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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY,)	No.
)	
Plaintiff,)	CONSENT DECREE
)	
v.)	
)	
LINDA T. Y. LEE,)	
GATEWAY INVESTMENT L. L. C.)	
)	
Defendants.)	

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (Ecology), and Linda T.Y. Lee, owner of the facility,
4 and Gateway Investment LLC, the lessee of the facility (Jointly referred to as Defendants or
5 separately as Lee and Gateway) is to provide for remedial action at a facility where there has
6 been a release or threatened release of hazardous substances. This Decree requires the
7 Defendants to undertake the following remedial action(s):

- 8 (1) Constructed Covers: As part of the redevelopment of the site into first a pay
9 parking lot, and eventually as a hotel complex, constructed covers will be installed
10 to minimize infiltration of precipitation and stormwater runoff into site soil and
11 underlying groundwater. Constructed covers will include asphalt pavement,
12 concrete pavement, and building floor slabs.
- 13 (2) Stormwater Management System: A stormwater management system will be
14 installed that will collect surface water runoff from paved areas across the entire
15 site and adjacent property associated with the parking lot. Once constructed, the
16 building roof shall be tied to stormwater controls such that stormwater is
17 conveyed and managed appropriately.
- 18 (3) Soil and Groundwater Treatment: Source control will be achieved using soil-
19 vapor extraction and onsite treatment of groundwater by air sparging with vapor
20 extraction. Extraction wells will be installed onsite for purposes of soil vapor
21 extraction and air sparging.
- 22 (4) Compliance Monitoring: Monitoring of groundwater will be required to ensure
23 that the cleanup actions were effective at the site.
- 24 (5) Operations and Maintenance Plan: Preparation of this plan, and implementation
25 of the actions described in this plan, will be required to ensure the continued
26 protection of human health and the environment at the site.

1 Ecology has determined that these actions are necessary to protect public health and the
2 environment.

3 B. The Complaint in this action is being filed simultaneously with this Decree. An
4 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
5 However, the parties wish to resolve the issues raised by Ecology's complaint by entering into a
6 settlement pursuant to RCW 70.105D.040(4). In addition, the parties agree that settlement of
7 these matters without litigation is reasonable and in the public interest and that entry of this
8 Decree is the most appropriate means of resolving these matters.

9 C. In signing this Decree, Defendants agree to its entry and agree to be bound by its
10 terms.

11 D. By entering into this Decree, the parties do not intend to discharge nonsettling
12 persons or entities from any liability they may have with respect to matters alleged in the
13 complaint. The parties retain the right to seek reimbursement, in whole or in part, from any
14 liable persons for sums expended under this Decree.

15 E. This Decree shall not be construed as proof of liability or responsibility for any
16 releases of hazardous substances or cost for remedial action nor as an admission of any facts;
17 provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any
18 proceeding to enforce this Decree.

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

21 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

22 **II. JURISDICTION**

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

25 B. Authority is conferred upon the Washington State Attorney General by RCW
26 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public

1 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious
2 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be
3 entered as a consent decree issued by a court of competent jurisdiction.

4 C. Ecology has determined that a release or threatened release of hazardous
5 substances has occurred at the site which is the subject of this Decree.

6 D. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(16), of
7 Ecology's determination that the Defendants are a potentially liable persons for the site and that
8 there has been a release or threatened release of hazardous substances at the site.

9 E. The actions to be taken pursuant to this Decree are necessary to protect public
10 health, welfare, and the environment and will lead to a more expeditious cleanup of hazardous
11 substances in accordance with RCW 70.105D.040(4)(a).

12 F. Defendants have agreed to undertake the actions specified in this Decree to
13 resolve their liability with the State of Washington and consent to the entry of this Decree under
14 the MTCA.

15 III. PARTIES BOUND

16 This Decree shall apply to and be binding upon the signatories to this Decree (parties),
17 their successors and assigns. The undersigned representative of each party hereby certifies that
18 he or she is fully authorized to enter into this Decree and to execute and legally bind such party to
19 comply with the Decree. Defendants agree to undertake all actions required by the terms and
20 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change
21 in ownership or corporate status shall alter the responsibility of the Defendants under this Decree.
22 Defendants shall provide a copy of this Decree to all agents, contractors and subcontractors
23 retained to perform work required by this Decree and shall ensure that all work undertaken by
24 such contractors and subcontractors will be in compliance with this Decree.

1 IV. DEFINITIONS

2 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms in
3 this Decree.

4 A. Site: The Site, referred to as the former Tac-Sea Motel, is located at 17024
5 Pacific Highway South, SeaTac, Washington 98188. The Site is more particularly described in
6 Exhibit A to this Decree which is a detailed site diagram.

7 B. Parties: Refers to the Washington State Department of Ecology and Linda T.Y.
8 Lee (owner) and Gateway Investment LLC (lessee).

9 C. Defendants: Refers to Lee and Gateway.

10 D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits
11 to the Decree which are entered into pursuant to RCW 70.105D.040(4). All exhibits are integral
12 and enforceable parts of this Consent Decree. The terms "Consent Decree" or "Decree" shall
13 include all exhibits to the Consent Decree.

14 V. STATEMENT OF FACTS

15 Ecology makes the following findings of fact without any express or implied admissions
16 by Linda T.Y. Lee, hereinafter referred to as "Lee", and/or by Gateway Investment LLC,
17 hereinafter referred to as "Gateway."

18 1. Lee is the owner of property known as the former Tac-Sea Motel (the "Site"), located
19 at 17024 Pacific Highway South, SeaTac, Washington, 98188, in King County, and has been the
20 owner of the Site where she operated a motel for many years.

21 2. Gateway became a tenant on the property at the Site pursuant to a lease agreement
22 effective June 1, 1998, and will participate in the remediation and redevelopment of the property.

23 3. The Site was the location of a dry cleaning facility, that was operated prior to the time
24 that the Tac-Sea Motel operated on the Site. The "owner" or "operator" of the dry cleaner is
25 unknown at this time; research is continuing to discover this information. The Tac-Sea Motel
26 building was demolished late summer 1998.

1 4. Areas of environmental concern at the Site are related to the dry cleaners and printer
2 formerly in operation at the Site and the historical use of solvents onsite. Operation of the dry
3 cleaning facility left soil and groundwater underlying the Site contaminated with a volatile
4 organic compound identified as perchloroethylene ("PCE"), and related chlorinated solvents
5 (including chloroform, cis-1,2-dichloroethene, tetrachloroethene; 1,1,1-trichloroethane and
6 trichloroethene).

7 5. In connection with demolition of the motel building on the Site, certain septic tanks
8 and associated piping and conduits had been located, one or more of which contained effluents
9 and/or sediments that have been determined, on the basis of laboratory analysis to contain PCE,
10 related chlorinated solvents and /or other hazardous substances. Two heating oil underground
11 storage tanks (USTs) were removed from the site on September 9, 1998 under an Interim Action
12 Agreed Order between Ecology and the Defendants. These tanks were apparently used by the
13 Tac-Sea Motel. Soil associated with the two tanks was found to be contaminated with petroleum
14 hydrocarbons (TPH). This contaminated soil was removed and taken offsite by the end of
15 September, 1998.

16 6. Gateway has performed environmental investigations at this Site. These investigations
17 are described more fully in Section 3 of the former Tac-Sea Motel Cleanup Action Plan, attached
18 to this Decree as Exhibit B. Based on the RI and FS documents and additional background
19 reports contained in Ecology's files, Ecology finds as follows: The investigations have
20 documented the "release," as defined in RCW 70.105D.020(20), of hazardous substances into the
21 soil and groundwater at the Site. The hazardous substances include: PCE and its degradation
22 products, trichloroethane (TCE) and cis-1,2-DCE. Chloroform and 1,1,1-TCA were also
23 detected.

24 7. On September 30, 1998, Ecology issued Lee and Gateway final potentially liable
25 person status letters.

1 8. Lee and Gateway are “owners or operators” as defined by RCW 70.105D.020(12) of a
2 “facility” as defined in RCW 70.105D.020(4).

3 9. Based on the above facts and on the RI and FS report contained in Ecology’s files,
4 Ecology has determined that the Cleanup Action Plan attached as Exhibit B to this Decree is
5 protective of human health and the environment, and will lead to a more expeditious cleanup of
6 hazardous substances in compliance with all applicable, relevant and appropriate cleanup
7 standards, as defined in RCW 70.105D.030(2)(e).

8 VI. WORK TO BE PERFORMED

9 This Decree contains a program designed to protect public health, welfare and the
10 environment from the known release, or threatened release, of hazardous substances or
11 contaminants at, on, or from the Site. The requirements of this program are outlined in detail in
12 the Cleanup Action Plan (CAP) attached as Exhibit B. Lee and Gateway shall implement the
13 cleanup selected in the attached CAP, which is by this reference made a part hereof as though set
14 out in full.

15 Lee and Gateway, through its contractor(s) and subcontractor(s) as necessary, shall
16 accomplish the following work:

- 17 1. The purpose of the cleanup actions (“Work”) is to reduce residual contaminant
18 concentrations in Site soils to further reduce continued impacts to the groundwater.
19 Such source control shall be accomplished using soil-vapor extraction. Another
20 objective of the Work is to reduce contaminant concentrations in the shallow aquifer
21 to reestablish it as a potential source of drinking water through the onsite treatment of
22 groundwater by air sparging with vapor extraction. Design of this physical soil and
23 groundwater treatment shall be submitted to Ecology for agency approval as a part of
24 the engineering design report. The final system shall meet the requirements and
25 perform according to the specifications in the approved engineering design report.
26

2. Lee and Gateway shall obtain any and all state and federal, or local permits required by applicable law before work covered by that permit can begin with the exception of section XX of this Decree (Compliance With Applicable Laws Section).
3. Pursuant to WAC 173-340-810, Lee and Gateway shall prepare a Site Safety and Health Plan in accordance with the most recent OSHA, WISHA, Department of Ecology, and EPA guidance as well as applicable regulations, to be reviewed by Ecology.
4. Lee and Gateway shall prepare an engineering design report, construction plans and specifications, and an operation and maintenance plan for the cleanup actions that meet the requirements of WAC 173-340-400(4), to be approved by Ecology. Upon approval, the engineering design report, construction plans and specifications, and operation and maintenance plan shall be integral and enforceable parts of this Decree, and shall be complied with by Lee and Gateway.
5. Lee and Gateway shall prepare a compliance monitoring plan that meets the requirements of WAC 173-340-720 through –750, to be approved by Ecology. The compliance monitoring plan shall contain a sampling and analysis plan that meets the requirements of WAC 173-34-820, and shall provide that all analysis performed pursuant to this Decree be conducted by a laboratory accredited under Chapter 173-50 WAC. Upon Ecology’s approval, the compliance monitoring plan shall become an integral and enforceable part of this Decree.
6. Lee and Gateway shall provide for public participation via the Public Participation Plan attached as Exhibit D to this Decree.
7. Constructed Covers: As part of the cleanup objective and redevelopment requirements for the Site, stormwater infiltration must be limited to minimize continued leaching of residual contaminants into groundwater. Constructed covers shall be installed that will minimize infiltration of precipitation and stormwater runoff

1 into Site soil and underlying groundwater. Construction covers will include asphalt
2 pavement, possibly concrete pavement, and building floor slabs. The cover designs
3 shall be submitted to Ecology as part of the engineering design report, and shall
4 include a statement of thickness, permeability, asphalt criteria, inspection and
5 maintenance, erosion control, and surface water control. The final constructed covers
6 shall meet the requirements and perform according to the specifications in the
7 approved engineering design report.

8 8. Stormwater Management System: As a part of the cleanup requirement to minimize
9 continued leaching of residual contaminants into groundwater, and as a part of the
10 redevelopment of the Site into a pay parking lot and future hotel complex, a
11 stormwater management system will be installed that will collect surface runoff from
12 pavement areas (and details about future building) and convey this stormwater to an
13 on-site detention area (details). The stormwater management design shall be
14 submitted to Ecology as part of the engineering design report.

15 9. Operations and Maintenance Plan: The Operation and Maintenance Plan shall help
16 to ensure the continued protection of human health and the environment through a
17 documented procedure for maintaining and properly operating environmental
18 components of the Site. In particular, this plan provides Site owners and the
19 contractors with procedures for effectively and safely operating and maintaining the
20 following components:

- 21 • Constructed Covers
- 22 • Stormwater Management
- 23 • Groundwater Recovery and Monitoring Wells
- 24 • Above ground components of Air Sparging and Vapor Extraction System

25 This Operations and Maintenance Plan shall be submitted to Ecology as part of the
26 Engineering Design Report.

1 Schedule of Work. The schedule of performance of the work identified above is as
2 follows. No work shall be performed until Ecology has approved the plans and reports required
3 in this Decree governing that work.
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1	Schedule	
2		
3	1. Submit Engineering Design, Construction Plans, Specifications, and Health and Safety Plan.	Within 45 days of the effective date of this Consent Decree.
4		
5	2. Install Recovery Wells and Monitoring Wells	Within 90 days of the effective date of this Consent Decree.
6		
7	3. Install Above Ground Components of Air Sparging and Vapor Extraction System.	Within 180 days of the effective date of this Consent Decree
8		
9	4. Conduct Startup of the Remediation System.	During a 30 day period following installation of the remediation system.
10		
11	5. Prepare Compliance Monitoring and O&M Plans (including system operation, groundwater monitoring, cover maintenance, and surface water management).	Within 180 days of the effective date of this Consent Decree
12		
13	6. Routine Treatment System Monitoring.	At monthly intervals following completion of remediation system startup.
14		
15	7. Groundwater Monitoring	At quarterly intervals following completion of remediation system startup.
16		
17	8. Submit Reports of System Monitoring and Groundwater Sampling	Within 30 days after receiving analytical data from each quarterly groundwater monitoring round.
18		
19	9. Confirmation Monitoring	Implemented within 90 days after cleanup levels have been met and the remediation system has been shut down. Performed at quarterly intervals following system shutdown.
20		
21		
22	10. Submit Reports from Confirmation Monitoring	Within 30 days after receiving analytical data from each quarterly confirmation monitoring round.
23		
24	11. Submit Draft Closure Report	Within 90 days after confirmation monitoring verifies that cleanup levels have been met.
25		
26		

12. Submit Final Closure Report	Within 30 days after receiving comments on the draft closure report from Ecology.
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Defendants agree not to perform any remedial actions outside the scope of this Decree unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Decree shall be done in accordance with WAC Ch. 173-340 unless otherwise provided herein.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:
 Glynis A. Carrosino
 Washington Department of Ecology
 Northwest Regional Office
 3190 – 160th Avenue SE
 Bellevue, WA 98008-5452
 Phone: (425) 649-7263

The project coordinator for Lee and Gateway is:
 Gary L. Laakso
 Remediation Services Manager
 AGI Technologies
 PO Box 3885
 Bellevue, WA 98009-3885
 Phone: (425) 453-8383

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the site. To the maximum extent possible, communications between Ecology and Lee and Gateway, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

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

3 VIII. PERFORMANCE

4 All work performed pursuant to this Decree shall be under the direction and supervision,
5 as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and
6 expertise in hazardous waste site investigation and cleanup. Any construction work must be
7 under the supervision of a professional engineer. Lee and Gateway shall notify Ecology in
8 writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any
9 contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of
10 their involvement at the site.

11 IX. ACCESS

12 Ecology or any Ecology authorized representatives shall have the authority to enter and
13 freely move about all property at the Site at all reasonable times for the purposes of, inter alia:
14 inspecting records, operation logs, and contracts related to the work being performed pursuant to
15 this Decree; reviewing Defendants' progress in carrying out the terms of this Decree; conducting
16 such tests or collecting such samples as Ecology may deem necessary; using a camera, sound
17 recording, or other documentary type equipment to record work done pursuant to this Decree;
18 and verifying the data submitted to Ecology by the Defendants. All parties with access to the
19 Site pursuant to this paragraph shall comply with approved health and safety plans.

20 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

21 With respect to the implementation of this Decree, Defendants shall make the results of
22 all sampling, laboratory reports, and/or test results generated by them, or on their behalf,
23 available to Ecology and shall submit these results in accordance with Section XI of this Decree.

24 In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted
25 according to Appendix E: GROUND WATER SAMPLING DATA SUBMITTAL
26

1 REQUIREMENTS. These submittals shall be provided to Ecology in accordance with Section
2 XI of this Decree.

3 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken by
4 Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to
5 the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance of
6 any sample collection or work activity required pursuant to the Decree or attached Cleanup
7 Action Plan at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken
8 by Defendants or their authorized representatives of any samples collected by Ecology pursuant
9 to the implementation of this Decree provided it does not interfere with the Department's
10 sampling. Without limitation on Ecology's rights under Section IX, Ecology shall endeavor to
11 notify Defendants prior to any sample collection activity.

12 XI. PROGRESS REPORTS

13 Defendants shall submit to Ecology written monthly progress reports which describe the
14 actions taken during the previous month to implement the requirements of this Decree. The
15 progress shall include the following:

- 16 A. A list of on-site activities that have taken place during the month;
- 17 B. Detailed description of any deviations from required tasks not otherwise
18 documented in project plans or amendment requests;
- 19 C. Description of all deviations from the schedule (Exhibit C) during the current
20 month and any planned deviations in the upcoming month;
- 21 D. For any deviations in schedule, a plan for recovering lost time and maintaining
22 compliance with the schedule;
- 23 E. All raw data (including laboratory analysis) received by the Defendants during the
24 past month and an identification of the source of the sample;
- 25 F. A list of deliverables for the upcoming month if different from the schedule; and
26 all progress reports shall be submitted by the tenth day of the month in which they are due

1 after the effective date of this Decree. Unless otherwise specified, progress reports and any other
2 documents submitted pursuant to this Decree shall be sent by certified mail, return receipt
3 requested, to Ecology's project coordinator.

4 XII. RETENTION OF RECORDS

5 Defendants shall preserve, during the pendency of this Decree and for ten (10) years from
6 the date this Decree is no longer in effect, as provided in Section XXV, all records, reports,
7 documents, and underlying data in its possession relevant to the implementation of this Decree
8 and shall insert in contracts with project contractors and subcontractors a similar record retention
9 requirement. Upon request of Ecology, Defendants shall make all non-archived records that are
10 not attorney/client privileged available to Ecology and allow access for review. All archived
11 records shall be made available to Ecology within a reasonable period of time.

12 XIII. TRANSFER OF INTEREST IN PROPERTY

13 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
14 or other interest in any portion of the Site shall be consummated without provision for continued
15 operation and maintenance of any containment system, treatment system, and monitoring system
16 installed or implemented pursuant to this Decree.

17 Prior to transfer of any legal or equitable interest in all or any portion of the property, and
18 during the effective period of this Decree, Defendants shall serve a copy of this Decree upon any
19 prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property;
20 and, at least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said
21 contemplated transfer.

22 XIV. RESOLUTION OF DISPUTES

23 A. In the event a dispute arises as to an approval, disapproval, proposed modification
24 or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute
25 resolution procedure set forth below.
26

1 (1) Upon receipt of the Ecology project coordinator's decision, the Defendants have
2 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the
3 decision.

4 (2) The parties' project coordinators shall then confer in an effort to resolve the
5 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
6 Ecology's project coordinator shall issue a written decision.

7 (3) Defendants may then request Ecology management review of the decision. This
8 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)
9 days of receipt of Ecology's project coordinator's decision.

10 (4) Ecology's Program Manager shall conduct a review of the dispute and shall issue a
11 written decision regarding the dispute within thirty (30) days of a Defendant's request for review.
12 The Program Manager's decision shall be Ecology's final decision on the disputed matter.

13 B. If Ecology's final written decision is unacceptable to a Defendant, the Defendant
14 has the right to submit the dispute to the Court for resolution. The parties agree that one judge
15 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
16 this Decree. In the event Defendant presents an issue to the Court for review, the Court shall
17 review the action or decision of Ecology on the basis of whether such action or decision was
18 arbitrary and capricious and render a decision based on such standard of review.

19 C. The parties agree to only utilize the dispute resolution process in good faith and
20 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
21 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the
22 other party may seek sanctions.

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

26 XV. AMENDMENT OF CONSENT DECREE

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

5 Defendant shall submit any request for an amendment to Ecology for approval. Ecology
6 shall indicate its approval or disapproval in a timely manner after the request for amendment is
7 received. If the amendment to the Decree is substantial, Ecology will provide public notice and
8 opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does
9 not agree to any proposed amendment, the disagreement may be addressed through the dispute
10 resolution procedures described in Section XIV of this Decree.

11 XVI. EXTENSION OF SCHEDULE

12 A. An extension of schedule shall be granted only when a request for an extension is
13 submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline
14 for which the extension is requested, and good cause exists for granting the extension. All
15 extensions shall be requested in writing. The request shall specify the reason(s) the extension is
16 needed.

17 An extension shall only be granted for such period of time as Ecology determines is
18 reasonable under the circumstances. A requested extension shall not be effective until approved
19 by Ecology or the Court. Ecology shall act upon any written request for extension in a timely
20 fashion. It shall not be necessary to formally amend this Decree pursuant to Section XV when a
21 schedule extension is granted.

22 B. The burden shall be on the Defendants to demonstrate to the satisfaction of
23 Ecology that the request for such extension has been submitted in a timely fashion and that good
24 cause exists for granting the extension. Good cause includes, but is not limited to, the following.

25 (1) Circumstances beyond the reasonable control and despite the due diligence of
26 Defendant including delays caused by unrelated third parties or Ecology, such as (but not limited

1 to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendant;
2 or

3 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other
4 unavoidable casualty; or

5 (3) Endangerment as described in Section XVII.

6 However, neither increased costs of performance of the terms of the Decree nor changed
7 economic circumstances shall be considered circumstances beyond the reasonable control of
8 Defendant.

9 C. Ecology may extend the schedule in Section VI (Work to be Performed, Schedule
10 of Work) for a period not to exceed ninety (90) days, except where an extension is needed for a
11 longer period of time as a result of:

12 (1) Delays in the issuance of a necessary permit which was applied for in a timely
13 manner; or

14 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

15 (3) Endangerment as described in Section XVII.

16 Ecology shall give Defendants written notification in a timely fashion of any extensions
17 granted pursuant to this Decree.

18 XVII. ENDANGERMENT

19 In the event Ecology determines that activities implementing or in noncompliance with
20 this Decree, or any other circumstances or activities, are creating or have the potential to create a
21 danger to the health or welfare of the people on the site or in the surrounding area or to the
22 environment, Ecology may order Defendants to stop further implementation of this Decree for
23 such period of time as needed to abate the danger or may petition the Court for an order as
24 appropriate. During any stoppage of work under this section, the obligations of Defendants with
25 respect to the work under this Decree which is ordered to be stopped shall be suspended and the
26 time periods for performance of that work, as well as the time period for any other work

1 dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this
2 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

3 In the event Defendants determine that activities undertaken in furtherance of this Decree
4 or any other circumstances or activities are creating an endangerment to the people on the Site or
5 in the surrounding area or to the environment, Defendants may stop implementation of this
6 Decree for such period of time necessary for Ecology to evaluate the situation and determine
7 whether Defendants should proceed with implementation of the Decree or whether the work
8 stoppage should be continued until the danger is abated. Defendants shall notify Ecology's
9 project coordinator as soon as possible, but no later than twenty-four (24) hours after such
10 stoppage of work, and thereafter provide Ecology with documentation of the basis for the work
11 stoppage. If Ecology disagrees with the Defendants' determination, it may order Defendants to
12 resume implementation of this Decree. If Ecology concurs with the work stoppage, the
13 Defendants' obligations shall be suspended and the time period for performance of that work, as
14 well as the time period for any other work dependent upon the work which was stopped, shall be
15 extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines
16 is reasonable under the circumstances. Any disagreements pursuant to the clause shall be
17 resolved through the dispute resolution procedures in Section XIV.

18 XVIII. OTHER ACTIONS

19 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently
20 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take any
21 other enforcement action pursuant to available statutory authority under the following
22 circumstances:

23 (1) Where Defendants fail, after notice, to comply with any requirement of this
24 Decree;

25 (2) In the event or upon the discovery of a release or threatened release not addressed
26 by this Decree;

1 (3) Upon Ecology's determination that action beyond the terms of this Decree is
2 necessary to abate an emergency situation which threatens public health or welfare or the
3 environment; or

4 (4) Upon the occurrence or discovery of a situation beyond the scope of this Decree
5 as to which Ecology would be empowered to perform any remedial action or to issue an order
6 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the
7 geographic Site described in Exhibit A and to those contaminants which Ecology knows to be at
8 the Site when this Decree is entered.

9 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural
10 resources resulting from the release or threatened release of hazardous substances from the
11 former Tac-Sea Motel Site.

12 Ecology reserves the right to take any enforcement action whatsoever, including a cost
13 recovery action, against potentially liable persons not party to this Decree.

14 XIX. INDEMNIFICATION

15 Each Defendant agrees to severally indemnify and save and hold the State of Washington,
16 its employees, and agents harmless from any and all claims or causes of action for death or
17 injuries to persons or for loss or damage to property arising from or on account of acts or
18 omissions of that Defendant, its officers, employees, agents, or contractors in entering into and
19 implementing this Decree. However, the Defendants shall not indemnify the State of
20 Washington nor save nor hold its employees and agents harmless from any claims or causes of
21 action arising out of the negligent acts or omissions of the State of Washington, or the employees
22 or agents of the State, in implementing the activities pursuant to this Decree.

23 24 25 XX. COMPLIANCE WITH APPLICABLE LAWS 26

1 A. All actions carried out by Defendant(s) pursuant to this Decree shall be done in
2 accordance with all applicable federal, state, and local requirements, including requirements to
3 obtain necessary permits, except as provided in paragraph B of this section.

4 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
5 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
6 local government permits or approvals for the remedial action under this Decree that are known
7 to be applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup
8 Action Plan, and are binding and enforceable requirements of the Decree.

9 Defendants have a continuing obligation to determine whether additional permits or
10 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
11 action under this Decree. In the event either Defendants or Ecology determines that additional
12 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
13 remedial action under this Decree, it shall promptly notify the other party of this determination.
14 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
15 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly
16 consult with the appropriate state and/or local agencies and provide Ecology with written
17 documentation from those agencies of the substantive requirements those agencies believe are
18 applicable to the remedial action. Ecology shall make the final determination on the additional
19 substantive requirements that must be met by Defendants and on how Defendants must meet
20 those requirements. Ecology shall inform Defendants in writing of these requirements. Once
21 established by Ecology, the additional requirements shall be enforceable requirements of this
22 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
23 additional requirements until Ecology makes its final determination; provided, however, that
24 Ecology shall grant an extension of schedule to accommodate both the additional requirements
25 and the time required by Ecology to make its determination.
26

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

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and the Defendants shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits; provided, however, that Ecology shall grant an extension of schedule to accommodate both the additional requirements and the time required by Ecology to make its determination.

XXI. REMEDIAL AND INVESTIGATIVE COSTS

The Defendants agree to pay reasonable costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by Ecology or its contractors for, or on, the site under RCW Ch. 70.105D both prior to and subsequent to the issuance of this Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Defendants agree to pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff or authorized representatives, and the amount of time spent by involved staff members or authorized representatives on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in interest charges.

XXII. IMPLEMENTATION OF REMEDIAL ACTION

If Ecology determines that Defendants have failed without good cause to implement the remedial action, Ecology may, after notice to Defendants, perform any or all portions of the

1 remedial action that remain incomplete. If Ecology performs all or portions of the remedial
2 action because of the Defendants' failure to comply with its obligations under this Decree,
3 Defendants shall reimburse Ecology for the costs of doing such work in accordance with Section
4 XXI, provided that Defendants are not obligated under this section to reimburse Ecology for
5 costs incurred for work inconsistent with or beyond the scope of this Decree.

6 XXIII. FIVE YEAR REVIEW

7 As remedial action, including ground water monitoring, continues at the site, the parties
8 agree to review the progress of remedial action at the site, and to review the data accumulated as
9 a result of Site monitoring as often as is necessary and appropriate under the circumstances. At
10 least every five years the parties shall meet to discuss the status of the site and the need, if any, of
11 further remedial action at the site. Ecology reserves the right to require further legally necessary
12 remedial action at the Site under appropriate circumstances. This provision shall remain in effect
13 for the duration of the Decree.

14 XXIV. PUBLIC PARTICIPATION

15 Ecology shall maintain the responsibility for public participation at the site. However,
16 Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

17 A. Prepare drafts of public notices and fact sheets at important stages of the remedial
18 action, such as the submission of work plans, Remedial Investigation/Feasibility Study reports
19 and engineering design reports. Ecology will finalize (including editing if necessary) and
20 distribute such fact sheets and prepare and distribute public notices of Ecology's presentations
21 and meetings;

22 B. Notify Ecology's project coordinator prior to the preparation of all press releases
23 and fact sheets, and before major meetings with the interested public and local governments.
24 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact
25 sheets, and before major meetings with the interested public and local governments;
26

1 C. Participate in public presentations on the progress of the remedial action at the
2 Site. Participation may be through attendance at public meetings to assist in answering
3 questions, or as a presenter;

4 D. In cooperation with Ecology, arrange and/or continue information repositories to
5 be located at Valley View Library, 17850 Military Road South, SeaTac, Washington, 98188 and
6 Ecology's Northwest Regional Office at 3190 – 160th Avenue S.E., Bellevue, Washington,
7 98008-5452. At a minimum, copies of all public notices, fact sheets, and press releases; all
8 quality assured ground water, surface water, soil sediment, and air monitoring data; remedial
9 actions plans, supplemental remedial planning documents, and all other similar documents
10 relating to performance of the remedial action required by this Decree shall be promptly placed in
11 these repositories.

12 XXV. DURATION OF DECREE

13 This Decree shall remain in effect and the remedial program described in the Decree shall
14 be maintained and continued until the Defendants have received written notification from
15 Ecology that the requirements of this Decree have been satisfactorily completed, and thereupon,
16 Ecology shall dismiss the Complaint.

17 XXVI. CLAIMS AGAINST THE STATE

18 Defendants hereby agree that, except for any agency of the State of Washington that is a
19 potentially liable party for the Site, except as otherwise provided in Section XIX
20 (Indemnification) they will not seek to recover any costs accrued in implementing the remedial
21 action required by this Decree from the State of Washington or any of its agencies; and further,
22 that the Defendants will make no claim against the State Toxics Control Account or any Local
23 Toxics Control Account for any costs incurred in implementing this Decree. Except as provided
24 above, however, Defendants expressly reserve their rights to seek to recover any costs incurred in
25 implementing this Decree from any other potentially liable person.
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1 Site to protect human health or the environment, and Defendants, after notice, fail to take the
2 necessary action within a reasonable time.

3 B. Applicability: Any Covenant Not to Sue concerning work performed under this
4 Consent Decree shall have no applicability whatsoever to:

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

9 XXVIII. EFFECTIVE DATE

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

11 XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

12 This Decree has been the subject of public notice and comment under RCW
13 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a
14 more expeditious cleanup of hazardous substances at the site.

15 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at
16 the option of any party and the accompanying Complaint shall be dismissed without costs and

17 //

18 //

1 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

2 STATE OF WASHINGTON
3 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

4
5 JIM PENDOWSKI
6 Program Manager
7 Toxics Cleanup Program

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

8 Dated: _____

Dated: _____

9 GRAHAM & JAMES LLP/
10 RIDDELL WILLIAMS P.S.

11
12 HARRY EDWARD GRANT
13 WSBA #13494
14 Attorney for Gateway Investment L.L.C.

LINDA T.Y. LEE

15 Dated: _____

Dated: _____

16 GATEWAY INVESTMENT L. L. C.

17
18 _____
19 Member

20 Dated: _____

21
22 DATED this ____ day of _____, 1999.

23
24 King County Superior Court

25 _____
26 JUDGE