State of Washington
Department of Ecology

In the Matter of Remedial Action by:

Exterior Wood, Inc.

Agreed Order

No. DE 24690

To: Brian Paul
Exterior Wood, Inc.
2685 Index Street
Washougal, WA 98671

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1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Bishoprick Properties, Inc., Exterior Wood, Inc., Taiga Building Products Ltd., and Taiga Building Products USA Ltd. (Bishoprick, Exterior, Taiga, and Taiga USA) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Exterior to complete a Remedial Investigation, develop an Interim Action, provide a Feasibility Study Work Plan, and maintain the integrity of the existing drip pad. Ecology believes the actions required by this Order are in the public interest.

2. Jurisdiction

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

3. Parties Bound

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. Exterior agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Exterior's responsibility under this Order. Exterior shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

4. Definitions

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204, and WAC 173-340 shall control the meanings of the terms in this Order.

4.1 Agreed Order or Order

Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order

4.2 Area of Concern (AOC)

Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

4.3 Cleanup Standards

Refers to the standards promulgated under RCW 70A.305.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

4.4 Corrective Action

Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70A.305 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

4.5 Corrective Measure

Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific Cleanup Action Plan (CAP) prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility-specific CAP.

4.6 Dangerous Constituent or Dangerous Waste Constituent

Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

4.7 Dangerous Waste

Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

4.8 Dangerous Waste Management Facility

Used interchangeably in this document with the term “Facility.”

4.9 Dangerous Waste Management Unit (DWMU)

Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

4.10 Facility

Refers to the Exterior Wood facility's wood treatment drip pad controlled by Exterior Wood Inc. located at 2685 Index Street, Washougal, Washington; all property contiguous to the drip pad also controlled by Exterior Wood Inc.; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. "Facility" also includes the definition found in RCW 70A.305.020(8).

4.11 Feasibility Study (FS)

Refers to the investigation and evaluation of potential corrective measures performed in accordance with the FS requirements of WAC 173-340-350, which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

4.12 Parties

Refers to the State of Washington, Department of Ecology and Bishoprick Properties, Inc., Exterior Wood Inc., Taiga Building Products Ltd., and Taiga Building Products USA Ltd..

4.13 Potentially Liable Persons (PLP(s))

Refers to Bishoprick Properties, Inc., Exterior Wood Inc., Taiga Building Products Ltd., and Taiga Building Products USA Ltd.

4.14 Permit or Permitting Requirement

Unless otherwise specified, refers to the requirements of WAC 173-303 for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

4.15 RCRA

Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

4.16 RCRA Facility Assessment (RFA)

Refers to the Ecology conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the administrative record for the site located at Ecology's Southwest Regional Office.

4.17 Release

Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of "release" in RCW 70A.305.020(32).

4.18 Remedial Investigation (RI)

Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340 and the RI Scope of Work attached to this Order, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

4.19 Solid Waste Management Unit (SWMU)

Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

4.20 Drip Pad

Refers to an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

4.21 Environmental Media

Refers to soil, groundwater, surface water, and air, and are not solid wastes in that the environmental media were never abandoned or discarded. Environmental media are subject to the Dangerous Waste Regulations when it is determined that the media contains a hazardous waste, exhibiting either a characteristic or is contaminated with a listed hazardous waste.

5. Findings of Fact

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Exterior Wood Inc. (Exterior):

5.1

The Exterior Wood facility has operated at this location since 1977. Exterior is on record as the property owner and facility operator in Ecology's records starting in 1993 through 1995. Bishoprick Properties Inc. were added to Ecology's records in 1996 as the owner of the property and Exterior Wood continued reporting as the operator, until Taiga purchased Exterior Wood Inc. as a wholly-owned subsidiary in July 2018. Taiga through its ownership of Exterior is the operator of the drip pad system since on or about July 2018.

5.2

Exterior, under the ownership of Stan Bishoprick, operated the wood treatment drip pad system on or after November 19, 1980, the date which subjects facilities to RCRA permitting requirements, including interim status requirements pursuant to RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder, and including authorized state regulations promulgated in WAC 173-303. The drip pad regulations, 40 CFR 264 Subpart W, became effective on December 6, 1990 with final corrections on July 1, 1991. Ecology adopted the drip pad regulations and the listings for hazardous waste from the wood preserving industry on November 19, 1995, and became authorized by the Environmental Protection Agency (EPA) for said revisions on February 29, 1996 (61 FR 7736).

5.3

On August 24, 1995, Exterior notified EPA and Ecology of the detection of a condition that may have caused or had caused a release of hazardous waste, as required under 40 CFR 265.443(m)(1)(iv). In the notification, Exterior described the discovery of deficiencies in the drip pad on August 11, 1995, and the immediate actions taken to abate further potential releases of hazardous waste. The written notification also detailed additional investigative tasks, including subsurface soil and groundwater sampling, and survey and restoration of the existing drip pad.

5.3.1

Per a written status report from Exterior dated September 15, 1995, soil contaminated with arsenic, chromium, and copper was discovered and five areas of concern within the drip pad footprint were identified by Exterior. Contaminated soils and asphalt were excavated from the five areas of concern and the drip pad was repaired. Due to the presence of structural support features and the wood treatment retort equipment, arsenic, chromium, and copper impacted soils could not be completely removed during the excavation activities. Post excavation sampling confirmed elevated levels of arsenic, chromium, and copper in four of the five areas of concern, with levels in some samples exceeding 1,000 mg/kg confirming that contamination was left in place.

5.3.2

An Environmental Site Assessment and Cleanup Report, dated September 19, 1995, detailed the cleanup actions taken by Exterior and recommendations for improvement of the drip pad and additional groundwater monitoring wells to be placed in specific locations. The modifications and repair to the drip pad system were conducted subsequently, which included the addition of a triple layer low-permeable liner on top of the existing drip pad along with a sacrificial asphaltic concrete layer on top of the liner. Several more wells were added to the existing groundwater monitoring well network.

5.4

On May 13, 1997, at approximately 1:15 a.m., one of the drying chambers at the Site caught fire, with approximately 100,000 board feet of treated and raw wood present in the area of the fire. The local fire department responded and used SILV-EX Foam Concentrate, diluted with water per the product requirements, to quench the fire. The exact amount of water foam mixture that was used to quench the fire is unknown.

5.4.1

The water foam mixture entered nearby storm drains at the Site and discharged to the Gibbons Creek Remnant Channel. Exterior personnel reported observing suds and thumbnail-sized chunks of charred wood in the Gibbons Creek Remnant Channel. Cleanup of the initial fire response was completed at approximately 10:00 a.m. on May 13, 1997. An Ecology Spill Program On-Scene Responder (OSR) arrived at the Site at approximately 2:30 p.m. and observed foam in the water below the storm drain outfall and, in a culvert, southwest of the drain outfall. The Ecology OSR indicated no readily apparent environmental damage was observed, then obtained a composite water sample from the Gibbons Creek Remnant Channel and sent the sample to Ecology's Manchester Laboratory for arsenic, chromium, and copper analysis.

5.4.2

The analysis determined the sample contained 9 ug/L chromium and 10 ug/L copper. Arsenic was non-detectable in the sample. The Ecology OSR determined that the stormwater contained within the Gibbons Creek Remnant Channel could be discharged to the Columbia River and notified the Port of Camas that the stormwater could be pumped. Exterior provided fish bioassay test results for the wood ash waste from the fire on September 24, 1997. The fish bioassay results determined the wood ash waste was non-dangerous waste.

5.5

Pursuant to the December 31, 1993, notification, Exterior was issued identification number WAD082631722 by Ecology.

5.6

Ecology Hazardous Waste and Toxics Reduction (HWTR) Program compliance inspectors conducted a routine compliance evaluation inspection at Exterior on December 10, 2008. During the inspection several unsealed or unrepaired cracks, ranging in size of one-eighth inch to one-quarter inch in width and ten to twenty feet in length, were observed on the surface of the drip pad system. Ecology noted from discussions with Exterior Staff that a three-ply impermeable membrane is present underneath the asphalt drip pad and that Exterior Staff were unable to inspect the membrane without tearing up the asphalt.

5.6.1

Exterior provided the requested drawings and design specifications for their existing drip pad on January 20, 2009. Ecology sent notification in a letter dated February 3, 2009, that Exterior's existing drip pad system did not meet the drip pad design and operating requirements (WAC 173-303-675(4)) due to the inability to inspect the low-permeable surface of the drip pad system. Ecology and Exterior determined during a meeting on March 5, 2009, that to inspect the low-permeable layer samples from the drip pad system would need to be tested. Ecology requested that Exterior provide a plan for inspecting and testing the drip pad system liner. Exterior provided a plan for inspecting, selecting areas of the drip pad system for sampling, and for testing the drip pad system liner for permeance, puncture resistance, tear strength, and tensile strength in accordance with ASTM standards.

5.6.2

The sampling of the drip pad system liner occurred on May 15, 2009. Eight samples were obtained and sent for analysis, and the drip pad system was subsequently repaired after samples being obtained. In a report dated October 22, 2009, RSV Engineering, Inc., the independent qualified registered professional engineer hired by Exterior, concluded that the drip pad design functioned as it was intended, and the sacrificial asphaltic concrete adequately protected the low-permeable liner.

5.7

On December 26, 2008, the roof covering the existing drip pad system partially collapsed due to a heavy snow load. An approximately 80-feet by 30-feet section of the roof collapsed along the southern side of the drip pad, allowing snow and stormwater to come into contact with the drip pad. Exterior stated that no contact stormwater was allowed to breach the drip pad containment, and that all contact stormwater flowed into the door pits at either end of the drip pad. Contact stormwater from the western end of the drip pad was routed to make-up water tanks and contact stormwater from the eastern end of the drip pad was routed to the 1,000,000-gallon untreated stormwater above-ground storage tank (AST). Exterior invoked condition S3.2 of their NPDES permit to allow a bypass of untreated stormwater into the Columbia River. During a call

between Exterior and Ecology the morning of the roof collapse, Ecology concurred with the plan to bypass the untreated stormwater into the Columbia River. The stormwater bypass allowed the collection of the contact stormwater from the drip pad while the situation of the roof collapse could be assessed and determine a plan of action. After exploring the possibility of treating the contact stormwater and discharging the treated contact stormwater to the Columbia River, Exterior determined it would be more economically viable to use the contact stormwater as make-up water in their wood treatment process. Mobile containers were procured, and the contact stormwater was transferred from the 1,000,000-gallon AST to the mobile containers.

5.8

On December 19, 2011, the HWTR Program submitted an Environmental Report Tracking System (ERTS) complaint # 631028 about the existence of known soil and groundwater contamination at the Site, and HWTR requested that the case be referred to the Toxics Cleanup Program (TCP) for further follow-up. A New Site Data Entry Form was completed for Exterior on December 20, 2011, and identified known arsenic contamination in soil and groundwater, and suspected other metals contamination in soil. An Early Notice Letter Regarding the Release of Hazardous Substance at Exterior, dated January 4, 2012, was sent to Exterior and informed Exterior about the next steps in the MTCA process.

5.9

On April 13, 2012, Exterior and Ecology signed Agreed Order DE 7971 requiring Exterior to take steps to bring the drip pad system at the facility into compliance. The conditions of operation included specific inspection and testing protocols to determine whether the drip pad was functioning to prevent releases to the environment.

5.10

On February 12, 2015, Ecology and Exterior amended Agreed Order DE 7971, removing the following provisions: subsection 3.1.5, subsection 3.1.5.1, and subsection 3.1.5.2. Under subsection 3.1.5.4, this allowed Exterior to conduct the Comprehensive Asphalt Inspection concurrently with the Annual Asphalt Integrity Assessment.

5.11

On May 28, 2019, Exterior performed the required inspection and sampling of the drip pad system according to the requirements in Agreed Order DE 7971.

5.11.1

A deficiency in one of the drip pad core samples was identified by Exterior during the sampling and visually observed by Ecology HWTR inspectors during the sampling oversight inspection. In the sample core, only one layer of the liner (of the required three layers comprised of GeoTac and CIM 1000) was present. During a routine inspection and

subsequent sampling of the drip pad system on June 2, 2022, a second area was discovered by Exterior that did not meet the three-layer liner requirement under Agreed Order DE 7971. Exterior provided notice to Ecology of the second area and completed repairs on June 6, 2022.

5.11.2

In an April 12, 2021 Technical Memorandum, Exterior provided information to Ecology regarding the groundwater extraction and containment system, which Exterior implemented as an independent remedial action at the Facility. The extraction system near the drip pad contains contaminated groundwater to prevent migration and Exterior uses the extracted contaminated groundwater in its wood treatment process.

5.12

Ecology sent Exterior a document request dated April 11, 2023. Exterior provided the following site characterization and groundwater monitoring reports and data (listed in chronological order) on May 2, 2023:

(1) Environmental Site Assessment and Cleanup, dated September 19, 1995;

(2) Quarterly, Semiannual, and Annual groundwater monitoring reports and associated data from 1997 to 2023;

(3) Remedial Alternatives Evaluation, dated April 18, 2018;

(4) Resource Protection Well Reports for the installation of Extraction Wells (EW) 1 through 5, dated May 22, 24, and 25, 2019;

(5) 2020 Groundwater Monitoring Report and Capture Zone Analysis, dated March 21, 2021;

(6) Sampling and Analysis Plan and Quality Assurance Project Plan for groundwater monitoring, dated May 1, 2023; and,

(7) Taiga Exterior Wood Regulatory Rationale for use of the contaminated groundwater in Exterior's wood treatment process, dated May 2, 2023.

5.13

According to these provided documents and ERTS complaint #631028, Exterior was aware of and initially informed Ecology in 2011 about the existence of known soil and groundwater contamination at the Site. Exterior became aware of a significant increase in arsenic concentrations from groundwater samples from groundwater monitoring well MW-6 beginning in December 2014. In 2017, Exterior requested their consultant to

conduct additional evaluations to understand the increases in arsenic concentrations in the subsurface surrounding MW-6. A remedial alternatives report was drafted in 2018 to address the elevated arsenic concentrations in groundwater at MW-6, and beginning in 2019 an extraction well system, consisting of extraction wells EW-1, EW-2, EW-3, EW-4, and EW-5, was installed along the southeast portion of the property. The extracted groundwater has since been used in the wood treatment process at the facility. Exterior notified regarding the extraction system in the April 12, 2021 Technical Memorandum.

5.14

In the Remedial Alternatives Evaluation, dated April 18, 2018, the groundwater surrounding the on-site above-ground storage tank (AST) for product diesel was sampled in 2017 for diesel constituents. The 12,000-gallon AST is located in the north central portion of the Site and the area near the AST is the only portion of the Site that is not paved. A Geoprobe boring sample number GP-9-GW obtained in 2017 indicated that diesel range hydrocarbons (TPH-Dx) at a concentration of 302,000 ug/L were present in the groundwater near the AST. Groundwater monitoring wells MW-13, MW-14, MW-15, MW-16, and MW-17 were installed within the vicinity of the AST and sampled beginning in October 2017.

5.15

Release(s) and/or potential release(s) of hazardous substances including, but not limited to arsenic, chromium, and copper from operations at the Site are documented in Ecology's compliance and oversight inspections, as well as the seven reports and correspondence listed above in item 5.12. Documented releases are summarized:

1. The drip pad system assessment, soil and asphalt removal, and soil sampling conducted in August and September 1995 confirmed releases of copper, chromium, and arsenic from the drip pad to the surrounding soil and groundwater. Post-excavation soil sampling confirmed that contaminated soil was left in place due to being unable to remove soil near structural support and wood treatment equipment.

2. Beginning in December 2014, elevated levels of arsenic concentrations were observed in samples obtained from groundwater monitoring well MW-6, located in the southeast corner of the Site. It's suspected that the elevated levels of arsenic are attributed to contaminated soil left in place after the soil removal in 1995. The extraction well system was installed in 2019 to address the containment of the arsenic contaminated groundwater.

5.16

Due to the failure of the original drip pad, i.e., confirmed releases of wood treatment solutions from the original drip pad design to the underlying soil and groundwater prior to repairs and redesign of the drip pad in 1996; and potentially due to the current drip pad design, i.e., areas of the drip pad that were missing the three-layer liner requirement under Agreed Order DE 7971, hazardous substances have been, and may continue to be released from the drip pad into the environment impacting soil and groundwater beneath and around the drip pad at the Facility.

5.17

In an email from Exterior Wood, dated October 29, 2024, it was disclosed that deficiencies in the secondary containment vault, a part of the drip pad system, below retort 4, were discovered on October 25, 2024. Exterior staff removed plywood within the Treating 2 secondary containment vault and discovered four cracks extending the vertical length of the vault walls and two pipe ends. Exterior reported water had been observed coming through the cracks in the concrete three feet up from the vault floor. Some of the cracks appeared to have been previously patched, however, Exterior did not have any record of these repairs in their operating record. Exterior did not have information on where the pipes led to or what the pipes were used for. On November 19, 2024, Exterior submitted a memo summarizing the repairs made to the Treating 2 secondary containment vault.

6. Ecology Determinations

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Exterior.

6.1

Bishoprick, Exterior, Taiga, and Taiga USA are persons within the meaning of RCW 70A.305.020(24).

6.2

Bishoprick is the owner and Exterior, Taiga, and Taiga USA are the operators of a wood treatment facility with a non-compliant drip pad that does not meet the conditions of exemption from a dangerous waste permit as allowed under WAC 173-303-675 and the Agreed Order DE 7971. Exterior, Taiga, and Taiga USA therefore have operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. Exterior, Taiga, and Taiga USA are also an “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).

6.3

Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section 4.0 (Definitions) of this Order.

6.4

These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70A.305.020(13).

6.5

Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a threat to human health and the environment.

6.6

Based upon credible evidence, Ecology issued PLP status letters to Bishoprick and Taiga dated March 14, 2024, and to Exterior and Taiga USA dated May 9, 2024, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. Exterior provided responses to the PLP status letter on April 12 and May 23, 2024. Exterior accepted PLP status, however, it disagreed with the PLP designation for Taiga for the reasons stated in the letters. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Bishoprick, Exterior, Taiga, and Taiga USA are PLPs under RCW 70A.305.040 and notified Bishoprick, Exterior, Taiga, and Taiga USA of this determination by email dated August 2, 2024, and by letter dated August 6, 2024.

6.7

Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

6.8

Exterior installed wells and an extraction system for the purpose of containing groundwater contamination associated with releases from the operation of the wood treatment drip pad and to repurpose the contaminated groundwater in its production process. This system was installed without prior review and approval by EPA or Ecology. The area within the Facility where the extraction system is located is described in the Interim Action Location Diagram (Exhibit B).

Ecology has determined that review and oversight of the interim action taken by Exterior is warranted under WAC 173-340-430. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section 7.7. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under Chapter 70A.305 RCW, or to undertake the interim action(s) itself.

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Exterior take the following remedial action(s) and drip pad maintenance activities at the Facility:

7.1

Exterior is required to perform the following work as further detailed in the Scope of Work (Exhibit C):

1. Submit a draft RI Work Plan for obtaining additional site characterization information, including the following:

    a. An assessment of the groundwater monitoring network detailing the construction of wells, well logs, maintenance program, and recommendations for on-going operation and maintenance activities.

    b. A seasonal groundwater study to determine seasonal water levels and groundwater flow direction.

    c. A sampling and analysis plan with a Quality Assurance Project Plan for obtaining additional soil samples in and around specifically identified areas of the site (see Exhibit A), as well as sediment samples at the outfall and along the Columbia River shoreline of the property.

2. Submit a draft RI Report that compiles past investigation data and newly obtained information. Include in the report a proposed conceptual site model for the Site.

3. Submit an Engineering Design Report (EDR) for the Interim Action, including the extraction system for beneficial reuse of groundwater in the manufacturing processes. Include in the EDR an operation and maintenance plan for on-going use of existing wells for groundwater extraction, conveyance to the manufacturing operation, and conditions of reuse to Ecology for review and approval.

4. Submit a draft Feasibility Study that identifies alternatives for addressing contamination that are permanent to the maximum extent practicable.

7.2

To effectuate the work to be performed under this Order in the most efficient manner, Exterior has elected to take the lead in performing various aspects of the work required under this Order. Language in this Order, and the exhibits attached hereto, may reflect this agreement between Bishoprick, Exterior, Taiga, and Taiga USA. However, Exterior remains strictly, jointly, and severally liable for the performance of any and all obligations under this Order. In the event Exterior should fail to timely and properly complete performance of all or any portion of its work, an amendment to this Order shall be executed to include all identified PLPs.

7.3

If Exterior learns of a significant change in conditions at the Facility, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, Exterior, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

7.4

Exterior shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

7.4.1

A list of activities that have taken place at the Facility during the month.

7.4.2

Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

7.4.3

Description of all deviations from the Scope of Work (Exhibit C) and Schedule (Exhibit D) during the current month and any planned deviations in the upcoming month.

7.4.4

For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

7.4.5

All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

7.4.6

A list of deliverables for the upcoming month.

7.5 Financial Assurance

7.5.1

Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when Exterior's actions and submissions meet the requirements of WAC 173-303-64620..

7.5.2

Ecology's Financial Assurance Officer is:

Joanna Seymour
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P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-7220
Fax: 360-407-6715
Email: joar461@ecy.wa.gov

7.6

All plans or other deliverables submitted by Exterior for Ecology's review and approval under the Scope of Work (Exhibit C) and Schedule (Exhibit D) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

7.7

If the Parties agree on an interim action under Section 6.8, Exterior shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Exterior shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral

and enforceable part of this Order, and Exterior is required to conduct the interim action in accordance with the approved Interim Action Work Plan

7.8

Exterior shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the Facility no later than 7 calendar days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator. If required, the investigation (assessment) and reporting shall be done in accordance with the Scope of Work (Exhibit C) and Schedule (Exhibit D).

7.9

If Ecology determines that Exterior has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Exterior, perform any or all portions of the remedial action or at Ecology's discretion allow Exterior the opportunity to correct. In an emergency, Ecology is not required to provide notice to Exterior, or an opportunity for dispute resolution. Exterior shall reimburse Ecology for the costs of doing such work in accordance with Section 8.1 (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.10

Except where necessary to abate an emergency situation or where required by law, Exterior shall not perform any remedial actions at the Facility outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.10 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Exterior must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

7.11

Maintain the drip pad system's Asphalt Coating, Asphalt Cover and Underlying Liner.

7.11.1

Exterior shall maintain a surface free of significant cracks and gaps by maintaining the asphalt and ensuring a continuous low permeability surface coating over the asphalt which is compatible with the wood treatment chemicals used. A defect in the surface of the asphalt shall be classified as "significant" if it would allow liquids to freely contact subsurface portions of the asphalt cover.

7.11.2
While the drip pad system is in operation, and as required in WAC 173-303-675(4)(i), Exterior shall clean the surface in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, so as to allow for weekly inspections of the entire cover without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. Exterior shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

7.11.3
While the drip pad system is in operation, and as required in WAC 173-303-675(5)(b), Exterior shall conduct inspections on a weekly basis and after storms to detect evidence of: (i) deterioration, malfunctions or improper operation of run-on and runoff control systems; and (ii) deterioration or cracking of the drip pad surface, including the asphalt coating required in 7.11.1. Exterior shall document the date and time of the inspection, the printed name and handwritten signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken in the facility's operating log.

7.11.4
Exterior shall conduct a Comprehensive Asphalt Inspection ("Inspection") concurrently with the Asphalt Integrity Assessment, as detailed in 7.11.5, to identify and repair any significant cracks, gaps or other deterioration in the asphalt and asphalt coating. Significant defects in the asphalt, as defined in 7.11.1, must be repaired and breaches in the continuous low permeability surface coating must be patched or otherwise repaired within a reasonably prompt period of time following discovery in accordance with the procedures in WAC 173-303-675(4)(m).

7.11.5
Annually, Exterior shall conduct an Asphalt Integrity Assessment ("Assessment") to determine the ability of the asphalt and asphalt coating to prevent chemical or physical degradation of the underlying liner. This Assessment must be reviewed and certified by an independent qualified registered professional engineer, who is knowledgeable of the Facility's unique drip pad design and the performance standards of WAC 173-303-675.

1. The Assessment must determine if the asphalt and asphalt coating is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to protect the underlying liner from chemical or physical degradation. It must assess the potential for failure due to (a) chemical degradation, (b) climatic conditions, (c) the stress of daily operations (e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.)

and (d) surface irregularities as defined by cracks, gaps, deformation, displacement, pitting, or other degradation of the asphalt.

2. The independent qualified registered professional engineer certified results of the Assessment must be kept in the facility's operating log and made available to Ecology upon request. The certified results must include the date, a record of observations including any schematic drawings that might be created, and recommendations for repair and/or final confirmation of the asphalt pad's integrity.

3. If the Assessment detects a condition that may have impacted the underlying liner, then Exterior must comply with the provisions of WAC 173-303-675(4)(m) for repairs or must close the drip pad in accordance with WAC 173-303-675(6).

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

Exterior shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Facility under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173 340 550(2). For all Ecology costs incurred, Exterior shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Stephanie Krupp
PO Box 47775

Olympia, WA 98504-7775
360-485-7961
stephanie.krupp@ecy.wa.gov

The project coordinator for Exterior is:

Andrew Vidourek, L.G.
Maul, Foster & Alongi
330 E. Mill Plain Boulevard, Suite 405
Vancouver, WA. 98660
360-694-2691
avidourek@maulfoster.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Facility. To the maximum extent possible, communications between Ecology and Exterior, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

8.3 Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Exterior shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Facility.

8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Facility that Exterior either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Exterior's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Exterior. Exterior shall make all reasonable efforts to secure access rights for those properties within the Facility not owned or controlled by Exterior where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Facility property owned or controlled by Exterior unless an emergency prevents such notice. All persons who access the Facility pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Facility property access.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Exterior shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section 7.0 (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Exterior shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Exterior pursuant to implementation of this Order. Exterior shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Facility. Ecology shall, upon request, allow Exterior and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided

that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section 8.4 (Access), Ecology shall notify Exterior prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

8.6 Public Participation

RCW 70A.305.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

Ecology shall maintain the responsibility for public participation at the Facility. However, Exterior shall cooperate with Ecology, and shall:

8.6.1

If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS reports, CAPs, and EDRs. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

8.6.2

Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Facility with the interested public and/or local governments. Likewise, Ecology shall notify Exterior prior to the issuance of all press releases and fact sheets related to the Facility, and before meetings related to the Facility with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Exterior that do not receive prior Ecology approval, Exterior shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

8.6.3

When requested by Ecology, participate in public presentations on the progress of the remedial action at the Facility. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

8.6.4

When requested by Ecology, arrange and maintain a repository to be located at:

(a) Fort Vancouver Regional Library – Washougal Branch
1661 "C" Street
Washougal, Washington 98671
360-906-4860

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Facility shall be maintained in the repository at Ecology's Southwest Region Office in Lacey, Washington.

8.7 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Exterior shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Exterior shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Exterior may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Exterior withholds any requested records based on an assertion of privilege, Exterior shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Facility-related data collected pursuant to this Order shall be considered privileged.

8.8 Resolution of Disputes

8.8.1

In the event that Exterior elects to invoke dispute resolution Exterior must utilize the procedure set forth below.

8.8.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Exterior has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.8.1.2 The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within

those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; Exterior's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.8.1.3 Exterior may then request regional management review of the dispute. Exterior must submit this request (Formal Dispute Notice) in writing to the Southwest Region Hazardous Waste and Toxics Reduction Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; Exterior's position with respect to the dispute; and the information relied upon to support its position.

8.8.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

8.8.2

The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

8.8.3

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

8.8.4

In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.9 Extension of Schedule

8.9.1

Exterior's request for 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 good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

8.9.1.1 The deadline that is sought to be extended.

8.9.1.2 The length of the extension sought.

8.9.1.3 The reason(s) for the extension.

8.9.1.4 Any related deadline or schedule that would be affected if the extension were granted.

8.9.2

The burden shall be on Exterior to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

8.9.2.1 Circumstances beyond the reasonable control and despite the due diligence of Exterior including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Exterior.

8.9.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.

8.9.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

8.9.2.4 Endangerment as described in Section 8.11 (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Exterior.

8.9.3

Ecology shall act upon any Exterior's written request for extension in a timely fashion. Ecology shall give Exterior written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section 8.10 (Amendment of Order) when a schedule extension is granted.

8.9.4

At Exterior's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

8.9.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.

8.9.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.

8.9.4.3 Endangerment as described in Section 8.11 (Endangerment).

8.10 Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section 8.12 (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Exterior. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, Exterior shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 8.8 (Resolution of Disputes).

8.11 Endangerment

In the event Ecology determines that any activity being performed at the Facility under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Facility, Ecology may direct Exterior to cease such activities for such period of time as it deems necessary to abate the danger. Exterior shall immediately comply with such direction.

In the event Exterior determines that any activity being performed at the Facility under this Order is creating or has the potential to create a danger to human health or the environment, Exterior may cease such activities. Exterior shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Exterior shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Exterior's cessation of activities, it may direct Exterior to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Exterior's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 8.9 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

8.12 Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Exterior to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Exterior regarding remedial actions required by this Order, provided Exterior complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Facility should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Facility.

By entering into this Order, Exterior does not admit to any liability for the Facility. Although Exterior is committing to conducting the work required by this Order under the terms of this Order, Exterior expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

8.13 Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by Exterior without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Exterior's transfer of any interest in all or any portion of the Facility, and during the effective period of this Order, Exterior shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Exterior shall notify Ecology of said transfer. Upon transfer of any interest, Exterior shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

8.14 Compliance with Applicable Laws

8.14.1 Applicable Laws

All actions carried out by Exterior pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit E (ARARs). Exterior has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Exterior, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Exterior must implement those requirements.

8.14.2 Relevant and Appropriate Requirements.

All actions carried out by Exterior pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in ARARs (Exhibit E). If additional relevant and appropriate requirements are identified by Ecology or Exterior, Ecology will document in

writing if they are applicable to actions carried out pursuant to this Order and Exterior must implement those requirements.

8.14.3

Pursuant to RCW 70A.305.090(1), Exterior may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Exterior shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in ARARs (Exhibit E).

8.14.4

Exterior has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Exterior determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Exterior shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Exterior shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Exterior and on how Exterior must meet those requirements. Ecology shall inform Exterior in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Exterior shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and Exterior shall comply with both the procedural

and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

8.15 Indemnification

Exterior agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Exterior, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Exterior shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

The provisions of this Order shall be deemed satisfied upon Exterior's receipt of written notification from Ecology that Exterior has completed the remedial activity required by this Order, as amended by any modifications, and that Exterior has complied with all other provisions of this Agreed Order.

10. Enforcement

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

10.1

The Attorney General may bring an action to enforce this Order in a state or federal court.

10.2

The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Facility.

10.3

A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

10.3.1

Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

10.3.2

Civil penalties of up to twenty-five thousand dollars ($25,000) per day for each day it refuses to comply.

10.4

This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.070.

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Effective date of this Order: _____

Exterior Wood Inc.

_____

Brian Paul
Director, U.S. Sales & Operations
Exterior Wood
2685 Index Street
Washougal, WA 98671-2537
360-838-2270

State of Washington
Department of Ecology

_____

Michelle Underwood
Section Manager
Hazardous Waste and Toxics Reduction Program
Southwest Regional Office
360-280-9375