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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JUANITA VILLAGE, LLC; SECO
DEVELOPMENT, INC.; and
BOARDWALK DEVELOPMENT,
INC.,

Defendants.

NO.

PROSPECTIVE PURCHASER
CONSENT DECREE RE:
JUANITA VILLAGE PROPERTY,
KIRKLAND, WASHINGTON

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EXHIBITS

- Exhibit A: Legal Description
- Exhibit B: Site Map and Diagram
- Exhibit C: Cleanup Action Plan
- Exhibit D: Schedule with Scope of Work
- Exhibit E: Reports/Studies Describing Contamination
- Exhibit F: Restrictive Covenant
- Exhibit G: Public Participation Plan

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I. INTRODUCTION

This prospective purchaser consent decree (“Decree”) is made and entered into by and between the Washington State Department of Ecology (“Ecology”), and Juanita Village, LLC, Boardwalk Development, Inc., and SECO Development, Inc. (referred to collectively as “Juanita Village”).

1. WHEREAS, the purpose of this Decree is to resolve the potential liability of Juanita Village for known and suspected contamination at or near the Juanita Village Property in Kirkland, Washington (the “Site”) arising from a release or threatened release of hazardous substances; to promote the public interest by expediting cleanup activities at the Site; and to facilitate the cleanup and redevelopment of contaminated commercial property in Kirkland, Washington. A legal description of the parcels that make up the Property is attached as Exhibit A. A Site map and diagram are attached as Exhibit B.

2. WHEREAS, Juanita Village has entered into a contract to acquire the Property with the current owner, Trans Pacific Corporation, Inc.

3. WHEREAS, Juanita Village has proposed to clean up and redevelop the Property, consistent with applicable City of Kirkland zoning provisions and comprehensive plan designations.

4. WHEREAS, in the absence of this Decree, at the time it acquires the Property, Juanita Village would incur potential liability as an owner and/or operator under RCW 70.105D.040(1)(a) of the Model Toxics Control Act (“MTCA”) for performing remedial actions, or for paying remedial costs incurred by Ecology, resulting from past releases or threatened releases of hazardous substances at the Site, and Juanita Village has certified that it is not currently liable under MTCA for remedial action at the Site.

5. WHEREAS, Juanita Village has performed extensive site characterization activities which Ecology has determined are the substantial equivalent of a MTCA Remedial

1 Investigation and Feasibility Study pursuant to WAC 173-340-350 (RI/FS). The RI/FS
2 documents soil and groundwater contamination at the Site that exceeds MTCA residential
3 cleanup levels for certain contaminants.

4 6. WHEREAS, this Decree promotes the public interest by expediting cleanup
5 activities at the Site.

6 7. WHEREAS, Juanita Village will perform the remediation specified in this Decree
7 and the Cleanup Action Plan (CAP), attached as Exhibit C in exchange for a covenant not to sue
8 and protection from contribution under MTCA.

9 8. WHEREAS, Juanita Village's plans for the redevelopment of the Property are not
10 likely to aggravate or contribute to contamination at the Site, interfere with remedial actions that
11 may be needed on the Site, or increase human health risks to persons at or in the vicinity of the
12 Site.

13 9. WHEREAS, this Decree will provide a substantial public benefit by promoting
14 redevelopment consistent with goals outlined by the Washington State Growth Management Act
15 and yielding substantial resources for cleanup to prevent any further migration of contaminants to
16 Juanita Creek, Lake Washington, Juanita Beach Park, and other areas in the vicinity of the Site.

17 10. WHEREAS, Juanita Village's cleanup of soil and groundwater contamination will
18 lead to a more expeditious cleanup of hazardous substances at the Site than would otherwise
19 occur, and will promote protection of the public health and the environment.

20 11. WHEREAS, Ecology has determined that this Decree is not based on
21 circumstances unique to Juanita Village pursuant to RCW 70.105D.040(4)(e)(ii).

22 12. WHEREAS, the Complaint in this action is being filed simultaneously with this
23 Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in
24 this case. However, the parties wish to resolve the issues raised by Ecology's Complaint. In
25 addition, the parties agree that settlement of these matters without litigation is reasonable and in
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1 the public interest and that entry of this Decree is the most appropriate means of resolving these
2 matters.

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

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

6 **II. AUTHORITY, JURISDICTION AND VENUE**

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

9 15. Authority is conferred upon the Washington State Attorney General by
10 RCW 70.105D.040(4)(a) and RCW 70.105D.040(5) to agree to a settlement with any potentially
11 liable person (“PLP”) if, after public notice and hearing, Ecology finds the proposed settlement
12 would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup
13 standards under RCW 70.105D.030(2)(e). RCW 70.105D.040(4) and RCW 70.105D.040(5)
14 require that such a settlement be entered as a consent decree issued by a court of competent
15 jurisdiction.

16 16. Ecology has determined that hazardous substances have been released at the Site.
17 Ecology has not made a determination that Juanita Village is a PLP for the Site and Juanita
18 Village has certified that it is not currently liable under RCW 70.105D. Were Juanita Village to
19 acquire an interest in the Property, however, it could become a PLP as an owner or operator
20 under RCW 70.105D.040(1)(a). This Decree is entered prior to Juanita Village’s acquisition of
21 the Property to resolve its potential liability for known or suspected Site contamination described
22 in the RI/FS and the CAP and to facilitate a more expeditious cleanup at the Site than otherwise
23 would occur. This Decree is entered pursuant to the authority set forth in RCW 70.105D.040(5).

24 17. By entering into this Decree, Juanita Village agrees not to challenge Ecology’s
25 jurisdiction in any proceeding to enforce this Decree. Juanita Village consents to the issuance of
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1 this Decree and has agreed to perform cleanup and monitoring and pay oversight costs as
2 specified in this Decree.

3 18. All Exhibits attached to this Decree are integral and enforceable parts of this
4 Decree.

5 III. PARTIES BOUND

6 19. This Decree shall apply to and be binding upon the signatories to this Decree.
7 The undersigned representative of each party hereby certifies that he or she is fully authorized to
8 enter into this Decree and to execute and legally bind such party to comply with this Decree.
9 Juanita Village agrees to undertake all actions required by the terms and conditions of this
10 Decree and not to contest state jurisdiction regarding this Decree. No change in ownership or
11 corporate status shall alter the responsibility of Juanita Village under this Decree. Juanita Village
12 shall provide a copy of this Decree to all agents, contractors and subcontractors retained to
13 perform work required by this Decree. Juanita Village remains obligated by this Decree
14 regardless of whether it carries out its terms through agents, contractors, and/or consultants.

15 IV. DEFINITIONS

16 20. Unless otherwise expressly provided herein, terms used in this Decree that are
17 defined in MTCA or in regulations promulgated under MTCA shall have the meaning assigned
18 to them in MTCA or in such regulations. Whenever terms listed below are used in this Decree or
19 in the attachments hereto, the following definitions shall apply:

20 “Decree” shall mean this Decree and all attachments hereto. In the event of conflict
21 between this Decree and any exhibit, this Decree shall control.

22 “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

23 “Property” is legally described in Exhibit A hereto and incorporated by reference. The
24 Property is an approximately 11-acre site located in the Juanita Business District of Kirkland just
25 north of Lake Washington.
26

1 “Section” shall mean a portion of this Decree identified by a Roman numeral and
2 including one or more Paragraphs.

3 “Site” shall mean the area on the Property where hazardous substances have been
4 deposited, stored, disposed of, placed or otherwise come to be located as a result of releases that
5 occurred on and upgradient of the Property. “Site” also means the area where perchloroethene
6 (PCE) has come to be located down-gradient of the Property. The location of hazardous
7 substances is described in the RI report. The Site boundaries are beyond the Property boundaries
8 both upgradient and down-gradient, and are not precisely defined at this time, but are
9 approximately depicted on Exhibit B. The Site is a “facility” as defined in MTCA per RCW
10 70.105D.020(4).

11 “Successors in Interest and Assigns” shall mean any person who acquires an interest in
12 the Site through purchase, lease, transfer, assignment, or otherwise, and who, but for the
13 acquisition of such interest, would have no liability with respect to the site. The rights and
14 obligations under MTCA of Successors in Interest or Assigns with respect to this Decree are set
15 forth in RCW 70.105D.040(4)(e) and (f).

16 V. STATEMENT OF FACTS

17 21. The Property is located in the Juanita Business District in Kirkland, Washington,
18 and consists of approximately 11 acres. The Property is bordered by 97th Avenue N.E. to the
19 west, 98th Avenue N.E. to the east, N.E. 120th Place to the northwest, and Juanita Drive to the
20 south. The Property includes (1) a former dry cleaning operation that was operated by a series of
21 companies and individuals since the early 1960s, (2) an auto repair business, (3) two former gas
22 stations, and (4) other retail businesses and parking areas, and (5) currently undeveloped land
23 (approximately six acres). A legal description of the Property is attached as Exhibit A. The Site
24 consists of the Property and those portions of Juanita Beach Park southwest of the property
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1 across 97th Avenue NE where groundwater contaminated with PCE has migrated. A Site map
2 and diagram is attached as Exhibit B.

3 22. The Property has been used for commercial purposes since the 1960's and is
4 zoned Juanita Business District 1 (JBD1) by the City of Kirkland. The City of Kirkland has
5 conducted land use planning under RCW 36.70A. Juanita Village intends to redevelop the
6 Property for residential and commercial uses consistent with the applicable City of Kirkland
7 zoning provisions and comprehensive plan designations.

8 23. The contaminants of concern are PCE in soils and ground water and total
9 petroleum hydrocarbons (TPH) in soils. The PCE is estimated at concentrations above the
10 MTCA Method A cleanup level in ground water underlying the Property, up-gradient beyond the
11 Property boundary northeast (former Juanita Cleaners and Laundry), and down-gradient
12 southwest of the Property boundary (King County Juanita Beach Park parking area) as shown in
13 Figure 4 of the CAP. The plume of PCE contaminated ground water is migrating in a
14 southwesterly direction towards Lake Washington and potentially towards Juanita Creek. If not
15 addressed, the PCE plume may pose a potential risk to aquatic habitat that hosts several salmon
16 species, including, but not limited to, Puget Sound Chinook and Lake Washington Sockeye and
17 Coho. The TPH is found in soils in and adjacent to the former Chevron gas station at the
18 southeast area of the Property, and may also be found in a second area where the current auto
19 repair clinic and the former Texaco gas station were located along the central east area of the
20 Property as shown in Figure 3-1 of the RI/FS. These appear to be localized occurrences resulting
21 from spillage or leakage. The petroleum underground storage tanks have been removed except
22 one waste oil tank and one heating oil tank at the former Texaco station.

23 **VI. DESCRIPTION OF PLANNED PROJECT**

24 24. Juanita Village proposes to acquire the Property, contingent upon receipt of
25 permits necessary for redevelopment.
26

1 25. Juanita Village proposes to remediate the Site as described in this Decree and
2 facilitate the redevelopment of the Property for residential and commercial uses, consistent with
3 the City of Kirkland’s zoning and comprehensive plan designations for the Property. Juanita
4 Village will complete the remediation in accordance with the Work to be Performed and
5 Schedule (Section VII of this Decree), and with the attached CAP (Exhibit C) and the Schedule
6 with Scope of Work (Exhibit D) pursuant to MTCA.

7 26. Juanita Village will remediate the Property to the Cleanup Levels specified in the
8 CAP for PCE and TPH in the soils and ground water underlying the Property. Juanita Village
9 will also remediate the Site to the Cleanup Levels specified in the CAP for PCE in ground water,
10 off-site and down-gradient southwest at 97th Avenue NE along the City right-of-way, if needed,
11 off-site and down-gradient southwest at Juanita Drive NE along the City right-of-way; and if
12 needed, off-Property and upgradient at the 98th Avenue NE City right-of-way and/or the
13 northeastern portion of the Property.

14 27. Juanita Village may transfer its interest in all or portions of the Property through
15 sale, lease or otherwise. In addition, other persons may in the future exercise control over all or
16 portions of the Property. As long as these future owners or operators meet the criteria in RCW
17 70.105D.040(4)(e), they will be entitled to the stay of enforcement and contribution protection
18 conferred in RCW 70.105D.040(4)(e) and (f).

19 28. Juanita Village shall be prohibited from using the Site in a manner likely to cause
20 or contribute to the existing release, interfering with remedial actions that may be needed at the
21 Site, or increasing health risks to persons or risks to the environment at or in the vicinity of the
22 Site. Ecology and Juanita Village acknowledge that certain development activities will occur
23 simultaneously with performance of the remedial action required under this Decree, and agree
24 that these development activities will not be allowed to interfere with the remedial action.

25 Juanita Village also agrees to include in all documents transferring ownership in any portion of
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1 the Property language prohibiting any successor or assignee from using the Property in a manner
2 likely to cause or contribute to the existing or threatened release, interfering with remedial
3 actions that may be needed at the Property, or increasing health risks to persons or risks to the
4 environment at or in the vicinity of the Property due to an existing or threatened release of
5 hazardous substances.

6 **VII. WORK TO BE PERFORMED AND SCHEDULE**

7 29. This Decree contains a plan designed to protect public health, welfare, and the
8 environment from the known, suspected, or threatened release of hazardous substances or
9 contaminants at, on, or from the Site. The requirements of such plan are described in detail in
10 this section of the Decree and in the Cleanup Action Plan (Exhibit C), the Schedule with Scope
11 of Work (Exhibit D), and in the schedule set forth in this section.

12 30. Upon the effective date of this Decree, Juanita Village will implement the CAP
13 attached at Exhibit C according to the estimated Schedule with Scope of Work described in
14 Exhibit D. Exhibit C summarizes the remedial investigations and feasible cleanup alternatives,
15 and describes the selected remedial actions. The selected cleanup action tasks are:

- 16 • Excavation and off-site treatment of petroleum contaminated soils using
17 thermal desorption and/or recycling where practical for soils in the
18 southeastern portion of the Property, former Chevron service station and
19 the central eastern area, Juanita Auto Clinic, (former Texaco service
20 station);
- 21 • On-property, Soil Vapor Extraction (SVE) for in-situ treatment of PCE-
22 contaminated soils in the central western area, around the former on-site
23 dry cleaner and down gradient. Off-Property, treatment along 98th Ave
24 NE right-of-way resulting from a former off-site, up-gradient dry cleaner;
- 25 • In-situ Density Driven Convection (DDC) well treatment of PCE-
26 contaminated ground water around the former on-site dry cleaner location
and down gradient along 97th Avenue NE right-of-way. If necessary,
south and down-gradient along Juanita Drive NE right-of-way; and if
necessary, at the Juanita Village Property northeast area and/or along 98th
Ave NE right-of-way;

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- If soils with concentrations of PCE above the MTCA Cleanup Level are discovered on the Juanita Village Property, then Juanita Village will either excavate the soils with off-site disposal at a RCRA permitted landfill, or contain them on-site under a restrictive covenant with prior approval from Ecology using Ecology's Area of Contamination and Contained-In policies. If soils are below the MTCA Cleanup Level then reuse of soils as subsurface fill is acceptable and would not require a Restrictive Covenant.

7 A full description of the cleanup tasks is found in section 3 of the CAP attached as
8 Exhibit C.

9 Compliance monitoring will be implemented to confirm Site cleanup is complete and the
10 cleanup levels have been achieved following the MTCA.

11 The tasks may be implemented in a phased and sequential manner and consistent with the
12 proposed redevelopment as long as the Site contamination is cleaned up in a timely manner and
13 according to the Schedule with Scope of Work in Exhibit D.

14 Juanita Village agrees not to perform any remedial actions for the release of hazardous
15 substances covered by this Decree, other than those required by this Decree, unless the parties
16 agree to amend the Decree to cover those actions. All work conducted under this Decree shall be
17 done in accordance with Chapter 173-340 WAC, unless otherwise provided herein.

18 **VIII. ECOLOGY COSTS**

19 31. Juanita Village agrees to pay all costs incurred by Ecology pursuant to this
20 Decree. The costs required to be paid under this Decree shall include work performed by
21 Ecology or its contractors for, or on, the Site under Ch. 70.105D RCW both before and after the
22 issuance of this Decree for investigations, remedial actions, and Decree preparation, negotiations,
23 oversight and administration, but shall not include any costs Juanita Village has already paid
24 pursuant to the prepayment agreement dated February 2, 2000. Ecology costs shall include costs
25 of direct activities and support costs of direct activities as defined in WAC 173-340-550(2), and
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1 shall include direct staff costs, an agency support cost multiplier, and a program support cost
2 multiplier for all oversight costs. Juanita Village has also agreed to reimburse Ecology for the
3 overtime costs associated with any necessary expediting of the public notice process.

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

11 IX. DESIGNATED PROJECT COORDINATORS

12 The project coordinator for Ecology is:

13 Maura S. O'Brien
14 Toxics Cleanup Program
15 Department of Ecology
16 Northwest Regional Office
17 3190 - 160th Avenue SE
18 Bellevue, WA 98008-5452
19 (425) 649-7249
20 E-mail: mobr461@ecy.wa.gov

21 The project coordinator for Juanita Village is:

22 John Kane
23 Environmental Partners, Inc.
24 10940 NE 33rd Place, Suite 110
25 Bellevue, WA 98004
26 (425) 889-4747
E-mail: johnk@epi-wa.com

33. Each project coordinator shall be responsible for overseeing the implementation
of this Decree. The Ecology project coordinator will be Ecology's designated representative at
the Site. To the maximum extent possible, communications between Ecology and Juanita
Village and all documents, including reports, approvals, and other correspondence concerning the

1 activities performed pursuant to the terms and conditions of this Decree, shall be directed
2 through the project coordinators. Ecology shall also provide a copy of all documents sent to
3 Juanita Village's project coordinator to: Andrew Colquitt, Juanita Village L.L.C., 10843 N.E. 8th
4 Street, Suite 200, Bellevue, WA 98004. The project coordinators may designate, in writing,
5 working-level staff contacts for all or portions of the implementation of the Work to be
6 Performed and attached Cleanup Action Plan. The project coordinators may agree to minor
7 modifications to the work to be performed without formal amendments to this Decree.

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

10 **X. PERFORMANCE**

11 35. All work performed pursuant to this Decree shall be under the direction and
12 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with
13 experience and expertise in hazardous waste site investigation and cleanup. Any construction
14 work undertaken as part of the remediation of the Site must be under the supervision of a
15 professional engineer. Juanita Village shall notify Ecology in writing as to the identity of such
16 engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used
17 in carrying out the terms of this Decree, in advance of their involvement at the Site.

18 **XI. CERTIFICATION OF JUANITA VILLAGE**

19 36. Juanita Village represents and certifies that, to the best of its knowledge and
20 belief, it has fully and accurately disclosed to Ecology the information currently in its possession
21 or control that relates to the environmental conditions at and in the vicinity of the Site, or to
22 Juanita Village's right and title thereto.

23 37. Juanita Village represents and certifies that it did not cause or contribute to a
24 release or threatened release of hazardous substances at the Site and is not otherwise potentially
25 liable under RCW 70.105D.040(1), except by becoming an owner of the Property.
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XII. TRANSFER OF INTEREST IN PROPERTY

38. Prior to any voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Property, Juanita Village shall provide for continued compliance with all of the conditions of this Decree. Prior to transfer of any legal or equitable interest in all or any portion of the Property during the effective period of this Decree, Juanita Village shall serve (a) a copy of this Decree and its Exhibits upon any prospective purchaser, and (b) a copy of this Decree and a concise summary of its exhibits upon any lessee (but only if the lease is for space totaling 3,000 square feet or more, or for a term exceeding three (3) years), transferee, assignee, or other successor in interest of the Property. Prior to transfer to any of these parties, Juanita Village shall notify Ecology of said contemplated transfer.

39. Juanita Village shall include in all documents transferring ownership in any portion of the Property language prohibiting any future use of the Property that would contribute to the existing release or threatened release, interfere with remedial actions at the Site, or increase health risks to persons or risks to the environment at or in the vicinity of the Site due to an existing or threatened release of hazardous substances.

XIII. AMENDMENT TO CONSENT DECREE

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

41. Amendments may cover any subject or be for any purpose agreed to by the parties to this Decree. If Ecology determines that the subject of an amendment requires public input, Ecology shall provide thirty (30) days public notice prior to seeking entry of the amendment to the Court.

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XIV. DISPUTE RESOLUTION

42. In the event a dispute arises as to an approval, disapproval, proposed modification, or other decision or action by Ecology's project coordinator, the parties shall use the dispute resolution procedure set forth below.

- a. Upon receipt of the Ecology project coordinator's decision, Juanita Village has fourteen (14) days to notify Ecology's project coordinator of any objection to the decision.
- b. The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.
- c. Juanita Village may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.
- d. Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of Juanita Village's request for review. The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed matter.

43. If Ecology's final written decision is unacceptable to Juanita Village, Juanita Village shall have the right to submit the dispute to the Court for resolution. The parties agree that one judge should retain jurisdiction over this case and shall as necessary, resolve any dispute arising under this Decree. In the event Juanita Village presents an issue to the Court for review, the Court shall review investigative and remedial actions or decisions of Ecology under an arbitrary and capricious standard of review.

44. The parties agree to use the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. When either party uses the dispute resolution in bad faith or for purposes of delay, the other party may seek sanctions.

1 A. Reopeners: In the following circumstances the State of Washington may
2 exercise its full legal authority to address releases of hazardous substances at the Site
3 notwithstanding the Covenant Not to Sue set forth above:
4

- 5 1. In the event Juanita Village fails to comply with the terms and conditions of
6 this Decree, including all attachments, and, after written notice of
7 noncompliance, fails to come into compliance within sixty (60) days of receipt
8 of notice of noncompliance.
- 9 2. In the event factors not known at the time of entry of this Decree are
10 discovered and present a previously unknown threat to human health or the
11 environment. In such event, Ecology shall give written notice to Juanita
12 Village. Juanita Village will have sixty (60) days from receipt of notice to
13 propose a cure to the condition giving rise to the threat. If such cure is
14 acceptable to Ecology, Juanita Village and Ecology will negotiate an
15 appropriate timetable for implementation.
- 16 3. In the event the remedial action conducted at the Site fails to meet the
17 requirements set forth in Section VII of this Decree and the attached Cleanup
18 Action Plan.
- 19 4. In the event the Property is used for any activities that would contribute to the
20 existing release or threatened release, interfere with remedial actions that may
21 be needed at the Site, or increase health risks to persons at or in the vicinity of
22 the Site, but only if such increased health risks are caused by an existing or
23 threatened release of hazardous substances.
- 24 5. Ecology reserves the right to take any enforcement action whatsoever,
25 including a cost recovery action, against potentially liable persons not party to
26 this Decree, except as otherwise provided by law.

 B. Applicability. The Covenant Not To Sue set forth above shall have no
applicability whatsoever to:

- 1 1. Criminal liability;
- 2 2. Any Ecology action, including cost recovery, against PLPs not party to this
3 Decree, except as otherwise provided by law; or
- 4 3. Liability for damages to natural resources.

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XVII. JUANITA VILLAGE RESERVATION OF RIGHTS

49. Juanita Village reserves all rights and defenses which it may have and which are not otherwise addressed in the Decree.

50. Except as provided herein for Juanita Village, this Decree does not grant any rights or affect any liabilities of any person, firm or corporation or subdivision or division of state, federal, or local government.

XVIII. DISCLAIMER

51. This Decree does not constitute a representation by Ecology that the Site is fit for any particular purpose.

XIX. RETENTION OF RECORDS

52. Juanita Village shall retain all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree during the pendency of this Decree and for a period of ten years following the termination of this Decree pursuant to paragraph XXIX, and shall insert in contracts with remediation project subcontractors and contractors a similar records retention requirement. Upon request of Ecology, Juanita Village shall make all non-archived records available to Ecology and allow Ecology access for record review. All archived records shall be made available to Ecology within a reasonable period of time.

XX. SITE ACCESS

53. Juanita Village grants to Ecology, its employees, agents, contractors, and authorized representatives, the right to enter upon the Property for purposes of allowing Ecology to monitor or enforce compliance with this Decree or to institute other necessary cleanup actions. Except in an emergency, Ecology shall provide advance notice to Juanita Village of any planned entry (preferably 72 hours notice) as well as schedules and locations of activity on the Property. Furthermore, except in an emergency, Ecology may enter the Property at any reasonable time, but

1 preferably only during normal business hours. Ecology or any Ecology authorized
2 representatives shall have the authority to enter and freely move about all Property for the
3 purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being
4 performed pursuant to this Decree; reviewing Juanita Village's progress in carrying out the terms
5 of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary;
6 using a camera, sound recording, or other documentary type equipment to record work done
7 pursuant to this Decree; and verifying the data submitted to Ecology by Juanita Village. All
8 parties with access to the Site pursuant to this paragraph shall comply with approved health and
9 safety plans.

10 54. Notwithstanding any provision of this Decree, Ecology retains all of its access
11 authorities and access rights, including enforcement authorities related thereto, under MTCA and
12 any other applicable state statute or regulation. Nothing in this Decree shall limit any right of
13 access Ecology may have concerning releases of hazardous substances not addressed by this
14 Decree. The right of entry granted in this Section is in addition to any right Ecology may have to
15 enter onto the Site pursuant to specific statutory or regulatory authority. Ecology's entry onto the
16 Site for purposes of monitoring or enforcing compliance with this Decree or implementing
17 further remediation at the Site may interfere with Juanita Village's full use of the Property.
18 Consistent with Ecology's responsibilities under state and federal law, Ecology, and any persons
19 acting for it, shall use best efforts to minimize any interference with the operations of Juanita
20 Village by any such entry. Ecology further agrees to accommodate reasonable requests that it
21 modify its scheduled entry or activities at the Property.

22 **XXI. OTHER APPLICABLE LAWS**

23 55. All actions carried out by Juanita Village pursuant to this Decree shall be done in
24 accordance with all applicable federal, state, and local requirements, including applicable
25 permitting requirements. Pursuant to RCW 70.105D.090(1), the known and applicable
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1 substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and
2 any laws requiring or authorizing local government permits or approvals for remedial action,
3 have been included in the CAP and are incorporated by reference here as binding and enforceable
4 requirements in this Decree.

5 56. Juanita Village has a continuing obligation to determine whether additional
6 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
7 remedial action under this Decree. In the event either Juanita Village or Ecology determines that
8 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required
9 for the remedial action under this Decree, it shall promptly notify the other party of this
10 determination. Ecology shall determine whether Ecology or Juanita Village shall be responsible
11 to contact the appropriate state and/or local agencies. If Ecology so requires, Juanita Village
12 shall promptly consult with the appropriate state and/or local agencies and provide Ecology with
13 written documentation from those agencies of the substantive requirements those agencies
14 believe are applicable to the remedial action. Ecology shall make the final determination on the
15 additional substantive requirements that must be met by Juanita Village and on how Juanita
16 Village must meet those requirements. Ecology shall inform Juanita Village in writing of these
17 requirements. Once established by Ecology, the additional requirements shall be enforceable
18 requirements of this Decree. Juanita Village shall not begin or continue the remedial action
19 potentially subject to the additional requirements until Ecology makes its final determination.

20 57. Ecology shall ensure that notice and opportunity for comment is provided to the
21 public and appropriate agencies prior to establishing the substantive requirements under this
22 section.

23 58. Pursuant to RCW 70.105D.090(2), in the event that Ecology determines that the
24 exemption from complying with the procedural requirements of the laws referenced in RCW
25 70.105D.090(1) would result in the loss of approval from a federal agency necessary for the state
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1 to administer any federal law, such exemption shall not apply and Juanita Village shall comply
2 with both the procedural and substantive requirements of the laws referenced in RCW
3 70.105D.090(1), including any requirements to obtain permits.

4 **XXII. SAMPLING, DATA REPORTING, AND AVAILABILITY**

5 59. With respect to the implementation of this Decree, Juanita Village shall make the
6 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
7 available to Ecology and shall submit these results in written format, such as a letter report with
8 laboratory and QA/QC sheets attached, and, where possible, in electronic format, such as e-mail
9 with attachments, within thirty (30) days of receipt in accordance with Section XXIII of this
10 Decree.

11 60. If requested by Ecology, Juanita Village shall allow split or duplicate samples to
12 be taken by Ecology and/or Ecology's authorized representatives of any samples collected by
13 Juanita Village pursuant to the implementation of this Decree. Juanita Village shall notify
14 Ecology at least seven (7) working days in advance of any sample collection or new remediation
15 work at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by
16 Juanita Village, or their authorized representatives, of any samples collected by Ecology pursuant
17 to the implementation of this Decree, provided it does not interfere with the Department's
18 sampling. Without limiting Ecology's rights under Section XX, Ecology shall endeavor to notify
19 Juanita Village at least five (5) working days prior to any sampling collection activity.

20 **XXIII. PROGRESS REPORTS**

21 61. Juanita Village shall submit to Ecology written monthly progress reports that
22 describe the actions taken during the previous month to implement the requirements of this
23 Decree. The progress report shall include the following:
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- a. A list of on-Site activities that have taken place during the month;
- b. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- c. Description of all deviations from the schedule during the current month and any planned deviations in the upcoming month;
- d. For any deviations in schedule, a plan for attempting to recover lost time and to maintain compliance with the schedule;
- e. All data (including laboratory analyses) which, after the QA/QC program has been performed, has been received by Juanita Village during the past month and an identification of the source of the samples; and
- f. A list of deliverables for the upcoming month if different from the schedule.

62. All progress reports shall be submitted by the tenth day of the month in which they are due after the effective date of this Decree. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Decree shall be sent by first-class mail, or by electronic mail to Ecology's project coordinator. Juanita Village may request that progress reports be submitted less frequently after the groundwater treatment system begins operating.

XXIV. EXTENSION OF SCHEDULE

63. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and when good cause exists for granting the extension. In addition, an extension of schedule shall be granted if Ecology's entry onto the Site under Section XX (Site Access) interferes with Juanita Village's performance of work required under this Decree. A request for extension may be deemed timely if submitted fewer than thirty (30) days prior to the deadline if Juanita Village could not reasonably have anticipated the need for an

1 extension earlier. All extensions shall be requested in writing. The request shall specify the
2 reason(s) the extension is needed.

3 64. An extension shall only be granted for such period of time as Ecology determines
4 is reasonable under the circumstances. A requested extension shall not be effective until
5 approved by Ecology or the Court. Ecology shall act upon any written request for extension
6 within a timely fashion and preferably within fifteen (15) days of receipt of the request. It shall
7 not be necessary to formally amend this Decree pursuant to Section XIII when a schedule
8 extension is granted.

9 65. The burden shall be on Juanita Village to demonstrate to the satisfaction of
10 Ecology that the request for such extension has been submitted in a timely fashion and that good
11 cause exists for granting the extension. Good cause includes, but is not limited to, the following:
12 (1) circumstances beyond the reasonable control and despite the due diligence of Juanita Village,
13 including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays
14 by Ecology in reviewing, approving, or modifying documents submitted by Juanita Village; or
15 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other
16 unavoidable casualty; or (3) endangerment as described in Section XXV.

17 66. However, neither increased costs of performance of the terms of the Decree nor
18 changed economic circumstances shall be considered circumstances beyond the reasonable
19 control of Juanita Village.

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

- 22
- 23 a. Delays in the issuance of a necessary permit that was applied for in a timely
manner; or
 - 24 b. Other circumstances deemed exceptional or extraordinary by Ecology; or
 - 25 c. Endangerment as described in Section XXV.
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1 68. Ecology shall immediately notify Juanita Village in writing of its decision to grant
2 or deny the requested extension.

3 **XXV. ENDANGERMENT**

4 69. In the event Ecology determines that activities implementing or in compliance
5 with this Decree, or any other circumstances or activities, are creating or have the potential to
6 create a danger to the health or welfare of the people on the Site or in the surrounding area or to
7 the environment, Ecology may order Juanita Village to stop further implementation of this
8 Decree only in the specific area of endangerment and only for such period of time as needed to
9 abate the danger or may petition the Court for an order as appropriate. During any stoppage of
10 work under this Section, the obligations of Juanita Village with respect to the work under this
11 Decree that is ordered to be stopped shall be suspended and the time periods for performance of
12 that work, as well as the time period for any other work dependent upon the work that is stopped,
13 shall be extended, pursuant to Section XXIV of this Decree, for such period of time as Ecology
14 determines is reasonable under the circumstances.

15 70. In the event Juanita Village determines that activities undertaken in furtherance of
16 this Decree or any other circumstances or activities are creating an endangerment to the people
17 on the Site or in the surrounding area or to the environment, Juanita Village may stop
18 implementation of this Decree for such period of time necessary for Ecology and, if necessary,
19 the Court to evaluate the situation and determine whether Juanita Village should proceed with
20 implementation of the Decree or whether the work stoppage should be continued until the danger
21 is abated. Juanita Village shall notify Ecology's project coordinator as soon as possible, but no
22 later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology
23 with documentation of the basis for the work stoppage. If Ecology disagrees with Juanita
24 Village's determination, it may direct Juanita Village to resume implementation of this Decree.
25 If Ecology concurs with the work stoppage, Juanita Village's obligations shall be suspended and
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1 the time period for performance of that work, as well as the time period for any other work
2 dependent upon the work that was stopped, shall be extended, pursuant to Section XXIV of this
3 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

4 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

5 71. If Ecology determines that Juanita Village has failed without good cause to
6 implement the remedial action described herein and in the CAP, Ecology may, after notice to
7 Juanita Village, perform any or all portions of the remedial action that remain incomplete. If
8 Ecology performs all or portions of the remedial action because of Juanita Village's failure to
9 comply with the obligations under this Decree, Juanita Village shall reimburse Ecology for the
10 costs of doing such work in accordance with Section VIII, provided that Juanita Village shall not
11 be obligated under this Section to reimburse Ecology for costs incurred for work not specifically
12 required under this Decree.

13 **XXVII. CONTINGENT REQUIREMENTS**

14 72. If any hazardous substances are left in the soil at the Property in concentrations
15 that exceed the cleanup levels specified in Exhibit C, then Juanita Village shall do the following:

- 16 a. Juanita Village shall follow the provisions in Section 3.3 of the CAP,
17 Exhibit C to this Decree.
- 18 b. Juanita Village shall record the Restrictive Covenant attached to this Decree
19 as Exhibit F with the King County Auditor's Office within thirty (30) days
20 of the completion of the cleanup required under this Decree, and shall
21 provide Ecology with proof of such recording within thirty (30) days of such
22 recording. The Restrictive Covenant will apply only to that portion of the
23 Property on which hazardous substances are left in concentrations exceeding
24 cleanup levels.
- 25 c. Notwithstanding any provision to the contrary in paragraph 38 of this
26 Decree, Juanita Village shall serve a copy of this Decree and its exhibits on
all persons who lease any portion of the Property to which the Restrictive
Covenant described in subparagraph b. applies.

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XXVIII. PUBLIC PARTICIPATION

73. Ecology shall maintain the responsibility for public participation at the Site as described in Exhibit G. However, Juanita Village shall cooperate with Ecology with respect to the following public participation activities:

- A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans and engineering design reports. Ecology will finalize (including editing if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;
- B. Each party shall notify the other party's project coordinator or designee prior to the preparation of all press releases and fact sheets, related to the remedial action at the Site and, if possible, at least one week before major meetings with the interested public and local governments regarding the remediation of the Site. Likewise, Ecology shall notify Juanita Village prior to the issuance of all press releases and fact sheets related to remedial action at the Site, and before major meetings with the interested public and local governments;
- C. Participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;
- D. In cooperation with Ecology, arrange and/or continue information repositories to be located at the following locations:

Kirkland Public Library
308 Kirkland Avenue
Kirkland, WA 98033
Phone: (425) 822-2459

Department of Ecology
Northwest Regional Office
Central Files
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
Phone: (425) 649-7190

At a minimum, copies of all public notices, fact sheets, and press releases, all quality assured monitoring data, remedial action plans, supplemental remedial planning documents, and

1 all other similar documents relating to performance of the remedial action required by this
2 Decree shall be promptly placed in these repositories.

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4 **XXIX. DURATION OF DECREE AND RETENTION OF JURISDICTION;
CERTIFICATIONS BY ECOLOGY**

5 74. This Decree shall remain in effect and this Court shall retain jurisdiction over both
6 the subject matter of this Decree and the parties for the duration of the performance of the terms
7 and provisions of this Decree for the purpose of enabling any of the parties to apply to the Court,
8 consistent with the dispute resolution process set forth in Section XIV, and the amendment
9 process set forth in Section XIII, for such further order, direction, and relief as may be necessary
10 or appropriate to ensure that obligations of the parties have been satisfied. The Decree shall
11 remain in effect until Juanita Village has received written notification from Ecology that the
12 requirements of this Decree have been satisfactorily completed. Ecology shall provide such
13 written notification or notice of any deficiencies in the completion of the requirements of this
14 Decree within sixty (60) days of receiving notice from Juanita Village that the requirements of
15 the Decree have been satisfied. Within sixty (60) days of Juanita Village's written notice that
16 any noted deficiencies have been corrected, Ecology shall provide written notification that the
17 requirements of the Decree have been satisfied or notice of any deficiencies that still remain.
18 The provisions set forth in Section XV (Contribution Protection), Section XVI (Covenant Not to
19 Sue Under MTCA; Reopeners), Section XXXI (Indemnification), and other such continuing
20 rights of Juanita Village, or Ecology under this Decree shall survive the termination of the
21 Decree pursuant to this paragraph. This Decree shall in no way limit the authority of Ecology to
22 obtain all legal or equitable remedies available against persons not party to this Decree and
23 against all persons, parties or non-parties, for releases of hazardous substances at the Site not
24 addressed by this Decree.

25 75. Certifications by Ecology. The Juanita Village Property will be redeveloped in
26 phases. Juanita Village may from time to time provide notice and demonstrate to Ecology that it

1 has attained soil and groundwater cleanup levels in certain parts of the Property. In order to
2 facilitate the timely redevelopment of the Property, Ecology shall, within sixty (60) days of
3 receiving such notice and satisfactory demonstration, certify in writing that cleanup levels have
4 been met in the portions of the Property specifically requested. In addition to these certifications,
5 Ecology shall, within sixty (60) days of receiving notice from Juanita Village that it has
6 satisfactorily completed work, certify in writing that Juanita Village has completed all cleanup
7 activities that are required pursuant to the CAP, with the exception of any required institutional
8 controls and monitoring as described in the Cleanup Action Plan.

9 **XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

10 76. This Decree has been the subject of public notice and comment under RCW
11 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a
12 more expeditious cleanup of hazardous substances at the Site, in compliance with applicable
13 cleanup standards, and is in the public interest.

14 77. If the Court withdraws its consent, this Decree shall be null and void at the option
15 of any party and the accompanying complaint shall be dismissed without costs and without
16 prejudice. In such an event, no party shall be bound by the requirements of this Decree. This
17 paragraph shall not create a basis for withdrawal of consent or termination of this Decree other
18 than those created by the terms of this Decree or that exist by operation of law or equity.

19 **XXXI. INDEMNIFICATION**

20 78. Juanita Village agrees to indemnify and save and hold the State of Washington, its
21 employees, and agents harmless from any and all claims or causes of action for death or injuries
22 to persons or for loss or damage arising from or on account of acts or omissions of Juanita
23 Village its officers, employees, agents, or contractors in entering into and implementing this
24 Decree. However, Juanita Village shall not indemnify the State of Washington nor save nor hold
25 its employees and agents harmless from any claims or causes of action arising out of the
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1 negligent acts or omissions of the State of Washington, or employees or agents of the State, in
2 implementing the activities pursuant to this Decree.

3 **XXXII. CLAIMS AGAINST THE STATE**

4 79. Juanita Village hereby agrees that it will not seek to recover any costs accrued in
5 implementing the remedial action required by this decree from the State of Washington or any of
6 its agencies and further that Juanita Village will make no claim against the state toxics control
7 account or any local toxics control account for any costs incurred in implementing this decree.
8 Except as provided above, however, Juanita Village expressly reserves its right to seek to recover
9 any costs incurred in implementing this decree from any other PLP.

10 **XXXIII. EFFECTIVE DATE**

11 80. This Decree is effective only after the date on which title to the Property vests in
12 Juanita Village and the date on which the Decree is entered by the Court.

13 So ordered this _____ day of _____, 2000.

14
15 _____
16 JUDGE
17 King County Superior Court
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The undersigned parties enter into this Prospective Purchaser Consent Decree on the date specified below.

JUANITA VILLAGE, LLC
By SECO DEVELOPMENT, INC.
Its Managing Member

BOARDWALK DEVELOPMENT,
INC.

By: _____
ANDREW W. COLQUITT,
Executive Vice President

By: _____
Its _____

DATED _____

DATED _____

SECO DEVELOPMENT, INC.

By _____
ANDREW W. COLQUITT,
Executive Vice President

DATED _____

CHRISTINE O. GREGOIRE
Attorney General

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

MAIA D. BELLON, WSBA #24777
Assistant Attorneys General
Attorneys for Plaintiff
State of Washington
Department of Ecology

JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program

DATED _____

DATED _____