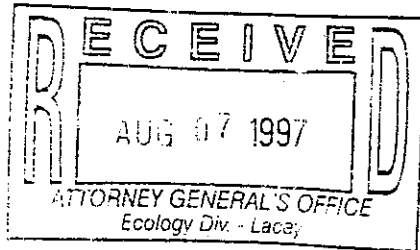


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JUL 29 1997

DEPARTMENT OF
JUDICIAL ADMINISTRATION

KING COUNTY SUPERIOR COURT

IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Plaintiff,

vs.

UNION STATION ASSOCIATES, a
limited liability corporation,
et. al.

Defendants.

No. 97-2-18936-5SEA

PROSPECTIVE PURCHASER
CONSENT DECREE

RE: UNION STATION

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INTRODUCTION

This prospective purchaser consent decree ("Decree") is made and entered into by and between the Washington State Department of Ecology ("Ecology") and Union Station Associates, L.L.C. ("Union Station Associates") and certain of its Associated Entities. Additional Associated Entities and Qualified Successors in Interest and Assigns may become parties to this Decree as provided herein, in Sections X and XI.

1. WHEREAS, the purpose of this Decree is to 1) resolve the potential liability of Defendants for the contamination identified in Attachment G associated with the Facility, including the contamination associated with the "Property" described in Section III and Attachment A herein, as well as any such contamination from the Property that has migrated from the Property and has thereafter been deposited, stored, disposed of, or placed, or otherwise come to be located within the Facility; 2) to promote the public interest by expediting cleanup activities at the Facility; and 3) to facilitate the reuse of a currently vacant parcel of land.

2. WHEREAS, the Property currently is owned by Union Pacific Railroad Company ("Union Pacific").

3. WHEREAS, the Facility is listed on the Washington Hazardous Sites List with a site hazard ranking of 3.

1 4. WHEREAS, Union Station Associates has entered into an
2 Option Agreement with Union Pacific to purchase the Property,
3 which totals 7.5 acres.

4 5. WHEREAS, final entry of this Consent Decree is a
5 condition of the Option Agreement necessary in order for the
6 purchase to close.

7 6. WHEREAS, Defendants propose to develop in phases, a
8 mixed commercial and retail development on the Property.

9 7. WHEREAS, in the absence of this Decree, at the time it
10 acquires the Property, Union Station Associates would incur
11 potential liability at the Facility to the State of Washington
12 and/or third parties under the Model Toxics Control Act ("MTCA"),
13 Chapter 70.105D, RCW as an owner/operator due to releases or
14 threatened releases of Hazardous Substances, Pollutants or
15 Contaminants at the Facility.

16 8. WHEREAS, in the absence of this Decree, at the time
17 Union Station Associates acquires the Property, certain of its
18 members, managers, directors and officers who have the actual or
19 potential ability to control the decisions of Union Station
20 Associates (hereinafter referred to as "Associated Entities")
21 could otherwise incur potential liability at the Facility to the
22 State of Washington and/or third parties based on statutory
23 language under MTCA and case law interpreting owner/operator
24 liability under the Comprehensive Environmental Response,
25 Compensation and Liability Act ("CERCLA") to extend to persons
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27
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with the actual or potential ability to control the decisions of
Union Station Associates.

9. WHEREAS, the Parties agree that by including Associated
Entities of Union Station Associates in the protections of this
Decree, the Parties intend to resolve the potential liability that
could result from their actual or potential ability to control the
decisions of Union Station Associates.

10. WHEREAS, Ecology does not intend to provide a defense to
Defendants to any liability for releases or threatened releases of
Hazardous Substances, Pollutants or Contaminants caused or
contributed to by Defendants.

11. WHEREAS, this Decree promotes the public interest by
facilitating use of the Property for an important public purpose.

12. WHEREAS, Defendants have offered to further certain
Ecology goals as provided in this Decree, in exchange for a
covenant not to sue and protection from contribution for
contamination at the Facility.

13. WHEREAS, Defendants have certified that their plans for
the Property are not likely to aggravate or contribute to
contamination at the Facility, interfere with remedial actions
that may be needed at the Facility, or increase human health risks
to persons at or in the vicinity of the Facility.

14. WHEREAS, this Decree will provide a substantial public
benefit by promoting reuse of a currently vacant parcel of land,
providing substantial economic, community, and transportation

benefits to the area and yielding substantial resources for environmental remediation.

15. WHEREAS, Defendants' development of the Property is designed to lead to more expeditious and effective remediation of Hazardous Substances released at the Facility and to promote protection of public health and the environment.

16. WHEREAS, the Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. AUTHORITY, JURISDICTION AND VENUE

17. This Court has authority to resolve the liability of the parties to this Decree.

18. This Court has jurisdiction over the subject matter and over the parties pursuant to the MTCA. Venue is proper in King County pursuant to RCW 70.105D.050(5)(b).

19. Authority for entry of this Decree is conferred by RCW 70.105D.040(4) and 70.105D.040(5), which authorize the Washington State Attorney General to agree to a settlement with a prospective purchaser of a facility if, after public notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards adopted under RCW 70.105D.030(2)(d). RCW 70.105D.040(4) and 70.105D.040(5) require that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

20. Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards adopted under RCW 70.105D.030(2)(d).

21. Ecology has listed the Facility on the Washington Hazardous Sites list. Ecology has not made a determination that Defendants are Potentially Liable Persons ("PLPs") for the Facility. Were Union Station Associates to acquire an interest in the Facility, however, some or all of the Defendants would become PLPs under RCW 70.105D.040(1)(a). This Decree is entered before Union Station Associates' acquires the Property to resolve the potential liability of it and certain of its Associated Entities at the Facility to the State of Washington and/or third parties for the contamination identified in Attachment G associated with the Facility, including the contamination associated with the Property, described in Section III and Attachment A herein, as well as any such contamination from the Property that has migrated from the Property and has thereafter been deposited, stored, disposed of, or placed, or otherwise come to be located within the Facility, and to facilitate a more comprehensive and expeditious cleanup than otherwise would occur.

22. By entering into this Decree, Defendants agree not to challenge Ecology's jurisdiction in any proceeding to enforce this Decree. Defendants consent to the issuance of this Decree and have agreed to perform the terms of the Decree, including remediation, monitoring and payment of oversight costs as

1 specified in this Decree; however, only Union Station Associates
2 and its Successors in Interest and Assigns who become Defendants
3 as provided in Sections X and XI of this Decree will be obligated
4 under paragraph 93 to indemnify the State of Washington.

5 **II. DEFINITIONS**

6 23. Whenever terms listed below are used in this Decree or
7 in the attachments hereto, the following definitions shall apply:

8 (a) "Cleanup Action Plan" shall mean the Cleanup Action
9 Plan, dated May 29, 1997, attached to this Decree as Attachment B.

10 (b) "Decree" shall mean this Decree and all attachments
11 hereto. In the event of a conflict between this Decree and any
12 attachment, this Decree shall control.

13 (c) "Defendant" shall mean Union Station Associates, L.L.C.
14 and those Associated Entities who are signatories to this Decree.
15 Additional Associated Entities may become Defendants as provided
16 in Sections X and XI. Qualified Successors in Interest and Assigns
17 may also become Defendants as provided in Sections X and XI.

18 (d) "Facility" shall mean the site or area where Hazardous
19 Substances, Pollutants or Contaminants have been deposited,
20 stored, disposed of, placed or otherwise come to be located as a
21 result of the conditions on the Property discussed in one or more
22 of the reports or studies listed in Attachment G. The Facility
23 boundaries are beyond the Property boundaries both upgradient and
24 downgradient, and are not currently known at this time.
25

(e) "Hazardous Substance" shall have the meaning defined in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") § 101(14), 42 U.S.C. § 9601(14) and MTCA, RCW 70.105D.020(6).

(f) "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

(g) "Pollutants or Contaminants" shall have the meaning defined in CERCLA § 101(33), 42 U.S.C. § 9601(33).

(h) "The Property" is described in Section III and Attachment A attached hereto and incorporated by reference.

(i) "Section" shall mean a portion of this Decree identified by a Roman numeral and including one or more Paragraphs.

(j) "Successors in Interest and Assigns" shall mean any person who acquires an interest in the Property through purchase, lease, transfer, assignment, mortgage or otherwise and by virtue of compliance with Sections X and XI obtains protection under this Decree. "Successor in Interest and Assigns" specifically includes the lenders and mortgagees in interest of Union Station Associates who by virtue of compliance with Sections X and XI obtain protection under this Decree.

III. DESCRIPTION OF FACILITY CONDITIONS

24. The Property consists of approximately 7.5 acres located in the City of Seattle, in King County as set forth in Attachment A.

1 25. Numerous studies of environmental conditions at the
2 Property and the Facility have been conducted. Attachment G is a
3 list of the studies supplied by Defendants to Ecology, on which
4 Ecology has relied in reaching this Agreement. For the purpose of
5 this Decree, only the documents listed in Attachment G were relied
6 upon by Ecology. Other documents, whether contained in Ecology
7 files, listed as references in the documents listed on Attachment
8 G, or otherwise existing were not relied upon by Ecology for the
9 purposes of this Decree. A brief description of the environmental
10 conditions at the Facility follows.

11 26. A Seattle Gaslight Company coal gasification plant
12 operated in the northern portion of the Property from 1874 to
13 1907. The Washington Natural Gas Company (now Puget Sound Energy)
14 is the successor to the Seattle Gaslight Company. A Vulcan Iron
15 Works foundry operated from about 1900 until about 1910 in the
16 southern portion of the Property. Gas plant wastes consist mostly
17 of tar, lampblack, and tarry sludges. Coal tar is a complex
18 chemical mixture (containing more than 250 individual compounds)
19 that is derived from the destructive distillation of coal in coke
20 ovens and retorts. During the process, coal is heated to 450 to
21 900 degrees centigrade for approximately 16 hours in the absence
22 of air. Coal vapors generated from this process are then
23 condensed to produce water, and the coal tars can then be
24 separated out because they sink.
25

27. The major class of chemical and relative percent composition associated with gas plant wastes are approximately 85% polycyclic aromatic hydrocarbons (PAHs). The PAHs associated with coal tars have a distinctive composition dominated by naphthalenes (11 to 14%), and phenanthrene (3 to 7%). Other chemical classes include: 10% phenolics (e.g., phenols, cresols, naphthals), 5% various inorganic sulfur and nitrogen compounds (e.g., acridenes, cyanide, ammonia, thiodenes, sulphite), less than 5% light aromatic hydrocarbons (benzene, toluene, ethylbenzene, and xylene [BTEX]), and trace metals (e.g., aluminum, arsenic, cadmium, chromium, copper, iron, lead, mercury, selenium, silver, sodium, and vanadium).

28. A Vulcan Iron Works plant was located between South Dearborn and South Lane Streets north of Airport Way South. The iron works was built before 1900 and expanded in 1902 to cover the entire portion of the block north of Airport Way South. Along with the residues from the iron, brass, and steel manufacturing processes, it is likely that a variety of lubricants were used on site for servicing machinery and products.

29. Union Station was constructed in 1911 by the Oregon and Washington Railway and Navigation Co. (predecessor to Union Pacific Railroad) and the Chicago Milwaukee and St. Paul Line. Union Station served passengers until 1971, when Union Pacific Railroad discontinued railroad operations at the Property. Based on the existence of a rail yard and a roundhouse located south of

1 the station, it is believed that limited routine maintenance
2 activities were conducted at the station with most of the heavy
3 maintenance activities occurring off of the Property. Union
4 Pacific Railroad continued to use some of the building space for
5 offices until 1978, and in 1984 it removed the railroad tracks
6 from the station area. The depot building is currently being used
7 as leased space for various social functions.

8 30. Over 50 soil samples from the Property or immediately
9 adjacent areas have been analyzed for a variety of metals and
10 organic compounds.

11 31. The most frequently detected constituents include metals
12 (arsenic, beryllium, chromium, copper, lead, mercury, nickel,
13 silver, zinc) and PAHs. Concentrations of arsenic, beryllium,
14 lead and CPAH in soil at some locations exceed MTCA method B
15 cleanup levels. The highest concentrations of PAH compounds were
16 detected within the fill soils at the northern end of the Facility
17 and at the elevation of the historical tideflat surface. Metals
18 concentrations are found at elevated levels in various portions of
19 the Facility. The distribution of these constituents is
20 consistent with the understanding that the PAH contamination
21 originated from the historical coal gasification plant that
22 existed at the north end of the Property. The origin of the
23 metals may be either trace metals from the coal used in the
24 gasification plant or residuals from other prior site owners and
25 operations.
26
27
28

32. The constituents (PAHs and metals) detected at the Facility are considered to be persistent in the environment. This means that they do not readily react, degrade, or otherwise diminish in concentration rapidly. Based on detection frequency and the magnitude of the exceedence, carcinogenic PAHs are the most significant constituent of concern in soil at the Facility.

33. Groundwater is present in fill material at the Facility. Based on water level elevations measured in monitoring wells from previous studies, and information from adjacent properties, shallow groundwater flow is to the northwest. Estimated groundwater flow velocity within the fill aquifer on the Property is about 0.2 to 2 feet per month. Groundwater on, and adjacent to the Property is not used for drinking. A search of Ecology's well data conducted in 1986 indicated that there are no existing drinking water wells located in the vicinity of the Property. Drinking water supplied to the City of Seattle comes from protected surface water sources on the Tolt and Cedar Rivers. Based on the location of the old shoreline and the historic topography, it is likely that a component of groundwater flow may enter the Property at its northern boundary.

34. Constituents detected in groundwater are similar to those detected in soil, including metals and PAHs. Low and high molecular weight PAH concentrations detected in some samples from some groundwater wells suggest that PAHs are sorbed on minerals in

1 the formation near to the well and causing measured PAH
2 concentrations in excess of MTCA method B cleanup levels.

3 **IV. DESCRIPTION OF PROPOSED PROJECT**

4 35. Defendants propose to acquire the Property for
5 commercial and retail development. The Union Station Development
6 Project (the "Project") will provide 1.2 million square feet of
7 commercial and retail space at the south end of downtown Seattle.

8 36. Union Station will be rehabilitated, and six new
9 buildings will be constructed. The Project will provide 1,110
10 parking spaces, including a parking garage located south of
11 Airport Way. The Project will include retail uses to complement
12 the commercial space. Below grade, transit, service, storage and
13 parking activities will predominate. At grade, there will be
14 public open spaces and retail. Special facilities, such as a
15 fitness center, will also be located at street level. Above
16 grade, floor space will be devoted primarily to commercial office
17 space.
18

19 37. Defendants propose to carry out the existing Property
20 Use and Development Agreement (PUDA) for this development, which
21 is valid until the year 2008. The following summarizes the key
22 elements of the development:

23 Density: Over 1,100,000 square feet above-grade in up
24 to six new buildings.

25 Height: Maximum building heights may vary from 65 feet
26 to 150 feet above street level, depending upon the
27

location of the building.

Access: Pedestrian access will be available from all sides of the Property. Automobile access to parking is provided along Fourth Avenue both north and south of Airport Way. Service access is provided south of Airport Way. Public transportation is provided at-grade along Fifth and Fourth, and below-grade at the Metro International Station, located at the northeast corner of the Site. The Metro station is designed to accommodate a future light and heavy rail system being planned by the Regional Transit Authority. Access to the Waterfront Streetcar is available on Fifth Avenue on the north end of the Property.

38. The development will be designed to take advantage of the desirable location of the Property, and will minimize adverse environmental impacts. Redevelopment will facilitate public access between the Pioneer Square and International District neighborhoods, create a strong connection to the downtown retail core, improve public safety in the area, improve parking in the area and create a new transportation hub.

39. The Project is expected to create a significant number of well-paying downtown jobs and to spur development in the south end of Seattle.

1 V. WORK TO BE PERFORMED

2 40. Upon the Effective Date of this Decree, Defendants will
3 perform the Cleanup Action Plan described in Attachment B
4 according to the schedule provided therein.

5 41. Defendants agree not to perform any remedial actions for
6 the release of hazardous substances covered by this Decree, other
7 than those required by this Decree, unless the parties agree to
8 amend the Decree to cover those actions. All work conducted under
9 this Decree shall be done in accordance with Chapter 173-340 WAC
10 and the National Contingency Plan, 40 CFR Part 300, unless
11 otherwise provided herein. All work conducted pursuant to this
12 Decree shall be done pursuant to the cleanup levels specified in
13 Tables 1 and 2 of the Cleanup Action Plan, as now written or
14 hereinafter amended provided that cleanup levels based on
15 practical quantitation limits may be modified pursuant to WAC 173-
16 340-707(4) and that any errors in fact are subject to correction.

17 42. Defendants agree to record the restrictive covenant in
18 Attachment C with the Office of the King County Recorder within
19 thirty (30) days of the Effective Date of this Decree, and shall
20 provide Ecology with proof of such recording within thirty (30)
21 days of recording.

22 VI. ECOLOGY COSTS

23 43. Defendants agree to pay all oversight costs incurred by
24 Ecology pursuant to this Decree, except for costs already paid
25 pursuant to the prepayment agreement entered between Ecology and
26 Nitze-Stagen & Company, Incorporated dated June 19, 1996. The
27

oversight costs required to be paid under this Decree shall include work performed by Ecology or its contractors for, or on, the Facility under Chapter 70.105D RCW, both before and after the issuance of this Decree, for Decree preparation, negotiations, and administration. Ecology oversight costs shall be calculated pursuant to WAC 173-340-550(2) and shall include direct staff costs, an agency support cost multiplier and a program support cost multiplier for all oversight costs. Such oversight costs shall not include costs of any remedial action taken by Ecology, but Ecology reserves its right to take such action pursuant to Section XV herein.

44. Defendants agree to pay Ecology oversight costs within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount spent by involved staff members on the project. Ecology shall, upon request, provide Defendants a general statement of work performed. Ecology shall prepare itemized statements of its oversight costs quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in interest charges at the rate of twelve (12) percent per annum.

45. In the event Defendants dispute expenditures or the adequacy of documentation for which reimbursement is sought, the parties agree to be bound by the dispute resolution process set forth in Section XII.

1 VII. DESIGNATED PROJECT COORDINATORS

2 46. The project coordinator for Ecology is:

3
4 David L. South
5 Toxics Cleanup Program
6 Department of Ecology
7 Northwest Regional Office
8 3190 160th Avenue S.E.
9 Bellevue, Washington 98008-5452
10 (206) 649-7200

11 The project coordinator for Defendants is:

12
13 Kevin Daniels
14 Union Station Associates, L.L.C.
15 2401 Utah Avenue South
16 Seattle, Washington 98134
17 (206) 467-0420

18 47. Each project coordinator shall be responsible for
19 overseeing the implementation of this Decree. The Ecology project
20 coordinator will be Ecology's designated representative at the
21 Property. To the maximum extent possible, communications between
22 Ecology and Defendants and all documents, including reports,
23 approvals, and other correspondence concerning the activities
24 performed pursuant to the terms and conditions of this Decree,
25 shall be directed through the project coordinators. The project
26 coordinators may designate, in writing, working-level staff
27 contacts for all or portions of the implementation of Section V of
28 this Decree, including the Cleanup Action Plan, incorporated in
this Decree as Attachment B. The project coordinators may agree to
minor modifications to the work to be performed without formal

amendments to this Decree. Minor modifications will be documented in writing by Defendants and approved by Ecology.

48. Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) days prior to the change.

VIII. PERFORMANCE

49. All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent. Any construction work must be under the supervision of a professional engineer. Defendants shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Facility.

IX. CERTIFICATIONS

50. Defendants certify that, to the best of their knowledge and belief, they have fully and accurately disclosed to Ecology the information currently in their possession that relates to the environmental conditions at the Facility, or to Defendants' right and title thereto and such information is included in Attachment G.

51. Defendants represent and certify that, to the best of their knowledge, they are not aware of any facts that would give rise to liability under RCW 70.105D.040 prior to Union Station Associates' acquisition of the Property.

52. Defendants represent and certify their belief that their redevelopment is not likely to contribute to the existing release or threatened release of Hazardous Substances from the Facility, interfere with future remedial actions that may be needed at the Facility, or increase health risks to persons at or in the vicinity of the Facility.

53. If any certification provided by a Defendant pursuant to this Section is not true, the Covenant Not to Sue in Section XIV shall not be effective with respect to that Defendant, and Ecology reserves all rights it may have against that Defendant.

X. PARTIES BOUND; CONVEYANCE OF PROPERTY

54. The restrictions, obligations and rights set forth in this Decree shall be binding upon the parties to this Decree. Additional Associated Entities and Qualified Successors in Interest and Assigns may become parties to this Decree, at the option of Defendants, by following the amendment procedures set forth in Section XI, or such other procedure as may hereafter be legally available, by reason of an amendment to MTCA or its implementing regulations, or otherwise.

55. Defendants shall implement contractual provisions that require all Successors in Interest and Assigns who become parties to this Decree to comply with the provisions of this Decree.

56. If proposed Successors in Interest and Assigns wish to become a party to this Decree, Defendants and the proposed transferee(s) shall notify Ecology and the Attorney General's

Office of the proposed transfer, the name of the proposed transferee(s), and the proposed transferee(s)'s intended use for the Property. The notification required by this paragraph shall occur at least sixty (60) days before the date of any transfer of interest. Such notification shall be in the form of Attachment D to this Decree. Other than the amendment procedures set forth in Section XI, there is no notification required for an additional Associated Entity to become a party to the Decree.

57. In the event Defendants assign all of their fee interest to a Successor in Interest or Assign, at Ecology's sole discretion, Ecology may elect to thereafter look first to the Successor and then to Union Station Associates, and, finally, to Associated Entities, to satisfy the requirements of this Decree, including, but not limited to, performance of the work as described in Section V, and payment of Ecology costs as described in Section VI.

58. The Covenant Not to Sue shall not be effective with respect to any additional Associated Entity or Successors In Interest or Assigns who fail to follow the procedure set forth in Section XI, or such other procedure as may hereafter be legally available, by reason of an amendment to MTCA or its implementing regulations, or otherwise. Failure of Defendants or the proposed Successors in Interest or Assign to timely comply with the notification requirements for Successors in Interest or Assigns in

1 paragraph 56 does not in any way alter the rights and obligations
2 of such party as set forth in this Decree.

3
4 **XI. AMENDMENT OF CONSENT DECREE;**
5 **ADDING NEW PARTIES TO DECREE**

6 59. This Decree may only be amended by a written stipulation
7 among the parties to this Decree that is thereafter entered and
8 approved by order of the Court. Such amendment shall become
9 effective upon entry by the Court, or upon a later date if such
10 date is expressly stated in the parties' written stipulation or
11 the Court so orders.

12 60. Amendments may cover any subject or be for any purpose
13 agreed to by the parties to this Decree, including for the purpose
14 of making additional Associated Entities or proposed Successors in
15 Interest and Assigns new parties to the Decree. If Ecology
16 determines that the subject of an amendment requires public input,
17 Ecology shall provide thirty (30) days public notice prior to
18 seeking entry of the amendment by the Court, except that Ecology
19 agrees that an amendment to make additional Associated Entities or
20 proposed Successors in Interest and Assigns parties to this Decree
21 does not by itself require public notice or comment.

22 61. All of Defendants' rights and benefits under this Decree
23 may be assigned or transferred, and shall run to any person who
24 becomes a party to this Decree pursuant to the procedures set
25 forth in Section XI of this Decree or obtains such protections
26 through any other procedures as may hereafter be legally
27

1 available. Such rights and benefits shall not take effect until
2 this Decree is amended pursuant to the procedure set forth in
3 Section XI, or such other procedure as may hereafter be legally
4 available to additional Associated Entities or Successors in
5 Interest and Assigns, by reason of an amendment to MTCA or its
6 implementing regulations, or otherwise.

7 62. Whenever Defendants contemplate conveyance of a fee
8 interest in the Property, the proposed Successors in Interest and
9 Assigns may request that the Decree be amended as provided for in
10 this paragraph. The amendment to the Decree shall be in the form
11 of Attachment E, "Agreement of Successors in Interest and
12 Assigns." Ecology may withhold consent to an amendment making
13 proposed Successors in Interest and Assigns party to this Decree
14 only if Defendants or a Successors in Interest and Assigns is in
15 violation or will be in violation of a material term of the
16 Decree. Provided, however, that Ecology shall not withhold
17 consent to an amendment making proposed Successors in Interest and
18 Assigns party to the Decree on the basis that their proposed use
19 fails to provide a public benefit or expedite cleanup so long as
20 the proposed use as a whole meets or is anticipated to meet those
21 requirements.
22

23 63. Whenever Defendants desire to add additional Associated
24 Entities to the Decree, the Decree will be amended as provided for
25 in this paragraph. The amendment to the Decree shall be in the
26 form of Attachment F, "Agreement of Additional Associated
27
28

1 Entities." Ecology may withhold consent to an amendment adding an
2 Associated Entity as a party to this Decree only if Defendants or
3 their Successors in Interest and Assigns are in violation or will
4 be in violation of a material term of the Decree.

5 **XII. DISPUTE RESOLUTION**

6 64. In the event a dispute arises as to an approval,
7 disapproval, proposed modification, or other decision or action by
8 Ecology's project coordinator pertaining to this Decree the
9 parties shall use the dispute resolution procedure set forth
10 below.

11 (1) Upon receipt of the Ecology project coordinator's
12 written decision, Defendants have fourteen (14) days within which
13 to notify Ecology's project coordinator of any objection to the
14 decision.

15 (2) The parties' project coordinators shall then confer in
16 an effort to resolve the dispute. If the project coordinators
17 cannot resolve the dispute within fourteen (14) days, Ecology's
18 project coordinator shall issue a written decision.

19 (3) Defendants may then request Ecology management review of
20 the decision. This request shall be submitted in writing to the
21 Toxics Cleanup Program Manager within seven (7) days of receipt of
22 Ecology's project coordinator's written decision.

23 (4) Ecology's Toxics Cleanup Program Manager shall conduct a
24 review of the dispute and shall issue a written decision regarding
25 the dispute within thirty (30) days of the Defendants' request for
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1 review. The Toxics Cleanup Program Manager's decision shall be
2 Ecology's final decision on the disputed matter.

3 65. If Ecology's final written decision is unacceptable to
4 Defendants, Defendants have the right to submit the dispute to the
5 Court for resolution. The parties agree that one judge should
6 retain jurisdiction over this case and shall, as necessary,
7 resolve any dispute arising under this Decree. For disputes that
8 arise under the following sections of the Decree, the Court shall
9 review the action or decision of Ecology under an arbitrary and
10 capricious standard of review: work to be performed (Section V),
11 Ecology costs (Section VI), designated project coordinators
12 (Section VII), performance of the work (Section VIII), retention
13 of records (Section XVII), property access (Section XVIII),
14 compliance with applicable laws (Section XIX), permit requirements
15 (Section XX), sampling data reporting and availability (Section
16 XXI), progress reports (Section XXII), extension of schedule
17 (Section XXIII), endangerment (Section XXIV), certification of
18 completion and delisting (Section XXV) and public participation
19 (Section XXIX) The standard of review for all other issues will be
20 decided by the Court.

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22 66. The parties may mutually agree to substitute an
23 Alternative Dispute Resolution (ADR) process, such as mediation,
24 for the formal dispute resolution process set forth in this
25 section.
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1 67. The parties agree to use the dispute resolution process
2 in good faith and agree to expedite, to the extent possible, the
3 dispute resolution process whenever it is used. When either party
4 uses the dispute resolution process in bad faith or for purposes
5 of delay, the other party may seek sanctions.

6 68. The implementation of these dispute resolution
7 procedures shall not provide a basis for delay of any activities
8 required in this Decree, unless Ecology agrees in writing to a
9 schedule extension or the Court so orders.

10 **XIII. CONTRIBUTION PROTECTION**

11 69. With regard to claims for contribution against
12 Defendants for Matters Addressed in this Consent Decree, the
13 parties hereto agree that Defendants are entitled to contribution
14 protection from any actions or claims pursuant to MTCA, RCW
15 70.105D.080, CERCLA § 107 or 113, or any other federal or state
16 claim seeking, under other theories, substantially similar relief,
17 to the extent allowed by MTCA, RCW 70.105D.040 and CERCLA §
18 113(f)(2). The contribution protection conferred in this section
19 shall not be frustrated by the use of non-CERCLA or non-MTCA
20 theories to seek relief in the nature of contribution or
21 indemnification.

22 70. For the purpose of this section, "Matters Addressed"
23 shall include:

24 (i) all past and future investigation and remedial
25 measures taken at the Facility, including those taken on or off of
26 the Property, provided such measures pertain to Hazardous
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Substances, Pollutants or Contaminants specified in one or more of the reports or studies listed in Attachment G, whether performed by Defendants, Ecology or any other persons, including other PLPs, whether performed voluntarily, under the Independent Remedial Action Program (IRAP), under any consent decree or order, under an enforcement order, or otherwise, and whether performed before or after the Effective Date of this Decree.

XIV. COVENANT NOT TO SUE; REOPENERS

71. In consideration of Defendants' compliance with the terms and conditions of this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all administrative, legal, and equitable remedies and enforcement actions ("Actions") available to the State against Defendants or Successors in Interest and Assigns, for releases or threatened releases of Hazardous Substances, Pollutants or Contaminants at the Facility including releases or threatened releases on or off of the Property, provided such Actions pertain to Hazardous Substances, Pollutants or Contaminants specified in one or more of the reports or studies listed in Attachment G.

72. Reopeners: In the following circumstances Ecology may exercise its full legal authority to address releases of Hazardous Substances, Pollutants, or Contaminants at the Facility, notwithstanding the Covenant Not to Sue set forth above:

(1) In the event a Defendant fails to comply with the terms and conditions of this Decree, including all attachments, and, after written notice of noncompliance, such failure is not cured

1 by such defendant within sixty (60) days of receipt of notice of
2 noncompliance;

3 (2) In the event factors not known at the time of entry of
4 this Agreement, and not disclosed to Ecology in Attachment G are
5 discovered and such factors present a previously unknown threat to
6 human health or the environment and are not addressed by the
7 Cleanup Action Plan. If such factors are discovered, Ecology
8 shall give written notice to Defendants. Defendants will have
9 sixty (60) days from receipt of notice to propose a cure to the
10 condition giving rise to the threat. If such cure is acceptable
11 to Ecology, Defendants and Ecology will negotiate an appropriate
12 time table for implementation. If such cure is not acceptable to
13 Ecology, the parties shall follow the dispute resolution
14 procedures in Section XIII.

15 73. Applicability: The Covenant Not to Sue set forth above
16 shall have no applicability whatsoever to:

17 (1) Criminal liability;

18 (2) Liability for any releases or threatened releases of
19 Hazardous Substances, Pollutants or Contaminants caused or
20 contributed to by a Defendant;

21 (3) Liability for actions by a Defendant that would be
22 sufficient to create liability under RCW 70.105D.040(1)(c)-(e) as
23 a generator, transporter or seller of Hazardous Substances;

24 (4) Liability of a Defendant who owned or operated the
25 Property prior to May, 1994.
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1 (5) Liability for damages for injury to, destruction of, or
2 loss of natural resources.

3 (6) Liability for any property owned or leased by a Defendant
4 other than the Property.

5 74. Ecology retains all of its legal and equitable rights
6 against all persons, except as otherwise provided in this Decree.
7 The legal and equitable rights retained by Ecology include, but
8 are not limited to, the right to compel any person, other than
9 Defendants, to take remedial actions for the release of hazardous
10 substances at the Property, and to seek reimbursement against such
11 persons for costs incurred by Ecology as a result of such
12 contamination.

13 **XV. RESERVATION OF RIGHTS**

14 75. Defendants reserve all rights and defenses which they
15 may have and which are not otherwise addressed in this Decree,
16 including the right to seek contribution or cost recovery for
17 funds expended pursuant to this Decree, subject to the limitations
18 in Section XXVIII. The execution of the "Agreement of Successors
19 in Interest and Assigns" attached hereto as Attachment E or the
20 "Agreement of Additional Associated Entities" attached hereto as
21 Attachment F or an amendment to this Decree by the Defendants is
22 not an admission of liability on their part.

24 76. Except as provided herein for the parties, this Decree
25 does not grant any rights or affect any liabilities of any person,
26 firm or corporation or subdivision or division of state, federal,
27 or local government.

1 **XVI. DISCLAIMER**

2 77. This Decree does not constitute a representation by
3 Ecology that the Property is fit for any particular purpose.

4 **XVII. RETENTION OF RECORDS**

5 78. Defendants shall preserve, during the pendency of this
6 Decree and for ten (10) years from the date this Decree is no
7 longer in effect as provided in Section XXX, all records, reports,
8 documents, and underlying data in its possession relevant to the
9 implementation of this Decree and shall insert in contracts with
10 project contractors and subcontractors a similar record retention
11 requirement. Defendants shall retain all monitoring data so long
12 as monitoring is ongoing as provided in the Cleanup Action Plan.
13 In the event the Cleanup Action Plan is modified to terminate
14 monitoring, Defendants shall retain all monitoring data until ten
15 (10) years after monitoring is completed. Upon request of
16 Ecology, Defendants shall make all non-archived records available
17 to Ecology and allow access for review. All archived records
18 shall be made available to Ecology within a reasonable period of
19 time.

20 **XVIII. PROPERTY ACCESS**

21 79. Defendants grant to Ecology, its employees, agents,
22 contractors and authorized representatives, an irrevocable right
23 to enter upon the Property, with reasonable notice and at any
24 reasonable time for purposes of allowing Ecology to monitor or
25 enforce compliance with this Decree. Defendants recognize and
26 acknowledge that Ecology's entry onto the Property for such
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purposes may interfere with their full use of the Property.

Defendants agree that they will not object to any interruption or interference with their use of the Property caused by Ecology's entry onto the Property for such purposes. The right of entry granted in this Section is in addition to any right Ecology may have to enter onto the Property pursuant to specific statutory or regulatory authority. Consistent with Ecology's responsibilities under state and federal law, Ecology, and any persons acting for it, shall use reasonable efforts to minimize any interference and use reasonable effort not to interfere with the operations of Defendants by any such entry. In the event Ecology enters the Property for reasons other than emergency response, Ecology agrees that it shall provide reasonable notice to Defendants of any planned entry, as well as schedules and locations of activity on the Property. Ecology further agrees to accommodate reasonable requests that it modify its scheduled entry or activities at the Property. Notwithstanding any provision of the Decree, Ecology retains all of its access authorities and access rights, including enforcement authorities related thereto, under MTCA and any other applicable state statute or regulations.

XIX. COMPLIANCE WITH APPLICABLE LAWS

80. All actions carried out by Defendants pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

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81. In the event Ecology determines or Defendants become aware that additional permits beyond those already obtained prior to entry of this Decree would, but for the provisions of RCW 70.105D.090(1), be required to carry out the Cleanup Action Plan, Defendants will be required to consult with the appropriate state or local jurisdictions concerning the substantive requirements those agencies believe are applicable to the remedial actions, prior to conducting the remedial actions. Ecology shall then determine whether additional substantive requirements are applicable to the remedial action, and if so, how Defendants must meet those requirements. Substantive requirements will be incorporated into an amendment to this Decree.

XXI. SAMPLING, DATA REPORTING, AND AVAILABILITY

16 82. With respect to the implementation of this Decree,
17 Defendants shall make the results of all sampling, laboratory
18 reports, and/or test results generated by it, or on its behalf,
19 available to Ecology in hard copy and on electronic disk. Data
20 submitted on disk shall be in a format acceptable to Ecology for
21 importation for use as a relational database into databases and/or
22 spreadsheet software commonly available.

83. If requested by Ecology, Defendants shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to the implementation of this Decree. Defendants shall notify

Ecology seven (7) days in advance of any sample collection or work activity at the Property. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendants or their authorized representatives of any samples collected by Ecology pursuant to the implementation of this Decree provided it does not interfere with the Department's sampling. Ecology shall endeavor to notify Defendants prior to any sample collection activity.

XXII. PROGRESS REPORTS

84. Defendants shall submit to Ecology written monthly progress reports beginning thirty (30) days prior to initiation of the Cleanup Action Plan and continuing until completion. After that time, progress reports shall be submitted quarterly, or at other intervals as approved by Ecology. The progress reports shall describe the actions taken during the reporting period to implement the requirements of this Decree. The progress report shall include the following:

- (1) A list of on-site activities that have taken place during the reporting period;
- (2) Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- (3) Description of all deviations from the schedule during the current reporting period and any planned deviations in the upcoming reporting period;

1 (4) For any deviations in schedule, a plan for recovering
2 lost time and maintaining compliance with the schedule;

3 (5) All raw data (including laboratory analysis) received by
4 Defendants during the past reporting period and an identification
5 of the source of the sample. Raw data shall be submitted in hard
6 copy and, on electronic disk. Data submitted on disk shall be in
7 a format acceptable to Ecology for importation for use as a
8 relational database into databases and/or spreadsheet software
9 commonly available;

10 (6) A list of deliverables for the upcoming reporting
11 period if different from the schedule;

12 (7) the status of deed recordation.

13 85. All progress reports shall be submitted by the tenth day
14 of the month in which they are due after the effective date of
15 this Decree.

16 **XXIII. EXTENSION OF SCHEDULE**

17 86. An extension of schedule shall be granted only when a
18 request for an extension is submitted in a timely fashion,
19 generally at least thirty (30) days prior to expiration of the
20 deadline for which the extension is requested, and good cause
21 exists for granting the extension. All extensions shall be
22 requested in writing. The request shall specify the reason(s) the
23 extension is needed.

24 87. An extension shall be granted only for such period of
25 time as Ecology determines is reasonable under the circumstances.
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1 A requested extension shall not be effective until approved by
2 Ecology or the Court. Ecology shall act upon any written request
3 for extension in a timely fashion. It shall not be necessary to
4 formally amend this Decree pursuant to Section XI when a schedule
5 extension is granted.

6 88. The burden shall fall on Defendants to demonstrate to
7 the satisfaction of Ecology that the request for such an extension
8 has been submitted in a timely fashion and that good cause exists
9 for granting the extension. Good cause includes, but is not
10 limited to, the following:

11 (1) Circumstances beyond the reasonable control and despite
12 the due diligence of Defendants including delays caused by
13 unrelated third parties or Ecology, such as (but not limited to)
14 delays by Ecology in reviewing, approving, or modifying documents
15 submitted by Defendants; or

16 (2) Acts of God, including fire, flood, blizzard, extreme
17 temperatures, storm, or other unavoidable casualty; or

18 (3) Endangerment as described in Section XXIV.

19 Ecology may extend the schedule for a period not to exceed
20 ninety (90) days, except where an extension is needed as a result
21 of:

22 (1) Delays in the issuance of a necessary permit which was
23 applied for in a timely manner; or

24 (2) Other circumstances deemed exceptional or extraordinary
25 by Ecology.
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1 However, neither increased costs of performance of the terms
2 of the Decree nor changed economic circumstances shall be
3 considered circumstances beyond the reasonable control of
4 Defendants.

5 Ecology shall give Defendants written notification in a
6 timely fashion of any extensions granted pursuant to this Decree.

7 **XXIV. ENDANGERMENT**

8 89. If, during construction of the Property, Ecology
9 determines that there is an actual or imminent danger to human
10 health or to the environment, Ecology may order Defendants to stop
11 further implementation of this Decree for such period of time as
12 needed to abate the danger or may petition the Court for an order
13 as appropriate. During any stoppage of work under this section,
14 the obligations of Defendants shall be suspended and the time
15 periods for performance of that work, as well as the time period
16 for any other work dependent upon the work which is stopped, shall
17 be extended, pursuant to Section XXIII of this Decree, for such
18 period of time as Ecology determines is reasonable under the
19 circumstances.

20 90. In the event Defendants determine that activities
21 undertaken in furtherance of this Decree or any other
22 circumstances or activities are creating an imminent danger to
23 human health or to the environment, Defendants may stop
24 implementation of this Decree for such period of time necessary
25 for Ecology to evaluate the situation and determine whether
26 Defendants should proceed with implementation of the Decree or
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whether the work stoppage should be continued until the danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after stoppage of work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with Defendants' determination, Ecology may order Defendants to resume implementation of this Decree. If Ecology concurs with the work stoppage, Defendants' obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent on the work which was stopped, shall be extended, pursuant to Section XXIII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to this Section shall be resolved through the dispute resolution procedures in Section XII.

XXV. CERTIFICATION OF COMPLETION AND DELISTING

91. Upon completion of all remedial actions specified in the Cleanup Action Plan, except confirmational monitoring, Ecology shall issue a Certificate of Completion. Completion of all remedial actions except confirmational monitoring is defined in Section 6.0 of Attachment B. Unless Ecology becomes aware of circumstances at the Facility that present a previously unknown threat to human health or the environment, Ecology shall within thirty (30) days of issuance of the Certificate of Completion propose to remove the Facility from the Hazard Ranking List, pursuant to WAC 173-340-330(4).

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XXVII. INSURANCE

93. A Commercial General Liability insurance policy meeting the requirements set forth in paragraph 94 shall be obtained by the Defendants for the Union Station Property in the amount of one million dollars per occurrence/two million dollars aggregate for a period beginning on the Effective Date of this Decree and ending three years following the completion of foundation loading. The State of Washington shall be listed as an additional insured on such policy. In the event that groundwater treatment is required as set forth in the Cleanup Action Plan, Attachment B, Defendants will obtain the same coverage for a period beginning with the construction of the groundwater treatment system and ending two years following initiation of operation of the groundwater treatment system.

94. The following requirements apply to the coverage required by paragraph 93:

a) The coverage shall contain no special limitations on the scope of protection afforded to the State of Washington.

b) For any claims related to this Decree, Defendant's insurance coverage shall be primary insurance as respects the State of Washington.

c) During the periods mentioned in paragraph 93, the policy shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the State of Washington.

1 **XXVIII. CLAIMS AGAINST THE STATE**

2 95. Defendants hereby agree that they will not seek to
3 recover any costs accrued in implementing the remedial action
4 required by this Decree from the State of Washington or any of its
5 agencies; and further, that the Defendants will make no claim
6 against the State Toxics Control Account or any Local Toxics
7 Control Account for any costs incurred in implementing this
8 Decree. Except as provided above, however, Defendants expressly
9 reserve their right to seek to recover any costs incurred in
10 implementing this Decree from any other potentially liable person.

11 **XXIX. PUBLIC PARTICIPATION**

12 96. Public participation shall be accomplished by
13 implementing a Union Station Public Participation Plan, attached
14 as Exhibit I. Ecology shall maintain the responsibility for
15 public participation in accordance with WAC 173-340-600(8)(g).
16 Defendants shall help coordinate and implement public
17 participation for the Property as required by Ecology.

18 **XXX. DURATION OF DECREE AND RETENTION OF JURISDICTION**

19 97. This Decree shall remain in effect and this Court shall
20 retain jurisdiction over both the subject matter of this Decree
21 and the parties for the duration of the performance of the terms
22 and provision of this Decree for the purpose of enabling any of
23 the parties to apply to the Court, as provided in the dispute
24 resolution process set forth in Section XII, and the amendment
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process set forth in Section XI, at any time for such further
order, direction, and relief as may be necessary or appropriate to
ensure that obligations of the parties have been satisfied. The
Decree shall remain in effect until the parties agree otherwise.

XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

98. This Decree has been the subject of public notice and
comment as required by RCW 70.105D.040(4)(a). As a result of this
process, Ecology has found that this Decree will lead to a more
expeditious cleanup of hazardous substances at the Property, in
compliance with applicable cleanup standards, and is in the public
interest.

99. If the Court withdraws its consent, this Decree shall be
null and void at the option of any party, and the accompanying
Complaint shall be dismissed without costs and without prejudice.
In such an event, no party shall be bound by the requirements of
this Decree.

XXXII. SEVERABILITY

100. If any Section, subsection, sentence or clause of this
Agreement is found to be illegal, invalid or unenforceable, such
illegality, invalidity or unenforceability will not affect the
legality, validity or enforceability of the Agreement as a whole
or of any other Section, subsection, sentence or clause.

XXXIII. EFFECTIVE DATE

101. The effective date of this Decree is the Closing date,
as defined in the Purchase and Sale Agreement between Union

Pacific and Union Station Associates, dated 4-1-97, and attached
as Exhibit H. So ordered this _____ day of _____, 1997.

JUL 29 1997
CARLOS VELAZQUEZ
CLERK OF SUPERIOR COURT

[Signature]
Judge
King County Superior Court

The undersigned parties enter into this Prospective
Purchaser Consent Decree on the date specified below.

UNION STATION ASSOCIATES, L.L.C.

By: [Signature]

Date: 7/10/97

ASSOCIATED ENTITIES

By: [Signature]

Date: 7/10/97

By: [Signature]

Date: 7/10/97

By: _____

Date: _____

DEPARTMENT OF ECOLOGY

By: Mary E. Burg

Date: 28 July 1997

ATTORNEY GENERAL'S OFFICE

By: [Signature]

Date: July 28, 1997