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March 22, 2005

3129/028

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND E-MAIL

Maura S. O'Brien
Toxics Clean Up Program
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

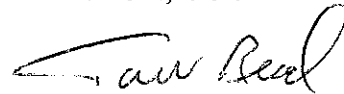
Re: Juanita Village Consent Decree

Dear Ms. O'Brien:

Pursuant to the Prospective Purchaser Consent Decree entered under King County Superior Court cause no. 00-2-16556-1SEA, and recorded under King County recording no. 20010118000864, this letter is to notify you that Juanita Village 5, LLC, successor in interest to Juanita Village, LLC, is planning to convey Lot 5 at Juanita Village to AvalonBay Communities, Inc., pursuant to a Purchase and Sale Agreement between Juanita Village 5, LLC and AvalonBay Communities, Inc., dated as of January 18, 2005.

Sincerely,

ALSTON, COURTNAGE & BASSETTI LLP



Thomas W. Read

TWR/vtk

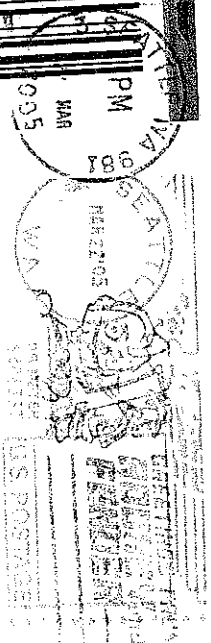
cc: Ms. Lisa Collins
Scott Brooks, Esq.
(both by email)

ALSTON, COURTNAGE & BASSETTI LLP
1000 SECOND AVENUE - SUITE 3900
SEATTLE, WASHINGTON 98104-1045

VERIFIED MAIL



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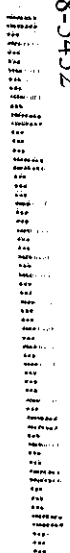


**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Maura S. O'Brien
Toxics Clean Up Program
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

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MAR 23 2006
DEPT. OF ECOLOGY

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KING COUNTY, WASHINGTON

NOV 14 2000

DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

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

Defendants.

No.

00-2-16556-1SEA

ORDER ENTERING
CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Declaration of Maura S. O'Brien, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this 7 day of NOVEMBER, 2000.

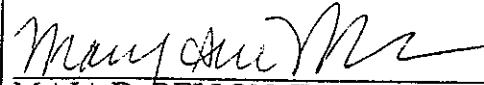
STEPHEN M. GADDS
JUDGE
King County Superior Court

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1 Presented by:


2 CHRISTINE O. GREGOIRE
3 Attorney General

4 
5 MAIA D. BELLON, WSBA #24777
6 MARY SUE WILSON, WSBA #19257
7 Assistant Attorneys General
8 Attorneys for Plaintiff
9 State of Washington
10 Department of Ecology

11 Date: Oct 24, 2000

12 Approved for entry and notice
13 of presentation waived:

14 MARIEN BROWN INC.

15 
16 JAY J. MANNING, WSBA #13579
17 Attorney for Defendant
18 Juanita Village, LLC

19 Date: 10/19/00

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OCT 27 2000
Cassidy Sandoz, JMT
Superior Court Clerk

JAMES DOERTY

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ATTORNEY GENERAL'S OFFICE
Ecology Division

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

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

Defendants.

No.
00-2-16556-1SEA
SUMMONS

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

A lawsuit has been started against you in the above-entitled court by the State of
Washington, Department of Ecology, plaintiff. Plaintiff's claim is stated in the written Complaint,
a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree, a copy of which
is also attached. Accordingly, this Summons shall not require the filing of an Answer. Further, all
disputes arising under this cause shall be resolved under the terms of the Consent Decree.

DATED this 24th day of October, 2000.

CHRISTINE O. GREGOIRE
Attorney General

Mary Sue Wilson
MAIA D. BELLON, WSBA #24777
MARY SUE WILSON, WSBA #19257
Assistant Attorneys General
Attorneys for Plaintiff
State of Washington, Department of Ecology
(360) 586-6770

RECEIVED
In King County Superior Court Clerk's Office
OCT 27 2000
Clerk Section KM
Superior Court Clerk

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NOV 15 2000
ATTORNEY GENERAL'S OFFICE
Ecology Division

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

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

Defendants.

00-2-16556-1SEA

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

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EXHIBITS

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

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

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

BOARDWALK DEVELOPMENT,
INC.

5
6 By: [Signature]
ANDREW W. COLQUITT,
7 Executive Vice President

By: A. Kann
Its Executive V.P.

8 DATED 4/28/00
9

DATED 4/28/00

10 SECO DEVELOPMENT, INC.
11 By: [Signature]
12 ANDREW W. COLQUITT,
Executive Vice President

13
14 DATED 4/28/00

15 CHRISTINE O. GREGOIRE
16 Attorney General

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

17 [Signature]
18 MAIA D. BELLON, WSBA #24777
Assistant Attorneys General
19 Attorneys for Plaintiff
State of Washington
20 Department of Ecology

[Signature]
JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program

21 DATED 10/20/00

DATED 10/13/00

22 [Signature]
23 MARY SUE WILSON, WSBA #19257
Assistant Attorney General
24 Attorneys for Plaintiff
State of Washington
25 Department of Ecology

26 DATED 10-24-00

RECEIVED

APR 28 2000

DEPT. OF ECOLOGY

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

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

Defendants.

NO.

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

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- Exhibit D: Schedule with Scope of Work
- Exhibit E: Reports/Studies Describing Contamination
- Exhibit F: Restrictive Covenant
- Exhibit G: Public Participation Plan

1
2 **I. INTRODUCTION**

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

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

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

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

19 4. WHEREAS, in the absence of this Decree, at the time it acquires the Property,
20 Juanita Village would incur potential liability as an owner and/or operator under RCW
21 70.105D.040(1)(a) of the Model Toxics Control Act ("MTCA") for performing remedial
22 actions, or for paying remedial costs incurred by Ecology, resulting from past releases or
23 threatened releases of hazardous substances at the Site, and Juanita Village has certified that it is
24 not currently liable under MTCA for remedial action at the Site.
25
26

1 5. WHEREAS, Juanita Village has performed extensive site characterization
2 activities which Ecology has determined are the substantial equivalent of a MTCA Remedial
3 Investigation and Feasibility Study pursuant to WAC 173-340-350 (RI/FS). The RI/FS
4 documents soil and groundwater contamination at the Site that exceeds MTCA residential
5 cleanup levels for certain contaminants.

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

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

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

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

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

23 11. WHEREAS, Ecology has determined that this Decree is not based on
24 circumstances unique to Juanita Village pursuant to RCW 70.105D.040(4)(e)(ii).
25
26

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

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

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

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

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

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

20 16. Ecology has determined that hazardous substances have been released at the Site.
21 Ecology has not made a determination that Juanita Village is a PLP for the Site and Juanita
22 Village has certified that it is not currently liable under RCW 70.105D. Were Juanita Village to
23 acquire an interest in the Property, however, it could become a PLP as an owner or operator
24 under RCW 70.105D.040(1)(a). This Decree is entered prior to Juanita Village's acquisition of
25 the Property to resolve its potential liability for known or suspected Site contamination described
26

1 in the RI/FS and the CAP and to facilitate a more expeditious cleanup at the Site than otherwise
2 would occur. This Decree is entered pursuant to the authority set forth in RCW 70.105D.040(5).

3 17. By entering into this Decree, Juanita Village agrees not to challenge Ecology's
4 jurisdiction in any proceeding to enforce this Decree. Juanita Village consents to the issuance of
5 this Decree and has agreed to perform cleanup and monitoring and pay oversight costs as
6 specified in this Decree.

7 18. All Exhibits attached to this Decree are integral and enforceable parts of this
8 Decree.

9 **III. PARTIES BOUND**

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

19 **IV. DEFINITIONS**

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

24 "Decree" shall mean this Decree and all attachments hereto. In the event of conflict
25 between this Decree and any exhibit, this Decree shall control.

1 "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

2 "Property" is legally described in Exhibit A hereto and incorporated by reference. The
3 Property is an approximately 11-acre site located in the Juanita Business District of Kirkland just
4 north of Lake Washington.

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

7 "Site" shall mean the area on the Property where hazardous substances have been
8 deposited, stored, disposed of, placed or otherwise come to be located as a result of releases that
9 occurred on and upgradient of the Property. "Site" also means the area where perchloroethene
10 (PCE) has come to be located down-gradient of the Property. The location of hazardous
11 substances is described in the RI report. The Site boundaries are beyond the Property boundaries
12 both upgradient and down-gradient, and are not precisely defined at this time, but are
13 approximately depicted on Exhibit B. The Site is a "facility" as defined in MICA per RCW
14 70.105D.020(4).

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

20 V. STATEMENT OF FACTS

21 21. The Property is located in the Juanita Business District in Kirkland, Washington,
22 and consists of approximately 11 acres. The Property is bordered by 97th Avenue N.E. to the
23 west, 98th Avenue N.E. to the east, N.E. 120th Place to the northwest, and Juanita Drive to the
24 south. The Property includes (1) a former dry cleaning operation that was operated by a series of
25 companies and individuals since the early 1960s, (2) an auto repair business, (3) two former gas
26

1 stations, and (4) other retail businesses and parking areas, and (5) currently undeveloped land
2 (approximately six acres). A legal description of the Property is attached as Exhibit A. The Site
3 consists of the Property and those portions of Juanita Beach Park southwest of the property
4 across 97th Avenue NE where groundwater contaminated with PCE has migrated. A Site map
5 and diagram is attached as Exhibit B.

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

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

1 simultaneously with performance of the remedial action required under this Decree, and agree
2 that these development activities will not be allowed to interfere with the remedial action.
3 Juanita Village also agrees to include in all documents transferring ownership in any portion of
4 the Property language prohibiting any successor or assignee from using the Property in a manner
5 likely to cause or contribute to the existing or threatened release, interfering with remedial
6 actions that may be needed at the Property, or increasing health risks to persons or risks to the
7 environment at or in the vicinity of the Property due to an existing or threatened release of
8 hazardous substances.

9 VII. WORK TO BE PERFORMED AND SCHEDULE

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

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

- 19 • Excavation and off-site treatment of petroleum contaminated soils using
20 thermal desorption and/or recycling where practical for soils in the
21 southeastern portion of the Property, former Chevron service station and
22 the central eastern area, Juanita Auto Clinic, (former Texaco service
23 station);
- 24 • On-property, Soil Vapor Extraction (SVE) for in-situ treatment of PCE-
25 contaminated soils in the central western area, around the former on-site
26 dry cleaner and down gradient. Off-Property, treatment along 98th Ave
NE right-of-way resulting from a former off-site, up-gradient dry cleaner;

- 1 • In-situ Density Driven Convection (DDC) well treatment of PCE-
2 contaminated ground water around the former on-site dry cleaner location
3 and down gradient along 97th Avenue NE right-of-way. If necessary,
4 south and down-gradient along Juanita Drive NE right-of-way; and if
5 necessary, at the Juanita Village Property northeast area and/or along 98th
6 Ave NE right-of-way;
- 7 • If soils with concentrations of PCE above the MTCA Cleanup Level are
8 discovered on the Juanita Village Property, then Juanita Village will
9 either excavate the soils with off-site disposal at a RCRA permitted
10 landfill, or contain them on-site under a restrictive covenant with prior
11 approval from Ecology using Ecology's Area of Contamination and
12 Contained-In policies. If soils are below the MTCA Cleanup Level then
13 reuse of soils as subsurface fill is acceptable and would not require a
14 Restrictive Covenant

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

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

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

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

26 VIII. ECOLOGY COSTS

31 Juanita Village agrees to pay all costs incurred by Ecology pursuant to this
Decree. The costs required to be paid under this Decree shall include work performed by
Ecology or its contractors for, or on, the Site under Ch. 70.105D RCW both before and after the
issuance of this Decree for investigations, remedial actions, and Decree preparation, negotiations,

1 oversight and administration, but shall not include any costs Juanita Village has already paid
2 pursuant to the prepayment agreement dated February 2, 2000. Ecology costs shall include costs
3 of direct activities and support costs of direct activities as defined in WAC 173-340-550(2), and
4 shall include direct staff costs, an agency support cost multiplier, and a program support cost
5 multiplier for all oversight costs. Juanita Village has also agreed to reimburse Ecology for the
6 overtime costs associated with any necessary expediting of the public notice process.

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

14 IX. DESIGNATED PROJECT COORDINATORS

15 The project coordinator for Ecology is:

16 Maura S. O'Brien
17 Toxics Cleanup Program
18 Department of Ecology
19 Northwest Regional Office
20 3190 - 160th Avenue SE
21 Bellevue, WA 98008-5452
22 (425) 649-7249
23 E-mail: mobr461@ecy.wa.gov

24 The project coordinator for Juanita Village is:

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

1 or control that relates to the environmental conditions at and in the vicinity of the Site, or to
2 Juanita Village's right and title thereto.

3 37. Juanita Village represents and certifies that it did not cause or contribute to a
4 release or threatened release of hazardous substances at the Site and is not otherwise potentially
5 liable under RCW 70.105D.040(1), except by becoming an owner of the Property.

6 **XII. TRANSFER OF INTEREST IN PROPERTY**

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

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

22 **XIII. AMENDMENT TO CONSENT DECREE**

23 40. This Decree may only be amended by a written stipulation among the parties to
24 this Decree that is thereafter entered and approved by order of the Court. Such amendment shall
25

1 become effective upon entry by the Court, or upon a later date if such date is expressly stated in
2 the parties' written stipulation or the Court so orders.

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

7 **XIV. DISPUTE RESOLUTION**

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

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

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

1 the Court shall review investigative and remedial actions or decisions of Ecology under an
2 arbitrary and capricious standard of review.

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

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

10 **XV. CONTRIBUTION PROTECTION**

11 46. With regard to claims for contribution against Juanita Village for Matters
12 Addressed in this Decree, Ecology agrees that Juanita Village is entitled to protection from
13 contribution actions or claims as is provided by MTCA, RCW 70.105D.040, CERCLA § 107 or
14 113, or any other federal or state claim seeking, under other theories, substantially similar relief,
15 to the extent allowed by MICA, RCW 70.105D.040 and CERCLA § 113(f)(2). The contribution
16 protection conferred in this section shall not be frustrated by the use of non-CERCLA or non-
17 MTCA theories to seek relief in the nature of contribution or indemnification.

18 47. For the purpose of this section, "Matters Addressed" shall include all
19 investigative and remedial actions undertaken at the Site (including those taken on or off the
20 Property) pursuant to this Consent Decree. "Matters Addressed" also includes all investigative
21 actions that were undertaken at the Site as described in Exhibit E (including those taken on or off
22 the Property) to characterize the present contamination at the Site or to enable the selection of a
23 cleanup action, and all oversight costs paid to Ecology.

1 5. Ecology reserves the right to take any enforcement action whatsoever,
2 including a cost recovery action, against potentially liable persons not party to
3 this Decree, except as otherwise provided by law.

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

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

9 **XVII. JUANITA VILLAGE RESERVATION OF RIGHTS**

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

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

15 **XVIII. DISCLAIMER**

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

18 **XIX. RETENTION OF RECORDS**

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

3 **XX. SITE ACCESS**

4 53. Juanita Village grants to Ecology, its employees, agents, contractors, and
5 authorized representatives, the right to enter upon the Property for purposes of allowing Ecology
6 to monitor or enforce compliance with this Decree or to institute other necessary cleanup actions.
7 Except in an emergency, Ecology shall provide advance notice to Juanita Village of any planned
8 entry (preferably 72 hours notice) as well as schedules and locations of activity on the Property.
9 Furthermore, except in an emergency, Ecology may enter the Property at any reasonable time,
10 but preferably only during normal business hours. Ecology or any Ecology authorized
11 representatives shall have the authority to enter and freely move about all Property for the
12 purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being
13 performed pursuant to this Decree; reviewing Juanita Village's progress in carrying out the terms
14 of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary;
15 using a camera, sound recording, or other documentary type equipment to record work done
16 pursuant to this Decree; and verifying the data submitted to Ecology by Juanita Village. All
17 parties with access to the Site pursuant to this paragraph shall comply with approved health and
18 safety plans.

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

6 **XXI. OTHER APPLICABLE LAWS**

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

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

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

7 58. Pursuant to RCW 70.105D.090(2), in the event that Ecology determines that the
8 exemption from complying with the procedural requirements of the laws referenced in RCW
9 70.105D.090(1) would result in the loss of approval from a federal agency necessary for the state
10 to administer any federal law, such exemption shall not apply and Juanita Village shall comply
11 with both the procedural and substantive requirements of the laws referenced in RCW
12 70.105D.090(1), including any requirements to obtain permits.

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

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

20 60. If requested by Ecology, Juanita Village shall allow split or duplicate samples to
21 be taken by Ecology and/or Ecology's authorized representatives of any samples collected by
22 Juanita Village pursuant to the implementation of this Decree. Juanita Village shall notify
23 Ecology at least seven (7) working days in advance of any sample collection or new remediation
24 work at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by
25 Juanita Village, or their authorized representatives, of any samples collected by Ecology pursuant
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1 to the implementation of this Decree, provided it does not interfere with the Department's
2 sampling. Without limiting Ecology's rights under Section XX, Ecology shall endeavor to notify
3 Juanita Village at least five (5) working days prior to any sampling collection activity.

4 **XXIII. PROGRESS REPORTS**

5 61. Juanita Village shall submit to Ecology written monthly progress reports that
6 describe the actions taken during the previous month to implement the requirements of this
7 Decree. The progress report shall include the following:

- 8 a. A list of on-Site activities that have taken place during the month;
- 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 schedule during the current month
12 and any planned deviations in the upcoming month;
- 13 d. For any deviations in schedule, a plan for attempting to recover lost time
14 and to maintain compliance with the schedule;
- 15 e. All data (including laboratory analyses) which, after the QA/QC program
16 has been performed, has been received by Juanita Village during the past
17 month and an identification of the source of the samples; and
- 18 f. A list of deliverables for the upcoming month if different from the schedule.

19 62. All progress reports shall be submitted by the tenth day of the month in which
20 they are due after the effective date of this Decree. Unless otherwise specified, progress reports
21 and any other documents submitted pursuant to this Decree shall be sent by first-class mail, or by
22 electronic mail to Ecology's project coordinator. Juanita Village may request that progress
23 reports be submitted less frequently after the groundwater treatment system begins operating.
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1 66. However, neither increased costs of performance of the terms of the Decree nor
2 changed economic circumstances shall be considered circumstances beyond the reasonable
3 control of Juanita Village.

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

- 6 a. Delays in the issuance of a necessary permit that was applied for in a timely
7 manner; or
- 8 b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- 9 c. Endangerment as described in Section XXV.

10 68. Ecology shall immediately notify Juanita Village in writing of its decision to grant
11 or deny the requested extension.

12 **XXV. ENDANGERMENT**

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

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

13 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

14 71. If Ecology determines that Juanita Village has failed without good cause to
15 implement the remedial action described herein and in the CAP, Ecology may, after notice to
16 Juanita Village, perform any or all portions of the remedial action that remain incomplete. If
17 Ecology performs all or portions of the remedial action because of Juanita Village's failure to
18 comply with the obligations under this Decree, Juanita Village shall reimburse Ecology for the
19 costs of doing such work in accordance with Section VIII, provided that Juanita Village shall not
20 be obligated under this Section to reimburse Ecology for costs incurred for work not specifically
21 required under this Decree.

22 **XXVII. CONTINGENT REQUIREMENTS**

23 72. If any hazardous substances are left in the soil at the Property in concentrations
24 that exceed the cleanup levels specified in Exhibit C, then Juanita Village shall do the following:
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- 1 a. Juanita Village shall follow the provisions in Section 3.3 of the CAP,
2 Exhibit C to this Decree.
- 3 b. Juanita Village shall record the Restrictive Covenant attached to this Decree
4 as Exhibit F with the King County Auditor's Office within thirty (30) days
5 of the completion of the cleanup required under this Decree, and shall
6 provide Ecology with proof of such recording within thirty (30) days of
7 such recording. The Restrictive Covenant will apply only to that portion of
8 the Property on which hazardous substances are left in concentrations
9 exceeding cleanup levels.
- 10 c. Notwithstanding any provision to the contrary in paragraph 38 of this
11 Decree, Juanita Village shall serve a copy of this Decree and its exhibits on
12 all persons who lease any portion of the Property to which the Restrictive
13 Covenant described in subparagraph b. applies.

14 XXVIII. PUBLIC PARTICIPATION

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

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

1 D. In cooperation with Ecology, arrange and/or continue information repositories
2 to be located at the following locations:

3 Kirkland Public Library
4 308 Kirkland Avenue
5 Kirkland, WA 98033
6 Phone: (425) 822-2459

7 Department of Ecology
8 Northwest Regional Office
9 Central Files
10 3190 - 160th Avenue SE
11 Bellevue, WA 98008-5452
12 Phone: (425) 649-7190

13 At a minimum, copies of all public notices, fact sheets, and press releases, all quality
14 assured monitoring data, remedial action plans, supplemental remedial planning documents, and
15 all other similar documents relating to performance of the remedial action required by this
16 Decree shall be promptly placed in these repositories.

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

19 74. This Decree shall remain in effect and this Court shall retain jurisdiction over both
20 the subject matter of this Decree and the parties for the duration of the performance of the terms
21 and provisions of this Decree for the purpose of enabling any of the parties to apply to the Court,
22 consistent with the dispute resolution process set forth in Section XIV, and the amendment
23 process set forth in Section XIII, for such further order, direction, and relief as may be necessary
24 or appropriate to ensure that obligations of the parties have been satisfied. The Decree shall
25 remain in effect until Juanita Village has received written notification from Ecology that the
26 requirements of this Decree have been satisfactorily completed. Ecology shall provide such
written notification or notice of any deficiencies in the completion of the requirements of this
Decree within sixty (60) days of receiving notice from Juanita Village that the requirements of

1 the Decree have been satisfied. Within sixty (60) days of Juanita Village's written notice that
2 any noted deficiencies have been corrected, Ecology shall provide written notification that the
3 requirements of the Decree have been satisfied or notice of any deficiencies that still remain.
4 The provisions set forth in Section XV (Contribution Protection), Section XVI (Covenant Not to
5 Sue Under MTCA; Reopeners), Section XXXI (Indemnification), and other such continuing
6 rights of Juanita Village, or Ecology under this Decree shall survive the termination of the
7 Decree pursuant to this paragraph. This Decree shall in no way limit the authority of Ecology to
8 obtain all legal or equitable remedies available against persons not party to this Decree and
9 against all persons, parties or non-parties, for releases of hazardous substances at the Site not
10 addressed by this Decree.

11 75. Certifications by Ecology. The Juanita Village Property will be redeveloped in
12 phases. Juanita Village may from time to time provide notice and demonstrate to Ecology that it
13 has attained soil and groundwater cleanup levels in certain parts of the Property. In order to
14 facilitate the timely redevelopment of the Property, Ecology shall, within sixty (60) days of
15 receiving such notice and satisfactory demonstration, certify in writing that cleanup levels have
16 been met in the portions of the Property specifically requested. In addition to these certifications,
17 Ecology shall, within sixty (60) days of receiving notice from Juanita Village that it has
18 satisfactorily completed work, certify in writing that Juanita Village has completed all cleanup
19 activities that are required pursuant to the CAP, with the exception of any required institutional
20 controls and monitoring as described in the Cleanup Action Plan.

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

22 76. This Decree has been the subject of public notice and comment under RCW
23 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a
24 more expeditious cleanup of hazardous substances at the Site, in compliance with applicable
25 cleanup standards, and is in the public interest.

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

6 **XXXI. INDEMNIFICATION**

7 78. Juanita Village agrees to indemnify and save and hold the State of Washington, its
8 employees, and agents harmless from any and all claims or causes of action for death or injuries
9 to persons or for loss or damage arising from or on account of acts or omissions of Juanita
10 Village its officers, employees, agents, or contractors in entering into and implementing this
11 Decree. However, Juanita Village shall not indemnify the State of Washington nor save nor hold
12 its employees and agents harmless from any claims or causes of action arising out of the
13 negligent acts or omissions of the State of Washington, or employees or agents of the State, in
14 implementing the activities pursuant to this Decree.

15 **XXXII. CLAIMS AGAINST THE STATE**

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

22 **XXXIII. EFFECTIVE DATE**

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

25 So ordered this _____ day of _____, 2000.

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JUDGE
King County Superior Court

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

3 JUANITA VILLAGE, LLC
4 By SECO DEVELOPMENT, INC.
Its Managing Member
5
6 By: [Signature]
ANDREW W. COLQUITT,
7 Executive Vice President

8 DATED 4/28/00
9

10 SECO DEVELOPMENT, INC.
11 By: [Signature]
12 ANDREW W. COLQUITT,
Executive Vice President

13
14 DATED 4/28/00

15 CHRISTINE O. GREGOIRE
16 Attorney General

17
18 MAIA D. BELLON, WSBA #24777
Assistant Attorneys General
19 Attorneys for Plaintiff
State of Washington
20 Department of Ecology

21 DATED _____

BOARDWALK DEVELOPMENT,
INC.

By: A. Kamm
Its EXECUTIVE V.P.

DATED 4/28/00

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program

DATED _____

EXHIBIT A

JUANITA VILLAGE, LLC

KIRKLAND, WASHINGTON

LEGAL DESCRIPTION

