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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LMI WEST SEATTLE, LLC,

Defendant.

NO. 13-2-29556-2

PROSPECTIVE PURCHASER  
CONSENT DECREE RE: SKS SHELL  
STATION PROPERTY, 3901 SW  
ALASKA ST., SEATTLE,  
WASHINGTON

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1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 ("Ecology") and LMI West Seattle, LLC ("LMI") under this Decree is to (1) resolve the potential  
4 liability of LMI for contamination of soil, groundwater, and surface water at the SKS Shell  
5 Station Site ("Site") arising from releases or threatened releases of hazardous substances  
6 associated with the historic operation gasoline stations at the Site, in advance of LMI purchasing  
7 an ownership interest in the Site; (2) to promote public interest by providing for expeditious  
8 remedial action at the Site; (3) to make additional financial resources available to perform  
9 remedial action at the Site; and (4) to facilitate the cleanup and redevelopment of contaminated  
10 land in the West Seattle Triangle area of Seattle, Washington.

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

13 B. The Complaint in this action is being filed simultaneously with this Decree. An  
14 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
15 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the  
16 Parties agree that settlement of these matters without litigation is reasonable and in the public  
17 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

18 C. By signing this Decree, the Parties agree to its entry and agree to be bound by its  
19 terms.

20 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
21 parties from any liability they may have with respect to matters alleged in the Complaint. The  
22 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
23 sums expended under this Decree.

24 E. This Decree shall not be construed as proof of liability or responsibility for any  
25 releases of hazardous substances or cost for remedial action nor an admission of any facts and  
26 LMI reserves the right to contest any facts or liability determination made herein; provided,

1 however, that LMI shall not challenge the authority or jurisdiction of the Attorney General and  
2 Ecology to enforce this Decree.

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

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

## 6 II. JURISDICTION

7 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
8 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. Venue is proper in King  
9 County pursuant to RCW 70.105D.050(5)(b).

10 B. Authority is conferred upon the Washington State Attorney General by  
11 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person ("PLP") if,  
12 after public notice and any required hearing, Ecology finds the proposed settlement would lead to  
13 a more expeditious cleanup of hazardous substances. In addition, under RCW 70.105D.040(5),  
14 the Attorney General may agree to a settlement with a person not currently liable for remedial  
15 action at a facility who proposes to purchase, redevelop, or reuse the facility, provided: the  
16 settlement will yield substantial new resources to facilitate cleanup; the settlement will expedite  
17 remedial action consistent with the rules adopted under MTCA; and Ecology determines based  
18 upon available information that the redevelopment or reuse of the facility is not likely to  
19 contribute to the existing release or threatened release, interfere with remedial actions that may  
20 be needed at the Site, or increase health risks to persons at or in the vicinity of the Site.  
21 RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by  
22 a court of competent jurisdiction.

23 C. Ecology has determined that a release or threatened release of hazardous  
24 substances has occurred at the Site that is the subject of this Decree, and that remedial actions  
25 required by this Decree are necessary to protect human health and the environment based on the  
26 planned future use of the Site as contemplated by the Parties under this Decree.

1 D. LMI has not been named as a PLP for the Site, and LMI has certified under  
2 Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA.  
3 However, LMI currently is in the process of acquiring the Property located at 3901 SW Alaska  
4 Street, Seattle, Washington from SKS Petroleum, Inc. ("SKS"), and executed a Purchase and  
5 Sale Agreement with SKS on August 9, 2012. The Property comprises the majority of a distinct  
6 site (facility) under RCW 70.105D.020(5); however, LMI's remedial action will clean up not  
7 only the SKS Shell Station Property Site, but also several neighboring parcels that will be a part  
8 of the planned redevelopment. LMI will incur potential liability under RCW 70.105D.040(1)(a)  
9 at the time it acquires an interest in the Site for performing remedial actions or paying remedial  
10 costs incurred by Ecology or third parties resulting from past releases or threatened releases of  
11 hazardous substances at the Site. This Decree settles LMI's liability as described herein for this  
12 Site upon its purchase of the Property.

13 E. Ecology finds that this Decree will yield substantial new resources to facilitate  
14 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site in  
15 compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and  
16 Chapter 173-340 WAC; will promote the public interest by facilitating the redevelopment or  
17 reuse of the Site; and will not likely contribute to the existing release or threatened release at the  
18 Site, interfere with remedial actions that may be needed at the Site, or increase health risks to  
19 persons at or in the vicinity of the Site. In addition, Ecology has determined that this Decree will  
20 provide a substantial public benefit in three categories: increased local revenue, job creation, and  
21 neighborhood revitalization.

22 1. The redevelopment of the Site is forecasted to generate \$25 million in  
23 sales for the local economy in its early years of operation.

24 2. The redevelopment is projected to create approximately 200 permanent  
25 and 400 temporary jobs for local residents.  
26



1 C. Parties: Refers to the State of Washington, Department of Ecology (“Ecology”)  
2 and LMI West Seattle, LLC (“LMI”).

3 D. Defendant: Refers to LMI West Seattle, LLC.

4 E. Consent Decree or Decree: Refers to this Prospective Purchaser Consent Decree  
5 and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this  
6 Prospective Purchaser Consent Decree. The terms “Consent Decree” or “Decree” shall include  
7 all exhibits to this Prospective Purchaser Consent Decree.

8 F. Days: Shall mean calendar days. The date of the event from which a time period  
9 begins to run shall not be included in computing the time period. The last day of a period so  
10 computed shall be included in the period unless it is a Saturday, Sunday, or legal holiday  
11 recognized by the State of Washington, in which case the period extends to the end of the next  
12 calendar day which is not a Saturday, Sunday, or legal holiday recognized by the State of  
13 Washington.

#### 14 V. FINDINGS OF FACT

15 Ecology makes the following findings of fact without any express or implied admissions  
16 of such facts by LMI.

17 A. The Site is located in West Seattle and consists of approximately 0.2 acres. The  
18 Site is bounded on the north by Southwest Alaska Street, on the east by Fauntleroy Way  
19 Southwest, and on the south and west by other former commercial properties owned by LMI or  
20 an affiliate and intended for the same redevelopment project as the Site. A diagram of the Site is  
21 attached as Exhibit A.

22 B. The Site was developed as a gasoline station in 1935, and a number of different  
23 oil companies retailed at the Site through the years: Gilmore Red Lion in the 1930s, Mobil in the  
24 1940s, Texaco in the 1950s, Richfield in the 1960s, Arco from 1975 to 1995, Texaco from  
25 approximately 1998 to 2004, and Shell from 2004 to 2013.  
26

1 C. Site contamination is related to vehicle fueling and leaking underground storage  
2 tanks. In 1950, the original equipment was removed and two 4,000-gallon underground storage  
3 tanks (USTs) were installed. An additional 8,000-gallon UST was installed in 1974. The 1950-  
4 era tanks were removed in 1984 and replaced with one 10,000-gallon tank and two 12,000-gallon  
5 tanks. The 1974- and 1984-vintage tanks are still active. The tanks have contained leaded and  
6 unleaded gasoline and diesel fuel. The Property has been listed as a leaking underground storage  
7 tank site since 1995 and has a history of subsurface assessments and past in situ remediation  
8 efforts.

9 D. Previous geotechnical studies have indicated that the Site is underlain by  
10 approximately 5 feet of fill (sand, silt, and gravel), which is itself underlain by native layers of  
11 silty sand and sandy silt, down to a depth of 40 feet. Groundwater beneath the Site is  
12 approximately 22 to 24 feet below grade, generally flowing to the northeast.

13 E. A series of subsurface assessments indicate that soil at the Site is impacted by  
14 gasoline- and diesel-range petroleum hydrocarbons ("GRPH" and "DRPH"), and benzene,  
15 toluene, and ethylbenzene (collectively "BTEX") at depths generally ranging from 12 to 25 feet  
16 below grade throughout much of the northern and eastern two-thirds of the property.  
17 Groundwater sampled from monitoring wells located around the perimeter of the USTs and  
18 pump islands contains concentrations of GRPH, DRPH, and BTEX exceeding MTCA standards.  
19 Free-phase petroleum product (non-aqueous phase liquid or "NAPL") has been observed  
20 intermittently in several wells on the property. Based on the general groundwater flow direction,  
21 the contaminant plume likely extends slightly into the Fauntleroy Way and Alaska Street  
22 intersection. However, samples collected from downgradient wells to the east northeast indicate  
23 that the plume does not extend beyond the right-of-way.

24 F. Alisto Engineering began installation of an air-sparging and soil vapor extraction  
25 system in 1997 on the Property. The system operated from May 1999 to December 2002.  
26



1 G. The Site is located at a major traffic intersection in West Seattle. Land uses are  
2 predominantly commercial businesses and mixed-use, with occasional residences and vacant  
3 lots. The Property is zoned Neighborhood Commercial 3 – 85, and the properties nearby have  
4 the same or similar zoning.

## 5 VI. WORK TO BE PERFORMED

6 This Decree contains a program designed to protect human health and the environment  
7 from the known release, or threatened release, of hazardous substances or contaminants at, on, or  
8 from the Site.

9 A. LMI shall perform the remedial actions specified in detail in the Cleanup Action  
10 Plan (CAP) (Exhibit C) and the Scope of Work and Schedule (Exhibit D). These exhibits are  
11 incorporated by reference and are an integral and enforceable part of this Decree. A summary of  
12 the work to be performed, which is identified more specifically in Exhibits C and D, is as  
13 follows:

14 1. Soils exceeding Method A cleanup levels for total petroleum  
15 hydrocarbons and BTEX on the Property will be excavated as a source removal and  
16 disposed off-site. Excavation is expected to occur to a depth of 30 feet below grade.

17 2. To recover and treat contaminated groundwater, address the potential for  
18 anomalous groundwater migration or soil conditions, and provide contingencies for any  
19 discoveries of potential preferential pathways:

- 20 • Install and operate dewatering/remedial treatment wells as described in the  
21 CAP. This includes drilling additional boring(s) under the funeral home area  
22 (after demolition and prior to construction) to address the western reach of the  
23 areas of concern;
- 24 • Collect soil and groundwater and analyze the results for contaminants of  
25 concern and to confirm the Conceptual Site Model. Tabulate and present to  
26 Ecology these additional data for discussion to decide if the site conditions

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warrant additional monitoring, or additional oxidizer injection in the right-of-way.

- If Ecology determines that conditions warrant additional monitoring, or additional oxidizer injection, implement such contingency measures as directed by Ecology, including as necessary installing additional remediation well(s). The field program for remedial implementation at the Site would be modified in accordance with that data discussion and its conclusions.

3. Site monitoring will be performed for at least five (5) years after completion of the excavation, until satisfaction of the criteria for monitored natural attenuation.

4. Prepare and submit all necessary documents as identified in the CAP and the Scope of Work and Schedule. All deliverables identified in the Scope of Work and Schedule are hereby incorporated by reference and are an integral and enforceable part of this Decree.

B. LMI agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit D) to cover these actions. All work conducted by LMI under this Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

C. Ecology shall issue written notice of completion that the requirements of this Decree have been satisfactorily completed when the work as described in the CAP has been performed and the necessary monitoring period completed.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Eugene Freeman  
4 Washington State Department of Ecology  
5 Northwest Regional Office  
6 3190 160th Avenue SE  
7 Bellevue, WA 98008-5452  
8 (425) 649-7191  
9 Email: [eufr461@ecy.wa.gov](mailto:eufr461@ecy.wa.gov)

7 The project coordinator for LMI is:

8 Rob Roberts  
9 SoundEarth Strategies, Inc.  
10 2811 Fairview Avenue East, Suite 2000  
11 Seattle, WA 98102  
12 (206) 245-1184  
13 Email: [rroberts@soundearthinc.com](mailto:rroberts@soundearthinc.com)

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

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

20 **VIII. PERFORMANCE**

21 All geologic and hydrogeologic work performed pursuant to this Decree shall be under  
22 the supervision and direction of a geologist licensed in the State of Washington or under the  
23 direct supervision of an engineer registered in the State of Washington, except as otherwise  
24 provided for by Chapters 18.220 and 18.43 RCW.  
25  
26

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

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

8 Any documents submitted containing geologic, hydrologic, or engineering work shall be  
9 under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or  
10 RCW 18.43.130.

11 LMI shall notify Ecology in writing of the identity of any engineer(s) and geologist(s),  
12 contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Decree,  
13 in advance of their involvement at the Site.

#### 14 IX. CERTIFICATION OF DEFENDANT

15 LMI represents and certifies that, to the best of its knowledge and belief, it has fully and  
16 accurately disclosed to Ecology the information currently in its possession or control that relates  
17 to the environmental conditions at and in the vicinity of the Site, or to LMI's right and title  
18 thereto.

19 LMI represents and certifies that it did not cause or contribute to a release or threatened  
20 release of hazardous substances at the Site and is not otherwise currently potentially liable for the  
21 Site under RCW 70.105D.040(1).

#### 22 X. ACCESS

23 Ecology or any Ecology authorized representative shall have access to enter and freely  
24 move about all property at the Site that LMI owns, controls, or has access rights to at all  
25 reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts  
26 related to the work being performed pursuant to this Decree; reviewing LMI's progress in

1 carrying out the terms of this Decree; conducting such tests or collecting such samples as  
2 Ecology may deem necessary; using a camera, sound recording, or other documentary type  
3 equipment to record work done pursuant to this Decree; and verifying the data submitted to  
4 Ecology by LMI. LMI shall make all reasonable efforts to secure access rights for those  
5 properties within the Site not owned or controlled by LMI where remedial activities or  
6 investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized  
7 representative shall give reasonable notice before entering any Site property owned or controlled  
8 by LMI unless an emergency prevents such notice. All Parties who access the Site pursuant to  
9 this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and  
10 their representatives shall not be required to sign any liability release or waiver as a condition of  
11 Site property access.

#### 12 **XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

13 With respect to the implementation of this Decree, LMI shall make the results of all  
14 sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
15 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in  
16 both printed and electronic formats in accordance with Section XII (Progress Reports), Ecology's  
17 Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent  
18 procedures specified by Ecology for data submittal.

19 If requested by Ecology, LMI shall allow Ecology and/or its authorized representative to  
20 take split or duplicate samples of any samples collected by LMI pursuant to the implementation  
21 of this Decree. LMI shall notify Ecology seven (7) days in advance of any sample collection or  
22 work activity at the Site. Ecology shall, upon request, allow LMI and/or its authorized  
23 representative to take split or duplicate samples of any samples collected by Ecology pursuant to  
24 the implementation of this Decree, provided that doing so does not interfere with Ecology's  
25 sampling. Without limitation on Ecology's rights under Section X (Access), Ecology shall notify  
26 LMI prior to any sample collection activity unless an emergency prevents such notice.

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

## 4 XII. PROGRESS REPORTS

5 LMI shall submit to Ecology quarterly written Progress Reports that describe the actions  
6 taken during the previous month(s) to implement the requirements of this Decree. The Progress  
7 Reports shall include the following:

- 8 A. A list of on-site activities that have taken place since the last reporting period;
- 9 B. Detailed description of any deviations from required tasks not otherwise  
10 documented in project plans or amendment requests;
- 11 C. Description of all deviations from the Scope of Work and Schedule (Exhibit D)  
12 during the current month and any planned deviations in the upcoming month;
- 13 D. For any deviations from the schedule, a plan for recovering lost time and  
14 maintaining compliance with the schedule;
- 15 E. All raw data (including laboratory analyses) received by LMI during the past  
16 month and an identification of the source of the sample; and
- 17 F. A list of deliverables for the upcoming month if different from the schedule.

18 All Progress Reports shall be submitted by the tenth (10th) day of the month in which  
19 they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports  
20 and any other documents submitted pursuant to this Decree shall be sent by certified mail, return  
21 receipt requested, to Ecology's project coordinator.

## 22 XIII. RETENTION OF RECORDS

23 During the pendency of this Decree, and for ten (10) years from the date this Decree is no  
24 longer in effect as provided in Section XXXI (Effective Date), LMI shall preserve all records,  
25 reports, documents, and underlying data in its possession relevant to the implementation of this  
26 Decree and shall insert a similar record retention requirement into all contracts with project

1 contractors and subcontractors. Upon request of Ecology, LMI shall make all records available  
2 to Ecology and allow access for review within a reasonable time.

3 Nothing in this Decree is intended by LMI to waive any right it may have under  
4 applicable law to limit disclosure of documents protected by the attorney work-product and/or  
5 attorney/client privilege. If LMI withholds any requested records based on an assertion of  
6 privilege, it shall provide Ecology with a privilege log specifying the records withheld and the  
7 applicable privilege. No data collected on Site pursuant to this Decree shall be considered  
8 privileged.

#### 9 **XIV. TRANSFER OF INTEREST IN PROPERTY**

10 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest  
11 in any portion of the Site shall be consummated by LMI without provision for continued  
12 operation and maintenance of any containment system, treatment system, and/or monitoring  
13 system installed or implemented pursuant to this Decree.

14 Prior to LMI's transfer of any interest in all or any portion of the Site, and during the  
15 effective period of this Decree, LMI shall provide a copy of this Decree to any prospective  
16 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30)  
17 days prior to any transfer, LMI shall notify Ecology of said transfer. Upon transfer of any  
18 interest, LMI shall assure that the transfer mechanism prohibits uses and activities inconsistent  
19 with this Decree and notifies all transferees of the restrictions on the use of the property.

#### 20 **XV. RESOLUTION OF DISPUTES**

21 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
22 other decision or action by Ecology's project coordinator, or an itemized billing statement under  
23 Section XXV (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure  
24 set forth below.

1           1.       Upon receipt of Ecology's project coordinator's written decision, or the  
2 itemized billing statement, LMI has fourteen (14) days within which to notify Ecology's  
3 project coordinator in writing of its objection to the decision or itemized statement.

4           2.       The Parties' project coordinators shall then confer in an effort to resolve  
5 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)  
6 days of Ecology's receipt of LMI's written notice of objection, unless a longer period is  
7 mutually agreed to by the Parties, Ecology's project coordinator shall issue a written  
8 decision.

9           3.       LMI may then request regional management review of the decision. This  
10 request shall be submitted in writing to the Northwest Regional Toxics Cleanup Program  
11 Section Manager within seven (7) days of receipt of Ecology's project coordinator's  
12 written decision.

13           4.       Ecology's Northwest Regional Toxics Cleanup Program Section Manager  
14 shall conduct a review of the dispute and shall endeavor to issue a written decision  
15 regarding the dispute within thirty (30) days of LMI's request for review.

16           5.       If LMI finds Ecology's Northwest Regional Toxics Cleanup Program  
17 Section Manager's decision unacceptable, LMI may then request final management  
18 review of the decision. This request shall be submitted in writing to the Toxics Cleanup  
19 Program Manager within fourteen (14) days of receipt of the Northwest Regional Toxics  
20 Cleanup Program Section Manager's decision.

21           6.       Ecology's Toxics Cleanup Program Manager shall conduct a review of  
22 the dispute and shall endeavor to issue a written decision regarding the dispute within  
23 thirty (30) days of LMI's request for review of the Regional Section Manager's decision.  
24 The decision of the Toxics Cleanup Program Manager shall be Ecology's final decision  
25 on the disputed matter.  
26



1 B. If Ecology's final written decision is unacceptable to LMI, LMI has the right to  
2 submit the dispute to the Court for resolution. The Parties agree that one judge should retain  
3 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.  
4 In the event LMI presents an issue to the Court for review, the Court shall review the action or  
5 decision of Ecology on the basis of whether such action or decision was arbitrary and capricious,  
6 or any other standard applicable under RCW 70.105D.060, and render a decision based on such  
7 standard of review.

8 C. The Parties agree to only utilize the dispute resolution process in good faith and  
9 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
10 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
11 the other party may seek sanctions.

12 D. Implementation of these dispute resolution procedures shall not provide a basis  
13 for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule  
14 extension or the Court so orders.

#### 15 XVI. AMENDMENT OF DECREE

16 The project coordinators may agree to minor changes to the work to be performed  
17 without formally amending this Decree. Minor changes will be documented in writing by  
18 Ecology.

19 Substantial changes to the work to be performed shall require formal amendment of this  
20 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
21 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
22 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by  
23 any party.

24 LMI shall submit a written request for amendment to Ecology for approval. Ecology  
25 shall indicate its approval or disapproval in writing and in a timely manner after the written  
26 request for amendment is received. If the amendment to the Decree is a substantial change,

1 Ecology will provide public notice and opportunity for comment. Reasons for the disapproval of  
2 a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to a  
3 proposed amendment, the disagreement may be addressed through the dispute resolution  
4 procedures described in Section XV (Resolution of Disputes).

#### 5 **XVII. EXTENSION OF SCHEDULE**

6 A. An extension of schedule shall be granted only when a request for an extension is  
7 submitted in a timely fashion, generally at least fourteen (14) days prior to expiration of the  
8 deadline for which the extension is requested, and good cause exists for granting the extension.

9 All extensions shall be requested in writing. The request shall specify:

- 10 1. The deadline that is sought to be extended;
- 11 2. The length of the extension sought;
- 12 3. The reason(s) for the extension; and
- 13 4. Any related deadline or schedule that would be affected if the extension  
14 were granted.

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

- 18 1. Circumstances beyond the reasonable control and despite the due  
19 diligence of LMI including delays caused by unrelated third parties or Ecology, such as  
20 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents  
21 submitted by LMI;
  - 22 2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,  
23 or other unavoidable casualty; or
  - 24 3. Endangerment as described in Section XVIII (Endangerment).
- 25  
26



1 determination or cessation of such activities. If Ecology disagrees with LMI's cessation of  
2 activities, it may direct LMI to resume such activities.

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

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

#### 11 **XIX. COVENANT NOT TO SUE**

12 A. Covenant Not to Sue: In consideration of LMI's compliance with the terms and  
13 conditions of this Decree, Ecology covenants not to institute legal or administrative actions  
14 against LMI regarding the release or threatened release of hazardous substances covered by this  
15 Decree.

16 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
17 and those hazardous substances that Ecology knows are located at the Site as of the date of entry  
18 of this Decree. This Decree does not cover any other hazardous substance or area. Ecology  
19 retains all of its authority relative to any substance or area not covered by this Decree.

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

- 21 1. Criminal liability;
- 22 2. Liability for damages to natural resources; and
- 23 3. Any Ecology action, including cost recovery, against PLPs not a party to  
24 this Decree.

1 If factors not known at the time of entry of the settlement agreement are discovered and  
2 present a previously unknown threat to human health or the environment, the Court shall amend  
3 this Covenant Not to Sue.

4 B. Reopeners: Ecology specifically reserves the right to institute legal or  
5 administrative action against LMI to require it to perform additional remedial actions at the Site  
6 and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the following  
7 circumstances:

8 1. Upon LMI's failure to meet the requirements of this Decree, including,  
9 but not limited to, failure of the remedial action to meet the cleanup standards identified  
10 in the Cleanup Action Plan (CAP) (Exhibit C);

11 2. Upon Ecology's determination that remedial action beyond the terms of  
12 this Decree is necessary to abate an imminent and substantial endangerment to human  
13 health or the environment;

14 3. Upon the availability of new information regarding factors previously  
15 unknown to Ecology, including the nature, quantity, or extent of hazardous substances at  
16 the Site and/or the presence of previously undiscovered preferential pathways for  
17 hazardous substance migration, any of which are on a scale beyond the scope of the  
18 contingency measures addressed in the CAP in Sections 5.2.5.1, 5.3.2 last paragraph, and  
19 7.0 next-to-last sentence, and Ecology's determination, in light of this information, that  
20 further remedial action is necessary at the Site to protect human health or the  
21 environment; or

22 4. After consultation with LMI, upon Ecology's determination that  
23 additional remedial actions are necessary to achieve cleanup standards within the  
24 reasonable restoration time frame set forth in the CAP.

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

#### 4 **XX. CONTRIBUTION PROTECTION**

5 With regard to claims for contribution against LMI, the Parties agree that LMI is entitled  
6 to protection against claims for contribution for matters addressed in this Decree as provided by  
7 RCW 70.105D.040(4)(d). The "matters addressed" in this Prospective Purchaser Consent  
8 Decree are all remedial actions taken or to be taken and all remedial costs (including Ecology's  
9 oversight costs) incurred or to be incurred by Ecology or any other person with respect to the  
10 Site.

#### 11 **XXI. LAND USE RESTRICTIONS**

12 If necessary as determined by applicable regulations (WAC 173-340-440) and data from  
13 confirmational sampling, LMI shall cause an environmental (restrictive) covenant(s) consistent  
14 with Chapter 64.70 RCW and substantially in the form of Exhibit F to be recorded with the  
15 office of the King County Auditor within ten (10) days of the completion of the remedial action.  
16 The environmental (restrictive) covenant(s) shall restrict future uses of the Site as appropriate  
17 given Site conditions. LMI shall provide Ecology with a copy of the recorded environmental  
18 (restrictive) covenant(s) within thirty (30) days of the recording date.

#### 19 **XXII. FINANCIAL ASSURANCES**

20 Pursuant to WAC 173-340-440(11), LMI shall maintain sufficient and adequate financial  
21 assurance mechanisms to cover all costs associated with the operation and maintenance of the  
22 remedial action at the Site, including institutional controls, compliance monitoring, and  
23 corrective measures.

24 Within sixty (60) days of the effective date of this Decree, LMI shall submit to Ecology  
25 for review and approval an estimate of the costs that it will incur in carrying out the terms of this  
26 Decree for operation and maintenance and compliance monitoring.







1 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
2 exemption from complying with the procedural requirements of the laws referenced in  
3 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is  
4 necessary for the State to administer any federal law, the exemption shall not apply and LMI  
5 shall comply with both the procedural and substantive requirements of the laws referenced in  
6 RCW 70.105D.090(1), including any requirements to obtain permits.

#### 7 XXV. REMEDIAL ACTION COSTS

8 LMI shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
9 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or  
10 its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and  
11 Decree preparation, negotiation, oversight, and administration. These costs shall include work  
12 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include  
13 costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).  
14 For all costs incurred, LMI shall pay the required amount within thirty (30) days of receiving  
15 from Ecology an itemized statement of costs that includes a summary of costs incurred, an  
16 identification of involved staff, and the amount of time spent by involved staff members on the  
17 project. A general statement of work performed will be provided upon request. Itemized  
18 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay  
19 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in  
20 interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

21 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
22 authority to recover unreimbursed remedial action costs by filing a lien against real property  
23 subject to the remedial actions.

#### 24 XXVI. IMPLEMENTATION OF REMEDIAL ACTION

25 If Ecology determines that LMI has failed without good cause to implement the remedial  
26 action, in whole or in part, Ecology may, after thirty (30) days written notice to LMI, perform

1 any or all portions of the remedial action that remain incomplete. If Ecology performs all or  
2 portions of the remedial action because of LMI's failure to comply with its obligations under this  
3 Decree, LMI shall reimburse Ecology for the costs of doing such work in accordance with  
4 Section XXV (Remedial Action Costs), provided that LMI is not obligated under this Section to  
5 reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this  
6 Decree. LMI and Ecology agree to first meet and confer before Ecology exercises its option  
7 under this Section.

8 Except where necessary to abate an emergency situation, LMI shall not perform any  
9 remedial actions at the Site outside those remedial actions required by this Decree, unless  
10 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XVI  
11 (Amendment of Decree).

#### 12 **XXVII. PERIODIC REVIEW**

13 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
14 agree to review the progress of remedial action at the Site, and to review the data accumulated as  
15 a result of monitoring the Site as often as is necessary and appropriate under the circumstances.  
16 At least five (5) years after the initiation of cleanup action at the Site the Parties shall meet to  
17 discuss the status of the Site and the need, if any, for further remedial action at the Site. Such  
18 periodic reviews shall continue at least every five (5) years thereafter if required under WAC  
19 173-340-420(2)(a) and indicated by conditions at the Site. At least ninety (90) days prior to each  
20 periodic review, LMI shall submit a report to Ecology that documents whether human health and  
21 the environment are being protected based on the factors set forth in WAC 173-340-420(4).  
22 Ecology reserves the right to require further remedial action at the Site under appropriate  
23 circumstances.

1 **XXVIII. PUBLIC PARTICIPATION**

2 A Public Participation Plan (Exhibit E) is required for this Site. Ecology developed the  
3 Public Participation Plan in conjunction with LMI. Ecology shall maintain the responsibility for  
4 public participation at the Site. However, LMI shall cooperate with Ecology, and shall:

5 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of  
6 public notices and fact sheets at important stages of the remedial action, such as the submission  
7 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and  
8 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
9 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

10 B. With respect to activities included under this Decree, notify Ecology's project  
11 coordinator prior to the preparation of all press releases and fact sheets, and before initiating  
12 major meetings with the interested public and local governments. A "major public meeting with  
13 the interested public" is a meeting where (a) public notice is provided in advance; and (b) the  
14 meeting addresses activities specified under Section VI (Work to be Performed), Exhibit C  
15 (Cleanup Action Plan), or Exhibit D (Scope of Work and Schedule). Likewise, Ecology shall  
16 notify LMI prior to the issuance of all press releases and fact sheets, and before major meetings  
17 with the interested public and local governments, except as set forth below. For all press  
18 releases, fact sheets, meetings, and other outreach efforts by LMI that do not receive prior  
19 Ecology approval, LMI shall clearly indicate to its audience that the press release, fact sheet,  
20 meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

24 D. When requested by Ecology, arrange and/or continue information repositories at  
25 the following locations:  
26

- 1                   1.     West Seattle Public Library  
2                             2306 42nd Avenue SW  
3                             Seattle, WA 98116  
4                             Phone: (206) 684-7444
- 5                   2.     Southwest Branch Public Library  
6                             9010 35th Avenue SW  
7                             Seattle, WA 98126  
8                             Phone: (206) 684-7455
- 9                   2.     Department of Ecology  
10                             Northwest Regional Office  
11                             3190 160th Avenue SE  
12                             Bellevue, WA 98008-5452  
13                             Phone: (425) 649-7190

14 At a minimum, copies of all public notices, fact sheets, and documents relating to public  
15 comment periods shall be promptly placed in these repositories. A copy of all documents related  
16 to this Site shall be maintained at these repositories.

17 **XXIX. DURATION OF DECREE**

18                   The remedial program required pursuant to this Decree shall be maintained and continued  
19 until LMI has received written notification from Ecology that the requirements of this Decree  
20 have been satisfactorily completed. This Decree shall remain in effect until dismissed by the  
21 Court. When dismissed, Section XIX (Covenant Not to Sue) and Section XX (Contribution  
22 Protection) shall survive.

23 **XXX. CLAIMS AGAINST THE STATE**

24                   LMI hereby agrees that it will not seek to recover any costs accrued in implementing the  
25 remedial action required by this Decree from the State of Washington or any of its agencies; and  
26 further, that LMI will make no claim against the State Toxics Control Account or any local  
Toxics Control Account for any costs incurred in implementing this Decree. Except as provided  
above, however, LMI expressly reserves its right to seek to recover any costs incurred in  
implementing this Decree from any other PLP. This Section does not limit or address funding  
that may be provided under Chapter 173-322 WAC.

1 **XXXI. EFFECTIVE DATE**

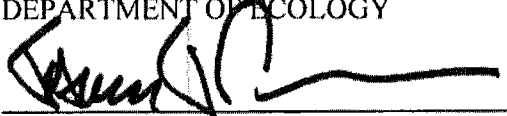
2 This Decree is effective only upon the date (Effective Date) that title to the Property vests  
3 in LMI, following entry of this Decree by the Court. If LMI does not purchase the Property by  
4 July 31, 2014, this Decree shall be null and void, and LMI will be under no obligation to perform  
5 the work required by this Decree.

6 **XXXII. WITHDRAWAL OF CONSENT**

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

10 STATE OF WASHINGTON  
11 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

12   
13 James J. Pendowski  
14 Program Manager  
15 Toxics Cleanup Program  
16 (360) 407-7177

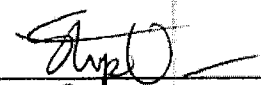
  
Andrew A. Fitz, WSBA #22169  
Senior Counsel  
(360) 586-6752

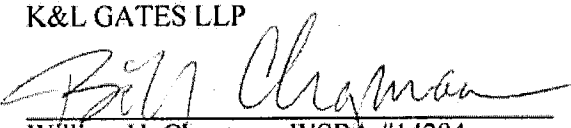
15 Dated: 7/26/13

Dated: 7/24/13

16 LMI WEST SEATTLE, LLC

K&L GATES LLP

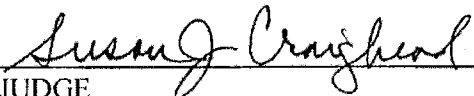
17   
18 Steve Orser  
19 Vice President  
20 (206) 816-1578

  
William H. Chapman, WSBA #14294  
Partner  
Attorneys for Defendant LMI  
(206) 623-7580

20 Dated: 6/19/13

Dated: 7/23/13

21  
22 ENTERED this 29<sup>th</sup> day of July 20 13.

23  
24   
25 JUDGE  
26 King County Superior Court

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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LMI WEST SEATTLE, LLC,

Defendant.

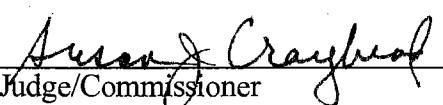
NO. 13-2-27556-2  
13-2-27556-2

ORDER ENTERING PROSPECTIVE  
PURCHASER CONSENT DECREE

~~PROPOSED~~

Having reviewed the Joint Motion for Entry of the Prospective Purchaser Consent Decree (Decree), it is hereby ORDERED AND ADJUDGED that the Decree in this matter is entered and that the Court shall retain jurisdiction over the Decree to enforce its terms.

DATED this 29<sup>th</sup> day of July 2013.

  
\_\_\_\_\_  
Judge/Commissioner  
King County Superior Court

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