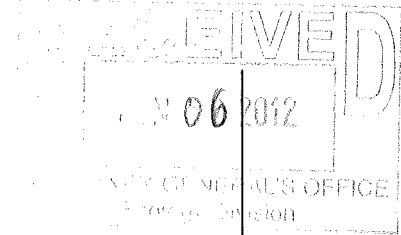


FILED
KING COUNTY, WASHINGTON

JUN 01 2012

DEPARTMENT OF
JUDICIAL ADMINISTRATION



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EP07

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

NORTHLAKE SHIPYARD, INC,

Defendant.

NO. 94-2-20115-8

FIRST AMENDMENT TO
PROSPECTIVE PURCHASER
CONSENT DECREE RE:
NORTHLAKE SHIPYARD INC.,
SEATTLE, WA


Pursuant to Section XIII of the PROSPECTIVE PURCHASER CONSENT DECREE RE: NORTHLAKE SHIPYARD, SEATTLE, WASHINGTON, entered by this Court on October 19, 2007, Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendant Northlake Shipyards, Inc., hereby stipulate to amend the Prospective Purchaser Consent Decree as follows:

All of Attachment D to the Prospective Purchaser Consent Decree is replaced by the attached revised Attachment D, (Amended Attachment D, Northlake Trust Agreement).

Except as set forth above, all other provisions of the Prospective Purchaser Consent Decree remain in full force and effect, unchanged by this First Amendment.

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA,
ATTORNEY GENERAL

3 



4 James Pendowski
5 Program Manager
6 Toxics Cleanup Program
7 (360) 407-7177

Dorothy H Jaffe, WSBA No. 34148
Assistant Attorney General
(360) 586-4637

8 Date: 5/4/12

Date: 5/29/12

9 NORTHLAKE SHIPYARD INC.

10
11 E. Peter Kelly
12 President

13 Date: _____

14
15 ENTERED this _____ day of 6/11/12, 2012.

16
17 
18 JUDGE
19 King County Superior Court

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA,
ATTORNEY GENERAL

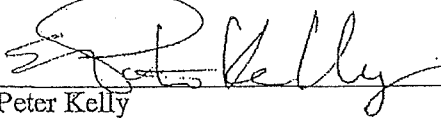
James Pendowski
Program Manager
Toxics Cleanup Program
(360) 407-7177

Dorothy H Jaffe, WSBA No. 34148
Assistant Attorney General
(360) 586-4637

Date: _____

Date: _____

NORTHLAKE SHIPYARD INC.



E. Peter Kelly
President

Date: May 29, 2012

ENTERED this _____ day of _____, 2012.

JUDGE
King County Superior Court

1 AMENDED ATTACHMENT D
2 NORTHLAKE TRUST AGREEMENT

3 THIS DECLARATION OF TRUST, dated this 3rd day of April, 2012 is made and
4 entered into by and among NORTHLAKE SHIPYARD, INC. ("Grantor"), and U.S. BANK
5 ("Trustee"), pursuant to the Prospective Purchaser Consent Decree (the "Consent Decree")
6 between the State of Washington Department of Ecology ("Ecology") and Grantor. The
7 Beneficiary of the Trust shall be Ecology.

8 WITNESSETH:

9 WHEREAS, Grantor has agreed to transfer, assign, and convey unto the Trustee the
10 sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) in trust, pursuant to the
11 terms of the Consent Decree; and

12 WHEREAS, Grantor and its Successors in Interest and Assigns have agreed to
13 transfer, assign, and convey unto the Trustee additional funds in trust, pursuant to the terms of
14 the Consent Decree; and

15 WHEREAS, funds transferred by Grantor shall constitute the initial corpus of the trust
16 hereby created and shall be held, invested, and distributed pursuant to the terms of this
17 Agreement, it is therefore agreed as follows:

18 I. Trust Estate The Trust Estate, as that term is used in this trust, shall consist
19 of the following:

20 1. The initial \$400,000 transferred to the Trustee by Grantor as herein
21 provided; and

22 2. Any additional funds transferred to the Trustee by Grantor, its
23 Successor in Interest and Assigns, or any other party; and

24 3. The proceeds, investments, and reinvestments of the assets so
25 transferred to the Trustee.
26

1 II. Trust Purpose The trustee shall hold, invest, reinvest, and distribute the Trust
2 Estate as Trustee, in accordance with the terms and conditions set forth herein. This trust is
3 organized and shall be operated to provide a source of funds for the purpose of paying for the
4 remedial action referenced in the Consent Decree. In furtherance of this purpose the
5 Department of Ecology project coordinator designated in the Consent Decree, hereinafter
6 referred to as the "Project Coordinator" has sole power to direct the Trustee to make
7 distributions from the Trust Estate in the manner hereinafter provided for.

8 III. Distributions The Trust Estate shall be distributed by the Trustee from time to
9 time as directed in writing by the Project Coordinator pursuant to the Consent Decree. Such
10 Trustee may rely with acquittance upon any written direction of payment made by the Project
11 Coordinator.

12 IV. Duration This trust shall continue until the Estate has been distributed for
13 the activities and purposes set forth herein and in the Consent Decree. Termination of the
14 trust in that event shall be by written notice as provided in Paragraph VI. If the Trust Estate
15 has not been wholly distributed pursuant tot the first sentence of this paragraph or there has
16 not been a direction to distribute funds pursuant to the Consent Decree which will exhaust the
17 funds prior to June 30, 2015 then upon written notice from the Project Coordinator all such
18 remaining unappointed funds shall be delivered consistent with the purpose of this Agreement
19 and the terms of a Memorandum of Agreement regarding this site entered between Ecology
20 and the United States Environmental Protection Agency ("EPA") and this Trust shall
21 thereafter terminate.

22 V. Amendment of Agreement This Agreement may only be amended by an
23 instrument in writing executed by the Grantor or its Successors in Interest and Assigns and
24 approved in writing by Ecology, which approvals shall not be unreasonably withheld.

25 VI. Irrevocable Nature of Trust Subject to the right of the parties to amend this
26 trust pursuant to Paragraph V of this Agreement, the trust created by this Agreement shall be

1 deemed irrevocable and shall continue until terminated by written agreement of Grantor or its
 2 Successors in Interest and Assigns and Ecology pursuant to the terms of the Consent Decree
 3 or as otherwise provided in this Trust Agreement.

4 VII. Trustee Management The Trustee shall invest and reinvest the principal and
 5 income of the Fund and keep the Fund invested as a single fund without distinction between
 6 principal and income. In investing, reinvesting, exchanging, selling, and managing the Trust,
 7 the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the
 8 Beneficiary and with the care, skill, prudence, and diligence under the circumstances then
 9 prevailing which persons of prudence, acting in a like capacity and familiar with such matters,
 10 would use in the conduct of an enterprise of a like character and with like aims. Investment of
 11 the trust shall be in accordance with any general investment policies and guidelines which the
 12 Grantor or its Successors in Interest and Assigns may communicate in writing to the Trustee
 13 from time to time and in accordance with the following:

- 14 1. Securities or other obligations of the Grantor or its Successors in Interest
 15 and Assigns, of any other owner or operator or the Property, or any of their
 16 affiliates as defined in the Investment Company Act of 1940, as amended
 17 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities
 18 or other obligations of the Federal or a State government;
- 19 2. The Trustee is authorized to invest the Trust Estate in time or demand
 20 deposit of the Trustee, to the extent insured by an agency of the Federal or
 21 State government; and
- 22 3. The Trustee is authorized to hold cash awaiting investment or distribution
 23 uninvested for a reasonable time and without liability for the payment of
 24 interest thereon.

25 The Trustee is expressly authorized in its discretion:
 26

1 1. To transfer from time to time any or all of the assets of the Fund to any
 2 common, commingled, or collective trust fund created by the Trustee in
 3 which the Fund is eligible to participate, subject to all of the provisions
 4 thereof, to be commingled with the assets of other trusts participating
 5 therein; and

6 2. To purchase shares in any investment company registered under the
 7 Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one
 8 which may be created, managed, underwritten, or to which investment
 9 advice is rendered or the shares of which are sold by the Trustee. The
 10 Trustee may vote such shares in its discretion.

11 VIII. Powers and Duties of Trustee Except as specifically restricted hereunder, the
 12 Trustee shall have all duties, powers, and rights imposed and granted by the laws of the State
 13 of Washington.

14 In addition to the duties, powers, and rights imposed and granted by law, the
 15 Trustee shall have (unless specifically restricted herein) the power and the exercise of
 16 discretion in the application thereof to:

- 17 1. Determine the allocation of receipts and expenses between income and
 18 principal in accordance with the Washington Principal and Income Act;
 19 2. The Trustee may from time to time consult with counsel, who may be
 20 counsel to the Grantor or its Successors in Interest and Assigns, with
 21 respect to any question arising as to the construction of this Agreement or
 22 any action to be taken hereunder. The Trustee shall be fully protected, to
 23 the extent permitted by law, in acting upon the advice of counsel.
 24 3. Appoint an ancillary trustee or agent to facilitate the management of assets
 25 located in another state, if any:
 26

1 IX. Resignation. The Trustee shall have the right to resign at any time by
2 delivering its resignation in writing to the Grantor or its Successors in Interest and Assigns,
3 such resignation to take effect upon the acceptance of appointment in writing by successor
4 Trustee. Upon any such resignation, the Grantor or its Successors in Interest and Assigns
5 shall deliver to the Project Manager a copy of the Letter of Resignation, together with a letter
6 proposing to appoint a successor Trustee. Provided, however, any successor Trustee shall be
7 a corporation authorized to conduct trust business within the State of Washington and at the
8 time of its appointment have assets of not less than One Hundred Million Dollars
9 (\$100,000,000.00) of trust funds.

10 Upon the approval of successor Trustee by the Project Manager, the Grantor or its
11 Successors in Interest and Assigns shall in writing appoint a successor Trustee. Acceptance of
12 appointment of successor Trustee shall be in writing and shall become effective upon receipt
13 by the Grantor or its Successors in Interest and Assigns of the notice of such acceptance. A
14 successor Trustee shall be appointed within 60 days of notice of Trustee's intent to resign.

15 Any successor Trustee appointed under this article shall, upon appointment,
16 immediately succeed to all powers, rights, discretions, obligations, and immunities of the
17 Trustee under this Agreement with the same effect as through successor Trustee were
18 originally named as Trustee in this Agreement.

19 X. Taxes and Compensation All taxes, if any, that are payable by the Trust
20 Estate created hereunder and all brokerage commissions incurred by the trust shall either be
21 paid from the Trust Estate or, at the option of the Grantor or its Successors in Interest and
22 Assigns, be paid directly by the Grantor or its successors in Interest and Assigns outside the
23 trust. Trustee shall prepare all required income tax returns unless Trustee and the Grantor or
24 its Successors in Interest and Assigns shall agree otherwise. All other expenses incurred by
25 the Trustee in connection with the administration of the trust created hereunder, including fees
26 for legal services reasonably rendered to the Trustee, the compensation of the Trustee, and all

1 other proper charges and disbursements of the Trustee shall either be paid from the Trust
 2 Estate directly, or at the option of the Grantor or its Successors in Interest and Assigns, be
 3 paid directly by the Grantor or its successors in Interest and Assigns outside the trust. The
 4 Trustee shall be entitled to be paid reasonable compensation as agreed upon by the Grantor or
 5 its Successors in Interest and Assigns and the Trustee.

6 XI. Annual Valuation and Audit The Trustee shall annually, within 10 days after
 7 the end of the anniversary date hereof, furnish to the Grantor or its Successors in Interest and
 8 Assigns and Beneficiary a statement confirming the value of the trust and showing the receipt
 9 of funds for the preceding year and the amount and payee of all distributions made during
 10 such year. Such statement shall include the amount of accumulated interest or other income
 11 in the trust. Any securities in the Trust Estate shall be valued at market value as of no more
 12 than 30 days prior to the date of the statement. In addition to providing the annual valuation
 13 pursuant to this Paragraph, the Trustee shall permit a certified public accountant, licensed in
 14 the State of Washington, and selected by Grantor or its Successors in Interest and Assigns, to
 15 conduct an annual audit of the trust as required by applicable law or regulations and shall such
 16 reasonable access to its books and records as necessary for the accountant reasonably to
 17 conduct such audit. Such audit shall be conducted at Grantor's or its Successors in Interest
 18 and Assigns' discretion.

19 XII. Governing Law This Trust Agreement shall be administered, construed,
 20 and enforced according to the laws of the State of Washington. Should any provision of this
 21 Agreement be or become invalid or unenforceable, the remaining provisions of this
 22 Agreement shall be and continue to be fully effective.

23 XIII. Notices Any notices or other communication required or permitted by
 24 this Agreement to be delivered to or served on any party shall be deemed properly delivered
 25 to, or served on, and received by such party when personally delivered on in lieu of such
 26 personal service, when deposited in the United States mail, certified mail with postage

1 prepaid, addressed to the appropriate addresses indicated below or as provided in writing to
2 Trustee from time to time:

3 If to Trustee: U.S. Bank, 1420 5th Ave
4 10th FL Att: ROD CASTELNA

5 If to Beneficiary: Ecology Project Coordinator, Department of Ecology, Northwest
6 Regional Office, 3190 - 160th Avenue S.E., Bellevue, Washington 98008-5452

7 If to Grantor: E. Peter Kelly, President, Northlake Shipyard, Inc., 2602 - 39th West,
8 Seattle, Washington 98199.

9 XIV. Benefit This Agreement shall be binding upon and inure to the benefit of the
10 respective legal representatives, successors, and assigns of the parties hereto and Beneficiaries
11 hereof:

12 Executed on the 3RD day of April, 2012, at King County, Washington.

14 GRANTOR

15 NORTHLAKE SHIPYARD, INC.

16 By [Signature]
17 Its President

19 TRUSTEE

20 U.S. BANK

21 By [Signature] (Rod Castella)
22 Its VICE President
23 → RE is transition manager