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FILED
KING COUNTY, WASHINGTON
JUL 24 2012
DEPARTMENT OF
JUDICIAL ADMINISTRATION

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

NO.

Plaintiff,

CONSENT DECREE

v.

SEA-TAC INVESTMENTS LLC, a
Washington limited liability company,
ANSCO PROPERTIES, LLC, a
Washington limited liability company, and
SCARSELLA BROS. INC., a Washington
Corporation,

Defendants.

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Sea-Tac Investments LLC, a Washington limited liability company, Scarsella Bros., Inc., a Washington corporation, and ANSCO Properties, LLC, a Washington limited liability company (Defendants), under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendants to conduct a cleanup of the Site (as defined herein) in accordance with the Cleanup Action Plan, attached and incorporated in this Decree as Exhibit B.

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

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

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

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

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Defendants shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

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

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

4 **II. JURISDICTION**

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

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

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

14 D. Ecology has given notice to Defendants of Ecology's determination that
15 Defendants are each a PLP for the Site, as required by RCW 70.105D.020(21) and
16 WAC 173-340-500.

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

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

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

23 H. Defendants each have agreed to undertake the actions specified in this Decree
24 and consent to the entry of this Decree under MTCA.

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site is referred to as the SeaTac Development Site and is generally located at 16025 International Boulevard, SeaTac, Washington. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and Sea-Tac Investments LLC, a Washington limited liability company, Scarsella Bros., Inc., a Washington corporation, and ANSCO Properties, LLC, a Washington limited liability company.

C. Defendants: Refers to Sea-Tac Investments LLC, Scarsella Bros., Inc., and ANSCO Properties, LLC.

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

1 E. Cleanup Action Plan: Refers to the final Cleanup Action Plan issued by
 2 Ecology for the Site and all attachments to that Cleanup Action Plan, each of which is an
 3 integral and enforceable part of the Cleanup Action Plan. The Cleanup Action Plan is attached
 4 to this Decree as Exhibit B.

5 V. FINDINGS OF FACTS

6 Ecology makes the following findings of fact without any express or implied
 7 admissions of such facts by Defendants.

8 A. The SeaTac Development Site is located generally at 16025 International
 9 Boulevard, SeaTac, Washington and is defined by the extent of contamination caused by the
 10 release of hazardous substances at the Site. The presently known extent of contamination
 11 (Site) includes properties owned by ANSCO Properties, LLC, property to the north thereof,
 12 Washington Memorial Park Cemetery, and also the right of way (South 160th Street).

13 B. ANSCO Properties, LLC (ANSKO), a Washington limited liability company is
 14 a current owner of real property at the Site. At this time the primary source of the
 15 contamination appears to be located on property owned by ANSCO. Sea-Tac Investments
 16 LLC (SeaTac Investments) is a lessee of this property at the Site where it operates a short and
 17 medium term valet parking business (serving primarily airline passengers using Seattle-
 18 Tacoma International Airport) known as MasterPark Lot C. Previously, the ANSCO property
 19 had been a base for construction and heavy equipment operations by Scarsella Bros. Inc.
 20 (Scarsella) and other companies. Small industrial and manufacturing activities and some
 21 residential and commercial uses also took place on the property. At all relevant times that
 22 SeaTac Investments has operated its valet parking business, the property (MasterPark Lot C)
 23 has been covered by a paved asphalt cap. The area of the Site and the property owned by
 24 ANSCO and leased by SeaTac Investments is shown on the Site Diagram (Exhibit A). On or
 25 about May 16, 2003 a Declaration of Restrictive Covenant was recorded with respect to the
 26 property owned by ANSCO and operated as MasterPark Lot C.

1 C. From approximately 1946 to 1985, the ANSCO property served as the
2 former location of, among other things, a construction company's heavy equipment yard
3 and operations base, and of various small industrial and manufacturing businesses. Since
4 approximately 2001, MasterPark Lot C has been an asphalt capped parking lot with a single
5 administrative building to support valet parking operations. Since 2001, SeaTac Investments
6 has operated its valet parking business at the Site on the capped asphalt surface and has not
7 provided fueling or petroleum waste disposal services.

8 D. During 2001 and 2002, soil and groundwater sampling, conducted on behalf of
9 SeaTac Investments indicated releases or threatened releases of hazardous substances at
10 MasterPark Lot C and its vicinity in soil and groundwater. The sampling was conducted in
11 conjunction with the closure of several underground fuel storage tanks and other remedial
12 actions at the property. In particular, the sampling indicated high levels of groundwater
13 contamination from gasoline in the regional unconfined aquifer QVA (Vashon Advance
14 Outwash), which extended outside property boundaries.

15 E. On September 17, 2003, Ecology issued SeaTac Investments an Interim
16 No Further Action determination pertaining to total petroleum hydrocarbons as diesel and
17 gasoline and to benzene, toluene, ethyl benzene, and xylene contamination in soil, but not in
18 groundwater.

19 F. On January 6, 2006, the Washington State Department of Health, acting
20 pursuant to a cooperative agreement with the United States Department of Health and Human
21 Services and the Agency for Toxic Substances and Disease Registry (ATSDR) issued a Health
22 Consultation identifying potentially harmful human health effects resulting from possible
23 exposure to hazardous substances at the Site, particularly focusing on the groundwater
24 contamination in the QVA regional aquifer. The Health Consultation identified a general class
25 of historic activities at the Site that used or handled petroleum products or generated wastes
26

1 containing petroleum, but concluded that none of the environmental investigations done at or
2 near the "Master Park properties indicate they are the source of petroleum contamination
3 discovered in the regional aquifer." The Health Consultation concluded, however, that the Site
4 posed an "indeterminate public health hazard" because there was inadequate information to
5 determine whether the groundwater contaminant plume posed a health threat to nearby
6 drinking water wells or to indoor air.

7 G. Effective May 9, 2007, Ecology rescinded the Interim No Further Action
8 determination that it had previously issued on September 17, 2003, for the Site because of a
9 later decision by the Attorney General that media-specific No Further Action determinations
10 were not appropriate. Ecology issued an opinion that further remedial action was necessary at
11 the Site pursuant to the provisions of MTCA. In its May 9, 2007 Partial Sufficiency and
12 Further Action Determination, Ecology stated its opinion that further action was required at the
13 Site because quarterly groundwater monitoring results showed an ongoing groundwater impact
14 at the Site above applicable MTCA standards for hazardous substances of concern and that the
15 gasoline and related hazardous substance plumes at the Site required an active cleanup.
16 Ecology stated that quarterly groundwater monitoring would not be sufficient to mitigate the
17 groundwater contamination at the Site.

18 H. On March 25, 2008, after Sea-Tac Investments submitted an Independent
19 Remedial Action Report to Ecology, Ecology's Toxics Cleanup Program determined that the
20 independent remedial actions performed at the Site were not sufficient to meet the substantive
21 requirements of MTCA and its implementing regulations for characterizing and addressing the
22 contamination at the Site. Ecology issued an opinion that further remedial action was
23 necessary at the Site under MTCA. Ecology stated that the gasoline range petroleum
24 hydrocarbons in the northwest quadrant of the Site had not been fully characterized; that
25 remedial action previously performed was not protective of the QVA aquifer and that the soil
26

1 and groundwater impacts extended beyond the property boundary. In issuing this opinion,
 2 Ecology further stated, "therefore, the current Partially Sufficient Determination letter dated
 3 May 5, 2007 [sic] is no longer appropriate for this Site."

4 I. On-site sampling during 2008 by SeaTac Investments identified more precisely
 5 the source and extent of both soil and groundwater impacts from hazardous substances,
 6 primarily gasoline range petroleum hydrocarbons and associated constituents that appeared to
 7 impact the regional aquifer, as a result of historic releases at the Site.

8 J. In July 2009, Ecology and Defendants entered into Agreed Order DE 6844
 9 which required the Defendants to complete a remedial investigation, feasibility study, and draft
 10 cleanup action plan and the related documents supporting a cleanup action plan.

11 K. Defendants have completed all investigations and reports required under the
 12 Agreed Order. By letter dated November 7, 2011, Ecology determined that Agreed Order
 13 DE 6844 was complete. Ecology's decision was documented in a Notice of Completion of
 14 Agreed Order by letter to Defendants dated November 7, 2011. Ecology also issued a final
 15 Cleanup Action Plan based upon the draft Cleanup Action Plan submitted by Defendants and
 16 modified by Ecology following a public comment period and review by Ecology. The
 17 preferred cleanup alternative in the cleanup action plan is focused in-situ air sparging and soil
 18 vapor extraction with source area capping, institutional controls and monitored natural
 19 attenuation.

20 VI. WORK TO BE PERFORMED

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

24 A. Defendants shall conduct a final cleanup action at the Site by implementing and
 25 completing the cleanup action selected in the final Cleanup Action Plan, attached and
 26 incorporated in this Decree. Among other actions, the selected cleanup action includes focused

1 in-situ air sparging and soil vapor extraction with source area capping, institutional controls,
 2 and monitored natural attenuation. Defendants will implement and complete the selected
 3 cleanup action in accordance with the requirements of the Cleanup Action Plan and all other
 4 requirements of this Decree, and in accordance with the Cleanup Action Plan schedule
 5 (Cleanup Action Plan Attachment C) as modified herein. The Cleanup Action Plan schedule is
 6 modified as follows under this Decree: (1) the schedule shall commence with Task 25
 7 ("Prepare Draft EDR & Support Plans"); (2) the schedule shall proceed in accordance with the
 8 durations provided for each task (e.g., 60 days provided to complete Task 25), rather than
 9 based on calendar dates; (3) each task duration shall be triggered by completion of the
 10 preceding scheduled task; and (4) with respect to those tasks for which Ecology is responsible,
 11 the schedule durations are advisory only.

12 B. All plans or other deliverables submitted by Defendants for Ecology's review
 13 and approval under the Cleanup Action Plan shall, upon Ecology's approval, become integral
 14 and enforceable parts of this Decree. Defendants each agree not to perform any remedial
 15 actions outside the scope of this Decree unless the Parties agree to modify the Cleanup Action
 16 Plan to cover these actions. All work conducted by Defendants under this Decree shall be
 17 done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

18 C. Defendants shall submit a cleanup action report providing the information
 19 specified in WAC 173-340-400(6)(b) and (c), 120 days after the completion of Task 37 in the
 20 Cleanup Action Plan schedule. Laboratory data shall be included in the report and will be
 21 reviewed according to the quality assurance and quality control procedures outlined in the
 22 Cleanup Action Plan, Attachment E. The cleanup action report shall be submitted with
 23 graphical representations of the work performed. The report shall also provide documented
 24 evidence that institutional controls have been implemented.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Jerome Cruz
 4 Northwest Regional Office
 5 3190 160th Avenue SE
 Bellevue, WA 98008-5452
 (425) 649-7094

6 The project coordinators for Defendants are:

7 Doug Rigoni
 SeaTac Investment LLC
 8 2003 Western Avenue, Suite 500
 Seattle, WA 98121-2106
 9 (206) 826-2715

10 Mr. Kevin J. Collette
 ANSCO Properties, LLC
 11 Ryan Swanson & Cleavland
 1201 Third Avenue, Suite 3400
 12 Seattle, WA 98101-3268
 (206) 583-0359

13 Ms. Tamarah Knapp Hancock P.E.
 14 General Counsel
 Scarsella Bros., Inc.
 15 PO Box 68697
 16 Seattle, WA 98168-0697
 (253) 872-7173

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

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

VIII. PERFORMANCE

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

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

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

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

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

IX. ACCESS

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that Defendants either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or

1 other documentary type equipment to record work done pursuant to this Decree; and verifying
 2 the data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to
 3 secure access rights for those properties within the Site not owned or controlled by Defendants
 4 where remedial activities or investigations will be performed pursuant to this Decree. Ecology
 5 or any Ecology authorized representative shall give reasonable notice before entering any Site
 6 property owned or controlled by Defendants unless an emergency prevents such notice. All
 7 Parties who access the Site pursuant to this Section shall comply with any applicable health
 8 and safety plan(s). Ecology employees and their representatives shall not be required to sign
 9 any liability release or waiver as a condition of Site property access.

10 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

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

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

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

4 **XI. PROGRESS REPORTS**

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

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

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

23 **XII. RETENTION OF RECORDS**

24 During the pendency of this Decree, and for ten (10) years from the date this Decree is
 25 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants shall
 26 preserve all records, reports, documents, and underlying data in its possession relevant to the

1 implementation of this Decree and shall insert a similar record retention requirement into all
 2 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants
 3 shall make all records available to Ecology and allow access for review within a reasonable
 4 time.

5 **XIII. TRANSFER OF INTEREST IN PROPERTY**

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

10 Prior to Defendants' transfer of any interest in all or any portion of the Site, and during
 11 the effective period of this Decree, Defendants shall provide a copy of this Decree to any
 12 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
 13 least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said transfer.
 14 Upon transfer of any interest, Defendants shall restrict uses and activities to those consistent
 15 with this Consent Decree and notify all transferees of the restrictions on the use of the
 16 property.

17 **XIV. RESOLUTION OF DISPUTES**

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

22 1. Upon receipt of Ecology's project coordinator's written decision, or the
 23 itemized billing statement, Defendants have fourteen (14) days within which to notify
 24 Ecology's project coordinator in writing of its objection to the decision or itemized
 25 statement.
 26

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

4 3. Defendants may then request regional management review of the
5 decision. This request shall be submitted in writing to the Northwest Region Toxics
6 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's
7 project coordinator's written decision.

8 4. Ecology's Regional Section Manager shall conduct a review of the
9 dispute and shall endeavor to issue a written decision regarding the dispute within
10 thirty (30) days of Defendants' request for review.

11 5. If Defendants find Ecology's Regional Section Manager's decision
12 unacceptable, Defendants may then request final management review of the decision.
13 This request shall be submitted in writing to the Toxics Cleanup Program Manager
14 within seven (7) days of receipt of the Regional Section Manager's decision.

15 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
16 the dispute and shall endeavor to issue a written decision regarding the dispute within
17 thirty (30) days of Defendants' request for review of the Regional Section Manager's
18 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final
19 decision on the disputed matter.

20 B. If Ecology's final written decision is unacceptable to Defendants, Defendants
21 have the right to submit the dispute to the Court for resolution. The Parties agree that one
22 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
23 arising under this Decree. In the event Defendants present an issue to the Court for review, the
24 Court shall review the action or decision of Ecology on the basis of whether such action or
25 decision was arbitrary and capricious and render a decision based on such standard of review.
26

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

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

8 XV. AMENDMENT OF DECREE

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

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

17 Defendants shall submit a written request for amendment to Ecology for approval.
 18 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
 19 written request for amendment is received. If the amendment to the Decree is a substantial
 20 change, Ecology will provide public notice and opportunity for comment. Reasons for the
 21 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
 22 not agree to a proposed amendment, the disagreement may be addressed through the dispute
 23 resolution procedures described in Section XIV (Resolution of Disputes).

XVI. EXTENSION OF SCHEDULE

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

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

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

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

However, neither increased costs of performance of the terms of this Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Defendants.

C. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Defendants written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology or, if required,

1 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
 2 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
 3 granted.

4 D. An extension shall only be granted for such period of time as Ecology
 5 determines is reasonable under the circumstances. Ecology may grant schedule extensions
 6 exceeding ninety (90) days only as a result of:

7 1. Delays in the issuance of a necessary permit which was applied for in a
 8 timely manner;

9 2. Other circumstances deemed exceptional or extraordinary by
 10 Ecology; or

11 3. Endangerment as described in Section XVII (Endangerment).

12 **XVII. ENDANGERMENT**

13 In the event Ecology determines that any activity being performed at the Site is creating
 14 or has the potential to create a danger to human health or the environment, Ecology may direct
 15 Defendants to cease such activities for such period of time as it deems necessary to abate the
 16 danger. Defendants shall immediately comply with such direction.

17 In the event Defendants determine that any activity being performed at the Site is
 18 creating or has the potential to create a danger to human health or the environment, Defendants
 19 may cease such activities. Defendants shall notify Ecology's project coordinator as soon as
 20 possible, but no later than twenty-four (24) hours after making such determination or ceasing
 21 such activities. Upon Ecology's direction, Defendants shall provide Ecology with
 22 documentation of the basis for the determination or cessation of such activities. If Ecology
 23 disagrees with Defendants' cessation of activities, it may direct Defendants to resume such
 24 activities.

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

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

9 XVIII. COVENANT NOT TO SUE

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

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

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

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

23 If factors not known at the time of entry of the settlement agreement are discovered and
 24 present a previously unknown threat to human health or the environment, the Court shall
 25 amend this Covenant Not to Sue.
 26

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

5 1. Upon Defendants' failure to meet the requirements of this Decree,
 6 including, but not limited to, failure of the remedial action to meet the cleanup
 7 standards identified in the Cleanup Action Plan (Exhibit B);

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

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

15 4. Upon Ecology's determination that additional remedial actions are
 16 necessary to achieve cleanup standards within the reasonable restoration time frame set
 17 forth in the Cleanup Action Plan.

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

21 **XIX. CONTRIBUTION PROTECTION**

22 With regard to claims for contribution against any of the Defendants, the Parties agree
 23 that Defendants are each entitled to protection against claims for contribution for matters
 24 addressed in this Decree as provided by RCW 70.105D.040(4)(d).
 25
 26

XX. LAND USE RESTRICTIONS

A Declaration of Restrictive Covenant (Exhibit C) has been recorded with the office of the King County Auditor with respect to the property within the Site owned by ANSCO and operated by SeaTac Investments as MasterPark Lot C. The Restrictive Covenant restricts future uses of that property and shall be maintained unless extinguished pursuant to the terms of Section 8 of Exhibit C. In addition, Defendants shall make good faith efforts to cause Restrictive Covenant(s) to be recorded that limit groundwater use with respect to those properties within the Site and downgradient of the MasterPark Lot C property, as provided under the Cleanup Action Plan, Section 5.3.6, and WAC 173-340-440(8)(c). Defendants shall, within 90 days of the entry of this Decree, report to Ecology in writing on whether they have been successful in causing the recording of such Restrictive Covenants, and shall provide Ecology with copy(ies) of all recorded Restrictive Covenant(s). In the event Defendants have been unsuccessful in causing one or more of the required Restrictive Covenants to be recorded, Defendants shall, in the report provided to Ecology, document their efforts to cause such recordings to be effected, and include either a projection as to when Defendants expect such Restrictive Covenants to be recorded (with a request that the deadline for causing such recordings be extended to a new date certain), or a request that Ecology consider the approval of other legal or administrative mechanisms to serve as an institutional control limiting groundwater use, as provided under WAC 173-340-440(8)(c). Ecology's response to such requests will become an enforceable part of this Decree under Section VI.B, and subject to the dispute resolution provisions of Section XIV.

XXI. FINANCIAL ASSURANCES

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

Within sixty (60) days of the effective date of this Decree, Defendant shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Decree, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendant shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

Defendant shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Decree; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of Defendants' fiscal year if the financial test or corporate guarantee is used; and

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

XXII. INDEMNIFICATION

Defendants agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, Defendants shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of

1 action to the extent arising from or on account of the acts or omissions of the State of
 2 Washington, or the employees or agents of the State, in entering into or implementing this
 3 Decree.

4 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

5 A. All actions carried out by Defendants pursuant to this Decree shall be done in
 6 accordance with all applicable federal, state, and local requirements, including requirements to
 7 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
 8 federal, state, or local requirements that the agency has determined are applicable and that are
 9 known at the time of entry of this Decree have been identified in the Cleanup Action Plan
 10 (Exhibit B).

11 B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural
 12 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws
 13 requiring or authorizing local government permits or approvals. However, Defendants shall
 14 comply with the substantive requirements of such permits or approvals. The exempt permits or
 15 approvals and the applicable substantive requirements of those permits or approvals, as they
 16 are known at the time of entry of this Decree, have been identified in the Cleanup Action Plan
 17 (Exhibit B).

18 Defendants have a continuing obligation to determine whether additional permits or
 19 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
 20 action under this Decree. In the event either Ecology or Defendants determines that additional
 21 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
 22 remedial action under this Decree, it shall promptly notify the other party of this determination.
 23 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
 24 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly
 25 consult with the appropriate state and/or local agencies and provide Ecology with written
 26 documentation from those agencies of the substantive requirements those agencies believe are

1 applicable to the remedial action. Ecology shall make the final determination on the additional
 2 substantive requirements that must be met by Defendants and on how Defendants must meet
 3 those requirements. Ecology shall inform Defendants in writing of these requirements. Once
 4 established by Ecology, the additional requirements shall be enforceable requirements of this
 5 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
 6 additional requirements until Ecology makes its final determination.

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

13 XXIV. REMEDIAL ACTION COSTS

14 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
 15 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
 16 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
 17 and Decree preparation, negotiation, oversight and administration. These costs shall include
 18 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
 19 include costs of direct activities and support costs of direct activities as defined in
 20 WAC 173-340-550(2). Ecology has accumulated \$1,782.29 in remedial action costs related to
 21 this facility as of March 31, 2012. Payment for this amount shall be submitted within thirty
 22 (30) days of the effective date of this Decree. For all costs incurred subsequent to March 31,
 23 2012, Defendants shall pay the required amount within thirty (30) days of receiving from
 24 Ecology an itemized statement of costs that includes a summary of costs incurred, an
 25 identification of involved staff, and the amount of time spent by involved staff members on the
 26 project. A general statement of work performed will be provided upon request. Itemized

1 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
 2 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result
 3 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

7 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

8 If Ecology determines that Defendants have failed without good cause to implement the
 9 remedial action, in whole or in part, Ecology may, after notice to Defendants, perform any or
 10 all portions of the remedial action that remain incomplete. If Ecology performs all or portions
 11 of the remedial action because of Defendants' failure to comply with its obligations under this
 12 Decree, Defendants shall reimburse Ecology for the costs of doing such work in accordance
 13 with Section XXIV (Remedial Action Costs), provided that Defendants are not obligated under
 14 this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the
 15 scope of this Decree.

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

20 **XXVI. PERIODIC REVIEW**

21 As remedial action, including groundwater monitoring, continues at the Site, the Parties
 22 agree to review the progress of remedial action at the Site, and to review the data accumulated
 23 as a result of monitoring the Site as often as is necessary and appropriate under the
 24 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
 25 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
 26 action at the Site. Ecology reserves the right to require further remedial action at the Site under

1 appropriate circumstances. This provision shall remain in effect for the duration of this
2 Decree.

3 XXVII. PUBLIC PARTICIPATION

4 Ecology shall maintain the responsibility for public participation at the Site under the
5 Cleanup Action Plan, Attachment D. However, Defendants shall cooperate with Ecology, and
6 shall:

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

12 B. Notify Ecology's project coordinator prior to the preparation of all press
13 releases and fact sheets, and before major meetings with the interested public and local
14 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press
15 releases and fact sheets, and before major meetings with the interested public and local
16 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
17 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to its
18 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
19 or endorsed by Ecology.

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

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

- 25 1. Valley View Library
26 17850 Military Road South
SeaTac, WA

2. Ecology's Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

XXVIII. DURATION OF DECREE

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

XXIX. CLAIMS AGAINST THE STATE

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

XXX. EFFECTIVE DATE

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

XXXI. WITHDRAWAL OF CONSENT

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

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

3 STATE OF WASHINGTON
4 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

5
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8 Date: 6/21/12

Date: 6/20/2012

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13 Date: 6.14.2012

Date: 14 June 2012

15 SCARSELVA BROS., INC.

16
17 TAMARAH KNAPP HANCOCK P.E.
General Counsel
18 (253) 874-7173

19 Date: 6/14/2012

20
21 ENTERED this _____ day of _____ '20

22
23
24 JUDGE
King County Superior Court
25
26