

FINAL WESLEY HOMES SETTLEMENT
DOCUMENTS

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Tab A:	Fully Executed Settlement Agreement dated March 26, 2022
Tab B:	Signed Amended and Restated Avigation Easement dated April 11, 2022
Tab C:	Amended and Restated Avigation Easement (showing recording with King County on April 21, 2022)

TAB A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (the “Agreement”) is dated as of the 26th day of March, 2022. The parties agree as follows:

1. Parties. The parties to this Agreement are as follows:

(a) Wesley Homes Des Moines, LLC, a Washington limited liability company, (“WHDM LLC”);

(b) Wesley Homes Corporation, a Washington nonprofit corporation, which is the sole Member and Manager of WHDM LLC (“WH Corporation”), and

(c) The Port of Seattle, a Washington municipal corporation.

2. Background & Purpose of this Agreement.

(a) Prior Settlements. Wesley and other capitalized terms are defined in Section 3 below. Wesley owns the Premises, consisting of 42 acres of real property in Des Moines, Washington, where it operates a continuing care retirement facility. Wesley has filed two prior lawsuits against the Port, one in the 1970s and another in the 1990s, each asserting that aircraft and other operations at the Airport had taken or damaged and decreased the value of some or all of the Premises. The Port defended those lawsuits and resolved them through negotiated settlements with Wesley without admitting liability or fault.

(b) Current Claim. Wesley claims that operations at the Airport after the opening of the Third Runway have taken or damaged and decreased the value of the Premises. The Port denies these assertions and contends that its operations are within the rights granted in the Original Easement that Wesley conveyed to the Port under the 2002 Settlement Agreement.

(c) Tolling Agreement & Information Exchange. After Wesley asserted the current claim, Wesley and the Port entered into the Tolling Agreement to facilitate settlement negotiations and avoid unnecessary litigation. As part of the settlement discussions, the parties informally exchanged information about valuation of the Premises and noise exposure at the Premises from operations at the Airport. Representatives of Wesley and the Port and the Port’s valuation consultants also conducted site visits of the Premises and its facilities and improvements.

(d) Mediation & Settlement. In August 2021 and in March 2022, the parties conducted mediation sessions before the Hon. Linda Lau, a retired King County Superior Court and Court of Appeals judge and mediator with extensive experience on this type of claim. At the end of the March 16, 2022 mediation session, authorized representatives of the parties signed a CR 2A Stipulation of Settlement stating the material terms of a settlement, subject to drafting and signing a definitive settlement agreement and obtaining the approval of both Wesley’s Board of Directors and the Port of Seattle Commission. No lawsuit has been filed regarding the current claim.

(e) Final Agreement. This Agreement supersedes the CR 2A Stipulation of Settlement and is intended to resolve all claims, counterclaims, and controversies between Wesley and the Port that arise out of or relate to Wesley's current claim.

3. Definitions. As used in this Agreement, the following capitalized terms have the following meanings. Other capitalized terms have the meanings assigned to them in other sections of this Agreement.

(a) "Airport" means Seattle-Tacoma International Airport, which is owned and operated by the Port as proprietor.

(b) "Amended Avigation Easement" means the Amended and Restated Avigation Easement conveyed by Wesley to the Port pursuant to this Agreement and attached to this Agreement as Exhibit A.

(c) "DNL" means the annual-average daily noise exposure from aircraft operations using the metric adopted by the Federal Aviation Administration ("FAA") known as day-night level as defined in the regulations at 14 C.F.R. Part 150 as such regulations are in effect as of March 26, 2022.

(d) "FAA" means the Federal Aviation Administration.

(e) "Original Easement" means the Avigation Easement conveyed by Wesley to the Port pursuant to the Prior Settlement Agreement. The Original Easement is dated April 15, 2002 and is recorded with the King County Recorder's office at Recording No. 20030110000170. A conformed copy of the Original Easement is attached to this Agreement as Exhibit B.

(f) "Port" means the Port of Seattle.

(g) "Premises" means the real property owned by Wesley and legally described in the Amended Avigation Agreement.

(h) "Prior Lawsuit" means the action captioned *Wesley Homes v. Port of Seattle*, King County Superior Court, Cause No. 99-2-52920-1 KNT.

(i) "2002 Settlement Agreement" means the agreement between Wesley and the Port dated April 15, 2002, under which the Prior Lawsuit was settled, resolved, and dismissed. A copy of the Prior Settlement Agreement is attached to this Agreement as Exhibit C.

(j) "Tolling Agreement" means the Tolling Agreement between Wesley and the Port originally dated October 18, 2018, and its subsequent extensions, which expire on April 15, 2022. A copy of the Tolling Agreement and the extensions are attached as Exhibit D.

(k) “Wesley” means WHDM LLC and WH Corporation, both individually and collectively.

4. Reimbursement. The Port will reimburse Wesley for reasonable attorney fees and expert fees that Wesley has incurred on this matter since October 2018 up to a combined total of \$250,000.00 (the “Reimbursement Cap”). Wesley will provide the Port with documentation establishing the total amount of fees and costs claimed, including the hourly rates and hours billed by its counsel and experts, no later than June 1, 2022. The Port will have 45 days from receipt of this information from Wesley to review, approve, or reject the claimed amount or any portion thereof. The Port agrees that approval will not be unreasonably withheld, nor will the Port reject the claim without reasonable grounds. If the Port rejects all or portion of the claim, the Parties shall first attempt to resolve the dispute through direct negotiations by counsel. If disputes about the amount to be reimbursed within the Reimbursement Cap cannot be settled among the parties within 30 days after the Port provides its position, the claim will be resolved by the Hon. Linda Lau acting as an arbitrator with final and binding decision-making authority. The Port will pay Wesley the reimbursement amount determined under this section with 45 days after all disputes about the amount are finally resolved. Except for the reimbursement amount determined under this section, Wesley and the Port will each bear their own attorney fees, expert witness and consultant fees, mediator and arbitrator fees, and other costs and disbursements incurred in connection with this claim.

5. Seeking Part 150 Funding for Noise Mitigation at Terrace Building. One structure at the Premises is a multi-story apartment complex constructed in or about 1961 that is generally known as the Terrace Building. The parties acknowledge and agree that the Terrace Building currently lies outside the Noise Remedy Boundary for the Port’s FAA-approved Noise Compatibility Program and that the Terrace Building is therefore not currently eligible to participate in the Port’s Noise Remedy Program. Wesley and the Port agree that they will work cooperatively and exercise good faith reasonable efforts to obtain funding under 14 C.F.R. Part 150 to install a full sound insulation package and/or continuous positive ventilation in eligible Terrace Building units, or the entire building, as determined by FAA. Wesley acknowledges that the Port’s participation in the Part 150 process is entirely voluntary and that airport sponsors (including the Port) are required to follow the procedures specified by the FAA. To satisfy this section, the parties will take the following steps.

(a) Conduct Initial Voluntary Acoustical Testing at Port’s Expense. Not later than six months after the parties approve this Agreement, the Port will conduct an initial round of acoustical testing and inspections for the purposes of confirming current interior aircraft noise exposure levels at the Terrace Building. Wesley will provide access to the Premises and the Terrace Building to conduct the testing. This testing will involve the use of an artificial noise source (loudspeaker) and other methods specified in the Port’s FAA-approved acoustical testing procedures attached as Exhibit E. The Port will conduct this testing under those procedures using the Port’s usual vendors, and at the Port’s expense. Wesley’s consultants will have a reasonable opportunity to review the procedures and observe the testing. This testing will be done prior to and outside of the Part 150 study update process discussed below.

(b) Part 150 Study Update. Before entering into this Agreement, the Port had decided to procure a vendor to conduct an update to the Port's most recent Part 150 study, which was approved by the FAA in 2014. The vendor selection process is expected to start in late 2022, and the Port will exercise reasonable efforts to have the vendor selected by the end of Q2 2023. The Port will commit operating budget funds in FY 2023 for commencing the Part 150 update, which is expected to take multiple years.

(c) Noise Compatibility Measure. Once the Port has completed the upcoming Part 150 study update and the Port's Noise Compatibility Program has been approved by the FAA, and if the Terrace Building falls within the 65 DNL contour of an FAA-accepted Noise Exposure Map from that upcoming update, the Port will include and exercise reasonable efforts to obtain the FAA's approval of a Noise Compatibility Program measure that would authorize installation of a full sound insulation package and/or continuous positive ventilation in eligible Terrace Building units or the entire building.

(d) Funding Request. If the FAA approves the Noise Compatibility Program measure described in subsection (c) above, the Port will develop and submit to the FAA a funding request for a full sound insulation package and/or continuous positive ventilation in eligible Terrace Building units using FAA's requirements regarding eligibility, minimum noise level reduction, acoustical design, noise measurement equipment and testing methodology, and scope. Wesley will provide information about and further access to the Terrace Building as needed to support the funding request. The Port will consider Wesley's input into the design, but the parties agree that the design must comply with FAA's standards and requirements and that the Port will have final approval authority over any funding request and design that is submitted to the FAA. The Port's sole obligation to provide funding for installing the approved measure, if any, will be its local contribution obligation pursuant to 14 C.F.R. Part 150 as set by the FAA.

(e) No Guaranteed Outcomes. Wesley acknowledges that the Port's ability to successfully complete a Part 150 update, whether the new Noise Remedy Boundary from such an update will include the Terrace Building, and whether FAA will approve a Noise Compatibility Program measure or approve a funding request for a noise insulation or ventilation system in the Terrace Building are all uncertain and outside the Port's control. Wesley also acknowledges that the Part 150 process includes an extensive and expensive public participation process and that this Agreement does not create an obligation for the Port to complete a Part 150 study update at any specific time or that the Part 150 study update will include any pre-determined results.

6. Amended and Restated Avigation Easement. Contemporaneously with signing this Agreement, Wesley will execute and deliver to the Port, and the Port will immediately record, the Amended Avigation Easement, which is intended to clarify the Original Easement. The Port will bear all costs of recording the Amended Avigation Easement and will provide a conformed copy of the recorded document to Wesley.

(a) The Port will provide Mr. Alverson's methodology, including the sound propagation used in modeling, and the study results to Wesley's consultant so that Wesley's consultant may confirm that the 1989 DNL values in the Amended Avigation Easement were prepared using the FAA's required AEDT noise modeling program and FAA's procedures.

Wesley, Wesley's counsel, and Wesley's consultant agree to keep any materials provided under this paragraph strictly confidential and not disclose them to anyone other than personnel necessary to conduct this review, to use the materials solely for the purpose described above, to return or destroy those materials and any copies in any format whatsoever upon completion of that review, and to certify to the Port that the materials have been returned or destroyed within 15 days after the review is completed and in any event not later than 45 days after they are provided.

(b) Disputes about whether the Easement Level specified in the Amended Avigation Easement has been exceeded, whether any damages are recoverable, and the amount of such damages, if any, will be resolved exclusively through the dispute resolution process described in this subsection. The parties must first mediate any dispute they cannot resolve through direct negotiations. Judge Linda Lau shall serve as the mediator. If she is unable or unwilling to serve, the parties shall agree upon a mediator with a strong preference for a mediator who is a retired judge. If mediation is not successful, the dispute will be decided in confidential and private binding arbitration before one retired Washington state court judge selected by the parties. The Presiding Judge of the King County Superior Court in Seattle will appoint a mediator and/or an arbitrator if the parties cannot agree on one. The award in any such arbitration shall be limited to the recoverable damages described in Paragraph 5 of the Amended Avigation Easement. Each side will bear its own litigation costs, including attorney fees and expert witness fees, in connection with the mediation, arbitration, and any proceedings to obtain judicial recognition or enforcement of any arbitration award. Arbitrator compensation will be shared equally by the Port and Wesley. The arbitration will be conducted pursuant to the then-existing arbitration rules of Judicial Dispute Resolution, LLC; if that entity is no longer providing arbitration services, then the parties will agree on the rules to be applied and the Presiding Judge of the King County Superior Court in Seattle will resolve any disputes over the selection of the applicable rules.

(c) The Amended Avigation Easement will be deemed to satisfy the requirements under RCW 53.54.030 for purposes of Wesley receiving benefits under the Port's Noise Remedy Program if the FAA approves funding for installing a full sound insulation package and/or continuous positive ventilation in eligible Terrace Building units and Wesley decides to proceed with such improvements.

(d) The parties intend the Amended Avigation Easement to clarify, implement the intention of, and relate back to the date of the Original Easement and to retain the priority recording date of the Original Easement. As further assurance that the Amended Avigation Easement will remain in full force and effect and not be removed from title to the Premises as a result of any judicial or non-judicial foreclosure, trustee's sale, deed in lieu transaction or other realization procedure or agreement, Wesley will (1) remain current in all payment obligations and avoid or timely cure any non-payment defaults on any obligations for which the Premises serves as security or collateral and (2) use reasonable efforts to obtain and provide to the Port an agreement from all lenders or other lienholders holding a deed of trust, mortgage, security interest or other form of lien on the Premises subordinating such interest to the Amended Avigation Easement. The agreement shall be in a form acceptable to the Port and shall be provided within a reasonable time following this Agreement becoming effective, not to exceed 90 days; the parties may agree to provide reasonable extensions of such period if necessary.

7. Releases. Wesley and each of its affiliated entities hereby release the Port and the Additional Port Released Parties described below from all Released Claims.

(a) “Released Claims” means any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys’ fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, extents and executions whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which Wesley and each of its affiliated entities now own or hold, or have at any time heretofore owned or held, or may in the future own or hold, against the Port of Seattle or the Additional Port Released Parties or any of them, in any capacity, which both (i) arise out of or are related in any way, directly or indirectly, to any alleged loss of value of the Premises or other impacts from the operation of the Airport including, but not limited, to any claims related to aircraft ground operations, aircraft landings, aircraft take-offs, aircraft flight operations in the airspace over or in the vicinity of the Premises and noise, noise exposure levels, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects from such activities, and (ii) are or may be based upon any facts, acts, omissions, conduct, purchases, representations, contracts, agreements, events, causes or matters of any kind occurring or existing at any time up to and including the date of this Agreement.

(b) These releases are not intended to be general releases. The parties reserve all claims and agreements between themselves that are not related, directly or indirectly, to the Released Claims.

(c) These releases shall not extend to any obligations that arise out of this Agreement.

(d) These releases extend to and inure to the benefit of the parties hereto and the following Additional Port Released Parties: all of the Port’s past and present officers, elected Commissioners, agents, employees, representatives, contractors, attorneys, accountants, insurers, employee benefit plans, parents, subsidiaries, affiliates, predecessors, successors, transferees, assigns, and related entities thereof, and all past and present shareholders, officers, directors, agents, employees, marital communities, domestic partnerships, representatives, partners, attorneys and accountants of any of those persons and entities.

(e) These releases shall bind Wesley and its affiliated entities and their respective officers, directors, agents, employees, attorneys, receivers, trustees, insurers, predecessors, successors, subrogees, transferees and assigns.

(f) Wesley represents and warrants that Wesley has full right, power and authority to enter into these releases, that Wesley owns or has the right to release each and all of the Released Claims, and that Wesley has not transferred any interest in any Released Claims to any third party.

(g) Wesley and its affiliates represent, warrant, and agree: (i) that they understand they are releasing potentially unknown claims; (ii) that these releases are fairly and

knowingly made; (iii) that they are aware that they have limited knowledge with respect to certain of the Released Claims; and (iv) that THE PARTIES SPECIFICALLY ALLOCATE THE RISK OF ANY MISTAKE BY ANY PARTY IN ENTERING INTO THIS AGREEMENT TO THE PARTY OR PARTIES WHO LATER CLAIM THEY WERE MISTAKEN.

8. Limitation on Future Recoverable Damages. Wesley (and its successors and assigns) may make a claim for liability or damages allegedly caused by any burden, including noise and all noise or airport associated conditions, arising from facts coming into existence after March 26, 2022. Such claims are limited as provided below.

a. Recoverable damages, if any, on such a claim will consist of and be limited to a decrease in fair market value of the Premises that Wesley (or its successors and assigns) proves is specifically caused by and attributable to noise exposure from aircraft operations that exceeds the Easement Level.

b. The Easement Level shall not be deemed to be exceeded unless Wesley (or its successors and assigns) proves that future DNL levels exceed the Easement Level by 1.5 dB DNL or more. In asserting a claim that the Easement Level has been exceeded, Wesley (or its successors and assigns) must calculate DNL levels by using the then-current version of the FAA's Aviation Environmental Design Tool ("AEDT") or any required noise modeling program the FAA has adopted to replace the AEDT, and the analysis must follow FAA requirements for conducting noise modeling, including using data from at least a 12-month period immediately preceding Wesley's assertion of the claim. Neither (1) the existence, use, or aircraft operations at, to, or from Runway 16R/34L at the Airport nor (2) the fact that the number of flight operations at the Airport in a 12-month period exceeds the number of such operations in 1989 constitutes a sufficient basis to establish that the Easement Level has been exceeded. If the Easement Level is exceeded, the Amended Easement and the releases provided in Section 7 above shall nonetheless remain in full force and effect as to all burden, including noise and all noise or airport associated conditions, resulting in DNL values falling within the Easement Level.

c. Wesley (and its successors and assigns) will have the burden of proof to show a 1.5 dB DNL exceedance of the Easement Level, the new claimed DNL value, and the existence and amount of any recoverable damages.

9. Confidentiality. Except as otherwise required by law or as necessary to implement specific terms of this Agreement, the terms of this Agreement shall be kept confidential, and shall not be disclosed to any third party except the parties' respective legal counsel, accountants, tax advisors, and bankers. Materials exchanged between the parties in connection with the above-referenced mediation process shall remain subject to the mediation privilege under RCW 7.07.030. The parties may disclose to any person, however, that they have satisfactorily settled their disputes and may further disclose to Wesley's Board of Directors and to the Port Commission information that is necessary or useful in their consideration of whether to approve this Agreement. The parties may also file this Agreement with a court, mediator, arbitrator, or arbitration or mediation service provider if necessary to enforce its terms, but only after complying with the provisions of Section 10 below regarding notice of default.

10. Notice of Default and Enforcement. This Agreement shall not be filed with any court, arbitrator, mediator, or arbitration or mediation service provider to enforce its terms except as provided in this subsection. If any party, acting in good faith, believes another party has violated the terms of this Agreement, the aggrieved party shall give the believed offending party notice of the alleged violation by sending a detailed written statement of the same to the allegedly offending party by hand or overnight delivery. This notice is intended to invite a resolution by the parties of any dispute prior to the institution of litigation. This Agreement may be filed with a court, arbitrator, mediator, or arbitration or mediation service provider to enforce its terms only upon the expiration of thirty (30) days after said notice is delivered, at which time, and not before, the aggrieved party may seek relief.

11. Notices. All notices, requests, demands, and other communications called for or contemplated by this Agreement shall be in writing, and shall be deemed to have been duly given by delivering the same by hand or overnight delivery to the following addresses, or to such other addresses as the parties may designate by written notice:

For the Port of Seattle:

Seattle-Tacoma International Airport/Noise Programs
17801 International Blvd.
Seattle, Washington 98158
Attn: Stan Shepherd

And

Port of Seattle Headquarters, Pier 69
2711 Alaskan Way
Seattle, WA 98121
Attn: Legal Department

For Wesley:

Wesley President/CEO
C/O Executive Director Wesley Des Moines
815 So. 216th St.
Des Moines WA 98198

And

Wesley Homes
C/O Ellis Li McKinstry
1700 Seventh Avenue, #1810
Seattle, WA 98101

12. Authority. The parties each represent and warrant that they have or, with the approval to execute this Agreement from Wesley's Board of Directors and the Port Commission,

respectively, they will have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement, including conveyance of the Amended Avigation Easement. All persons executing this Agreement in representative capacities represent and warrant that they have full power and authority to bind their respective corporations, limited liability companies, and affiliates.

13. No Admission of Liability. This Agreement is a result of a compromise and shall not at any time or for any purpose be considered as an admission of liability, fault, or responsibility on the part of any of the parties, who continue to deny all liability and disclaim all responsibility.

14. Governing Law. This Agreement is entered into under the laws of the state of Washington. If it becomes necessary to interpret or enforce any of the Agreement's terms, it is the parties' intent that the laws of the state of Washington shall apply, without giving effect to principles related to conflicts of laws or choice of laws.

15. Binding Effect; Assignability. This Agreement and the Amended Avigation Easement shall bind and inure to the benefit of the parties hereto and their respective heirs, survivors, legatees, executors, personal representatives, receivers, trustees, attorneys, insurers, predecessors, successors, subrogees, transferees, and assigns.

16. Dispute Resolution. Subject to the mandatory dispute resolution and arbitration provisions in Section 4 and Section 6(b) above and the notice of default and enforcement requirements in Section 10 above, the parties each consent to venue and personal jurisdiction in King County Superior Court in Seattle, Washington, for the resolution of other disputes that may arise under or relate to this Agreement. If any party to this Agreement initiates mediation, arbitration, or legal proceedings to resolve or adjudicate any issues arising under or related to this Agreement or the Amended Avigation Agreement, each party shall bear its own attorneys' fees, costs, expenses, and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by them in preparing to commence any mediation, arbitration, or suit; during mediation, arbitration, or suit; and on appeal, on petition for review, or in enforcing any judgment or award.

17. Severability. This Agreement and the Amended Avigation Easement do not violate any federal or state statute, rule, regulation, or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation, or common law shall be considered null and void, with the remaining provisions remaining viable and in effect. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement, the releases provided for above, and the Amended Avigation Easement are each necessary to this settlement and that without any of these the parties would not agree to this settlement.

18. Cooperation in Execution of Documents. The parties agree to execute and deliver all additional documents that may be necessary to render this Agreement or the Amended Avigation Easement effective. This paragraph shall not require the execution of any document that expands, alters, or in any way changes the terms of this Agreement.

19. Headings Not Controlling. The paragraph headings included are for reference only and are not a part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

20. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

21. Equal Opportunity to Participate in Drafting. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement and the Amended Avigation Easement. No ambiguity in those documents shall be construed against any party based upon a claim that that party drafted the ambiguous language.

22. Incorporation of Exhibits. The Exhibits referred to in this Agreement are incorporated herein by this reference as if fully set forth here.

23. Waiver. Any of the terms or conditions of this Agreement may be waived, but only by a written notice signed by the party waiving such terms or conditions. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit, or waive a party's rights to enforce compliance thereafter with each and every term and condition of this Agreement.

24. Time of the Essence. Time is of the essence regarding this Agreement, specifically including, without limitation, the requirement for Wesley to execute and deliver the Amended Avigation Easement to the Port.

25. Failure of Approval. This Agreement shall become effective when, and only when, Wesley and the Port have such approval from the Board of Directors and the Port Commission, respectively, as is necessary to execute it, and no party may enforce any term of this Agreement unless and until that occurs. The parties agree to seek such approval as soon as reasonably possible. If approval is not granted by both parties within 60 days after March 26, 2022, each party shall have all rights in law and in equity that they had absent the execution of this Agreement, without prejudice and as if this Agreement was never executed.

26. Complete Agreement. This Agreement together with the Amended Avigation Easement is the final and complete expression of the agreement of the parties on these subjects. Neither this Agreement nor the Amended Avigation Easement may be modified, interpreted, amended, waived, or revoked orally, except by a writing signed by all parties. This Agreement supersedes and replaces all prior agreements, discussions, and representations on these subjects including, without limitation, the CR 2A Settlement Stipulation, all of which are merged into, and superseded by, this Agreement. No party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations, or agreements other than those contained in this Agreement.

27. Full Understanding; Independent Legal Counsel. The parties each acknowledge, represent, and agree that they have read this Agreement and the Exhibits attached; that they fully understand the terms hereof; and that they have been fully advised by their legal counsel and other advisors with respect this Agreement.

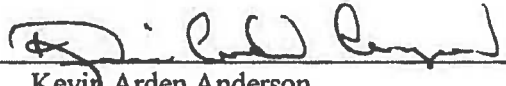
Dated as of the date first mentioned above.

THE PORT OF SEATTLE, a Washington municipal corporation

By: 

Its: EXECUTIVE DIRECTOR

WESLEY HOMES CORPORATION, a Washington nonprofit corporation

By: 

Kevin Arden Anderson

Its: Executive Director & CEO

WESLEY HOMES DES MOINES, LLC, a Washington limited liability company,

By: Wesley Homes Corporation, a Washington nonprofit corporation, the sole Member and Manager of Wesley Homes Des Moines, LLC

By: 

Kevin Arden Anderson

Its: Executive Director & CEO

SETTLEMENT AGREEMENT- EXHIBIT A

WHEN RECORDED RETURN TO:

Seattle-Tacoma International Airport/Noise Programs
17801 International Blvd.
Seattle, Washington 98158
Attn: Stan Shepherd

AMENDED AND RESTATED AVIGATION EASEMENT

Grantor: Wesley Homes Des Moines, LLC, a Washington limited liability company

Grantee: Port of Seattle, a Washington municipal corporation

Abbreviated Legal Descriptions: SW 1/4 of NE 1/4 of Section 8, Township 22 North, Range 4 East W.M.; and
NW 1/4 of SE 1/4 of Section 8, Township 22 North, Range 4 East W.M.

Full legal descriptions in Exhibit B attached hereto

Assessor's Property

Tax Parcel Numbers: 082204-9014, 082204-9087, and 082204-9133

Reference Number

of Related Document: 20030110000170 (Avigation Easement dated April 15, 2002)

AMENDED AND RESTATED AVIGATION EASEMENT

Grantor WESLEY HOMES DES MOINES, LLC, a Washington limited liability company, whose sole member and manager is Wesley Homes Corporation, a Washington nonprofit corporation (collectively, “Wesley”), on its own behalf and behalf of its successors and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys and warrants to the PORT OF SEATTLE, a Washington municipal corporation (the “Port”), and its successors and assigns, a permanent nonexclusive easement, as more specifically set forth herein, for the free and unobstructed use and passage of all types of aircraft through the airspace over or in the vicinity of the real property situated in King County, Washington, that is more particularly described on Exhibit B (“the Premises”), with such use and passage to be unlimited as to frequency, type of aircraft, and proximity, except as the Port’s easement rights are limited below. The easement granted by this instrument shall be for the benefit of, and appurtenant to, the real property now commonly known as Seattle-Tacoma International Airport, which facility is owned and operated by the Port of Seattle as proprietor, together with any additions thereto wherever located hereafter made by the Port or its successors and assigns (the “Airport”).

1. This Amended and Restated Avigation Easement (“Amended Easement”) clarifies the Avigation Easement recorded on January 10, 2003, under Recording Number 20030110000170, which was granted by Wesley to the Port as a condition of a negotiated settlement in *Wesley Homes v. Port of Seattle*, King County Superior Court, Cause No. 99-2-52920-1 KNT (the “Original Easement”). The parties desire to amend and restate the Original Easement and intend that the Amended Easement retain the same priority of title and effective date as the Original Easement. This Amended Easement is being conveyed pursuant to a subsequent settlement of disputes between Wesley and the Port regarding the meaning and effect of the prior negotiated settlement and Original Easement.

2. The Amended Easement entitles the Port, together with such persons operating aircraft at, to, or from the Airport, to cause and continue the burden, including noise and all noise or airport associated conditions, in existence at the Premises as of December 30, 1989 (the “Easement Level”). The Easement Level is determined by the annual-average daily noise exposure from aircraft operations using the metric adopted by the Federal Aviation Administration (“FAA”) known as day-night level (“DNL”) as defined in the regulations at 14 C.F.R. Part 150 as such regulations are in effect as of March 26, 2022. The parties agree that the DNL values for the Easement Level are as shown in the attached Exhibit A.

3. The Easement Level shall not be deemed to be exceeded unless Wesley (or its successors and assigns) sustains the burden of proving that future DNL levels exceed the Easement Level by 1.5 dB DNL or more. In asserting a claim that the Easement Level has been exceeded, Wesley (or its successors and assigns) must calculate DNL levels by using the then-current version of the FAA’s Aviation Environmental Design Tool (“AEDT”) or any required noise modeling program the FAA has adopted to replace the AEDT, and the analysis must follow FAA

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS

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requirements for conducting noise modeling, including using data from at least a 12-month period immediately preceding Wesley's assertion of the claim. If the Easement Level is exceeded, this Amended Easement shall nonetheless remain in full force and effect as to all burden, including noise and all noise or airport associated conditions resulting in DNL values falling within the Easement Level.

4. Wesley and its successors and assigns specifically waive all damages and release all claims for liability or damages caused, or alleged to be caused by any burden, including noise and all noise or airport associated conditions, existing at any time prior to March 26, 2022, or arising from facts occurring after that date for any such burden, including noise and all noise or airport associated conditions, resulting in DNL values falling within the Easement Level. Wesley and the Port acknowledge and agree that neither (1) the existence, use, or aircraft operations at, to, or from Runway 16R/34L at the Airport nor (2) the fact that the number of flight operations at the Airport in a 12-month period exceeds the number of such operations in 1989 constitutes a sufficient basis to establish that the Easement Level has been exceeded.

5. Subject to the above paragraphs, Wesley (and its successors and assigns) may make a claim for liability or damages allegedly caused by any burden, including noise and all noise or airport associated conditions, arising from facts coming into existence after March 26, 2022. Recoverable damages, if any, on such a claim will consist of and be limited to a decrease in fair market value of the Premises that Wesley (or its successors and assigns) proves is specifically caused by and attributable to noise exposure from aircraft operations that exceeds the Easement Level. Wesley (and its successors and assigns) will have the burden of proof to show a 1.5 dB DNL exceedance of the Easement Level, the new claimed DNL value, and the existence and amount of any recoverable damages.

6. Disputes about whether the Easement Level specified in the Amended Easement has been exceeded, whether any damages are recoverable, and the amount of such damages, if any, will be resolved exclusively through the dispute resolution process described in this paragraph. The parties must first mediate any dispute they cannot resolve through direct negotiations. Judge Linda Lau shall serve as the mediator. If she is unable or unwilling to serve, the parties shall agree upon a mediator. If mediation is not successful, the dispute will be decided in confidential and private binding arbitration before one retired Washington state court judge selected by the parties. The Presiding Judge of the King County Superior Court in Seattle will appoint a mediator and/or an arbitrator if the parties cannot agree on one. The award in any such arbitration shall be limited to the recoverable damages described in Paragraph 5 above. Each side will bear its own litigation costs, including attorney fees and expert witness fees, in connection with the mediation, arbitration, and any proceedings to obtain judicial recognition or enforcement of any arbitration award. Arbitrator compensation will be shared equally by the Port and Wesley. The arbitration will be conducted pursuant to the then-existing arbitration rules of Judicial Dispute Resolution, LLC; if that entity is no longer providing arbitration services, then the parties will agree on the rules to be

applied and the Presiding Judge of the King County Superior Court in Seattle will resolve any disputes over the selection of the applicable rules.

7. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but not be limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

8. As used herein, the term "burden" shall include, but not be limited to, the effects of any aircraft operations, aircraft landings, and aircraft take-offs, such as noise, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects.

9. The Amended Easement constitutes a permanent burden on the Premises, runs with the land, and is binding upon and enforceable against Wesley, and all successors in right, title, or interest to the Premises. The Amended Easement benefits the Port and its successors, assigns, guests, and invitees, including any and all persons, firms, or corporations operating aircraft at, to, or from the Airport.

10. Wesley covenants that at the time of signing this Amended Easement it is the owner in fee simple of the Premises and holds full ownership rights and powers to convey this Amended Easement free and clear from all other grants, bargains, sales, liens, taxes, assessments, and encumbrances of whatever kind or nature. Wesley further covenants with the Port and the Port's successors and assigns, to warrant and forever defend against any and all persons claiming by or through, or in the place of Wesley, or based upon any claimed interest in the Premises, any right or title adverse to the Amended Easement.

11. Except as specifically provided, the Amended Easement shall neither enlarge nor diminish any rights of either party existing prior to the effective date of the Original Easement.

DATED this ^{11th} ~~26th~~ day of ^{April} ~~March~~, 2022.

WESLEY HOMES DES MOINES, LLC, a Washington
limited liability corporation

By: WESLEY HOMES CORPORATION, a Washington
nonprofit corporation, as the sole Member and Manager of
Wesley Homes Des Moines, LLC

By: 
Kevin Arden Anderson
Its: Executive Director & CEO

[illegible]

On this 11th day of ~~March~~^{April}, 2022, before me personally appeared KEVIN ARDEN ANDERSON, to me known to be the Executive Director and CEO of Wesley Homes Corporation, the Washington nonprofit corporation that is the Sole Member and the Manager of Wesley Homes Des Moines, LLC, a Washington limited liability company, and he executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation and said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of each such entity.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Karen M. Cliven
(Signature)

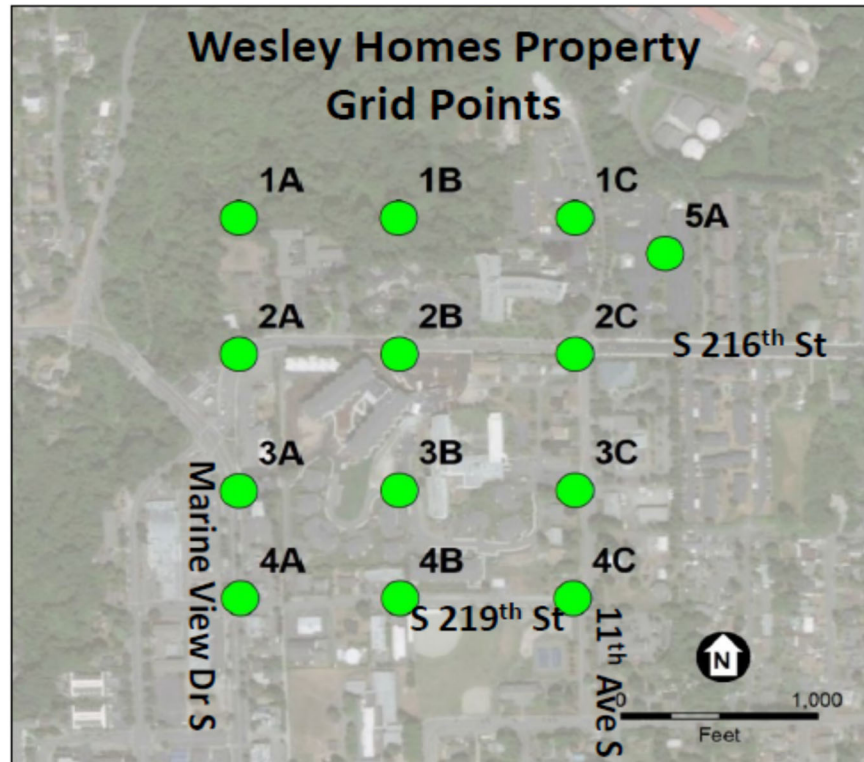
Karen M. Clewer
(Printed Name)

Notary Public, in and for the State of Washington,
Residing at: Auburn, Washington
My Commission Exp.: 3/29/24



EXHIBIT A

DNL Values Comprising the Easement Level for Amended Avigation Easement



DNL Values As Of 1989

Grid Point	1989
1A	67.8
1B	69.0
1C	70.4
2A	67.4
2B	68.6
2C	70.1
3A	67.0
3B	68.2
3C	69.7
4A	66.7
4B	67.9
4C	69.3
5A	71.1

EXHIBIT B

Legal Description of the Premises, generally known as Wesley Des Moines, King County
Property Tax Parcel/Account Numbers: 082204-9014, 082204-9087, and 082204-9133

PARCEL A:

The southwest quarter of the northeast quarter of Section 8,
Township 22 North, Range 4 East W.M., in King County,
Washington;

EXCEPT the west 274 feet thereof;
AND EXCEPT the east 7.5 acres thereof;
AND EXCEPT commencing at the northeast corner of said
subdivision;
thence west along the north line of said subdivision, 242.60
feet to the northwest corner of the east 7.5 acres of said
subdivision and the true point of beginning;
thence south 00°03'29" west along the west line of said east 7.5
acres, 675.48 feet;
thence north 19°38'24" west 144.24 feet;
thence north 19°13'39" west 216.18 feet;
thence north 52°44'31" west 170.65 feet;
thence south 58°52'44" west 254.8 feet;
thence south 80°37'59" west 238.69 feet;
thence south 82°59'51" west 183.89 feet to the east line of the
west 274 feet of said subdivision;
thence north 00°56'27" west 475.13 feet along said east line to
the south line of South 212th St.;
thence south 86°39'36" east to the true point of beginning;
AND EXCEPT that portion thereof lying within south 216th Street.

PARCEL B:

That portion of the southwest quarter of the southeast quarter
of the northeast quarter and the southeast quarter of the
southwest quarter of the northeast quarter of Section 8,
Township 22 North, Range 4 East W.M., in King County,
Washington, described as follows:

Beginning at a point on the west line of the southwest quarter
of the southeast quarter of the northeast quarter which is north
00°03'23" east 42.03 feet from the southwest corner thereof
(said point lying on the north margin of South 216th Street as
established by deed recorded under Recording No. 6100097);
thence easterly along the northerly boundary of South 216th

Street, 88.81 feet;
thence north 00' 03' 23" east 450 feet;
thence north 20' 21' 27" west 114.83 feet;
thence north 87' 15' 32" west 48.75 feet to the west boundary of
the southeast quarter of the northeast quarter;
thence continuing north 87' 15' 32" west 242.48 feet to the west
line of the east 7.5 acres of the southwest quarter of the
northeast quarter;
thence south 00' 03' 29" west 570 feet, more or less, to the
northerly boundary of South 216th Street;
thence easterly along the northerly boundary of South 216th
Street, 242.37 feet to the easterly boundary of the southwest
quarter of the northeast quarter;
thence north 00' 03' 23" east to the true point of beginning;

TOGETHER WITH an easement as established by instrument recorded
under Recording No. 9301270878.

PARCEL C:

That portion of the northwest quarter of the southeast quarter
of Section 8, Township 22 North, Range 4 East, W.M., in King
County, Washington, described as follows:

Beginning at a point on the west line of the northwest quarter
of the southeast quarter 1,827.42 feet north of the southwest
corner of the southeast quarter of said Section 8;
and running thence east 418 feet; .
thence south to the north line of South 219th Street, (formerly
the Ethel O. Peck Co. Road);
thence east along the north line of said South 219th Street to
the west line of the H.J. Latimer Co. Road No. 823;
thence north along said west line of road to the north line of
said northwest quarter of the southeast quarter;
thence west along said north line to the northwest corner of
said northwest quarter of the southeast quarter;
thence south along the west line thereof to the point of
beginning;
EXCEPT portion included in the Morgan O'Brien Co. Road No. 155
along the north line thereof;
AND EXCEPT the following described portion thereof:

Beginning at a point on the north line of said 219th Street and
the west line of said H.J. Latimer Co. Road No. 823;
thence north 87° 11' 00" west along said north line 315.00 feet;
thence north parallel with the west line of said H.J. Latimer

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS
PAGE 7 OF 8

Co. Road No. 823, a distance of 97.1 feet;
thence east parallel with the north line of said South 219th
Street, 315.00 feet to said west line of said H.J. Latimer Co.
Road No. 823;
thence along said west line 97.1 feet to the point of beginning.

SETTLEMENT AGREEMENT- EXHIBIT B

CONFORMED COPY

20030110000170

ABC-LEGAL MESS EAS
PAGE 001 OF 004
01/10/2003 08:46
KING COUNTY, WA

22.00

WHEN RECORDED RETURN TO:

Port of Seattle
P.O. Box 1209
Seattle, WA 98111
Attn: Paul M. Bintinger

AVIGATION EASEMENT

Grantor: WESLEY HOMES, a Washington nonprofit corporation

Grantee: PORT OF SEATTLE, a Washington municipal corporation

Legal Description: SW 1/4 of NE 1/4 of Section 8, Township 22 North, Range 4 East W.M. and
NW 1/4 of SE 1/4 of Section 8, Township 22 North, Range 4 East W.M.
Detailed legal descriptions are attached on Exhibit A (Pages 3 and 4) hereto.

Property Tax Parcel/Account Numbers: 082204-9014, 082204-9087, and 082204-9133

Related Documents: None

The Grantor, WESLEY HOMES, a Washington nonprofit corporation, for good and valuable consideration the receipt of which is hereby acknowledged, hereby conveys and warrants to the PORT OF SEATTLE, a Washington municipal corporation, a permanent nonexclusive easement as more specifically set forth herein for the free and unobstructed use and passage of all types of aircraft through the airspace over or in the vicinity of the real property ("the Premises") situated in King County, Washington that is more particularly described on Exhibit A, with such use and passage to be unlimited as to frequency, type of aircraft and proximity, except as limited by Paragraphs 2 and 3 below. The Easement granted by this instrument shall be for the benefit of, and appurtenant to, the Seattle-Tacoma International Airport, which facility is owned any operated by the Port of Seattle, together with any additions thereto wherever located.

1. The Easement granted by this instrument is as a condition of a negotiated settlement in the matter of Wesley Homes v. Port of Seattle, King County Superior Court, Cause No. 99-2-52920-1 KNT.

2. The Easement granted by this instrument shall entitle the Port, together with such persons operating aircraft at, to or from the Airport, to cause and continue the burden, including noise and all noise or airport associated conditions, in existence at the Premises as of December 30, 1989 (the "Easement Level"). If the Easement Level is exceeded, the Easement shall nonetheless remain in full force and effect as to all burden, including noise and all noise or airport associated conditions, falling within the Easement Level. Grantor specifically waives all damages and releases all claims for liability or damages caused, or alleged to be caused, by any burden, including noise and all noise or airport associated conditions, up to the Easement Level.

EASE TAX NOT REQUIRED

King Co. Records Division

[Signature] Deputy

3. The Easement granted by this instrument shall not affect any right (if any) that Grantor may now or in the future have to make a claim for liability or damages caused by or incidental to any burden that exceeds the Easement Level at any time on or after December 30, 1989.

4. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but not be limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

5. As used herein, the term "burden" shall include, but not be limited to, the effects of any aircraft operations, aircraft landings, aircraft take-offs, such as noise, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects.

6. The Easement granted by this instrument shall constitute a permanent burden on the Premises, run with the land, and be binding upon and enforceable against Grantor, and all successors in right, title, or interest to the Premises. The Easement granted by this instrument shall benefit the Port, its successors, assigns, guests and invitees, including any and all persons, firms, or corporations operating aircraft at, to or from the Airport.

7. Except as specifically provided, this instrument shall neither enlarge nor diminish any rights of either party existing prior to the date hereof.

DATED this 15th day of ~~March~~ ^{April}, 2002.

WESLEY HOMES, a Washington nonprofit corporation,

By: [Signature]
Kevin Anderson, Executive Director

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 15th day of ~~March~~ ^{April}, 2002, before me personally appeared KEVIN ANDERSON, to me known to be the Executive Director of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
(Signature)
Keith Kemper
(Print Name)

Notary Public, in and for the State of Washington,
residing at Edmonds, WA
My Commission expires: 2-6-04

EXHIBIT A

Legal Description of the Premises

PARCEL A:

The southwest quarter of the northeast quarter of Section 8, Township 22 North, Range 4 East W.M., in King County, Washington;

EXCEPT the west 274 feet thereof;
AND EXCEPT the east 7.5 acres thereof;
AND EXCEPT commencing at the northeast corner of said subdivision;
thence west along the north line of said subdivision, 242.60 feet to the northwest corner of the east 7.5 acres of said subdivision and the true point of beginning;
thence south 00°03'29" west along the west line of said east 7.5 acres, 675.48 feet;
thence north 19°38'24" west 144.24 feet;
thence north 19°13'39" west 216.18 feet;
thence north 52°44'31" west 170.65 feet;
thence south 58°52'44" west 254.8 feet;
thence south 80°37'59" west 238.69 feet;
thence south 82°59'51" west 183.89 feet to the east line of the west 274 feet of said subdivision;
thence north 00°56'27" west 475.13 feet along said east line to the south line of South 212th St.;
thence south 86°39'36" east to the true point of beginning;
AND EXCEPT that portion thereof lying within south 216th Street.

PARCEL B:

That portion of the southwest quarter of the southeast quarter of the northeast quarter and the southeast quarter of the southwest quarter of the northeast quarter of Section 8, Township 22 North, Range 4 East W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of the southwest quarter of the southeast quarter of the northeast quarter which is north 00°03'23" east 42.03 feet from the southwest corner thereof (said point lying on the north margin of South 216th Street as established by deed recorded under Recording No. 6100097);
thence easterly along the northerly boundary of South 216th Street, 88.81 feet;
thence north 00°03'23" east 450 feet;
thence north 20°21'27" west 114.83 feet;
thence north 87°15'32" west 48.75 feet to the west boundary of the southeast quarter of the northeast quarter;
thence continuing north 87°15'32" west 242.48 feet to the west line of the east 7.5 acres of the southwest quarter of the northeast quarter;
thence south 00°03'29" west 570 feet, more or less, to the northerly boundary of South 216th Street;
thence easterly along the northerly boundary of South 216th Street, 242.37 feet to the easterly boundary of the southwest quarter of the northeast quarter;
thence north 00°03'23" east to the true point of beginning;

TOGETHER WITH an easement as established by instrument recorded under Recording No. 9301270878.

PARCEL C:

That portion of the northwest quarter of the southeast quarter of Section 8, Township 22 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of the northwest quarter of the southeast quarter 1,827.42 feet north of the southeast corner of the southeast quarter of said Section 8; ^{west}
and running thence east 418 feet;
thence south to the north line of South 219th Street, (formerly the Ethel O. Peck Co. Road);
thence east along the north line of said South 219th Street to the west line of the H.J. Latimer Co. Road No. 823;
thence north along said west line of road to the north line of said northwest quarter of the southeast quarter;
thence west along said north line to the northwest corner of said northwest quarter of the southeast quarter;
thence south along the west line thereof to the point of beginning;

EXCEPT portion included in the Morgan O'Brien Co. Road No. 155 along the north line thereof;

AND EXCEPT the following described portion thereof:

Beginning at a point on the north line of said 219th Street and the west line of said H.J. Latimer Co. Road No. 823;
thence north $87^{\circ}11'00''$ west along said north line 315.00 feet;
thence north parallel with the west line of said H.J. Latimer Co. Road No. 823, a distance of 97.1 feet;
thence east parallel with the north line of said South 219th Street, 315.00 feet to said west line of said H.J. Latimer Co. Road No. 823;
thence along said west line 97.1 feet to the point of beginning.

780508

KING COUNTY RECORDER
500 4TH AVE ROOM 311
SEATTLE WA 98104
(206)296-1570

ISSUED TO:
ABC-LEGAL MESSENGERS, INC.

RECEIPT # 163129
01/10/2003 08:46:48 AM

DESCRIPTION	FEE
COPY, CONFD 1 PG	1.00
08:46 20030110000170	
EASEMENT 4 PGS	22.00

=====
Total Amount Due \$23.00

Total Number Docs: 1

ON ACCT 482 23.00

=====
Total Payments: \$23.00

Balance for # 482
01/10/2003 08:46 AM \$169.77

VISIT US AT WWW.METROKC.GOV/RECELEC/RECORDS/
KING COUNTY RECORDER'S OFFICE

Deputy: PENNYW



PLEASE TYPE OR PRINT
SEE BACK PAGE

REAL ESTATE EXCISE TAX AFFIDAVIT

CHAPTER 82.45 RCW - CHAPTER 458-61 WAC
FOR USE AT COUNTY TREASURER'S OFFICE

(Use Form No. 84-0001B for Reporting Transfers of Controlling Interest of Entity Ownership to the Department of Revenue)

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS 1-7 ARE FULLY COMPLETED

This form is your receipt
when stamped by cashier.

1 SELLER GRANTOR	Name <u>WESLEY HOMES</u>	2 BUYER GRANTEE	Name <u>PORT OF SEATTLE</u>	
	Street <u>815 South 216th Street</u>		Street <u>SEATTLE-TACOMA INTERNATIONAL AIRPORT</u>	
	City/State/Zip <u>DES MOINES, WA 98198</u>		City/State/Zip <u>SEATTLE, WA 98111</u>	
3	ADDRESS TO SEND ALL PROPERTY TAX RELATED CORRESPONDENCE		ALL TAX PARCEL NUMBERS	COUNTY TREASURER PLACE ASSESSED VALUE IF TAX EXEMPT
	Name <u>SAME AS ITEM 1 ABOVE</u>		<u>082204-9014</u>	
	Street _____		<u>082204-9087</u>	
	City/State/Zip _____		<u>082204-9133</u>	

4 LEGAL DESCRIPTION OF PROPERTY SITUATED IN ☐ UNINCORPORATED _____ COUNTY ☒ OR IN CITY OF Des Moines
Street Address (if property is improved): 815 South 216th Street

SEE ATTACHED EXHIBIT A

5	Is this property currently:	YES	NO
	Classified or designated as forest land? Chapter 84.33 RCW	☐	☒
	Classified as current use land (open space, farm and agricultural, or timber)? Chapter 84.34 RCW	☐	☒
	Exempt from property tax as a nonprofit organization? Chapter 84.36 RCW	☐	☒
Seller's Exempt Reg. No. _____			
Receiving special valuation as historic property? Chapter 84.26 RCW ☐ YES ☒ NO			
Property Type: ☐ land only ☐ land with new building ☒ land with previously used building ☐ land with mobile home ☐ timber only ☐ building only			
Principal Use: ☐ Apt. (4+ unit) ☐ residential ☐ timber ☐ agricultural ☐ commercial/industrial ☒ other <u>Continuing Care Retirement Facility</u>			
8	(1) NOTICE OF CONTINUANCE (RCW 84.33 OR RCW 84.34) If the new owner(s) of land that is classified or designated as current use or forest land wish to continue the classification or designation of such land, the new owner(s) must sign below. If the new owner(s) do not desire to continue such classification or designation, all compensating or additional tax calculated pursuant to RCW 84.33.120 and 140 or RCW 84.34.108 shall be due and payable by the seller or transferor at the time of sale. The county assessor must determine if the land transferred qualifies to continue classification or designation and must so indicate below. Signatures do not necessarily mean the land will remain in classification or designation. If it no longer qualifies, it will be removed and the compensating taxes will be applied. All new owners must sign. This land ☐ does ☐ does not qualify for continuance. Date _____ DEPUTY ASSESSOR		
	(2) NOTICE OF COMPLIANCE (Chapter 84.26 RCW) If the new owner(s) of property with special valuation as historic property wish to continue this special valuation the new owner(s) must sign below. If the new owner(s) do not desire to continue such special valuation, all additional tax calculated pursuant to Chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.		
	(3) OWNER(S) SIGNATURE _____ _____		
	6 Description of personal property included in gross selling price, both tangible (eg; furniture, equipment, etc.) or intangible (eg; goodwill, agreement not to compete, etc.) <u>NONE</u> If exemption claimed, list WAC number and explanation. WAC No. (Sec/Sub) <u>458-61-335(1); 458-61-420(c)</u> Explanation <u>Inverse condemnation of avigation rights</u> Type of Document <u>AVIGATION EASEMENT</u> Date of Document <u>APRIL 15, 2002</u> Gross Selling Price \$ <u>N/A</u> Personal Property (deduct) \$ <u>N/A</u> Taxable Selling Price \$ <u>N/A</u> Excise Tax: State \$ <u>0.00</u> Local \$ <u>0.00</u> Delinquent Interest: State \$ <u>0.00</u> Local \$ <u>0.00</u> Delinquent Penalty \$ <u>0.00</u> Total Due \$ <u>0.00</u> A MINIMUM OF \$2.00 IS DUE AS A PROCESSING FEE AND TAX.		
7 AFFIDAVIT I Certify Under Penalty of Perjury Under The Laws of The State of Washington That The Foregoing Is True And Correct. (See back page of this form). Signature of Grantor/Agent _____ Name (print) _____ Date and Place of Signing: _____ Signature of Grantee/Agent _____ Name (print) <u>PAUL M. BINTINGER, SENIOR PORT COUNSEL</u> Date & Place of Signing: <u>January 2, 2003 SEATTLE, WA</u>			

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

EXHIBIT A

Legal Description of the Premises

PARCEL A:

The southwest quarter of the northeast quarter of Section 8, Township 22 North, Range 4 East W.M., in King County, Washington;

EXCEPT the west 274 feet thereof;
AND EXCEPT the east 7.5 acres thereof;
AND EXCEPT commencing at the northeast corner of said subdivision;
thence west along the north line of said subdivision, 242.60 feet to the northwest corner of the east 7.5 acres of said subdivision and the true point of beginning;
thence south 00°03'29" west along the west line of said east 7.5 acres, 675.48 feet;
thence north 19°38'24" west 144.24 feet;
thence north 19°13'39" west 216.18 feet;
thence north 52°44'31" west 170.65 feet;
thence south 58°52'44" west 254.8 feet;
thence south 80°37'59" west 238.69 feet;
thence south 82°59'51" west 183.89 feet to the east line of the west 274 feet of said subdivision;
thence north 00°56'27" west 475.13 feet along said east line to the south line of South 212th St.;
thence south 86°39'36" east to the true point of beginning;
AND EXCEPT that portion thereof lying within south 216th Street.

PARCEL B:

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Beginning at a point on the west line of the southwest quarter of the southeast quarter of the northeast quarter which is north 00°03'23" east 42.03 feet from the southwest corner thereof (said point lying on the north margin of South 216th Street as established by deed recorded under Recording No. 6100097);
thence easterly along the northerly boundary of South 216th Street, 88.81 feet;
thence north 00°03'23" east 450 feet;
thence north 20°21'27" west 114.83 feet;
thence north 87°15'32" west 48.75 feet to the west boundary of the southeast quarter of the northeast quarter;
thence continuing north 87°15'32" west 242.48 feet to the west line of the east 7.5 acres of the southwest quarter of the northeast quarter;
thence south 00°03'29" west 570 feet, more or less, to the northerly boundary of South 216th Street;
thence easterly along the northerly boundary of South 216th Street, 242.37 feet to the easterly boundary of the southwest quarter of the northeast quarter;
thence north 00°03'23" east to the true point of beginning;

TOGETHER WITH an easement as established by instrument recorded under Recording No. 9301270878.

PARCEL C:

That portion of the northwest quarter of the southeast quarter of Section 8, Township 22 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of the northwest quarter of the southeast quarter 1,827.42 feet north of the southeast corner of the southeast quarter of said Section 8; ~~southeast~~ ^{west} and running thence east 418 feet; thence south to the north line of South 219th Street, (formerly the Ethel O. Peck Co. Road); thence east along the north line of said South 219th Street to the west line of the H.J. Latimer Co. Road No. 823; thence north along said west line of road to the north line of said northwest quarter of the southeast quarter; thence west along said north line to the northwest corner of said northwest quarter of the southeast quarter; thence south along the west line thereof to the point of beginning; EXCEPT portion included in the Morgan O'Brien Co. Road No. 155 along the north line thereof; AND EXCEPT the following described portion thereof:

Beginning at a point on the north line of said 219th Street and the west line of said H.J. Latimer Co. Road No. 823; thence north $87^{\circ}11'00''$ west along said north line 315.00 feet; thence north parallel with the west line of said H.J. Latimer Co. Road No. 823, a distance of 97.1 feet; thence east parallel with the north line of said South 219th Street, 315.00 feet to said west line of said H.J. Latimer Co. Road No. 823; thence along said west line 97.1 feet to the point of beginning.

SETTLEMENT AGREEMENT- EXHIBIT C

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the Port of Seattle ("Port") and Wesley Homes, Inc. ("Wesley") and their respective subsidiary or successor corporations, assigns, future acquired entities or affiliated companies as of the latest date of execution by all signatories set forth below. The Port and Wesley may be referred to as the "Parties."

WHEREAS, Wesley is the owner of property located in Des Moines, Washington legally described on Exhibit A and incorporated by reference (the "Property");

WHEREAS, the Port is the proprietor of the Seattle-Tacoma International Airport (the "Airport");

WHEREAS, on December 30, 1999, Wesley filed a lawsuit against the Port in King County Superior Court, Cause No. 99-2-52920-1KNT for inverse condemnation, seeking an award of damages, together with its attorneys fees, expert witness fees, costs and expenses (the "Litigation");

WHEREAS, the Parties to this Agreement desire to amicably settle the Litigation;

NOW THEREFORE, the Parties agree as follows:

1. The Port shall execute this Agreement and forward copies of the same to Wesley for execution. Each original counterpart signature page shall be returned to counsel for the Port, who shall assemble and attach them to the original Agreement, and provide a complete copy to the legal counsel for Wesley.

2. The Port shall pay within fifteen (15) days of receipt of a copy of this Agreement executed by Wesley, and Wesley shall accept the sum of Five Hundred and Fifty Thousand Dollars (\$550,000.00).

3. The settlement funds shall be paid by delivering a certified check to counsel for Wesley at Ellis, Li & McKinstry, PLLC, 601 Union Street, Suite 4900, Seattle, WA 98101-3906, Attention: Keith Kemper. The check shall be made jointly payable to "Ellis Li & McKinstry and Wesley Homes, Inc."

4. Upon receipt by Wesley or its counsel of the settlement sum described in Paragraph 2 above, Wesley and the Port shall execute appropriate documents by which Wesley shall dismiss all its claims against the Port in the Litigation, without prejudice. Neither party shall be entitled to recover its costs or attorneys fees in the Litigation, except as provided in this Agreement.

5. In further consideration of this Agreement, Wesley will execute an Avigation Easement in the form attached as Exhibit B. The Avigation Easement shall be a permanent burden on the Wesley property, as described in the easement document. The Port may at its

election record the Avigation Easement in the records of King County, but the Port's failure to do so will in no way affect the binding nature of the easement as between Wesley and the Port.

6. In further consideration of this Agreement, Wesley hereby releases and forever discharges the Port from any and all claims, obligations, demands, penalties and fines, causes of actions, suits, proceedings, agreements, contracts, judgments, costs, expenses, damages, losses, and liabilities ("Claims"), of whatever nature, known or unknown, whether or not well founded in fact, in law, in equity or otherwise, which arise out of impacts from the operation of the Airport at or within the Easement level described in the Avigation Easement, attached as Exhibit B, including, but not limited, to any Claims related to aircraft operations, aircraft landings, aircraft take-offs, noise, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects, PROVIDED that nothing in this agreement shall limit the right of Wesley Homes to bring a claim for the damaging or taking of Wesley Homes' property as a result of impacts from the Airport that exceed the Easement Level described in the Avigation Easement, attached as Exhibit B.

7. In further consideration of the settlement sum, the Port agrees to assist Wesley in applying for and participating in the Port's existing insulation program for Wesley's single family cottages, subject to all existing terms and conditions of that program. The Port agrees to cooperate in good faith to allow Wesley to obtain the maximum benefit obtainable from the insulation program. However, because ultimate approval rests with the FAA, the Port makes no warranty regarding the payment for any specific benefit.

8. In further consideration of the settlement of this Litigation, the Port acknowledges that the filing of a suit in this matter on December 30, 1999 served to interrupt the running of prescriptive rights, if any, against the Property. Further, without deciding whether or not the Port is entitled to claim any easement by prescription, by this Agreement, the parties agree that the running of any prescriptive period will begin anew on the date of dismissal of this Litigation.

9. Execution of this Agreement does not constitute an admission by any party of liability or wrongdoing, and shall not be construed as such.

10. This Agreement shall be binding upon and inure to the benefit of the successors, assigns, subsidiaries, parent corporations, partners, and affiliates of the Parties, as well as all other persons or entities claiming through them.

11. This Agreement may not be amended, modified, or waived except by a writing executed by all Parties to the Agreement.

12. The Parties shall authorize their respective legal counsel to sign any and all documents required to complete this settlement, including pleadings required to dismiss Wesley's claims in the Litigation.

13. This Agreement shall be interpreted according to the laws of the State of Washington. Venue for any legal action related to this Agreement will be in King County Superior Court, in Seattle, Washington.

14. The prevailing party in any dispute relating to the interpretation or enforcement of this Agreement shall be entitled to its reasonable attorneys' fees and expenses associated with the dispute.

15. This Agreement contains the final, complete and exclusive agreement of the Parties, and supersedes and prevails over all prior communications between the Parties regarding the matters contained here.

DATED: 4/15/02

WESLEY HOMES, INC.

By 
Its Executive Director

DATED: _____

THE PORT OF SEATTLE

By _____
Its _____

Wesley Homes v. Port of Seattle
King County Superior Court Cause No. 99-2-52920-1 KNT

Disbursement Sheet

Gross proceeds from Settlement with Port:	\$550,000
Less Attorneys Fees of 10% to Ellis, Li & McKinstry: (Pursuant to fee agreement of Sept. 30, 1999)	<\$55,000>
Net proceeds disbursed to Wesley Homes:	\$495,000

Approved for disbursement by:

Kevin Anderson
Executive Director, Wesley Homes

Date: _____

WHEN RECORDED RETURN TO:

Port of Seattle
P.O. Box 1209
Seattle, WA 98111
Attn: Paul M. Bintinger

AVIGATION EASEMENT

Grantor: WESLEY HOMES, a Washington nonprofit corporation

Grantee: PORT OF SEATTLE, a Washington municipal corporation

Legal Description: SW 1/4 of NE 1/4 of Section 8, Township 22 North, Range 4 East W.M. and
NW 1/4 of SE 1/4 of Section 8, Township 22 North, Range 4 East W.M.
Detailed legal descriptions are attached on Exhibit A (Pages 3 and 4) hereto.

Property Tax Parcel/Account Numbers: 082204-9014, 082204-9087, and 082204-9133

Related Documents: None

The Grantor, WESLEY HOMES, a Washington nonprofit corporation, for good and valuable consideration the receipt of which is hereby acknowledged, hereby conveys and warrants to the PORT OF SEATTLE, a Washington municipal corporation, a permanent nonexclusive easement as more specifically set forth herein for the free and unobstructed use and passage of all types of aircraft through the airspace over or in the vicinity of the real property ("the Premises") situated in King County, Washington that is more particularly described on Exhibit A, with such use and passage to be unlimited as to frequency, type of aircraft and proximity, except as limited by Paragraphs 2 and 3 below. The Easement granted by this instrument shall be for the benefit of, and appurtenant to, the Seattle-Tacoma International Airport, which facility is owned any operated by the Port of Seattle, together with any additions thereto wherever located.

1. The Easement granted by this instrument is as a condition of a negotiated settlement in the matter of Wesley Homes v. Port of Seattle, King County Superior Court, Cause No. 99-2-52920-1 KNT.

2. The Easement granted by this instrument shall entitle the Port, together with such persons operating aircraft at, to or from the Airport, to cause and continue the burden, including noise and all noise or airport associated conditions, in existence at the Premises as of December 30, 1989 (the "Easement Level"). If the Easement Level is exceeded, the Easement shall nonetheless remain in full force and effect as to all burden, including noise and all noise or airport associated conditions, falling within the Easement Level. Grantor specifically waives all damages and releases all claims for liability or damages caused, or alleged to be caused, by any burden, including noise and all noise or airport associated conditions, up to the Easement Level.

3. The Easement granted by this instrument shall not affect any right (if any) that Grantor may now or in the future have to make a claim for liability or damages caused by or incidental to any burden that exceeds the Easement Level at any time on or after December 30, 1989.

4. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but not be limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

5. As used herein, the term "burden" shall include, but not be limited to, the effects of any aircraft operations, aircraft landings, aircraft take-offs, such as noise, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects.

6. The Easement granted by this instrument shall constitute a permanent burden on the Premises, run with the land, and be binding upon and enforceable against Grantor, and all successors in right, title, or interest to the Premises. The Easement granted by this instrument shall benefit the Port, its successors, assigns, guests and invitees, including any and all persons, firms, or corporations operating aircraft at, to or from the Airport.

7. Except as specifically provided, this instrument shall neither enlarge nor diminish any rights of either party existing prior to the date hereof.

DATED this 12th day of ~~March~~ ^{April}, 2002.

WESLEY HOMES, a Washington nonprofit corporation,

By: [Signature]
Kevin Anderson, Executive Director

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 15th day of ~~March~~ ^{April}, 2002, before me personally appeared KEVIN ANDERSON, to me known to be the Executive Director of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
(Signature)

Keith Kemper
(Print Name)

Notary Public, in and for the State of Washington,
residing at Edmonds, WA
My Commission expires: 2-6-04

SETTLEMENT AGREEMENT- EXHIBIT D

SEVENTH AMENDMENT (EXTENSION) OF TOLLING AGREEMENT

THIS AMENDMENT alters and extends the Tolling Agreement that was executed on October 30, 2018 and the Amendment (Extension) of Tolling Agreement that was executed on January 28, 2019, and also the Second Amendment (Extension) of Tolling Agreement executed on August 28, 2019, the Third Amendment (Extension) of Tolling Agreement executed on February 27, 2020, the Fourth Amendment (Extension) of Tolling Agreement executed on June 23, 2020, the Fifth Amendment (Extension) of Tolling Agreement executed on August 28, 2020, and the Sixth Amendment (Extension) of Tolling Agreement executed on November 25, 2020, between the same two parties, Wesley Homes, Inc. ("Wesley") and The Port of Seattle ("Port"). Those same parties, Wesley and the Port (collectively the "Parties"), by their respective signatures below, agree to the following change: the termination date of August 27, 2021 contained in the Sixth Amendment (Extension) of Tolling Agreement (a copy of which is attached as Exhibit 1) is amended and extended six months to **February 28, 2022**.

As part of the consideration for this extension, the Port and Wesley have agreed to engage in additional good faith discussions and negotiations, which will include the agreement to abide by the following commitments and timeline:

1. Wesley will pursue additional testing of noise impacts on the Wesley property and will agree to share the results of those tests by December 1, 2021. A reasonable extension may be granted if the Parties agree that additional time is needed to complete the testing.
2. The Port will provide additional information to Wesley, on or before December 1, 2021, regarding the types of sound attenuation efforts that the Port is able to make under its Part 150 plan, assuming there are buildings on the Wesley Property that would otherwise qualify for remediation.
3. Both Parties agree to rejoin mediation with Judge Linda Lau (Ret.) at JDR between January 2, 2022 and January 28, 2022. Mediation may be waived if the Parties agree to an additional tolling agreement or form of settlement.
4. This Tolling Agreement will now expire on February 28, 2022.

All other terms of the October 30, 2018 Agreement (a copy of which is attached as Exhibit 2) remain the same.

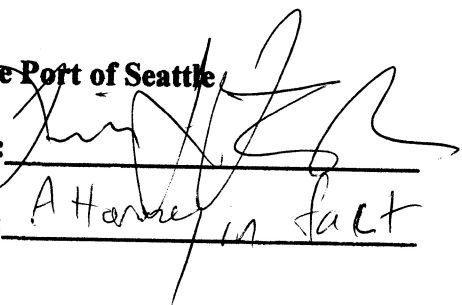
Wesley Homes, Inc.

By: Karl Kasper

Its Attorney in Fact

Date: 8-24-21

The Port of Seattle

By: 

Its: Attorney in fact

Date: 8/24/2021

SIXTH AMENDMENT (EXTENSION) OF TOLLING AGREEMENT

THIS amendment alters and extends the Tolling Agreement that was executed on October 30, 2018 and the Amendment (Extension) of Tolling Agreement that was executed on January 28, 2019, and also the Second Amendment (Extension) of Tolling Agreement executed on August 28, 2019, the Third Amendment (Extension) of Tolling Agreement executed on February 27, 2020, and the Fourth Amendment (Extension) of Tolling Agreement executed on June 23, 2020 between the same two parties, Wesley Homes, Inc. and The Port of Seattle, the Fifth Amendment (Extension) of Tolling Agreement executed on October 28, 2020. Those same parties, by their respective signatures below, agree to the following change: the termination date of November 25, 2020 contained in the Fifth Amendment (Extension) of Tolling Agreement (a copy of which is attached as Exhibit 1) is amended and extended to **August 27, 2021**.

As part of the consideration for this extension, the Port has requested, and Wesley has agreed, to abide by the following timeline and deadlines

1. Plaintiffs' Appraisal Reports due not later than March 1, 2021.
2. Port's Appraisers' Reports & Mediator Selection due not later than June 4, 2021.
3. Information Exchange, Settlement Meeting and/or Mediation completed between June 4 and August 20, 2021.
4. Tolling Agreement Expires on August 27, 2021.

All other terms of the October 30, 2018 Agreement (a copy of which is attached as Exhibit 2) remain the same.

Wesley Homes, Inc.

By: 
Its Attorney in Fact

Date: 11-24-20

The Port of Seattle
By: 
Its: Attorney in Fact

Date: 11/25/2020

TOLLING AGREEMENT

THIS Tolling Agreement ("Agreement") is made as of the 30th day of October, 2018 ("Effective Date"), by and between the following: Wesley Homes, Inc. ("Wesley") and The Port of Seattle ("The Port"). Wesley and The Port are each referred to below as a "Party" or collectively as the "Parties."

RECITALS

Wesley is a not-for-profit Washington corporation that has its principal place of business in Des Moines, Washington. It was created under the auspices of the Pacific Northwest Annual Conference of the United Methodist Church with the Des Moines property being purchased in 1944. Wesley provides a continuum of care to aging seniors in a retirement setting.

The Port is a Washington municipal corporation that owns and operates Sea-Tac Airport, among other facilities. The Airport opened in 1944 with its first regularly scheduled airline flights beginning in or about 1947. It has engaged in continuous operations ever since, including operations on the third runway at Sea-Tac airport, which commenced service in November 2008.

Wesley contends that over time the aircraft operations of the Port have increased dramatically and caused damage to the value of its property. Wesley claims that the Port has not acquired the rights to operate at the current level of operation or in the current airspace over the Wesley property.

The Port denies all of Wesley's claims and further maintains that the level of operations and the noise exposure at the Wesley property from those operations at Sea-Tac Airport and flights over or in the vicinity of the Wesley property are within easement rights the Port has acquired through judgments entered in earlier lawsuits between the Port and Wesley, or by conveyance or by prescription.

The Parties seek to avoid litigation while they continue to discuss possible resolution and therefore the Parties desire to enter into a tolling agreement,

TERMS OF AGREEMENT

The Parties agree as follows:

1. For purposes of any applicable statute of limitations, statute of repose, doctrine of laches, and any other legal doctrine based on the failure to commence legal proceedings within a specified period of time (collectively, "Timing Defenses"), any and all claims, defenses, rights, and liabilities that any Party has against or in regard to any other Party, will not be affected by the passage of time from the Effective Date through February 4, 2019, and will on February 5, 2019, be as they were on the Effective Date.
2. Nothing in this Agreement will (a) preclude or impair any party from asserting any Timing Defense to the extent that it already existed on the Effective Date, or (b) revive any

claim, defense, right, or liability that was already barred as of the Effective Date. By entering into this Agreement, no Party is admitting any fault or liability, conceding any contentions made by the other Party or waiving any claims or defenses except as expressly provided in Paragraph 1 above.

3. This Agreement contains the entire agreement between the Parties in regard to Timing Defenses and it may be modified only by a writing signed by each Party. The Parties agree that the terms of this Agreement have not been changed, modified, or expanded by any oral agreements or representations entered into or made by the Parties prior to or at the execution of this Agreement. Further, the Recitals above are not intended to define or limit the specific claims or defenses but are set forth in general terms for the purposes of limiting the Timing Defenses.

4. This Agreement is binding upon and inures to the benefit of the Parties' heirs, successors and assigns.

5. This Agreement is governed by the laws of the State of Washington.

6. The Parties may sign this Agreement in counterparts, and by electronic means, and those signatures will be treated as original signatures.

7. Each Party represents that the signer of this Agreement for that Party has authority to enter into this Agreement and to bind the Party for whom he or she is signing.

Wesley Homes, Inc.

By: Kirk Kump
Its Attorney in Fact

Date: 10/30/18

The Port of Seattle

By: James M. Gordon
Its: Senior Port Counsel

Date: 11/14/18

Tim J. Filer

From: Tim J. Filer
Sent: Tuesday, February 22, 2022 5:08 PM
To: Keith Kemper
Subject: RE: Wesley / Port of Seattle

Hi Keith –

No horsing around for me yesterday!

The Port is in agreement that the exchange of correspondence is sufficient to document that the Tolling Agreement expires on March 26.

Separate note: You'd suggested sending over Veneklasen's raw data. That isn't going to be particularly useful without a report from Veneklasen providing the context of how they gathered the data (equipment, methodology, timing, etc.) and the reasoning behind their conclusions. If they prepare a report, we'd be grateful to see it sooner rather than later and in any event by March 2 so that we have time to assess it before the mediation.

Thanks.

Tim J. Filer**Principal**

Foster Garvey PC
Tel: 206.447.2904
tim.filer@foster.com

Foster Garvey is closely monitoring the developing situation with COVID-19. For the latest legal updates and resources, please visit our [COVID-19 Resource Center](#).

From: Keith Kemper <kkemper@elmlaw.com>
Sent: Monday, February 21, 2022 2:49 PM
To: Tim J. Filer <tim.filer@foster.com>
Subject: RE: Wesley / Port of Seattle

Hi, Tim, happy holiday, hope you are getting some good horse time (although its really cold today).

Back on January 11 I accepted the terms of the Port's proposal. Part of that was to extend the current tolling agreement until 10 days after our scheduled mediation, which would make March 26 the new end of the SOL.

Is there any question from your client regarding our agreement on that? I would just as soon not do a whole new extension if the attorneys and clients are on the same page.

But if there is any uncertainty on that point, we should probably memorialize it, more or less formally.

Thanks

Keith

From: Keith Kemper
Sent: Tuesday, January 11, 2022 2:14 PM

To: Tim J. Filer <tim.filer@foster.com>

Subject: Wesley / Port of Seattle

Tim,

Thanks again for your letter. Let me say up front, yes, we will take the additional time and agree to what the Port is willing to do.

But let me follow that with some additional thoughts. First, I don't think the short extension is likely to give us much more to talk about. Veneklasen is finally mobilizing this week. But the amount of data we can produce and analyze between next week and Feb 14 is not likely to be helpful. It will be a short period that may or may not be representative of air traffic over a longer period.

But more significantly, air traffic remains well below the last year that was unimpacted by Covid. Below is a portion of a chart I pulled today from the POS website. It has averaged daily operations by week and my snippet is for the first 29 weeks of the year. It shows the enormous discrepancies we are experiencing right now relative to "normal".

Sadly the Port's chart is also wrong (the number of daily operations from 2019 is reversed with (most likely) the data from 2020).

But the point is the same: any testing we do right now is not going to reflect historical operations nor will it accurately predict expected future operations.

I get that the Port wants to be done with this and that our claim is not high on the General Counsel's priority list. But I also thought the framework we discussed had some promise and might create a pathway to resolving a claim that literally spans decades. I don't see much opportunity to update or upgrade our discussions with the short extension proposed.

As you and I have discussed many times, Wesley's alternative is to file the claim, if nothing else, to stop the running of prescriptive rights. But that does not make Wesley go away unless you can get a court to say that the change in flight locations (runway 3) or the number of overflights cannot give rise to additional damage. Short of that, litigation now does not resolve this. It just kicks it down the road by other means.

I think you have probably seen enough data at this point that you know now how Port operations compare to those in 1989, 1999, 2001, 2008, and 2019. And the forecasted growth is still far above 2019 levels.

Unless aircraft just get incredibly quiet going forward, Wesley will again be inside the 65 DNL contour, even if they are not now. Also, the Time Above 65 metric and the sheer number of noise events in excess of 65db will certainly increase. But that may be impossible to prove with any data collected during a Covid induced holding patter (pun intended).

We continue to urge the Port to choose a path that resolves Wesley's claim.

Thanks for your efforts,

Keith

Aircraft operations			
2022	2021	2020	2019
700	840	1,200	1,170
	810	1,130	1,160
	780	1,110	1,110
	770	1,110	1,130
	770	1,110	1,150
	800	1,010	1,140
	740	1,030	1,160
	820	1,140	1,170

	900	1,130	1,170
	900	1,140	1,170
	920	1,160	1,160
	920	1,160	1,070
	930	1,160	760
	950	1,170	540
	960	1,170	420
	980	1,180	390
	980	1,180	380
	990	1,210	370
	1,000	1,230	380
	1,020	1,240	390
	1,050	1,250	420
	1,070	1,240	440
	1,090	1,280	500
	1,160	1,360	580
	1,180	1,370	630
	1,190	1,370	650
	1,180	1,330	670
	1,180	1,390	730
	1,190	1,390	760

Tim J. Filer

From: Tim J. Filer
Sent: Friday, March 25, 2022 12:01 PM
To: Keith Kemper
Cc: Cynthia Wyer; Sandra D. Lonon
Subject: RE: settlement docs

Just to close the loop – Port agrees to the new April 15, 2022 date for expiration of the tolling agreement.

Thanks all.

Tim J. Filer
Principal

Foster Garvey PC
Tel: 206.447.2904
tim.filer@foster.com

Foster Garvey is closely monitoring the developing situation with COVID-19. For the latest legal updates and resources, please visit our [COVID-19 Resource Center](#).

From: Keith Kemper <kkemper@elmlaw.com>
Sent: Friday, March 25, 2022 11:58 AM
To: Tim J. Filer <tim.filer@foster.com>
Cc: Cynthia Wyer <cwyer@elmlaw.com>
Subject: RE: settlement docs

Thanks, Tim.

This confirms (in writing, of course) that Wesley agrees to the extension of our tolling agreement to April 15. We will do our best to wrap this up before then.

As always, thank you for your courtesies.

Keith

Ellis | Li | McKinstry
Keith Kemper
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
Direct: 206.224.6686
Main: 206.682.0565
www.elmlaw.com

From: Tim J. Filer <tim.filer@foster.com>
Sent: Thursday, March 24, 2022 3:34 PM
To: Keith Kemper <kkemper@elmlaw.com>
Subject: RE: settlement docs

Thanks Keith –

Wondering if our emails crossed – I proposed an extension of the tolling agreement out to April 15 to give us time to work out the documents and get the approvals; also wanted to know if that would be enough time for Wesley to convene its board for the approval discussion.

I've got a call at 4 and I'm not sure how long it is going to go. How about you talk to Kevin, I'll take a look at what you've edited/highlighted and we could talk tomorrow morning. Does 11 am work?

Thanks.

Tim J. Filer
Principal

Foster Garvey PC
Tel: 206.447.2904
tim.filer@foster.com

Foster Garvey is closely monitoring the developing situation with COVID-19. For the latest legal updates and resources, please visit our [COVID-19 Resource Center](#).

From: Keith Kemper <kkemper@elmlaw.com>
Sent: Thursday, March 24, 2022 3:17 PM
To: Tim J. Filer <tim.filer@foster.com>
Subject: FW: settlement docs

Tim, I don't see a lot that requires comment, but take a look at the few items I edited or highlighted. As mentioned, the SOL is an issue to the degree it takes 60 days for review and approval. I think the tolling agreement has to match that and I proposed a way that perhaps matches what you were thinking.

The whole issue of the intent to clarify the earlier easement, I think I understand what you are attempting to do, but I can honestly say that was not the intent that I had in discussing this – although we certainly agreed to amend it. I don't have a big beef with saying what you have here, but i may not be grasping your concern in your focus on that. To the degree it is to get out in front of any after-acquired lien or obligation on the property, that makes some sense to me. But I don't know how much control we may have over whether a lienholder agrees or not. We can sure try.

Finally, the word you used on the burden Wesley has matched what you used last Wednesday, but its not a very legal word and it may cause more confusion than understanding. Can we use the more typical "proximate" cause on the loss of value to the property. That is the what is commonly needed when it comes to the burden of proof on causation.

As I said, I am scheduled to talk with Kevin at 4 pm.
I can pick up the phone before then if you want to call.
Best,
Keith

SETTLEMENT AGREEMENT- EXHIBIT E



Acoustical Test Plan

In accordance with Appendix R of the *Airport Improvement Program (AIP) Handbook*, FAA Order 5100.38D (Handbook), the Port of Seattle is required to develop an Acoustical Test Plan (ATP) for FAA review. The ATP is to include protocols for initial testing, FAA review of initial testing results, special circumstances and the final testing phase. The key steps in the proposed ATP for the final phases of the single-family residential sound insulation program and the sound insulation program phases for the multi-family residential properties and places of worship are:

1. **Pre-Construction Acoustical Testing:** Test 100% of remaining single family homes, 100% of houses of worship and a representative sample of each multi-family housing type within each complex
2. **Determine Compatible and Non-Compatible Structures:** Analyze test data to determine if the average of the interior noise levels in all eligible rooms is greater than, equal to or less than DNL 45 dB
3. **Design Full Sound Insulation Package for Eligible Structures:** Design acoustical treatments that will meet FAA noise reduction goals for non-compatible structures
4. **Design Alternate Treatment Package for Eligible Structures:** Design secondary treatment packages for compatible structures that are eligible for purposes of “neighborhood equity” or needing to have continuous positive ventilation installed in order to receive the benefits of the existing sound insulation by having windows and doors always closed
5. **Post-Construction Acoustical Testing:** Test a representative sampling of structures that had acoustical treatments installed to determine if treatments met noise reduction goals as required by the FAA

The Seattle-Tacoma International Airport (SEA) ATP conforms to “best-practices” utilized by industry professionals for over thirty years in sound insulation programs across the nation, and includes testing methods for determining interior noise levels that are described in the FAA’s adopted guidance per Advisory Circular 150/5000-9A, *Announcement of Availability – Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residents Exposed to Aircraft Noise*, issued in 1992.

Detailed description of the key steps follows.

1. Complete Pre-Construction Acoustical Testing

Pre-construction acoustical testing serves two major purposes: (1) calculation of the existing interior noise level to determine eligibility to participate in the sound insulation program based on FAA criteria and (2) determination of the required improvement in noise level reduction required to provide an interior noise level that meets the FAA criteria.

1.1 Acoustical Criteria

Eligibility criteria for the SEA Noise Mitigation Program are as required per the Handbook, Appendix R, which specifies that potentially eligible properties must be located in the FAA-approved DNL 65 dB noise contour and structures have a logarithmic (energy) average interior noise level in habitable rooms of 45 dB or greater.

Noise reduction goals for the SEA Noise Mitigation Program are as required per the Handbook, Appendix R, Table R-6, which states: “The sound insulation package must provide a reduction of at least 5 dB and bring the average interior noise level below 45 dB.” The 5 dB improvement exists to provide a noticeable reduction of aircraft noise levels to the inhabitants / users of the interior spaces.

1.2 Measurement Methodology

Sound insulation measurements are typically based on using either an artificial noise source or using actual aircraft noise events. Historically the Port of Seattle has used the actual aircraft method, but is requiring the use of the artificial noise source method for efficiency in implementation and to limit interruption to the property owners and inhabitants/users of the interior spaces. An artificial noise source allows measurements to be made at the properties during a brief measurement period, independent from the reliance on aircraft over flights and without the need for multiple sound level meters to simultaneously measure aircraft noise in all habitable rooms. The measurement procedure described herein has been developed to accurately measure outdoor to indoor noise level reduction (NLR) of rooms and to measure the sound insulation effectiveness (SIE) of building construction elements such as windows, doors, walls, and/or roof structures as deemed appropriate.

The equipment expected to complete the sound insulation measurements includes:

- Integrating sound level meter
- Loudspeaker (active or passive)
- Power amplifier (often integrated with speaker)
- Signal generator (pink noise or simulated pink noise via graphic equalizer)
- Speaker tripod
- Monopod for the measurement microphone
- Speaker extension cables
- Power extension cables
- Digital camera

The procedures generally follow those outlined in the American Society for Testing and Materials (ASTM) Standard E966¹. The procedures also conform to good practice in sound insulation programs. The efficiency and flexibility of the testing procedures are enhanced using methods and theories from other sources such as Leo Beranek’s “Noise and Vibration Control”. These are applied in addition to the ASTM standard to achieve the same level of accuracy.

¹ ASTM E966 - 10^{E1}: *Standard Guide for Field Measurements of Airborne Sound Attenuation of Building Facades and Façade Elements*

1.3 Measurement Procedures

The Port of Seattle's acoustical consultant shall use a specialized field monitoring kit that includes a signal generator and public announcement (PA) type loud speaker to produce a noise source of equal energy in each octave band (known in the acoustics field as "pink noise") at an approximate overall sound level of 100 dB as measured at the façade under test.

The loudspeaker will be vertically positioned either on a tripod or placed on the ground unless there is compelling evidence that the roof/ceiling element of the room under test has the potential to contribute to the interior sound level from aircraft operations. Examples of compelling reasons include: existence of weak elements within the roof/ceiling structure, such as sky lights; relatively light weight materials to make up the roof structure; limited airspace between the roof and ceiling, e.g., vaulted ceilings and flat roofs; and limited or no use of insulation in the space between the roof and ceiling. In these instances, the speaker will be lifted above the roof for roof and façade exposure through the use of an industrial grade hoisting device, such as a bucket truck, scissors lift or mobile crane.

The loudspeaker is directed at the room or element of interest as required in the ASTM Standard E966, typically at a 45-degree incidence angle to minimize the application of corrections to the data. The goal is to have a uniform sound field exposure of the entire exterior surface (façade) of interest, whether a single room or multiple rooms along the same facade. To obtain a uniform sound field along a wider area (testing of multiple rooms along the same façade) requires the speaker to be a greater distance from the façade at an increased volume as compared to the measurement of a single room.

The loudspeaker must be positioned such that sound field at the façade of the room being measured is as uniform as possible (± 2 dB along the façade of measurement) at a 45-degree angle of incidence. A larger facade would require a greater distance from the facade to the speaker to maintain a uniform sound level. Corner rooms with two facades must have both facades exposed simultaneously, with the direction of the speaker aimed at the center of only one of the facades. If only one façade is tested, it must be the least performing façade in terms of potential noise reduction. From the center of the façade, the perpendicular and the parallel distance to the speaker must be roughly equal. For efficiency attempt to position the loudspeaker in positions to test multiple rooms with a single position and minimize the number of speaker positions required to complete testing of all habitable rooms.

At times the acoustical consultant will request the roof/ceiling structure be tested to determine whether it is a major sound transmission path into a particular room. When determining the performance of the roof structure, the loudspeaker is placed over the roof such that the other structural elements (i.e., doors, windows, walls, etc.) are shielded from the sound field as much as possible. This often requires the use of a longer hoisting device than required if the loudspeaker is placed above the yard.

With the loudspeaker placed to provide sufficiently uniform sound across the façade, room, or element, acoustic octave band (or one-third octave band) measurements are made both on the

exterior and in the interior of the structure. Interior octave band (or one-third octave band) sound levels measurements are also obtained without the loudspeaker in operation to provide background or ambient sound levels. Time- and spatial-averaged sound levels are required for interior and exterior measurements.

Interior Measurement Procedures:

Interior measurements occur for two distinct purposes:

1. Interior noise level calculations for each room as required for eligibility and assuring achievement of the program's acoustical goals.
2. Identifying specific intrusion from various exterior building elements (e.g., doors, windows, etc.) which contribute to the interior noise level from aircraft operations.

1. Interior room measurements:

For interior room measurements, the microphone is swept to measure the average sound pressure of the room and should be at least 3.3 feet (1 meter) from the sound transmitting elements of the room (window, door, wall, vent, etc.) and from any hard reflective surface in the room (e.g., walls).

The interior background Leq is measured by sweeping the microphone as described above for 30 seconds without the loudspeaker system on. To ensure no contamination with the interior measurements with the speaker on, the background Leq must be at least 10 dB below the noise levels measured with the speaker on in each octave band (or 1/3 octave band). Typically, the goal is for an overall interior background Leq of 40 dB or less. To obtain this environment, household noise sources may need to be reduced or eliminated including pet noise, talking, movements within the home and some equipment may need to be turned down, turned off or muted, such as televisions, radios, phones, ventilation (fan) systems, refrigerators and fish tanks.

The interior room Leq is measured by repeating the interior background Leq process, but with the loudspeaker system turned on.

2. Interior element measurements:

For supplemental interior element measurements (if requested by the architect/engineer to refine the recommended treatments), the microphone is swept over the entire element (window, door, etc.) in a repeated "S" pattern with the microphone less than 3 inches away from element without touching the element for 30 seconds. This procedure varies from the ASTM E966 guidance to reduce flanking noise contribution from other exterior façade elements and will be used to identify the noise contribution from the particular element under test. By placing the microphone as close to the element as described above (within 3 inches), the measurement is likely influenced by "near field" acoustic factors and the results are, therefore, not intended to be used for detailed modeling of elements as outlined in ASTM E966. The purpose of the interior element measurements

is only to help determine the relative contributions of the various exterior building elements within a particular room for general design purposes.

It is important to return all household noise sources to their conditions prior to the measurements.

Exterior Measurement Procedures:

For exterior measurements (background Leq and measurement Leq), the microphone is swept in a repeated “S” pattern for 30 seconds. There are three acceptable methods for obtaining the exterior measurements, which should be attempted in the order below as described (if option 1 is not possible, go to option 2 and then option 3 if options 1 and 2 are not possible):

1. Flush Method: Are flush measurements possible with great accuracy in that the microphone is kept within a windscreen distance from the façade? If yes, then use the flush method. If not, proceed to 2. The flush method requires the microphone swept as close to the façade as possible without touching the façade. Typically the microphone is kept within a windscreen diameter distance from the façade or element being tested.
2. Nearby Method: Can the speaker be positioned about 40 feet from the façade and able to have the microphone 4 to 5 feet away from the façade? If yes, then use the nearby method and subtract an additional 1 dB from the exterior noise level prior to determining interior noise level for that room. If not, proceed to 3. The nearby method requires the microphone be swept at a distance of 4 to 5 feet from the façade within the direct sound field of the speaker.
3. Free Field Method: Use the free field method by measuring the distance from the speaker to the façade, positioning the speaker in a free-field environment over soft ground and measure the sound level at the same distance from the speaker as the façade during the interior noise level room measurement by sweeping the microphone at the distance determined.

The default method is the flush measurement procedure to provide the maximum consistency in the process. We fully acknowledge there will be instances encountered when it will be difficult to impossible to measure very close to the façade. For these instances we recommend the nearby method as this method does not require additional set up, time and community annoyance to complete. In those rare instances that neither of these methods is employable, the free field method is to be used as the last option.

Digital photographs must be taken of the following:

- Exterior of the home to aid in identifying the property
- Loudspeaker setups
- Exterior elements that are in poor condition or that have been replaced with modern products
- Room interiors to document absorption conditions in case noise modeling is undertaken or if retesting is required to document changes in the interior conditions

The digital camera must have same date and time as the integrating sound level meter and all photographs must have date and time stamp for reference.

The acoustical consultant must complete data log sheets (digital format is acceptable) that include, at a minimum, the following information:

- Resident last name
- Property address (site number if known)
- Date and time of measurements
- Description of rooms tested
- Initials of person conducting the testing
- Airport code/identifier
- Speaker set up (ground, tripod or elevated using hoisting device)
- A-weighted noise level in dB tagged to SLM file number for interior background, interior, exterior and type of exterior façade measurement (flush, nearby or free field)
- Sketch of room layout, loudspeaker and microphone placement noting all exterior elements

1.4 Calculations

The Outdoor/Indoor Noise Reduction (OINR) of rooms and of building elements are calculated from the measured exterior and interior sound levels in each octave band (or one-third octave band), as outlined in ASTM E966. The OINR values are used to compute the outdoor to indoor NLR of aircraft noise as measured in A-weighted decibels, denoted dB. The OINR data is similarly used to compute the sound insulation effectiveness (SIE) of the individual building elements measured.

Sound levels using the artificial noise source are used to determine the OINR in accordance with ASTM E966. With the loudspeaker directed at the room, or element, measurements are made both on the exterior and in the interior of the room. The exterior measurements are reduced by 5 dB, 2 dB or 0 dB in each octave band (or one-third octave band) for the flush, nearby and free field methods, respectively. In some cases, such as for roof structures, “nearby microphone method” measurements are not practical. In these cases, the acoustical consultant instead undertakes “free-field” exterior measurements of the noise source. These measurements are undertaken at a distance from the loudspeaker equal to the distance from the loudspeaker to the façade or element being tested. Per ASTM E966, the “free-field” measurements require no adjustments to the measured sound levels. Interior element measurements are adjusted per ASTM E966 based on the angle of incidence of the noise source. The acoustical consultant typically attempts to position the speaker and obtain an incident angle of 45 degrees for consistency, repeatability, and efficiency as it requires no correction in the calculations. If some other angle, rather than 45 degrees, is required, the acoustical consultant will apply the appropriate correction to the calculations as provided in ASTM E966.

1.5 Calculation of Noise Level Reduction (NLR) – Rooms

NLR is a single number rating used for the comparison of the difference in the outdoor-to-indoor noise levels. This number is typically used to judge the overall effectiveness of sound insulation programs.

The NLR of a room is dependent on the exterior noise source spectrum. In aviation sound insulation programs, the NLR is based on aircraft as the exterior noise source. The Port has determined the exterior sound source spectra for use in the current sound insulation program per the FAA-accepted 2018 Noise Exposure Map (NEM) for the SEA Program as the Boeing 737-800. The aircraft noise spectra provided below will be used to determine the NLR for each room tested for areas where arrivals or departures dominate in the exterior DNL. The noise source spectra of the 737-800 aircraft is A-weighted to resemble human perception and to be consistent with the FAA guidelines for assessing aircraft noise in communities.

SEA Sound Insulation Program A-weighted Aircraft Noise Spectra												
Boeing 737-800 Aircraft Arrival Spectra – INM Spectral Class 203												
Hz	50	63	80	100	125	160	200	250	315	400	500	630
dB	37.1	42.7	47.1	50.9	54.1	60.6	63.8	64.5	64.7	69.3	69.7	71.2
Hz	800	1000	1250	1500	2000	2500	3150	4000	5000	6300	8000	10000
dB	70.8	70.0	71.0	68.4	68.6	72.1	70.9	73.1	64.7	56.3	48.5	36.4
Boeing 737-800 Aircraft Departure Spectra – INM Spectral Class 104												
Hz	50	63	80	100	125	160	200	250	315	400	500	630
dB	27.1	30.1	39.0	48.6	55.3	60.3	56.1	63.5	67.2	69.3	68.1	68.5
Hz	800	1000	1250	1500	2000	2500	3150	4000	5000	6300	8000	10000
dB	70.1	70.0	68.8	68.3	64.6	62.2	57.8	54.2	48.3	40.4	30.6	25.4

The indoor A-weighted noise source spectrum for each room tested in the program is obtained by subtracting the measured OINR from each octave band (or one-third octave band) of the exterior A-weighted noise source spectrum. The A-weighted noise level is obtained by summing the energies in each octave band (or one-third octave band). The A-weighted NLR, based on a typical aircraft noise spectrum, is the difference between the outdoor and indoor A-weighted noise levels. This is shown in the following equations.

The exterior A-weighted total level is:

$$L_{Ext\ Total} = 10 \log \sum_{i=1}^k 10^{\frac{L_{Ext\ Noise\ Source\ Spectrum,i}}{10}}$$

The interior A-weighted total level is:

$$L_{Int\ Total} = 10 \log \sum_{i=1}^k 10^{\frac{L_{Ext\ Noise\ Source\ Spectrum,i} - OINR_i}{10}}$$

Where “k” is the total number of full octave or 1/3 octave bands used

The NLR is then determined by:

$$NLR = L_{Ext\ Total} - L_{Int\ Total}$$

The following table presents an example of a full octave band calculation measurement. Under “Unweighted Measured Data”, the *Interior Background* shows the measured interior background

octave band levels and the A-weighted total. The *Interior Measurement* presents the measured interior octave band levels and the A-weighted total. The *Exterior Background* shows the measured exterior background octave band levels and the A-weighted total. The *Exterior Measurement* shows the measured exterior façade octave band levels and the A-weighted total. In this example, the A-weighted totals show the measurements with the loudspeaker turned on being more than 10 dB louder than the background levels. The OINR is developed by subtracting the *Interior Measurement* from the *Exterior Measurement*.

Under “A-Weighted Aircraft Noise Source Spectrum” the OINR is subtracted from the Exterior Spectrum to obtain the Interior Spectrum. The A-weighted acoustical energy totals of the Exterior Spectrum and the Interior Spectrum are subtracted to obtain the Noise Level Reduction on the last line.

	Octave Band Center Frequency								A-Weighted Total
	63 Hz	125 Hz	250 Hz	500 Hz	1000 Hz	2000 Hz	4000 Hz	8000 Hz	
Unweighted Measured Data									
Int. Background	45.6	40.2	36.2	27.7	30.1	28.0	22.6	18.9	35.2 dBA
Int. Measurement	56.3	52.7	48.3	40.8	46.6	43.5	43.3	36.4	51.0 dBA
Ext. Background	63.1	58.8	55.6	41.3	43.7	43.5	41.0	24.7	51.7 dBA
Ext. Measurement	78.1	77.0	74.0	70.8	75.9	75.8	74.8	74.6	82.0 dBA
OINR	21.8	24.3	25.7	30.0	29.3	32.3	31.5	38.2	
A-Weighted Aircraft Noise Source Spectrum									
Ext. Spectrum	63.2	74.1	80.4	84.1	84.0	82.4	75.0	58.2	89.3 dBA
Int. Spectrum	41.5	49.8	54.7	54.1	54.7	50.1	43.5	20.0	60.4 dBA
Noise Level Reduction:									28.9

1.6 Calculation of Sound Insulation Effectiveness (SIE) – Structure Elements

Single number ratings have been developed to describe the sound insulating capabilities of building construction elements such as windows, doors, walls, roof structures, etc. The acoustical consultant measures elements during the testing process only to provide guidance in recommending appropriate sound insulation treatments to obtain the required NLR improvements and Program goals.

Manufacturers of windows and doors commonly use the Sound Transmission Class (STC) and/or Outdoor-Indoor Transmission Class (OITC) ratings. These ratings were developed to judge the sound insulating capabilities of interior building partitions over the frequencies of human speech. The single number rating, SIE, is used by the acoustical consultant to assess the capability of an element to reduce aircraft noise inside a building. SIE for elements is calculated the same way as the NLR for rooms. For elements, the OILR is subtracted from each octave band (or one-third octave band) of an A-weighted noise source spectrum. It should be noted that the SIE based on aircraft noise exposure will generally be lower than STC because aircraft noise has more energy in the low frequencies than that associated with human speech.

1.7 Calculation of Day-Night Average Sound Level (DNL)

The exterior Day-Night Average Sound Level (DNL) values at each property are determined from the current FAA-accepted NEM, 2018 for the SEA Program. The process used to specify the exterior DNL values is outlined in section 3.4.1 of the 1992 *Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations*, which states: “The higher end of the noise zone range is always used. For example, in the DNL 65 to 70 dB contour zone, the noise level outside the house is taken to be 70 dB.” This methodology is further supported by section 1.1 of the 2005 *Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations*, which is attached to FAA Advisory Circular AC150/5000-9a, states: “There are no safety factors built into the recommendations in this report, except to the extent that homes are grouped into 5 dB ranges of outdoor noise exposure.”

Interior DNL noise levels are calculated for each residence by subtracting the calculated room NLR based on the acoustical measurements from the exterior DNL noise level and then logarithmically averaging the results for all eligible rooms. Eligible rooms for residences are defined by the FAA as “habitable” (as defined below) whereas eligible rooms for places of worship are those that are used for purposes requiring relative low interior noise levels, e.g., areas of worship or instruction. Eligible rooms will be determined for each structure during implementation of the SEA Program.

The Appendix on Noise Compatibility Planning/Projects of the AIP Handbook defines habitable rooms for residences as living, sleeping, eating or cooking areas. This would include living rooms, family rooms, dining rooms, bedrooms, kitchens, and offices. In limited cases, a sunroom that meets the latest edition of the International Residential Building Code (IRBC) definition of a Category V sunroom, and also adopted by a variety of state building codes, may be considered habitable. In the IRBC, a Category V sunroom is defined as “a one-story structure attached to a building with a glazing area in excess of 40 percent of the gross area of the structure’s exterior walls and roof.” The sunroom must have a roof with enclosed walls and is designed to be heated and/or cooled and is open to the main structure of the residence. The sunroom must also comply with additional requirements for forced-entry resistance, water-penetration resistance, air-leakage resistance, and thermal performance, defined by the local state building codes for being habitable and conditioned.

Bathrooms, closets, halls, vestibules, foyers, stairways, unfinished basements, storage and utility spaces are not considered to be habitable space. In addition, spaces not allowed under local building codes are not considered habitable. For example a garage conversion to a bedroom or a basement conversion to a bedroom is not considered habitable.

In some cases, elements such as windows of non-habitable space may impact the testing and mitigation of adjacent habitable rooms. For example, a stairway window adjacent to an open bedroom or an open closet with a window next to a bedroom may need to be considered for mitigation.

1.8 Extent of Testing

According to the Handbook Appendix R, typically the FAA recommends testing between 10 and 30% of the potentially eligible parcels. Based on the windshield survey results of the parcels currently within the 2018 NEM DNL 65 dB contour, the SEA Program determined the extent of testing for each of the following parcel types: single-family residential, multi-family residential and houses of worship.

Single-Family Residential:

Due to: (1) the limited number of single-family residential units remaining eligible, (2) having completed the majority of the single-family homes in prior phases and (3) the large diversity of structure types, sizes and conditions, SEA requires 100% testing of the remaining single-family structures. Acoustical testing will be conducted in all habitable rooms in each structure for all owners that apply for sound insulation treatment and are determined to be potentially eligible based on year built (12/3/1986 for the city of Des Moines and 9/6/1987 for all other areas of King County²).

Multi-Family Residential:

For multi-family properties the testing method for apartments and condominiums varies slightly. Apartments typically have one (1) owner and multiple tenants and have very little changes in the elements with consistent construction. Condominiums are individually owned, similar to single-family homes. Condominiums are more likely to have changes in the elements by individual owners which may change testing requirements and interior noise levels. The difference in the testing plans is described in more detail in the following sections.

Apartment Buildings (Rental Property):

Apartments are based on what is called the “Individual Building” acoustical testing plan and generally have one (1) owner with multiple tenants. Unlike condominiums, apartments are more likely to have consistent exterior elements since any changes would be undertaken as part of each building and the whole complex. The property survey will identify all floor plan types and variation in all buildings on the property. Floor plan types are usually studios, 1-bedrooms, 2-bedrooms, 3-bedrooms and can be further categorized as flats or townhouses. Variations on the floor plans may include units that have extra windows or different exterior construction. Once all floor plan types have been identified, acoustical testing is conducted on at least 10% of each floor plan type/variation with a minimum of two (2) units per floor plan type.

For smaller multi-family apartment buildings (6 units or less) testing on 100% of all units is recommended. Consultation with the local FAA Regional Office or ADO is required to confirm when 100% testing must take place

The selection of the testing sample for apartment buildings is summarized below:

² While the FAA current guidelines recommend the date of construction for eligibility as October 1, 1988, the Port of Seattle has adopted more stringent dates as negotiated with the City of Des Moines and King County.

- Conduct a site survey of all apartment buildings on the property;
- Define all apartment floor plan types present in all buildings (i.e.; studio, 1-bedroom, 2-bedroom, 3-bedroom), (flats and townhomes);
- Define each variation in the floor plan types (i.e.; extra windows, skylights);
- Define construction styles (exterior walls) for all apartment units;
- Identify each unit floor plan and building construction style;
- Select a representative sample of apartment units to be tested; and
- Conduct acoustical testing in all selected apartment units making sure to test 10% (minimum 2 units) of each apartment floor plan, variation, and construction style

Condominium Buildings (Owner-Occupied Property):

Condominiums are also based on the “Individual Building” acoustical testing plan and are individually owned similar to single-family homes. Unlike apartments, condominiums are more likely to have exterior changes such as newer windows and doors. The property survey must identify all floor plan types and variations in all buildings on the property. Floor plan types are usually studios, 1-bedrooms, 2-bedrooms, 3-bedrooms and can be further categorized as flats or townhouses. Variation on the floor plans may include units that have extra windows or different exterior construction. Variations also include units where homeowners have replaced exterior windows and doors that could impact the interior noise levels. Once all floor plan types have been identified acoustical testing must be conducted on at least 10% of each floor plan type/variation with a minimum of two (2) units per floor plan type.

The selection of the testing sample for condominium buildings is summarized below:

- Conduct a site survey of all condominium buildings on the property;
- Define all condominium floor plan types present in all buildings (i.e.; studio, 1-bedroom, 2-bedroom, 3-bedroom), flats or townhomes;
- Define construction styles (exterior walls) for all condominium buildings;
- Define condominium units that have had exterior changes in elements;
- Identify each condominium floor plan and building construction style;
- Select a representative sample of condominium units to be tested; and
- Conduct acoustical testing in all selected condominium units making sure to test 10% (minimum 2 units) of each condominium floor plan, construction style, and renovated unit

Houses of Worship:

Based on the windshield survey of all eligible houses of worship and the diversity of structures within a parcel and among all the parcels, SEA requires 100% testing. Acoustical testing will be conducted in all eligible (noise sensitive) rooms in each structure for all parcels that the owners apply for sound insulation treatment.

2. Determine Compatible and Non-Compatible Structures

Noise sensitive structures, e.g., residences and places of worship, located within the DNL 65 dB contour that are potentially eligible for sound insulation were identified in the FAA accepted 2018 NEM.

Single-family structures with an average interior noise level of DNL 45 dB or greater, will be considered eligible for the full sound insulation package of acoustical treatments based upon pre-construction acoustical testing results.

If 30% or more of the multi-family units in a structure qualify for treatment (average interior noise level of DNL 45 dB or greater), then the entire structure will be deemed eligible for the full sound insulation treatment. All remaining structures are not eligible to receive sound insulation treatment.

For houses of worship, only those noise sensitive rooms with interior noise levels of DNL 45 dB or greater will be considered eligible for the “Full Sound Insulation Package”. Houses of worship noise sensitive rooms with an interior noise level less than 45 dB DNL and deemed to be already compatible, may qualify for an alternative package of treatments.

Structures are eligible for the alternative package of treatments under the two following circumstances:

To ensure neighborhood equity – residential properties only

Table R-3, b (AIP Handbook Appendix R) states that “The sponsor must develop a separate neighborhood equity package limited to improvements the secondary treatment package would include things such as “...caulking, weather stripping, installation of storm doors or ventilation packages for residences that are not experiencing interior noise levels of 45 dB or greater.” As noted in Table R-3, g, “The ADO³ must review and approve or disapprove the sponsor’s proposed neighborhood equity package.” The proposed alternative package of treatments will be determined for each residential phase of the SEA Program, a draft of which will be submitted to the FAA for review and approval.

To ensure a structure can continuously have all doors and windows closed

Table R-6, h.3 states that “A Continuous Positive Ventilation System is the allowable package ...” and Table R-6, h.2 states “Because the interior noise measurements are conducted with “windows closed”, there may be situations where a [structure] does not have an existing ventilation system, but relies on keeping the windows open for air circulation.” Units that do not have an existing positive ventilation system will qualify for installation of a system.

³ Federal Aviation Administration Airports District Office (ADO). The Seattle ADO is the office that the Port of Seattle’s will coordinate with for the Program.

The Handbook requires that the “The sponsor will then measure the interior noise levels and prepare a summary report detailing the effectiveness of the design package, make recommendations for any changes to the package, lists the before and after interior noise level data, and submits the package to the ADO”⁴ The Port of Seattle will prepare the required report for submission to the ADO.

3. Design Full Sound Insulation Package for Eligible Structures

The full sound insulation package is intended to create an acoustically-treated envelope within the structure to achieve FAA’s goal for Noise Level Reduction (NLR) improvement. The Handbook states, “The sound insulation package must provide a reduction in indoor noise level of at least 5 dB and bring the average interior noise level below 45 dB.”⁵

FAA allows only the following treatments to be included in the full sound insulation package:

- Window and door replacement
- Caulking
- Weather stripping
- Central air ventilation if the structure does not already have a central air ventilation system

The central air ventilation treatment often requires modifications to the existing electrical system to accommodate the new equipment. If this issue occurs, consultation with the FAA will be necessary as there are many situations where modification to the electrical system is not eligible.

Sunrooms that enclose conditioned space shall be analyzed to determine if acoustic treatment is necessary and proposed treatments shall meet current building codes. If the sunroom is thermally isolated from the rest of the habitable space, then insulation shall be provided in the isolation barrier as per building code, if necessary and applicable.

A detailed process for preparing design document should be included in a comprehensive Policy and Procedures manual for the Port’s program. As part of this detailed process, the Port’s program should include a detailed design assessment visit to collect important existing condition information about each structure. Based upon the existing conditions, and results of the acoustical testing, specific recommendations for treatments are to be developed. For example, windows and doors will be recommended with appropriate Sound Transmission Class (STC) ratings to achieve the NLR goal for the structure.

The Handbook also requires that, “If for any reason the sponsor believes that the 5 dB reduction cannot be achieved, the sponsor must provide a written request to the ADO.”⁶ A determination should be made for each structure during the design process and a request submitted to the ADO

⁴ FAA Order 5100.38D, *Airport Improvement Program Handbook*, Appendix R, Table R-4, Paragraph c. (5).

⁵ FAA Order 5100.38D, *Airport Improvement Program Handbook*, Appendix R, Table R-6, Paragraph g. (4).

⁶Stet.

for any structure where the design team is concerned the NLR improvement goal might not be achieved.

4. Design Alternate Treatment Package for Eligible Structures

There are two situations where the Handbook permits alternate treatment packages for residential structures. Offering a reduced package of treatments to a small number of homes that don't qualify for the full treatment package is the first situation. The Handbook states, "A sponsor may consider the use of neighborhood equity when a few residences in the eligible noise contour threshold (per Paragraph R-6) that do not meet the interior noise level requirements are scattered among residences that do meet the interior noise level criteria."⁷ Treatments allowed for these structures include:

- Caulking
- Weather stripping
- Installation of storm doors
- Ventilation packages if the structure does not already have a central air ventilation system

The ventilation package often requires modifications to the existing electrical system to accommodate the new equipment. If this issue occurs, consultation with the FAA will be necessary as there are many situations where modification to the electrical system is not eligible.

This alternate treatment package can be offered only if the following provisions are met:

- The residence must be in the eligible noise contour threshold
- The lesser of 10% of the homes in a neighborhood or 20 homes in a phase of the program are offered the alternate treatment package
- A detailed list of the residences is provided by the Port to the ADO
- Detailed costs comparing the alternate treatment package with the full treatment package are provided by the Port to the ADO
- The ADO approves the use of the alternate package

A determination would be made whether or not to offer the alternate treatment package once the pre-construction acoustical testing is completed. If a significant number of homes do not qualify for the full treatment package, the Port would conduct a review and consult with the ADO to determine if offering the alternate treatment package is feasible. A detailed process should be included in a Policy and Procedures Manual for the Port's Program.

Structures that do not have existing positive ventilation systems are the other situation where the Handbook permits an alternate treatment package. Keeping the existing windows and doors closed in a structure may result in interior noise levels less than 45 dB without further modification. However, maintaining a level of comfort inside the structure requires adequate ventilation. Therefore, the Handbook offers a provision that, "A Continuous Positive Ventilation

⁷ FAA Order 5100.38D, *Airport Improvement Program Handbook*, Appendix R, Paragraph R-10.

System is the allowable package for these residences.”⁸ Modifications to the existing electrical system may also be performed to accommodate the new ventilation equipment, as necessary. Repairing existing code deficiencies is not AIP eligible.

The acoustical testing team should document whether each structure tested has an existing ventilation system and tabulate a list of those structures that do not have a ventilation system. Upon completion of the acoustical testing process, structures that are eligible for the ventilation system only would be identified and this option would be offered to the owners of those structures. It is recommended that a separate construction package just for structures that qualify only for ventilation systems be prepared. Procedures defined in the aforementioned Policy and Procedure Manual would be followed for the design and installation process.

5. Post-Construction Acoustical Testing

Post-construction acoustical testing will be conducted on a random sampling of between 30% and 100% dependent on parcel type that had acoustical treatments installed: 20% of single-family structures, 30% of multi-family unit/category types, and 100% places of worship rooms. The acoustical consultant will analyze the results to determine if treatments met program acoustical goals. Any instances where goals were not met will be investigated and adjustments made to acoustical treatments may be required to ensure that acoustical goals are ultimately met. This task is intended to provide quality control and assurance.

A post-construction acoustical testing summary report will be prepared and submitted to the Seattle ADO that documents the noise level reduction achieved and notes any unique circumstances.

6. Conclusion

The five steps outlined in the SEA Noise Mitigation Program ATP comply with the requirements set forth in Table R-4 of Appendix R, Noise Compatibility Planning / Projects of the Handbook. The plan also takes into consideration, as does FAA’s adopted guidance, Advisory Circular 150/5000-9, that sample testing needs to be augmented by testing of select individual homes depending on their acoustically significant interior and exterior features.

⁸ FAA Order 5100.38D, Airport Improvement Program Handbook, Appendix R, Table R-6, Paragraph h. (3).

TAB B

WHEN RECORDED RETURN TO:

Seattle-Tacoma International Airport/Noise Programs
17801 International Blvd.
Seattle, Washington 98158
Attn: Stan Shepherd

AMENDED AND RESTATED AVIGATION EASEMENT

Grantor: Wesley Homes Des Moines, LLC, a Washington limited liability company

Grantee: Port of Seattle, a Washington municipal corporation

Abbreviated Legal Descriptions: SW 1/4 of NE 1/4 of Section 8, Township 22 North, Range 4 East W.M.; and
NW 1/4 of SE 1/4 of Section 8, Township 22 North, Range 4 East W.M.

Full legal descriptions in Exhibit B attached hereto

Assessor's Property

Tax Parcel Numbers: 082204-9014, 082204-9087, and 082204-9133

Reference Number

of Related Document: 20030110000170 (Avigation Easement dated April 15, 2002)

AMENDED AND RESTATED AVIGATION EASEMENT

Grantor WESLEY HOMES DES MOINES, LLC, a Washington limited liability company, whose sole member and manager is Wesley Homes Corporation, a Washington nonprofit corporation (collectively, “Wesley”), on its own behalf and behalf of its successors and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys and warrants to the PORT OF SEATTLE, a Washington municipal corporation (the “Port”), and its successors and assigns, a permanent nonexclusive easement, as more specifically set forth herein, for the free and unobstructed use and passage of all types of aircraft through the airspace over or in the vicinity of the real property situated in King County, Washington, that is more particularly described on Exhibit B (“the Premises”), with such use and passage to be unlimited as to frequency, type of aircraft, and proximity, except as the Port’s easement rights are limited below. The easement granted by this instrument shall be for the benefit of, and appurtenant to, the real property now commonly known as Seattle-Tacoma International Airport, which facility is owned and operated by the Port of Seattle as proprietor, together with any additions thereto wherever located hereafter made by the Port or its successors and assigns (the “Airport”).

1. This Amended and Restated Avigation Easement (“Amended Easement”) clarifies the Avigation Easement recorded on January 10, 2003, under Recording Number 20030110000170, which was granted by Wesley to the Port as a condition of a negotiated settlement in *Wesley Homes v. Port of Seattle*, King County Superior Court, Cause No. 99-2-52920-1 KNT (the “Original Easement”). The parties desire to amend and restate the Original Easement and intend that the Amended Easement retain the same priority of title and effective date as the Original Easement. This Amended Easement is being conveyed pursuant to a subsequent settlement of disputes between Wesley and the Port regarding the meaning and effect of the prior negotiated settlement and Original Easement.

2. The Amended Easement entitles the Port, together with such persons operating aircraft at, to, or from the Airport, to cause and continue the burden, including noise and all noise or airport associated conditions, in existence at the Premises as of December 30, 1989 (the “Easement Level”). The Easement Level is determined by the annual-average daily noise exposure from aircraft operations using the metric adopted by the Federal Aviation Administration (“FAA”) known as day-night level (“DNL”) as defined in the regulations at 14 C.F.R. Part 150 as such regulations are in effect as of March 26, 2022. The parties agree that the DNL values for the Easement Level are as shown in the attached Exhibit A.

3. The Easement Level shall not be deemed to be exceeded unless Wesley (or its successors and assigns) sustains the burden of proving that future DNL levels exceed the Easement Level by 1.5 dB DNL or more. In asserting a claim that the Easement Level has been exceeded, Wesley (or its successors and assigns) must calculate DNL levels by using the then-current version of the FAA’s Aviation Environmental Design Tool (“AEDT”) or any required noise modeling program the FAA has adopted to replace the AEDT, and the analysis must follow FAA

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS

PAGE 1 OF 8

requirements for conducting noise modeling, including using data from at least a 12-month period immediately preceding Wesley's assertion of the claim. If the Easement Level is exceeded, this Amended Easement shall nonetheless remain in full force and effect as to all burden, including noise and all noise or airport associated conditions resulting in DNL values falling within the Easement Level.

4. Wesley and its successors and assigns specifically waive all damages and release all claims for liability or damages caused, or alleged to be caused by any burden, including noise and all noise or airport associated conditions, existing at any time prior to March 26, 2022, or arising from facts occurring after that date for any such burden, including noise and all noise or airport associated conditions, resulting in DNL values falling within the Easement Level. Wesley and the Port acknowledge and agree that neither (1) the existence, use, or aircraft operations at, to, or from Runway 16R/34L at the Airport nor (2) the fact that the number of flight operations at the Airport in a 12-month period exceeds the number of such operations in 1989 constitutes a sufficient basis to establish that the Easement Level has been exceeded.

5. Subject to the above paragraphs, Wesley (and its successors and assigns) may make a claim for liability or damages allegedly caused by any burden, including noise and all noise or airport associated conditions, arising from facts coming into existence after March 26, 2022. Recoverable damages, if any, on such a claim will consist of and be limited to a decrease in fair market value of the Premises that Wesley (or its successors and assigns) proves is specifically caused by and attributable to noise exposure from aircraft operations that exceeds the Easement Level. Wesley (and its successors and assigns) will have the burden of proof to show a 1.5 dB DNL exceedance of the Easement Level, the new claimed DNL value, and the existence and amount of any recoverable damages.

6. Disputes about whether the Easement Level specified in the Amended Easement has been exceeded, whether any damages are recoverable, and the amount of such damages, if any, will be resolved exclusively through the dispute resolution process described in this paragraph. The parties must first mediate any dispute they cannot resolve through direct negotiations. Judge Linda Lau shall serve as the mediator. If she is unable or unwilling to serve, the parties shall agree upon a mediator. If mediation is not successful, the dispute will be decided in confidential and private binding arbitration before one retired Washington state court judge selected by the parties. The Presiding Judge of the King County Superior Court in Seattle will appoint a mediator and/or an arbitrator if the parties cannot agree on one. The award in any such arbitration shall be limited to the recoverable damages described in Paragraph 5 above. Each side will bear its own litigation costs, including attorney fees and expert witness fees, in connection with the mediation, arbitration, and any proceedings to obtain judicial recognition or enforcement of any arbitration award. Arbitrator compensation will be shared equally by the Port and Wesley. The arbitration will be conducted pursuant to the then-existing arbitration rules of Judicial Dispute Resolution, LLC; if that entity is no longer providing arbitration services, then the parties will agree on the rules to be

applied and the Presiding Judge of the King County Superior Court in Seattle will resolve any disputes over the selection of the applicable rules.

7. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but not be limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

8. As used herein, the term "burden" shall include, but not be limited to, the effects of any aircraft operations, aircraft landings, and aircraft take-offs, such as noise, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects.

9. The Amended Easement constitutes a permanent burden on the Premises, runs with the land, and is binding upon and enforceable against Wesley, and all successors in right, title, or interest to the Premises. The Amended Easement benefits the Port and its successors, assigns, guests, and invitees, including any and all persons, firms, or corporations operating aircraft at, to, or from the Airport.

10. Wesley covenants that at the time of signing this Amended Easement it is the owner in fee simple of the Premises and holds full ownership rights and powers to convey this Amended Easement free and clear from all other grants, bargains, sales, liens, taxes, assessments, and encumbrances of whatever kind or nature. Wesley further covenants with the Port and the Port's successors and assigns, to warrant and forever defend against any and all persons claiming by or through, or in the place of Wesley, or based upon any claimed interest in the Premises, any right or title adverse to the Amended Easement.

11. Except as specifically provided, the Amended Easement shall neither enlarge nor diminish any rights of either party existing prior to the effective date of the Original Easement.

DATED this ^{11th} ~~26th~~ day of ^{April} ~~March~~, 2022.

WESLEY HOMES DES MOINES, LLC, a Washington
limited liability corporation

By: WESLEY HOMES CORPORATION, a Washington
nonprofit corporation, as the sole Member and Manager of
Wesley Homes Des Moines, LLC

By: 
Kevin Arden Anderson
Its: Executive Director & CEO

STATE OF WASHINGTON)
COUNTY OF KING) ss
)

On this 11th day of ~~March~~^{April}, 2022, before me personally appeared KEVIN ARDEN ANDERSON, to me known to be the Executive Director and CEO of Wesley Homes Corporation, the Washington nonprofit corporation that is the Sole Member and the Manager of Wesley Homes Des Moines, LLC, a Washington limited liability company, and he executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation and said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of each such entity.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Karen M. Cliven
(Signature)

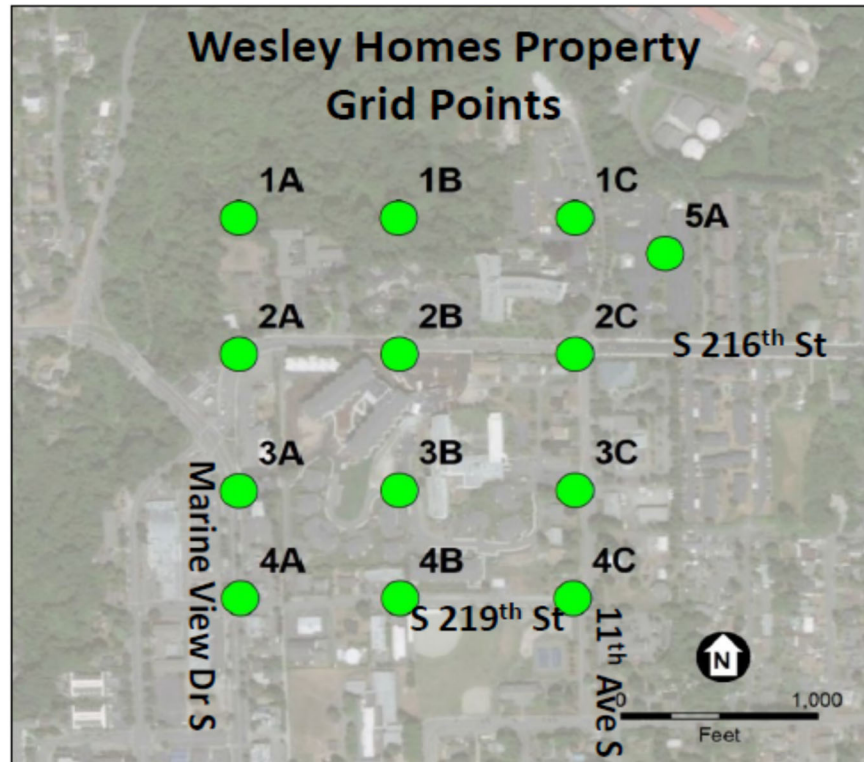
Karen M. Clewer
(Printed Name)

Notary Public, in and for the State of Washington,
Residing at: Auburn, Washington
My Commission Exp.: 3/29/24



EXHIBIT A

DNL Values Comprising the Easement Level for Amended Avigation Easement



DNL Values As Of 1989

Grid Point	1989
1A	67.8
1B	69.0
1C	70.4
2A	67.4
2B	68.6
2C	70.1
3A	67.0
3B	68.2
3C	69.7
4A	66.7
4B	67.9
4C	69.3
5A	71.1

EXHIBIT B

Legal Description of the Premises, generally known as Wesley Des Moines, King County
Property Tax Parcel/Account Numbers: 082204-9014, 082204-9087, and 082204-9133

PARCEL A:

The southwest quarter of the northeast quarter of Section 8,
Township 22 North, Range 4 East W.M., in King County,
Washington;

EXCEPT the west 274 feet thereof;
AND EXCEPT the east 7.5 acres thereof;
AND EXCEPT commencing at the northeast corner of said
subdivision;
thence west along the north line of said subdivision, 242.60
feet to the northwest corner of the east 7.5 acres of said
subdivision and the true point of beginning;
thence south 00°03'29" west along the west line of said east 7.5
acres, 675.48 feet;
thence north 19°38'24" west 144.24 feet;
thence north 19°13'39" west 216.18 feet;
thence north 52°44'31" west 170.65 feet;
thence south 58°52'44" west 254.8 feet;
thence south 80°37'59" west 238.69 feet;
thence south 82°59'51" west 183.89 feet to the east line of the
west 274 feet of said subdivision;
thence north 00°56'27" west 475.13 feet along said east line to
the south line of South 212th St.;
thence south 86°39'36" east to the true point of beginning;
AND EXCEPT that portion thereof lying within south 216th Street.

PARCEL B:

That portion of the southwest quarter of the southeast quarter
of the northeast quarter and the southeast quarter of the
southwest quarter of the northeast quarter of Section 8,
Township 22 North, Range 4 East W.M., in King County,
Washington, described as follows:

Beginning at a point on the west line of the southwest quarter
of the southeast quarter of the northeast quarter which is north
00°03'23" east 42.03 feet from the southwest corner thereof
(said point lying on the north margin of South 216th Street as
established by deed recorded under Recording No. 6100097);
thence easterly along the northerly boundary of South 216th

Street, 88.81 feet;
thence north 00' 03' 23" east 450 feet;
thence north 20' 21' 27" west 114.83 feet;
thence north 87' 15' 32" west 48.75 feet to the west boundary of
the southeast quarter of the northeast quarter;
thence continuing north 87' 15' 32" west 242.48 feet to the west
line of the east 7.5 acres of the southwest quarter of the
northeast quarter;
thence south 00' 03' 29" west 570 feet, more or less, to the
northerly boundary of South 216th Street;
thence easterly along the northerly boundary of South 216th
Street, 242.37 feet to the easterly boundary of the southwest
quarter of the northeast quarter;
thence north 00' 03' 23" east to the true point of beginning;

TOGETHER WITH an easement as established by instrument recorded
under Recording No. 9301270878.

PARCEL C:

That portion of the northwest quarter of the southeast quarter
of Section 8, Township 22 North, Range 4 East, W.M., in King
County, Washington, described as follows:

Beginning at a point on the west line of the northwest quarter
of the southeast quarter 1,827.42 feet north of the southwest
corner of the southeast quarter of said Section 8;
and running thence east 418 feet; .
thence south to the north line of South 219th Street, (formerly
the Ethel O. Peck Co. Road);
thence east along the north line of said South 219th Street to
the west line of the H.J. Latimer Co. Road No. 823;
thence north along said west line of road to the north line of
said northwest quarter of the southeast quarter;
thence west along said north line to the northwest corner of
said northwest quarter of the southeast quarter;
thence south along the west line thereof to the point of
beginning;
EXCEPT portion included in the Morgan O'Brien Co. Road No. 155
along the north line thereof;
AND EXCEPT the following described portion thereof:

Beginning at a point on the north line of said 219th Street and
the west line of said H.J. Latimer Co. Road No. 823;
thence north 87° 11' 00" west along said north line 315.00 feet;
thence north parallel with the west line of said H.J. Latimer

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS
PAGE 7 OF 8

Co. Road No. 823, a distance of 97.1 feet;
thence east parallel with the north line of said South 219th
Street, 315.00 feet to said west line of said H.J. Latimer Co.
Road No. 823;
thence along said west line 97.1 feet to the point of beginning.

TAB C

Record Date:4/21/2022 12:46 PM

Electronically Recorded King County, WA

WHEN RECORDED RETURN TO:

Seattle-Tacoma International Airport/Noise Programs
17801 International Blvd.
Seattle, Washington 98158
Attn: Stan Shepherd

AMENDED AND RESTATED AVIGATION EASEMENT

Grantor: Wesley Homes Des Moines, LLC, a Washington limited liability company

Grantee: Port of Seattle, a Washington municipal corporation

Abbreviated Legal Descriptions: SW 1/4 of NE 1/4 of Section 8, Township 22 North, Range 4 East W.M.; and
NW 1/4 of SE 1/4 of Section 8, Township 22 North, Range 4 East W.M.
Full legal descriptions in Exhibit B attached hereto

Assessor's Property Tax Parcel Numbers: 082204-9014, 082204-9087, and 082204-9133

Reference Number of Related Document: 20030110000170 (Avigation Easement dated April 15, 2002)

AMENDED AND RESTATED AVIGATION EASEMENT

Grantor WESLEY HOMES DES MOINES, LLC, a Washington limited liability company, whose sole member and manager is Wesley Homes Corporation, a Washington nonprofit corporation (collectively, “Wesley”), on its own behalf and behalf of its successors and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys and warrants to the PORT OF SEATTLE, a Washington municipal corporation (the “Port”), and its successors and assigns, a permanent nonexclusive easement, as more specifically set forth herein, for the free and unobstructed use and passage of all types of aircraft through the airspace over or in the vicinity of the real property situated in King County, Washington, that is more particularly described on Exhibit B (“the Premises”), with such use and passage to be unlimited as to frequency, type of aircraft, and proximity, except as the Port’s easement rights are limited below. The easement granted by this instrument shall be for the benefit of, and appurtenant to, the real property now commonly known as Seattle-Tacoma International Airport, which facility is owned and operated by the Port of Seattle as proprietor, together with any additions thereto wherever located hereafter made by the Port or its successors and assigns (the “Airport”).

1. This Amended and Restated Avigation Easement (“Amended Easement”) clarifies the Avigation Easement recorded on January 10, 2003, under Recording Number 20030110000170, which was granted by Wesley to the Port as a condition of a negotiated settlement in *Wesley Homes v. Port of Seattle*, King County Superior Court, Cause No. 99-2-52920-1 KNT (the “Original Easement”). The parties desire to amend and restate the Original Easement and intend that the Amended Easement retain the same priority of title and effective date as the Original Easement. This Amended Easement is being conveyed pursuant to a subsequent settlement of disputes between Wesley and the Port regarding the meaning and effect of the prior negotiated settlement and Original Easement.

2. The Amended Easement entitles the Port, together with such persons operating aircraft at, to, or from the Airport, to cause and continue the burden, including noise and all noise or airport associated conditions, in existence at the Premises as of December 30, 1989 (the “Easement Level”). The Easement Level is determined by the annual-average daily noise exposure from aircraft operations using the metric adopted by the Federal Aviation Administration (“FAA”) known as day-night level (“DNL”) as defined in the regulations at 14 C.F.R. Part 150 as such regulations are in effect as of March 26, 2022. The parties agree that the DNL values for the Easement Level are as shown in the attached Exhibit A.

3. The Easement Level shall not be deemed to be exceeded unless Wesley (or its successors and assigns) sustains the burden of proving that future DNL levels exceed the Easement Level by 1.5 dB DNL or more. In asserting a claim that the Easement Level has been exceeded, Wesley (or its successors and assigns) must calculate DNL levels by using the then-current version of the FAA’s Aviation Environmental Design Tool (“AEDT”) or any required noise modeling program the FAA has adopted to replace the AEDT, and the analysis must follow FAA

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS

PAGE 1 OF 8

requirements for conducting noise modeling, including using data from at least a 12-month period immediately preceding Wesley's assertion of the claim. If the Easement Level is exceeded, this Amended Easement shall nonetheless remain in full force and effect as to all burden, including noise and all noise or airport associated conditions resulting in DNL values falling within the Easement Level.

4. Wesley and its successors and assigns specifically waive all damages and release all claims for liability or damages caused, or alleged to be caused by any burden, including noise and all noise or airport associated conditions, existing at any time prior to March 26, 2022, or arising from facts occurring after that date for any such burden, including noise and all noise or airport associated conditions, resulting in DNL values falling within the Easement Level. Wesley and the Port acknowledge and agree that neither (1) the existence, use, or aircraft operations at, to, or from Runway 16R/34L at the Airport nor (2) the fact that the number of flight operations at the Airport in a 12-month period exceeds the number of such operations in 1989 constitutes a sufficient basis to establish that the Easement Level has been exceeded.

5. Subject to the above paragraphs, Wesley (and its successors and assigns) may make a claim for liability or damages allegedly caused by any burden, including noise and all noise or airport associated conditions, arising from facts coming into existence after March 26, 2022. Recoverable damages, if any, on such a claim will consist of and be limited to a decrease in fair market value of the Premises that Wesley (or its successors and assigns) proves is specifically caused by and attributable to noise exposure from aircraft operations that exceeds the Easement Level. Wesley (and its successors and assigns) will have the burden of proof to show a 1.5 dB DNL exceedance of the Easement Level, the new claimed DNL value, and the existence and amount of any recoverable damages.

6. Disputes about whether the Easement Level specified in the Amended Easement has been exceeded, whether any damages are recoverable, and the amount of such damages, if any, will be resolved exclusively through the dispute resolution process described in this paragraph. The parties must first mediate any dispute they cannot resolve through direct negotiations. Judge Linda Lau shall serve as the mediator. If she is unable or unwilling to serve, the parties shall agree upon a mediator. If mediation is not successful, the dispute will be decided in confidential and private binding arbitration before one retired Washington state court judge selected by the parties. The Presiding Judge of the King County Superior Court in Seattle will appoint a mediator and/or an arbitrator if the parties cannot agree on one. The award in any such arbitration shall be limited to the recoverable damages described in Paragraph 5 above. Each side will bear its own litigation costs, including attorney fees and expert witness fees, in connection with the mediation, arbitration, and any proceedings to obtain judicial recognition or enforcement of any arbitration award. Arbitrator compensation will be shared equally by the Port and Wesley. The arbitration will be conducted pursuant to the then-existing arbitration rules of Judicial Dispute Resolution, LLC; if that entity is no longer providing arbitration services, then the parties will agree on the rules to be

applied and the Presiding Judge of the King County Superior Court in Seattle will resolve any disputes over the selection of the applicable rules.

7. As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but not be limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

8. As used herein, the term "burden" shall include, but not be limited to, the effects of any aircraft operations, aircraft landings, and aircraft take-offs, such as noise, vibrations, fumes, dust, fuel particles, or other undesirable environmental effects.

9. The Amended Easement constitutes a permanent burden on the Premises, runs with the land, and is binding upon and enforceable against Wesley, and all successors in right, title, or interest to the Premises. The Amended Easement benefits the Port and its successors, assigns, guests, and invitees, including any and all persons, firms, or corporations operating aircraft at, to, or from the Airport.

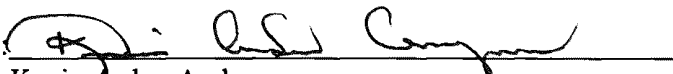
10. Wesley covenants that at the time of signing this Amended Easement it is the owner in fee simple of the Premises and holds full ownership rights and powers to convey this Amended Easement free and clear from all other grants, bargains, sales, liens, taxes, assessments, and encumbrances of whatever kind or nature. Wesley further covenants with the Port and the Port's successors and assigns, to warrant and forever defend against any and all persons claiming by or through, or in the place of Wesley, or based upon any claimed interest in the Premises, any right or title adverse to the Amended Easement.

11. Except as specifically provided, the Amended Easement shall neither enlarge nor diminish any rights of either party existing prior to the effective date of the Original Easement.

DATED this ^{11th} ~~26th~~ day of ^{April} ~~March~~, 2022.

WESLEY HOMES DES MOINES, LLC, a Washington
limited liability corporation

By: WESLEY HOMES CORPORATION, a Washington
nonprofit corporation, as the sole Member and Manager of
Wesley Homes Des Moines, LLC

By: 
Kevin Arden Anderson
Its: Executive Director & CEO

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS
PAGE 3 OF 8

FG:100169572.5

[illegible]

On this 11th day of ^{April} ~~March~~, 2022, before me personally appeared KEVIN ARDEN ANDERSON, to me known to be the Executive Director and CEO of Wesley Homes Corporation, the Washington nonprofit corporation that is the Sole Member and the Manager of Wesley Homes Des Moines, LLC, a Washington limited liability company, and he executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation and said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of each such entity.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Loren M. Cloven
(Signature)

Karen M. Clever
(Printed Name)
Notary Public, in and for the State of Washington,
Residing at: Auburn, Washington
My Commission Exp.: 3/29/24

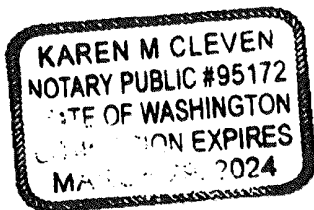
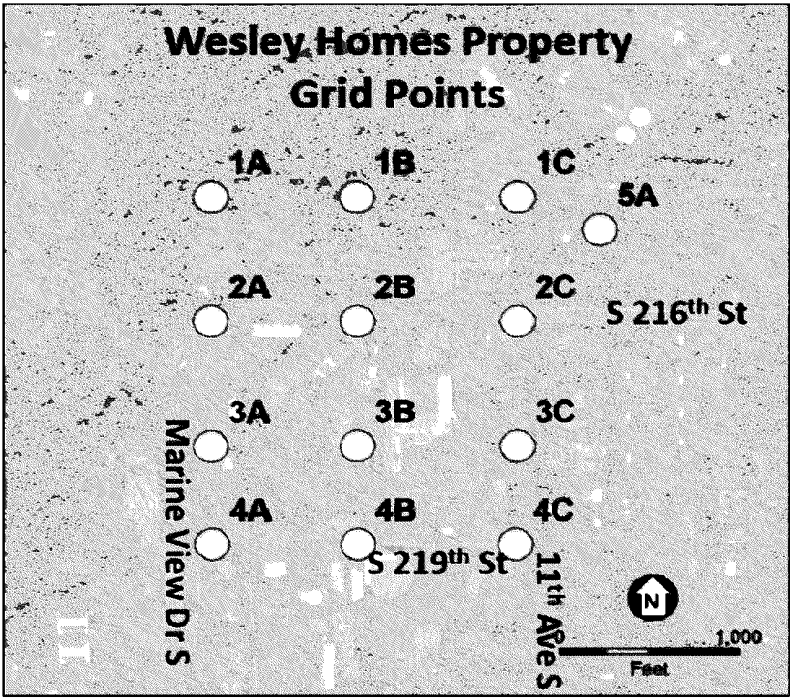


EXHIBIT A

DNL Values Comprising the Easement Level for Amended Avigation Easement



DNL Values As Of 1989

Grid Point	1989
1A	67.8
1B	69.0
1C	70.4
2A	67.4
2B	68.6
2C	70.1
3A	67.0
3B	68.2
3C	69.7
4A	66.7
4B	67.9
4C	69.3
5A	71.1

EXHIBIT B

Legal Description of the Premises, generally known as Wesley Des Moines, King County
Property Tax Parcel/Account Numbers: 082204-9014, 082204-9087, and 082204-9133

PARCEL A:

The southwest quarter of the northeast quarter of Section 8,
Township 22 North, Range 4 East W.M., in King County,
Washington;

EXCEPT the west 274 feet thereof;
AND EXCEPT the east 7.5 acres thereof;
AND EXCEPT commencing at the northeast corner of said
subdivision;
thence west along the north line of said subdivision, 242.60
feet to the northwest corner of the east 7.5 acres of said
subdivision and the true point of beginning;
thence south 00°03'29" west along the west line of said east 7.5
acres, 675.48 feet;
thence north 19°38'24" west 144.24 feet;
thence north 19°13'39" west 216.18 feet;
thence north 52°44'31" west 170.65 feet;
thence south 58°52'44" west 254.8 feet;
thence south 80°37'59" west 238.69 feet;
thence south 82°59'51" west 183.89 feet to the east line of the
west 274 feet of said subdivision;
thence north 00°56'27" west 475.13 feet along said east line to
the south line of South 212th St.;
thence south 86°39'36" east to the true point of beginning;
AND EXCEPT that portion thereof lying within south 216th Street.

PARCEL B:

That portion of the southwest quarter of the southeast quarter
of the northeast quarter and the southeast quarter of the
southwest quarter of the northeast quarter of Section 8,
Township 22 North, Range 4 East W.M., in King County,
Washington, described as follows:

Beginning at a point on the west line of the southwest quarter
of the southeast quarter of the northeast quarter which is north
00°03'23" east 42.03 feet from the southwest corner thereof
(said point lying on the north margin of South 216th Street as
established by deed recorded under Recording No. 6100097);
thence easterly along the northerly boundary of South 216th

AMENDED AND RESTATED AVIGATION EASEMENT & EXHIBITS
PAGE 6 OF 8

Street, 88.81 feet;
thence north 00° 03' 23" east 450 feet;
thence north 20° 21' 27" west 114.83 feet;
thence north 87° 15' 32" west 48.75 feet to the west boundary of
the southeast quarter of the northeast quarter;
thence continuing north 87° 15' 32" west 242.48 feet to the west
line of the east 7.5 acres of the southwest quarter of the
northeast quarter;
thence south 00° 03' 29" west 570 feet, more or less, to the
northerly boundary of South 216th Street;
thence easterly along the northerly boundary of South 216th
Street, 242.37 feet to the easterly boundary of the southwest
quarter of the northeast quarter;
thence north 00° 03' 23" east to the true point of beginning;

TOGETHER WITH an easement as established by instrument recorded
under Recording No. 9301270878.

PARCEL C:

That portion of the northwest quarter of the southeast quarter
of Section 8, Township 22 North, Range 4 East, W.M., in King
County, Washington, described as follows:

Beginning at a point on the west line of the northwest quarter
of the southeast quarter 1,827.42 feet north of the southwest
corner of the southeast quarter of said Section 8;
and running thence east 418 feet; .
thence south to the north line of South 219th Street, (formerly
the Ethel O. Peck Co. Road);
thence east along the north line of said South 219th Street to
the west line of the H.J. Latimer Co. Road No. 823;
thence north along said west line of road to the north line of
said northwest quarter of the southeast quarter;
thence west along said north line to the northwest corner of
said northwest quarter of the southeast quarter;
thence south along the west line thereof to the point of
beginning;
EXCEPT portion included in the Morgan O'Brien Co. Road No. 155
along the north line thereof;
AND EXCEPT the following described portion thereof:

Beginning at a point on the north line of said 219th Street and
the west line of said H.J. Latimer Co. Road No. 823;
thence north 87° 11' 00" west along said north line 315.00 feet;
thence north parallel with the west line of said H.J. Latimer

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Co. Road No. 823, a distance of 97.1 feet;
thence east parallel with the north line of said South 219th
Street, 315.00 feet to said west line of said H.J. Latimer Co.
Road No. 823;
thence along said west line 97.1 feet to the point of beginning.