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**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AMERON INTERNATIONAL,
OLDCASTLE PRECAST, INC., PORT
OF EVERETT, DAVID F. HULBERT,
TANA MARTIN GREENBERG,
WILLIAM G. HULBERT III, the
WILLIAM HULBERT MILL
COMPANY LIMITED PARTNERSHIP,
and the WILLIAM G HULBERT, JR
AND CLARE MUMFORD HULBERT
REVOCABLE LIVING TRUST,

Defendants.

NO. **15 2 01720 7**

CONSENT DECREE

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1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Port of Everett (the Port), Ameron International Corporation (Ameron),
4 Oldcastle Precast, Inc. (Oldcastle), and the Hulberts (the Hulberts is defined under Section
5 IV.C) under this Decree is to provide for remedial action at a facility where there has been a
6 release or threatened release of hazardous substances. This Decree requires Defendants to
7 (hereinafter collectively referred to as “the Potentially Liable Persons” or “the PLPs”) to
8 perform the remedial action(s) at the North Marina Ameron/Hulbert Site in Everett,
9 Washington in accordance with the Cleanup Action Plan (CAP) attached as Exhibit B to this
10 Decree.

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

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

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

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

25 F. This Decree shall not be construed as proof of liability or responsibility for any
26 releases of hazardous substances or cost for remedial action nor an admission of any facts;

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

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

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

6 II. JURISDICTION

7 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
8 to the Model Toxics Control Act (MTCA), RCW 70.105D.

9 B. Authority is conferred upon the Washington State Attorney General by
10 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
11 after public notice and any required hearing, Ecology finds the proposed settlement would lead
12 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
13 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

14 C. Ecology has determined that a release or threatened release of hazardous
15 substances has occurred at the Site that is the subject of this Decree.

16 D. Ecology has given notice to the PLPs of Ecology's determination that they are
17 PLPs for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

18 E. The actions to be taken pursuant to this Decree are necessary to protect public
19 health and the environment.

20 F. This Decree has been subject to public notice and comment.

21 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
22 hazardous substances at the Site in compliance with the cleanup standards established under
23 RCW 70.105D.030(2)(e) and WAC 173-340.

24 H. The PLPs have agreed to undertake the actions specified in this Decree and
25 consents to the entry of this Decree under MTCA.

1 **III. PARTIES BOUND**

2 This Decree shall apply to and be binding upon the Parties to this Decree, their
3 successors and assigns. The undersigned representative of each party hereby certifies that he
4 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
5 comply with this Decree. Each PLP agrees to undertake all actions required by the terms and
6 conditions of this Decree. No change in ownership or corporate status shall alter the PLPs'
7 responsibility under this Decree. The PLPs shall provide a copy of this Decree to all agents,
8 contractors, and subcontractors retained to perform work required by this Decree, and shall
9 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
10 this Decree.

11 **IV. DEFINITIONS**

12 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
13 WAC 173-340-200 shall control the meanings of the terms in this Decree.

14 A. Site: The Site (or Facility) is referred to as the North Marina Ameron/Hulbert
15 Site (the Site) and is generally located between 11th and 13th Streets off West Marine View
16 Drive, Everett, Snohomish County, Washington (located primarily within the northeast portion
17 of the North Marina Redevelopment). The Site is owned by the Port and includes
18 approximately 30 acres of upland and adjacent in-water areas (about 12 acres of in-water and
19 18 acres of upland). The Site is defined by the extent of contamination caused by the release
20 of hazardous substances at the Site and is not limited by property boundaries. The Site
21 includes areas where hazardous substances have been deposited, stored, disposed of, placed, or
22 otherwise come to be located. The Site is more particularly described in Exhibit A to this
23 Decree, which includes site and tax parcel maps (Exhibit A, Figures 1 to 4), a site location
24 description, and property information from the Snohomish County Assessor's Office. The Site
25 includes both upland and in-water areas (i.e., adjacent marine sediment) as defined below. The
26 Site constitutes a Facility under RCW 70.105D.020(5).

1 B. Parties: Refers to the State of Washington, Department of Ecology, the Port of
2 Everett, Ameron, Oldcastle and the Hulberts (defined below).

3 C. PLPs: Refers to the Port of Everett, Ameron International Corporation,
4 Oldcastle Precast, Inc., and the Hulberts. The Hulberts include Mr. William G. Hulbert III,
5 Mr. David F. Hulbert, Ms. Tana Martin Greenberg, the William G. Hulbert, Jr. and Claire
6 Mumford Hulbert Revocable Living Trust, and the William Hulbert Mill Company Limited
7 Partnership.

8 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
9 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
10 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

11 E. Upland Area: Refers to areas of the Site that fall outside the In-Water Area, as
12 generally depicted in Exhibit A, Figures 2 and 3.

13 F. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and
14 subtidal (areas always covered by water) parts of the Site associated with adjacent marine
15 waters, as generally depicted in Exhibit A, Figures 2 and 3.

16 G. North Marina Area: Refers to the Port-owned property being redeveloped into a
17 mixed residential/commercial use development. The Site is located within the northeastern
18 end of the North Marina Area, as generally depicted in Exhibit A, Figure 2

19 **V. FINDINGS OF FACTS**

20 Ecology makes the following findings of fact without any express or implied
21 admissions of such facts by the PLPs.

22 A. The Site is generally located between 11th and 13th Streets off West Marine
23 View Drive, Everett, Snohomish County, Washington (located within the northeastern portion
24 of the North Marina Redevelopment). The Site location is depicted in Exhibit A, Figure 1.
25 The facility is depicted in Exhibit A, Figures 2 and 3. Exhibit A also contains a legal
26 description of the property (located after Figure 4 of Exhibit A). The Site is listed on the

1 Department of Ecology's Hazardous Sites List as "North Marina Ameron/Hulbert" with the
2 Facility Site ID No. 68853261.

3 B. The Port is the owner and an operator at the Site, and has owned the Site
4 continuously since 1991. Ameron currently operates on a portion of the Site. Oldcastle is a
5 prior operator at the Site. Prior to the Port's ownership, a majority of the parcels making up
6 the Site were owned by the William Hulbert Mill Company, related Hulbert family business
7 entities, and individual Hulbert family members.

8 C. The Site has been used for commercial and industrial purposes (shingle/saw
9 mills, marine support services, etc.) since at least the early 1900s. The first milling operations
10 on the Site appear to have started when Fred K. Baker first purchased a portion of the Site in
11 1913. The William Hulbert Mill began operations at the Site in the early 1920s, was partly
12 destroyed in a fire in 1956, and ended operations around 1960. The William Hulbert Mill was
13 partly destroyed in a fire in 1956. It is noted that fires on industrial properties have a high
14 potential to release various hazardous substances such as polycyclic aromatic hydrocarbons
15 (PAHs). Following cessation of mill operations, the Hulberts leased their 35-acre property to
16 various industrial entities until they sold it to the Port in March of 1991. The Port also leased
17 the Site to a variety of business ventures including marine support services and light industrial
18 manufacturing. A large portion of the Site has been used for pole and piling manufacturing
19 since 1972. Centrecon—which was purchased by Utility Vault Company (UVC) in 1978—
20 operated in the same general area as the current Ameron leasehold from 1972 until 1988.
21 Primary operations associated with Centrecon/UVC included the manufacturing of concrete
22 poles and pilings. Oldcastle Precast, Inc. acquired UVC in 1981. In 1988, Ameron entered
23 into an asset purchase agreement with UVC, whereby it purchased substantially all of the
24 assets, properties, and business of UVC's Centrecon division and entered into a sublease
25 agreement at the Site with UVC. Like Centrecon/UVC, primary operations associated with
26 Ameron also included concrete pole and piling manufacturing Ameron continues to operate at

1 the Site under a lease agreement with the Port. Ameron's leased area is generally shown in
2 Exhibit A, Figure 2. Following the interim cleanup action in 2007, the Port redeveloped a
3 majority of the Site located outside of the Ameron leasehold. These improvements include
4 construction of a boatyard, the Waterfront Place multi-use building, a marina facility known as
5 the North Marina, a commercial building operated by Bayside Marine, a building housing Port
6 Marina Operations, a boat-wash facility, a shoreline access public trail, roads, parking lots, and
7 other related infrastructure.

8 D. Several environmental investigations have been conducted at the Site since the
9 late 1980s. These investigations, which are summarized in the Interim Action Report for the
10 Site, identified petroleum and metals in soil and groundwater, among other contamination.

11 E. Because of its large size (approximately 65 acres designated as upland) the
12 North Marina Area (the area addressed by the Port's currently planned Waterfront Place
13 redevelopment) was divided into 13 areas (A through M) for investigation and data
14 management purposes.

15 F. In the late 1990s the Port decided to redevelop the North Marina area and,
16 consequently, between 2001 and 2007 the Port undertook several environmental investigations
17 to determine the nature and extent of sediment, soil and groundwater contamination at the Site.
18 These investigations, including the removal of soil contamination, are summarized in the
19 April 7, 2010 North Marina Ameron/Hulbert Site Interim Action Report prepared by Landau
20 Associates for the Port, and were integrated in the remedial investigation/feasibility study
21 (RI/FS) that was subsequently conducted at the Site.

22 G. The Port has conducted three interim actions at the Site between 1991 and 2007,
23 which included the investigation of soil and groundwater contamination at the Site. The
24 interim actions also included excavation and off-site disposal of metals (i.e., arsenic, copper,
25 lead), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and/or petroleum hydrocarbon-
26 impacted soil, and the collection and analysis of compliance monitoring samples to verify that

1 soil interim action cleanup levels, based in part on the protection of groundwater, were
2 achieved. A total of 33,000 tons (about 22,000 yd³) of contaminated soil was removed from
3 the Site during the interim actions. The interim actions and the investigations described in
4 paragraph F of Section V (Findings of Fact) were conducted under Ecology's Voluntary
5 Cleanup Program, and are described in Exhibit B. Investigation of groundwater quality at the
6 Site consisted, in part, of laboratory analysis of groundwater samples collected from
7 monitoring wells and soil boring locations. Groundwater samples were selectively analyzed
8 for volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), including
9 carcinogenic polycyclic aromatic hydrocarbons (cPAHs), metals, and petroleum hydrocarbons.

10 H. On June 3, 2009, the Port, Ameron, the Hulberts, and Ecology entered into
11 Agreed Order DE 5271, which required the PLPs to perform a RI/FS and produce a draft
12 Cleanup Action Plan (DCAP) for the Site.

13 I. The RI/FS documented the nature and extent of hazardous substances in various
14 media including soil and groundwater. Analytical results of chemicals measured in sediment
15 samples collected as part of the RI/FS indicated acceptable concentrations based on
16 comparison to Ecology's Sediment Management Standards (SMS). Based upon the results of
17 the RI, the FS evaluated the cleanup action alternatives for the Site against the MTCA
18 requirements for soil and groundwater, and identified a preferred cleanup action alternative for
19 each media. Compounds identified in the RI/FS investigation as exceeding published MTCA
20 cleanup levels in soil and groundwater include:

- 21 • **Soil** – Metals, polycyclic aromatic hydrocarbons (PAHs), and petroleum
22 hydrocarbons.
- 23 • **Groundwater** – Metals, petroleum hydrocarbons, 1,1-dichloroethylene (1,1-DCE)
24 and bis(2-ethylhexyl) phthalate (BEHP). For 1-1-DCE and dissolved copper, the
25 groundwater exceedances occurred in the first round of groundwater sampling, and
26 were not repeated in subsequent rounds.

1 J. In 2011, an emergency action cleanup was conducted in the area of the former
2 Collins Building to address petroleum hydrocarbon contamination in shallow soil in two areas
3 (East Area and West Area) within the Port's Craftsman District boatyard expansion area.
4 Approximately 79 cubic yards of petroleum contaminated soil were removed from the two
5 areas and transported off-site for treatment. This emergency action is further described in
6 Exhibit B.

7 K. In 2013, an emergency action was conducted that included the cleanout of
8 accumulated solids in the existing main trunk line located along the north Site boundary, and
9 the replacement of a portion of the existing stormwater trunk line. The trunk line discharges
10 directly to marine surface water in the Port's 12th Street Marina (a.k.a., 12th Street Yacht
11 Basin) and contained a large accumulation of solids with elevated concentrations of a number
12 of hazardous substances including heavy metals, semivolatile organic compounds (SVOCs),
13 polychlorinated biphenyls (PCBs), petroleum hydrocarbons, and concentrations of dioxins/
14 furans that would be considered a threat to human health or ecological receptors if discharged
15 to marine sediment. Approximately 13 tons of accumulated solids were removed from the
16 trunk line. This emergency action is further described in Exhibit B.

17 L. In 2014, an emergency action was conducted that included the excavation of
18 contaminated soils and the replacement of a storm drain system that ran through cleanup area
19 G-1b, and excavation of contaminated soils within cleanup area G-3. Both cleanup areas were
20 contaminated with sandblast grit and/or cement slurry residue containing heavy metals. A total
21 of approximately 3,178 tons of contaminated or potentially contaminated soil and storm drain
22 pipe were removed. This emergency action is further described in Exhibit B.

23 VI. WORK TO BE PERFORMED

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

1 A. Based on the information in the RI/FS report, a DCAP was prepared. The PLPs
2 shall perform all tasks set forth in the final CAP (attached in Exhibit B) and implement the
3 CAP in accordance with the CAP's schedule. As documented in the CAP, the cleanup action
4 to be implemented at the Site includes the focused remedial excavation and off-site disposal of
5 contaminated soil associated with hot spot areas G-1b, G-2, and G-3. The remedial excavation
6 of Areas G-1b and G-3 has been addressed as part of an emergency action as discussed in
7 paragraph L of Section V (Findings of Fact). Containment (i.e., capping) along with
8 institutional controls will be applied to remaining areas of the Site where soil contamination
9 remains. To address groundwater contamination, the cleanup alternative will consist of
10 removal of contaminated soil followed by long-term groundwater compliance monitoring.
11 Institutional controls will be applied to the Site to prevent exposure with contaminated shallow
12 groundwater.

13 B. The PLPs agree not to perform any remedial actions outside the scope of this
14 Decree unless the Parties agree to modify the CAP's Schedule to cover these actions. All work
15 conducted by the PLPs under this Decree shall be done in accordance with WAC 173-340
16 unless otherwise provided herein.

17 C. All plans or other deliverables submitted by the PLPs for Ecology's review and
18 approval under the CAP and its Schedule shall, upon Ecology's approval, become integral and
19 enforceable parts of this Decree.

20 **VII. DESIGNATED PROJECT COORDINATORS**

21 The project coordinator for Ecology is:

22 Andy Kallus
23 Toxics Cleanup Program
24 PO Box 47600, Olympia, WA 98504
25 Phone: (360) 407-7259
26 E-Mail: akal461@ecy.wa.gov

1 The project coordinator for the PLPs is:

2 Erik Gerking
3 Port of Everett
4 PO Box 538, Everett, WA 98206
5 Phone: (425) 259-3164
6 E-mail: erikg@portofeverett.com

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

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

17 **VIII. PERFORMANCE**

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

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

25 All construction work performed pursuant to this Decree shall be under the direct
26 supervision of a professional engineer or a qualified technician under the direct supervision of

1 a professional engineer. The professional engineer must be registered by the State of
2 Washington, except as otherwise provided for by RCW 18.43.130.

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

6 The PLPs shall notify Ecology in writing of the identity of any engineer(s) and
7 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
8 of this Decree, in advance of their involvement at the Site.

9 **IX. ACCESS**

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

1 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

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

8 If requested by Ecology, the PLPs shall allow Ecology and/or its authorized
9 representative to take split or duplicate samples of any samples collected by the PLPs pursuant
10 to the implementation of this Decree. The PLPs shall notify Ecology seven (7) days in
11 advance of any sample collection or work activity at the Site. Ecology shall, upon request,
12 allow the PLPs and/or its authorized representative to take split or duplicate samples of any
13 samples collected by Ecology pursuant to the implementation of this Decree, provided that
14 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights
15 under Section IX (Access), Ecology shall notify the PLPs prior to any sample collection
16 activity unless an emergency prevents such notice.

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

20 **XI. PROGRESS REPORTS**

21 The PLPs shall submit to Ecology written monthly Progress Reports that describe the
22 actions taken during the previous month to implement the requirements of this Decree. The
23 Progress Reports shall include the following:

- 24 A. A list of on-site activities that have taken place during the month;
- 25 B. Detailed description of any deviations from required tasks not otherwise
26 documented in project plans or amendment requests;

1 C. Description of all deviations from the Cleanup Action Plan and Schedule
2 (Exhibit B) during the current month and any planned deviations in the upcoming month;

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

5 E. All raw data (including laboratory analyses) received by the PLPs during the
6 past month and an identification of the source of the sample; and

7 F. A list of deliverables for the upcoming month if different from the schedule.

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

12 XII. RETENTION OF RECORDS

13 During the pendency of this Decree, and for ten (10) years from the date this Decree is
14 no longer in effect as provided in Section XXVIII (Duration of Decree), the PLPs shall
15 preserve all records, reports, documents, and underlying data in its possession relevant to the
16 implementation of this Decree and shall insert a similar record retention requirement into all
17 contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall
18 make all records available to Ecology and allow access for review within a reasonable time.

19 Nothing in this Decree is intended by the PLPs to waive any right it may have under
20 applicable law to limit disclosure of documents protected by the attorney work-product
21 privilege and/or the attorney-client privilege. If a PLP withholds any requested records based
22 on an assertion of privilege, that PLP shall provide Ecology with a privilege log specifying the
23 records withheld and the applicable privilege. No Site-related data collected pursuant to this
24 Decree shall be considered privileged.

1 dispute; Ecology's position with regards to the dispute; and the extent of resolution
2 reached by informal discussion.

3 3. The PLP(s) may then request regional management review of the
4 dispute. This request ("Formal Dispute Notice") must be submitted in writing to the
5 Land and Aquatic Lands Cleanup Section Manager within seven (7) calendar days of
6 receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall
7 include a written statement of dispute setting forth: the nature of the dispute; the
8 disputing Party's position with respect to the dispute; and the information relied upon
9 to support its position.

10 4. The Section Manager shall conduct a review of the dispute and shall
11 issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30)
12 calendar days of receipt of the Formal Dispute Notice.

13 5. If a PLP(s) finds Ecology's Regional Section Manager's decision
14 unacceptable, the PLP(s) may then request final management review of the decision.
15 This request ("Final Review Request") shall be submitted in writing to the Toxics
16 Cleanup Program Manager within seven (7) calendar days of the PLP's receipt of the
17 Decision on Dispute. The Final Review Request shall include a written statement of
18 dispute setting forth: the nature of the dispute; the disputing Party's position with
19 respect to the dispute; and the information relied upon to support its position.

20 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
21 the dispute and shall issue a written decision regarding the dispute ("Final Decision on
22 Dispute") within thirty (30) calendar days of receipt of the Final Review Request. The
23 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
24 disputed matter.

25 B. If Ecology's Final Decision on Dispute is unacceptable to the PLP(s), the
26 PLP(s) has the right to submit the dispute to the Court for resolution. The Parties agree that

1 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
2 arising under this Decree. In the event the PLP(s) presents an issue to the Court for review, the
3 Court shall review the action or decision of Ecology on the basis of whether such action or
4 decision was arbitrary and capricious and render a decision based on such standard of review.

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

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

12 E. In case of a dispute, failure to either proceed with the work required by this
13 Decree or timely invoke dispute resolution may result in Ecology's determination that
14 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
15 undertaking the work under Section XXV (Implementation of Remedial Action).

16 **XV. AMENDMENT OF DECREE**

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

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

25 The PLP(s) shall submit a written request for amendment to Ecology for approval.
26 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the

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

6 **XVI. EXTENSION OF SCHEDULE**

7 A. An extension of schedule shall be granted only when a request for an extension
8 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
9 deadline for which the extension is requested, and good cause exists for granting the extension.

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

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

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

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

1 ceasing such activities. Upon Ecology's direction, that PLP shall provide Ecology with
2 documentation of the basis for the determination or cessation of such activities. If Ecology
3 disagrees with a PLP's cessation of activities, it may direct that PLP to resume such activities.

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

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

12 **XVIII. COVENANT NOT TO SUE**

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

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

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

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

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

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

8 1. Upon a PLP's failure to meet the requirements of this Decree;

9 2. Failure of the remedial action to meet the cleanup standards identified in
10 the Cleanup Action Plan (CAP) (Exhibit B);

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

14 4. Upon the availability of new information regarding factors previously
15 unknown to Ecology, including the nature or quantity of hazardous substances at the
16 Site, and Ecology's determination, in light of this information, that further remedial
17 action is necessary at the Site to protect human health or the environment; or

18 5. Upon Ecology's determination that additional remedial actions are
19 necessary to achieve cleanup standards within the reasonable restoration time frame set
20 forth in the CAP.

21 C. Except in the case of an emergency, prior to instituting legal or administrative
22 action against any PLP pursuant to this section, Ecology shall provide the PLP with fifteen (15)
23 calendar days' notice of such action.
24
25
26

1 section, or if applicable, ninety (90) days after the close of the Port's fiscal year if the financial
2 test or corporate guarantee is used.

3 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
4 approval of a modification or revision to the CAP that result in increases to the cost or
5 expected duration of remedial actions. Any adjustments for inflation since the most recent
6 preceding anniversary date shall be made concurrent with adjustments for changes in cost
7 estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the
8 anniversary date established under this section to become the date of issuance of such revised
9 or modified CAP.

10 **XXII. INDEMNIFICATION**

11 Each PLP agrees to indemnify and save and hold the State of Washington, its
12 employees, and agents harmless from any and all claims or causes of action (1) for death or
13 injuries to persons, or (2) for loss or damage to property to the extent arising from or on
14 account of acts or omissions of a PLP, its officers, employees, agents, or contractors in
15 entering into and implementing this Decree. However, the PLPs shall not indemnify the State
16 of Washington nor save nor hold its employees and agents harmless from any claims or causes
17 of action to the extent arising out of the negligent acts or omissions of the State of Washington,
18 or the employees or agents of the State, in entering into or implementing this Decree.

19 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

20 A. All actions carried out by the PLPs pursuant to this Decree shall be done in
21 accordance with all applicable federal, state, and local requirements, including requirements to
22 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
23 federal, state, or local requirements that the agency has determined are applicable and that are
24 known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

25 B. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural
26 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring

1 or authorizing local government permits or approvals. However, the PLPs shall comply with
2 the substantive requirements of such permits or approvals. The exempt permits or approvals
3 and the applicable substantive requirements of those permits or approvals, as they are known at
4 the time of entry of this Decree, have been identified in the CAP (Exhibit B).

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

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

1 **XXIV. REMEDIAL ACTION COSTS**

2 The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
3 consistent with WAC 173-340-550(2). These costs shall include work performed both prior to
4 and subsequent to the entry of this Decree. Ecology's costs shall include costs of direct
5 activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLPs
6 shall pay the required amount within thirty (30) days of receiving from Ecology an itemized
7 statement of costs that includes a summary of costs incurred, an identification of involved staff,
8 and the amount of time spent by involved staff members on the project. A general statement of
9 work performed will be provided upon request. Itemized statements shall be prepared
10 quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90)
11 days of receipt of the itemized statement of costs will result in interest charges at the rate of
12 twelve percent (12%) per annum, compounded monthly.

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

16 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

17 If Ecology determines that the PLPs have failed to make sufficient progress or failed to
18 implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs,
19 perform any or all portions of the remedial action or at Ecology's discretion allow the PLPs
20 opportunity to correct. The PLPs shall reimburse Ecology for the costs of doing such work in
21 accordance with Section XXIV (Remedial Action Costs).

22 Except where necessary to abate an emergency situation, the PLPs shall not perform
23 any remedial actions at the Site outside those remedial actions required by this Decree, unless
24 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
25 (Amendment of Decree).

1 **XXVI. PERIODIC REVIEW**

2 As remedial action, including groundwater monitoring, continues at the Site, the Parties
3 agree to review the progress of remedial action at the Site, and to review the data accumulated
4 as a result of monitoring the Site as often as is necessary and appropriate under the
5 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
6 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
7 action at the Site. Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to
8 require further remedial action at the Site under appropriate circumstances. This provision
9 shall remain in effect for the duration of this Decree.

10 **XXVII. PUBLIC PARTICIPATION**

11 A Public Participation Plan (Exhibit C) is required for this Site. Ecology shall review
12 any existing Public Participation Plan to determine its continued appropriateness and whether it
13 requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan
14 alone or in conjunction with the PLPs.

15 Ecology shall maintain the responsibility for public participation at the Site. However,
16 the PLPs shall cooperate with Ecology, and shall:

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

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

1 PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to its audience
2 that the press release, fact sheet, meeting, or other outreach effort was not sponsored or
3 endorsed by Ecology.

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

7 D. When requested by Ecology, arrange and/or continue information repositories at
8 the following locations:

- 9 1. Everett Public Library
10 2702 Hoyt Avenue
Everett, WA 98201
- 11 2. Department of Ecology
12 Toxics Cleanup Program
13 Headquarters Office
300 Desmond Drive SE
Olympia, WA 98504-7600

14 At a minimum, copies of all public notices, fact sheets, and documents relating to public
15 comment periods shall be promptly placed in these repositories. A copy of all documents
16 related to this Site shall be maintained in the repository at Ecology's Headquarters in Olympia,
17 Washington.

18 **XXVIII. DURATION OF DECREE**

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

24 **XXIX. CLAIMS AGAINST THE STATE**

25 The PLPs hereby agree that they will not seek to recover any costs accrued in
26 implementing the remedial action required by this Decree from the State of Washington or any

1 of its agencies; and further, that the PLPs will make no claim against the State Toxics Control
2 Account or any local Toxics Control Account for any costs incurred in implementing this
3 Decree. Except as provided above, however, the PLPs expressly reserves their right to seek to
4 recover any costs incurred in implementing this Decree from any other PLP. This section does
5 not limit or address funding that may be provided under WAC 173-322.

6 **XXX. EFFECTIVE DATE**

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

8 **XXXI. WITHDRAWAL OF CONSENT**

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

13
14 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 
16 JAMES PENDOWSKI
17 Program Manager
18 Toxics Cleanup Program
(360) 407-7177

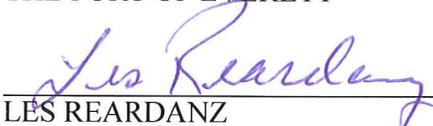
19 Date: 12/23/14

ROBERT W. FERGUSON
Attorney General

20 
21 JOHN A. LEVEL, WSBA # 20439
22 Assistant Attorney General
23 (360) 586-6753

24 Date: 12/24/14

25 THE PORT OF EVERETT

26 
LES REARDANZ
CEO
(425) 259-3164

Date: 12/17/14

AMERON INTERNATIONAL

JEFFREY D. MANN
Global HSE Officer – Facilities
(713) 375-3732

Date: _____

1 of its agencies; and further, that the PLPs will make no claim against the State Toxics Control
2 Account or any local Toxics Control Account for any costs incurred in implementing this
3 Decree. Except as provided above, however, the PLPs expressly reserves their right to seek to
4 recover any costs incurred in implementing this Decree from any other PLP. This section does
5 not limit or address funding that may be provided under WAC 173-322.

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10 at the option of any party and the accompanying Complaint shall be dismissed without costs
11 and without prejudice. In such an event, no party shall be bound by the requirements of this
12 Decree.

13 STATE OF WASHINGTON
14 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

15
16 _____
17 JAMES PENDOWSKI
18 Program Manager
19 Toxics Cleanup Program
20 (360) 407-7177

JOHN A. LEVEL, WSBA # 20439
Assistant Attorney General
(360) 586-6753

21 Date: _____

Date: _____

22 THE PORT OF EVERETT

AMERON INTERNATIONAL

23 _____
24 LES REARDANZ
25 CEO
26 (425) 259-3164



JEFFREY D. MANN
Global HSE Officer – Facilities
(413) 375-3732

27 Date: _____

Date: 11/26/14

1 DAVID F. HULBERT

TANA MARTIN GREENBERG

2
3 DAVID F. HULBERT

TANA MARTIN GREENBERG

4 Date: _____

Date: _____

5
6 WILLIAM G. HULBERT III

THE WILLIAM HULBERT MILL
COMPANY LIMITED PARTNERSHIP

7 



8 WILLIAM G. HULBERT III

WILLIAM G. HULBERT III

9
10 Date: 12-3-2014

Date: 12-3-2014

11 THE WILLIAM G HULBERT, JR AND
12 CLARE MUMFORD HULBERT
13 REVOCABLE LIVING TRUST

OLDCASTLE PRECAST, INC.

14 

15 WILLIAM G. HULBERT III, TRUSTEE

16 ROBERT D. QUINN
17 Chief Administrative Officer
18 (770) 677-2320

19 Date: 12-3-2014

Date: _____

20 TANA MARTIN GREENBERG, TRUSTEE

21 Date: _____

22 ENTERED this _____ day of _____ 2014.

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25 JUDGE
26 Snohomish County Superior Court

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DAVID F. HULBERT

TANA MARTIN GREENBERG

Tana Martin Greenberg
TANA MARTIN GREENBERG

DAVID F. HULBERT

TANA MARTIN GREENBERG

Date: _____

Date: 12/2/2014

WILLIAM G. HULBERT III

THE WILLIAM HULBERT MILL
COMPANY LIMITED PARTNERSHIP

WILLIAM G. HULBERT III

WILLIAM G. HULBERT III

Date: _____

Date: _____

THE WILLIAM G HULBERT, JR AND
CLARE MUMFORD HULBERT
REVOCABLE LIVING TRUST

OLDCASTLE PRECAST, INC.

WILLIAM G. HULBERT III, TRUSTEE

ROBERT D. QUINN
Chief Administrative Officer
(770) 677-2320

Date: _____

Date: _____

Tana Martin Greenberg
TANA MARTIN GREENBERG, TRUSTEE

Date: 12/2/2014

ENTERED this _____ day of _____ 2014.

JUDGE
Snohomish County Superior Court

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DAVID F. HULBERT

DAVID F. HULBERT

Date: 12/2/14

WILLIAM G. HULBERT III

WILLIAM G. HULBERT III

Date: _____

THE WILLIAM G HULBERT, JR AND
CLARE MUMFORD HULBERT
REVOCABLE LIVING TRUST

WILLIAM G. HULBERT III, TRUSTEE

Date: _____

TANA MARTIN GREENBERG, TRUSTEE

Date: _____

ENTERED this _____ day of _____ 2014.

TANA MARTIN GREENBERG

TANA MARTIN GREENBERG

Date: _____

THE WILLIAM HULBERT MILL
COMPANY LIMITED PARTNERSHIP

WILLIAM G. HULBERT III

Date: _____

OLDCASTLE PRECAST, INC.

ROBERT D. QUINN
Chief Administrative Officer
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Date: _____

JUDGE
Snohomish County Superior Court

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DAVID F. HULBERT

TANA MARTIN GREENBERG

DAVID F. HULBERT

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Date: _____

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WILLIAM G. HULBERT III

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COMPANY LIMITED PARTNERSHIP

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Date: _____

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THE WILLIAM G HULBERT, JR AND
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REVOCABLE LIVING TRUST

OLDCASTLE PRECAST, INC.

WILLIAM G. HULBERT III, TRUSTEE



ROBERT D. QUINN
Chief Administrative Officer
(770) 677-2320

Date: _____

Date: 12-12-2014

TANA MARTIN GREENBERG, TRUSTEE

Date: _____

ENTERED this _____ day of _____ 2014.

JUDGE
Snohomish County Superior Court

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DAVID F. HULBERT

TANA MARTIN GREENBERG

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Date: _____

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WILLIAM G. HULBERT III

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COMPANY LIMITED PARTNERSHIP

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REVOCABLE LIVING TRUST

OLDCASTLE PRECAST, INC.

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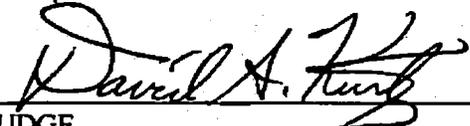
Date: _____

Date: _____

TANA MARTIN GREENBERG, TRUSTEE

Date: _____

ENTERED this 16 day of January 2015



JUDGE
Snohomish County Superior Court