

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

PACCAR Inc, a Delaware corporation

and

Merrill Creek Holdings, LLC, a  
Washington limited liability company

AGREED ORDER NO. 6069

FIRST AMENDMENT TO AGREED  
ORDER TO SUBSTITUTE  
CENTERPOINT 8801  
MARGINAL LLC FOR MERRILL  
CREEK HOLDINGS, LLC

This First Amendment to Agreed Order No. 6069 ("First Amendment") is issued pursuant to the authority of Chapter 70.105D RCW, the Model Toxics Control Act ("MTCA").

**RECITALS**

A. Agreed Order No. 6069 was entered into by and between the Washington State Department of Ecology ("Ecology"), PACCAR Inc. ("PACCAR") and Merrill Creek Holdings, LLC ("Merrill Creek") effective as of approximately November 14, 2008 (the "Agreed Order"). Ecology, PACCAR and Merrill Creek shall be referred to collectively as the "Parties" to the Agreed Order.

B. The Agreed Order obligates PACCAR and Merrill Creek to conduct certain remedial actions at the Upland Area of the 8801 Site (as defined in the Agreed Order), which consists of the real property located generally at 8801 Marginal Way South, Tukwila, Washington (the "8801 Property"). A separate Agreed Order (No. DE 3599), signed by PACCAR and Ecology only, applies to the Sediment Area of the 8801 Site (as defined In the Agreed Order).

C. Centerpoint 8801 Marginal LLC, a Delaware limited liability company, ("CPPT8801"), has purchased Merrill Creek's interest in the 8801 Property and desires to: (1) substitute itself for Merrill Creek as a party to the Agreed Order; (2) assume all of Merrill

1 Creek's rights and obligations under the Agreed Order whether arising prior to or after the  
2 effective date of this First Amendment; (3) be bound by all of the terms and conditions of the  
3 Agreed Order as though an original party to the same; and (4) have Merrill Creek removed as a  
4 party to the Agreed Order.

5 D. PACCAR and Merrill Creek have requested and agreed to the substitution of  
6 CPPT8801 for Merrill Creek and the removal of Merrill Creek from the Agreed Order.

7 E. Ecology has concluded that substitution of CPPT8801 for Merrill Creek on the  
8 Agreed Order and the removal of Merrill Creek from the Agreed Order is in the public interest.

#### 9 AMENDMENT

10 I. Based on the foregoing, the Parties stipulate and agree that the Agreed Order is  
11 amended as follows:

12 a. All references to Merrill Creek in the Agreed Order (other than those references  
13 in Sections V.B. and VI.E) are amended to substitute CPPT8801 for Merrill  
14 Creek.

15 b. The second to last sentence of Section V.B. is amended to read as follows: "In  
16 October 2004, PACCAR sold the Upland Area to Merrill Creek."

17 c. The following sentences are added to the end of Section V.B.: "Centerpoint  
18 8801 Marginal LLC ("CPPT8801") acquired title to the Upland Area from  
19 Merrill Creek effective November 26, 2014. CPPT8801 is the current owner of  
20 the Upland Area."

21 d. The following sentences are added to the end of Section VI.E: "Based upon  
22 credible evidence that CPPT8801 is the new owner of the Upland Area as of  
23 November 26, 2014 and pursuant to RCW 70.105D.040, RCW  
24 70.105D.020(22), and WAC 173-240-500, Ecology issued a letter to CPPT8801  
25 dated April 6, 2015, stating that Ecology was proposing to find CPPT8801  
26 potentially liable for releases of hazardous substances at the Site because

1 CPPT8801 acquired the Upland Area on November 26 2014. CPPT8801  
2 waived its right to a notice and comment period and accepted PLP status on  
3 April 21, 2015, stating that by doing so it made no admission of liability.  
4 Ecology thereafter determined that credible evidence supports a finding of  
5 potential liability based upon CPPT8801's status as the new owner of the  
6 Upland Area as of November 26, 2014 and issued a determination that  
7 CPPT8801 was a PLP under 70.105D.040 and notified CPPT8801 of this  
8 determination by letter dated May 24, 2016."

- 9 e. Section VIII.D. (Designated Project Coordinators) is amended to delete the  
10 identified project coordinator for Merrill Creek and identify the following  
11 individual as the project coordinator for CPPT8801:

12 Rick Matthews  
13 Centerpoint 8801 Marginal LLC c/o  
14 CenterPoint Properties Trust  
15 1808 Swift Drive  
16 Oak Brook, IL 60523  
17 Phone: (630) 586-8000  
18 rmatthews@centerpoint.com

- 19 2. This First Amendment is not intended to, and does not, amend, alter or change  
20 PACCAR's obligations under the Agreed Order.  
21 3. Except as set forth above, all other provisions of the Agreed Order remain in full force  
22 and effect, unchanged by this First Amendment.  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON, <sup>RW</sup>  
~~ATTORNEY GENERAL~~

By: [Signature]  
Name: ROBERT W. WARREN  
Title: REGIONAL SECURITY MANAGER  
Dated: 8-1-17

\_\_\_\_\_  
\_\_\_\_\_, WSBA No. \_\_\_\_\_  
~~Assistant Attorney General~~  
Dated: \_\_\_\_\_

PACCAR INC

MERRILL CREEK HOLDINGS LLC,  
a Washington limited liability company  
By: Washington Real Estate Holdings, LLC,  
a Washington limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

CENTERPOINT 8801 MARGINAL LLC  
By: CenterPoint Properties Trust, managing member

By: [Signature]  
Name: Rick A. Mathews  
Title: Vice President, Legal  
Dated: 3.16.17

4811-2871-6320, v. 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON, *RW*  
ATTORNEY GENERAL

By: *[Signature]*  
Name: ROBERT W. WARREN  
Title: REGIONAL SECTION MANAGER  
Dated: 8-1-17

\_\_\_\_\_, WSBA No. \_\_\_\_\_  
Assistant Attorney General  
Dated: \_\_\_\_\_

PACCAR INC  
By: *[Signature]*  
Name: R.B. Reifsnyder  
Title: Exec Director of Property & Env  
Dated: 7-28-16

MERRILL CREEK HOLDINGS LLC,  
a Washington limited liability company  
By: Washington Real Estate Holdings, LLC,  
a Washington limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

CENTERPOINT 8801 MARGINAL LLC  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

4811-2871-6320, v. 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By: *Warren*  
Name: ROBERT W. WARREN  
Title: REGIONAL SECTION MANAGER  
Dated: 8-1-17

~~ROBERT W. FERGUSON;~~ <sup>RW</sup>  
~~ATTORNEY GENERAL~~  
  
\_\_\_\_\_, WSBA No. \_\_\_\_\_  
~~Assistant Attorney General~~  
~~Dated: \_\_\_\_\_~~

PACCAR INC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

MERRILL CREEK HOLDINGS LLC,  
a Washington limited liability company  
By: Washington Real Estate Holdings, LLC,  
a Washington limited liability company,  
its managing member  
*Warner*  
By: \_\_\_\_\_  
Name: Mark F Barberi  
Title: EVP  
Dated: 11/21/16

CENTERPOINT 8801 MARGINAL LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

4811-2871-6320, v. 4