

**PORT OF EVERETT/BARGREEN FAMILY
SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Agreement”) is made and entered into this 21st day of SEPT., 2020 by and between the Port of Everett, a port district organized under the laws of the State of Washington (the “Port”), on the one hand; and Howard J. Bargreen, Melinda L. Bargreen, Owen J. Bargreen, as his sole and separate interest, and Maren Bargreen Mullin as Trustee of the Maren Bargreen Mullin Revocable Trust (collectively “Bargreens”), on the other hand. The Port and the Bargreens may be referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

A. In 2017, the Parties entered into a settlement agreement (the “2017 Settlement Agreement”) concerning, among other things, issues related to the proposed modernization of the Port’s South Terminal.

B. At the time the parties entered into the 2017 Settlement Agreement, the Bargreens, individually or collectively, owned five parcels of land adjacent to the South Terminal, within the City of Everett, described in Exhibit A, hereto (the “Bargreen Properties”). The Bargreens, individually or collectively, still own the Bargreen Properties as of the Effective Date.

C. The 2017 Settlement Agreement provided, among a number of provisions, for the Port to purchase from the Bargreens four marine terminal impact easements applicable to the Bargreen Properties (the “2017 Marine Terminal Impact Easements”), and for the Parties to enter into an agreement ancillary to the easements (the “2017 Agreement Ancillary To Easement”).

D. The 2017 Settlement Agreement, the 2017 Marine Terminal Impact Easements, and the 2017 Agreement Ancillary to Easement were intended to be integrated documents and are referred to collectively herein as the “2017 Agreements.” The Parties desire to affirm the 2017 Agreements except as expressly amended herein.

E. At the time the 2017 Agreements were entered into, the Port had a tentative agreement with the Port of Seattle to receive two 100-foot gauge marine terminal gantry cranes. The Port of Seattle cranes that the Port was to acquire were painted bright safety orange. The Parties, in the 2017 Agreements, agreed that the cranes the Port was acquiring would be “painted

the equivalent of the Sherwin-Williams ‘Smoke Blue’ color that was selected by the Port Gardner Neighborhood” prior to becoming operational.

F. Originally, the Port had contemplated purchasing the cranes from the Port of Seattle. The Port ultimately obtained cranes from the Port of Los Angeles, resulting in significantly higher transportation costs to barge the two cranes from the Port of Los Angeles to the Port of Everett. The Port of Los Angeles cranes that the Port acquired were painted green, except the tallest portion above 200 feet in height, which was painted with bright orange and white safety striping.

G. Subsequent to the Parties entering into the 2017 Agreements, the Port became aware of Federal Aviation Administration (“FAA”) height and safety regulations requiring certain striping or flashing lights.

H. The Port’s contractors estimated the cost of painting the cranes the equivalent of the Sherwin-Williams ‘Smoke Blue’ color to be approximately \$3,000,000. The Port did not believe that the cost was justified for the benefit to be received when the Port’s analysis showed that the green color of the cranes was similar in hue to the Sherwin-Williams ‘Smoke Blue’ color.

I. In addition to the cost of painting, due to the negative impact of the FAA lighting requirements on adjacent neighborhoods, the Port contacted the Bargreens and indicated it would prefer not to paint the cranes the equivalent of Sherwin-Williams ‘Smoke Blue’ color specified in the 2017 Agreements.

J. The Bargreens felt the impact on their property and property rights were significant if the cranes were not painted the equivalent of the Sherwin-Williams ‘Smoke Blue’ color specified in the 2017 Agreements, particularly that portion painted bright orange and white safety striping.

K. The Parties had a *bona fide* dispute and participated in mediation to resolve that dispute. This Agreement is the result of the mediation and the Parties desire to resolve not only the current, pending dispute over the color of the paint on the new cranes, but some thirty (30) years of disputes that have arisen from time-to-time.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Mutual Representations.

1.1 Port Representation. The Port, by and through the signator to this Agreement, who is the Port's Speaking Agent for this provision of the Agreement and makes this representation in good faith to the best of her knowledge as of the Effective Date, is not aware of any material breach of the 2017 Agreements by the Port as of the Effective Date; provided, however, that this representation does not apply to any breach of any confidentiality provisions in the 2017 Agreements, including, without limitation, Paragraph 6(f) of the 2017 Settlement Agreement and Paragraph 6(f) of the 2017 Agreement Ancillary To Easement. The Port further represents that as of the Effective Date, it has not previously assigned any right, claim, or interest, in whole or in part, under or related to any of the 2017 Agreements.

1.2 Bargreen Representations. The Bargreens each, respectively, make this representation in good faith to the best of her or his knowledge as of the Effective Date, are not aware of any material breach of the 2017 Agreements by any of the Bargreens as of the Effective Date; provided, however, that this representation does not apply to any breach of any confidentiality provisions in the 2017 Agreements, including, without limitation, Paragraph 6(f) of the 2017 Settlement Agreement and Paragraph 6(f) of the 2017 Agreement Ancillary To Easement. The Bargreens further represent that as of the Effective Date, each, respectively, has not previously assigned any right, claim, or interest, in whole or in part, under or related to any of the 2017 Agreements.

2. Release of Claims.

2.1 Port Release of Claims and Covenant Not to Sue. The Port hereby forever, unconditionally, and irrevocably releases and discharges the Bargreens and their past, present, and future predecessors, successors, assigns, agents, contractors, and representatives (each a "Released Party") of and from any and all manner of action(s), cause(s) of action in law or in equity, and any and all suits, debts, liens, claims,

counterclaims, cross-claims, complaints, charges, demands, damages, liabilities, obligations, guaranties, warranties, violations, breaches, rights, losses, injuries, fees, costs, and expenses of any nature whatsoever accruing, arising, or existing on or before the Effective Date, whether now known or unknown, suspected or unsuspected, latent or patent, choate or inchoate, fixed or contingent, matured or unmatured, legal or equitable, express or implied, asserted or unasserted, including, without limitation, claims arising out of or related to the 2017 Agreements, claims arising under or related to breach of contract and breach of confidentiality (collectively the "Port Released Claims"). The Port covenants and agrees that it shall not directly or indirectly bring, commence, initiate institute, maintain, or prosecute any action, suit, or other proceeding against the Bargreens, the substance of which is the Port Released Claims, in whole or in part. The Parties acknowledge and agree that this release is intended to be broad and end 30 years of legal disputes between the Port of Everett and the Bargreens and that this release shall be interpreted and construed as broadly as possible consistent with that intent. Any claim or lawsuit filed by the Port containing some or all of the Port Release Claims shall be dismissed as to that portion that is in violation of this Release of Claims.

2.2 Bargreen Release of Claims and Covenant Not to Sue. Bargreens, collectively and individually, hereby forever, unconditionally, and irrevocably release and discharge the Port and its past, present, and future subsidiaries, parents, departments, divisions, affiliates, commissioners, directors, officers, managers, associates, predecessors, successors, assigns, agents, employees, contractors, representatives (each a "Released Party") of and from any and all manner of action(s), cause(s) of action in law or in equity, and any and all suits, debts, liens, claims, counterclaims, cross-claims, complaints, charges, demands, damages, liabilities, obligations, guaranties, warranties, violations, breaches, rights, losses, injuries, fees, costs, and expenses of any nature whatsoever accruing, arising, or existing on or before the Effective Date, whether now known or unknown, suspected or unsuspected, latent or patent, choate or inchoate, fixed or contingent, matured or unmatured, legal or equitable, express or implied, asserted or unasserted, including, without limitation, claims arising out of or related to the 2017 Agreements, claims otherwise related to painting or not painting the cranes, and claims arising under or related

to breach of contract, breach of confidentiality, or violation of any environmental review, State Environmental Policy Act, the Open Public Meetings Act, and/or the Public Records Act (collectively, the “Bargreen Released Claims”). Bargreens, collectively and individually, covenant and agree that each shall not directly or indirectly bring, commence, initiate, institute, maintain, or prosecute any action, suit, or other proceeding against the Port the substance of which is the Bargreen Released Claims, in whole or in part. The Parties acknowledge and agree that this release is intended to be broad and end 30 years of legal disputes between the Port of Everett and the Bargreens and that this release shall be interpreted and construed as broadly as possible consistent with that intent. Any claim or lawsuit filed by the Bargreens containing some or all of the Bargreen Released Claims shall be dismissed as to that portion that is in violation of this Release of Claims.

3. Payment of Settlement Funds. The Port of Everett will pay to the Bargreens the sum of \$590,000.00 (the “Settlement Funds”). One Half of the Settlement Funds will be paid according to the instructions provided by the Bargreens’ attorneys within ten (10) business days of the Effective Date of this Agreement. The Port shall pay the other half of the Settlement Funds, according to the instructions provided by the Bargreens’ attorneys, within two (2) business days of the recording of the four (4) Amended And Restated Marine Terminal Impact Easements And Agreements, which recording the Port shall effectuate as soon as practicable after the Effective Date and in any event no later than fourteen business days after the latter of the Effective Date. Prior to the Port making these payments, each of the Bargreens shall deliver to the Port a signed and valid IRS W-9 Form.

4. Amendment To 2017 Agreements.

4.1 The 2017 Agreements shall be amended to delete any requirement that any cranes be painted or be painted the equivalent of the Sherwin-Williams ‘Smoke Blue’ color or otherwise, including, without limitation, deleting Section 3(a) of the 2017 Settlement Agreement, deleting Section 3(a) of the 2017 Agreement Ancillary To Easement, and amendment of the four 2017 Marine Terminal Impact Easements to refer to this Agreement and deletion of this painting requirement. The Parties acknowledge and agree the amended

Agreement Ancillary To Easement will state that the Port will exercise its judgment, in its sole and absolute discretion, to comply with Federal Aviation Administration painting, lighting, and any other requirements related to the cranes and the Bargreens hereby forever, unconditionally, and irrevocably waive any and all objections to the Port's decisions in determining proper means and methods for FAA compliance.

4.2 None of the amendments required by the preceding Section 4.1 shall affect the remaining provisions of (a) the 2017 Settlement Agreement, (b) the 2017 Agreement Ancillary To Easement, or the (c) 2017 Marine Terminal Impact Easements; provided, however, the continued viability of the 2017 Agreements shall not reduce or affect in any way the scope of the Port Released Claims or the Bargreen Released Claims.

5. **Withdrawal of Public Records Requests.** The Bargreens and their attorneys shall and do hereby withdraw any and all pending Public Records Requests. The Bargreens and their attorneys acknowledge and agree that the Settlement Funds and the Bargreen Released Claims include, without limitation, the full and complete release of any public records requests, and any claims and/or liability associated therewith, that were initiated by or on behalf of the Bargreens, their attorneys, representatives, and agents.

6. **General Provisions.**

6.1 **Effective Date.** The Effective Date shall be the date of the last signature provided by the Parties on this Agreement, the Amended Ancillary Agreement To Easements and each of the four (4) Amended and Restated Marine Terminal Impact Easements and Agreements.

6.2 **Organization, Authorization.** Each Party represents and warrants to the other Parties that: (1) each Party has full and complete power, capacity, and authority to enter into this Agreement and to consummate all transactions and perform all obligations contemplated by this Agreement; (2) the execution of this Agreement has been duly authorized by all necessary corporate or other involved party action, if any, on the part of each Party; and (3) this Agreement constitutes a legal, valid, and binding obligation of the Parties, enforceable in accordance with its terms.

6.3 Future Discovery of Facts. Each Party acknowledges that he, she, or it may hereafter discover facts different from or in addition to those which the Parties now know or believe to be true with respect to the Port Released Claims and/or the Bargreen Released Claims. Nonetheless, each Party agrees that this Agreement shall be effective, and shall remain effective, in all respects notwithstanding such different or additional facts, or the discovery of the same.

6.4 No Oral Modification and/or Amendment. No amendment, modification, change, waiver, and/or alteration of the terms or provisions of this Agreement, whether in full or in part, shall be binding unless the same shall be in writing and duly executed by all Parties.

6.5 Voluntary and Informed Execution. The Parties acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice and that they have read this Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect. The Parties acknowledge that this Agreement is executed voluntarily by each Party, without any duress or undue influence.

6.6 Final and Binding Agreement. This Agreement, including, its terms, conditions, and obligations, shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, beneficiaries, successors, and assigns.

6.7 No Representation Regarding Tax Consequences. Each of the Parties acknowledges that no other Party, nor any of its representatives or attorneys, have made any promise, representation, or warranty, express or implied, regarding the tax consequences of this Agreement. The Bargreens also acknowledge and agree that the Port has no obligation to indemnify or defend the Bargreens in any tax proceedings or from any tax consequences that could result from payments made in accordance with this Agreement. It is agreed that the Bargreens are solely and completely responsible for any income tax, estate tax, or other tax payments that might later be contended, found or held to be applicable to any payments under this Agreement.

6.8 No Admission of Liability; Settlement Negotiations. This Agreement pertains to settlement of disputed claims and does not constitute an admission of the

existence or extent of any obligation, fault, wrongdoing, or liability by any Party. Neither this Agreement nor the fact that it has been entered into shall be construed or deemed as an admission of any obligation, fault, wrongdoing, or liability, nor shall anything contained within this Agreement be construed or deemed to be evidence of any admission of any obligation, fault, liability, or wrongdoing whatsoever. It is expressly understood that each Party denies any liability or wrongdoing.

6.9 Construction and Interpretation. The terms of this Agreement have been negotiated by the Parties and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted. The singular form of a word shall also mean and include to the plural (and vice versa), and the masculine gender shall also mean and include the feminine and gender neutral (and vice versa).

6.10 Governing Law, Jurisdiction and Venue. This Agreement and all matters arising out of or relating to this Agreement, for all purposes, shall be governed by and construed in accordance with the laws of the State of Washington, including its statutes of limitations, without regard to any conflicts of laws principles that would require the laws of any other jurisdiction to apply. Venue for any action or proceeding arising out of or related to this Agreement shall be Snohomish, County Superior Court, or, for any claims under federal law, the U.S. District Court for the Western District of Washington at Seattle. The Parties hereby unconditionally and irrevocably submit to the exclusive jurisdiction of these courts and waive the defense of inconvenient forum to the maintenance of any action or proceeding in such venue.

6.11 Severability. The provisions of this Agreement are severable. If a court of competent jurisdiction rules that any provision of this Agreement is invalid or unenforceable, such ruling shall not affect the validity and enforceability of the other provisions of the Agreement. Upon the issuance of such ruling, the Parties agree to promptly negotiate in good faith for mutual agreement and signature on a replacement for the invalidated provision as an amendment to this Agreement.

6.12 No Third-Party Beneficiaries. This Agreement and the terms and conditions set forth herein apply only to the Parties. There are no intended or incidental third-party beneficiaries to this Agreement except heirs, trustees, beneficiaries, successors, and/or assigns.

6.13 Headings and Captions. The headings and captions inserted into this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

6.14 Entire Agreement. This Agreement, including any related agreements or attached Exhibits, constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties with respect to the express subject matter herein, and the terms of the Agreement are contractual and not merely recitals. The Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

6.15 Signatures; Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All facsimile and/or electronic signatures shall be deemed the equivalent of an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BARGREENS

H. Bargreen
Howard J. Bargreen, individually
and his marital community

Date: 9-22-2020

Melinda L. Bargreen

Melinda L. Bargreen, individually
and her marital community

Date: 9-22-2020

Owen J. Bargreen
Owen J. Bargreen, as his sole and separate interest

Date: 9-20-2020

PORT OF EVERETT

Lisa Lefebber

By: Lisa Lefebber

Its: CEO/Executive Director

Date: 10/19/2020

Maren Bargreen Mullin

Maren Bargreen Mullin as Trustee
of the Maren Bargreen Mullin Revocable Trust
Date: 9-21-20

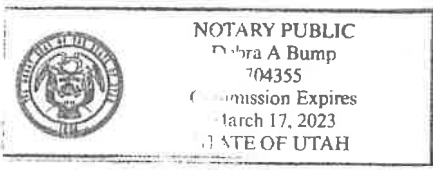
State of Utah
County of Summit

On the 21 day of September, 2020
personally appeared before me,

Maren Bargreen Mullin

signer(s) of the above instrument,
who duly acknowledged to me that
he/she/they executed the same.

Debra A Bump
Notary Public



**EXHIBIT A
TO
PORT OF EVERETT/BARGREEN FAMILY
SETTLEMENT AGREEMENT**

LEGAL DESCRIPTION OF BARGREEN PROPERTIES

Tax Parcel: 29053000304800:

Parcel "Segregation by Snohomish County Superior Court Cause No. 88-2-00010-2" contained in Record Map of Boundary Line Adjustment recorded under Auditor's File No. 9207205001, records of Snohomish County, Washington, being a portion of Government Lot 3 of Section 30, Township 29 North, Range 5 East of the Willamette Meridian.

Situate in the County of Snohomish, State of Washington.

Tax Parcel: 29053000305300

Parcel 1 of Record Map of Boundary Line Adjustment recorded under Auditor's File No. 9207205001, records of Snohomish County, Washington, being a portion of Government Lot 3 of Section 30, Township 29 North, Range 5 East of the Willamette Meridian.

Situate in the County of Snohomish, State of Washington.

Tax Parcel 29053000301400:

Parcel 2 of Record Map of Boundary Line Adjustment recorded under Auditor's File No. 9207205001, records of Snohomish County, Washington, being a portion of Government Lot 3 of Section 30, Township 29 North, Range 5 East of the Willamette Meridian.

Situate in the County of Snohomish, State of Washington.

Tax Parcel 29053000301500:

Parcel 3 of Record Map of Boundary Line Adjustment recorded under Auditor's File No. 9207205001, records of Snohomish County, Washington, being a portion of Government Lot 3 of Section 30, Township 29 North, Range 5 East of the Willamette Meridian.

Situate in the County of Snohomish, State of Washington.

Tax Parcel 29053000301700:

BEGINNING AT A POINT 146.22 FEET SOUTH AND 694.93 FEET WEST OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 29 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN;
THENCE WEST 152.92 FEET;
THENCE NORTH 180.90 FEET;
THENCE NORTH 2°22'00" EAST 91.98 FEET;
THENCE SOUTH 56°12'00" EAST 132.26 FEET;
THENCE SOUTH 25°22'00" EAST 91.63 FEET;
THENCE SOUTH 114.83 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.