge as liens against the Properties all mechanics' and contractors' liens which encumber the Property as of the date hereof or which may be filed against the Property after the date hereof and on or prior to the Closing Date. In the event Seller fails to cause such liens and encumbrances to be paid and canceled at or prior to Closing, Purchaser shall be entitled to pay such amount to the holder thereof as may be required to pay and cancel same, and to credit against the Purchase Price the amount so paid.

10.4 Section 11.1 notwithstanding, Purchaser may not object to the following title matters, which shall be considered "Permitted Exceptions": (a) real property taxes or assessments due after Closing; (b) easements consistent with Purchaser's intended use of the Property (which determination shall be made in Purchaser's sole and absolute discretion); (c) reserved oil and/or mineral rights; (d) rights reserved in federal patents or state deeds; and (e) governmental building and land use regulations, codes, ordinances and statutes.

11. Default and Termination.

11.1 By Seller. In the event of a default by Seller, Purchaser shall, in addition to any other remedy Purchaser may have, including Specific Performance, be entitled to immediately cancel this Agreement and receive a refund of its earnest money deposit and interest; provided, however, Purchaser may, at its option, waive any default by Seller and proceed with the purchase of the Property.

11.2 By Purchaser. In the event of any default by Purchaser that is not remedied prior to Closing, Seller's sole and exclusive remedy shall be to terminate the escrow and Purchaser's right to purchase the Property and be paid by Escrow Agent that portion of the earnest money deposited by Purchaser hereunder and interest thereon which, collectively, do not exceed five percent (5%) of the Purchase Price as liquidated damages.

11.3 General. If a party (the "Defaulting Party") fails or refuses to perform its obligations under this Agreement or if the sale and purchase of the Property contemplated by this Agreement is not consummated on account of the Defaulting Party's default hereunder, then Escrow Agent shall (after receiving notice from the non-Defaulting Party and then giving the Defaulting Party ten (10) days' prior written notice) refund any monies deposited by the non-defaulting party, and return any documents deposited with the Escrow Agent by the non-Defaulting Party, on demand, without prejudice to any other legal rights or remedies of the non-Defaulting Party hereunder. In the event Seller is the Defaulting Party hereunder, Purchaser shall have, in addition to any right or remedy provided hereunder, the right to seek specific performance of this Agreement, or other equitable remedies against Seller in the event that Seller wrongfully fails or refuses to perform any covenant or agreement of Seller hereunder.

11.4 Termination. If this Agreement is terminated, under Section 7 herein or otherwise, neither party hereto shall have any further rights or obligations under this Agreement whatsoever, except for such rights and obligations that, by the express terms hereof, inure to the benefit of either party upon the default of the other party or survive any termination of the Agreement prior to Closing. The Escrow Agent shall return the earnest money to the Purchaser upon termination by either party, except as provided for in Section 11.2 above.

12. Condemnation or Destruction.

12.1 Condemnation. Seller hereby represents and warrants that Seller has no knowledge of any action or proceeding pending or instituted for condemnation or other taking of all or any part of the Property by friendly acquisition or statutory proceeding by any governmental entity other than the City of Gig Harbor, Washington. Seller agrees to give Purchaser immediate written notice of such actions or proceedings that may result in the taking of all or a portion of the Property. If, prior to Closing, all or any part of the Property is subject to a bona fide threat or is taken by eminent domain or condemnation, or sale in lieu thereof, then Purchaser, by notice to Seller given within twenty (20) calendar days of Purchaser's receiving actual notice of such threat, condemnation or taking by any governmental entity other than the City of Gig Harbor, Washington, may elect to terminate this Agreement. In the event Purchaser continues or is obligated to continue this Agreement, Seller shall at Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award. During the term of this Agreement, Seller shall not stipulate or otherwise agree to any condemnation award without the prior written consent of Purchaser.

12.2 Damage or Destruction. Prior to Closing, the risk of loss of or damage to the Property by reason of any insured or uninsured casualty shall be borne by Seller.

13. Indemnification; Remediation.

13.1 Seller's Indemnification. Seller shall indemnify and defend Purchaser (including its elected officials, officers, managers, employees and agents) and hold it harmless from and against any claim, loss, liability and expense, including attorneys' fees and court costs (collectively "Claims") incurred by Purchaser on account of (a) Claims by persons or entities other than Purchaser arising out of or in connection with the ownership, operation or maintenance of the Property by the Seller, or any fact, circumstance or event which occurred prior to the Closing Date, excluding remediation obligations within the Property boundaries based upon the release or existence of Hazardous Substances on the Property on or before the date of Closing; and (b) Claims resulting from or arising directly or indirectly, out of the breach of any representation, warranty, covenant or agreement of Seller contained in this Agreement to the extent caused by such breach.

13.2 **Purchaser's Indemnity.** Purchaser shall indemnify and defend Seller (including its officers, officials, employees and agents) and hold it harmless from and against any Claims incurred by Seller on account of Claims resulting from or arising directly or indirectly out of the breach of any representation, warranty, covenant or agreement of Purchaser contained in this Agreement to the extent caused by such breach.

13.3 **Purchaser's Remediation Obligations.** The Purchaser agrees that, after Closing, it will assume the obligation to take such actions as Purchaser deems reasonable and necessary to remediate contamination within the Property boundaries consistent with the intended use of the Property and as required by applicable law, including the Washington State Model Toxics Control Act. The remediation will be conducted under the direction and supervision of a qualified environmental consultant. Purchaser will not seek to recover costs of responding to or remediating contamination within the Property boundaries existing as of the date of Closing from Seller or the Peninsula Group, a Washington Partnership, from whom Seller purchased the Property.

14. **Assignment.** Neither party shall be entitled to assign its right, title and interest herein to any third party without the written consent of the other party to this Agreement. Any approved assignee shall expressly assume all of the assigning party's duties, obligations, and liabilities hereunder but shall not release the assigning party from its liability under this Agreement.

15. **Representations Regarding Brokers.** Seller and Purchaser each represent and warrant to the other that neither has employed, retained or consulted any broker, agent or finder in carrying on the negotiations in connection with this Agreement or the purchase and sale referred to herein.

16. **Notices.** All notices, demands, and any and all other communications which may be or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand, sent by fax, sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service to the addresses set out below or at such other addresses as specified by written notice and delivered in accordance herewith. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand, fax or courier delivery or on the date of deposit in the U.S. Mail as provided above. However, the time period within which a response to any notice or request must be given, if any, shall commence to run from the date of actual receipt of such notice, request, or other communication by the addressee thereof.

SELLER: Harbor Cove Group
c/o Barry Margolese
108 S. Jackson, #300
Seattle, WA 98104

PURCHASER: The City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
Attn: John Vodopich, Community Development Director
Phone (253) 851-6170
Fax: (253) 853-7597

With a copy to: Carol A. Morris, City Attorney
Law Office of Carol A. Morris, P.C.
P.O. Box 948
Seabeck, WA 98380
Phone: (360) 830-0328
Fax: (360) 850-1099

17. Miscellaneous.

17.1 Governing Law and Construction. This Agreement shall be construed and interpreted under the laws of the State of Washington. The titles of sections and subsections herein have been inserted as a matter of convenience or reference only, and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

17.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

17.3 Rights, Powers and Privileges. Except as expressly provided under the terms of this Agreement, all rights, powers and privileges conferred hereunder upon the parties shall be cumulative but not restrictive of those given by law.

17.4 Waiver. No failure of a party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

17.5 Time. Time is of the essence in complying with the terms, conditions and agreements of this Agreement.

17.6 Entire Agreement. This Agreement contains the entire Agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force and effect.

17.7 Survival. Each of the covenants, agreements, representations and warranties herein shall survive the Closing and shall not merge at Closing with any deed, bill of sale or other document of transfer.

17.8 Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns.

17.9 Time Periods. If the Time period by which any right, option or election provided under this Agreement must be exercised or by which any acts or payments required hereunder must be performed or paid, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

17.10 Severability. If a court of competent jurisdiction invalidates a portion of this Agreement, such invalidity shall not affect the remainder.

17.11 Modifications. Any amendment to this Agreement shall not be binding upon any of the parties to this Agreement unless such amendment is in writing, duly executed by each of the parties affected thereby.

17.12 Attorneys' Fees. If Purchaser or Seller institute suit concerning this Agreement, the prevailing party or parties is/are entitled to court costs and reasonable attorneys' fees. The venue of any suit shall be in Pierce County, Washington or the U.S. District Court for the Western District of Washington sitting in Tacoma, Washington.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives on the dates indicated below, to be effective as of the date and year first above written.

[Signature page follows]

PURCHASER:

CITY OF GIG HARBOR

By: Gretchen Wilbert
Gretchen Wilbert, Mayor

SELLER:

Eileen Tellefson and MarSan LLC, Tenants in Common

Eileen Tellefson
Eileen Tellefson, as her separate estate

MarSan LLC

By: Sandra Schaumburg
Sandra Schaumburg, Member

By: Marcia Johnson
Marcia Johnson, Member

ATTEST:

Molly M. Towslee
City Clerk, Molly Towslee

APPROVED AS TO FORM
SALTER JOYCE ZIKER, PLLC

Barry G. Ziker, Special Counsel

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Eileen Tellefson is the person who appeared before me, and said person acknowledged that she executed the within and forgoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Dated: 1/12/05



Jan Smith
Jan Smith
(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: Sumner, WA
My Commission expires: 11/21/05

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Sandra Schaumburg is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a member of MarSan LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/12/05



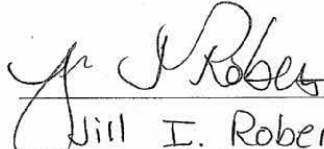
Jan Smith
Jan Smith
(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: Sumner, WA
My Commission expires: 11/21/05

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Marcia Johnson is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a member of MarSan LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1-14-05





Jill I. Roberts
(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: Gig Harbor

EXHIBIT 'A'

DESCRIPTION:

PARCEL A:

Beginning at an intersection with the North Boundary Line of the 60 foot right-of-way of the Burnham-Hunt County Road, and a line which is North 1 degrees 13 minutes East, being parallel to the Section line common to Section 5 and 6, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington, and East therefrom 212.37 feet, measured at right angle thereto;

Thence on a line North 1 degrees 13 minutes East, 209 feet, more or less, to the intersection with the Government meander line on the South side of Gig Harbor;

Thence South and East, following said Government meander line to its intersection with a line which is South 1 degrees 13 minutes West and parallel to the aforesaid section line common to Section 5 and 6, Township 21 North, Range 2 East of the W.M., and East therefrom 287.37 feet, measured at right angle thereto;

Thence South 1 degrees 13 minutes West on said line 163 feet, more or less, to its intersection with the North Boundary Line of the aforesaid Burnham-Hunt County Road;

Thence West and South 79 feet, more or less, along the North Boundary line of said County Road to the point of beginning.

Also the following described Tidelands of the Second Class, being adjacent to and abutting upon the aforescribed upland property:

Beginning at the intersection of the West Boundary Line of the aforescribed upland property and the said Government Meander Line, which point is East 212.37 feet from the section line common to Section 5 and 6, Township 21 North, Range 2 East of the W.M., and measured at right angle thereto;

Thence on a line North 19 degrees 49 minutes East over Tidelands of the Second Class to an intersection with the irregular line, indicated by the extreme low tide;

Thence South and East following said irregular line of extreme low tide, to intersect a line which bears North 19 degrees 49 minutes East from the Northeast corner of the above described tract of upland;

Thence on said parallel line South 19 degrees 49 minutes West to its intersection with the aforesaid Government meander line;

Thence West and North along the said Government meander line to the place of beginning.

Legal Continued:

Legal Continued:

Beginning at the stone monument which is at the intersection of the section line common to Section 5 and 6, Township 21 North, Range 2 East of the W.M., with its Government meander line on the South side of Gig Harbor, Pierce County, Washington;

Thence South 1 degrees 13 minutes West on the said section line common to Section 5 and 6 aforesaid, 572.82 feet;

Thence on a line North 50 degrees 55 minutes East 58 feet, more or less, to an intersection with the East Boundary Line of the right-of-way of the 60 foot Burnham-Hunt County Road, the true point of beginning;

Thence continuing on the said line, which is North 50 degrees 55 minutes East to the point 220.55 feet, measured from its intersection with the aforesaid section line common to said Section 5 and 6;

Thence on a line North 19 degrees 49 minutes East 79 feet, more or less, to its intersection with the Government meander line of Gig Harbor;

Thence on the said Government meander line South 25 degrees East 42 feet, more or less, to an intersection with a line which is South 1 degrees 13 minutes West, which line is parallel to the aforesaid section line common to Sections 5 and 6, and the East 212.37 feet, measured at right angles thereto;

Thence South 1 degrees 13 minutes West on said line, 209 feet, more or less, to its intersection with the North boundary of the aforesaid Burnham-Hunt County Road;

Thence on a curve to the right, following the North boundary line of said Burnham-Hunt County Road, 193 feet, more or less, to the point of beginning.

Also the following described Tidelands of the Second Class being adjacent and abutting upon the aforescribed upland property:

Beginning at the stone monument which is at the intersection of the section line common to Section 5 and 6, Township 21 North, Range 2 East of the W.M., and the Government meander line on the South side of Gig Harbor, Pierce County, Washington.

Thence South 1 degrees 13 minutes West on said section line common to Section 5 and 6, aforesaid, 572.82 feet;

Thence on a line North 50 degrees 55 minutes East 220.55 feet;

Thence on a line North 19 degrees 49 minutes East 79 feet, more or less, to its intersection with the aforesaid Government meander line, the true place of beginning;

Thence continuing on said line North 19 degrees 49 minutes East over the Tidelands of the Second Class, to an intersection with an irregular line indicated by the extreme low tide;

Thence South and East following the irregular line of the extreme low tide to intersect a line which bears North 19 degrees 49 minutes East from the Northeast corner of the above described tract of upland;

Thence on said parallel line South 19 degrees 49 minutes West to its intersection with the aforesaid Government meander line North 25 degrees West 42 feet, more or less, to the point of beginning.

Legal Continued:

Legal Continued:

PARCEL B:

All that part of Lot 7, Section 5, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington, described as follows:

Beginning at a stone monument at the Northwest corner of said Lot 7;

Thence running South 1 degrees 13 minutes West along West line of said Lot, 351.47 feet to true point of beginning;

Thence continuing South 1 degrees 13 minutes West on said West line 221.35 feet to tract conveyed to John Dowar Lumber Company by Deed recorded in Book 521 of Deeds at Page 170, under Auditor's File No. 987817;

Thence North 50 degrees 55 minutes East 220.55 feet;

Thence North 19 degrees 49 minutes East 79 feet, more or less, to Government meander line of said Lot 7;

Thence on said Government meander line North 25 degrees West 125.5 feet, more or less, to a point North 54 degrees 48 minutes East of the true point of beginning;

Thence South 54 degrees 48 minutes West 174.98 feet, more or less, to the true point of beginning.

Together with tidelands of the second class abutting thereon, lying within the prolongation of the side lines of the above described tract and extending to line of mean low tide.

And together with all tidelands of the second class lying between the line of mean low tide and extreme low tide, lying in front thereof.

Except State Highway No. 14.

And except any portion lying South of said Highway.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

ABBREVIATED LEGAL:

5-21-2E, ARB 305-0

5-21-8E, ARB 307-4

AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Amendment") is entered into this ____ day of March, 2005, and amends that certain Purchase and Sale Agreement entered into on January 11, 2005 ("Agreement") by and between the City of Gig Harbor, a Washington municipal corporation ("Purchaser") and Eileen Tellefson and Marsan, LLC, tenants in common, d/b/a Harbor Cove Group, whose address is 108 South Jackson, Suite 300, Seattle, Washington, 98104 ("Seller"). Capitalized terms used in this Amendment and not defined herein shall have the meaning ascribed to them in the Agreement.

WHEREAS, Purchaser has undertaken environmental due diligence as contemplated by the Agreement, and such due diligence has confirmed that Hazardous Substances are present at and under the Property; and

WHEREAS, Purchaser and Seller wish to resolve liability for additional investigation and remedial action associated with such Hazardous Substances on the terms and conditions set forth below;

NOW THEREFORE, for the consideration set forth in the Agreement, the sum of Ten Dollars (\$10.00), and for other good and valuable consideration, the parties agree as follows:

1. Purchase Price. Section 2.1 of the Agreement is deleted in its entirety and replaced with the following provision:

2.1 Purchase Price. The total purchase price for the Property (the "Purchase Price") shall be Three Million Seven Hundred Fifty Thousand Dollars and No Cents (\$3,750,000.00), payable at Closing, which includes the earnest money paid to the Escrow Agent after execution of this Agreement by both parties. The earnest money shall be Fifty Thousand Dollars and No Cents (\$50,000.00) which shall be paid to and held by Escrow Agent until Closing or earlier termination of this Agreement, or as otherwise provided herein.

2. Closing Date. Closing will occur on or before March 19, 2005, without any increase of the Purchase Price (as amended by Section 1 above) as originally contemplated by the Agreement. Notwithstanding the foregoing, Purchaser agrees to use its reasonable best efforts to close the purchase and sale transaction as soon as practicable after executing this Amendment and securing all necessary Gig Harbor City Council and other lawfully required approvals.

3. Investigation and Remediation of Property.

3.1 As more particularly set forth in this Amendment, the parties have agreed that a portion of the Purchase Price will be paid into a special interest-bearing escrow account ("Remediation Account") that will be used exclusively for costs associated with

further investigation and cleanup of the Property.

3.2 After Closing, Purchaser and Seller will notify the State of Washington Department of Ecology ("Ecology") that title to the Property has been transferred to Purchaser, and that Purchaser, in cooperation with Seller, intends to pursue the prompt investigation and cleanup of the Property. Investigation, cleanup, reporting and monitoring will be coordinated with Ecology through the Voluntary Cleanup Program ("VCP") and diligently pursued until a no further action letter ("NFA") from Ecology is obtained for the Property, including soil, groundwater and sediments. Purchaser agrees that the NFA may be conditioned upon reasonable restrictions to permit an efficient and cost effective remediation, recognizing the contemplated use as a boatyard and public park, and for related historical, cultural, educational, and recreational purposes. Such restrictions may be recorded in the form of a restrictive covenant on the Property and, if applicable, may include but are not necessarily limited to: (i) notice that Remedial Action (as defined below) has been conducted on the Property and residual contamination remains in place; (ii) restricting the use of the Property to a public park, with the exception of that portion of the Property operated as a boatyard, which portion may be limited to use as a boatyard or like facility including use of the marine railway; (iii) prohibiting any activity on the Property that may result in the release or exposure to the environment of the contamination that was contained as part of the remedial action, or create a new exposure pathway, or otherwise interfere with the integrity of the Remedial Action, and (iv) restrictions on the use of groundwater to exclude any beneficial use as drinking water. Remedial Action at the Property shall be conducted so as to allow the reconstruction of the dock and marine railway in the event the dock and/or marine railway is partially or completely demolished in connection with such Remedial Action. Notwithstanding the foregoing, Seller shall not be responsible for any costs required to bring boatyard operations into compliance with best management practices or other regulatory requirements that do not constitute Remedial Action. Seller and Purchaser agree to use their reasonable best efforts to secure the NFA determination as soon as practicable.

3.3 Purchaser will retain a principal environmental consultant for all investigation, remediation and related activities at the Property. The Parties shall meet and confer in good faith to discuss the selection of such principal environmental consultant for a period not to exceed thirty (30) days from the date of Closing. Purchaser shall make the final selection of the principal consultant and all other consultants in its discretion. Seller acknowledges that (i) Purchaser is a municipal corporation subject to laws and regulations relating to hiring of contractors to perform services on behalf of Purchaser, (ii) retention of certain consultants or contractors may be subject to such laws and regulations, and (iii) the City shall have the final decision and right to retain any qualified consultant or contractor as required by such statutes or regulations.

3.4 The parties will cooperate in all phases of investigating and remediating the Property. Purchaser will take the lead in all negotiations with Ecology and will make the final decisions in its discretion (subject to the objective of securing an NFA as contemplated by Section 3.2 above) with regard to the content of all submittals to

Ecology; provided, however, that Seller will have the right to review and comment on all draft investigation and remediation plans, reports, and other submittals to Ecology, and shall have the right to participate in all meetings and telephone conferences with Ecology.

4. Remediation Account.

4.1 The parties agree that at the Closing, the sum of Seven Hundred Fifty Thousand and No Dollars (\$750,000) out of the Purchase Price shall be placed in a special escrow account ("Remediation Account") to be administered by Escrow Agent or other person agreed to by the parties ("Remediation Account Administrator") and to be used exclusively for the payment of Response Costs. "Response Costs" shall include fees, costs, and expenses incurred in connection with the development, approval, implementation, and reporting of any Remedial Action (which, for the purposes of this Amendment, is as defined in RCW 70.105D.020(21) and including applicable Sediment Management Standards) with respect to soil, sediments, and groundwater at and under the Property, all as designed to meet the objective of securing an NFA as described in Section 3.2 above. Attorneys' fees incurred by either party shall be paid for by such party and shall not be considered Response Costs or be paid out of the Remediation Account.

4.2 The fees charged by the Remediation Account Administrator shall be paid out of the Remediation Fund; provided, however, that Purchaser will not charge a fee in the event the parties agree that an employee of Purchaser shall act as the Remediation Account Administrator. If a third party is used as the Remediation Account Administrator, the parties will agree upon escrow instructions or a like document that provides guidance and protection to the Remediation Account Administrator.

4.3 Any consultant or contractor retained in connection with Remedial Action shall submit a scope of work prior to commencement of any work, which scope of work shall be finally approved by the City in its discretion (subject to the objective of securing an NFA as contemplated by Section 3.2 above). Seller shall have the right to review and comment on the scope of work, but may object to the scope of work only to the extent that it is inconsistent with the objective of securing an NFA determination for the Property as set forth in Section 3.2 above or inconsistent with input from Ecology on work necessary to secure such NFA.

4.4 Upon receipt of invoices from any consultant or contractor retained in connection with Remedial Action, Purchaser will deliver a copy to Seller and to the Remediation Account Administrator with instructions to pay such invoice 10 days after delivery, if Seller does not object to such payment in writing or e-mail received by the Remediation Account Administrator within the 10 day period. The only ground for objection shall be that the work invoiced was not in accordance with the scope of work approved in accordance with section 4.3 herein. In the event of such objection, the parties will meet and confer, and use their reasonable best efforts to negotiate with the applicable consultant to reduce the charges that are the subject of Seller's objection; provided, however, that Purchaser shall have the final authority to pay the invoice and

resolve the objection with respect to such consultant in its discretion.

4.5 In the event that funds remain in the Remediation Account after payment of all Response Costs necessary to secure the NFA for the Property, the Remediation Account Administrator shall pay to Seller all principal and interest remaining in the Remediation Account.

5. Alternative Funding Source. Purchaser will use its reasonable best efforts and cooperate with Seller to obtain grants and state and federal funding for Remedial Actions at the Property ("Alternative Funding"). Seller is actively investigating and pursuing opportunities for Alternative Funding. If Seller identifies such opportunities, Purchaser will initiate preparation of applications for Alternative Funding and Purchaser shall take such additional steps as may be lawful, reasonable, and necessary to apply for and obtain said Alternative Funding. Purchaser will deposit the grant funds actually received in the Remediation Account (or other account with like purpose if such funds must be segregated) to be applied to payment of Response Costs so long as such funds can lawfully be used for such purpose. Failure to secure such funding will not constitute a breach or default under this Amendment or the Agreement.

6. Additional Response Costs. If Response Costs exceed the funds available in the Remediation Account and any additional funding secured by Purchaser (as described in Section 5 above), then the Seller agrees that it will be responsible for all Response Costs in excess of such amounts until an NFA as contemplated by Section 3.2 above is issued by Ecology. Within fourteen (14) days of the date the balance in the Remediation Account becomes less than One Hundred Fifty Thousand Dollars (\$150,000), the parties will meet and confer regarding the likely costs to complete Remedial Action necessary to obtain the NFA, and if additional funds in excess of the Remediation Account balance are likely necessary to complete such Remedial Action, Sellers agree to place the estimated funding requirements in the Remediation Account. The parties further agree to meet and confer, and Sellers agree to provide additional funding as contemplated by the preceding sentence, if at any time thereafter it appears reasonably likely that the funds in the Remediation Account will be exhausted prior to obtaining the NFA. Seller's failure to provide funding as required by this Section 6 within thirty (30) days of written notice from Purchaser is a material breach of the Agreement. Each of the Sellers is jointly and severally liable for such additional Response Costs beyond the amounts available through the Remediation Account and additional funding, if any, secured by Purchaser. Each of the Sellers agrees to retain sufficient liquid assets to fund reasonably anticipated Response Costs in excess of the amounts available through the Remediation Account.

7. Effect of Amendment. Except to the extent expressly amended by this Amendment, the terms of the Agreement shall remain in full force and effect. Notwithstanding the foregoing, in the event of a conflict between any provision of the Agreement and this Amendment, the provisions of this Amendment shall control.

8. Survival. The terms of this Amendment shall survive the Closing and

continue to be binding upon the parties after the closing date.

9. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Purchase and Sale Agreement to be executed by their respective duly authorized representatives, to be effective as of the date and year first above written.

PURCHASER:

CITY OF GIG HARBOR

By: Gretchen Wilbert
Gretchen Wilbert, Mayor

SELLER:

Eileen Tellefson and MarSan LLC, Tenants in Common

Eileen Tellefson
Eileen Tellefson, as her separate estate

MarSan LLC

By: Sandra Schaumburg
Sandra Schaumburg, Member

By: _____
Marcia Johnson, Member

ATTEST:

Molly M Towslee
City Clerk, Molly Towslee

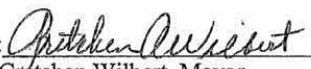
**APPROVED AS TO FORM
SALTER JOYCE ZIKER, PLLC**

Barry G. Ziker, Special Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Purchase and Sale Agreement to be executed by their respective duly authorized representatives, to be effective as of the date and year first above written.

PURCHASER:

CITY OF GIG HARBOR

By: 
Gretchen Wilbert, Mayor


SELLER:

Eileen Tellefson and MarSan LLC, Tenants in Common

Eileen Tellefson, as her separate estate

MarSan LLC

By: Sandra Schaumburg, Member

By: 
Marcia Johnson, Member

ATTEST:


City Clerk, Molly Towslee

APPROVED AS TO FORM
SALTER JOYCE ZIKER, PLLC

Barry G. Ziker, Special Counsel