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**STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
RICHARD BOYCE, PAUL GISSELBERG,  
and JERRY OVERTON,  
  
Defendants.

NO. 06-2-00427-0

CONSENT DECREE BETWEEN  
PLAINTIFF AND DEFENDANT  
GISSELBERG

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and Paul Gisselberg (Defendant) under this Decree is to avoid difficult and  
4 prolonged litigation by allowing Defendant to make a cash payment to address his alleged civil  
5 liability for the Site. This payment will assist in paying for remedial action at a facility where  
6 there has been a release or threatened release of hazardous substances. In recognition of  
7 Defendant's limited ability to pay for remedial action costs, this Decree requires Defendant to  
8 pay a sum of money commensurate with his ability to pay. This Decree is based on  
9 circumstances unique to Defendant, namely financial hardship. *See* RCW 70.105D.040(4)(e).

10 Ecology has determined that these actions are necessary to protect human health and  
11 the environment.

12 B. The Complaint in this action was filed on March 2, 2006, and Defendant  
13 subsequently filed an Answer. There have been multiple motions filed in this action thus far,  
14 including a summary judgment motion that resolved, among other issues, that Defendant is a  
15 liable person for this Site. However, the Parties now wish to resolve the remaining issues  
16 raised by Ecology's Complaint, as well as any remaining issues raised in Defendant's Answer.  
17 In addition, the Parties agree that settlement of these matters without litigation is reasonable  
18 and in the public interest, and that entry of this Decree is the most appropriate means of  
19 resolving these matters.

20 C. By signing this Decree, Ecology and Defendant agree to its entry and agree to  
21 be bound by its terms.

22 D. By entering into this Decree, Ecology and Defendant do not intend to discharge  
23 non-settling parties from any liability they may have with respect to matters alleged in the  
24 Complaint. Ecology and Defendant retain the right to seek reimbursement, in whole or in part,  
25 from any liable persons for sums expended under this Decree. In addition, Defendant reserves  
26 any and all rights he may have against third parties under existing law.

1 E. This Decree shall not be construed as proof of liability or responsibility for any  
2 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
3 provided, however, that Defendant shall not challenge the authority of the Attorney General  
4 and Ecology to enforce this Decree.

5 F. This Decree does not commit the state to contribute public funding to assist  
6 potentially liable persons to pay for the costs of remedial action under  
7 RCW 70.105D.070(2)(xi).

8 G. Ecology and Defendant recognize that this agreement has been negotiated in  
9 good faith.

10 H. The Court is fully advised of the reasons for entry of this Decree, and good  
11 cause having been shown:

12 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

13 **II. JURISDICTION**

14 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
15 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

16 B. Authority is conferred upon the Washington State Attorney General by  
17 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
18 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
19 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
20 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

21 C. Ecology has determined that a release or threatened release of hazardous  
22 substances has occurred at the Site that is the subject of this Decree.

23 D. Ecology has given notice to Defendant of Ecology's determination that  
24 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

25 E. The actions to be taken pursuant to this Decree are necessary to protect public  
26 health and the environment.

1 F. This Decree has been subject to public notice and comment.

2 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
3 hazardous substances at the Site in compliance with the cleanup standards established under  
4 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

5 H. Defendant has agreed to undertake the actions specified in this Decree and  
6 consents to the entry of this Decree under MTCA.

### 7 III. PARTIES BOUND

8 This Decree shall apply to and be binding upon the Parties to this Decree, and their  
9 successors and assigns. The undersigned representative of each party hereby certifies that he  
10 or she is fully authorized to enter into this Decree and to execute and legally bind such party to  
11 comply with this Decree. Defendant agrees to undertake all actions required by the terms and  
12 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's  
13 responsibility under this Decree.

### 14 IV. DEFINITIONS

15 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and  
16 WAC 173-340-200 shall control the meanings of the terms in this Decree.

17 A. Site: The Site is referred to as the City Parcel Site and is generally located at  
18 the intersection of North Cook Street and East Springfield Avenue in Spokane, Washington. The  
19 Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a  
20 Facility under RCW 70.105D.020(5).

21 B. Parties: Refers to the State of Washington, Department of Ecology and Paul  
22 Gisselberg.

23 C. PLPs: Refers to Richard Boyce, Paul Gisselberg, and Jerry Overton.

24 D. Defendant: Refers to Paul Gisselberg.  
25  
26

1 E. Consent Decree or Decree: Refers to this Consent Decree and each of the  
2 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
3 The terms “Consent Decree” or “Decree” shall include all exhibits to this Consent Decree.

4 F. Financial Information: Refers to those documents identified in Exhibit B.

## 5 V. FINDINGS OF FACTS

6 Ecology makes the following findings of fact without any express or implied  
7 admissions of such facts by Defendant.

8 A. The City Parcel Site (the Site) is located in the SE ¼ Sec. 16, T.25, N., R. 42 E. in  
9 Spokane County, Washington, at the intersection of North Cook Street and East Springfield  
10 Avenue, as further depicted in Exhibit A (Site Diagram).

11 B. The Site was occupied by Spokane Transformer, Inc., a transformer repair and  
12 recycling operation, for approximately 25 years. The Site was sold in 1980 to City Parcel,  
13 Delivery, Inc. City Parcel is a parcel delivery service that was owned by Paul Gisselberg, and,  
14 upon information and belief, Gisselberg has sold the City Parcel business. Gisselberg continues to  
15 own the underlying property. The former Spokane Transformer, Inc.’s address was 2500 East  
16 Springfield Avenue, Spokane, Washington 99202. City Parcel’s address is 708 North Cook  
17 Street, Spokane, Washington 99202.

18 C. The Site was owned by Richard Boyce during Spokane Transformer, Inc.’s  
19 transformer repair and recycling operations. Boyce operated Spokane Transformer, Inc. until  
20 1974.

21 D. Jerry Overton leased the property from Boyce. Overton owned and operated the  
22 Spokane Transformer, Inc. business from 1974 to 1980.

23 E. The Environmental Protection Agency (EPA) first investigated the Site in 1976.  
24 Two soil samples were collected from outside of the operations building. Analytical results  
25 indicated soils contained polychlorinated biphenyls (PCBs) above relevant MTCA residential and  
26 industrial soil cleanup levels.

1 F. In 1980, EPA and Ecology inspected the Site. The inspectors noted areas of  
2 visibly oil-stained soil.

3 G. PCBs and petroleum products are hazardous substances under MTCA,  
4 RCW 70.105D.020(10).

5 H. In 1986, EPA collected four samples from the vicinity of the building. Two of  
6 these soils samples were collected from storm drain catch basins in the vicinity of the Site.  
7 Laboratory results showed a maximum concentration of PCBs well in excess of applicable  
8 cleanup standards.

9 I. In 1987, Ecology and Environment, Inc., as a contractor to EPA, conducted a  
10 sampling program to further characterize the extent of PCB contamination in work areas, floor  
11 drains, on-site soil, and the off-site storm drains. PCBs were detected in on-site soil samples at  
12 concentrations above applicable cleanup levels. Four surface scrape samples collected to examine  
13 work space contamination showed results of PCB concentrations above applicable cleanup levels.  
14 Sediment samples from floor drains inside the building also contained PCBs at concentrations  
15 well above applicable cleanup levels. Sediment samples from storm drains in the vicinity of the  
16 Site had concentrations above cleanup levels. Three samples that were analyzed for PCBs were  
17 also tested for chlorinated hydrocarbons. Chlorinated hydrocarbons were detected in all three  
18 samples.

19 J. In March and April 1997, George Maddox & Associates, Inc., working for  
20 Gisselberg, collected soil samples from inside and outside the building from dry wells and from  
21 an alley on the east side of the building. The on-site soils contained PCBs at concentrations above  
22 applicable cleanup levels. The soil from a dry well contained exceedances of PCBs. PCB  
23 concentrations from soil samples taken from the alleyway next to the property also exceeded  
24 applicable cleanup levels for PCBs.

25 K. In November 1997, George Maddox & Associates, Inc. installed a monitoring well  
26 adjacent to a dry well near the southeast portion of City Parcel's property. Soil samples were

taken at each 5 feet of drill penetration. The highest PCB concentration was measured at the 10-12 feet depth, above cleanup levels. A groundwater sample taken from this monitoring well contained PCBs above cleanup levels for groundwater. A second groundwater sample was collected in January 1998. This sample did not detect PCBs.

5 L. In 1994, City Parcel's then-owner, Gisselberg, filed a lawsuit against Richard  
6 Boyce, his wife Mary K. Boyce, Jerry Overton, and his wife Jane Doe Overton. *See City Parcel*  
7 *v. Overton*, Spokane County Superior Court Cause No. 94-2-06779-1 (1999). The lawsuit was a  
8 private right of action for contribution under MTCA under RCW 70.105D.080.

9 M. The lawsuit filed by City Parcel and the Gisselbergs against the Boyces and the  
10 Overtons was tried in Spokane County Superior Court from July 19 through July 22, 1999. On  
11 September 28, 1999, Judge Linda Thompkins issued Findings of Fact and Conclusions of Law  
12 finding all parties liable under MTCA for the Site, and allocating liability of 37.5 percent to  
13 Boyce, 37.5 percent to Overton, and 25 percent to Gisselberg as their contribution for remedial  
14 action costs under MTCA.

15 N. In September 1997, Ecology conducted an initial investigation of the Site and a  
16 letter was sent to Gisselberg on September 9, 1997, indicating further remedial action was needed.

17 O. In August 1998, the Spokane Regional Health District completed the site hazard  
18 assessment of the City Parcel property, as required under MTCA. This Site, pursuant to the  
19 requirements contained in WAC 173-340-320 and the "Washington Ranking Method Scoring  
20 Manual," was given a rank of 2. A score of 1 represents the highest level of risk and 5 the lowest.

21 P. In certified correspondence dated March 21, 2001, Ecology notified each of the  
22 PLPs of Ecology's preliminary finding of their potential liability under MTCA and requested  
23 comment on those findings.

24 Q. On April 12, 2001, after notice and opportunity for comment, Ecology notified the  
25 PLPs of Ecology's determination of their status as PLPs under RCW 70.105D.040, for the release  
26 of hazardous substances at the Site.



1 R. Ecology's PLP determination for Defendant was based on a finding of credible  
2 evidence that he owned and operated the Site at the time of a release or threatened release of  
3 hazardous substances.

4 S. On July 18, 2001, Ecology initiated negotiations with the PLPs for an Agreed  
5 Order that would require completion of a Remedial Investigation/Feasibility Study (RI/FS) for the  
6 Site.

7 T. On September 13, 2001, Ecology ended negotiations with the PLPs in accordance  
8 with WAC 173-340-530(6), based on Defendants' lack of reasonable progress toward successful  
9 negotiations of the Agreed Order.

10 U. Ecology thereafter conducted a RI/FS for the Site, using State funds. RI field  
11 activities at the Site were conducted in 2002 by Ecology's contractor, Science Applications  
12 International Corporation (SAIC). Results of the 2002 studies are presented and discussed in the  
13 November 27, 2002, "Final Remedial Investigation Report for the City Parcel Site" prepared by  
14 SAIC. The RI report was made available for public comment from January 16 through  
15 February 18, 2003. Only one written comment was received, from Boyce, questioning the  
16 necessity of the RI investigations. Ecology determined the comment did not warrant any changes  
17 to the RI Report.

18 V. Results of the RI confirmed extensive contamination of PCBs in soils in the  
19 parking lot and in the alleyway. In April 2002, PCBs above cleanup levels were again detected in  
20 the monitoring well that was installed in 1997. PCBs were also detected at very low  
21 concentrations in two other newly-installed wells. Groundwater sampling conducted in July  
22 2002, February 2003, and May 2003 did not indicate measurable PCBs in the monitoring wells.  
23 The RI also revealed the presence of an underground storage tank beneath the concrete floor, near  
24 the southeast corner of the building. At the time of the investigation, the tank contained about two  
25 inches of an unknown liquid.  
26

1 W. EPA has determined that exposure to PCBs is associated with significant adverse  
2 effects to human health and the environment. PCBs have been shown to cause cancer in animals  
3 and are a probable human carcinogen. Additionally, EPA has found that exposure to PCBs in  
4 animals causes significant non-cancer toxic effects on the immune system, the reproductive  
5 system, the nervous system and the endocrine system, and studies in humans support the  
6 correlation to toxicity in humans as well. Based on available data regarding PCBs including EPA  
7 findings, Ecology has found that PCBs present a threat to human health and the environment.

8 X. In August 2003, Ecology formally requested that the City of Spokane install a  
9 temporary cover over the contaminated soils in the alleyway which is a City right-of-way. The  
10 City complied, covering the alleyway with gravel.

11 Y. Based on the RI results and other existing site data, Ecology drafted a Feasibility  
12 Study (FS) Report in 2004. The report evaluated cleanup alternatives for the Site. The FS Report  
13 was made available for public review and comment from February 26, 2004, through March 26,  
14 2004. No comments were received during this comment period.

15 Z. After finishing the FS, Ecology prepared a Draft Cleanup Action Plan (DCAP)  
16 that identified the selected remedial action for the Site. The DCAP was made available for public  
17 review and comment from July 21, 2004, through August 19, 2004, and was sent to all three  
18 PLPs. No comments were received during the public comment period. The Final Cleanup Action  
19 Plan (FCAP) was issued in August 2004. The FCAP requires, among other details, removal of a  
20 building, excavation of soils, removal of all drain lines and dry wells, and removal of an  
21 underground storage tank.

22 AA. On November 22, 2004, Ecology sent letters to the PLPs calling for a meeting to  
23 discuss the FCAP and its implementation. Gisselberg was given a second opportunity to provide  
24 comments on the Cleanup Action Plan for an additional thirty day period, extending from  
25 December 1, 2004, to December 31, 2004.  
26

1 BB. On December 28, 2004, Gisselberg provided comments on the remedial action  
2 chosen in the FCAP and proposed alternative actions that included allowing the building to  
3 remain on the Site. The proposed modifications did not meet the minimum requirements of  
4 MTCA, and therefore the FCAP was not revised.

5 CC. On May 24, 2005, Ecology met with the PLPs to discuss implementation of the  
6 FCAP. At the meeting, Ecology outlined an alternative remedial action that would meet the  
7 requirements of MTCA and allow the building to remain intact. Ecology set out the nature and  
8 magnitude of modifications to the remedial action identified in the FCAP that would be necessary  
9 if the building were to remain.

10 DD. On May 27, 2005, the Attorney General's Office, on behalf of Ecology, sent letters  
11 to the PLPs inquiring about their intention to negotiate an Agreed Order or Consent Decree with  
12 Ecology to implement the FCAP (as written or with some specific modifications as discussed  
13 during the May 24, 2005, meeting). Ecology requested that the PLPs respond to Ecology's letter  
14 by July 27, 2005. Boyce responded that he would not be able to contribute financially to any  
15 portion of the cleanup costs. Gisselberg also responded, indicating he elected not to negotiate an  
16 Agreed Order or Consent Decree with Ecology for implementation of either the FCAP, or the  
17 FCAP with specific modifications that would allow the building on the Site to remain. Overton  
18 did not send a response.

19 EE. On August 16, 2005, pursuant to its authority under RCW 70.105D.030(1) and  
20 .050(1) and WAC 173-340-540, Ecology issued Enforcement Order No. 2691 (the Order). The  
21 Order requires, among other details, that Defendants implement either the FCAP, or the FCAP  
22 with specific modifications that would allow the building on the Site to remain.

23 FF. The Order required the PLPs, within fifteen (15) days of the effective date of the  
24 Order, to submit to Ecology a letter of intent clearly defining the PLPs' intent to abide by the  
25 Order in good faith. The effective date of the Order was October 4, 2005. None of the PLPs  
26 submitted this required letter of intent by October 19, 2005 (15 days after October 4, 2005). Since

1 Ecology issued the Order, none of the PLPs have taken any steps to comply with the FCAP as  
2 required by the Order.

3 GG. On March 2, 2006, Ecology then filed the above-entitled action, asking, among  
4 other things, this Court to enforce the Order.

5 HH. On October 17, 2007, the Honorable Ann Hirsch signed an order on partial  
6 summary judgment in this action in favor of Ecology, finding that Defendant Gisselberg is a liable  
7 person for the City Parcel Site.

8 II. Ecology has reviewed the Financial Information submitted by Defendant to  
9 determine whether the Defendant is financially able to pay for remedial action costs incurred  
10 and to be incurred at the Site. Based on this Financial Information including information as to  
11 savings, assets, current income, and limited future earnings potential (taking into consideration  
12 factors including but not limited to Defendant's age, life expectancy and health care/long term  
13 care expenses), Ecology has determined that the Defendant has limited financial ability to pay  
14 for remedial action costs incurred and to be incurred at the Site.

15 JJ. This Decree is based on circumstances unique to Defendant, namely financial  
16 hardship. *See* RCW 70.105D.040(4)(e). Thus, a successor in interest to Defendant will not  
17 automatically receive the benefit of this Decree. Defendant's estate is obligated to comply  
18 with this Decree and also receives the benefits of this Decree.

## 19 VI. PAYMENT & OTHER OBLIGATIONS

20 A. Defendant shall pay a sum of \$180,000, plus a payment for the time value of  
21 paying in installments (calculated at five percent (5%), annual percentage rate, simple interest)  
22 according to the following schedule and conditions:

23 1. \$60,000 paid to Ecology within fourteen (14) days of entry of the  
24 Consent Decree;

25 2. \$66,000 paid to Ecology by December 31, 2008 (including \$60,000  
26 towards principal, and \$6,000 in accrued interest);

1           3.       \$63,000 paid to Ecology by December 31, 2009 (including \$60,000  
2 towards principal and \$3,000 in accrued interest);

3           4.       Within ten (10) days of the entry of this Decree with the Court,  
4 Defendant agrees to record a lien against his real property located at 708 North Cook  
5 Street in Spokane in the amount of \$189,000 in unreimbursed remedial action costs  
6 incurred by Ecology. The lien shall take the form of Exhibit C (Lien). Defendant shall  
7 provide Ecology a copy of the recorded lien within thirty (30) days of entry of this  
8 Decree;

9           5.       If Defendant sells his ownership interest in the real property at the Site  
10 before December 31, 2009, then all sums not yet paid will immediately become due and  
11 payable upon the sale of the property, in accordance with the terms of the lien recorded  
12 against the property (Exhibit C);

13           6.       If Defendant timely pays the entire sum, including the entirety of the  
14 principal (\$180,000) and the 2008 interest payment (\$6,000), before December 31,  
15 2008, then the interest on the payment due in 2009 (in the amount of \$3,000) shall not  
16 accrue. If, however, the full amount of the settlement has not been timely paid by the  
17 end of 2008, then the full second year's interest on the principal (in the amount of  
18 \$3,000) shall become due and owing according to the schedule above, in addition to  
19 any sums owing in accordance with Section VII (Interest); and

20           7.       Payments shall be made payable to the "Washington State Department  
21 of Ecology" and sent to the following address:

22                   ATTN: GARY ZEILER  
23                   DEPARTMENT OF ECOLOGY  
24                   FISCAL OFFICE  
25                   PO BOX 5128  
26                   LACEY, WA 98509-5128

These payments are intended to go into an interim account. If the 2008 Legislature  
creates a new account for environmental settlements of the type described in this

1 Decree, then the funds shall be directed from the interim account into the new  
2 settlement account once the account has been created. This new account may be called  
3 the Cleanup Settlement Account or equivalent. If the 2008 Legislature does not create  
4 any such environmental settlement account, then the funds shall be transferred from the  
5 interim account to the State Toxics Control Account.

6 B. Defendant agrees not to perform any remedial actions at the Site without  
7 Ecology's express written approval.

8 C. Defendant agrees to fully cooperate with Ecology's remedial efforts, including  
9 but not limited to: granting full, unencumbered access to Defendant's property located at 708  
10 N. Cook Street in Spokane, consistent with Section VIII (Access); agreement to demolition of  
11 the building; agreement to removal of any other improvements on the property where such  
12 removal is reasonably necessary to the remediation; and by April 30, 2008, Defendant agrees  
13 to have fully prepared the property for demolition and cleanup. This preparation includes  
14 clearing all of Defendant's personal property out of the building and off the outdoor portions of  
15 the property to make way for the cleanup and demolition. "Reasonable necessity" under this  
16 Section shall be determined at Ecology's sole discretion.

17 D. Defendant agrees that any and all salvageable metal resulting from the destruction  
18 of the building is the property of Ecology and may be disposed of by Ecology within Ecology's  
19 sole discretion.

20 E. Defendant agrees to the placement of an Environmental Covenant on his property  
21 in accordance with Section XVIII (Land Use Restrictions).

22 F. Defendant shall fully comply with Ecology's periodic review efforts at the Site,  
23 consistent with Section XIX (Periodic Review).

1 **VII. INTEREST**

2 If Defendant fails to make any payment in full by the required due date in accordance  
3 with Section VI (Payment & Other Obligations), interest shall accrue on the unpaid balance in  
4 the amount of twelve percent (12%) (annual percentage rate, compounded monthly).

5 **VIII. ACCESS**

6 Ecology or any Ecology authorized representative shall have full authority to enter and  
7 freely move about all property at the Site that Defendant either owns, controls, or has access  
8 rights to at all reasonable times for the purposes of, *inter alia*: conducting investigative and  
9 cleanup work at the site, performing periodic reviews, inspecting records, operation logs, and  
10 contracts related to the work being performed pursuant to this Decree; conducting such tests or  
11 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or  
12 other documentary type equipment to record remedial work done at the Site; and verifying any  
13 and all data submitted to Ecology for the Site. Defendant shall make all reasonable efforts to  
14 secure access rights for those properties within the Site not owned or controlled by Defendant  
15 where remedial activities or investigations will be performed pursuant to this Decree. Ecology  
16 or any Ecology authorized representative shall give reasonable notice before entering any Site  
17 property owned or controlled by Defendant unless an emergency prevents such notice. All  
18 Parties who access the Site pursuant to this Section shall comply with any applicable health  
19 and safety plan(s). Ecology employees and their representatives shall not be required to sign  
20 any liability release or waiver as a condition of Site property access.

21 Defendant or a representative of Defendant may be present during any remediation at  
22 the Site, provided that (1) Defendant coordinate with Ecology's project coordinator in advance;  
23 and (2) that Defendant comply with any and all applicable health and safety plans at the Site.  
24 Defendant does not have the right to exercise control over remediation at the Site and/or to  
25 exercise control over any contractors who may perform remedial work at the Site.  
26

1 **IX. TRANSFER OF INTEREST IN PROPERTY**

2 No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
3 interest in any portion of the Site shall be consummated by Defendant without provision for the  
4 continued operation and maintenance of any wells, containment system, treatment system,  
5 and/or monitoring system installed or implemented by Ecology or its authorized  
6 representatives at the Site.

7 Prior to Defendant’s transfer of any interest in all or any portion of the Site, and during  
8 the effective period of this Decree, Defendant shall provide a copy of this Decree to any  
9 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
10 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.  
11 Upon transfer of any interest, Defendant shall restrict uses and activities to those consistent  
12 with this Consent Decree and notify all transferees of the restrictions on the use of the  
13 property.

14 Because this is a settlement based on circumstances unique to Defendant, namely  
15 financial hardship, Ecology reserves all rights to enforce against any and all successors in  
16 interest to Defendant, and successors in interest to Defendant shall not automatically benefit  
17 from the terms of this Decree. *See* RCW 70.105D.040(4)(e).

18 **X. DESIGNATED PROJECT COORDINATORS**

19 The project coordinator for Ecology is:

20  
21 Teresita Bala  
22 Washington State Department of Ecology  
23 Eastern Regional Office  
24 North 4601 Monroe  
25 Spokane, WA 99205-1295  
26 Phone: (509) 329-3543  
Email: [tbal461@ecy.wa.gov](mailto:tbal461@ecy.wa.gov)

The project coordinator for Defendant is:

Paul Gisselberg  
10957 Gisselberg Lane, NW



1 Seabeck, WA 98380  
2 (360) 830-5565

3 Each project coordinator shall be responsible for overseeing the implementation of this  
4 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.  
5 Any party may change its respective project coordinator. Written notification shall be given to  
6 the other party at least ten (10) calendar days prior to the change.

7 **XI. REASONABLE ASSISTANCE**

8 In light of the nature of this settlement, it is important that Ecology obtains full  
9 cooperation from Defendant in any future efforts Ecology may make to remediate the Site  
10 and/or to recover costs from other potentially liable persons. Therefore, Defendant shall make  
11 all reasonable efforts to assist Ecology in the Department's enforcement and/or cost recovery  
12 efforts against any other potentially liable persons for the Site. This includes, but is not limited  
13 to, timely provision of documents, witness testimony, and other evidence upon Ecology's  
14 request.

15 **XII. NOTICE OF FINANCIAL STATUS**

16 Because this settlement is based on a finding that Defendant has a limited ability to pay  
17 for cleanup costs, it is required that Ecology be notified of substantial increases in Defendant's  
18 financial status. Therefore, for the first six years following the entry of this Decree (for the  
19 years 2008 through 2013), Defendant shall notify Ecology annually of his overall financial  
20 status, on or before the first (1st) day of August each year. In this submittal, Defendant shall  
21 include (1) a fully completed, signed, sworn and acknowledged statement in the form of  
22 Exhibit D (Annual Notice of Financial Status Form); and (2) a complete and accurate copy of  
23 Defendant's most recent personal federal income tax return, including all schedules and  
24 attachments thereto. After the first six years following the entry of this Decree, Defendant  
25 shall provide Ecology updated notices of his financial status within sixty (60) days of a written  
26 request from Ecology for such information.

1 **XIII. AMENDMENT OF DECREE**

2 This Decree may only be formally amended by a written stipulation among the Parties  
3 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
4 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
5 by any party.

6 Defendant shall submit a written request for amendment to Ecology for approval.  
7 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the  
8 written request for amendment is received. If the amendment to the Decree is a substantial  
9 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
10 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
11 not agree to a proposed amendment, the disagreement may be addressed through the Court.

12 **XIV. ENDANGERMENT**

13 In the event Ecology determines that any activity being performed at the Site is creating  
14 or has the potential to create a danger to human health or the environment, Ecology may direct  
15 Defendant to cease such activities for such period of time as it deems necessary to abate the  
16 danger. Defendant shall immediately comply with such direction.

17 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or  
18 contractors to take or require appropriate action in the event of an emergency.

19 **XV. COVENANT NOT TO SUE**

20 A. Covenant Not to Sue: In consideration of Defendant’s compliance with the  
21 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
22 actions against Defendant regarding the release or threatened release of hazardous substances  
23 covered by this Decree.

24 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
25 and those hazardous substances that Ecology knows are located at the Site as of the date of  
26

1 entry of this Decree. This Decree does not cover any other hazardous substance or area.  
2 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

3 This Covenant Not to Sue shall have no applicability whatsoever to:

- 4 1. Criminal liability;
- 5 2. Liability for damages to natural resources; and
- 6 3. Any Ecology action, including cost recovery, against PLPs not a party to  
7 this Decree.

8 If factors not known at the time of entry of the settlement agreement are discovered and  
9 present a previously unknown threat to human health or the environment, the Court shall  
10 amend this Covenant Not to Sue. In that event, however, Ecology requests that the Court take  
11 into consideration, as appropriate, that the basis of this settlement is limited financial ability to  
12 pay.

13 B. Reopeners: Ecology specifically reserves the right to institute legal or  
14 administrative action against Defendant to require it to perform additional remedial actions at  
15 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the  
16 following circumstances:

17 1. Upon Defendant's failure to meet the requirements of this Decree,  
18 including, but not limited to, fulfillment of Sections VI (Payment & Other Obligations);  
19 VII (Interest); XI (Reasonable Assistance); and XII (Notice of Financial Status);

20 2. Upon Ecology's determination that remedial action by Defendant  
21 beyond the terms of this Decree is necessary to abate an imminent and substantial  
22 endangerment to human health or the environment;

23 3. Upon Ecology's determination that the Financial Information provided  
24 to Ecology by Defendant is false or in any material respect inaccurate. If Ecology  
25 makes such a determination, Defendant shall forfeit all payments pursuant to this  
26 agreement and the Covenant Not to Sue shall be null and void. Such forfeiture shall

1 not constitute liquidated damages and shall not in any way foreclose Ecology's right to  
2 pursue any other causes of action arising from Defendant's false or materially  
3 inaccurate information;

4 4. Upon Ecology's determination that Defendant's financial ability to pay  
5 has materially increased from the time of entry of this Decree. Should Ecology make  
6 such a determination, Defendant shall forfeit all payments pursuant to this agreement  
7 and the Covenant Not to Sue shall be null and void. Such forfeiture shall not constitute  
8 liquidated damages and shall not in any way foreclose Ecology's right to pursue any  
9 other causes of action arising from Defendant's material change in finances; or

10 5. Upon the availability of new information regarding factors previously  
11 unknown to Ecology, including the nature or quantity of hazardous substances at the  
12 Site, and Ecology's determination, in light of this information, that further remedial  
13 action is necessary at the Site to protect human health or the environment.

14 C. Except in the case of an emergency, prior to instituting legal or administrative  
15 action against Defendant pursuant to this Section, Ecology shall provide Defendant with fifteen  
16 (15) calendar days notice of such action.

#### 17 **XVI. CONTRIBUTION PROTECTION**

18 With regard to claims for contribution against Defendant, the Parties agree that  
19 Defendant is entitled to protection against claims for contribution for matters addressed in this  
20 Decree as provided by RCW 70.105D.040(4)(d).

#### 21 **XVII. CLAIMS AGAINST THE STATE**

22 Defendant hereby agrees that it will not seek to recover any costs paid under this  
23 Decree, including but not limited to, payments made pursuant to Section VI (Payment & Other  
24 Obligations) and Section VII (Interest) from the State of Washington or any of its agencies;  
25 and further, that Defendant will make no claim against the State Toxics Control Account or  
26

1 any local Toxics Control Account for any costs incurred in implementing its obligations under  
2 this Decree.

3 **XVIII. LAND USE RESTRICTIONS**

4 Defendant shall record the Environmental Covenant attached as Exhibit E to this  
5 Decree with the office of the Spokane County Auditor within ten (10) days of receiving written  
6 notice from Ecology that the active remediation is complete. The Environmental Covenant  
7 shall restrict future uses of the Site. Defendant shall provide Ecology with a copy of the  
8 recorded Environmental Covenant within thirty (30) days of the recording date.

9 **XIX. PERIODIC REVIEW**

10 Defendant recognizes that Ecology's remediation efforts include periodic reviews  
11 consistent with WAC 173-340-420(2) and the Uniform Environmental Covenants Act (Chapter  
12 64.70 RCW) to ensure the integrity of remedial actions completed at the Site. Defendant shall  
13 fully comply with Ecology's periodic review efforts at the Site, including but not limited to  
14 permitting access consistent with Section VIII (Access) and allowing Ecology to access any and  
15 all documents in Defendant's possession that may be relevant to the remediation at the Site.  
16 Defendant's successors in interest and assigns shall also fully comply with Ecology's periodic  
17 review efforts.

18 **XX. PUBLIC PARTICIPATION**

19 A Public Participation Plan is required for this Site. Ecology shall update, maintain and  
20 implement the Public Participation Plan, as appropriate. This includes information  
21 repositories, the preparation of all press releases and fact sheets, meetings, and other outreach  
22 with the interested public, local governments, and news organizations. Ecology shall notify  
23 Defendant prior to the issuance of all press releases and fact sheets, and before major meetings  
24 with the interested public and local governments, on issues related to this Consent Decree.

25 Defendant shall not be associated with public participation efforts. Defendant shall  
26 refer any and all Site inquiries directly to Ecology's project coordinator. However, upon

1 Ecology's request, Defendant shall cooperate with Ecology on any and all public participation  
2 efforts.

### 3 **XXI. DURATION OF DECREE**

4 The Decree shall be maintained and continued until Defendant has received written  
5 notification from Ecology that the requirements of this Decree have been satisfactorily  
6 completed. Ecology shall not issue such notification to Defendant until Defendant has  
7 completed all the requirements of this Decree, including but not limited to the requirements of  
8 Section VI (Payment & Other Obligations), Section VII (Interest), and the first six years of  
9 reporting under Section XII (Notice of Financial Status). This Decree shall remain in effect  
10 until dismissed by the Court. When dismissed, Section VIII (Access), Section XI (Reasonable  
11 Assistance), Section XII (Notice of Financial Status), Section XV (Covenant Not to Sue),  
12 Section XVI (Contribution Protection), Section XVII (Claims Against the State), and XIX  
13 (Periodic Review) shall survive.

### 14 **XXII. CERTIFICATION**

15 In the attached Exhibit F (Declaration of Paul Gisselberg), Defendant certifies the  
16 following under penalty of perjury under the laws of the State of Washington: That, to the best  
17 of his knowledge and belief, after thorough inquiry, he has fully complied with any and all of  
18 Ecology's requests for documents or information regarding the Site and Defendant's financial  
19 circumstances; further, that Defendant has submitted to Ecology Financial Information that  
20 fairly, accurately, and materially sets forth his financial circumstances, and that those financial  
21 circumstances have not materially increased between the time the Financial Information was  
22 submitted to Ecology and the time the Defendant executes this Decree; finally, Defendant has  
23 certified that he has fully disclosed the existence of any insurance policies that may cover  
24 claims relating to the cleanup of the Site.

### 25 **XXIII. EFFECTIVE DATE**

26 This Decree is effective upon the date it is entered by the Court.

**XXIV. WITHDRAWAL OF CONSENT**

If the Court withholds or withdraws its consent to this Decree, it 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.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA  
Attorney General

\_\_\_\_\_  
JAMES PENDOWSKI  
Program Manager  
Toxics Cleanup Program  
360-407-7177

\_\_\_\_\_  
ELLIOTT FURST, WSBA # 12026  
Senior Counsel  
360-586-6770

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PAUL GISSELBERG

\_\_\_\_\_  
MELISSA ROURKE, WSBA # 34549  
Assistant Attorney General  
360-586-6770

\_\_\_\_\_  
PAUL GISSELBERG  
(360) 830-5565

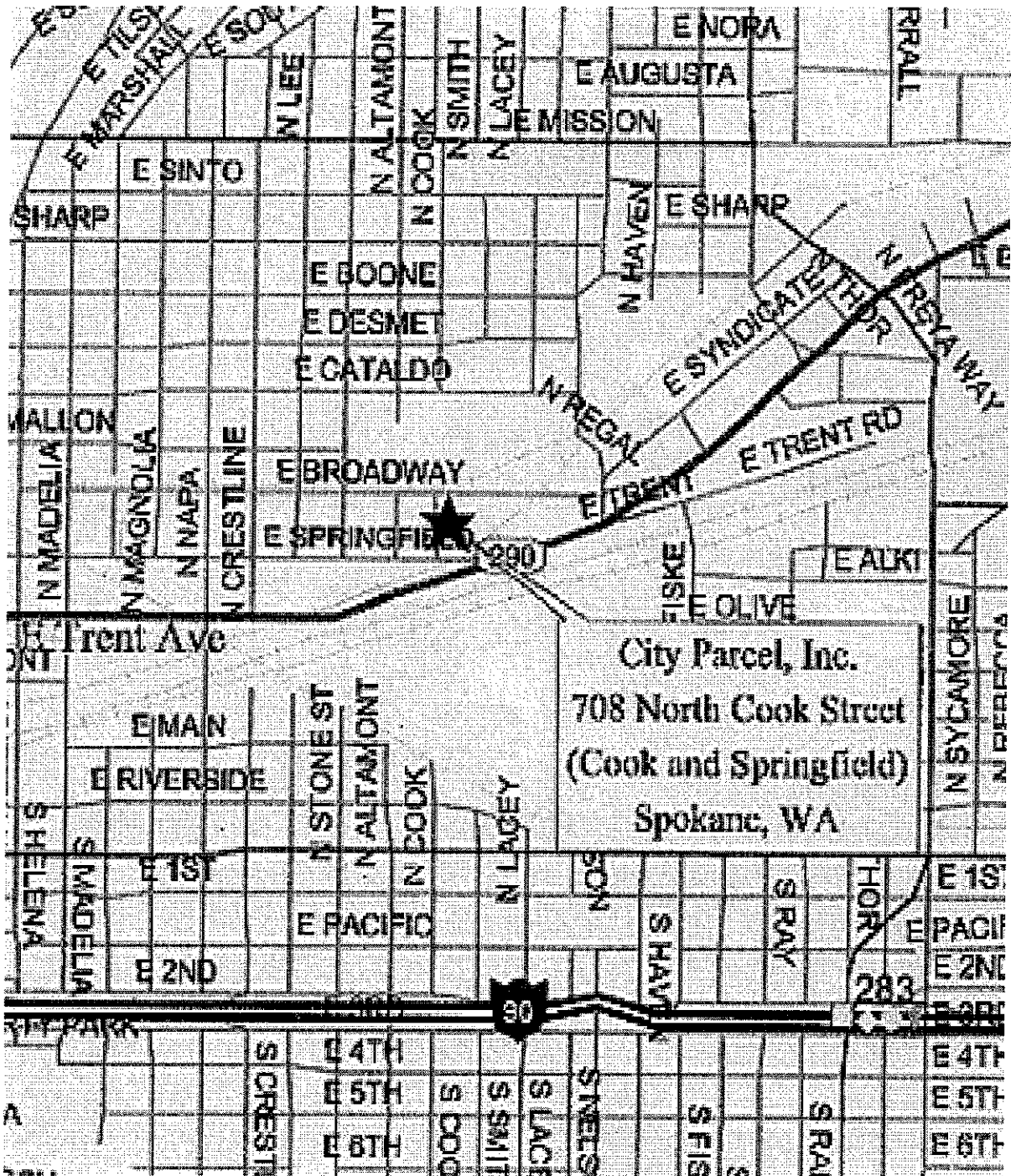
Date: \_\_\_\_\_

Date: \_\_\_\_\_

ENTERED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

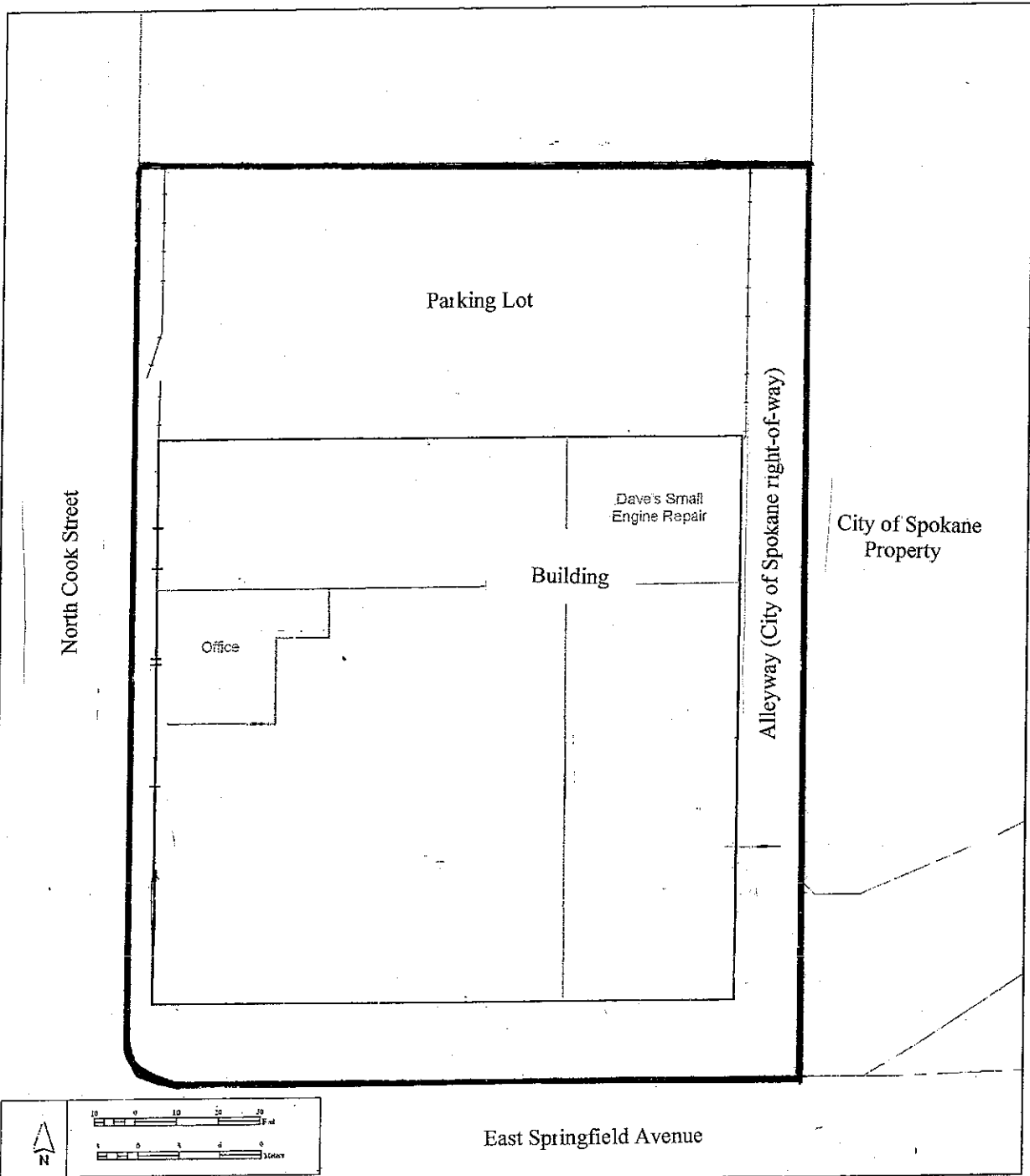
\_\_\_\_\_  
JUDGE ANNE HIRSCH  
Thurston County Superior Court

# EXHIBIT A



CITY PARCEL SITE LOCATION





— Site Boundary

**City Parcel Site Diagram**

# EXHIBIT B

## List of Financial Information

## LIST OF FINANCIAL INFORMATION

Ecology reviewed the following documents submitted by Mr. Gisselberg in making the financial hardship determination for Mr. Gisselberg:

- Signed statement under penalty of perjury describing Mr. Gisselberg's assets, income, and earning potential, dated March 26, 2007 (submitted to Ecology through its legal counsel by letter dated March 28, 2007).
- Mr. Gisselberg's personal federal income tax returns for the years 2004 through 2006 and attached letter to Ecology's counsel dated May 11, 2007.
- Letter dated March 28, 2007, from Dr. Dale Holdren, M.D., describing Mr. Gisselberg's ophthalmic condition (submitted to Ecology through its legal counsel by letter dated April 11, 2007).
- Sworn declaration under penalty of perjury (Exhibit F to this Decree).

# EXHIBIT C

Lien

After Recording Return to:

Department of Ecology  
4601 North Monroe St.  
Spokane, WA 99205-1295

### **Model Toxics Control Act- Statement of Lien**

Grantor: Paul and Mary Ann Gisselberg

Grantee: State of Washington, Department of Ecology

Legal: Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16,  
Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that  
part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company;  
situate in Spokane County, State of Washington

Tax Parcel Nos.: 35164.0406

Cross Reference:

Notice is hereby given that State of Washington, through the Department of Ecology, claims a lien pursuant to RCW 70.105D.055. In support of this lien the following information is given.

Legal Owner of Property: Paul and Mary Ann Gisselberg

Legal description of property subject to lien: Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16, Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company; situate in Spokane County, State of Washington

Amount of Lien: One hundred and eighty nine thousand dollars (\$ 189,000.00 )

This lien supports the financial obligations set forth in that consent decree between Paul Gisselberg and State of Washington dated [REDACTED] on file with the Superior Court in Thurston County, Cause No. 06-2-00427-0.

Upon default by Paul Gisselberg in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable.

By accepting payment of any sum secured hereby after its due date, State does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
Name: Jim Pendowski  
Title: Program Manager, Toxics Cleanup Program

CONSENT

As legal owner of the property identified above, I hereby consent to the placement of this lien.

PAUL GISSELBERG

\_\_\_\_\_  
MARY ANN GISSELBERG

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that **he/she/they** signed the same as **his/her/their** free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

**STATE ACKNOWLEDGMENT**

STATE OF WASHINGTON )  
 )ss  
COUNTY OF THURSTON )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me \_\_\_\_\_, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

# EXHIBIT D

Annual Notice of Financial Status Form



**EXHIBIT D**

ANNUAL NOTICE OF FINANCIAL STATUS FORM

I, Paul Gisselberg, declare that my combined personal assets and income have not increased by more than twenty percent (20%) from the time of entry of the Consent Decree in Thurston County Superior Court, matter number 06-2-00427-0, *Ecology v. Boyce et. al.*

Attached to this form is a true and correct copy of my most recent personal federal income tax return, including all schedules and attachments thereto.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this \_\_\_\_ day of \_\_\_\_\_ (Month) \_\_\_\_\_ (Year) in \_\_\_\_\_ (City), Washington.

\_\_\_\_\_  
Paul Gisselberg

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.

# EXHIBIT E

## Environmental Covenant



These documents are on file at Ecology's Eastern Regional Office located at 4610 N. Monroe St., Spokane, WA.

This Covenant is required because the Remedial Action resulted in residual concentrations of Polychlorinated Biphenyls (PCBs) which exceed the Model Toxics Control Act Method A Soil Cleanup Level for Unrestricted Land Uses established under WAC 173-340-740.

The undersigned, Mr. Paul Gisselberg and Ms. Mary Ann Gisselberg, are the fee owners of real property (hereafter "Property") in Spokane County, State of Washington, that is subject to this Covenant. The Property is legally described in ATTACHMENT A of this Covenant and made a part hereof by reference.

Grantors make the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1.

1. The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(14) and defined in and allowed under the City of Spokane zoning regulations codified in the Municipal Code Title 17C.130 as of the date of this Restrictive Covenant.

2. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial

Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

MR. PAUL GISSELBERG

---

PAUL GISSELBERG

An Individual

Dated: \_\_\_\_\_

MS. MARY ANN GISSELBERG

---

MARY ANN GISSELBERG

An Individual

Dated: \_\_\_\_\_

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

---

**[Name of Person Acknowledging Receipt]**  
**[Title]**

Dated: \_\_\_\_\_

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.

Exhibit A  
Legal Description

Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16, Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company; situate in Spokane County, State of Washington



# EXHIBIT F

Declaration of Paul Gisselberg

**EXHIBIT F**

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**STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

RICHARD BOYCE, PAUL GISSELBERG,  
and JERRY OVERTON,

Defendants.

NO. 06-2-00427-0

DECLARATION OF PAUL  
GISSELBERG

I, Paul Gisselberg, being first duly sworn upon an oath, depose and say:

1. To the best of my knowledge and belief, after thorough inquiry, I have fully complied with any and all of Ecology’s requests for documents or information regarding the Site and my financial circumstances.

2. The Financial Information (described in Exhibit B) that I have submitted to Ecology fairly, accurately, and materially sets forth my financial circumstances. Further, my financial circumstances have not materially increased between the time the Financial Information was submitted to Ecology and the time I am signing this Consent Decree; and

3. Finally, I have fully disclosed the existence of any insurance policies that may cover claims relating to the cleanup of the Site.

///

///

1 I declare under penalty of perjury of the laws of the state of Washington that the  
2 foregoing is true and correct to the best of my knowledge.

3 Dated this \_\_\_\_\_ day of \_\_\_\_\_(Month), \_\_\_\_\_(Year), in \_\_\_\_\_,  
4 (City) \_\_\_\_\_ (State).

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7 PAUL GISSELBERG  
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