NO. 46130-7-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

COLUMBIA RIVERKEEPER; and
NORTHWEST ENVIRONMENTAL DEFENSE CENTER,
Petitioners,

v.

PORT OF VANCOUVER USA;
JERRY OLIVER, Port of Vancouver USA Board of Commissioners President; BRIAN WOLFE, Port of Vancouver USA Board of Commissioners Vice President; and NANCY I. BAKER, Port of Vancouver USA Board of Commissioners Secretary,
Respondents.

OPENING BRIEF FOR COLUMBIA RIVERKEEPER and NORTHWEST ENVIRONMENTAL DEFENSE CENTER

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I. Introduction

Columbia Riverkeeper and Northwest Environmental Defense Center (collectively, "Riverkeeper") challenge the Port of Vancouver, USA and its commissioners' (collectively, the "Port") execution of a lease prior to the preparation of an Environmental Impact Statement ("EIS") in violation of the State Environmental Policy Act ("SEPA"). The ten-year lease commits roughly 42 acres of public property near downtown Vancouver, Washington, for use as a crude-by-rail terminal that would receive and ship 360,000 barrels of crude oil each day, and store more than 2 million barrels of crude oil on the banks of the Columbia River. The Port executed this binding lease with Tesoro Savage Petroleum Terminal, LLC ("Tesoro") before the analyses required by SEPA of the human health risks and environmental impacts of the crude oil terminal had even begun. The Port violated the letter and the fundamental purposes of SEPA by contracting away its ability to reject the project or require additional or alternative lease terms before an EIS is complete.

The parties agree that Tesoro's proposed project is subject to Washington's Energy Facilities Site Locations Act ("EFSLA") and therefore that the Energy Facility Site Evaluation Council ("EFSEC") is statutorily designated as the lead SEPA agency charged with preparing an EIS for the project. However, the Superior Court erred in finding that EFSLA allows the Port to execute the lease before EFSEC completes an

EIS studying the human health and environmental impacts of the crude oil terminal. The Superior Court further erred by concluding that the lease allows the Port to withdraw from the lease or meaningfully modify the lease terms in response to information about human health and environmental risks disclosed through the SEPA process. This Court should reverse the Superior Court's decision and ensure that the Port is not allowed to evade SEPA's core goals by an irreversibly committing to host a massive crude-by-rail terminal on public property before the environmental impacts are analyzed and disclosed.

II. Assignments of Error and Issues

1. Assignments of Error

a. First Assignment of Error

The Superior Court erred in granting the Port's motion for summary judgment as to Riverkeeper's Fifth Cause of Action by finding that the Energy Facilities Site Locations Act, RCW 80.50.180 (App. p.16), exempts the Port's decision to lease public land from SEPA's EIS requirement, RCW 43.21C.030(2)(c) (App. p.2).

b. Second Assignment of Error

The Superior Court erred in granting the Port's motion for summary judgment as to Riverkeeper's Sixth Cause of Action by finding that the lease did not limit the reasonable range of alternatives prior to the

completion of SEPA review of the project. *See* WAC 197-11-070(1) (App. p.20); WAC 463-47-020 (App. pp.53–59).

2. Issues Pertaining to Assignments of Error

a. Issue Pertaining to First Assignment of Error

Did the Port violate SEPA by making a proprietary decision to enter into a long-term lease for the development of a massive crude oil shipping terminal on public land before the human health and environmental impacts of the terminal are analyzed and disclosed to the public in an EIS?

b. Issue Pertaining to Second Assignment of Error

Did the Port violate SEPA by limiting the choice of reasonable alternatives before the completion of the EIS by executing a long-term, legally binding lease detailing the location, fundamental design, and certain conditions of a massive crude oil terminal, and requiring the Port to advocate for the licensing of the terminal as described in the lease?

III. Statement of the Case

1. Washington's State Environmental Policy Act

SEPA was enacted to "encourage productive and enjoyable harmony between humankind and the environment" and to "prevent or eliminate damage to the environment and biosphere." RCW 43.21C.010 (App. p.1). To achieve these goals, SEPA requires agencies to integrate environmental concerns into their decision making processes and study and explain the environmental consequences

before making decisions. *See Stempel v. Dep't of Water Res.*, 82 Wn.2d 109, 117–18, 508 P.2d 166 (1973).

Specifically, SEPA requires that all branches of the State government include, in each proposal for a major action with probable significant adverse environmental impacts, a "detailed statement" on:

> (i) the environmental impact of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented; (iii) alternatives to the proposed action; (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

RCW 43.21C.030(2)(c) (App. p.2). This "detailed statement" is commonly referred to as an EIS. RCW 43.21C.031(1) (App. p.3).

Where two or more agencies have decision-making authority over different aspects of a proposed project, one agency is designated the "lead" SEPA agency. *See* WAC 197-11-922–948 (App. pp.36–50); *and* WAC 197-11-055(5) (App. p.19); *and* WAC 197-11-030(2)(d)–(e) (App. p.17). The lead agency prepares the EIS for the proposed project. WAC 197-11-050(2)(b) (App. p.18). The other non-lead agencies involved must use that EIS unless an exception applies, such as where a non-lead agency believes that its comments on the draft EIS warrant additional analysis, whereupon the non-lead agency prepares a supplement to the EIS. WAC 197-11-600(3)(c) (App. p.28). This procedure eliminates duplicative analyses but ensures that all responsible agencies have the benefit of an EIS before making decisions. Until the EIS is issued, both lead and

non-lead agencies are prohibited from taking any actions that would have adverse environmental impacts or limit the choice of reasonable alternatives. WAC 197-11-070(1) (App. p.20).

2. Washington's Energy Facilities Site Locations Act

EFSLA governs the regulation of "energy facilities," RCW 80.50.060(1) (App. p.9), which include "[f]acilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters . . . ." RCW 80.50.020(12)(d) (App. p.4).

EFSLA also created EFSEC, an agency consisting of a chair person appointed by the governor and several public officers and officials, to administer a certification process for proposed energy facilities. RCW 80.50.030 (App. pp.5–6); *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 284–85, 197 P.3d 1153 (2008). For energy facilities proposed to be located on port district property, the affected port district appoints a representative as a nonvoting member of EFSEC. RCW 80.50.030(6) (App. p. 6). "Site certification [from EFSEC] authorizes the applicant to construct and operate an energy facility in lieu of any other permit or document required by any other agency or subdivision." *Residents Opposed to Kittitas Turbines*, 165 Wn.2d at 285, 197 P.3d 1153 (citing RCW 80.50.120(2), (3)

(App. p.14)). EFSLA thereby "preempts" any other local or state agency from regulating, permitting, or certifying energy facilities that are subject to the statute. RCW 80.50.110 (App. p.13).

EFSEC is the lead SEPA agency charged with preparing EISs for energy facilities subject to EFSLA. WAC 197-11-938(1) (App. p.44). EFSLA exempts agencies—other than EFSEC—from the requirement to prepare an EIS for certain regulatory actions related to energy facilities subject to the statute:

> Except for actions of the [EFSEC] under [EFSLA], all proposals for legislation and other actions of any branch of government..., to the extent the legislation or other action involved approves, authorizes, [or] permits...the location, financing or construction of any energy facility subject to certification under [EFSLA], shall be exempt from the [EIS] required by [SEPA].

RCW 80.50.180 (App. p.16). However, EFSEC has also adopted regulations that prohibit any such non-lead agencies from taking actions that would limit the choice of reasonable alternatives before EFSEC completes its EIS. WAC 463-47-020 (App. p.53) (adopting WAC 197-11-070(1)(b)) (App. p.20).

3. Tesoro's Proposed Crude-by-rail Terminal

Tesoro proposes constructing a massive crude oil terminal on public property at the Port of Vancouver. CP at 0079–95. Up to 360,000 barrels of crude oil per day would arrive at Tesoro's terminal near downtown Vancouver, Washington, in rail tanker cars. CP at 0162. At full operation, the terminal would receive an average of four mile-and-a-half-long oil trains every day. CP at 0163. The terminal would store more

than 2 million barrels of crude oil in large above-ground tanks, and load crude oil into tanker ships that would pass through the Columbia River Estuary and cross the Columbia River Bar on their way to refineries. CP at 0162.

To build and operate the proposed crude oil terminal at the Port, Tesoro must secure both the proprietary right to use the Port's land and the regulatory approval necessary to operate a large crude oil shipping facility. Without the Port's consent to lease public land along the Columbia River near downtown Vancouver, Tesoro could not construct the proposed crude oil terminal. CP at 0269–335 (App. pp.67–171). While the proposed crude oil terminal is an "energy facility" within the meaning of EFSLA, RCW 80.50.020(12)(d) (App. p.4), and therefore requires regulatory certification from EFSEC, RCW 80.50.060(1) (App. p.9), EFSEC does not control the Port's decision to lease public land to Tesoro. *See* RCW 80.50.040 (App. pp.7–8) (listing EFSEC's powers).

4. The October 2013 Lease

The Port and Tesoro executed a lease for the development of the crude oil terminal on October 22, 2013. CP 0333 (App. p.131). The lease provides that it is the entire, "absolute and irrevocable" legal agreement between the Port and Tesoro. CP at 0282, 0332 (App. pp.79, 130). The lease describes specific details of Tesoro's proposed project, including the project's fundamental design, CP at 0273–74, 0279–80, 0337–43 (App.

pp.71–72, 77–78, 135–141), use, CP at 0277, 0289–94 (App. pp.75, 87–92), payment and financing, CP at 0274–76, 0284–89 (App. pp.72–74, 82–87), and exclusive options. CP at 0290–91 (App. pp.88–89). The lease further specifies the amount of pollution liability insurance that Tesoro is required to maintain for the project—$25 million. CP at 0278 (App. p.76). The lease also specifies the duration of the agreement; ten years with the option to extend the lease for two consecutive five-year terms. CP at 0274, 0282–83 (App. pp.72, 80–81).

The lease states that it is subject to two "conditions precedent," CP at 0281 (App. p.79), but neither of these conditions enable the Port to withdraw from the lease or renegotiate any of its material terms if the SEPA analysis discloses significant environmental or human health risks. The first condition states that the oil terminal will not be built if Tesoro cannot obtain the necessary regulatory permits—*i.e.*, certification from EFSEC. *Id.* The second condition, that Tesoro must obtain a baseline environmental investigation of the property, is explicitly provided only for Tesoro's benefit; the Port has no ability to void or renegotiate the lease if this condition is not met. *Id.* Unless Tesoro, of its own volition, actually fails to pursue development and commence construction of the crude oil terminal as described in the lease, the Port will be unable to withdraw from or renegotiate the lease. CP at 0282 (App. p.80).

The Port negotiated and executed this binding lease before the EIS, or even a draft of the EIS, was available to the Port or the public. *See* CP at 0045. While the Port provided opportunities for public comment on its leasing decision, CP at 0040–41, no formal study existed to explain the environmental and human health risks posed by the crude oil terminal. *See* CP at 0045. Accordingly, that information—which EFSEC's forthcoming EIS will presumably contain—was not available to members of the public, including Riverkeeper, attempting to provide meaningful input about the Port's decision. Further, this lack of disclosure interfered with the public's understanding of the consequences of the publicly elected Port commissioners' decision.

5. EFSEC's SEPA Review of Tesoro's Proposal

EFSEC is in the process of preparing an EIS to analyze the human health and environmental impacts of the proposed crude oil terminal. Tesoro filed its application for EFSEC regulatory certification on August 29, 2013, and requested that EFSEC determine that an EIS is required. CP at 0045. On October 3, 2013, EFSEC "determined that [the crude oil terminal] is likely to have a significant adverse impact on the environment" and designated itself as the lead agency for preparing the EIS. *Id.* The Port appointed, and EFSEC hired, Lawrance Paulson as the Port's representative member on EFSEC during the certification process for Tesoro's project. *See* CP at 0247. To the best of Riverkeeper's

knowledge, EFSEC is still preparing a draft EIS as of the date of this filing.

IV. Argument

The Port violated the spirit and the letter of SEPA by leasing public land to Tesoro before EFSEC completes the EIS for the proposed crude oil terminal. EFSLA does not exempt proprietary decisions to lease public land from SEPA review. The Port thus violated SEPA's basic requirement that an EIS must precede all major actions significantly impacting the environment. RCW 43.21C.030(2)(c) (App. p.2); *see also* CP at 0014–15. Even if EFSLA exempted the Port's lease decision from the EIS requirement—which it does not—the Port's binding and detailed lease violates EFSEC's SEPA regulations prohibiting any action that would limit the reasonable alternatives to a proposal before EFSEC completes an EIS. *See* WAC 463-47-020 (App. p.53) (adopting WAC 197-11-070(1)(b) (App. p.20)); *see also* CP at 0015.

The Port's premature decision to negotiate and execute a lease of public land compromised SEPA's primary goal: to "prevent or eliminate damage to the environment," RCW 43.21C.010 (App. p.1), by ensuring that the values of ecological health and human welfare become part of every agency's decision-making process. *Stempel*, 82 Wn.2d at 117–18, 508 P.2d 166. SEPA review should begin "at the earliest opportunity," *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122

Wn.2d 619, 646, 860 P.2d 390 (1993), so agencies can and will weigh the environmental consequences before making a decision. WAC 197-11-400(1), (4) (App. p.21); *see also Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (The National Environmental Policy Act's ("NEPA") success "depends entirely on involving environmental considerations in the initial decisionmaking process.") (citing 40 C.F.R. §§ 1501.2, 1502.5 (App. pp.61–62)).[1] An EIS is not a means for "justifying decisions already made." WAC 197-11-402(10) (App. p.22). The Port should have waited for and used the analysis in the EIS to decide whether, or under what conditions, to lease public land for the crude oil terminal. The Port's failure to do so cause the Port to make its decision without the required consideration for "ecological health and human welfare . . . ." *Stempel*, 82 Wn.2d at 117–18, 508 P.2d 166.

By leasing public land to Tesoro before the EIS process had even begun, the Port also undercut SEPA's disclosure, public scrutiny, and decision-maker accountability functions. The EIS process should both alert the public to the consequences of an agency's proposed action and "give the public enough information to be able to participate intelligently"

[1] "NEPA is substantially similar to SEPA, [so] Washington Courts may look to federal case law for SEPA interpretation." *Public Utility Dist. No. 1 of Clark County v. Pollution Control Hearings Bd.*, 137 Wn. App. 150, 158, 151 P.3d 1067 (2007) ("*Clark PUD*"). Further, the policies behind SEPA are even stronger than NEPA. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 224, 995 P.2d 63 (2000).

in the decision-making process. *Nisqually Delta Assoc. v. Du Pont*, 103 Wn.2d 720, 741–42, 696 P.2d 1222 (1985) (Dore, J., dissenting); *and see Cal. v. Block*, 690 F.2d 753, 772 (9th Cir. 1982) (stating that a purpose of the EIS process under NEPA is also "to give the public enough information to be able to participate intelligently"). As the U.S. Supreme Court explained, an EIS "provides a springboard for public comment" and also informs the public whether the agency "has indeed considered environmental concerns in its decisionmaking process. . . ." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (citations and quotations omitted). In addition to informing the underlying decision, the requirement to disclose environmental impacts serves the purpose of "strengthening agency accountability. . . ." *Atlanta Coalition on Transp. Crisis, Inc. v. Atlanta Regional Com.*, 599 F.2d 1333, 1344 n.13 (5th Cir. 1979).

The Port's commitment of public property for a crude oil terminal before the EIS was published prevented the public from understanding the environmental and safety implications of the Port's decision. Without this critical information, Riverkeeper and other members of the public were not able to provide the "public scrutiny" and input that is "essential" to the EIS process and the Port's leasing decision. *See Brodsky v. United States NRC*, 704 F.3d 113, 120 (2d Cir. 2013) (citing 40 C.F.R. § 1500.1(b) (App. p.62)); *see also W. Watersheds Project v. Kraayenbrink*, 632 F.3d

472, 492 (9th Cir. 2011). Failure to disclose and explain the environmental and human health consequences of the Port's decision also insulated the Port and the Port commissioners—elected public officials—from public accountability.

The relief sought by Riverkeeper is neither burdensome nor complicated: the Port should be required to wait until EFSEC's EIS discloses the human health and environmental risks associated with operating a massive crude oil terminal on the Columbia River near downtown Vancouver, Washington, before committing public property to that project. That, after all, is the point of SEPA.

1. Standard of Review

The Court of Appeals reviews decisions on summary judgment de novo, engaging in the same inquiry as the trial court. *Int'l Longshore & Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 511, 519, 309 P.3d 654 (2013). All Washington laws "shall be interpreted . . . in accordance with the policies set forth" in SEPA. RCW 43.21C.030(1) (App. p.2); *see also Juanita Bay Valley Cmty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 65, 510 P.2d 1140 (1973).

2. The Port's decision to lease public land for a crude-by-rail terminal is subject to SEPA's EIS requirement.

As the sale or lease of public land often has important environmental impacts, proprietary decisions like the Port's decision to lease land for a crude oil terminal require SEPA review. WAC 197-11-

704(2)(a)(ii) (App. p.32) (defining actions that may trigger SEPA to include leases of public lands); *see also In re Recall of Telford*, 166 Wn.2d 148, 158, 206 P.3d 1248 (2009) (discussing the SEPA process for a lease by a port).

The parties do not dispute that the proposed crude oil terminal would have significant environmental impacts, and therefore requires an EIS. Because the proposed crude oil terminal is an energy facility within the meaning of EFSLA, EFSEC is the lead agency charged with preparing the EIS for the proposed project. CP at 0045. As a non-lead agency with decision-making authority over a proposed project for which an EIS is being prepared, the Port was required to wait for and use EFSEC's EIS before negotiating and executing the lease. RCW 43.21C.030(2)(c) (App. p.2); WAC 197-11-600 (App. pp.28–29). This is how SEPA's fundamental requirement to prepare an EIS applies to non-lead agencies like the Port.

When EFSEC has jurisdiction over certifying an energy facility, some regulatory decisions by other state agencies are exempt from SEPA's requirements. However, proprietary decisions like the Port's lease are not exempt. Specifically, EFSLA provides:

> "all proposals for legislation and other actions of . . . municipal and public corporations, . . . to the extent the legislation or other action involved approves, authorizes, [or] permits . . . the location, financing or construction of any energy facility subject to certification under [EFSLA], shall be exempt from the [EIS] required by [SEPA]."

RCW 80.50.180 (App. p.16). A lease is not an action that "approves, authorizes, [or] permits" the oil terminal within the meaning of EFSLA. Rather, the terms "approves," "authorizes," and "permits" in this provision refer to regulatory—not proprietary—decisions. Because EFSLA does not exempt the proprietary lease decision from SEPA, the Port violated SEPA's fundamental requirement by making a decision that significantly impacted the environment before an EIS was prepared. RCW 43.21C.030(2)(c) (App. p.2); *Int'l Longshore*, 176 Wash. App. at 522, 309 P.3d 654 (SEPA's "fundamental idea" is "to prevent government agencies from approving projects and plans before the environmental impacts of doing so are understood.").

a. In the context of EFSLA, the terms "approves," "authorizes," and "permits" refer to regulatory—not proprietary—decisions.

The statutory context where the terms "approves," "authorizes," and "permits" appear shows that these terms refer only to regulatory authorizations, such as pollution control permits and zoning approvals. Statutory interpretation begins with the plain meaning of the term in question. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9–10, 43 P.3d 4 (2002). The plain meaning should be discerned from the ordinary meaning of the term *in the context of the statute where it appears*. *Id.* at 146 Wn.2d at 10–12, 43 P.3d 4; *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309–10, 237 P.3d 256 (2010). Accordingly,

the meaning of "approves," "authorizes," and "permits" in RCW 80.50.180 (App. p.16) should be determined based on the context of EFSLA.

Specifically, terms in EFSLA should be interpreted in the context of EFSLA's overarching purpose; to centralize *regulatory* authorizations required for the development of large energy facilities. *Cf. Residents Opposed to Kittitas Turbines*, 165 Wn.2d at 284–85, 197 P.3d 1153; *see also* RCW 80.50.090(2) (App. p.10). The heart of EFSLA is the pronouncement that the statute "preempts the *regulation and certification*" of large energy facilities. RCW 80.50.110(2) (App. p.13) (emphasis added). The rules implementing EFSLA provide that certification by EFSEC is "in lieu of any *permit, certificate, or similar document*" otherwise required by state or local agencies. WAC 463-14-050 (App. p.51) (emphasis added).[2] Other EFSLA rules instruct EFSEC to consider the "*laws or ordinances, rules or regulations*, which may be preempted by certification." WAC 463-14-080(7) (App. p.52) (emphasis added).

[2] The full text of WAC 463-14-050 (App. p.51) reads: "Chapter 80.50 RCW operates as a state preemption of *all matters* relating to energy facility sites. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document which might otherwise be required by state agencies and local governments." (emphasis added). It is not literally true, of course, that EFSLA preempts "all matters" relating to energy facility sites. Read broadly, the Port's lease is a 'matter related to an energy facility site,' but no party suggests that the Port's lease is preempted. Instead, WAC 463-14-050 (App. p.51) reflects that EFSLA was not intended to have any bearing on proprietary decisions by local governments. RCW 80.50.180 (App. p.16) should be interpreted in that context.

Accordingly, EFSLA is a statute that deals only with the consolidation and preemption of regulatory and permitting processes. In that context, the terms "approves," "authorizes," and "permits" in RCW 80.50.180 (App. p.16) should be interpreted to refer only regulatory and permitting decisions.

EFLSA does not preempt, disturb, or even address the authority of local governments and municipal corporations to make proprietary decisions about selling or leasing their public lands. Nothing suggests the legislature even considered disturbing the local proprietary control of the lands where energy facilities might be located. For instance, EFSEC could not acquire the 42 acres in question through eminent domain, or otherwise force the Port to lease or sell property for the proposed oil terminal. *See* RCW 80.50.040 (App. pp.7–8) (listing EFSEC's powers). Rather, Tesoro was required to negotiate with the Port regarding the terms of the lease and the Port was required to make its own decision related thereto. EFSLA and EFSEC are simply not concerned with the sale or lease of public lands. In that context, it would make no sense to interpret the terms "approves," "authorizes," or "permits" in RCW 80.50.180 (App. p.16) to refer to proprietary decisions.

b. Riverkeeper's interpretation of RCW 80.50.180 supports SEPA's goals and policies.

RCW 80.50.180 (App. p.16) is best read as requiring SEPA compliance before public bodies lease or sell land for energy facilities.

The Washington Legislature provided explicit and mandatory instruction for interpreting state laws: all Washington laws "shall be interpreted . . . in accordance with the policies set forth" in SEPA. RCW 43.21C.030(1) (App. p.2); *see also Juanita Bay Valley Cmty. Ass'n*, 9 Wn. App. at 65, 510 P.2d 1140. For example, in *English Bay Enterprises v. Island County*, the Supreme Court noted that this legislative directive "mandated" a broad interpretation of the Shoreline Management Act to ensure environmental protection of Washington's shore lands. 89 Wn.2d 16, 20, 568 P.2d 783 (1977); *see also Herman v. Shorelines Hearings Bd.*, 149 Wn. App. 444, 459, 204 P.3d 928 (2009). Additionally, RCW 43.21C.030(1) (App. p.2) uses the mandatory command "shall" to direct those interpreting Washington law to honor SEPA's "policies," not merely SEPA's text. The Court should use this statutory mandate, when interpreting RCW 80.50.180 (App. p.16), to effectuate SEPA's policies and not to undermine them.

Interpreting RCW 80.50.180 (App. p.16) to exempt only regulatory—but not proprietary—decisions would support SEPA's core policy of ensuring that decision-makers like the Port have the information necessary to make responsible environmental decisions when selling or

leasing public land.[3] SEPA's policy is to "prevent or eliminate damage to the environment," RCW 43.21C.010 (App. p.1), by ensuring that the values of ecological health and human welfare become part of every agency's decision-making process. *Stempel*, 82 Wn.2d at 117–18, 508 P.2d 166. Interpreting RCW 80.50.180 (App. p.16) as requiring local governments to use EFSEC's EIS when deciding whether to sell or lease public land for energy facilities perfectly complements SEPA's goals. An EIS provides agencies like the Port with the necessary information to understand a project's impacts on ecological health and human welfare. WAC 197-11-400 (App. p.21). By making the critical decision to lease public land for a crude oil terminal without the benefit of an EIS, the Port violated SEPA's core policy. Accordingly, this Court should interpret the terms "approves," "authorizes," and "permits" in RCW 80.50.180 (App. p.16) as exempting only regulatory and permitting decisions from SEPA, because that interpretation effectuates SEPA's goals and policies.

SEPA's disclosure and accountability goals are served by interpreting EFSLA to require local governments to make decisions about whether to sell or lease public land *after* the EIS publicly explains the project's environmental and human-health implications. *Cf. Robertson*, 490 U.S. at 349 (EISs inform the public whether the agency "has indeed

[3] Exempting *regulatory* decisions by agencies other than EFSEC does not offend SEPA's policies because EFSEC makes the regulatory decisions about large energy facilities, and EFSEC must comply with SEPA's EIS requirement. *See* RCW 80.50.180 (App. p.16).

considered environmental concerns"); *see also Atlanta Coalition on Transp. Crisis, Inc.*, 599 F.2d at 1344 n.13 (EISs serve the purpose of "strengthening agency accountability"). Moreover, allowing the public to review the information in the EIS before commenting on a local government's decision to lease or sell public land will strengthen both the EIS and the underlying proprietary decision. *See Robertson*, 490 U.S. at 332 (an EIS "provides a springboard for public comment"); *see also Cal. v. Block*, 690 F.2d at 772 (The EIS process should "give the public enough information to be able to participate intelligently" in the decision-making process.).

Faced with competing interpretations about the breadth of EFSLA's SEPA exemption, the Court is guided by the Legislature's command to interpret all statutes to effectuate SEPA's policies. The Court should therefore interpret EFSLA as not exempting proprietary decisions like the Port's lease from SEPA because only that interpretation ensures that the Port will make its decision when the pertinent information is available—in the form of an EIS—to the Port and the public.

c. EFSLA and its implementing regulations demonstrate that agencies besides EFSEC can have SEPA responsibilities for energy facilities.

A broad interpretation of RCW 80.50.180 (App. p.16) conflicts with, and would render meaningless, other sections of EFSLA and EFSEC's regulations. The Court should reject such an interpretation.

Courts should interpret and construe statues as a whole, so that all of the language in a statute "is given effect, with no portion rendered meaningless or superfluous." *G-P Gypsum Corp.*, 169 Wn.2d at 309, 237 P.3d 256. Other sections of EFSLA and its implementing regulations demonstrate that non-EFSEC agencies sometimes have SEPA responsibilities, even when EFSEC is preparing the EIS. A broad interpretation of RCW 80.50.180 (App. p.16) would render these sections meaningless and should therefore be rejected. *See G-P Gypsum Corp.*, 169 Wn.2d at 309, 237 P.3d 256.

For instance, RCW 80.50.175 (App. p.15), which allows discretionary site studies of potential energy facilities, demonstrates that agencies besides EFSEC can have SEPA responsibilities, even when EFSLA applies. RCW 80.50.175(4) (App. p.15) states that any site study "prepared . . . pursuant to subsection (3) of this section *may be used in place of the 'detailed statement' required by RCW 43.21C.030(2)(c)* by any branch of government except [EFSEC]." (Emphasis added). The pronouncement that a non-EFSEC agency may use EFSEC's site study "in place of" an EIS necessarily anticipates that—in some instances—a non-EFSEC agency would be required use an EIS. An overly broad interpretation of RCW 80.50.180 (App. p.16), which would absolve non-EFSEC agencies of all SEPA responsibilities, would render RCW 80.50.175(4) (App. p.15) meaningless.

Further, the Washington Department of Ecology's ("Ecology")[4] and EFSEC's SEPA regulations demonstrate that agencies other than EFSEC can have obligations under SEPA for projects subject to EFSLA. These regulations designate EFSEC as the "lead agency" for SEPA in EFSLA proceedings. WAC 197-11-938(1) (App. p.44); WAC 463-47-020 (App. pp.53, 59). The sole purpose of the "lead agency" designation and its associated procedures is to delineate the respective roles and responsibilities where multiple agencies have jurisdiction and SEPA responsibilities over one project. If Ecology and EFSEC interpreted RCW 80.50.180 (App. p.16) as exempting all non-EFSEC agencies from all SEPA responsibilities, there would be no need to designate EFSEC as the lead SEPA agency. Reading EFSLA's SEPA exemption too broadly would make EFSEC's lead agency rules superfluous.

Riverkeeper's proffered interpretation of RCW 80.50.180 (App. p.16) would harmonize that provision with RCW 80.50.175(4) (App. p.15), WAC 463-47-020 (App. pp.53, 59), and WAC 197-11-938(1) (App. p.44) by acknowledging that certain decisions by non-EFSEC agencies, like the Port's proprietary leasing decision, must be preceded by an EIS even when EFSLA applies.

[4] SEPA assigns Ecology primary responsibility to promulgate regulations to implement the statute. RCW 43.21C.110(1). Ecology's SEPA regulations are given substantial deference. RCW 43.21C.095.

3. The Port's binding lease with Tesoro violated regulations implementing SEPA and EFSLA by limiting the choice of reasonable alternatives before EFSEC issues the EIS.

As explained above, RCW 80.50.180 (App. p.16) does not exempt the Port's lease decision from the EIS requirement. However, even if it did, that exemption would not absolve the Port of all SEPA obligations with respect to Tesoro's proposed crude oil terminal. The exemption at RCW 80.50.180 (App. p.16) only relates to the requirement to prepare (or, in the case of a non-lead agency, to use) a "detailed statement" (*i.e.*, an EIS). In addition to the EIS requirement, EFSEC has adopted its own regulations governing SEPA review of projects subject to EFSLA. One of these regulations is a prohibition against any government actions that would limit the choice of reasonable alternatives before EFSEC issues the EIS. The Port violated this mandate by negotiating and executing a long-term lease for the terminal before EFSEC issued the EIS.

WAC 197-11-070(1)(b) (App. p.20) states:

> Until the responsible official issues a final determination of nonsignificance or final [EIS], no action concerning the proposal shall be taken by a governmental agency that would . . . [l]imit the choice of reasonable alternatives.

EFSEC's regulations adopt this prohibition. WAC 463-47-020 (App. p.53).

Consideration of reasonable alternatives to a proposed action is an essential aspect of the SEPA process. *See* RCW 43.21C.030(2)(c)(iii), (e)

(App. p.2); *and see Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 41, 873 P.2d 498 (1994) (an EIS must contain a "reasonably detailed analysis of a reasonable number and range of alternatives"). Ecology explains that "[a]lternatives are one of the basic building blocks of an EIS. They present options in a meaningful way for decision-makers." Ecology, SEPA Online Handbook, § 3.3.2, Identifying Alternatives (App. pp.65–66).

SEPA regulations state that "alternative[s]" may include (i) no action; (ii) other reasonable courses of action; or (iii) mitigation measures that are not included in the proposed action. WAC 197-11-792(2)(b) (App. p.35). A "reasonable" alternative is "an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." WAC 197-11-786 (App. p.34). Alternatives that should be considered under SEPA include the no action alternative and "design alternatives, location options on the site, different operational procedures, various methods of reclamation for ground disturbance, closure options, etc." Ecology, SEPA Online Handbook, § 3.3.2, Identifying Alternatives (App. pp.65–66).

The "reasonable alternatives" to be considered under SEPA—and therefore not to be restricted before the completion of an EIS—encompass more than just the alternatives available to the lead SEPA agency. The regulation prescribing the content of EISs defines "reasonable

alternatives" as alternatives over which "an agency" with jurisdiction has authority to control impacts. WAC 197-11-440(5)(b)(iii) (App. p.24); *see also* WAC 197-11-786 (App. p.34). Given that SEPA repeatedly differentiates between the "lead agency" and other agencies, *see, e.g.*, WAC 197-11-440(2)(c), (d), and (j) (App. p.23), the "reasonable alternatives" included in an EIS necessarily include more than just those over which the lead SEPA agency has jurisdiction. As a government entity with jurisdiction to decide whether, and under what terms, to lease public property to Tesoro for a crude oil terminal, the Port had ample authority through its lease negotiation process to control the impacts of the proposed project. Accordingly, reasonable alternatives for the project must include actions available to the Port related to leasing public land and the terms of the lease.

EFSEC's prohibition on actions prior to the final EIS that limit the choice of reasonable alternatives, *see* WAC 463-47-020 (App. p.53) *and* WAC 197-11-070(1)(b) (App. p.20), applies to the Port's decision to lease public property to Tesoro.[5] The Port violated EFSEC's regulation by committing itself to the binding terms of the lease, thereby foreclosing reasonable alternatives prior to completion of the EIS.

[5] The Port tacitly acknowledged that WAC 197-11-070(1)(b) and WAC 463-47-020 prohibit the Port from taking actions that limit reasonable alternatives before completion of a final EIS. CP at 0969–71.

a. The Port's lease is a binding agreement that committed the Port to hosting a massive crude oil terminal on public property.

The Port's decision to execute the lease was an "action" under the plain terms of SEPA, subject to EFSEC's regulation prohibiting actions that limit reasonable alternatives. WAC 463-47-020 (App. p.53); WAC 197-11-070(1)(b) (App. p.20). SEPA regulations define a "project action" as "a decision on a specific project," including agency decisions to "lease, transfer, or exchange natural resources, including publicly owned land, whether or not the environment is directly modified." WAC 197-11-704(2)(a) (App. p.32). The lease meets SEPA's definition of "project action."

The Port's lease is binding; it does not provide the Port discretion to "back out" based upon the human health and environmental risks disclosed through EFSEC's SEPA process. Before the Superior Court, the Port attempted to identify contingencies, or "off-ramps," in the terms of the lease. CP at 0970–72. Within the four corners of the lease, however, there are precisely two conditions precedent that must be met before the lease is fully effective: "(1) all necessary licenses, permits and approvals have been obtained for the Permitted Use; and (2) Lessee shall obtain a baseline investigation of environmental conditions at the Premises . . . ." CP at 0281 (App. p.79). Only the first condition is relevant here because

the lease states the second condition is for the sole benefit of Tesoro and the Port may not enforce it. *Id.*

The plain terms of the first condition precedent do not provide the Port with the flexibility of an "exclusive option" that the Port claims to have reserved. *See* CP at 0046, 0966. The condition is not premised on the information disclosed in EFSEC's EIS; it is dependent simply on site certification by EFSEC. As the Port stated to the court below, if the SEPA process leads EFSEC to deny certification, then the project may not proceed.[6] CP at 0971. However, if EFSEC certifies the project but the EIS reveals environmental or human health impacts that the Port had not contemplated when executing the lease, the Port has no power to withdraw or renegotiate the lease terms.

Further, various obligations in the lease apply regardless of the satisfaction of any conditions precedent: (1) Tesoro's obligation to pay a contingency period fee, (2) both parties' obligations to work diligently and in good faith to pursue all necessary licenses, permits, and approvals for the development and construction of the Facility for the Permitted Use, and (3) the indemnity obligations. CP at 0281 (App. p.79). Thus,

[6] As the lead agency under SEPA, EFSEC must prepare an EIS before making its recommendation to the Governor, who ultimately decides to certify or deny the project. RCW 50.80.100(3) (App. pp.11–12). The SEPA analysis informs EFSEC's recommendation about certification to the Governor, and the SEPA analysis must be complete before EFSEC makes its recommendation.

regardless of satisfaction of the conditions precedent, the Port obligated itself to support "the development and construction of the Facility for the Permitted Use" before completion of the EIS.

Other language in the lease similarly does not allow the Port to rescind or renegotiate the terms based upon information disclosed through the SEPA process. This language allows the Port to terminate the lease only if Tesoro is not prepared, or does not intend, to commence construction as contemplated in the lease. CP at 0282 (App. p.80). In short, nothing in the lease provides the Port with discretion to reconsider or renegotiate the terms based on the human health and environmental impacts disclosed in EFSEC's EIS.

The possibility that Tesoro's proposal for a crude oil terminal may not survive EFSEC's review does not detract from the binding nature of the Port's lease. An action may be binding even if it is not the last decision that will move a project forward. *See Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 318, 230 P.3d 190 (2010) (noting that even though implementation of a city's development plan was subject to federal approval, "once adopted by the federal government as a condition of transfer of . . . property, it will bind the City as to its use of that property"). Just as the *Magnolia* court determined that a city's "decision on a specific construction project, located in a defined geographic area" was binding, *id.* at 314, 190, the Port's lease binds it to a

specific construction project located in a defined geographic area. *See* CP at 0372–73 (App. pp.170–71) (describing the Port's and Tesoro's infrastructure improvements); 0336–71 (App. pp.134–69) (outlining the defined geographic location of the project at the Port's property). The designs in the lease and exhibits thereto are extremely detailed and will bind the Port upon certification by the Governor, much like the "very detailed" development proposal in *Magnolia* that was found to "bind the City as to its use of that property" upon federal approval. 155 Wn. App. at 317, 230 P.3d 190.

In contrast, the Port's lease is nothing like the procedural memorandum in *International Longshore*, 176 Wn. App. 511, 309 P.3d 654 (2013), that was found not to be a binding action. That memorandum outlined "a proposed deal and the process by which the governments would decide whether to participate." *Id.* at 515, 654. Moreover, the memorandum expressly reserved the city's right to unilaterally withdraw once an EIS was completed if the EIS revealed unacceptable impacts. *Id.* at 516, 654. Here, however, the Port will be obligated under the lease when the EIS is complete. The *International Longshore* court explained that because "the memorandum . . . does not limit or control future decisions the city and county may be called upon to make," "[i]t is not 'binding' as that word is used in *Magnolia*." *Id.* at 523, 654. In contrast, the Port's lease is a legally binding decision to lease public property for

petroleum product loading and unloading, the "Permitted Use." Unlike the memorandum in *International Longshore*, that outlined a decision-making process that expressly included consideration of the impacts disclosed in the EIS, the Port committed to lease its property for a massive crude oil terminal when it executed the lease, well before completion of the EIS.

Washington courts have recognized that "[i]n land use law generally, the possibility that a proposal could fail if construction-level standards are not met subtracts nothing from the nature of a prior *use* approval for the proposal." *Lands Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn. App. 787, 798, 309 P.3d 734 (2013) (emphasis in original). In *Lands Council*, the court determined that classifying land proposed for an alpine ski expansion as "Recreation" "was the agency decision approving the use, even though the proposal could still conceivably founder if the director could not approve the precise configuration of the [ski] runs." *Id.* Likewise here, the unambiguous terms of the Port's lease fix the type of use permitted at specific sites, under specific design configurations. CP at 0277 (App. p.75) (listing as "Permitted Use," *inter alia*, loading and unloading of petroleum products by rail, transfer of such petroleum products to and from storage or the marine terminal area, and rail operations and maintenance associated with the receipt, loading, unloading, and transfer

of such petroleum products); *see also* CP at 0289–90 (App. pp.87–88) (stating that "Lessee shall occupy and use the Premises for the Permitted Use set forth in Paragraph 1.I and shall not use the Premises for any other purpose without the prior written consent of Lessor").

Indeed, the terms of the lease are more precise and definite than other agency actions that Washington courts have previously determined to be binding for SEPA purposes. *See King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 663, 860 P.2d 1024 (1993) (requiring SEPA review prior to an annexation decision even though there was no pending development proposal for the property because "[t]he absence of specific development plans should not be conclusive of whether an adverse environmental impact is likely"); *and see Magnolia*, 155 Wn. App. at 308–09, 317, 230 P.3d 190 (city impermissibly adopted a development plan without first conducting SEPA review where the plan would be binding on the city upon federal approval).

Federal case law under NEPA also supports the conclusion that the Port's action before completion of the EIS was impermissible. Federal courts have held that agencies are precluded from making an "irreversible or irretrievable commitment of resources" before completing an EIS. Many of these NEPA cases turned on whether the agency reserved its right to prevent certain future uses of a natural resource until after completing

NEPA review. *See Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1988) (concluding federal gas and oil leases on national forest land prematurely committed resources in violation of NEPA because the government did not "reserve . . . the absolute right to prevent all surface-disturbing activity" (i.e. the no action alternative) pending the outcome of NEPA review); *Metcalf*, 214 F.3d at 1144 (determining that the government irreversibly committed to a project by contracting to assist certain whaling activities without conditioning that agreement on a NEPA determination that the "whaling proposal would not significantly affect the environment"); *Center for Environmental Law & Policy v. U.S. Bureau of Reclamation*, 715 F. Supp. 2d 1185, 1195 (E.D. Wn. 2010), *aff'd*, 655 F.3d 1000, 1006 (9th Cir. 2011) (authorization of water right permits was not an irreversible commitment because the agency retained "absolute authority to decide whether" to actually allow the water use until after the agency completed an NEPA review); *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1063 (9th Cir. 1998) (finding that the agency's "Tentative Operating Schedule" made no irretrievable commitment of resources "because the government retains absolute authority to decide whether any such activities will ever take place on the . . . lands") (quoting *Conner*). The Port's lease crosses the line drawn by *Conner* and other federal NEPA cases because—so long as EFSEC and Tesoro agree to

move the project forward—the Port has not reserved its authority to disallow the proposed crude oil terminal based on the outcome of the EIS.

b. The Port's lease limits the consideration of reasonable alternatives under SEPA in violation of WAC 463-47-020 and WAC 197-11-070(1)(b).

EFSEC is the lead agency responsible for completing the analysis in the EIS, including a discussion of reasonable alternatives. Because the Port has the authority to decide whether, and under what terms to lease public property to Tesoro for a crude oil terminal, alternatives to those decisions should be considered in EFSEC's EIS. By committing to the terms in the lease before EFSEC even began preparing the EIS, the Port limited the consideration of reasonable alternatives in the EIS in violation of WAC 463-47-020 (App. p.53) and WAC 197-11-070(1)(b) (App. p.20). The Port also limited its authority to consider whether to enter into the lease or negotiate alternative terms after EFSEC completes the EIS.

The lease commits the Port and Tesoro to a specific "Facility" design and "Permitted Uses" and defines closure and reclamation requirements, thereby limiting the reasonable alternatives that may be considered, in violation of WAC 463-47-020 (App. p.53) and WAC 197-11-070(1)(b) (App. p.20). Unlike the memorandum in *International Longshore* that "expressly anticipate[d] that the [SEPA] review process w[ould] consider at least the alternative of Seattle Center as well as a 'no action' alternative," 176 Wn. App. at 525, 309 P.3d 654, the Port's lease

explicitly precludes any alternative site for the proposed oil terminal. Rather, the Port's lease describes the location of the proposed crude oil facilities with specificity. CP at 0273–74, 0339–71 (App. pp.71–72, 137–69).

Further, an analysis of reasonable alternatives in an EIS must include more than just alternative sites. *See* WAC 197-11-792(2)(b) (App. pp.35) (defining alternatives as no action, other reasonable courses of action, or mitigation measures not included in the proposed action); *and see* WAC 197-11-440(5)(d) (App. p.25) (for private projects, "the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objectives on the same site"); Ecology, SEPA Online Handbook, § 3.3.2, Identifying Alternatives (App. pp.65–66) (alternatives include "design alternatives, location options on the site, different operational procedures, various methods of reclamation for ground disturbance, closure options, etc."). Yet, as noted above, the Port's lease determines closure and reclamation requirements, CP at 0300–01 (App. pp.198–99) and the facility's basic design, CP at 0277 (App. p.75), thereby limiting alternatives to these lease terms.

Of particular note is that the lease established the amount of pollution liability insurance that Tesoro must carry for its proposed crude oil terminal—a remarkably low $25 million for a project of this nature and

size—before any environmental analyses had been conducted under SEPA that would identify the extent of potential harm from pollution. CP at 0278 (App. p.76). This $25 million amount is not subject to revision based on the outcome of EFSEC's environmental review. Rather, the lease terms give the Port the right to increase the coverage amount only "upon its knowledge that Lessee intends to: (1) change its operations, (ii) change its use or other handling of Petroleum Products or Hazardous Substances at the Premises, or (iii) make Alterations to the Premises." CP at 0310 (App. pp.108). By agreeing to a specific amount of pollution liability insurance, the Port limited the consideration of alternatives that might have provided a more appropriate level of insurance and environmental protection.

The lease's description of "Permitted Uses" limits consideration of alternate designs, such as other locations or configurations of the terminal on the Port's property. The preliminary and final premises descriptions expressly set forth a particular design for the project. CP at 0273–74 (App. pp.71–72). The lease also states that "Lessee shall occupy and use the Premises for the Permitted Use set forth in Paragraph 1.I and shall not use the Premises for any other purpose without the prior written consent of Lessor." CP at 0289–90 (App. pp.87–88). The Port's commitment to these designs is not conditional in nature, as the Port claims, simply because the lease provides that the Port and Tesoro will "develop mutually

agreeable depictions and legal descriptions" of the final designs. CP at 0966, 0970–71. Rather, the lease requires that the parties "shall" develop these final designs "[d]uring the Contingency Period," and "[u]ntil such substitution has occurred, the Premises shall consist of" the areas defined in Exhibits A, B-1, B-2 and B-3 of the lease. CP at 0281 (App. p.79). Hence, the Port committed itself to identifying the final designs during the contingency period, which is, by definition, before EFSEC completes the EIS. By specifying the particular design of the facility in the lease, the Port limited consideration of reasonable alternative designs.

The Port's lease also limits the consideration of other operational procedures or courses of action. The lease's terms constrain the Port's ability to control the operation of the marine berths dedicated to the crude oil terminal, limiting the consideration of alternative operational procedures. CP at 0294 (App. p.92) ("Lessor shall not impose rules or regulations relating to the operation of the Berth that would have the effect of interrupting or materially interfering with Lessee's safe operation of the Berth."). Plus, the Port lost its ability to consider leasing this property to other potential tenants who would fulfill the Port's objectives—*e.g.*, revenue in the form of rent payments—but in a less environmentally harmful way. CP at 0283 (App. p.81) ("Lessor may not, without compensating Lessee for the same . . . enter into a lease, license or other occupancy agreement with a third party for all or any portion of the

Premises whereby the Premises and the improvements and Alterations made by Lessee are used by such third party for a use substantially similar to the Permitted Use."). By binding itself to these terms, the Port limited the consideration of alternative operational procedures or courses of action at the same site.

c. Executing the lease limited the reasonable alternatives by building momentum in favor of Tesoro's crude oil terminal.

The "fundamental idea of SEPA" is "to prevent government agencies from approving projects and plans before the environmental impacts of doing so are understood." *Int'l Longshore*, 176 Wn. App. at 522, 309 P.3d 654. The Port executed the binding lease before EFSEC had a chance to complete an EIS analyzing and disclosing the environmental impacts of the proposal. Contrary to SEPA's fundamental purpose, the Port illegally stacked the deck in favor of Tesoro's oil terminal as defined in the lease before the environmental impacts of the project were understood.

Washington courts have recognized that such government action "can 'snowball' and acquire virtually unstoppable administrative inertia." *King County*, 122 Wn.2d at 644, 860 P.2d 1024. The cases have recognized that "[p]ostponing environmental review risks 'a dangerous incrementalism where the obligation to decide is postponed successively while project momentum builds.'" *Int'l Longshore*, 176 Wn. App. at 522,

309 P.3d 654 (quoting *King County*, 122 Wash.2d at 664, 860 P.2d 1024).

The Supreme Court of Washington has explained:

> Even if adverse environmental effects are discovered later, the inertia generated by the initial government decisions (made without environmental impact statements) may carry the project forward regardless. When government decisions may have such snowballing effect, decisionmakers need to be apprised of the environmental consequences *before* the project picks up momentum, not after.

King County, 122 Wash.2d at 664, 860 P.2d 1024 (emphasis in original). The Port's lease does precisely what the Supreme Court warned against: it creates a "snowball effect" of administrative inertia in favor of Tesoro's crude oil terminal as described in the lease.

In *Lands Council*, the court concluded that an EIS was required before reclassifying public lands for an alpine ski expansion, even though the action was predicated on the director's approval and environmental review, because the agency inappropriately created a "snowball effect" before an EIS had been prepared when it "effectively approved a specific proposal." 176 Wn. App. at 807, 309 P.3d 734.

Specifically, the lease immediately obligates the Port "to work diligently and in good faith to pursue all necessary licenses, permits, and approvals required for the development and construction of the Facility for

the Permitted Use." CP at 0281 (App. p.79).[7] The Port admits that the lease obligates it to "work diligently and in good faith" to "develop and mutually approve milestones and preliminary engineering and construction plans" during the contingency period, before the EIS is completed. CP at 0970. These obligations arose immediately upon the effective date of the lease and without regard to the conditions precedent. Given that a representative of the Port will sit as a member of EFSEC when EFSEC reviews Tesoro's application, *see* RCW 80.50.030(6) (App. p.6), the Port's obligation to further the project essentially requires it to lobby EFSEC for approval from within, providing undeniable momentum for the project's certification.

Likewise, in *Magnolia*, the court determined that an up-front EIS was necessary because the city's amendment to its zoning plan would have a "snowballing effect" even though it was contingent on federal approval. 155 Wn. App. at 317, 230 P.3d 190. The court agreed with plaintiffs that later environmental review would "be little more than lip service given that the decision about the kind, type, and extent of the development was made when the City Council approved" the plan. *Id.* at 317, n.17, 230 P.3d 190. The Port's lease is no different; it was

[7] The lease also obligates the Port to make specific infrastructure improvements for the benefit of Tesoro's project, and explains "[i]t is anticipated that the Facility will be constructed and fully operational within 9 to 12 months from the receipt of all required permits." CP at 0372–73 (App. pp.170–71).

specifically designed to build momentum in favor of Tesoro's crude oil terminal.

The Port's lease builds momentum for Tesoro's project by obligating the Port to a ten-year lease for a petroleum products loading and unloading terminal at a particular location within the Port of Vancouver. For the first 12 months of the lease, including the time prior to site certification or EFSEC's completion of the EIS, Tesoro will pay the Port $360,000 in rent. CP at 0064. The Port claims this amount is "minor" and therefore too little to generate inertia favoring the project. CP at 0966. Yet this represents $360,000 more than the Port would otherwise have received had the Port not executed the lease. If EFSEC's review extends to 24 months, the Port will have received $840,000 in rent from Tesoro. *Id.* This is far greater than the zero sum that the Port would have otherwise collected. These financial commitments, in combination with the legal obligation to work in furtherance of this particular project, create an incentive for the Port to promote Tesoro's crude oil facility.

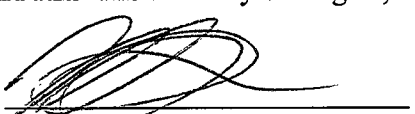
By generating administrative inertia in favor of Tesoro's crude oil terminal, the lease prematurely limits the consideration of reasonable alternatives. The Port's lease decision limited the Port's, EFSEC's, and the public's consideration of alternatives during the EIS process by focusing attention on the specific terms of the project identified in the lease. Public comments submitted during the SEPA scoping phase

focused on the project proposal as set forth by the terms of the lease. In turn, EFSEC's consideration of impacts in the final EIS is likely to focus on the details of the project as set forth in the lease. The Port's lease violates WAC 197-11-070(1)(b) (App. p.20) and WAC 463-47-020 (App. p.53) because it did, and was specifically designed to, build momentum in favor of the crude oil terminal identified as the "Permitted Use."

V. Conclusion

For the reasons explained above, this Court should reverse the Superior Court's decision granting summary judgment to the Port with regard to claims five and six in Riverkeeper's first amended complaint and hold that the Port's leasing decision is subject to SEPA.

RESPECTFULLY SUBMITTED this 15th day of August, 2014.



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CERTIFICATE OF SERVICE

I, Miles Johnson, declare under penalty of perjury of the laws of the United States, that I am a citizen of the United States, that I am over the age of eighteen, that I am not a party to this lawsuit, and that on August 15, 2014, I caused the foregoing Appellants' Opening Brief to be served on the following by U.S. mail to the following addresses and by electronic service to the following email addresses:

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Appendix

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RCW 43.21C.010

Purposes

The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between humankind and the environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation.

RCW 43.21C.030 (excerpt)

Guidelines for state agencies, local governments — Statements — Reports — Advice — Information.

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

RCW 43.21C.031 (excerpt)

Significant impacts.

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) and 43.21C.450 do not require environmental review or the preparation of an environmental impact statement under this chapter. RCW 80.50.020(12)(d).

RCW 80.50.020 (excerpt)

Definitions

(12) "Energy plant" means the following facilities together with their associated facilities:

....

(d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

RCW 80.50.030

Energy facility site evaluation council — Created — Membership — Support.

(1) There is created and established the energy facility site evaluation council.

(2)(a) The chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chair may designate a member of the council to serve as acting chair in the event of the chair's absence. The salary of the chair shall be determined under RCW 43.03.040. The chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington utilities and transportation commission shall provide all administrative and staff support for the council. The commission has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW. The council shall otherwise retain its independence in exercising its powers, functions, and duties and its supervisory control over nonadministrative staff support. Membership, powers, functions, and duties of the Washington state utilities and transportation commission and the council shall otherwise remain as provided by law.

(3)(a) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

(i) Department of ecology;

(ii) Department of fish and wildlife;

(iii) Department of commerce;

(iv) Utilities and transportation commission; and

(v) Department of natural resources.

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

(i) Department of agriculture;

(ii) Department of health;

(iii) Military department; and

(iv) Department of transportation.

(c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after May 8, 2001. For applications filed before May 8, 2001, council membership is mandatory for those agencies listed in (b) of this subsection.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy facility is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.

RCW 80.50.040

Energy facility site evaluation council — Powers enumerated.

The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: PROVIDED, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: PROVIDED FURTHER, That the council may retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: AND PROVIDED FURTHER, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and

(13) To serve as an interagency coordinating body for energy-related issues.

RCW 80.50.060 (excerpt)

Energy facilities to which chapter applies — Applications for certification — Forms — Information.

(1) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in *RCW 80.50.020 (7) and (15). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

RCW 80.50.090 (excerpt)

Public hearings.

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

RCW 80.50.100

Recommendations to governor — Expedited processing — Approval or rejection of certification — Reconsideration.

(1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant.

(b) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generating [generation] facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(i) Approve the application and execute the draft certification agreement; or

(ii) Reject the application; or

(iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the

certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

RCW 80.50.110

Chapter governs and supersedes other law or regulations — Preemption of regulation and certification by state.

(1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended.

RCW 80.50.120

Effect of certification.

(1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not.

RCW 80.50.175

Study of potential sites — Fee — Disposition of payments.

(1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.

(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location.

RCW 80.50.180

Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030.

Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW.

WAC 197-11-030 (exerpt)

Policy

(2) Agencies shall to the fullest extent possible:

. . .

(d) Initiate the SEPA process early in conjunction with other agency operations to avoid delay and duplication.

(e) Integrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such procedures run concurrently rather than consecutively.

WAC 197-11-050

Lead agency.

(1) A lead agency shall be designated when an agency is developing or is presented with a proposal, following the rules beginning at WAC 197-11-922.

(2) The lead agency shall be the agency with main responsibility for complying with SEPA's procedural requirements and shall be the only agency responsible for:

(a) The threshold determination; and

(b) Preparation and content of environmental impact statements.

WAC 197-11-055 (excerpt)

Timing of the SEPA process.

(5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they should coordinate their SEPA processes wherever possible. The agencies shall comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922.

WAC 197-11-070 (excerpt)

Limitations on actions during SEPA process.

(1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

(a) Have an adverse environmental impact; or

(b) Limit the choice of reasonable alternatives.

WAC 197-11-400

Purpose of EIS.

(1) The primary purpose of an environmental impact statement is to ensure that SEPA's policies are an integral part of the ongoing programs and actions of state and local government.

(2) An EIS shall provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.

(3) Environmental impact statements shall be concise, clear, and to the point, and shall be supported by the necessary environmental analysis. The purpose of an EIS is best served by short documents containing summaries of, or reference to, technical data and by avoiding excessively detailed and overly technical information. The volume of an EIS does not bear on its adequacy. Larger documents may even hinder the decision making process.

(4) The EIS process enables government agencies and interested citizens to review and comment on proposed government actions, including government approval of private projects and their environmental effects. This process is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage the resolution of potential concerns or problems prior to issuing a final statement. An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.

WAC 197-11-402 (excerpt)

General requirements.

Agencies shall prepare environmental impact statements as follows:

. . .

(10) EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made.

WAC 197-11-440

EIS contents.

(1) An EIS shall contain the following, in the style and format prescribed in the preceding sections.

(2) Fact sheet. The fact sheet shall include the following information in this order:

(a) A title and brief description (a few sentences) of the nature and location (by street address, if applicable) of the proposal, including principal alternatives.

(b) The name of the person or entity making the proposal(s) and the proposed or tentative date for implementation.

(c) The name and address of the lead agency, the responsible official, and the person to contact for questions, comments, and information.

(d) A list of all licenses which the proposal is known to require. The licenses shall be listed by name and agency; the list shall be as complete and specific as possible.

(e) Authors and principal contributors to the EIS and the nature or subject area of their contributions.

(f) The date of issue of the EIS.

(g) The date comments are due (for DEISs).

(h) The time and place of public hearings or meetings, if any and if known.

(i) The date final action is planned or scheduled by the lead agency, if known. Agencies may indicate that the date is subject to change. The nature or type of final agency action should be stated unless covered in subsection (a) above.

(j) The type and timing of any subsequent environmental review to which the lead agency or other agencies have made commitments, if any.

(k) The location of a prior EIS on the proposal, EIS technical reports, background data, adopted documents, and materials incorporated by reference for this EIS, if any.

(l) The cost to the public for a copy of the EIS.

(3) Table of contents.

(a) The table of contents should list, if possible, any documents which are appended, adopted, or serve as technical reports for this EIS (but need not list each comment letter).

(b) The table of contents may include the list of elements of the environment (WAC 197-11-444), indicating those elements or portions of elements which do not involve significant impacts.

(4) Summary. The EIS shall summarize the contents of the statement and shall not merely be an expanded table of contents. The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures. The summary need not mention every subject discussed in the EIS, but shall include a summary of the proposal, impacts, alternatives, mitigation measures, and significant adverse impacts that cannot be mitigated. The summary shall state when the EIS is part of a phased review, if known, or the lead agency is relying on prior or future environmental review (which should be generally identified). The lead agency shall make the summary sufficiently broad to be useful to the other agencies with jurisdiction.

(5) Alternatives including the proposed action.

(a) This section of the EIS describes and presents the proposal (or preferred alternative, if one or more exists) and alternative courses of action.

(b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

(i) The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

(ii) The "no-action" alternative shall be evaluated and compared to other alternatives.

(iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

(c) This section of the EIS shall:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

(ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address, if any, and legal description (unless long or in metes and bounds).

(iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals, if known.

(iv) Tailor the level of detail of descriptions to the significance of environmental impacts. The lead agency should retain any detailed engineering drawings and technical data, that have been submitted, in agency files and make them available on request.

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of foreclosing future options by implementing the proposal.

(d) When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan that was adopted after review under SEPA. Further, alternative sites may be evaluated if other locations for the type of proposed use have not been included or considered in existing planning or zoning documents.

(6) Affected environment, significant impacts, and mitigation measures.

(a) This section of the EIS shall describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts. Elements of the environment that are not significantly affected need not be discussed. Separate sections are not required for each subject (see WAC 197-11-430(3)).

(b) General requirements for this section of the EIS.

(i) This section shall be written in a nontechnical manner which is easily understandable to lay persons whenever possible, with the discussion commensurate with the importance of the impacts. Only significant impacts must be discussed; other impacts may be discussed.

(ii) Although the lead agency should discuss the affected environment, environmental impacts, and other mitigation measures together for each element of the environment where there is a significant impact, the responsible official shall have the flexibility to organize this section in any manner useful to decision makers and the public (see WAC 197-11-430(3)).

(iii) This subsection is not intended to duplicate the analysis in subsection (5) and shall avoid doing so to the fullest extent possible.

(c) This section of the EIS shall:

(i) Succinctly describe the principal features of the environment that would be affected, or created, by the alternatives including the proposal under consideration. Inventories of species should be avoided, although rare, threatened, or endangered species should be indicated.

(ii) Describe and discuss significant impacts that will narrow the range or degree of beneficial uses of the environment or pose long term risks to human health or the environment, such as storage, handling, or disposal of toxic or hazardous material.

(iii) Clearly indicate those mitigation measures (not described in the previous section as part of the proposal or alternatives), if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement.

(iv) Indicate what the intended environmental benefits of mitigation measures are for significant impacts, and may discuss their technical feasibility and economic practicability, if there is concern about whether a mitigation measure is capable of being accomplished. The EIS need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA (see WAC 197-11-660(2)). An EIS may briefly mention nonsignificant impacts or mitigation measures to satisfy other environmental review laws or requirements covered in the same document (WAC 197-11-402(8) and 197-11-640).

(v) Summarize significant adverse impacts that cannot or will not be mitigated.

(d) This section shall incorporate, when appropriate:

(i) A summary of existing plans (for example: Land use and shoreline plans) and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.

(ii) Energy requirements and conservation potential of various alternatives and mitigation measures, including more efficient use of energy, such as insulating, as well as the use of alternate and renewable energy resources.

(iii) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(iv) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(e) Significant impacts on both the natural environment and the built environment must be analyzed, if relevant (WAC 197-11-444). This involves impacts upon and the quality of the physical surroundings, whether they are in wild, rural, or urban areas. Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal. EISs shall also discuss significant environmental impacts upon land and shoreline use, which includes housing, physical blight, and significant impacts of projected population on environmental resources, as specified by RCW 43.21C.110 (1)(d) and (f), as listed in WAC 197-11-444.

(7) Appendices. Comment letters and responses shall be circulated with the FEIS as specified by WAC 197-11-560. Technical reports and supporting documents need not be circulated with an EIS (WAC 197-11-425(4) and 197-11-440 (2)(k)), but shall be readily available to agencies and the public during the comment period.

(8) (Optional) The lead agency may include, in an EIS or appendix, the analysis of any impact relevant to the agency's decision, whether or not environmental. The inclusion of such analysis may be based upon comments received during the scoping process. The provision for combining documents may be used (WAC 197-11-640). The EIS shall comply with the format requirements of this part. The decision whether to include such information and the adequacy of any such additional analysis shall not be used in determining whether an EIS meets the requirements of SEPA.

WAC 197-11-600

When to use existing environmental documents.

(1) This section contains criteria for determining whether an environmental document must be used unchanged and describes when existing documents may be used to meet all or part of an agency's responsibilities under SEPA.

(2) An agency may use environmental documents that have previously been prepared in order to evaluate proposed actions, alternatives, or environmental impacts. The proposals may be the same as, or different than, those analyzed in the existing documents.

(3) Any agency acting on the same proposal shall use an environmental document unchanged, except in the following cases:

(a) For DNSs, an agency with jurisdiction is dissatisfied with the DNS, in which case it may assume lead agency status (WAC 197-11-340 (2)(e) and 197-11-948).

(b) For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

(i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or

(ii) New information indicating a proposal's probable significant adverse environmental impacts. (This includes discovery of misrepresentation or lack of material disclosure.) A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents.

(c) For EISs, the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead agency's FEIS (in which case the agency may prepare a supplemental EIS at its own expense).

(4) Existing documents may be used for a proposal by employing one or more of the following methods:

(a) "Adoption," where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same proposal for which an environmental document was prepared are not required to adopt the document; or

(b) "Incorporation by reference," where an agency preparing an environmental document includes all or part of an existing document by reference.

(c) An addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.

(d) Preparation of a SEIS if there are:

(i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts; or

(ii) New information indicating a proposal's probable significant adverse environmental impacts.

(e) If a proposal is substantially similar to one covered in an existing EIS, that EIS may be adopted; additional information may be provided in an addendum or SEIS (see (c) and (d) of this subsection).

WAC 197-11-660

Substantive authority and mitigation.

(1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

(c) Mitigation measures shall be reasonable and capable of being accomplished.

(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

(f) To deny a proposal under SEPA, an agency must find that:

(i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and

(ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(g) If, during project review, a GMA county/city determines that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations or comprehensive plan adopted under chapter 36.70A RCW, or in other applicable local, state or federal laws or rules, provide adequate analysis of and mitigation for the

specific adverse environmental impacts of the project action under RCW 43.21C.240, the GMA county/city shall not impose additional mitigation under this chapter.

(2) Decision makers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts (WAC 197-11-440(6)). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

(a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and

(b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) Agencies shall prepare a document that contains agency SEPA policies (WAC 197-11-902), so that applicants and members of the public know what these policies are. This document shall include, or reference by citation, the regulations, plans, or codes formally designated under this section and RCW 43.21C.060 as possible bases for conditioning or denying proposals. If only a portion of a regulation, plan, or code is designated, the document shall identify that portion. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.

WAC 197-11-704

Action

(1) "Actions" include, as further specified below:

(a) New and continuing activities (including projects and programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies;

(b) New or revised agency rules, regulations, plans, policies, or procedures; and

(c) Legislative proposals.

(2) Actions fall within one of two categories:

(a) Project actions. A project action involves a decision on a specific project, such as a construction or management activity located in a defined geographic area. Projects include and are limited to agency decisions to:

(i) License, fund, or undertake any activity that will directly modify the environment, whether the activity will be conducted by the agency, an applicant, or under contract.

(ii) Purchase, sell, lease, transfer, or exchange natural resources, including publicly owned land, whether or not the environment is directly modified.

(b) Nonproject actions. Nonproject actions involve decisions on policies, plans, or programs.

(i) The adoption or amendment of legislation, ordinances, rules, or regulations that contain standards controlling use or modification of the environment;

(ii) The adoption or amendment of comprehensive land use plans or zoning ordinances;

(iii) The adoption of any policy, plan, or program that will govern the development of a series of connected actions (WAC 197-11-060), but not including any policy, plan, or program for which approval must be obtained from any federal agency prior to implementation;

(iv) Creation of a district or annexations to any city, town or district;

(v) Capital budgets; and

(vi) Road, street, and highway plans.

(3) "Actions" do not include the activities listed above when an agency is not involved. Actions do not include bringing judicial or administrative civil or criminal enforcement actions (certain

categorical exemptions in Part Nine identify in more detail governmental activities that would not have any environmental impacts and for which SEPA review is not required).

WAC 197-11-786

Reasonable alternative.

"Reasonable alternative" means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures. (See WAC 197-11-440(5) and 197-11-660.) Also see the definition of "scope" for the three types of alternatives to be analyzed in EISs (WAC 197-11-792).

WAC 197-11-792

Scope

(1) "Scope" means the range of proposed actions, alternatives, and impacts to be analyzed in an environmental document (WAC 197-11-060(2)).

(2) To determine the scope of environmental impact statements, agencies consider three types of actions, three types of impacts, and three types of alternatives.

(a) Actions may be:

(i) Single (a specific action which is not related to other proposals or parts of proposals);

(ii) Connected (proposals or parts of proposals which are closely related under WAC 197-11-060(3) or 197-11-305(1)); or

(iii) Similar (proposals that have common aspects and may be analyzed together under WAC 197-11-060(3)).

(b) Alternatives may be:

(i) No action;

(ii) Other reasonable courses of action; or

(iii) Mitigation measures (not in the proposed action).

(c) Impacts may be:

(i) Direct;

(ii) Indirect; or

(iii) Cumulative.

(3) WAC 197-11-060 provides general rules for the content of any environmental review under SEPA; Part Four and WAC 197-11-440 provide specific rules for the content of EISs. The scope of an individual statement may depend on its relationship with other EISs or on phased review.

WAC 197-11-922

Lead Agency Rules

The rules for deciding when and how an agency is the lead agency (WAC 197-11-050) are contained in this part. The method and criteria for lead agency selection are in WAC 197-11-924. Lead agency rules for different types of proposals as well as for specific proposals are in WAC 197-11-926 through 197-11-940. Rules for interagency agreements are in WAC 197-11-942 through 197-11-944. Rules for asking the department of ecology to resolve lead agency disputes are in WAC 197-11-946. Rules for the assumption of lead agency status by another agency with jurisdiction are in WAC 197-11-948.

WAC 197-11-924

Determining the Lead Agency

(1) The first agency receiving an application for or initiating a nonexempt proposal shall determine the lead agency for that proposal, unless the lead agency has been previously determined, or the agency receiving the proposal is aware that another agency is determining the lead agency. The lead agency shall be determined by using the criteria in WAC 197-11-926 through 197-11-944.

(2) If an agency determines that another agency is the lead agency, it shall mail to such lead agency a copy of the application it received, together with its determination of lead agency and an explanation. If the agency receiving this determination agrees that it is the lead agency, it shall notify the other agencies with jurisdiction. If it does not agree, and the dispute cannot be resolved by agreement, the agencies shall immediately petition the department of ecology for a lead agency determination under WAC 197-11-946.

(3) Any agency receiving a lead agency determination to which it objects shall either resolve the dispute, withdraw its objection, or petition the department for a lead agency determination within fifteen days of receiving the determination.

(4) An applicant may also petition the department to resolve the lead agency dispute under WAC 197-11-946.

(5) To make the lead agency determination, an agency must determine to the best of its ability the range of proposed actions for the proposal (WAC 197-11-060) and the other agencies with jurisdiction over some or all of the proposal. This can be done by:

(a) Describing or requiring an applicant to describe the main features of the proposal;

(b) Reviewing the list of agencies with expertise;

(c) Contacting potential agencies with jurisdiction either orally or in writing.

WAC 197-11-926

Lead Agency for Government Proposals

(1) When an agency initiates a proposal, it is the lead agency for that proposal. If two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will be the lead agency. For the purposes of this section, a proposal by an agency does not include proposals to license private activity.

(2) Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.

WAC 197-11-928

Lead agency for public and private proposals

When the proposal involves both private and public activities, it shall be characterized as either a private or a public project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is an agency or from the private sector. Any project in which agency and private interests are too intertwined to make this characterization shall be considered a public project. The lead agency for all public projects shall be determined under WAC 197-11-926.

WAC 197-11-930

Lead agency for private projects with one agency with jurisdiction

For proposed private projects for which there is only one agency with jurisdiction, the lead agency shall be the agency with jurisdiction.

WAC 197-11-932

Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.

For proposals for private projects that require nonexempt licenses from more than one agency, when at least one of the agencies requiring such a license is a county/city, the lead agency shall be that county/city within whose jurisdiction is located the greatest portion of the proposed project area, as measured in square feet. For the purposes of this section, the jurisdiction of a county shall not include the areas within the limits of cities or towns within such county.

WAC 197-11-934

Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies

When a proposed private project requires nonexempt licenses only from a local agency other than a county/city and one or more state agencies, the lead agency shall be the local agency.

WAC 197-11-936

Lead agency for private projects requiring licenses from more than one state agency

(1) For private projects which require licenses from more than one state agency, but require no license from a local agency, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

(a) Department of ecology.

(b) Department of health.

(c) Department of natural resources.

(d) Department of fish and wildlife.

(e) Utilities and transportation commission.

(f) Department of licensing.

(g) Department of labor and industries.

(2) When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation.

(3) When, under subsection (1), an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program.

WAC 197-11-938

Lead agencies for specific proposals.

Notwithstanding the lead agency designation criteria contained in WAC 197-11-926 through 197-11-936, the lead agency for proposals within the areas listed below shall be as follows:

(1) For all governmental actions relating to energy facilities for which certification is required under chapter 80.50 RCW, the lead agency shall be the energy facility site evaluation council (EFSEC); however, for any public project requiring such certification and for which the study under RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.

(2) For all private projects relating to the use of geothermal resources under chapter 79.76 RCW, the lead agency shall be the department of natural resources.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee under chapter 78.52 RCW, the lead agency shall be the department of natural resources; however, for projects under RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.09 RCW, the lead agency shall be either the department of natural resources or the city/county where the project is located, as set forth below:

(a) The interagency agreements authorized by WAC 222-50-030 between the department of natural resources and other governmental agencies may be used to identify SEPA lead agency status for forest practice applications. If used, this agreement shall meet the requirements for a lead agency agreement in WAC 197-11-942.

(b) If no interagency agreement exists, the SEPA lead agency determination shall be based on information in the environmental checklist required as part of the forest practice application requiring SEPA review. The applicant shall, as part of the checklist, submit all information on future plans for conversion, and shall identify any known future license requirements.

(c) For any proposal involving forest practices (i) on lands being converted to another use, or (ii) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, the applicable county or city is the lead agency if the county or city will require a license for the proposal. Upon receipt of a forest practice application and environmental checklist, natural resources shall determine lead agency for the proposal. If insufficient information is available to identify necessary permits, natural resources shall ask the applicant for additional information. If a permit is not required from the city/county, natural resources shall be lead agency. If a city/county permit is required, natural resources shall send copies of the environmental checklist and forest practice application together with the determination of the lead agency to the city/county.

(d) Upon receipt and review of the environmental checklist and forest practice application, the city/county shall within ten business days:

(i) Agree that a city/county license is required, either now or at a future point, and proceed with environmental review as lead agency.

(ii) Determine that a license is not required from the city/county, and notify natural resources that the city/county is not lead agency; or

(iii) Determine there is insufficient information in the environmental checklist to identify the need for a license, and either:

(A) Assume lead agency status and conduct appropriate environmental analysis for the total proposal;

(B) Request additional information from the applicant; or

(C) Notify natural resources of the specific additional information needed to determine permit requirements, who shall request the information from the applicant.

(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

(6) For a pulp or paper mill or oil refinery not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology, when a National Pollutant Discharge Elimination System (NPDES) permit is required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342).

(7) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(8) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology.

(9) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or more gallons of any liquid fuel not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(10) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

(11) For proposed metal mining and milling operations regulated by chapter 78.56 RCW, except for uranium and thorium operations regulated under Title 70 RCW, the lead agency shall be the department of ecology.

(12) For proposals to construct, operate, or expand any uranium or thorium mill, any tailings areas generated by uranium or thorium milling or any low-level radioactive waste burial facilities, the lead agency shall be the department of health.

WAC 197-11-940

Transfer of lead agency status to a state agency

For any proposal for a private project where a city or town with a population of under five thousand or a county with a population under eighteen thousand would be the lead agency under WAC 197-11-928 through 197-11-938, and when one or more state agencies are agencies with jurisdiction over the proposal, such local agency may at its option transfer the lead agency duties to that state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936. In such event, the state agency so determined shall be the lead agency and the agency making the transfer shall be an agency with jurisdiction. Transfer is accomplished by the county, city or town transmitting a notice of the transfer together with any relevant information it may have on the proposal to the appropriate state agency with jurisdiction. The local agency making the transfer shall also give notice of the transfer to any private applicant and other agencies with jurisdiction involved in the proposal.

WAC 197-11-142

Agreements on lead agency status

Any agency may assume lead agency status if all agencies with jurisdiction agree.

WAC 197-11-944

Agreements on division of lead agency duties

Two or more agencies may by agreement share or divide the responsibilities of lead agency through any arrangement agreed upon. In such event, however, the agencies involved shall designate one of them as the nominal lead agency, which shall be responsible for complying with the duties of the lead agency under these rules. Other agencies with jurisdiction shall be notified of the agreement and determination of the nominal lead agency.

WAC 197-11-946

DOE resolution of lead agency disputes

(1) If the agencies with jurisdiction are unable to determine which agency is the lead agency under the rules, any agency with jurisdiction may petition the department for a determination. The petition shall clearly describe the proposal in question, and include a list of all licenses and approvals required for the proposal. The petition shall be filed with the department within fifteen days after receipt by the petitioning agency of the determination to which it objects. Copies of the petition shall be mailed to any applicant involved, as well as to all other agencies with jurisdiction over the proposal. The applicant and agencies with jurisdiction may file with the department a written response to the petition within ten days of the date of the initial filing.

(2) Within fifteen days of receipt of a petition, the department shall make a written determination of the lead agency, which shall be mailed to the applicant and all agencies with jurisdiction. The department shall make its determination in accordance with these rules and considering the following factors (which are listed in order of descending importance):

(a) Magnitude of an agency's involvement.

(b) Approval/disapproval authority over the proposal.

(c) Expertise concerning the proposal's impacts.

(d) Duration of an agency's involvement.

(e) Sequence of an agency's involvement.

WAC 197-11-948

Assumption of lead agency status

(1) An agency with jurisdiction over a proposal, upon review of a DNS (WAC 197-11-340) may transmit to the initial lead agency a completed "Notice of assumption of lead agency status." This notice shall be substantially similar to the form in WAC 197-11-985. Assumption of lead agency status shall occur only within the fourteen-day comment period on a DNS issued under WAC 197-11-340 (2)(a), or during the comment period on a notice of application when the optional DNS process in WAC 197-11-355 is used.

(2) The DS by the new lead agency shall be based only upon information contained in the environmental checklist attached to the DNS transmitted by the first lead agency or the notice of application if the optional DNS process is used, and any other information the new lead agency has on the matters contained in the environmental checklist.

(3) Upon transmitting the DS and notice of assumption of lead agency status, the consulted agency with jurisdiction shall become the "new" lead agency and shall expeditiously prepare an EIS. In addition, all other responsibilities and authority of a lead agency under this chapter shall be transferred to the new lead agency.

WAC 463-14-050

Preemption.

Chapter 80.50 RCW operates as a state preemption of all matters relating to energy facility sites. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document which might otherwise be required by state agencies and local governments.

WAC 463-14-080 (excerpt)

EFSEC deliberative process.

RCW 80.50.100 requires the council to report to the governor its recommendation of approval or rejection of an application for certification. In order for the council to develop such a recommendation, it shall use wherever applicable the following deliberative process:

...

(7) Consider any laws or ordinances, rules or regulations, which may be preempted by certification.

The council, when fully satisfied that all issues have been adequately reviewed, will consider and by majority decision will act on the question of approval or rejection of an application.

WAC 463-47-020

Adoption by reference

The energy facility site evaluation council adopts the following sections or subsections of chapter 197-11 WAC by reference as of the effective date of this rule.

197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-300	Purpose of this part.
197-11-305	Categorical exemptions.
197-11-310	Threshold determination required.
197-11-315	Environmental checklist.
197-11-330	Threshold determination process.
197-11-335	Additional information.
197-11-340	Determination of nonsignificance (DNS).
197-11-350	Mitigated DNS.
197-11-360	Determination of significance (DS)/initiation of scoping.
197-11-390	Effect of threshold determination.
197-11-400	Purpose of EIS.

197-11-712 Affecting.

197-11-714 Agency.

197-11-716 Applicant.

197-11-718 Built environment.

197-11-720 Categorical exemption.

197-11-722 Consolidated appeal.

197-11-724 Consulted agency.

197-11-726 Cost-benefit analysis.

197-11-728 County/city.

197-11-730 Decisionmaker.

197-11-732 Department.

197-11-734 Determination of nonsignificance (DNS).

197-11-736 Determination of significance (DS).

197-11-738 EIS.

197-11-740 Environment.

197-11-742 Environmental checklist.

197-11-744 Environmental document.

197-11-746 Environmental review.

197-11-750 Expanded scoping.

197-11-752 Impacts.

197-11-754 Incorporation by reference.

197-11-756 Lands covered by water.

197-11-758 Lead agency.

40 C.F.R. § 1501.2

Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

40 C.F.R. § 1502.5

Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

40 C.F.R. § 1500.1 (excerpt)

Purpose.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

State Environmental Policy Act Handbook

Washington State Department of Ecology - Publication # 98-114
September 1998
Updated 2003

2.4. The Lead Agency (excerpt)

For most proposals, one agency is designated as lead agency under SEPA. The lead agency is:

- Responsible for compliance with SEPA procedural requirements.
- Responsible for compiling and assessing information on all the environmental aspects of the proposal for all agencies with jurisdiction.
- The **only** agency responsible for the threshold determination and for the preparation and content of an environmental impact statement when required.[17]

The responsible official represents the lead agency, and is responsible for ensuring adequate environmental analysis is done and the SEPA procedural requirements are met. The responsible official should be identified within the agency's SEPA procedures, and may be a specific person (such as the planning director or mayor), may vary within an agency depending on the proposal, or may be a group of people (such as an environmental review committee or the city council).

Federal agencies and tribes have no authority under SEPA and cannot be SEPA lead agency. If a federal agency or tribe proposes a project that needs a state or local permit, the federal agency would be considered a private applicant under SEPA and would be responsible for only those steps that are normally required of the applicant.

.....

2.4.2. Lead Agency Agreements

Any non-federal agency within Washington State may be the lead agency as long as all agencies with jurisdiction agree [WAC 197-11-942]. The lead agency is not required to have jurisdiction on the proposal.

When the designated lead agency transfers all or part of the lead agency responsibilities to another agency, a "lead agency agreement" is made. Although we recommend that the agencies document the agreement in writing to avoid later confusion, this is not required.

Two or more agencies may become "co-lead" agencies if both agencies agree. One of the agencies is named "nominal lead" and is responsible for complying with the procedural requirements of SEPA [WAC 197-11-944]. All agencies sharing lead agency status are responsible for the completeness and accuracy of the environmental document(s). The written agreement between co-lead agencies, although not required, helps clarify responsibilities, and might typically contain: an outline of each agency's duties, a statement as to which agency is nominal lead, aspects on how disagreements will be resolved, who will hear appeals, and under what circumstances the contract can be dissolved.

Federal agencies may share lead agency status with a state or local agency to produce a combined NEPA/SEPA document. This allows both agencies to have input into the document preparation, saving time and money, and ensuring that the information needed to evaluate the federal, as well as the state and local permits, is included. This also helps ensure necessary and important coordination among agencies and a more unified understanding of the proposal and mitigation. The co-lead agency agreement can be formalized in a written agreement outlining the responsibilities of both agencies for the environmental review process.

3.3. Purpose and Content of an EIS (excerpt)

The primary purpose of an EIS is to provide an impartial discussion of significant environmental impacts, and reasonable alternatives and mitigation measures that avoid or minimize adverse environmental impacts. This environmental information is used by agency officials—in conjunction with applicable regulations and other relevant information—to make decisions to approve, condition, or deny the proposal. (See **Using SEPA in Decision Making**.)
An EIS is not meant to be a huge, unwieldy document. The text of a typical EIS is intended to be only 30 to 50 pages. It is not to exceed 75 pages unless the proposal is of unusual scope or complexity, in which case it may not exceed 150 pages [WAC 197-11-425(4)]. The EIS should provide information that is readable and useful for the agencies, the applicant, and interested citizens.

A readable document:

- Is well-organized;
- Provides useful tools for the reader, such as a table of contents, glossary, index, references;
- Is not overly technical (technical details necessary to support information and conclusions in the EIS should be included in appendices or incorporated by reference); and
- Is brief and concise.

A useful document:

- Focuses on the most significant and vital information concerning the proposal, alternatives, and impacts;
- Provides sufficient information about each alternative so that impacts can be compared between alternatives; and
- Presents the lead agency's analysis and conclusions about the likely environmental impact of the proposal.

Format requirements for an EIS are outlined in WAC 197-11-430, 440, 442, and 443. A cover letter or memo is required and the fact sheet must be the first section of every EIS. (A sample fact sheet can be found in Appendix D, on page 140.) Otherwise, the lead agency has the flexibility to use any format they think appropriate to provide a clear understanding of the proposal and the alternatives.

The lead agency is responsible for the content of the EIS and for meeting the procedural requirements of the SEPA Rules. The lead agency, the applicant, or an outside consultant can prepare the EIS [WAC 197-11-420]. The lead agency must specify, within its own SEPA procedures, the circumstances and limitations under which the applicant will participate in the preparation of the EIS.

Tip:

A common misconception is that the requirement of an EIS for a project means that the proposal will probably be denied. This is not the intent or necessarily the outcome of an EIS. A determination to prepare an EIS means there are likely significant adverse environmental impacts that need to be carefully considered and understood, and alternative avenues for mitigating the issues that need to be investigated.

....

3.3.2 Identifying Alternatives

The EIS evaluates the proposal, the no-action alternative, and other "reasonable alternatives" [WAC 197-11-786, 197-11-440(5)]. A reasonable alternative is a feasible alternate course of action that meets the proposal's objective at a lower environmental cost. Reasonable alternatives may be limited to those that an agency with jurisdiction has authority to control either directly or indirectly through the requirement of mitigation.

Alternatives are one of the basic building blocks of an EIS. They present options in a meaningful way for decision-makers. The EIS examines all areas of probable significant adverse environmental impact associated with the various alternatives including the no-action alternative and the proposal.

Project alternatives might include design alternatives, location options on the site, different operational procedures, various methods of reclamation for ground disturbance, closure options, etc. For public projects, alternative project sites should also be evaluated. For private projects,

consideration of off-site alternatives may be limited except under certain circumstances (see WAC 197-11-440(5)(d)).

It is not necessary to evaluate every alternative iteration. Selecting alternatives that represent the range of options provides an effective method to evaluate and compare the merits of different choices. The final action chosen by decision-makers need not be identical to any single alternative in the EIS, but must be within the range of alternatives discussed. (Additional analysis in a supplemental EIS or in an addendum can be used to address any portions of the final proposal that lie outside the analysis in the EIS. See section on **Use of Existing Documents**.)

As potential alternatives are identified, they should be measured against certain criteria:

- Do they feasibly attain or approximate the proposal's objectives?
- Do they provide a lower environmental cost or decreased level of environmental degradation than the proposal?

It may not be evident at the beginning of the process whether an alternative meets all of these criteria. The lead agency should continue to analyze each alternative until information becomes available that indicates an alternative fails to meet the criteria. The alternative can then be eliminated from further consideration. Any decisions to eliminate an alternative and the reasons why should be documented in the EIS.

Occasionally, a lead agency may decide that there are no reasonable alternatives to a proposal. In this case, the no-action alternative and the proposed action would be the only alternatives examined in the EIS.

As part of the discussion of alternatives, the EIS must discuss the benefits and disadvantages of delaying implementation of the proposal [WAC 197-11-440(5)(c)(vii)]. The urgency of implementing the proposal can be compared to any benefits of delay. The foreclosure of other options should also be considered (i.e. conversion of timberland to residential development eliminates the possible use of the site for future timber production, conversion to farmland, etc.).

GROUND LEASE

BETWEEN

THE PORT OF VANCOUVER, U.S.A.

AND

TESORO SAVAGE PETROLEUM TERMINAL LLC

Commission Approval Date: July 23, 2013

Effective Date: August 1, 2013

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GROUND LEASE

THIS GROUND LEASE is made by and between the PORT OF VANCOUVER, a municipal corporation organized and existing under the laws of the State of Washington, hereinafter referred to as "Lessor," and TESORO SAVAGE PETROLEUM TERMINAL LLC, a Delaware limited liability company, hereinafter referred to as "Lessee." Capitalized terms have the meanings set forth in the Glossary of Terms attached hereto as Exhibit "E" or as defined elsewhere in this Lease.

WITNESSETH:

That the Parties do hereby mutually agree as follows:

1. **BASIC LEASE PROVISIONS:** These are provisions of this Lease, except as they may be modified hereafter.

A.	DATE OF GROUND LEASE:	August 1, 2013 (referred to herein as the "Effective Date").
B.	PRELIMINARY AND FINAL PREMISES DESCRIPTIONS:	As of the Effective Date, the Parties have not determined the precise boundaries of the Premises. During the Contingency Period, Lessor and Lessee shall develop mutually agreeable depictions and legal descriptions of the Rail/Rack Area, the Support Areas, the Storage Area, and the Marine Terminal Area (collectively, the "Final Premises"), which shall replace Exhibits "A", "B-1", "B-2" and "B-3" attached hereto on the Effective Date. Until such substitution has occurred, the Premises shall consist of the following (the "Preliminary Premises"): The area outlined on the attached Exhibits "A", "B-1", "B-2" and "B-3", all in "AS-IS" condition, all as described more particularly in Paragraph 2 below, and consisting of: "Rail/Rack Area": Approximately 9.92 acres (432,115 square feet) of land area for construction and operation of a petroleum products unloading facility, including exclusive rail tracks as described in Exhibit "J" and more particularly depicted on Exhibit "B-1". "Support Areas": Approximately 1.54 acres (67,082 square feet) ("Support Area A") and approximately 3.93 acres (171,191 square feet) ("Support Area B") of land for administrative and rail operations support activities for the Facility, more particularly depicted on Exhibit "B-1".

"Storage Area": Approximately 20.84 acres (969,210 square feet) of vacant land to be used for construction and use of petroleum products storage tanks and more particularly depicted on Exhibit "B-2". The possession of the Storage Area will be delivered in two phases (Phase 1, approximately 15.97 acres; and Phase 2, approximately 4.87 acres) as described in Paragraph 3.E below.

"Marine Terminal Area": Approximately 5.76 acres (250,906 square feet) consisting of the berthing areas commonly known as Berth 13 and Berth 14, Terminal 4, to be used exclusively by Lessee for the loading of Petroleum Products onto vessels docked at the Marine Terminal Area from time to time. The Marine Terminal Area is to be used in accordance with the terms of this Lease.

C. TERM:

Initial Lease Term:
The term of this Lease shall commence on the Effective Date, and shall continue for a full one hundred twenty (120) months after the Rent Commencement Date (i.e., ending at midnight on the last day of the calendar month that is a full 120 months after the Rent Commencement Date), unless sooner terminated in accordance with the terms and provisions of this Lease. The period from the Rent Commencement Date until the end of the term of this Lease (including any exercised Extension Terms) is referred to herein as the "Operating Term".

Extension Terms:
Lessee is granted two (2) successive options to extend, each for an additional Extension Term of five (5) years. The Extension Term(s) must be exercised in accordance with the provisions of Paragraph 3.B.

Early Termination:
If any or all of the conditions precedent set forth in Paragraph 2.D has not been satisfied or waived on or before the Conditions Precedent Outside Date, either Lessor or Lessee may terminate this Lease on or before the Conditions Precedent Outside Date by written notice of termination to the other Party, without further cost or obligation, except as set forth expressly herein. The security instrument required by the first paragraph of Paragraph 1.G hereof will be retained by Lessor until all outstanding expenses owed to Lessor are reimbursed in full by Lessee.

D. INITIAL FEES AND RENT:

During the Contingency Period: Thirty Thousand Dollars ($30,000.00) per month during the first eighteen (18) months of the Contingency Period.

and thereafter, until the Conditions Precedent Expiration Date, Fifty Thousand Dollars ($50,000.00) per month ("Contingency Period Fees").

During the Construction Period: Fifty Thousand Dollars ($50,000.00) per month until the Rent Commencement Date ("Construction Period Fees").

On and after the Rent Commencement Date: Five and thirty-two one hundredths cents ($0.0532), multiplied by the annual percentage increases in the Index from the Effective Date until the Rent Commencement Date, per square foot per month ("Base Monthly Rent"), plus Leasehold Tax.

Rent Adjustment:
During the Initial Lease Term and any Extension Term, the Base Monthly Rent shall be increased annually on each anniversary of the Effective Date (each, an "Adjustment Date"). On each annual Adjustment Date, the Base Monthly Rent set forth above shall be adjusted by multiplying the Base Monthly Rent by the percentage increase in the Consumer Price Index All Urban Consumers U.S. City Average (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The percentage increase shall be calculated by comparing the Index that was in effect on the ninetieth (90^{th}) day preceding the Effective Date for the first annual adjustment and prior to the Adjustment Date on each successive annual adjustment to the Index that is in effect on the ninetieth (90^{th}) day preceding the then current Adjustment Date. In the event that the Adjustment Date falls on a day other than the 1^{st} of the month, the adjustment in Base Monthly Rent shall take effect on the first day of the following month.

E. CURRENT LEASEHOLD TAX RATE: Twelve and 84/100 percent (12.84%).

F. ADDITIONAL CHARGES: Common Area Maintenance ("CAM") charges: $.0054 per square foot, as adjusted below, and as described in Paragraph 5.E.

Rail Access Fee ("RAF"): Twenty-Five Dollars ($25.00) per BNSF-delivering carrier Loaded Rail Car, or Fifty Dollars ($50.00) per non-BNSF-delivering carrier Loaded Rail Car, pursuant to the terms outlined in Paragraph 5.C.

CAM charges and the Rail Access Fee shall increase annually on the first day of each January ("CAM Adjustment Date"), beginning on January 1, 2014. On each CAM Adjustment Date, the CAM and RAF charges set forth shall be adjusted by multiplying such CAM and RAF charges by the percentage increase in the Consumer Price Index All Urban Consumers U.S. City Average (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The percentage increase for the first annual adjustment shall be calculated by comparing the Index that is in effect on the 1st day of October preceding January 1, 2013 to the Index that is in effect on the 1st day of October preceding January 1, 2014. Each successive annual adjustment will compare the Index in effect on October 1st prior to the previous CAM Adjustment date to the Index that is in effect on October 1st preceding the current CAM Adjustment Date. No such adjustments shall be less than an increase of Two percent (2%) or more than an increase of Six percent (6%) of the CAM and RAF charges in effect immediately prior to such adjustment.

Rail Maintenance Fee: For the Port's Rail System, as determined by the Port's annual Rail Tariff pursuant to the terms outlined in Paragraph 5.D; the Rail Maintenance Fee is, as of the Effective Date, Four Dollars ($4) per Loaded Rail Car.

Lessee shall be responsible for all individual rail maintenance and repair expenses on all rail spurs and tracks used exclusively by Lessee.

G. LEASE SECURITY AMOUNT:

Bond, letter of credit, or cash in an amount of [redacted] Dollars [redacted] as and to the extent required in Paragraph 6.

Additionally, as security for payment of the sums to be paid by Lessee to Lessor under the terms of the MGA Agreement, Lessee shall deliver to Lessor a deed of trust creating, for the benefit of Lessor (or the holders of bonds issued by Lessor or a trustee acting for the benefit thereof), a first position security interest on the improvements and Alterations constituting the Facility (as more particularly described in Paragraph 6.B), or such other security instrument as is proposed by Lessee and is acceptable to Lessor in its sole discretion, until such time as Lessee has paid to Lessor, in respect of Wharfage, Service and Facilities Fees, a total of [redacted]

H.	GUARANTY:	If applicable with respect to an assignee, one or more Parent Company Guaranties, in the form attached hereto as Exhibit "G".
I.	PERMITTED USE:	Rail/Rack Area: (i) Loading and unloading of Petroleum Products by rail, (ii) transfer of such Petroleum Products to and from the Storage Area or the Marine Terminal Area, and (iii) rail operations and other operational and maintenance activities associated with the receipt, loading, unloading and transfer of such Petroleum Products, including but not limited to inspection, repair and storage of rail cars and installation and upgrading of equipment from time to time. Support Areas: Office, administrative and support activities relating to the operation of the Facility, including installation and upgrading of equipment from time to time. Storage Area: (i) Storage and blending of Petroleum Products delivered by rail, or vessel via pipeline, to the Rail/Rack Area, (ii) transfer of such Petroleum Products via pipeline to the Marine Terminal Area, and (iii) operational and maintenance activities associated with the storage, blending and transfer of such Petroleum Products, including installation and upgrading of equipment from time to time. Marine Terminal Area: (i) Loading and unloading of vessels with Petroleum Products delivered to the Premises; and (ii) operational and maintenance activities, including installation and upgrading of equipment from time to time, including equipment used to load and unload Petroleum Products onto and from vessels and the inspection, repair and handling of vessels.
J.	PROPERTY INSURANCE:	Lessee Provided: Maximum Deductible: One Million Dollars ($1,000,000) and five percent (5%) of values per location (i.e., the Rail/Rack Area, the Support Areas, the Storage Area, and the Marine Terminal Area) for the perils of earthquake and flood; and subject to adjustment pursuant to the provisions of Paragraph 15.
K.	LIABILITY INSURANCE:	Minimum Coverage Amounts for Paragraph 15.B: Ten Million Dollars ($10,000,000) per occurrence; Fifteen Million Dollars ($15,000,000) aggregate; subject to adjustment pursuant to the provisions of Paragraph 15.

Minimum Coverage Amounts for Paragraph 15.D(4) – Employer Liability Act:
One Million Dollars ($1,000,000).

Minimum Coverage Amounts for Paragraph 15.D(5) – Automobile Liability:
One Million Dollars ($1,000,000) per occurrence.

L. POLLUTION LEGAL LIABILITY INSURANCE

Lessee shall also obtain pollution legal liability insurance in the amount of Twenty-Five Million Dollars ($25,000,000) as an extension of the commercial general liability insurance or as a separate policy, and further pursuant to the provisions of Paragraph 15.C.

M. ADDRESSES FOR NOTICE PURPOSES:

Notices to Lessor shall be sent to:

The Port of Vancouver, U.S.A.
3103 NW Lower River Road
Vancouver, WA 98660
Attention: Executive Director
Telephone: 360-693-3611
Facsimile: 360-735-1565

With a copy to:

Alicia Lowe, POV General Counsel
Schwabe, Williamson & Wyatt
700 Washington Street, Suite 701
Vancouver, WA 98660
Telephone: 360-694-7551
Facsimile: 360-693-5574

Notices to Lessee shall be sent to:

Tesoro Savage Petroleum Terminal LLC
c/o Savage Services Corporation
6340 South 3000 East, Suite 600
Salt Lake City, Utah 84121
Attention: Group Leader, Oil and Gas Solutions
Email: [redacted]
Facsimile: [redacted]

With a copy to:

Savage Companies
6340 South 3000 East, Suite 600
Salt Lake City, Utah 84121
Attention: General Counsel
Email: [redacted]
Facsimile: [redacted]

And to:

Tesoro Refining & Marketing Company LLC
19100 Ridgewood Parkway

San Antonio, Texas 78259
Attention: Senior Director, Managing Attorney, Commercial
Email: [redacted]
Facsimile: [redacted]

N. BROKERS:

Lessor's Broker: None
Lessee's Broker: None

Lessor shall lease the Premises (as defined below in Paragraph 2) to Lessee, and Lessee shall lease the Premises from Lessor, in accordance with the Terms of this Lease, after Lessor and Lessee execute this Lease, which consists of _____ pages including Exhibits A, B-1, B-2, B-3, C, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q. Any and all exhibits attached hereto are made a part of this Lease and incorporated herein.

2. **PREMISES:**

A. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, subject to and with the benefit of the terms and conditions of this Lease, including the attached exhibits, the Preliminary Premises, located in the Port District of the Port of Vancouver, hereinafter known as the "Port," located in the City of Vancouver, Clark County, Washington, as described in Paragraph 1.B and as represented by the area outlined on the attached Exhibits "A", "B-1", "B-2", and "B-3" together with the nonexclusive right of ingress and egress to and from the Premises across those portions of the Port dedicated from time to time as streets, roadways, and Common Areas. Lessor further agrees to convey to Lessee one or more nonexclusive pipeline easements for the purpose of constructing and maintaining pipelines to transport Lessee's Petroleum Products between the Rail/Rack Area, the Support Areas, the Storage Area, and the Marine Terminal Area, substantially in the form of Pipeline Easement Agreement attached hereto as Exhibit "K" (each, a "Pipeline Agreement"). Except for the Existing Environmental Conditions as generally described below in Paragraph 2.C, Lessee hereby accepts said Premises in "As-Is" condition. Notwithstanding that Lessee accepts the Premises in "As Is" condition, Lessor shall, prior to the Rent Commencement Date and at Lessor's sole cost and expense, complete the improvements to the Port that are described as "Lessor's Infrastructure Improvements" on Exhibit "D" attached hereto, to enable Lessee to fully utilize the Premises for the Permitted Use.

B. It is understood that the Premises constitute a portion of a multiple occupancy area, including warehouses and office buildings, in the Port. During the term hereof and subject to the covenants, terms and conditions hereof, Lessee, and its agents, employees, customers, invitees, and licensees, shall have the nonexclusive

right to use, in common with Lessor and other lessees of building and unimproved land space in the Port, and their agents, employees, customers, invitees, and licensees, thereto, all Common Areas. Lessee shall use Common Areas in conformity with the reasonable rules and regulations and changes thereto from time to time promulgated by Lessor after written notice of any changes to such rules and regulations has been provided to Lessee. The manner and nature of the installation and maintenance of the Common Areas shall be subject to the sole discretion of Lessor, but in a manner consistent with the requirements of Paragraph 5.E below. Lessor reserves the right from time to time to make changes in the shape, size, location and extent of Common Areas provided that, except as may be required by law or government agencies, no such change shall materially adversely affect Lessee's Permitted Use of the Premises or Lessee's means of access to and from the Premises. Lessor further retains the right to temporarily close Common Areas from time to time in order to prevent a dedication thereof or for the making of repairs or performance of maintenance. No such temporary closures shall prevent Lessee's normal business operations at the Premises or materially adversely and unreasonably affect Lessee's access to and from the Premises.

C. Lessor and Lessee acknowledge that portions of the Premises and portions of the areas to which Lessee may be granted an easement pursuant to a Pipeline Agreement are subject to the Consent Decree, in which the previous land owner agreed to remediate the Premises. Portions of the Premises and portions of the areas to which Lessee may be granted an easement pursuant to a Pipeline Agreement also are subject to the Restrictive Covenants, which require capping of residual contamination and restrict activities that would disturb the contamination. Lessee's possession, including but not limited to Lessee's use and operations, throughout the Term(s) of the Lease, shall be consistent with all requirements of the Consent Decree and Restrictive Covenants, which are incorporated by reference in this Lease. Lessor shall be responsible for proper management of all Existing Environmental Conditions, including in connection with the pre-occupancy construction of improvements on the Premises, all as set forth in Paragraph 11.B hereof. Lessor, with Lessee's cooperation, will obtain the necessary approvals from the Washington Department of Ecology so as to allow Lessor or Lessee to modify any monitoring well location or cap, including modifications to conduct baseline and geotechnical testing, for pre-occupancy construction of improvements and pre-occupancy construction of the tenant improvements necessary for the Permitted Use (provided Lessee presents a reasonable design which is consistent with the Consent Decree and Restrictive Covenants, as well as the other terms and conditions of this Lease) of the Premises under this Lease. Lessee (with Lessor's reasonable cooperation, but at no cost to Lessor) shall be responsible for obtaining any other

licenses, permits and approvals needed for its operations on the Premises, and shall cooperate reasonably with Lessor to ensure that the scope and breadth of such licenses, permits and approvals are adequate for completion of any work to be performed by Lessor under such licenses, permits and approvals.

D. Notwithstanding anything to the contrary set forth herein, the Parties' respective obligations under this Lease (other than: (1) Lessee's obligation to pay the Contingency Period Fee pursuant to Paragraph 4.A; (2) the Parties' obligations to work diligently and in good faith to pursue all necessary licenses, permits and approvals required for the development and construction of the Facility for the Permitted Use; and (3) the indemnity obligations set forth in Paragraphs 11, 13, 16, 23, and 39; each of which such obligations set forth in this Paragraph 2.D shall be absolute and irrevocable as of the Effective Date through the date of any termination based on the failure of the Conditions Precedent) shall be subject to satisfaction or waiver of the following Conditions Precedent on or before the Conditions Precedent Outside Date:

(1) all necessary licenses, permits and approvals have been obtained for the Permitted Use; and

(2) Lessee shall obtain a baseline investigation of environmental conditions at the Premises by an independent, reputable professional environmental consultant to assess the presence of contamination on the Premises prior to Lessee's use of the Premises (the "Baseline Assessment"). The selection of such consultant and the scope of work for the Baseline Assessment shall be approved by Lessor prior to the engagement of the consultant or the initiation of the assessment work. The scope of work shall include the sampling and analysis plan for the Baseline Assessment.

The Condition Precedent in Paragraph 2.D(1) is for the benefit of both Lessor and Lessee. The Condition Precedent in Paragraph 2.D(2) is for the sole benefit of Lessee. If the Conditions Precedent are satisfied or waived by the Party or Parties to whose benefit they run on or before the Conditions Precedent Outside Date, then Lessee shall promptly commence construction of the Facility. If neither Party provides the other Party with a termination notice on or before the Conditions Precedent Outside Date, the Conditions Precedent shall then be deemed satisfied.

During the Contingency Period, Lessor and Lessee shall work diligently and in good faith to: develop and approve depictions and legal descriptions of the Final Premises (the cost of preparation thereof to be borne by Lessor), and such depictions and legal descriptions shall, prior to the Conditions Precedent Expiration Date, be substituted into this Lease as replacement Exhibits "A", "B-1", "B-2" and "B-3" by a mutually executed

amendment to this Lease; and develop and mutually approve milestones and preliminary engineering and construction plans, specifications and designs (to be submitted by Lessee to Lessor for Lessor's review and approval), and rail track plans and specifications, for the development, construction, and operation of the Facility. Notwithstanding anything to the contrary herein, if Lessor is not reasonably satisfied on or before the Conditions Precedent Outside Date that Lessee is prepared to, and intends to, commence construction within [redacted] after the Conditions Precedent Expiration Date, Lessor may terminate this Lease without any further obligations on the part of either Party hereto, except as expressly set forth herein.

E. Lessee's use of the Rail/Rack Area shall be at all times in accordance with and subject to the terms, conditions, and limitations set forth in Exhibit "J" ("Rail Operations") attached hereto.

F. During the first twelve (12) months of the Contingency Period (unless otherwise expressly agreed in writing by the Parties), Lessor may use the Premises, and allow third parties to use the Premises, for any and all purposes other than the Permitted Use, so long as such use does not unreasonably change the condition of the Premises in such a way that would inhibit Lessee's development of the Facility following the Conditions Precedent Expiration Date.

3. **LEASE TERM:**

A. In accordance with the terms and conditions of this Lease, but subject to Paragraph 3.F below, Lessee shall have and hold the Premises commencing on the Conditions Precedent Expiration Date, unless this Lease shall be sooner terminated as herein provided.

B. Provided no Default under any of the provisions or covenants of the Lease has occurred which has not been cured, Lessee is hereby granted the number of successive options set forth in Paragraph 1.C to extend the Term of this Lease, each for an additional Extension Term as set forth in Paragraph 1.C (each of which periods is referred to herein as an "Extension Term"). Lessee shall exercise each option by giving written notice (the "Exercise Notice") to Lessor of its intent to extend the Lease Term no less than One Hundred Eighty (180) days prior to the expiration of the then current Term. Upon the timely exercise of the option to extend and subject to the assent of the Port, which shall not be unreasonably withheld, the Extension Term shall be on the same terms and conditions, except Base Monthly Rent, contained in the Lease. Base Monthly Rent for the Extension Term shall not be less than the Base Monthly Rent provided for herein. Base Monthly Rent shall be in the amount set forth below and there shall be no further options to extend the Term beyond the number of Extension Terms set forth in

Paragraph 1.C. Any attempted exercise of an option to extend the Term shall be null and void and wholly ineffective unless this Lease is still in full force and effect and Lessee shall not be in Default beyond applicable notice and cure periods under the terms of this Lease. For any assignment of this Lease requiring Lessor's approval or consent pursuant to Paragraph 19, Lessor's express approval shall also be required in order for any extension options available to Lessee to be included with the assignment of the Lease, with the same standard of consent (i.e., sole or reasonable discretion) applicable for Lessor's approval of the assignment of the Lease also being applicable to Lessor's approval of the assignment of the extension options. For any assignment of this Lease not requiring Lessor's approval or consent pursuant to Paragraph 19, any extension options available to Lessee shall be assigned automatically with the assignment of the Lease.

C. If Lessee fails to give timely written notice to Lessor of its election to extend the Term, the Term shall expire and this Lease terminate as of the end of the then expiring Term. If the Term is extended as aforesaid, all of the same terms, provisions and conditions set forth in this Lease shall apply, except that the Base Monthly Rent during the Extension Term shall be as set forth in Paragraphs 1.D and 4.

D. If Lessee timely gives written notice to Lessor of Lessee's first or second election to extend the Term, but Lessor elects to withhold its assent to such extension, then Lessee shall have no obligation, notwithstanding the terms of Paragraph 28 below, to pay for removal of the improvements and Alterations made by Lessee to the Premises. Additionally, in such event, Lessor may not, without compensating Lessee for the same (based on the fair market value thereof), enter into a lease, license or other occupancy agreement with a third party for all or any portion of the Premises whereby the Premises and the improvements and Alterations made by Lessee are used by such third party for a use substantially similar to the Permitted Use.

E. Any reference in this Lease to the "Term" or "Term of this Lease" or "Lease Term" shall mean the Initial Term together with any Extension Term accruing pursuant to Paragraph 3.B. If any option to extend the Term is not exercised strictly in accordance with Paragraph 3.B, then all other options to extend the Term shall automatically terminate and be null and void.

F. Lessee acknowledges that a portion of the Premises is, as of the Effective Date, occupied by a third party tenant, whose lease thereof expires on December 31, 2013. Accordingly, notwithstanding anything to the contrary herein, Lessee shall not have access to or possession of the portion of the Storage Area shown on Exhibit

"B-2" as "Storage Area – Phase 2" until written notice from Lessor to Lessee that such portion of the Premises is available (the "Phase 2 Possession Notice Date").

4. **FEES AND RENT:**

A. Lessee agrees to pay, during the Contingency Period, the Contingency Period Fees.

B. Lessee agrees to pay, during the Construction Period, the Construction Period Fees, which will not be credited back to Lessee.

C. Lessee agrees to pay as rental during the Term of this Lease, commencing on the Rent Commencement Date, the Base Monthly Rent set forth in Paragraph 1.D, as adjusted. Lessee also agrees to pay, during the Term of this Lease, commencing on the Effective Date, all Leasehold Taxes, including Leasehold Taxes applied by the Washington State Department of Revenue ("DOR") with respect to the Premises as determined by the DOR under RCW 82.29A.020. Base Monthly Rent and Leasehold Taxes are referred to collectively herein as the "Rent." The current Leasehold Tax Rate is set forth in Paragraph 1.E.

D. The Contingency Period Fee, the Construction Period Fee and the Rent shall be paid in advance on or before the first day of the month in which payment is due. All Additional Charges, including those described in Paragraph 5, shall be paid within no more than thirty (30) days from the date of billing. All payments shall be payable at Lessor's office in Vancouver, Washington without counterclaim, setoff, deduction or defense.

E. If any payment of the Contingency Period Fee, the Construction Period Fee, Rent or Additional Charges due to Lessor is not received within five (5) days from the date herein set for payment, Lessee shall pay to Lessor a late charge in the amount of ten percent (10%) of the payment then due and in arrears and interest on said payment at the "Interest Rate." Interest shall be calculated on outstanding payments from the date first due until received by Lessor. Lessee shall be responsible for any attorney fees or related charges incurred by Lessor for collection of rent. A charge of Seventy-Five and 00/100 Dollars ($75.00) shall be levied for any check received which is returned for insufficient funds.

F. Any Contingency Period Fee, Construction Period Fee or Rent payment for any fractional month during the Term hereof shall be prorated on the number of days in such month and payable on the next applicable payment date.

G. The Base Monthly Rent for each Extension Term shall be equal to the greater of: (i) the Base Monthly Rent payable immediately prior to the commencement of such Extension Term, plus an annual rent

adjustment in accordance with Paragraph 1.D, or (ii) the "Fair Market Rent" for the Premises which shall be determined as follows:

"Fair Market Rent" shall mean the effective flat rental rate per square foot received by landlords of comparable water accessible, heavy industrial land in the Vancouver, Washington, metropolitan area with similar amenities and fixtures, assuming Lessor were to put the space in question (in its then-existing "as-is" condition) on the market for lease to a new lessee, assuming a new lessee with comparable attributes to Lessee. In determining such "Fair Market Rent" there shall be taken into account, among other things, (i) rental rates, (ii) concessions then being given to prospective tenants such as construction and other allowances for tenant improvements, moving and other allowances, and (iii) any expenses that would be incurred by a landlord in connection with a third party lease such as leasing commissions, and (iv) the Base Year being utilized to determine such rent. Items referred to in clauses (ii) through (iv) above are hereinafter collectively referred to as "concessions" and Fair Market Rent shall be reduced to the extent necessary to amortize the amount of such concessions over the full term of the Extension Term. Fair Market Rent as of the date of the Extension Term shall be determined by mutual agreement of Lessor and Lessee not later than thirty (30) days after receipt of the Exercise Notice, subject to arbitration as hereinafter provided. If the Parties are unable to reach agreement as to Fair Market Rent within such thirty (30) day period, the Parties shall submit the dispute to arbitration. The arbitration shall be conducted and determined in Vancouver, Washington in accordance with the then prevailing rules of the American Arbitration Association or its successor for arbitration of real estate valuation disputes, except that the procedures mandated by such rules shall be modified as follows:

(1) Within ten (10) business days after expiration of the thirty (30) day period for mutual agreement on Fair Market Rent, Lessee shall notify Lessor of the name and address of the person to act as arbitrator on Lessee's behalf. The arbitrator shall be a MAI certified real estate appraiser with at least ten (10) years full-time experience who is familiar with the Fair Market Rent of water accessible, heavy industrial land similar to the Premises in Vancouver, Washington. Within ten (10) business days after Lessee identifies in writing its arbitrator, Lessor shall give notice to Lessee specifying the name and address of the person designated by Lessor to act as arbitrator on Lessor's behalf, which person shall be similarly qualified. If Lessor fails to notify Lessee of the appointment of Lessor's arbitrator within the time specified, then the arbitrator appointed by Lessee shall be the arbitrator to determine the Fair Market Rent for the Premises.

(2) If two arbitrators are chosen, the arbitrators so chosen shall meet within ten (10) business days after the second arbitrator is appointed and shall appoint a neutral arbitrator who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators. If they are unable to agree upon such appointment within five (5) business days, the neutral arbitrator shall be selected by the presiding judge of the Clark County Superior Court.

(3) The Fair Market Rent shall be fixed by the three arbitrators in accordance with the following procedures. Each Party-appointed arbitrator shall state, in writing, such arbitrator's determination of the Fair Market Rent supported by the reasons therefor and shall make counterpart copies for the other Party-appointed arbitrator and the neutral arbitrator. The Party-appointed arbitrators shall arrange for a simultaneous exchange of their proposed Fair Market Rent determinations. The role of the neutral arbitrator shall be to select whichever of the two proposed determinations of Fair Market Rent most closely approximates the neutral arbitrator's own determination of Fair Market Rent. The neutral arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations of Fair Market Rent. The determination of Fair Market Rent that the neutral arbitrator chooses as that most closely approximating the neutral arbitrator's determination of the Fair Market Rent shall constitute the decision of the arbitrators and shall be final and binding upon the Parties. The arbitrators shall have no power to modify the provisions of this Lease.

(4) The neutral arbitrator's decision shall be made not later than thirty (30) days after the submission by the arbitrators of their proposals with respect to the Fair Market Rent. The Parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the neutral arbitrator may for good cause allow reasonable extensions or delays, which shall not affect the validity of the award. Absent fraud, collusion or willful misconduct by the neutral arbitrator, the award shall be final, and judgment may be entered in any court having jurisdiction thereof.

(5) Each Party shall pay the fees and expenses of its respective arbitrator and both Parties shall share the fees and expenses of the neutral arbitrator equally.

(6) The entire arbitration process, beginning after expiration of the thirty (30) day period for mutual agreement on Fair Market Rent, shall be completed in not more than sixty-five (65) days.

Notwithstanding the foregoing, in the event that the Parties have modified the terms of the MGA Agreement such that a mutually agreeable MGA (as defined in the MGA Agreement) has been established and

agreed upon for the entirety of the applicable Extension Term or Extension Terms, the Base Monthly Rent for such Extension Term or Extension Terms shall not be subject to such Fair Market Rent adjustment, but shall continue to be subject to annual rent adjustment in accordance with Paragraph 1.D.

H. This is intended to be a net lease, meaning that Lessee shall pay all expenses of every type relating to the Premises after the Conditions Precedent Expiration Date, and all Contingency Period Fees, Construction Period Fees, Rent and Additional Charges shall be received by Lessor without setoff, offset, abatement, or deduction of any kind except as provided herein. **Under no circumstances or conditions, whether now existing or hereafter arising or whether beyond the present contemplation of the Parties, shall Lessor be expected or required to make any payment of any kind whatsoever or be under any obligation or liability under the Lease except as expressly set forth in the Lease.**

5. **ADDITIONAL CHARGES:** Upon commencement of the Construction Period, Lessee shall timely make all payments owing by Lessee under this Lease in addition to either (as the case may be) the Construction Period Fees or Rent ("Additional Charges"), including but not limited to the following:

A. charges for all utilities and services furnished to the Premises and assessments for utilities and services furnished to the Premises. "Utilities" include, but are not limited to, water, natural gas, electricity, sewer and refuse disposal, storm water collection and treatment, garbage and recycling, trackage for Lessee's exclusive use, and monthly inspection fees for any trackage for Lessee's exclusive use. "Services" include, but are not limited to, landscaping, paving, parking lot striping, catch basin repair and maintenance, irrigation, security and fire protection and monitoring systems and all associated operation services. Lessee shall also pay for all charges for maintenance associated with the Premises. Lessor has the first right to supply any of such Utilities to Lessee and, if Lessor elects to do so, Lessee shall purchase and pay for the same as an Additional Charge at the same rate schedule charged other users in the Port; provided that such rate shall not exceed the rates available from other suppliers of the same utility in the Vancouver area. Payments for all Utilities provided by third parties shall be made by Lessee directly to such providers. If Lessor furnishes a utility to the Premises and such utility is not separately metered, then Lessor shall apportion the utility charges, and the charges associated therewith, on an equitable basis, in its reasonable discretion. In no event shall Lessor be liable for the interruption or failure in the supply of any Services or Utilities to the Premises, whether or not being furnished by Lessor, provided, however, that, in the case of

Utilities furnished by Lessor, Lessor shall use diligent efforts to restore such Services and/or Utilities as soon as reasonably possible.

B. any insurance premiums to be reimbursed by Lessee to Lessor pursuant to Paragraph 15.

C. a Rail Access Fee in the amount specified in Paragraph 1.F. This fee shall be billed to the Lessee each month and shall be calculated by the actual railcar traffic as reported by BNSF, Lessor's exclusive rail operator.

D. a Rail Maintenance Fee for the common rail system internal to the Port in an amount to be determined by Lessor's annual rail tariff. Lessee shall also be responsible for individual rail maintenance and repair expenses on all rail spurs and tracks used exclusively by Lessee.

E. as a component of Additional Charges, a monthly CAM (as defined below) fee during each calendar year, or portion thereof, during the term of this Lease. Lessee shall pay the amount stated in Paragraph 1.F, which amount is subject to adjustment as described in Paragraph 1.F. Any amount collected by Lessor that exceeds any given year's total CAM expenses will be deposited in a reserve account and used towards any following year's total CAM capital improvements. During the Term hereof, Lessor shall repair, maintain and keep the Common Areas in good order, repair and condition, including without limitation, utilities and roads (including roads and utility lines within the Premises which are not exclusively used by Lessee and which are not maintained by the utility service provider). Common Area Maintenance ("CAM") expenses shall include, but not be limited to, all costs and expenses incurred by Lessor for the management, administration, maintenance, upkeep, and operation of the Common Areas, including, but not limited to, the costs and expenses of water, natural gas, electricity, sewer and refuse disposal, storm water collection and treatment, garbage and recycling, landscaping, paving, parking lot striping, catch basin repair and maintenance, irrigation, fire protection and monitoring systems, fencing, storage area screenings, common lighting, signage, security shacks, security card access, security guards and services, Common Area liability insurance, and the cost of capital improvements made to comply with the law or to reduce future expenses and all charges associated therewith. Administration costs and expenses shall include but not be limited to maintaining records of CAM expenses.

F. any charges, costs, and expenses that Lessor pays or agrees to pay under this Lease, together with all interest and other charges that may accrue thereon in the event of the failure of Lessee to pay those items, and all

other damages, costs, expenses, and sums that Lessor may suffer or incur, or that may become due, by reason of any Default of Lessee under this Lease.

G. any charges, costs, and expenses that Lessee pays or agrees to pay under any other agreement with Lessor, including but not limited to the MGA Agreement and any berthing agreement and/or trackage agreement.

H. any and all rentals and charges due the State of Washington under the Port Management Agreement as such applies to the Premises and as required by the DNR.

6. **LEASE SECURITY**: Lessee shall, upon execution of this Lease, and prior to occupancy, file with Lessor a bond, letter of credit or cash in accordance with RCW 53.08.085, as amended. The terms and document of the security instrument shall be subject to the reasonable approval of Lessor, and shall extend for a period of sixty (60) days subsequent to the Term of this Lease. The initial amount of security shall be as set forth in Paragraph 1.G. In the event of an exercise of an option to renew as provided in Paragraph 3.B or the execution of an Amendment to the Lease, subsequent security amounts shall increase and readjust in proportion to any subsequent increase in Rent or as reasonably determined by the Port Commission. Additional security corresponding to such increase shall be filed with Lessor within thirty (30) days after the effective date of the increase in Rent and prior to cancellation of any bond or letter of credit issued pursuant to this Paragraph. Upon any Default by Lessee in its obligations under this Lease, Lessor may collect on the security to offset any liability of Lessee to Lessor. Collection on the security shall not relieve Lessee of liability, shall not limit any of Lessor's other remedies, and shall not reinstate or cure the Default or prevent termination of the Lease because of the Default.

If a guaranty is required by Paragraph 1.H in connection with an assignment of this Lease, the assignee's parent company shall execute a guaranty in the same form as that attached hereto as Exhibit "G".

7. **POSSESSION**: Lessee has examined the Premises and, by taking possession, accepts them "as is" in their present condition without obligation or liability on the part of Lessor, to make any Alterations, improvements, repairs or maintenance except to the extent set forth expressly herein with respect to Existing Environmental Conditions and to the extent, if any, specifically set forth in writing and included herein or as an exhibit attached to this Lease.

8. **USE OF PREMISES**:

A. Lessee shall occupy and use the Premises for the Permitted Use set forth in Paragraph 1.I and shall not use the Premises for any other purpose without the prior written consent of Lessor. Lessee shall use the entire

Premises for the Permitted Use continuously during the entire term of this Lease, commencing on the Rent Commencement Date, except for: (i) periods of time (not exceeding twelve (12) months) that Lessee is prevented from using the Premises due to Force Majeure or damage or destruction of improvements, so long as following any damage or destruction, Lessee is using diligent efforts to make repairs or restoration of such improvements; or (ii) temporary closures (not exceeding thirty (30) days) as may be necessary for repairs or remodeling or for reasons beyond Lessee's control. Should Lessee use, or permit or suffer the use of, the Premises for any business or purpose other than the Permitted Use without the prior written consent of Lessor, except for temporary closures permitted by this Lease, Lessee shall be deemed in Default under the terms of this Lease. Except for Petroleum Products and those Hazardous Substances listed in Exhibit "H" (as the list may be modified during the Term through the new product approval process described in Exhibit "I"), it is further understood and agreed that the Premises shall not be used to store, distribute or otherwise handle flammable or Hazardous Substances.

B. Lessee agrees that it will not make or permit any unusual disturbance, noise, vibration, dust or other condition in, on or about the Premises, which would tend to create a Nuisance or unreasonably disturb Lessor or any other tenant of Lessor.

C. Lessee shall not use the Premises in such a manner as to increase the rates of insurance to the Premises or adjacent premises, without prior written approval of Lessor, and if permitted, Lessor may charge to Lessee as additional charges the full amount of any resulting premium increases incurred by Lessor or any of its adjacent tenants.

D. No invasive testing (except to the extent expressly approved by Lessor in conjunction with the Baseline Assessment and any approved geotechnical testing) or construction activities shall be conducted at the Premises during the Contingency Period.

E. During the MGA Term, so long as Lessee has, by the date that is [redacted] full months following the Rent Commencement Date (measured, at such time, based on a rolling 6-month average commencing on the second anniversary of the Rent Commencement Date), and each month thereafter, based on a rolling 6-month average, achieved and sustained an average throughput volume of [redacted] barrels per day of Petroleum Products (such period of time during the MGA Term with sustained throughput over [redacted] being referred to herein as the "Exclusive Period"), Lessor agrees not to lease any premises (other than the Premises that are subject to this Lease) located within the Port to a third party that will be permitted (directly or

indirectly) to operate a crude oil by Rail Facility for Unit Trains (the "Exclusive Use"), it being the intention of the Parties that Lessee shall during the Exclusive Period have the exclusive right in the Port to operate and conduct on the Premises a business for the Exclusive Use. If, thereafter, Lessee fails to maintain such throughput volume for a period of twelve (12) months or longer, the Exclusive Period and the right of first opportunity with respect to the Second PBR Facility (defined below) shall automatically terminate, and the Exclusive Use shall be of no further force and effect.

If the Facility achieves an average throughput volume that exceeds [redacted] barrels per day (measured on a rolling 12-month basis), and Lessor desires to develop another facility for the Exclusive Use (the "Second PBR Facility"), then Lessee shall have a right of first opportunity to lease additional real property from Lessor for the Second PBR Facility, either by (a) expanding the Premises and thereby adding additional throughput capacity, or (b) adding a facility at the Port that is separate from the Premises. If Lessee achieves an average throughput volume that exceeds [redacted] barrels per day (measured on a rolling 12-month basis) and Lessor desires to develop a Second PBR Facility, then Lessor shall give written notice to Lessee indicating the same, and Lessee shall have thirty (30) days following receipt of such written notice to accept or decline to enter into negotiations for the Second PBR Facility (the "Exercise Date"). If Lessee timely elects to enter into such negotiations, then Lessor and Lessee shall negotiate diligently and in good faith to reach and enter into a definitive agreement governing the development of the Second PBR Facility. If the Parties are unable to enter into such a definitive agreement within six (6) months following the Exercise Date, or if Lessee elected not to exercise its right of first opportunity (or failed to timely do so), then and only then shall Lessor be permitted to commence negotiations with third parties concerning the Second PBR Facility, and such Second PBR Facility will not be subject to the Exclusive Use. If Lessee has elected not to exercise its right of first opportunity (or failed to timely do so) at any point during the Lease Term, the right of first opportunity shall automatically terminate and be of no further force and effect for the balance of the Lease Term.

In the event that Lessor suffers or permits any use of the Port that is in violation of Lessee's Exclusive Use during a period in which Lessee has achieved and maintained an average throughput volume of [redacted] barrels per day of crude oil (measured on a rolling 12-month basis), Lessee shall be entitled to all remedies at law or in equity, including, should such violation remain for a period of twelve (12) months or longer in duration, the right to terminate this Lease with reservation of Lessee's remedies at law or at equity.

A portion of the Premises is owned by the DNR and is subject to the Port Management Agreement. Lessee shall be responsible throughout the Term to comply with the terms of the Port Management Agreement insofar as it applies to the Premises.

9. **WATERBORNE COMMODITIES; OPERATIONS AT MARINE TERMINAL AREA:** If applicable, Lessee agrees that throughout the Term of this Lease it will use commercially reasonable efforts, in conjunction with Lessor, to promote and aid the movement of cargo through the Port. Lessee further agrees that movements of Lessee's waterborne commodities, if any, shall be made through Lessor's port facilities if such routing is competitive with other ports.

B. The portion of the Premises described as the "Marine Terminal Area" includes Berths 13 and 14 in Terminal 4 (collectively, the "Berth"). Lessee shall have exclusive use of the Berth, as shown on Exhibit "B-1"/ "B-2" attached hereto, together with the nonexclusive rights of vehicular ingress and egress over and across those areas of the Port designated for driveway usage between the Berth and the balance of the Premises. Lessee shall use the Berth and the Marine Terminal Area solely in conjunction with the operation of the Facility for loading and unloading of Petroleum Products. The use of the Berth is subject to the following terms, conditions and requirements:

(1) Lessee shall be solely responsible for all capital improvements, replacement, maintenance and repair of the docks located in the Berth area, all at Lessee's sole expense.

(2) Lessor shall, at Lessor's sole cost and expense, perform all dredging necessary to provide continuous, safe access to the Berth and the dock located in the Berth area, and shall maintain the Berth's established depth to be the same as or deeper than the federal navigation channel depth plus two feet (2') for vessel under keel clearance.

If at any time during the Term, Lessee conducts or causes to be conducted a hydrographic survey of the Berth, and such survey reveals that the depth of the Berth has not been maintained in accordance with the preceding Paragraph 9.B(2), then Lessor shall, within ninety (90) days after the date on which such hydrographic survey is provided to Lessor, cause dredging to be completed to the required depth at Lessor's sole cost and expense; provided, however, that the period provided for Lessor to complete the dredging shall be extended if, during such 90-day period, dredging is prohibited either by the Army Corps of Engineers or the Washington State Department of Natural Resources.

(3) Lessee or its agent shall be the sole arbiter with respect to vessels having the right to tie up to the dock whether working cargo or idle. Notwithstanding the foregoing, Lessee shall allow vessels to dock under emergency conditions, provided that Lessee may require such vessel to vacate the Berth at the earliest possible time.

(4) Lessor retains the right to permit or refuse cargoes, other than Petroleum Products which have been approved in accordance with the requirements of this Lease, vessel stores (food and supply products) and fuel necessary for the operation of vessels. Permission for Lessee to handle any such other cargo may be granted or withheld by Lessor in Lessor's sole and absolute discretion, and shall be granted in writing (if at all) prior to the handling, transshipping, loading, unloading, storage or other presence of such other cargo at the Berth. Lessor shall not be liable to Lessee or any third party for any loss, damage, claim or liability arising from Lessor's failure to permit any such other cargo. Any other cargo so approved shall be subject to Lessor's terminal tariff.

(5) Lessee shall prepare and submit to Lessor timely reports including: (i) vessel schedules, (ii) vessel length overall and gross registered tons, (iii) time at berth, (iv) amount of product handled in barrels, and (v) such other information as may be reasonably required for Lessor's prudent and safe operation of the Port. Lessee considers the quantities of specific types of Petroleum Products, and the bills of lading relating thereto, to constitute a trade secret, as defined in RCW 19.108.010(4). Except to the extent reasonably determined by Lessor to be required by law to be disclosed by Lessor (including, without limitation, pursuant to the Washington Public Records Act), Lessor agrees to maintain the confidentiality of such information; provided, however, that Lessor shall provide reasonable notice to Lessee of any request for information that Lessor is required by law to disclose so that Lessee may seek legal protection for the information, and Lessor shall cooperate with Lessee in Lessee's efforts to prevent disclosure of such information. If Lessee is unable to obtain such protection, Lessor may disclose the information, but only to the extent required by law. The Parties agree to share information reasonably related to the performance of this Agreement, excluding trade secrets and such other proprietary information that is confidential, and to cooperate reasonably with all contractors, entities and other persons associated with such activities as permitting and repair work at the Berth.

(6) Lessor shall have the right to audit all of Lessee's reports of tonnage for Petroleum Products transported through the Berth.

(7) Lessor reserves to itself a right of access and/or easement upon, over, across and beneath the Berth for access, subject to Lessee's security processes, together with the right to grant, to third parties, utility easements upon, over, across, and beneath the Berth, provided that such easements do not interrupt or materially interfere with Lessee's operations pursuant to this Lease.

(8) Lessee shall operate the Berth in a prudent manner in accordance with all statutes, ordinances, and applicable regulations in effect, including but not limited to rules and regulations promulgated by the U.S. Coast Guard. Lessor shall not impose rules or regulations relating to the operation of the Berth that would have the effect of interrupting or materially interfering with Lessee's safe operation of the Berth.

(9) Terminal tariff fees invoiced to the vessel shall be paid to and collected by Lessor from the vessel or its agents. Lessor shall receive all dockage, vessel security fees and MFSA safety fees, per Lessor's terminal tariff; to the extent that Lessee receives such fees from any vessel, Lessee shall promptly remit such fees to Lessor.

10. **GENERAL COMPLIANCE WITH ALL LAWS:** In its use of the Premises, Lessee agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations and Lessor shall have the right to review all related documents. In the event Lessor requires copies of any such documents, Lessee will be reimbursed for any associated reasonable costs. Lessor's right to review Lessee's documents does not imply that Lessor has accepted any responsibility for accuracy, completeness, or legal compliance. Lessee shall pay any fees for any federal, state or municipal inspections and/or certificates required for use and occupancy of the Premises. Further, Lessee shall pay all licenses, fees, and taxes covering the business conducted on the Premises, together with all taxes and assessments on the property of Lessee on the Premises. Lessee shall notify Lessor of any violation of any local, state, and federal laws, ordinances, regulations, permits, plans, and approvals.

11. **PRESENCE AND USE OF HAZARDOUS SUBSTANCES:**

A. **Use, Storage, and Disposal:** Except as expressly permitted by the terms of Paragraph 8.A above, Lessee shall not use, transport, store, treat, generate, sell or dispose of any Petroleum Products or Hazardous Substances on or in any manner that affects the Premises, Pipeline Agreement areas, or surrounding properties. "Affects the Premises, Pipeline Agreement areas, or surrounding properties" shall include but not be limited to allowing any Petroleum Products or Hazardous Substances to migrate off the Premises or Pipeline Agreement areas,

or the Release of any Petroleum Products or Hazardous Substances into adjacent surface waters, soils, sediments, groundwater or air.

B. **Deed Restricted Areas:** As set forth in Paragraph 2.C, the Parties acknowledge that portions of the Premises and portions of the areas to which Lessee may be granted an easement pursuant to a Pipeline Agreement are the subject of the Consent Decree and subject to the Restrictive Covenants, and that construction on such areas may require disturbing the environmental caps and may generate soil or groundwater contaminated with Hazardous Substances that will require special handling and disposal. Lessor and Lessee understand that disturbance or removal of portions of the environmental caps is required for pre-occupancy construction and pre-occupancy tenant improvements for Lessee's Permitted Use and such removal or disturbance of a cap requires prior approval by the Washington Department of Ecology. Lessor, with Lessee's cooperation (which shall include, without limitation, Lessee's presentation of a reasonable design which is consistent with the Consent Decree and Restrictive Covenants, as well as the other terms and conditions of this Lease), will obtain approval from the Washington Department of Ecology that will allow Lessor or Lessee to modify the cap for: (i) Baseline Assessment and geotechnical testing, (ii) pre-occupancy construction, (iii) pre-occupancy tenant improvements, and (iv) the Permitted Use of the Premises under this Lease. Without limiting Lessor's responsibility for Existing Environmental Conditions, Lessor will be responsible for characterization and proper disposal (in compliance with Environmental Laws and as required by the Washington Department of Ecology) of contaminated media generated in connection with the pre-occupancy construction necessary for Lessee's Permitted Use. Lessor's obligation shall not extend to any new Releases of Petroleum Products or Hazardous Substances to the extent such Petroleum Products or Hazardous Substances are first brought onto the Premises by Lessee or Lessee's employees, contractors or agents during the Term of the Lease. Lessor represents and warrants to Lessee that there are monitoring wells on the Premises in the locations described on Exhibit "Q" attached hereto. To the extent that such monitoring wells are described on Exhibit "Q," and such monitoring wells are required to be relocated, then Lessee will be solely responsible for costs associated with all monitoring well relocation required in conjunction with Lessee's development of the Facility and Permitted Use of the Premises; to the extent that such monitoring wells are not described on Exhibit "Q" and are required to be relocated, the costs associated with such monitoring well relocation shall be borne by Lessor.

C. **Compliance with Environmental Laws:** Lessee shall, at its sole cost and expense, comply with all Environmental Laws, including but not limited to all permits applicable to the Premises and issued to Lessee. Pursuant to this Paragraph 11.C, Lessee shall, at its sole cost and expense, comply with the terms of the National Pollutant Discharge Elimination System ("NPDES") Western Washington Phase II Municipal Stormwater Permit issued to Lessor and any other applicable permit covering stormwater or other discharges from the Premises. Lessee agrees to comply with the requirements of Lessor's Stormwater Management Program ("SWMP") and Illicit Discharge Detection and Elimination policy ("IDDE") as required by the NPDES Western Washington Phase II Municipal Stormwater Permit. Lessor agrees to make the NPDES permit, SWMP, and IDDE available to Lessee on the Lessor's website.

D. **Environmental Audits:** The Port of Vancouver environmental department conducts periodic environmental audits of leased premises. These environmental audits do NOT imply compliance with state or federal regulations. Lessee agrees to cooperate with the Port's environmental department in its conducting environmental audits of the Premises and Pipeline Agreement areas and to comply with the Port's requests made pursuant to the environmental audit results for the Premises and Pipeline Agreement areas. In addition, Lessee shall provide an updated Tenant Environmental Questionnaire at Lessor's request.

E. **Monitoring:** Lessor or its designated agents may, at Lessor's sole discretion and at reasonable times, enter upon the Premises for the purpose of (1) monitoring Lessee's activities conducted thereon, and (2) conducting environmental testing and sampling to determine compliance with Environmental Laws and the terms of this Lease; provided Lessor shall not unreasonably interfere with the conduct of Lessee's business. If such monitoring discloses a Release of Petroleum Products or Hazardous Substances (except to the extent caused by Lessor, its employees, agents, or contractors, or by any other tenant of Lessor or by a railroad serving the Port that is not carrying Petroleum Products for Lessee or the Facility), a violation by Lessee of Environmental Laws or a Default by Lessee of its obligations under this Lease, the cost of such monitoring, testing and sampling shall be paid by Lessee. In addition, within five (5) days of Lessor's written request, Lessee shall provide Lessor with a detailed written description of Lessee's generation, use, sale, transportation, storage, treatment and disposal of Petroleum Products or Hazardous Substances on or which may otherwise affect the Premises, Pipeline Agreement areas, or the surrounding properties. Lessor's discretionary actions pursuant to this subparagraph shall not substitute for any

obligation of Lessee hereunder, or constitute a release, waiver or modification of Lessee's obligations otherwise specified in this Lease.

F. **Notifications**: Lessee shall notify Lessor of the presence or Release of Hazardous Substances or the Release of Petroleum Products on or that may affect the Premises, Pipeline Agreement areas, or the surrounding properties immediately following a Release caused by Lessee, its employees, agents, or contractors, or upon Lessee's discovery of a Release caused by Lessor, its employees, agents, or contractors, by any other tenant of Lessor, or by a railroad serving the Port that is not carrying Petroleum Products for Lessee or the Facility, or of the presence of such Hazardous Substances (other than Permitted Hazardous Substances). Lessee shall provide Lessor with the following documentation:

(1) copies of any notifications submitted by Lessee to any governmental entity relating to the Release or presence of Hazardous Substances or Release of Petroleum Products on the Premises or Pipeline Agreement areas at the same time they are submitted to the appropriate governmental authorities;

(2) any inspection report, complaint, order, fine, request, notice, or other correspondence from any entity, pursuant to any Environmental Law, that may affect the Premises, Pipeline Agreement area, or the surrounding properties, within ten (10) days of receiving such documentation;

(3) all reports, manifests, material safety data sheets ("MSDS"), or any other documentation related to Lessee's compliance with Environmental Laws at the Premises, upon written request by the Port.

G. **Environmental Assessment**: Lessee shall, upon written request from Lessor made at any time during the Term of this Lease or within sixty (60) days thereafter, based on a sufficient reason to believe there has been a Release of Petroleum Products or Hazardous Substances other than by Lessor, its employees, agents or contractors, by any other tenant of Lessor or by a railroad serving the Port that is not carrying Petroleum Products for Lessee or the Facility, or violation by Lessee of Environmental Laws, provide Lessor with an environmental assessment prepared by a qualified professional mutually agreed upon by Lessor and Lessee, which assent shall not be unreasonably withheld. In the event of refusal by Lessee to assent within twenty-four (24) hours of an emergency or within seven (7) days of a non-emergency, Lessor shall unilaterally select the qualified professional to perform said assessment. The environmental assessment shall, at a minimum, (1) certify that a diligent investigation of the Premises and Pipeline Agreement areas has been conducted, including a specific description of the work performed, and (2) either (a) certify that diligent investigation of the Premises and Pipeline Agreement areas has

revealed no evidence of a Release of Petroleum Products or Hazardous Substances or violation of Environmental Laws, or (b) if a Release or violation of Environmental Laws is detected, identify and describe: (i) the types and levels of Petroleum Products or Hazardous Substances detected; (ii) the physical boundaries of any actual Release, including property other than the Premises; (iii) to the extent determinable, the person or parties that caused the Release; (iv) the actual and potential risks to the environment from such Release or violation; and (v) the procedures and actions necessary to remedy the Release or violation in compliance with Environmental Laws. If such environmental assessment discloses a Release of Petroleum Products or Hazardous Substances that is caused, at least in part, by Lessee, its employees, agents or contractors, a violation by Lessee of Environmental Laws or a Default by Lessee of its obligations under this Lease, Lessee shall pay the expense of obtaining the environmental assessment.

H. **Hold Harmless and Indemnity:** Lessee shall defend (with attorneys approved in advance and in writing by Lessor), indemnify and hold Lessor and its agents harmless from any damages, loss, claim, fine or penalty arising from (i) the Release of Petroleum Products or Hazardous Substances that is caused, at least in part, by Lessee, its employees, agents or contractors, whether or not within the Premises, (ii) any violation of Environmental Laws, (iii) a default by Lessee of the provisions of this Paragraph 11, or (iv) any exacerbation of Existing Environmental Conditions affecting the Premises, Pipeline Agreement areas, or the surrounding properties, to the extent caused by Lessee or by Lessee's employees, contractors or agents. Such obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs and charges, environmental consultants' fees, attorneys' fees, civil and criminal fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, Lessor's lost business and sales, natural resource damages and any other costs, and Lessor's expenses as provided in subparagraph 11.G. Lessee's obligations pursuant to this subparagraph shall survive expiration or other termination of this Lease.

Lessor shall defend (with attorneys approved in advance and in writing by Lessee), indemnify and hold Lessee and its agents harmless from any damages, loss, claim, fine or penalty arising from (i) the Existing Environmental Conditions, or (ii) a violation of Environmental Laws to the extent caused by Lessor or by Lessor's employees, contractors or agents. Such obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants' fees, attorneys' fees, fines and penalties,

laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, lost profits, natural resource damages and any other costs. Lessor's obligations pursuant to this subparagraph shall survive expiration or other termination of this Lease.

I. **Assignments and Subleases:** Lessor may withhold its consent to any assignment, sublease, or other transfer if the proposed transferee's use of the Premises may involve the use, transportation, storage, treatment, generation, sale or disposal of Petroleum Products or Hazardous Substances (other than Permitted Hazardous Substances).

J. **Lessor's Remedies:** Notwithstanding any other provision of this Lease, and without prejudice to any other right or remedy available to Lessor at law, in equity or under this Lease, Lessor, in the event of a Release of Hazardous Substances not caused solely by Lessor, a violation by Lessee of Environmental Laws, or a Default by Lessee of the provisions of this Paragraph 11, shall be entitled to any or all of the following rights and remedies, at Lessor's option:

(1) To terminate this Lease if Lessee has failed, following a Release that is caused, at least in part, by Lessee, its employees, agents or contractors, a violation by Lessee of Environmental Laws, or a Default by Lessee of the provisions of this Paragraph 11, to diligently and timely take such actions as are required (a) by any governmental agency having jurisdiction to remediate the Release (or cause the remediation by the party responsible therefore), (b) by any governmental agency having jurisdiction to cure the violation of Environmental Laws, or (c) to remedy the Default of the provisions of this Paragraph 11 by responding in accordance with the requirements of this Lease.

(2) To recover damages as described in, and to be indemnified as provided in, subparagraph H.

(3) If Lessee has failed to act diligently and to Lessor's satisfaction, to enter upon the Premises and cure any such Release, violation or Default, and, to the extent such Release is not caused by Lessor, its employees, agents or contractors, by any other tenant of Lessor, or by a railroad serving the Port that is not carrying Petroleum Products for Lessee or the Facility, either (i) charge to Lessee as Additional Charges an amount sufficient to recover the cost of such cure, together with interest thereon at the Interest Rate, or (ii) if Lessor does not elect to terminate this Lease, increase Rent by such amount as will permit Lessor to fully recover the cost of such cure, together with interest thereon at the Interest Rate, during such portion of the unexpired Term of this Lease as Lessor

may deem proper. Such election by Lessor shall be without prejudice to any other right or remedy provided to Lessor at law, in equity or in this Lease.

The remedy provisions provided in Subsections (1), (2) and (3) above shall not apply to the Rail/Rack and Pipeline Agreement areas defined above in paragraph I.I., except to the extent caused by Lessee, its employees, agents or contractors.

K. **EPA Identification Number**: Lessee shall also provide to Lessor Lessee's Environmental Protection Agency Identification Number to dispose of Hazardous Substances if Lessee has one. Lessee shall also provide to Lessor copies of all of Lessee's disposal manifests.

L. **Vacation of the Premises**: Prior to vacation of the Premises, in addition to all other requirements under this Lease, Lessee shall remove any Petroleum Products or Hazardous Substances placed on the Premises during the term of this Lease or Lessee's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Lease security to Lessee upon termination or expiration of this Lease. As a component of Lessee's requirements under this paragraph, Lessee agrees to cooperate with the Port's environmental department in conducting an environmental exit audit of the Premises and Pipeline Agreement areas and to comply with the Port's requests made pursuant to the environmental exit audit results.

M. **Exit Contamination Assessment**:

(1) Prior to vacation of the Premises upon the expiration or earlier termination of this Lease, without limitation of other applicable requirements under this Lease, Lessee will have an environmental assessment conducted on the Premises and Pipeline Agreement areas by an independent, reputable professional environmental consultant reasonably approved by Lessor to assess the presence of contamination on the Premises and Pipeline Agreement areas as of the termination of this Lease to compare its condition at that time with the condition established by the Baseline Assessment (such assessment, the "Exit Contamination Assessment").

(2) The scope of work for the Exit Contamination Assessment shall be timely, and in any event within 20 days of Lessee's notice to Lessor of the identity of the consultant and the proposed scope of work, reviewed and approved by Lessor, acting reasonably, prior to its initiation and it shall be intended to address whether there have been (a) Releases on the Premises or Pipeline Agreement areas, (b) violations of Environmental Laws in Lessee's or its Related Parties' use or occupancy of the Premises and Pipeline Agreement areas, or

(c) exacerbation of Existing Environmental Conditions, which were caused or suffered by Lessee or its Related Parties after the Effective Date.

(3) If the Exit Contamination Assessment reveals: (a) Releases on the Premises or Pipeline Agreement areas that materially worsen the condition of the Premises or Pipeline Agreement areas when compared to Existing Environmental Conditions; (b) violations of Environmental Laws in Lessee's or its Related Parties' use or occupancy of the Premises or Pipeline Agreement areas; or (c) exacerbation of Existing Environmental Conditions that materially worsens the condition of the Premises when compared to Existing Environmental Conditions; and provided and to the extent that such Releases, violations or exacerbation were caused or suffered, in whole or in part, by Lessee or its Related Parties after the Effective Date of this Lease, then Lessee shall be responsible to remediate or clean up the Premises and Pipeline Agreement areas to the extent caused or suffered by Lessee or any Related Party, such that the Premises and Pipeline Agreement areas, from an environmental condition perspective, are in the same condition upon termination of this Lease and Lessee's surrender of the Premises and Pipeline Agreement areas, as when the Premises and Pipeline Agreement areas were delivered to Lessee (with the exception of, and to the extent of, any conditions caused by Lessor, its employees, agents or contractors, by any other tenant of Lessor or by a railroad serving the Port that is not carrying Petroleum Products for Lessee or the Facility). Except to the extent of any exacerbation, Lessee shall have no obligation to remediate or clean up any Existing Environmental Conditions.

(4) Lessor reserves the right to conduct its own exit contamination assessment of the Premises and Pipeline Agreement areas at Lessor's expense.

12. **RESERVATIONS BY LESSOR:**

A. Lessor reserves to itself a right and easement (and the right to grant easements to third parties, including utility providers) upon, over and beneath the Premises for the construction, maintenance, repair and replacement of roadways, non-exclusive railroad tracks and all surface, overhead or underground utilities to include, but not be limited to, storm water treatment devices and/or structures, provided that Lessor's activities do not unreasonably interfere with Lessee's Permitted Use. Lessee shall, upon reasonable notice from Lessor, provide access to areas identified by Lessor for these purposes, including but not limited to removing any obstructions (other than permanent structures which have been installed with the approval of Lessor) from these areas. This reservation includes the responsibility of Lessor to repair any physical damage done to the Premises incidental to the exercise of

its rights under this reservation. Lessor shall make reasonable efforts to cooperate with Lessee in the exercise of Lessor's rights under this Paragraph 12.A and, to the extent possible, shall schedule any non-emergency work in advance.

B. Lessor reserves the right to enter upon and inspect the Premises at any and all reasonable times during the Term of this Lease, and during the last six (6) months of the Term (or any applicable Extension Term) to show the Premises to prospective tenants or purchasers. Any such inspection shall be conducted in such a manner as not to unduly interfere with Lessee's operations. The right of inspection shall not impose any obligation on Lessor to do so, nor shall Lessor incur any liability for not making inspections. During the last six (6) months of the Term, or any applicable Extension Term thereof, Lessor may place upon the Premises the usual "for rent," "for lease," and "available" notices advertising the availability of the Premises for lease which notices Lessee shall permit to remain thereon without molestation. Prior to vacation of the Premises, Lessee agrees to cooperate with Lessor's facilities department in conducting an exit audit of the Premises and to comply with Lessor's reasonable requests made pursuant to the exit audit results.

C. Lessor reserves the right for Lessor and Lessor's agents to enter upon the Premises to conduct any remedial action, monitoring, audit, and investigation, including but not limited to soil and sediments tests, groundwater tests, cap inspections, well drilling and well relocation that may be required for any purpose. Lessee shall, upon reasonable notice from Lessor, provide access to areas identified by Lessor for these purposes, including but not limited to removing any obstructions from these areas. Notwithstanding of the foregoing, (i) Lessor shall use reasonable efforts to minimize interference with Lessee's business and operations on the Premises (including the scheduling of any non-emergency work in advance), and (ii) Lessee shall not be required to move, demolish or alter any building or other improvements located on the Premises for which Lessor has provided its written consent to facilitate Lessor's actions under this Paragraph 12.C, unless the need to conduct any remedial action, monitoring, audit, and investigation is caused by Lessee's operations or is required by the Consent Decree or other applicable law or regulation.

D. Except to the extent, if any, otherwise expressly provided in this Lease, Lessor reserves to itself any water rights that may be appurtenant to or required for the Premises or for any business or other activities thereon, and such water rights will belong to Lessor upon expiration or termination of the Lease. Lessee shall not submit any application for water rights with respect to wells in the Port, without first obtaining Lessor's prior written

consent. If Lessee acquires any interest in water rights with respect to wells in the Port, Lessee shall not seek to convey, assign, encumber or otherwise transfer such interest apart from this Lease.

13. **MAINTENANCE AND REPAIR:**

A. Lessee shall, at its sole cost and expense, take or cause to be taken good care of the Premises and the Alterations during the Term of this Lease, it being understood that Lessor shall not be required to make any repairs to the Premises or the Alterations during the Term hereof, except to the extent of any damage to improvements, Alterations or fixtures located on the Premises which is caused by Lessor's employees, agents or contractors, or for which Lessor is expressly responsible under the terms of this Lease. Without limiting the generality of the foregoing sentence, Lessee aggress to maintain, repair and replace the Alterations, all sidewalks, vaults, sidewalk hoists, roads and curbs on the Premises (including keeping the same free and clear of rubbish, ice and snow), and all water, sewer, and gas connections, pipes, and mains which service the Premises shall comply with all applicable laws with respect thereto. Lessee's obligation to maintain all water, sewer, and gas connections, pipes, and mains shall apply to, but not be limited to, water lines and faucets within the Premises, sanitary sewer and drain lines extending to the sewer/septic connections, and all plumbing fixtures. Lessee is responsible for any discharge that damages or fouls the septic tank, sewer, or drain line systems serving the Premises. If the Premises' sanitary system includes a holding tank or is served by a septic system, Lessor will conduct an annual inspection and complete any necessary maintenance and pumping. Lessee is responsible for any maintenance expenses resulting from the annual inspection and shall remit payment to Lessor within thirty (30) days of the date of invoice. At the end or other termination of this Lease, Lessee shall deliver to Lessor the Premises with all Alterations thereon in good repair and condition, ordinary wear and tear, depreciation, and casualty and condemnation loss being excepted (provided that the foregoing shall not abrogate Lessee's obligations under Paragraphs 14.1 and 28 hereof).

B. Lessee shall, at its sole cost and expense, take good care of the Premises, make all repairs and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in first class condition and in good order and repair, and Lessor shall not be responsible for the foregoing. Lessee shall indemnify, defend, protect and hold Lessor harmless of and from any and all claims or demands: (i) upon or arising out of the failure of Lessee to perform the covenant contained herein, or (ii) arising out of any accident, injury or damage to any person or property which shall or may happen in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, except to the extent

such accident, injury or damage is caused by Lessor, its employees, agents, or contractors. Lessee shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises.

C. If Lessor is required to make any repairs to the Premises by reason of Lessee's negligent acts or omission to act or failure to perform its obligations under this Lease, then Lessor may add the cost of such repairs plus a fifteen percent (15%) administrative fee as an Additional Charge next owing from Lessee, which cost shall become due upon billing by Lessor.

D. In the event of damage or destruction to the Premises required by the terms of this Lease to be covered by insurance, or which happens to be covered by insurance maintained by either Party, the provisions of this Paragraph 13 shall not apply and the obligations of the Parties shall be controlled by Paragraph 17 of this Lease.

14. **ALTERATIONS:**

A. Lessee shall not make any Alterations to the Premises (other than those described conceptually on Exhibit "D" to the extent subsequently approved by Lessor for actual construction) without the prior written consent of Lessor having first been obtained; provided, however, that in the event that the Alteration is an immaterial, insubstantial or ordinary non-structural repair or replacement that does not require a permit and that clearly and convincingly will not affect or impact (i) the terms of the Restrictive Covenants or the Consent Decree, (ii) adjacent tenants or property owners, or (iii) any other obligations of Lessee under this Lease, Lessor's consent shall not be required.

B. Lessee shall, prior to making any Alteration that requires Lessor's consent under Paragraph 14.A, submit to Lessor the plans and specifications for such Alteration and obtain Lessor's prior written approval, such approval not to be unreasonably withheld so long as it does not affect, alter, or expand the Permitted Use. All Alterations shall be substantially in accordance with the plans, specifications, and elevations approved in writing by Lessor in advance thereof and shall be completed with all reasonable dispatch. No Alterations shall interfere with any easements and/or utilities.

C. In order to facilitate coordination of the development and construction of any approved Alterations and to provide for efficient communications between the Parties in the day-to-day implementation of certain other provisions of this Agreement, the Parties shall form a project team (the "Project Team") consisting of at least two (2) members appointed by Lessor and two (2) members appointed by Lessee. As of the Effective Date, Curtis Shuck

and Monty Edberg shall be Lessor's Project Team members, and Rick Weyen and Kent Avery shall be Lessee's Project Team members. At any time during the Term that Alterations are being designed, developed, or implemented, the Project Team shall meet on a weekly basis, including by teleconference as appropriate under the circumstances, or such other frequency as the Parties may agree to in writing, to keep one another apprised of the progress of the applicable Alterations, so as to minimize disruptions or delay in the completion of such Alterations and the other terms and conditions of this Agreement. Such coordination should include coordinated scheduling (including the review and recommendations for modifications thereof) of the timing and location of the applicable Alterations or activities to be performed on or about the Premises in order to effectuate the intent of this Paragraph.

D. Lessee warrants that any Alterations, whether done with or without Lessor's consent, shall be completed lien-free and in a good and workmanlike manner with new materials; will be performed in complete compliance with local, state and federal building, fire and other codes and construction guidelines, including but not limited to the Americans with Disabilities Act, if applicable, and all other applicable covenants, terms and conditions hereof (and proof of such compliance shall be provided to Lessor); and that all workmanship and materials shall be free from defects, and that all fixtures erected or installed by Lessee shall be new or completely reconditioned. Proof of compliance shall include providing to Lessor copies of certificates and permits issued by local, state and federal building, fire and other code and construction agencies. Further, Lessee shall provide Lessor with updated "as-built" drawings. Lessee may deliver said drawings to Lessor electronically or on disk, and a hard copy shall also be provided.

E. No electrical wiring, communications (including telephonic), or other electrical apparatus, including air conditioning equipment, shall be installed, maintained or operated on said Premises except with the approval of, and in a manner satisfactory to Lessor. In no event shall Lessee overload the electric circuits from which Lessee obtains current. Any additional air conditioning required as a result of heat generating equipment, special lighting or other equipment installed by Lessee shall be installed and operated, only with Lessor's prior written approval, at Lessee's sole expense.

F. Lessee shall be required to provide lien releases to Lessor from contractors and other individuals performing work on the Premises for Lessee promptly following the completion of such work. Lessee will notify Lessor in advance of intended work on the Premises, obtain any required approval from Lessor and all applicable

governmental bodies, and, if required by Lessor, will provide Lessor with financial assurances or bonding, as required by Lessor. Lessor shall be entitled to post notices of non-responsibility on the Premises.

G. Any sign, decoration, awning or canopy, or advertising matter to be installed by Lessee shall comply with all regulation requirements of the State of Washington, Clark County or City of Vancouver (or any other appropriate governmental agency). In addition Lessee shall not install any sign, decoration, awning or canopy, or advertising matter without prior written approval by Lessor. Lessee shall submit a written and graphic description of the proposed sign, decoration, awning or canopy, or advertising matter to Lessor in requesting approval and shall be responsible for obtaining any permits required for such installation.

H. Lessor will respond to all written requests for approval of proposed Alterations within thirty (30) days of the receipt of Lessee's request accompanied by plans and specifications for any such proposed Alterations. Lessee shall be responsible to pay any of Lessor's out-of-pocket expenses related to review and approval of any proposed Alterations. However, in the event the proposed Alterations are so complex or involved that thirty (30) days is inadequate for the appropriate review, Lessor shall have such additional time as is reasonable. Lessee acknowledges that Port Commission approval may also be required and that Lessor shall have reasonable additional time to obtain said approval.

I. All Alterations and improvements made by Lessee shall become the property of Lessor unless there is a written agreement to the contrary attached to this Lease or agreed to by the Parties in writing at a later date. Lessor shall have the option, at the expiration or termination of this Lease to require Lessee to remove the Alterations and improvements at Lessee's expense; provided, however, that (i) such election to remove must be made with respect to all or none of the Alterations and improvements, and Lessor may not require Lessee to remove some, but not all of the same (unless both Parties otherwise mutually agree at the time); and (ii) if the Alterations and improvements, as of the expiration or termination of this Lease, remain economically and operationally viable (as determined by an independent third party expert mutually selected by or acceptable to the Parties, if Lessor and Lessee are unable to agree on whether the Alterations and improvements are then economically viable, taking into consideration future uses of the Premises which are both economically and operationally viable), then Lessee shall not be required to remove the Alterations and improvements. In the event that Lessor does not require removal, the Alterations and improvements shall be surrendered to Lessor as part of the Premises in accordance with the terms of this Lease.

J. All Lessee's trade fixtures (including, but not limited to, shelving, portable partitions, modular offices, and cabinets), furnishings and other moveable personal property shall remain the property of Lessee and may be removed on or before the termination of this Lease, or any renewal thereof, provided Lessee shall make any repairs necessary to restore the Premises to its original condition upon such removal. If not removed by Lessee upon expiration of this Lease or any extension thereof, Lessor shall have the option to require Lessee to remove such items at Lessee's expense or to treat such items as abandoned. In the event Lessor treats such items as abandoned, they shall become the property of Lessor.

15. **INSURANCE:**

A. **Property Damage:**

(1) If Lessee's use of the Premises requires improvements to be constructed on-site, the construction is at the risk of Lessee until final completion of Lessee's construction. Lessee shall purchase and maintain Builders Risk insurance upon the work at the site to the full insurable value until Lessee's final construction completion. This insurance shall cover the interests of the Port, designers of Lessee's work, Lessee, its contractor, subcontractors and sub-subcontractors in the work at the project site, all of whom shall be listed as additional insureds. The interests of any loss payees shall be automatically included for coverage. Said insurance will insure against the "all-risk" perils including earthquake and flood for physical loss and damage. The insurance shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property, including, but not limited to, fees of designers and other professionals. If not covered under the "all risk" insurance, Lessee shall maintain similar property insurance on portions of the work stored on and off the site or in transit when such portions of the work are to be included in a progress payment application. Losses up to the deductible in Paragraph I.J shall be the sole responsibility of Lessee.

(2) Lessee shall, at all times, maintain "all risk" property insurance (including boiler and machinery insurance) upon any buildings and facilities, including any permanent additions and improvements thereto, of which the Premises form a part with coverage for perils as set forth on the Causes of Loss - Special Form, with a coverage extension for the perils of earthquake, windstorm and flood coverage, in an amount equal to the full replacement cost thereof. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage and a waiver of subrogation endorsement. All policies or certificates of insurance, indemnity bonds and similar securities protecting the Premises from damage

shall name Lessor as a loss payee, as its interests may appear. Any and all payments from said policies or certificates of insurance, indemnity bonds and similar securities shall be made jointly payable to Lessor and Lessee, deposited in an account satisfactory to Lessor and Lessee during the Term of this Lease for application toward any required repairs or restorations, and made available to Lessee for use in making repairs or restorations. Further, Lessee shall notify Lessor within five (5) days of Lessee's receipt of notification of any modification or cancellation of any insurance contract. Lessee shall provide Lessor with replacement coverage acceptable to Lessor prior to the applicable modification or cancellation taking effect, and in no event more than thirty (30) days of Lessee's notification to Lessor of such modification or cancellation of any insurance contract or indemnity bond. Lessee shall be solely responsible for the insurance premium and any deductible (which shall not exceed the Maximum Deductible set forth in Paragraph 1.J or in such amount as shall be adopted by the Port Commission from time to time, which amount shall be consistent with industry standards).

(3) Lessor may, from time to time, require qualified appraisals to be made of the Premises and any and all improvements thereon. Lessee will cooperate with Lessor's appraiser to access and evaluate the Premises upon reasonable notice to Lessee. Upon the establishment of any new insurance premium or deductible, Lessor will advise Lessee by written notice. Lessee shall, within thirty (30) days, submit to Lessor evidence of such increased coverage.

(4) Lessee shall maintain "all risk" property insurance upon any building improvements and personal property owned by Lessee with coverage for perils as set forth on the Causes of Loss - Special Form, with a coverage extension for the perils of earthquake, windstorm and flood coverage, in an amount equal to the full replacement cost thereof. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage and a waiver of subrogation endorsement.

B. **Liability**:

(1) Lessee shall maintain, with financially sound and reputable insurers (see Paragraph D(1) below), commercial general liability insurance written on an "occurrence" policy form with coverage at least as broad as ISO CGL form CG 0001, including contractual liability insurance coverage, against claims for bodily injury, property damage, personal injury, products and completed operations, and advertising injury occurring on or about the Premises or in any way relating to or arising out of Lessee's use or occupancy of the Premises with minimum limits as provided in Paragraph 1.K or in such amount as shall be adopted by the Port Commission from

time to time, which amount shall be consistent with industry standards but in no event shall be less than the Minimum Coverage Amount set forth in Paragraph 1.K. Lessor and its "Related Parties" shall be named as additional insureds with coverage at least as broad as form ISO CG 2026 – Designated Person or Organization (or other comparable endorsement), without modification, affording coverage regardless of the additional insureds' concurrent negligence. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by Lessor, and shall contain a severability of interest or cross liability clause. Further, Lessee shall notify Lessor within five (5) days of Lessee's receipt of notification of any modification or cancellation of any insurance contract or indemnity bond. Lessee shall provide Lessor with replacement coverage acceptable to Lessor prior to the applicable modification or cancellation taking effect, and in no event more than thirty (30) days of Lessee's notification to Lessor of such modification or cancellation of any insurance contract or indemnity bond. Lessor retains the right to increase the coverage amount upon receipt of notice, as required in Paragraph 14, that Lessee intends to make Alterations to the Premises.

(2) In the event that Lessee's use of the Premises requires improvements to be constructed on-site, Lessee shall also provide Contractor's Pollution Liability insurance in the amount of Five Million Dollars ($5,000,000) per claim and in the aggregate covering Lessee's general contractor and all sub-contractors of every tier during the construction of an improvement. This insurance shall be kept in effect until final completion of the project. In the event that the insurance is written on a claims made basis, the retroactive date shall be before the start of the project. Lessor shall be named as an additional insured on this coverage.

C. **Pollution Legal Liability:** Lessee shall also obtain pollution legal liability insurance against claims for bodily injury, property damage (including third party claims), natural resource damages, and clean up and defense costs occurring on or about the Premises or in any way relating to or arising out of Lessee's use or occupancy of the Premises and use of the Pipeline Easement areas, in the amount specified in Paragraph 1.L as an extension of the commercial general liability insurance or as a separate policy. Such policy or policies shall include coverage for sudden and accidental releases as well as any gradual releases arising in any way from Lessee's occupancy of and operations at the Premises. Lessor and its Related Parties shall be named as additional insureds with coverage at least as broad as form ISO CG 2026 Designated Person or Organization (or other comparable endorsement), without modification, affording coverage regardless of the additional insureds' concurrent negligence. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory

to any similar insurance carried by Lessor, and shall contain a severability of interest or cross liability clause. Further, Lessee shall notify Lessor within five (5) days of Lessee's receipt of notification of any modification or cancellation of any insurance contract or indemnity bond. Lessee shall provide Lessor with replacement coverage acceptable to Lessor prior to the applicable modification or cancellation taking effect, and in no event more than thirty (30) days of Lessee's notification to Lessor of such modification or cancellation of any insurance contract or indemnity bond. Lessor has assessed the pollution legal liability coverage amount specified in Paragraph 1.L based on the site conditions investigated by Lessor and the operational information provided by Lessee. A copy of the Tenant Environmental Questionnaire is attached as Exhibit "H". Lessee agrees that it shall provide notice to Lessor of any change in the site conditions or site operations, including without limitation changes in Hazardous Substances handled at the Premises as provided through the new product approval process described in Exhibit "I" thirty (30) days prior to any such change. Lessor retains the right to increase the coverage amount upon its knowledge that Lessee intends to: (i) change its operations, (ii) change its use or other handling of Petroleum Products or Hazardous Substances at the Premises, or (iii) make Alterations to the Premises.

D. **Miscellaneous:**

(1) Lessee's insurance carrier, for all insurance referenced in this Lease, shall be a reputable insurance company reasonably acceptable to Lessor and licensed to do business in the State of Washington. Lessee's insurance carrier(s) shall have a minimum A-VIII rating as determined by the then current edition of Best's Insurance Reports published by A.M. Best Co.

(2) Lessee shall provide Lessor with certificates of insurance, with a copy of additional insured endorsement in favor of Lessor attached, prior to or at occupancy, concurrently with the execution of this Lease and upon each renewal thereafter, to establish that Lessee's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least thirty (30) days advance written notice to Lessor.

(3) Lessor reserves the right to inspect and require full copies of all insurance policies to be provided to Lessor.

(4) Lessee shall provide workers' compensation coverage (including all coverage mandated by any federal law) pursuant to all statutory requirements as may apply and any other insurance coverage required by law. It is the sole responsibility of Lessee to determine the laws applicable to Lessee's employees and

contractors and the employees and contractors of Lessee's agents operating the Facility. At no time shall Lessor incur any costs or liability due to Lessee's failure to obtain and maintain all insurance coverage required pursuant to applicable law. Lessee further agrees to maintain Employer Liability Act ("ELA") or stop gap insurance coverage of at least the Minimum Coverage Amount set forth in Paragraph 1.K. In the event that the workers at the Facility are employed by one or more contractors of Lessee rather than by Lessee directly, Lessee shall not be required to maintain such coverage, but shall require such contractor or contractors to maintain such coverage for all workers at the Facility.

(5) Lessee shall provide Automobile Liability insurance with coverage at least as broad as Business Automobile Liability ISO form CA 0001, covering all owned, non-owned and hired automobiles brought on the Premises, with coverage of at least the Minimum Coverage Amount set forth in Paragraph 1.K.

(6) Notwithstanding anything in this Lease to the contrary, neither Party, nor its Related Parties, nor, in case of Lessee, its sublessees, shall be liable to the other Party or to any insurance company (by way of subrogation or otherwise) insuring the other Party, for any loss or damage to any building, structure or other property (whether real or personal) arising from any cause that (i) would be insured against under the terms of any property insurance required to be carried hereunder, or (ii) is insured against under the terms of any property insurance actually carried, regardless of whether the same is required hereunder, even though such loss or damage might have been occasioned by the negligence of such Party or its Related Parties. Each Party shall notify their respective insurance companies of this waiver of any rights of subrogation that such companies may have against Lessor or Lessee, as the case may be and shall obtain any necessary endorsement to avoid such waiver's invalidating the policy in whole or in part. Further, neither Lessor nor any Related Party of Lessor shall be liable for any such damage caused by other lessees or persons in, upon or about the Premises, or caused by operations in construction of any private, public or quasi-public work.

(7) Lessor and Lessee each hereby waive, and in no event shall either Party be liable to the other for, any lost profits, damage to business, or any form of special, indirect of consequential damages.

(8) Lessee shall be solely responsible for all losses up to the applicable deductible.

16. **RELEASE AND INDEMNIFICATION COVENANTS:**

A. Lessee releases Lessor and all officials and employees of Lessor from, and covenants and agrees that neither Lessor nor any Related Party of Lessor shall be liable for, and Lessee agrees to defend, indemnify and

hold Lessor and its Related Parties (hereinafter the "Lessor Indemnitee" or "Lessor Indemnitees") harmless against, any and all claims, actions, proceedings, damages, liabilities, costs, and expenses incurred (including, without limitation, all attorneys' fees and expenses arising in connection with each such claim, action or proceeding) from or in connection with: (i) the conduct, operation or management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition created therein or thereon, (ii) any act, omission, or negligence of Lessee or any of its sublessees or licensees or its or their partners, directors, officers, agents, employees, invitees or contractors; (iii) any incident, injury or damage whatever occurring in, at or upon the Premises; and/or (iv) any breach or Default by Lessee in the full and prompt payment and performance of Lessee's obligations under this Lease, except that (1) Lessee's indemnity shall not apply to any loss, damage, injury or death to the extent attributable to the negligence or intentional misconduct of Lessor or Lessor Indemnitees (provided, however, that in such event the indemnity shall remain valid for all other Lessor Indemnitees); (2) if and to the extent that this Lease is subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where liability for damages arising out of bodily injury to persons or damage to property is caused by or results from the concurrent negligence of (a) the Lessor Indemnitee or Lessor Indemnitee's agents or employees, and (b) the Lessee or its Related Parties, Lessee's obligations of indemnity under this Paragraph 16 shall be effective only to the extent of the Lessee's negligence; and (3) liability for any loss, claim, fine or penalty arising from the Release of Petroleum Products or Hazardous Substances or any violation of Environmental Laws shall be governed by the terms of Paragraph 11.H of this Lease.

B. In case any action shall be brought against any Lessor Indemnitee in respect of which indemnity may be sought against Lessee, such Lessor Indemnitee shall promptly notify Lessee in writing and Lessee shall assume the defense thereof, including the employment of counsel and the payment of all expenses incident to such defense. Such Lessor Indemnitee shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Lessor Indemnitee unless the employment of such counsel has been authorized by Lessee or counsel for Lessee shall have advised Lessor in writing that there exists actual or potential conflicts of interest which make representation by the same counsel inappropriate. Lessee shall not be liable for any settlement of any such action without its consent but, if any such action is settled with the consent of Lessee or if there be final judgment for the plaintiff of any such action, Lessee

agrees to indemnify and hold harmless Lessor Indemnitees from and against any loss or liability by reason of such settlement or judgment.

C. Lessee specifically and expressly waives any immunity that may be granted Lessee under the Washington State Industrial Insurance Act, Title 51 RCW, or its successor. Further, the indemnification obligation under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under all workers' compensation act (including, but not limited to, the Washington State Industrial Insurance Act, disability benefits acts or other employee benefits acts.

D. Lessor shall indemnify and hold harmless Lessee and its Related Parties ("Lessee Indemnitee" or "Lessee Indemnitees") from and against any and all third party claims for bodily injury and/or property damage arising from or in connection with: (i) any accident, injury or damage whatever occurring in, at or upon the Common Areas; (ii) any act, omission, or negligence of Lessor or its or their officers, agents, employees, invitees or contractors; and/or (iii) any breach or Default by Lessor in the full and prompt performance of Lessor's obligations under this Lease; together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorneys' fees and expenses at trial and upon appeal, except that (1) Lessor's Indemnity shall not apply to bodily injury, death and/or property damage to the extent attributable to the negligence or intentional misconduct of Lessee or Lessee Indemnitee(s) (provided, however, that in such event the indemnity shall remain valid for all other Lessee Indemnitees); (2) if and to the extent that this Lease is subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where liability for damages arising out of bodily injury to persons or damage to property is caused by or results from the concurrent negligence of (a) a Lessee Indemnitee or Lessee Indemnitees, and (b) the Lessor or the Lessor's agents or employees, Lessor's obligations of indemnity under this paragraph shall be effective only to the extent of the Lessor's negligence; (3) liability for any loss, claim, fine or penalty arising from the Release of Petroleum Products or Hazardous Substances or any violation of Environmental Laws shall be governed by the terms of Paragraph 11.H of this Lease and not by this Paragraph 16.D; and (4) liability for property damage arising from a fire or other casualty shall be governed by Paragraph 17 of this Lease and not by this Paragraph 16.D.

E. The indemnification provisions of this Paragraph 16 shall survive the expiration or earlier termination of this Lease, and are independent of, and will not limit or be limited by, any insurance obligations in this Lease (whether or not complied with).

17. **DAMAGE OR DESTRUCTION:**

A. In the event the Premises or any portion thereof shall be damaged or destroyed by fire or any other insured casualty, or any other insured peril whatsoever, at any time during the term of this Lease, then and in such event, unless the damage exceeds fifty percent (50%) of the replacement cost thereof or will take more than one year to repair, Lessee will or will cause to repair and restore the buildings and improvements in substantially the same location and condition before damage occurred.

B. In the event Lessee elects, undertakes, or is required to rebuild, the proceeds of any insurance policies which are required hereunder shall be first devoted exclusively to the repair and restoration of the damaged or destroyed buildings and improvements located on the Premises and the expenditure of such sum by Lessee for the restoration thereof shall be considered full compliance with the covenant to repair and restore. All property insurance proceeds on Lessee's buildings and improvements owned by Lessee, whether or not used to repair or restore said damage, shall be paid to Lessor and Lessee jointly. All property insurance proceeds on Lessor provided site improvements shall be paid to Lessor.

C. In the event the Premises or any portion thereof is damaged or destroyed to an extent exceeding fifty percent (50%) of the replacement cost thereof, or if Lessor reasonably determines that repair or restoration of any damage cannot be completed within one year, or if there is less than three (3) years remaining in the Term, Lessee shall have the option to elect either to repair and restore the buildings and improvements located on the Premises to substantially the same location and condition as existed before damage occurred or to terminate this Lease. In the event Lessee elects to terminate this Lease: (i) Lessee shall give Lessor written notice of such termination within forty-five (45) days of the date of damage, and (ii) Lessor shall be entitled to any casualty insurance proceeds necessary to repair or replace the improvements or Alterations to the extent affected by such damage or destruction. If Lessee is not in Default under this Lease, any prepaid or unearned rent shall be returned to Lessee.

D. In the event the Premises or any portion thereof is damaged or destroyed, to whatever extent, but Lessor and Lessee agree to maintain this Lease during the time of repair and restoration, Lessee shall be entitled to a reduction of Rent equal to that portion of the Premises unusable as a result of the damage and/or destruction so long as Lessee is at all times diligently pursuing such repair or restoration to completion.

18. **SUBORDINATION AND ATTORNMENT:**

A. Lessor shall have the absolute right to sell, transfer, convey, assign and encumber its interest in this Lease and its estate in the Premises (called "Lessor's Interest"), or any part thereof (including, but not limited to, Lessor's reversion), and to delegate all or any portion of its obligations hereunder, from time to time as it sees fit, without obtaining any approval from Lessee.

B. This Lease shall be subject and subordinate to any encumbrances and to any extensions or renewals thereof which are now, or may hereafter be placed by Lessor, its successors or assigns, upon the whole or any part of Lessor's property and which includes the Premises. Promptly upon request by Lessor and without expense to Lessor, Lessee shall execute and deliver any instrument which may be reasonably required by Lessor or its current or prospective lender. bondholders or the trustee for Lessor's bonds, or the holder of the secured party's interest in any loan (collectively "Mortgagee") with regard to the Premises in confirmation of such subordination. If Lessee shall fail at any time to execute and deliver any such subordination, Lessor, in addition to any other remedy available to it in consequence thereof, may execute and deliver such instrument as the attorney-in-fact of Lessee; and Lessee hereby appoints Lessor as attorney-in-fact for such limited purpose.

C. In the event that Lessor sells or assigns its interest or estate absolutely, Lessee shall be bound to the purchaser or assignee under all of the covenants, terms and conditions of this Lease for the balance of the Term with the same force and effect as if such purchaser or assignee was the lessor under the Lease and Lessee hereby attorns to such purchaser or assignee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument on the part of either of the Parties hereto immediately upon such purchaser's or assignee's succeeding to the interest or estate of Lessor. Specifically, on receipt of a notice from Mortgagee that Rents should be paid to Mortgagee, Lessee shall pay all Rents to Mortgagee or its designee directly. If the Mortgagee succeeds to the interest of Lessor under the Lease, Mortgagee shall not be: (i) liable for any act or omission of Lessor or any prior landlord; (ii) liable for the return of any Security Deposit unless such deposit has been delivered to Mortgagee by Lessor or is in an escrow fund available to Mortgagee; (iii) subject to any offsets or defenses that Lessee might have against any prior landlord (including Lessor); (iv) bound by any rent or additional rent that Lessee might have paid for more than the current month to any prior landlord (including Lessor); (v) bound by any amendment, modification, or termination of the Lease made without Mortgagee's consent; (vi) personally liable under the Lease, Mortgagee's liability hereunder being limited to its interest in the Premises; or (vii) bound by

any notice of termination given by Lessor to Lessee without Mortgagee's prior written consent thereto. If during the pendency of foreclosure proceedings or otherwise, there is appointed by the court a receiver for the property of which the Premises are a part, Lessee hereby attorns to the receiver as its landlord during the pendency of such foreclosure proceeding, such attornment to be effective and self-operative without the execution of any further instrument on the part of either Party.

D. If requested by any Mortgagee, or any ground lessor, Lessee will agree to give such Mortgagee or ground lessor, a reasonable opportunity to cure any Default by Lessor under this lease.

19. **ASSIGNMENT OR SUBLEASE:** Except as specifically provided in this Paragraph 19, Lessee shall not assign, in whole or in part, this Lease or any extension thereof, nor shall Lessee rent or sublease all or any part of the Premises, to a third party, without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed so long as the Permitted Use and all other terms and conditions hereof (other than the identity of Lessee) remain unchanged following such assignment, and so long as Lessee demonstrates to Lessor's sole satisfaction that the proposed assignee (i) has the financial ability to pay and perform the obligations of Lessee under this Lease, and (ii) has the ability and experience to operate the Facility for the Permitted Use, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process or through insolvency proceedings. Notwithstanding the foregoing, if the assignment is the direct result of a change of ownership or control of the business operated by Lessee at the Premises by a non-third-party merger or consolidation of Lessee (including an internal merger or consolidation of the Lessee or a division(s) thereof) or a transfer to an affiliate of Lessee or an entity owned or controlled by Tesoro Corporation, a Delaware corporation, or Savage Companies, a Utah corporation, Lessor's consent shall not be required. The rights and obligations hereof shall extend to and be binding upon Lessor's and Lessee's respective permitted successors and assigns as the case may be. Lessee will furnish Lessor with copies of all such assignment, sublease or rental documents. For the purposes of this Lease, any change of fifty percent (50%) or more of the beneficial ownership of the Lessee including sale, liquidation or other disposition of corporate stock or limited liability company units (or a sale of substantially all of the assets) will be considered an assignment. Should Lessor consent to any assignment made by Lessee solely for the purposes of obtaining a loan or other consideration from a third party (as opposed to a merger, consolidation, sale of assets, corporate stock or limited liability units), then Lessor's consent shall be made in accordance with a mutually agreed

Consent to Assignment. Upon any assignment of this Lease or sublease of the Premises, Lessee shall continue to be obligated under this Lease.

B. If Lessor refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring declaratory action to determine whether Lessor was entitled to refuse such assignment under the terms of this Lease.

C. The granting of consent to any assignment or sublease shall not constitute a waiver of Lessor's discretion to approve or disapprove any future request for permission to assign or sublease in accordance with the requirements of Paragraph 19.A. Acceptance of rent or other performance by Lessor following an assignment or sublease, whether or not Lessor has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

D. Unless otherwise agreed in writing, the initial Lessee and any assignee of Lessee shall remain liable for the full performance of all obligations of Lessee hereunder during the entire Term of this Lease.

E. A minimum handling and transfer fee ("Transfer Fee") of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00) shall be payable by Lessee to Lessor if Lessee requests that Lessor's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. Such Transfer Fee shall be submitted to Lessor at the same time that Lessee requests Lessor's consent to the proposed sublease, assignment or modification. If Lessor's reasonable and customary attorneys' fees exceed the Transfer Fee, then Lessee agrees to reimburse Lessor for such additional reasonable and customary attorneys' fees. Lessee's failure to remit this additional amount within sixty (60) days of the mailing of notice of such charges shall constitute a Default under this Lease.

F. In the event Lessee fails or refuses to pay Rent or Additional Charges when due or is otherwise in Default as defined in Paragraph 23 of this Lease, any sublessee of Lessee shall direct all rental and other payments under the sublease directly to Lessor upon written notice from Lessor and without liability to the original Lessee. In the event Lessor elects to terminate the Lease due to a Default by Lessee, any sublease previously agreed to shall, at Lessor's sole discretion, automatically become a direct lease between Lessor and the sublessee, subject to all terms and conditions of this Lease (including bond, security and insurance requirements) without further action by any Party.

20. **LEASEHOLD MORTGAGES:** Lessee shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor's consent, to mortgage or grant a security interest in Lessee's interest in

this Lease, the Premises and the Alterations, and in any subleases, under one or more leasehold mortgages or pursuant to a sale-leaseback financing arrangement to one or more Lending Institutions (as defined in Paragraph 20.B) and/or under one or more purchase-money leasehold mortgages to a Lending Institution, and to assign this Lease and any subleases to a Lending Institution as collateral security for such leasehold mortgages or pursuant to the sale-leaseback financing arrangement, on the condition that all rights acquired under such leasehold mortgages or pursuant to the sale-leaseback financing arrangement shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, none of which covenants, conditions, restrictions, rights, or interests is or shall be waived by Lessor by reason of the right given to mortgage or grant a security interest in Lessee's interest in this Lease and the Premises and the Improvements, except as expressly provided otherwise. During any period of time that Lessor's deed of trust to secure the payment of the WS&F Lien Amount is an encumbrance against the improvements and Alterations located on the Premises, any Permitted Leasehold Mortgage (defined below) shall be subject and subordinate to Lessor's deed of trust.

B. Any mortgage or sale-leaseback financing arrangement made pursuant to this paragraph is referred to as a "Permitted Leasehold Mortgage," and the holder of or secured party under a Permitted Leasehold Mortgage is referred to as a "Permitted Leasehold Mortgagee." The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is referred to as the "First Leasehold Mortgage," and the holder of or secured party under the First Leasehold Mortgage is referred to as the "First Leasehold Mortgagee." For the purposes of any rights created under this paragraph, any so-called wraparound lender that is a Lending Institution shall be considered a First Leasehold Mortgagee. If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the "First Leasehold Mortgage." A "Permitted Leasehold Mortgage" includes, without limitation, mortgages and trust deeds as well as financing statements, security agreements, sale-leaseback instrumentation, and other documentation that the lender may require. The words "Lending Institution", as used in this Lease, mean (1) a bank (state, federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (state or federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500 company (such as General Electric Capital Corporation), real

estate mortgage investment conduit, or securitization trust; (2) any issuer of collateralized mortgage obligations or any similar investment entity (provided that either (a) at least certain interests in such issuer or other entity are publicly traded or (b) such entity was or is sponsored by an entity that otherwise constitutes a Lending Institution or has a trustee that is, or is an Affiliate of, any entity that otherwise constitutes a Lending Institution), or any Person acting for the benefit of or on behalf of such an issuer; (3) any Person actively engaged in commercial real estate financing and having total assets (on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee's acquisition of its Leasehold Mortgage by assignment, but excluding the value of any Leasehold Mortgage encumbering this Lease) of at least Five Hundred Million and 00/100 Dollars ($500,000,000.00); (4) any Person that is a wholly owned subsidiary of or is a combination of any one or more of the foregoing Persons; or (5) any of the foregoing when acting as trustee, agent, or administrative agent for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Lending Institutions. The fact that a particular Person (or any Affiliate of such Person) is a partner, member, or other investor of the then Lessee shall not preclude such Person from being a Lending Institution and a Leasehold Mortgagee provided that: (a) such entity has, in fact, made or acquired a bona fide loan to Lessee secured by a Leasehold Mortgage or is a Mezzanine Lender; (b) such entity otherwise qualifies as Lending Institution and a Leasehold Mortgagee (as applicable); and (c) at the time such entity becomes a Leasehold Mortgagee, no Default exists under this Lease, unless simultaneously cured.

C. If a Permitted Leasehold Mortgagee sends to Lessor a true copy of its Leasehold Mortgage, together with written notice specifying the name and address of the Permitted Leasehold Mortgagee, then as long as such Permitted Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply (in respect of such Permitted Leasehold Mortgage):

(1) Except as expressly provided otherwise below, a Leasehold Mortgagee shall not be bound by any cancellation, termination, surrender, acceptance of surrender, amendment, or modification of this Lease without in each case the prior consent in writing of the Permitted Leasehold Mortgagee. Nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and the leasehold estates in the Premises.

(2) Lessor shall, upon serving Lessee with any notice, whether of Default or any other matter, simultaneously serve a copy of such notice on the Permitted Leasehold Mortgagee, and no such notice to

Lessee shall be deemed given unless a copy is so served on the Permitted Leasehold Mortgagee in the manner provided in this Lease for giving notices.

(3) In the event of any Default by Lessee under this Lease, each Permitted Leasehold Mortgagee has the same period as Lessee has, plus thirty (30) days, after service of notice on it of such Default, to remedy or cause to be remedied or commence to remedy and complete the remedy of the Default complained of for such default, and Lessor shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Lessee. Each notice of non-monetary Default given by Lessor will state the amounts of whatever Rent or Additional Charges are then claimed to be in default, if any.

(4) If Lessor elects to terminate this Lease by reason of any Default of Lessee, the Permitted Leasehold Mortgagee, in addition to the rights granted under the preceding paragraph, shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Lessor in its notice of termination, for a period of six months, provided that the Permitted Leasehold Mortgagee shall cure or cause to be cured any then-existing defaults in payment of Rent and Additional Charges and meanwhile pay the Rent and Additional Charges, and provided further that the Permitted Leasehold Mortgagee shall forthwith take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and shall prosecute the same to completion with all due diligence. If, at the end of the six-month period, the Permitted Leasehold Mortgagee is actively engaged in steps to acquire or sell Lessee's interest, the time of the Permitted Leasehold Mortgagee to comply with the provisions of this Paragraph 20.C shall be extended for such period as is reasonably necessary to complete such steps with reasonable diligence and continuity.

(5) Lessor agrees that the name of the Permitted Leasehold Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee or Lessor.

(6) Lessor agrees that in the event of termination of this Lease by reason of any Event of Default by Lessee, Lessor will enter into a new lease of the Premises with the Permitted Leasehold Mortgagee or its nominee, for the remainder of the Term, effective on the date of such termination, at the Rent and Additional Charges and on the terms, provisions, covenants, and agreements contained in this Lease and subject only to the same conditions of title as this Lease is subject to on the date this Lease is executed, and to the rights, if any, of any parties then in possession of any part of the Premises, provided:

a) The Permitted Leasehold Mortgagee or its nominee shall make written request on Lessor for such new lease within fifteen (15) days after the date of termination indicated in the notice of termination given to Permitted Leasehold Mortgagee and such written request shall be accompanied by payment to Lessor of Rent and Additional Charges then due to Lessor under this Lease.

b) The Permitted Leasehold Mortgagee or its nominee shall pay to Lessor, at the time the new lease is executed and delivered, any and all Rent and Additional Charges that would be due at the time of the execution and delivery of the new lease pursuant to this Lease but for such termination, and in addition any expenses, including reasonable attorneys' fees, to which Lessor shall have been subjected by reason of such Default.

c) The Permitted Leasehold Mortgagee or its nominee shall ensure that any security and guaranty(ies) are in full force and effect, and shall perform and observe all covenants contained in this Lease on Lessee's part to be performed and further shall remedy any other conditions that Lessee under the terminated Lease was obligated to perform; and upon execution and delivery of such new lease, any subleases, security that may have been assigned and transferred previously by Lessee to Lessor, as security under this Lease, shall then be held by Lessor as security for the performance of all the obligations of Lessee under the new lease.

d) Lessor shall not warrant possession of the Premises or the Improvements to Lessee under the new lease.

e) Such new lease shall be expressly made subject to the rights, if any, of Lessee under the terminated Lease.

f) Lessee under such new lease shall have the same right, title, and interest in and to the Alterations on the Premises as Lessee had under the terminated Lease.

g) Nothing contained in this Lease requires the Permitted Leasehold Mortgagee or its nominee to cure any Default that occurs as a result of the status of Lessee, such as Lessee's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against Lessee's interest in this Lease junior in priority to the lien of the Permitted Leasehold Mortgage.

h) The First Leasehold Mortgagee shall be given notice of any arbitration or other proceeding or dispute by or between the Parties and shall have the right to intervene and be made a party to any such arbitration or other proceeding. In any event, each Permitted Leasehold Mortgagee shall receive notice of, and a copy of, any award or decision made in the arbitration or other proceeding.

i) Any award or payment in condemnation or eminent domain in respect of the improvements shall be paid to the First Leasehold Mortgagee for the benefit of the Parties and applied in the manner specified in this Lease.

j) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain without in each case the prior written consent of the First Leasehold Mortgagee.

k) Except as otherwise provided in this Paragraph 20, no liability for the payment of Rent or Additional Charges or the performance of any of Lessee's covenants and agreements shall attach to or be imposed on the Permitted Leasehold Mortgagee (other than any obligations assumed by the Permitted Leasehold Mortgagee), all such liability (other than any obligations assumed by the Permitted Leasehold Mortgagee) being expressly waived by Lessor.

l) Lessor, within 10 days after request in writing by Lessee or any Permitted Leasehold Mortgagee, shall furnish a written statement, duly acknowledged, that this Lease is in full force and effect and unamended, or if there are any amendments, such statement will specify the amendments, and that there are no Defaults by Lessee that are known to Lessor, or if there are any known Defaults, such statement shall specify the Defaults Lessor claims exist.

m) No payment made to Lessor by any Permitted Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and the Permitted Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion, provided it shall have made demand not later than one year after the date of its payment.

n) Lessor, on request, shall execute, acknowledge, and deliver to each Permitted Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Permitted Leasehold Mortgagee and Lessor, among Lessor, Lessee, and the Permitted Leasehold Mortgagee, agreeing to all the provisions of this paragraph.

o) Lessor shall at no time be required to subordinate its fee simple interest in the Premises to the lien of any leasehold mortgage, nor to mortgage its fee simple interest in the Premises as collateral

or additional security for any leasehold mortgage. Lessor shall attorn to any Permitted Leasehold Mortgagee or any other person who becomes Lessee by, through, or under a Permitted Leasehold Mortgage.

p) If Lessee is declared bankrupt or insolvent and this Lease is thereafter lawfully canceled or rejected, Permitted Leasehold Mortgagee or its nominee, shall accept the existing lease in bankruptcy.

q) If Lessor declares bankruptcy and Lessor's bankruptcy trustee rejects this Lease when there is a Permitted Leasehold Mortgagee, Lessee's right to elect to terminate this Lease or to retain its rights pursuant to 11 USC §365(h)(1) shall be exercised by the Permitted Leasehold Mortgagee.

21. **ESTOPPEL CERTIFICATE:** Lessee and Lessor shall each, at any time and from time to time without charge, and within ten (10) days after written request therefor by the other Party, complete, execute, and deliver to the requesting Party a written statement concerning the terms of this Lease, whether it is in full force and effect, if there are any Defaults hereunder, and such other information as may be required by the requesting Party, but only as typically provided in an estoppel certificate.

22. **[INTENTIONALLY DELETED].**

23. **LIENS:** Except for the deed of trust granted by Lessee to Lessor to secure the payment of the WS&F Lien Amount and any Permitted Leasehold Mortgage, Lessee shall keep the Premises and Lessee's leasehold interest therein free and clear of, and shall indemnify, defend and hold harmless Lessor against, all liens, charges, mortgages, and encumbrances which may result from any act or neglect of Lessee, including but not limited to liens for utility charges and mechanics and materialman liens, and all expenses in connection therewith, including attorneys' fees; it being expressly agreed that Lessee or any transferee, assignee, delegate or sublessee shall have no power or authority to create any such lien, charge, mortgage or encumbrance except with the prior written approval of Lessor. Nothing herein shall prevent Lessee from litigating any Lien not believed by Lessee to be valid, providing that (i) such contest will not expose Lessor to civil or criminal liability, fine or penalty, (ii) such contest will not subject the Premises to sale, forfeiture, foreclosure or interference, and (iii) Lessee provides to Lessor security, reasonably satisfactory to Lessor against any loss or injury by reason of such contest and prosecutes the contest with due diligence.

24. **DEFAULT OR BREACH:**

Time is of the essence of this Lease. Each of the following events shall constitute an event of default and breach ("Default") of this Lease:

A. If Lessee, or any successor or assignee of Lessee while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any Bankruptcy Act, or shall voluntarily take advantage of any such Act by answer or otherwise, or shall make an assignment for the benefit of creditors.

B. If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Lessee, or if a receiver or trustee shall be appointed for all or substantially all of the property of Lessee, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within one hundred twenty (120) days after the institution or appointment.

C. If Lessee shall fail to pay to Lessor Rent or Additional Charges when due, taking into account any grace period for payment provided hereunder.

D. If Lessee shall fail to provide a bond or other security in violation of Paragraph 6 and maintain it throughout the Term of this Lease and sixty (60) days thereafter.

E. If Lessee shall fail to provide the insurance required under Paragraph 15.

F. If Lessee shall fail to occupy and use the Premises continuously during the Term of this Lease in violation of Paragraph 8.A.

G. If this Lease or the interest of Lessee under this Lease shall be assigned, sublet or otherwise transferred to or shall pass to or devolve on any other person or party, voluntarily or involuntarily, except in the manner expressly permitted in this Lease.

H. If Lessee shall fail to perform or comply with any other term or condition of this Lease, and if the non-performance shall continue for a period of twenty (20) days after notice of non-performance given by Lessor to Lessee or, if the performance cannot be reasonably accomplished within the twenty (20) day period, Lessee shall not in good faith have commenced performance within the twenty (20) day period and shall not diligently proceed to completion of performance within a reasonable time thereafter.

I. If any default or event of default of Lessee shall arise under any Pipeline Agreement and continue beyond any applicable notice or cure period available to Lessee thereunder.

H. Lessor shall use commercially reasonable efforts to mitigate its damages following a Default by Lessee hereunder.

In the event that Lessor fails to perform or comply with any term or condition of this Lease, and if the non-performance shall continue for a period of twenty (20) days after notice of non-performance given by Lessee to

Lessor or, if the performance cannot be reasonably accomplished within the twenty (20) day period, Lessor shall not in good faith have commenced performance within the twenty (20) day period and shall not diligently proceed to completion of performance within a reasonable time thereafter, then Lessee shall have all rights and remedies available at law or in equity as a result of Lessor's breach.

25. **EFFECT OF DEFAULT:**

In the event of any Default by Lessee under this Lease, Lessor shall have the following rights and remedies:

A. In the event of any Default by Lessee or any person claiming under, by, or through Lessee, or any threatened or attempted Default by such person, Lessor shall be entitled to pursue an injunction against such person enjoining such Default (other than an injunction to cause Lessee to continuously operate the Premises pursuant to the terms of Paragraph 8.A). Nothing herein contained precludes Lessor from pursuing any other remedies available hereunder or at law or equity to Lessor for such breach, including eviction and the recovery of damages.

B. Lessor shall have the right to terminate this Lease, as well as all right, title and interest of Lessee under this Lease, by giving to Lessee not less than thirty (30) days notice of the termination effective on a date specified in the notice. No act of Lessor or its agents shall be deemed a termination of this Lease and no agreement of Lessor to terminate this Lease shall be valid, effective, or enforceable unless in writing and signed by Lessor. On the termination date specified in the notice, this Lease, and the right, title and interest of Lessee under this Lease, shall terminate in the same manner and with the same force and effect, except as to Lessee's liability, as if such termination date was the end of the Term originally set forth in this Lease.

C. Lessor may elect, but shall not be obligated, to make any payment required of Lessee in this Lease or to comply with any agreement, term, or condition required by this Lease to be performed by Lessee. Lessor shall have the right to enter the Premises for the purpose of curing any such Default and to remain until the Default has been cured. In either case, Lessor may charge to Lessee as Additional Charges the amount of such payment or the cost of such compliance or cure, together with interest thereon at the Interest Rate from the date of such payment. Any such cure by Lessor shall not be deemed to waive or release the Default of Lessee or the right of Lessor to take any action as may be otherwise permissible under this Lease in the case of any Default.

D. Lessor may re-enter the Premises immediately and remove the personal property and personnel of Lessee, and store the property in a public warehouse or at a place elected by Lessor, at the expense of Lessee. **Lessor may also remove any third party's property, and store the same in a public warehouse or other place**

elected by Lessor at the third party's expense, after Lessor has contacted the third party owner and given said third party owner ten (10) days' notice of Lessor's intent to remove the property. After re-entry, Lessor may terminate this Lease on giving thirty (30) days' notice of termination to Lessee. Without the notice, re-entry will not terminate this Lease.

E. After re-entry, Lessor may relet the Premises or any part of the Premises for any term without terminating this Lease, at the rent and on the terms as Lessor may choose. Lessor may make Alterations and repairs to the Premises. The duties and liabilities of the Parties upon the reletting of the Premises as provided in this paragraph shall be as follows:

(1) In addition to Lessee's liability to Lessor for breach of this Lease, Lessee shall be liable for all expenses of the reletting, for the Alterations and repairs made, and for the difference between the rent and additional charges received by Lessor under the new lease agreement, and the Rent and Additional Charges that are due for the same period under this Lease.

(2) To the fullest extent permitted by law, Lessor shall have the right to apply the rent received from reletting the Premises to any amount as Lessor may decide in Lessor's sole discretion, including but not limited to any or all of the following: (a) the interest owed by Lessee to Lessor under this Lease, (b) attorneys' fees and costs owed by Lessee to Lessor under this Lease, (c) expenses of the reletting and alterations and repairs made, (d) Rent or Additional Charges due under this Lease, or (e) future Rent or Additional Charges under this Lease as they become due.

(3) If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than Rent, or if rentals from the new Lessee have been otherwise applied by Lessor as provided for in this subparagraph E and during any rent installment period or less than the rent payable for the corresponding installment period under this Lease, Lessee shall pay Lessor the deficiency, separately for each rent installment deficiency, and before the end of that period. Lessor may at any time after reletting terminate this Lease for the breach on which Lessor had based the re-entry and subsequently relet the Premises, and in such event the provisions of subparagraph G hereof shall apply.

F. Lessor shall be entitled to recover damages from Lessee for any Default by Lessee, without prejudice to any of Lessor's other rights or remedies hereunder or at law or equity, including Lessor's right to terminate this Lease. If this Lease is terminated for any reason, Lessee's liability to Lessor for damages shall

survive such termination. In the event of termination as a result of any Default by Lessee, Lessor shall be entitled to recover immediately without waiting until the due date of any future Rent and/or Additional Charges or until the date fixed for expiration of the Term, the following amounts as damages determined as of the date of termination:

(1) Any Rent, Additional Charges and late charges due under the Lease as of the date of termination, together with interest thereon at the Interest Rate from the date each sum became due through the date of termination;

(2) Notwithstanding anything to the contrary herein and notwithstanding the exercise of any other rights and remedies of Lessor, including but not limited to the right to re-enter the Premises as set forth herein, any excess of the value of all of Lessee's obligations under this Lease, including the obligation to pay Rent and Additional Charges, from the date of termination until the end of the Term remaining immediately prior to such termination, over the reasonable rental value of the Premises for the same period figured as of the date of termination, plus the loss of reasonable rental value of the Premises as of the end of the Term resulting from Lessee's Default, the net result to be discounted to the date of termination at the rate of five percent (5%) per annum;

(3) The reasonable costs of re-entry and re-letting including without limitation the cost of any clean-up, refurbishing, removal of Lessee's property and fixtures, and any other expense occasioned by Lessee's failure to quit the Premises upon termination or to leave them in the required condition, and any remodeling costs, broker commissions and advertising costs, together with interest thereon at the Interest Rate from the date such costs are incurred by Lessor until paid; and

(4) Any other damages recoverable at law, in equity or under this Lease, including but not limited to any doubling of damages permitted under RCW 59.12.170.

The foregoing damages shall bear interest at the Interest Rate from the termination date until paid.

G. Lessor's rights and remedies shall be cumulative and may be exercised and enforced concurrently. Any right or remedy conferred upon Lessor under this Lease shall not be deemed to be exclusive of any other right or remedy it may have. In the event of a Default in the payment of Additional Charges, Lessor shall have all the rights and remedies provided at law, in equity or in this Lease for a Default in the payment of Rent.

26. **CONDEMNATION OR TERMINATION BY COURT ORDER:**

A. If all or any part of the Premises are condemned by any public body, and the part not taken is not suitable for continued operation of Lessee's business (as determined by Lessee and Lessor after consultation, or, if Lessor and Lessee are unable to agree, as determined by a court of competent jurisdiction), Lessee may, at its option, terminate this Lease as of the date of such taking, and, if Lessee is not in Default under any of the provisions of this Lease on said date, any Rent or Additional Charges prepaid by Lessee shall be promptly refunded to Lessee. Upon such termination, the entire estate and interest of Lessee in the Premises shall cease and Lessee shall have no further rights or obligations hereunder, except for any rights and obligations intended to survive the expiration or termination of this Lease, including (without limitation) the obligations of Lessee pursuant to Paragraph 28; provided, however, that if only a portion of the Premises is condemned, then Lessee's obligations for repair and restoration of any improvements located on the Premises shall apply only to the portion of the Premises that is surrendered to Lessor and is not the subject of the condemnation action.

B. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by Lessor of any of its obligations under this Lease, then either Party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination and any rights and obligations intended to survive the expiration or termination of this Lease) shall thereupon terminate. If Lessee is not in Default under any of the provisions of this Lease on the effective date of such termination, any Rent or Additional Charges prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee.

C. In every case of taking or sale of the Premises, or any part thereof to which this Paragraph 26 is applicable; (i) the net proceeds (excluding any portion thereof which is attributable to Lessee's trade fixtures and equipment, which shall belong to Lessee so long as Lessee is not then in Default hereunder, and any separate award to Lessee for relocation costs) shall be applied following order of priority until the net proceeds are exhausted:

(1) First, to Lessor, to the extent of the Land Award;

(2) Second, to Lessee, to the extent of the Building Leasehold Award;

(3) Last, to Lessor, to the extent of any remaining net proceeds; and

(ii) if this Lease is not terminated pursuant to Paragraph 26.A, the Rent shall be reduced proportionately to the reduction in the square footage of the Premises as a result of the taking. If a court that is authorized to fix and determine the condemnation award fails to fix and determine, separately and apart, the Land Award and Building Leasehold Award, such amounts shall be determined and fixed by agreement between Lessor and Lessee (or if Lessor and Lessee are unable to agree, shall be determined by a proceeding in the court in which the eminent domain proceeding is brought).

27. **HOLDING OVER:** In the event Lessee for any reason shall hold over after the expiration of this Lease, without written consent by Lessor, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but shall only create a tenancy terminable at will at any time by Lessor. In this event the Rent owing from Lessee to Lessor shall equal one hundred fifty percent (150%) of the Base Monthly Rent during the last month prior to the holdover period, unless otherwise agreed. If Lessee, with written consent of Lessor, holds over after the expiration or sooner termination of this Lease, the resulting tenancy shall be on a month-to-month basis, upon agreed upon Rent terms. Lessee shall continue to be bound by all other pertinent provisions of this Lease.

28. **SURRENDER OF PREMISES:** Prior to the vacation of the Premises, and in addition to the requirements in Paragraph 11, Lessee shall promptly surrender possession of the Premises, and shall deliver all keys that it may have to any and all parts of the Premises. The Premises shall be surrendered to Lessor in the same condition in which the Premises were received, reasonable wear and tear excepted, and in the state of repair and maintenance required by the terms of this Lease. All Alterations and improvements allowed by Lessor shall be surrendered to Lessor in the same condition in which they were made, reasonable wear and tear excepted, and in the state of repair and maintenance required by the terms of this Lease, unless Lessor elects to permit or require Lessee to remove some or all of such improvements or Alterations (to the extent Lessor may require such removal pursuant to the terms hereof). Lessor may, at its option, exercised within ten (10) days after termination notice or expiration of this Lease, require Lessee expeditiously to remove any or all improvements and fixtures placed on the Premises by Lessee and which would otherwise remain the property of Lessor. In addition to all other requirements under this Lease, including but not limited to Paragraphs 11.L and 12.B, Lessor may require Lessee to repair any physical damage resulting from such removal, or Lessor may elect to do so itself and charge the cost to Lessee with interest at fifteen percent (15%) per annum from the date of expenditure, which shall be payable by Lessee forthwith on demand.

29. **JOINT AND SEVERAL LIABILITY:**

A. Each and every party who signs this Lease, other than in the representative capacity, as Lessee, shall be jointly and severally liable hereunder.

B. It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessees under this Agreement. In construing this Lease, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to entities and individuals.

30. **RULES AND REGULATIONS:** Lessor, for the proper maintenance of the Premises, the rendering of good service thereon, and the providing of safety, order and cleanliness thereof, may make and enforce such rules and regulations as Lessor may reasonably deem necessary or appropriate for such purposes but not inconsistent with the covenants, terms and conditions of this Lease. Lessor's Rules and Regulations attached hereto as Exhibit "F" and the Health and Safety Guidelines for the Facility, prepared by Savage Corporation, in its capacity as the operator of the Facility, attached hereto as Exhibit "L" are acknowledged by Lessee as current and binding. Lessee reserves the right from time to time to modify the Health and Safety Guidelines, and shall provide a copy of such modified Health and Safety Guidelines to Lessor within thirty (30) days after Lessee's implementation thereof, which implementation shall not be subject to Lessor's review, consent, or approval. In addition, a final Facility Operation and Safety Plan shall be mutually approved prior to operation of the Facility.

31. **CAPTIONS AND PARTICULAR PROVISIONS:**

A. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

B. If any term or provision of this Lease or the applications thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

32. **NON-DISCRIMINATION:**

A. Lessee agrees that in the performance of this Lease it will not discriminate by segregation or otherwise against any person or persons because of sex, race, creed, age, color or national origin.

B. It is agreed that Lessee's non-compliance with the provisions of this clause shall constitute a Default of this Lease following the lapse of any applicable notice and cure periods without a cure. In the event of such noncompliance, Lessor may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

33. **NOTICES:** All notices hereunder may be delivered (personally or by reliable overnight courier) or mailed. If mailed, they shall be sent by certified or registered mail to the address set forth in Paragraph 1.M or to such other address as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given three (3) days after the date on which properly mailed, postage prepaid, certified mail, return receipt requested. Notices delivered by reliable overnight courier service shall be deemed to have been given one (1) business day after the date on which deposited with such overnight courier service, properly addressed to the address set forth in Paragraph 1.M or to such other address as either party hereto may hereafter from time to time designate in writing, with charges paid for next business day delivery. Lessee shall also provide information to Lessor regarding Lessee's billing address if it is different from the notice listed above. Lessee shall also provide emergency contact information to Lessor within thirty (30) days of this Lease going into effect and shall keep such information current throughout the Term of this Lease.

34. **ATTORNEY'S FEES AND COURT COSTS:** In case suit or action is instituted to enforce compliance with any of the terms of this Lease, the losing Party agrees to pay the prevailing Party a reasonable attorney's fee before or at trial or any appeal, together with all costs and expenses incurred in connection with such actions, including the reasonable cost of searching the records to determine the condition of title at the time suit is commenced.

35. **SUCCESSORS AND ASSIGNS:** All rights, remedies and liabilities herein given to or imposed upon either of the Parties hereto shall inure to the benefit of and bind the executors, administrators, successors and assigns of such Parties. Nothing herein shall or is intended to confer upon any person, other than the Parties and their respective successors and assigns, any rights, remedies, obligations or liabilities.

36. **WAIVER**: Lessor shall not be deemed to have waived any rights under this Lease unless the waiver is given in writing and signed by Lessor. No delay or omission on the part of Lessor in exercising any right shall operate as a waiver of the right or any other right. A waiver by Lessor of a provision of this Lease shall not prejudice or constitute a waiver of Lessor's right otherwise to demand strict compliance with that provision or any other provision of this Lease. No prior waiver by Lessor shall constitute a waiver of any of Lessor's rights or of any of Lessee's obligations as to any future transactions.

37. **TOTAL AGREEMENT**: This Lease and the MGA Agreement contain the entire agreement between the Parties. Each Party represents that no promises, representations or commitments have been made by the other as a basis for this agreement which have not been reduced to writing herein. No oral promises or representations shall be binding upon either Party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Vancouver. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Lease to be drafted.

38. **PROVISION OF FINANCIAL INFORMATION**: Within twenty (20) days' notice, and/or upon reasonable request, Lessee shall provide Lessor with current financial information concerning Lessee or any assignee, sublessee or guarantor, including financial statements certified, reviewed or compiled by a certified public accountant, if available, or, in the absence thereof, a balance sheet and income statement and other up-to-date financial information certified by Chief Financial Officer or other appropriate officer of Lessee or such assignee, sublessee or guarantor, as applicable, all as requested by Lessor; provided however, that Lessor acknowledges that such financial information with regard to a non-public company is Confidential Information and is to be used and disclosed only to Lessor's management personnel, Lessor's management company, attorneys and accountants for Lessor's internal purposes and to third parties only for the purpose of financing, refinancing, or sale of any portion of the Premises, and then only with reasonable confidentiality restrictions.

This Paragraph 38 does not prohibit either Party from disclosing Confidential Information to the extent such disclosure is required by law. If either Party, or any person to whom either Party transmits Confidential Information pursuant to this Lease, becomes legally compelled to disclose any Confidential Information, including without limitation Confidential Information subject to the Washington Public Disclosure Act, then such Party will provide prompt notice to the other Party prior to any such disclosure so that the other Party may seek a protective

order or other appropriate remedy and/or waive compliance with the provisions of this Paragraph with respect to such disclosure. If such protective order or other remedy is not obtained, or the other Party waives compliance with the provisions of this Paragraph, then the first Party will furnish only that portion of Confidential Information that such Party is advised by written opinion of counsel is legally required and will exercise such Party's best efforts to cooperate with the other Party's efforts to obtain reasonable assurance that confidential treatment will be accorded Confidential Information.

39. **BROKERS:** Nothing contained in this Lease shall impose any obligation on Lessor to pay a commission or fee to any party unless specifically agreed to in writing. Lessee and Lessor each hereby agrees to indemnify, defend and hold the other harmless for, from and against any claim for a compensation or fee by any broker or agent engaged by such party.

40. **COUNTERPARTS:** This Lease may be signed in counterparts. All signatures taken together shall amount to the concurrence of all Parties. In that regard, a photostatic copy of any signature shall have the same effect as the original.

41. **NO OPTION BY SUBMISSION OF LEASE DRAFT:** The submission of this Lease for examination does not constitute a reservation of or option for the Premises to the prospective Lessee and this Lease shall become effective as a Lease only upon execution by both Lessor and Lessee.

42. **APPLICABLE LAW AND VENUE:** This agreement shall be governed by and construed in accordance with the laws of the State of Washington, and in the event of any litigation arising out of or relating to this Lease, the Parties hereto stipulate and agree that the venue of any such action shall be laid in Clark County, Washington.

IN WITNESS WHEREOF, the Parties hereto have signed this Lease as of the 22nd day of October, 2013.

PORT OF VANCOUVER, Lessor

By _____
President

By _____
Vice President

By _____
Secretary

TESORO SAVAGE PETROLEUM TERMINAL LLC, Lessee

By: _____

Title: Authorized Person

Approved as to form:

SCHWABE, WILLIAMSON & WYATT

By: Alicia L Lowe

Alicia L. Lowe, Port Counsel

STATE OF WASHINGTON)
) ss.
County of Clark)

On this day personally appeared before me NANCY I. BAKER, GERALD T. OLIVER, and BRIAN WOLFE, all Commissioners of the PORT OF VANCOUVER, and to me known to be the individuals that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Port of Vancouver for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 22nd day of October, 2013

MICHELLE ALLAN
NOTARY PUBLIC
STATE OF WASHINGTON
MY COMMISSION EXPIRES JUNE 01, 2017

Michelle Allan
Print Name Here: Michelle Allan
NOTARY PUBLIC in and for the State of Washington
residing at Vancouver
My Commission Expires: 6/1/17

STATE OF Utah)
) ss.
County of Salt Lake)

On this day personally appeared before me Curtis C. Davis, to me known to be the Authorized Person respectively of TESORO SAVAGE PETROLEUM TERMINAL LLC that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument on behalf of said Lessee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 18 day of October, 2013

MEGAN WAYMAN
NOTARY PUBLIC - STATE OF UTAH
My Comm. Exp. 05/02/2015
Commission # 608073

Megan Wayman
Print Name Here: Megan Wayman
NOTARY PUBLIC in and for the State of Utah
residing at Salt Lake
My Commission Expires: 5/2/15

EXHIBIT "A"

OUTLINE OF PREMISES LOCATION WITHIN THE OVERALL PORT PROPERTY

[attached]

EXHIBIT A

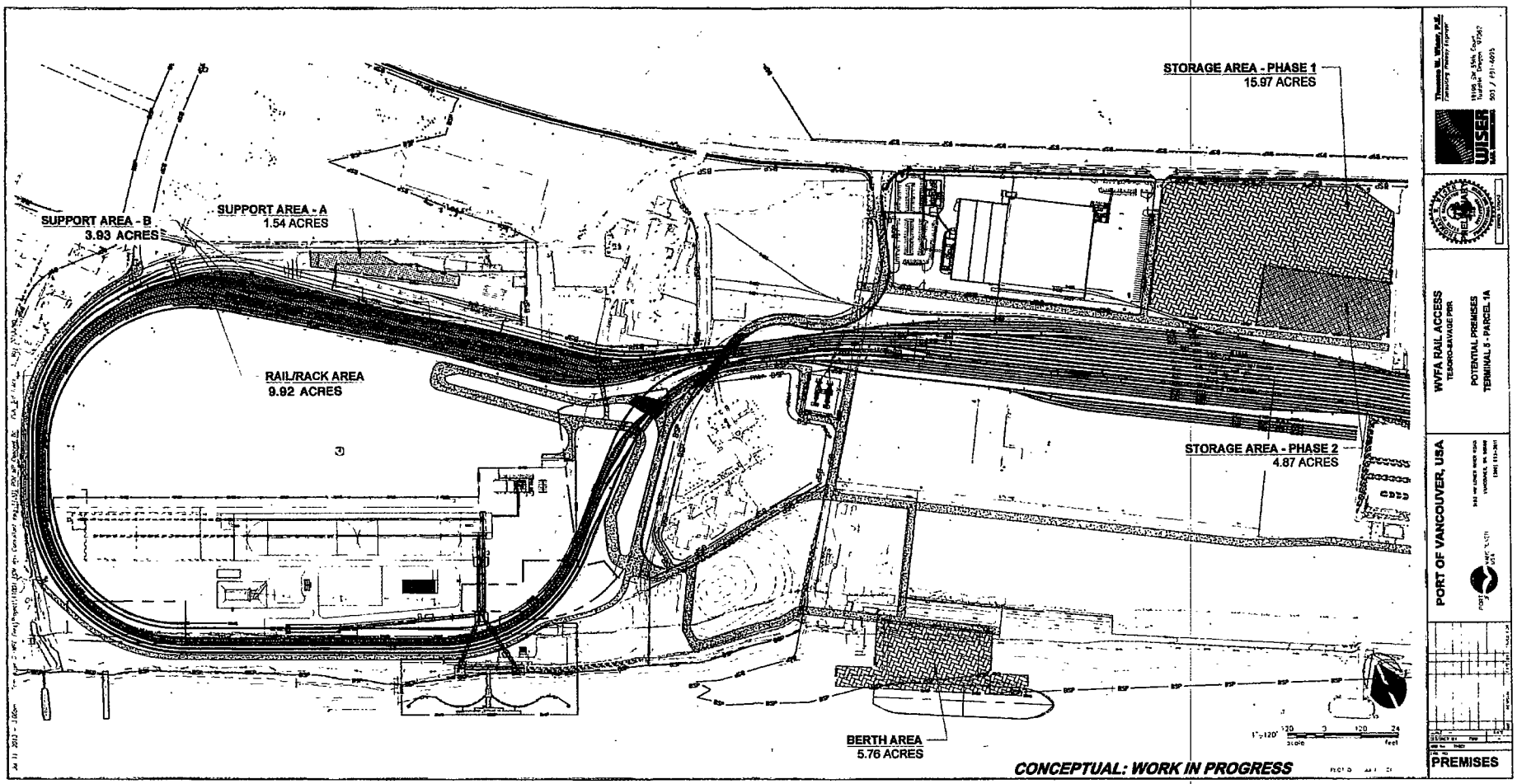
STORAGE AREA - PHASE 1
15.97 ACRES
SUPPORT AREA - B
3.93 ACRES
SUPPORT AREA - A
1.54 ACRES
RAIL/RACK AREA
9.92 ACRES
STORAGE AREA - PHASE 2
4.87 ACRES
BERTH AREA
5.76 ACRES
CONCEPTUAL: WORK IN PROGRESS
WVFA RAIL ACCESS
TESORO-SAVAGE PBR
POTENTIAL PREMISES
TERMINAL 5 - PARCEL 1A
PORT OF VANCOUVER, USA
PREMISES

EXHIBIT "B-1"

PREMISES SITE OUTLINE

[attached]

EXHIBIT B-1

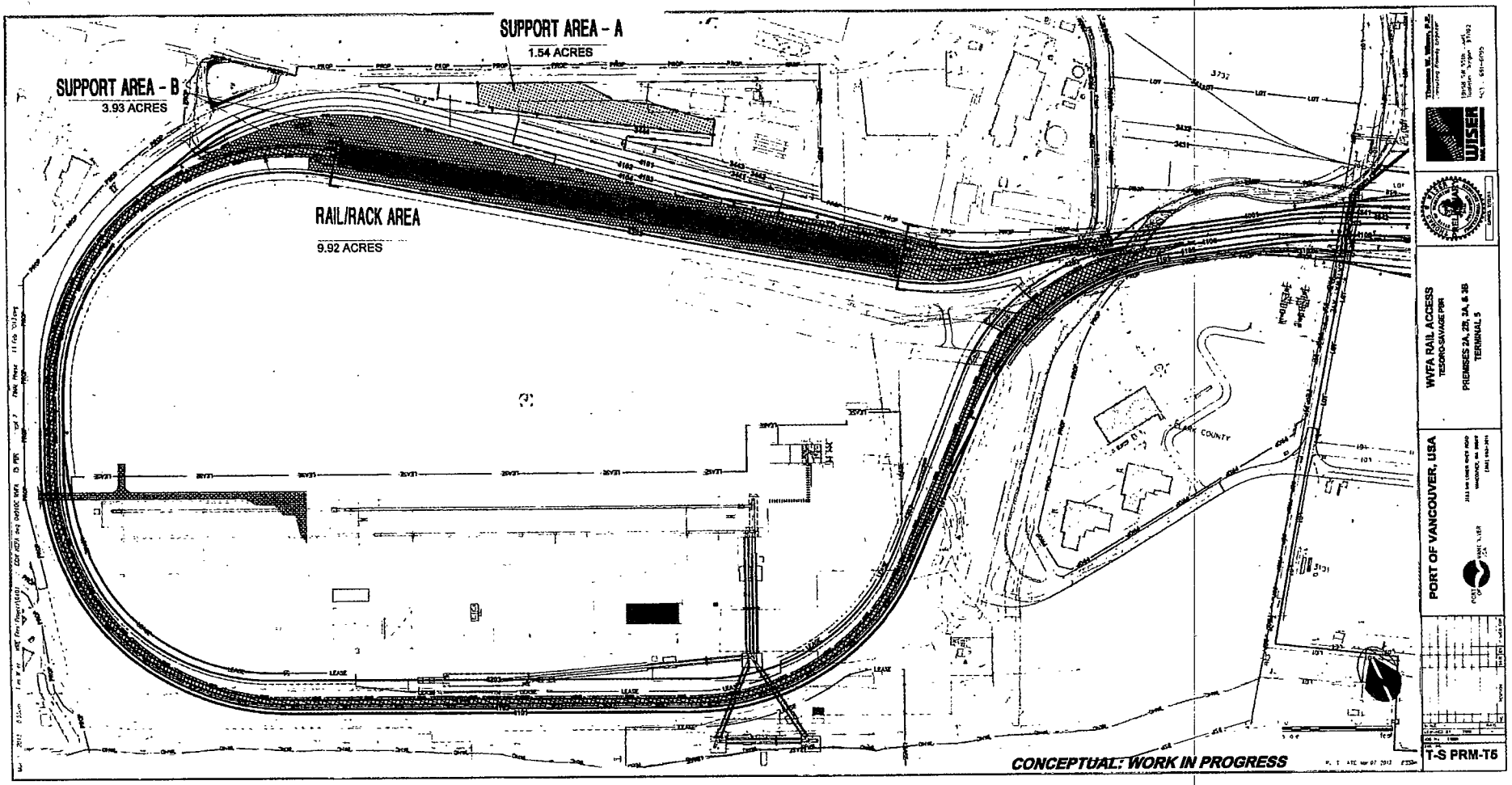
SUPPORT AREA - A
1.54 ACRES
SUPPORT AREA - B
3.93 ACRES
RAIL/RACK AREA
9.92 ACRES
CONCEPTUAL: WORK IN PROGRESS
WVFA RAIL ACCESS
TESORO-SAVAGE PBR
PREMISES 2A, 2B, 3A, & 3B
TERMINAL 5
PORT OF VANCOUVER, USA
T-S PRM-T5

EXHIBIT "B-2"

PREMISES SITE OUTLINE

|attached|

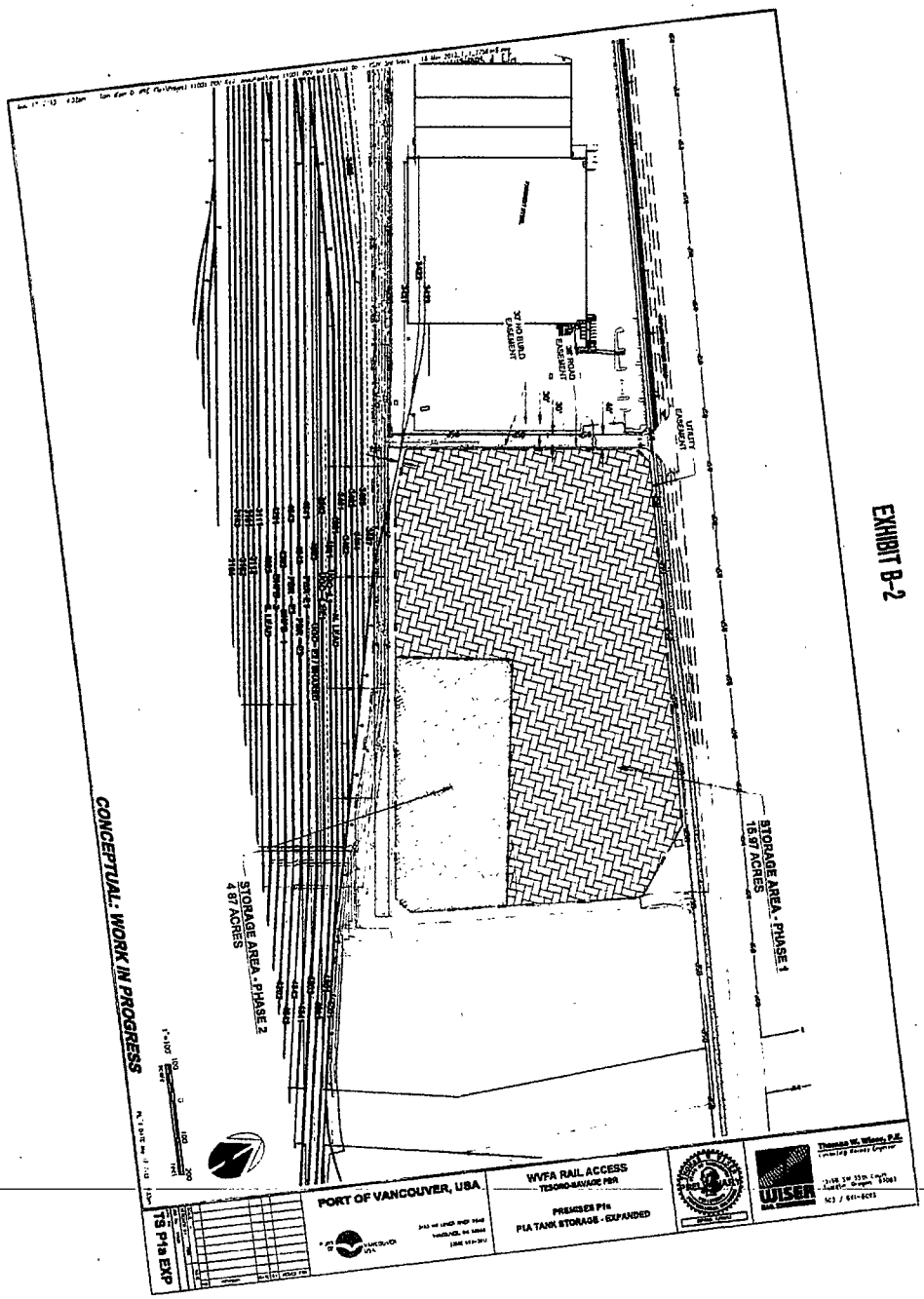
EXHIBIT B-2
CONCEPTUAL: WORK IN PROGRESS
STORAGE AREA - PHASE 2
4.87 ACRES
STORAGE AREA - PHASE 1
15.97 ACRES
UTILITY EASEMENT
30' ROAD EASEMENT
30' ROAD EASEMENT
PORT OF VANCOUVER, USA
WVFA RAIL ACCESS
PREMISES P1a
P1A TANK STORAGE - EXPANDED
TS P1a EXP

EXHIBIT "B-3"

PREMISES SITE OUTLINE

[attached]

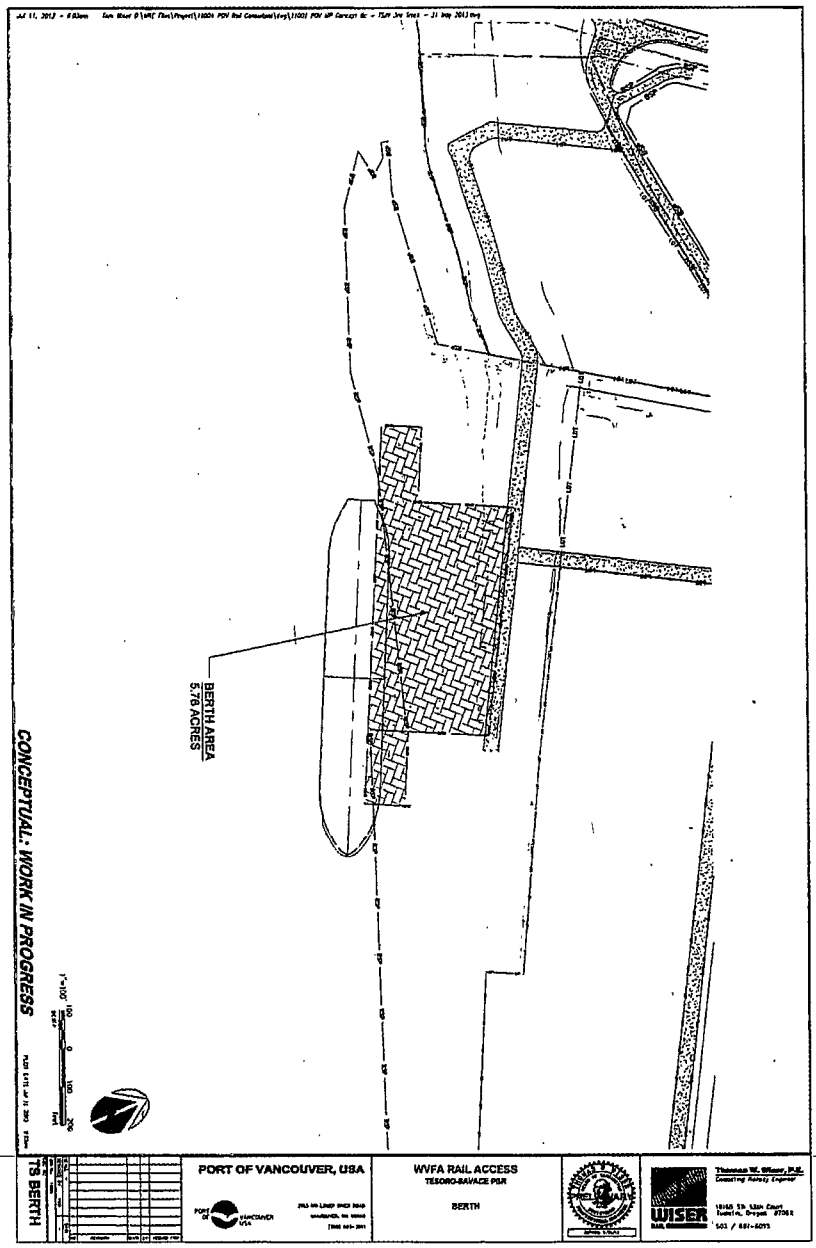
BERTH AREA
5.76 ACRES
CONCEPTUAL: WORK IN PROGRESS
1"=100'
100
0
100
200
Feet
TB BERTH
PORT OF VANCOUVER, USA
WVFA RAIL ACCESS
TESORO-SAVAGE PSR
BERTH
WISER
RAIL

EXHIBIT B-3

EXHIBIT "C"

LEGAL DESCRIPTION

A portion (approximately as shown on Exhibits B-1, B-2, and B-3) of the following described real property:

3/31/09 ALCOA DEED (T-5)

PARCEL I

A TRACT OF LAND LOCATED IN SECTIONS 17, 18, 19 AND 20, TOWNSHIP 2 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CLARK COUNTY, WASHINGTON. SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERN CORNER OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC BY DEED RECORDED AS AUDITOR'S FILE 8706250115, RECORDS OF CLARK COUNTY WASHINGTON. SAID POINT BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "HILL LS 7591"

THENCE ALONG THE SOUTHERN LINES OF THAT PROPERTY CONVEYED TO THE PORT OF VANCOUVER AS DESCRIBED IN AUDITOR'S FILE 9206090248 THE FOLLOWING COURSES:

SOUTH 65°59'34" EAST, 861.82 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 62°05'21" EAST, 78.63 FEET A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 65°53'48" EAST, 278.45 FEET TO THE SOUTHWESTERN LINE OF THAT PROPERTY CONVEYED TO THE UNITED STATES OF AMERICA AS DESCRIBED IN AUDITOR'S FILE E36885;

THENCE ALONG SAID SOUTHWESTERN SOUTH 40°06'49" EAST, 9.21 FEET THE EASTERN LINE OF THAT PROPERTY CONVEYED TO ALCOA, INC. AS DESCRIBED IN AUDITOR'S FILE 3451521;

THENCE ALONG SAID EASTERN LINE SOUTH 23°47'45" WEST, 526.31 FEET;

THENCE ALONG THE SOUTHERN AND EASTERN LINES OF THOSE PROPERTIES DESCRIBED IN AUDITOR'S FILES 9609250325 AND 9506230321 THE FOLLOWING COURSES:

SOUTH 66°56'33" EAST, 61.43 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 22°18'35" WEST, 26.79 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 66°01'38" EAST, 546.86 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 25°14'59" WEST, 5.80 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 69°29'52" EAST, 1.06 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 24°56'09" WEST, 152.66 FEET TO A POINT OF NON-TANGENT CURVATURE WITH A 220.00 FEET RADIUS CURVE FROM WHICH A RADIAL LINE BEARS NORTH 07°47'59" EAST;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19°29'02" (THE CHORD BEARS NORTH 88°03'28" EAST, 74.45 FEET) AN ARC DISTANCE OF 74.81 FEET;

THENCE NORTH 78°18'57" EAST, 61.62 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 220.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 54°14'23" (THE CHORD BEARS NORTH 51°11'45" EAST, 200.58 FEET) AN ARC DISTANCE OF 208.27 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°04'34" EAST, 471.83 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591" AT A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 270.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 38°56'34" (THE CHORD BEARS NORTH 04°36'17" EAST, 180.00 FEET) AN ARC DISTANCE OF 183.51 FEET TO A POINT OF REVERSE CURVATURE;

THENCE ALONG THE ARC OF A 330.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 22°54'37" (THE CHORD BEARS NORTH 03°24'42" WEST, 131.08 FEET) AN ARC DISTANCE OF 131.95 FEET;

THENCE NORTH 08°05'38" EAST, 30.56 FEET TO THE SOUTHERN RIGHT-OF-WAY LINE OF LOWER RIVER ROAD AT A POINT OF NON-TANGENT CURVATURE WITH A 497.00 FEET RADIUS CURVE FROM WHICH A RADIAL LINE BEARS SOUTH 02°19'17" EAST;

THENCE ALONG SAID RIGHT-OF-WAY CURVE THROUGH A CENTRAL ANGLE OF 06°58'17" (THE CHORD BEARS SOUTH 88°50'08" EAST, 60.44 FEET) AN ARC DISTANCE OF 60.47 FEET;

THENCE ALONG THE WESTERN LINE OF THAT PROPERTY CONVEYED TO THE PORT OF VANCOUVER AS DESCRIBED IN AUDITOR'S FILE 9105240201 PARCEL 1A THE FOLLOWING COURSES:

SOUTH 08°05'03" WEST, 37.80 FEET TO A POINT OF NON-TANGENT CURVATURE WITH A 270.00 FEET RADIUS CURVE FROM WHICH A RADIAL LINE BEARS SOUTH 81°57'23" EAST;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°54'37" (THE CHORD BEARS SOUTH 03°24'41" EAST, 107.24 FEET) AN ARC DISTANCE OF 107.96 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025" AT A POINT OF REVERSE CURVATURE;

THENCE ALONG THE ARC OF A 330.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 38°56'34" (THE CHORD BEARS SOUTH 04°36'17" WEST, 220.00 FEET) AN ARC DISTANCE OF 224.29 FEET;

THENCE SOUTH 24°04'34" WEST, 471.83 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025" AT A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 280.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 36°12'35" (THE CHORD BEARS SOUTH 42°10'52" WEST, 174.02 FEET) AN ARC DISTANCE OF 176.95 FEET TO THE NORTHERN RIGHT-OF-WAY OF THE SPOKANE, PORTLAND AND SEATTLE RAILROAD AS DESCRIBED IN AUDITOR'S FILE E24906;

THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 73°39'14" WEST, 507.82 FEET TO THE WESTERN LINE OF THE VAN ALMAN DONATION LAND CLAIM;

THENCE THEN ALONG SAID WESTERN LINE SOUTH 09°54'57" WEST, 497.01 FEET TO THE SOUTHERN RIGHT-OF-WAY LINE THE SPOKANE, PORTLAND AND SEATTLE RAILROAD;

THENCE ALONG SAID SOUTHERN RIGHT-OF-WAY NORTH 39°07'39" EAST, 468.36 FEET TO A POINT OF CURVATURE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY ALONG THE ARC OF A 739.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 33°02'42" (THE CHORD BEARS NORTH 55°39'00" EAST, 420.62 FEET) AN ARC DISTANCE OF 426.50 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025" AT ITS INTERSECTION WITH THE WESTERN LINE OF THAT PROPERTY CONVEYED TO CLARK COUNTY AS DESCRIBED IN AUDITOR'S FILE 9804030486;

THENCE ALONG THE WESTERN AND SOUTHERN LINES OF SAID CLARK COUNTY PROPERTY THE FOLLOWING COURSES:

SOUTH 04°28'45" WEST, 79.82 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025" AT A POINT OF NON-TANGENT CURVATURE WITH A

691.97 FEET RADIUS CURVE FROM WHICH A RADIAL LINE BEARS SOUTH 21°15'02" EAST;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°41'58" (THE CHORD BEARS SOUTH 53°53'59" WEST, 354.68 FEET) AN ARC DISTANCE OF 358.68 FEET;

THENCE SOUTH 39°03'00" WEST, 741.81 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025";

THENCE SOUTH 24°08'35" WEST, 28.79 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025";

THENCE SOUTH 89°38'19" EAST, 352.44 FEET TO A ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025";

THENCE NORTH 82°45'01" EAST, 712.86 FEET TO THE WESTERN LINE OF THAT PROPERTY CONVEYED TO THE PORT OF VANCOUVER AS DESCRIBED IN AUDITOR'S FILE 9105240201 PARCEL 1B;

THENCE ALONG SAID WESTERN LINE SOUTH 35°02'02" WEST, 44.85 FEET;

THENCE CONTINUING ALONG SAID WESTERN LINE SOUTH 35°00'15" WEST, 749.59 FEET;

THENCE CONTINUING ALONG SAID WESTERN LINE SOUTH 35°00'15" WEST 1.05 FEET TO THE ORDINARY HIGH WATER LINE OF THE COLUMBIA RIVER;

THENCE ALONG THE ORDINARY HIGH WATER LINE THE FOLLOWING COURSES:

NORTH 89°29'12" WEST, 9.52 FEET;

THENCE NORTH 77°40'26" WEST, 16.60 FEET;

THENCE SOUTH 86°36'31" WEST, 77.49 FEET;

THENCE NORTH 78°50'38" WEST, 173.64 FEET;

THENCE NORTH 84°19'36" WEST, 254.87 FEET;

THENCE NORTH 76°30'55" WEST, 20.14 FEET;

THENCE NORTH 69°05'45" WEST, 310.36 FEET;

THENCE NORTH 73°25'50" WEST, 31.58 FEET;

THENCE NORTH 78°01'48" WEST, 41.07 FEET;

THENCE NORTH 75°14'34" WEST, 70.64 FEET;

Exhibit "C"

THENCE NORTH 67°13'09" WEST, 106.03 FEET;

THENCE NORTH 85°08'56" WEST, 14.42 FEET;

THENCE NORTH 69°41'50" WEST, 102.24 FEET;

THENCE NORTH 62°47'21" WEST, 22.10 FEET;

THENCE NORTH 85°06'24" WEST, 12.19 FEET;

THENCE NORTH 78°40'23" WEST, 23.96 FEET;

THENCE NORTH 68°36'38" WEST, 11.78 FEET;

THENCE NORTH 54°35'29" WEST, 28.64 FEET;

THENCE NORTH 61°34'46" WEST, 105.07 FEET;

THENCE NORTH 70°03'25" WEST, 111.12 FEET;

THENCE NORTH 61°56'51" WEST, 18.49 FEET;

THENCE NORTH 66°35'10" WEST, 27.88 FEET;

THENCE NORTH 71°57'33" WEST, 28.64 FEET;

THENCE NORTH 61°44'43" WEST, 36.12 FEET;

THENCE NORTH 70°11'57" WEST, 27.01 FEET;

THENCE NORTH 75°26'06" WEST, 88.93 FEET;

THENCE NORTH 69°07'46" WEST, 82.68 FEET;

THENCE NORTH 85°00'29" WEST, 9.41 FEET;

THENCE NORTH 79°39'38" WEST, 24.20 FEET;

THENCE NORTH 71°31'12" WEST, 49.99 FEET;

THENCE NORTH 76°56'35" WEST, 34.63 FEET;

THENCE NORTH 79°53'56" WEST, 6.78 FEET;

THENCE NORTH 74°55'38" WEST, 53.64 FEET;

THENCE NORTH 73°16'30" WEST, 41.35 FEET;

THENCE NORTH 69°24'34" WEST, 52.13 FEET;

Exhibit "C"

THENCE NORTH 62°17'46" WEST, 32.15 FEET;

THENCE NORTH 65°47'53" WEST, 33.52 FEET;

THENCE NORTH 63°32'11" WEST, 25.50 FEET;

THENCE NORTH 55°03'48" WEST, 52.98 FEET;

THENCE NORTH 34°13'21" WEST, 10.50 FEET;

THENCE NORTH 48°48'47" WEST, 8.46 FEET;

THENCE NORTH 67°23'10" WEST, 34.95 FEET;

THENCE NORTH 62°28'18" WEST, 21.35 FEET;

THENCE NORTH 60°53'29" WEST, 42.70 FEET;

THENCE NORTH 62°43'59" WEST, 61.76 FEET;

THENCE NORTH 47°54'15" WEST, 13.10 FEET;

THENCE NORTH 57°42'47" WEST, 34.21 FEET;

THENCE NORTH 45°30'34" WEST, 26.68 FEET;

THENCE NORTH 63°11'33" WEST, 91.74 FEET;

THENCE NORTH 63°52'03" WEST, 43.89 FEET;

THENCE NORTH 68°40'24" WEST, 45.31 FEET;

THENCE NORTH 63°18'56" WEST, 41.82 FEET;

THENCE NORTH 55°08'42" WEST, 40.63 FEET;

THENCE NORTH 65°23'25" WEST, 39.33 FEET;

THENCE NORTH 68°13'41" WEST, 36.75 FEET;

THENCE NORTH 59°46'47" WEST, 20.47 FEET;

THENCE NORTH 56°29'02" WEST, 23.33 FEET;

THENCE NORTH 73°15'43" WEST, 30.91 FEET;

THENCE NORTH 65°05'42" WEST, 34.79 FEET TO THE EASTERN LINE OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC AS DESCRIBED IN AUDITOR'S FILE 8706250115;

Exhibit "C"

THENCE ALONG THE EASTERN LINE OF SAID PROPERTY THE FOLLOWING COURSES:

NORTH 24°51'44" EAST, 19.90 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°51'44" EAST, 75.00 FEET;

THENCE SOUTH 67°02'30" EAST, 150.95 FEET;

THENCE SOUTH 24°24'13" WEST, 8.03 FEET;

THENCE SOUTH 65°32'25" EAST, 139.46 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°25'27" EAST, 190.47 FEET TO A BRASS SCREW IN LEAD;

THENCE SOUTH 65°26'27" EAST, 75.44 FEET;

THENCE NORTH 24°33'33" EAST, 16.47 FEET;

THENCE SOUTH 65°26'27" EAST, 3.23 FEET TO A BRASS SCREW IN LEAD;

THENCE NORTH 24°02'00" EAST, 8.74 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 65°37'38" EAST, 30.69 FEET;

THENCE NORTH 24°22'22" EAST, 43.42 FEET;

THENCE SOUTH 66°03'36" EAST, 202.10 FEET;

THENCE SOUTH 21°35'33" WEST, 53.64 FEET;

THENCE SOUTH 66°03'43" EAST, 337.03 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°23'48" EAST, 332.67 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 65°37'48" EAST, 491.35 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 24°34'33" WEST, 17.72 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 65°13'05" EAST, 25.00 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

Exhibit "C"

THENCE NORTH 23°39'31" EAST, 602.51 FEET;

THENCE NORTH 65°35'48" WEST, 483.30 FEET TO A SPINDLE;

THENCE NORTH 09°15'46" WEST, 56.18 FEET TO A SPINDLE;

THENCE NORTH 24°23'13" EAST, 214.67 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 65°27'24" WEST, 22.46 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°16'52" EAST, 40.03 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 65°35'26" WEST, 440.76 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°23'35" EAST, 253.74 FEET TO A BRASS SCREW IN LEAD;

THENCE SOUTH 65°35'08" EAST, 29.66 FEET TO A BRASS SCREW IN LEAD;

THENCE NORTH 19°44'44" WEST, 68.68 FEET;

THENCE NORTH 65°36'36" WEST, 109.69 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°23'37" EAST, 435.28 FEET TO THE POINT OF BEGINNING.

EXCEPTING THERE FROM:

COMMENCING AT THE MOST NORTHEASTERN CORNER OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC BY DEED RECORDED AS AUDITOR'S FILE 8706250115, RECORDS OF CLARK COUNTY WASHINGTON. SAID POINT BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 15°22'35" EAST, 2,450.69 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591" AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 65°57'51" EAST, 137.31 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 24°06'06" WEST, 125.67 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 65°57'29" WEST, 137.25 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

Exhibit "C"

THENCE NORTH 24°04'31" EAST, 125.66 FEET TO THE POINT OF BEGINNING.

BEARINGS BASED ON THE WASHINGTON STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH ZONE AND DISTANCES ARE AT GROUND.

PARCEL II

A TRACT OF LAND LOCATED IN SECTIONS 18 AND 19, TOWNSHIP 2 NORTH, RANGE 1 EAST, AND SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CLARK COUNTY, WASHINGTON. SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHEASTERN CORNER OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC BY DEED RECORDED AS AUDITOR'S FILE 8706250115, RECORDS OF CLARK COUNTY WASHINGTON. SAID POINT BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "HILL LS 7591"

THENCE NORTH 83°36'37" WEST, 2,411.16 FEET TO A POINT ON THE SOUTHERN LINE OF THE TIDEWATER TRACT BEING THE MOST NORTHERN NORTHWEST CORNER OF THAT PROPERTY CONVEYED TO RUSSELL TOWBOAT AND MOORAGE CO. AS DESCRIBED IN AUDITOR'S FILE 9501260058 AND THE TRUE POINT OF BEGINNING;

THENCE ALONG THE WESTERN LINE OF SAID RUSSELL PROPERTY THE FOLLOWING COURSES:

SOUTH 25°51'55" WEST, 511.44 FEET;

THENCE SOUTH 65°53'18" EAST, 426.16 FEET;

THENCE SOUTH 49°01'37" WEST, 182.34 FEET;

THENCE SOUTH 49°01'33" WEST, 782.97 FEET;

THENCE NORTH 65°32'10" WEST, 53.72 FEET;

THENCE NORTH 08°41'22" WEST, 212.96 FEET;

THENCE NORTH 66°14'51" WEST, 109.99 FEET TO THE SOUTHERN MOST CORNER OF THAT PROPERTY CONVEYED TO VANALCO INC AS DESCRIBED AS PARCEL 1 AUDITOR'S FILE 9501260083;

THENCE ALONG THE EASTERN AND NORTHERN BOUNDARY OF SAID VANALCO PROPERTY THE FOLLOWING COURSES:

NORTH 23°44'52" EAST, 93.21 FEET;

THENCE SOUTH 72°34'32" EAST, 28.67 FEET;

THENCE SOUTH 78°41'13" EAST, 29.76 FEET;

THENCE SOUTH 88°59'26" EAST, 29.49 FEET;

THENCE NORTH 84°48'34" EAST, 28.92 FEET;

THENCE NORTH 68°13'10" EAST, 40.09 FEET;

THENCE NORTH 40°50'00" EAST, 30.39 FEET;

THENCE NORTH 27°26'22" EAST, 49.86 FEET;

THENCE SOUTH 64°08'05" EAST, 96.65 FEET;

THENCE NORTH 25°51'55" EAST, 376.04 FEET;

THENCE NORTH 65°53'18" WEST, 993.55 FEET TO THE SOUTHEASTERN LINE OF THAT PROPERTY CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC AS DESCRIBED IN AUDITOR'S FILE 9104290287;

THENCE ALONG SAID SOUTHEASTERN LINE NORTH 23°15'04" EAST, 606.83 FEET TO A FOUND ½" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "OLSON 9025";

THENCE ALONG THE SOUTHERN LINE OF SAID TIDEWATER TRACT SOUTH 65°25'50" EAST, 1,021.02 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 19.87 ACRES MORE OR LESS.

BEARINGS BASED ON THE WASHINGTON STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH ZONE AND DISTANCES ARE AT GROUND.

PARCEL II-A

AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS DISCLOSED UNDER AUDITOR'S FILE NO. 9501260050 AND 9501260056.

PARCEL III

A TRACT OF LAND LOCATED IN NORTHEAST ONE-QUARTER OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CLARK COUNTY, WASHINGTON. SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHEASTERN CORNER OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC BY DEED RECORDED AS AUDITOR'S FILE 8706250115, RECORDS OF CLARK COUNTY WASHINGTON. SAID POINT BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 15°22'35" EAST, 2,450.69 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591" AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 65°57'51" EAST, 137.31 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 24°06'06" WEST, 125.67 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 65°57'29" WEST, 137.25 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE NORTH 24°04'31" EAST, 125.66 FEET TO THE POINT OF BEGINNING.

BEARINGS BASED ON THE WASHINGTON STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH ZONE AND DISTANCES ARE AT GROUND.

PARCEL IV

AN EASEMENT FOR PLACEMENT AND MAINTENANCE OF A FENCE AND AS DISCLOSED BY EASEMENT AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 9005240083.

PARCEL V

AN EASEMENT FOR ACCESS TO GROUNDWATER SAMPLING WELLS AS DISCLOSED BY EASEMENT AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 9506230325.

PARCEL VI

AN EASEMENT FOR INGRESS, EGRESS AND INSTALLATION AND MAINTENANCE OF UTILITIES AS DISCLOSED BY EASEMENT AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 9506230327.

PARCEL VII

AN EASEMENT FOR ACCESS AS DISCLOSED BY EASEMENT AGREEMENT UNDER AUDITOR'S FILE NO. 9609250326.

PARCEL VIII

AN EASEMENT FOR INGRESS, EGRESS AND INSTALLATION AND MAINTENANCE OF UTILITIES AS DISCLOSED BY EASEMENT AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 9804030488.

PARCEL IX

EASEMENTS FOR THE USE OF VARIOUS SHARED FACILITIES, ACCESS THERETO AND OTHER PURPOSES AS DISCLOSED BY DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS AND SHARED FACILITIES AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 8706250113, AS AMENDED BY INSTRUMENT RECORDED AT AUDITOR'S FILE NO. 9501260085

1-29-09 EVERGREEN DEED (T-5)

PARCEL I:

THOSE PORTIONS OF THE JOHN H. MATHEWS DONATION LAND CLAIM AND PATRICK MARKEYS DONATION LAND CLAIM SITUATED IN SECTIONS 18 AND 19, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, IN CLARK COUNTY, WASHINGTON, THE POINT OF BEGINNING BEING THE SECTION CORNER COMMON TO SECTIONS 17, 18, 19, AND 20 IN SAID TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, THAT IS MONUMENTED WITH A 1-1/2" IRON PIPE SIZE PROJECTING 5.6 FEET ABOVE GROUND; SAID SECTION CORNER BEING SOUTH 02°30'12" WEST 273.26 FEET FROM A DONATION LAND CLAIM CORNER COMMON TO THE PATRICK MARKEYS AND H. VAN ALMA DONATION LAND CLAIM THAT IS MONUMENTED WITH A 1-1/2" IRON PIPE SIZE PROJECTING 10.6 FEET ABOVE GROUND; SAID PORTIONS MORE PARTICULARLY DESCRIBED AS A SINGLE PARCEL AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

BEGINNING AT SAID SECTION CORNER; THENCE NORTH 65°35'57" WEST 2013.30 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP AS THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING SOUTH 41°24'54" WEST 439.18 FEET FROM THE BONNEVILLE POWER ADMINISTRATION SUBSTATION SITE MOST NORTHERLY CORNER AND HENDRICKSON DONATION LAND CLAIM CORNER; THENCE SOUTH 24°23'36" WEST 435.25 FEET ALONG THE WEST SIDE OF A WOVEN WIRE FENCE TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE SOUTH 65°27'02" EAST 109.72 FEET ALONG A WOVEN WIRE FENCE TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE SOUTH 19°56'22" EAST 68.47 FEET ALONG A WOVEN WIRE FENCE TO A LEADED BRASS SCREW SET IN CONCRETE; THENCE NORTH 65°32'35" WEST 29.68 FEET TO A LEADED BRASS SCREW SET IN CONCRETE; THENCE SOUTH 24°22'38" WEST 253.80 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 65°35'42" EAST 440.80 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE SOUTH 24°22'01" WEST 40.01 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE SOUTH 65°29'21" EAST 22.49 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE SOUTH 24°22'50" WEST 214.71 FEET TO A 5/8" STEEL PIN WITH BEVEL GEAR TOP; THENCE SOUTH 09°14'16" EAST 56.06 FEET TO STEEL PIN WITH BEVEL GEAR TOP; THENCE SOUTH 65°35'49" EAST 483.24 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 23°38'23" WEST 602.58 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE NORTH 65°18'33" WEST 25.00 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 24°28'09" EAST 17.77 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 65°37'47" WEST 491.32 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 24°24'00" WEST 332.70 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 66°02'32" WEST 337.10 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH

21°38'52" EAST 53.65 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 63°16'23" WEST 202.63 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 24°02'56" WEST 53.17 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 65°57'05" WEST 30.63 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 23°57'32" WEST 8.74 FEET TO A LEADED BRASS SCREW; THENCE NORTH 66°02'28" WEST 3.23 FEET TO A POINT INSIDE BLDG. 36A OPPOSITE THE NORTHWESTERLY CORNER OF BLDG. 36; THENCE SOUTH 23°57'32" WEST 16.63 FEET TO A POINT NORTHWESTERLY OF THE SOUTHEASTERLY CORNER OF BLDG. 36A; THENCE NORTH 65°18'59" WEST 75.21 FEET TO A LEADED BRASS SCREW; THENCE SOUTH 24°35'26" WEST 190.46 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 66°33'49" WEST 139.52 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP BY THE NORTHERLY GATEPOST; THENCE NORTH 25°43'26" EAST 8.01 FEET TO AN INSIDE FENCE CORNER AND A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 66°06'29" WEST 151.08 FEET ALONG A WOVEN WIRE FENCE TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 24°50'40" WEST 74.95 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE SOUTH 24°50'40" WEST 211.30 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH THE CALCULATED JOHN H. MATHEWS DONATION LAND CLAIM LINE WHICH IS NORTH 65°03'32" WEST 1317.02 FEET FROM THE SOUTHEAST CORNER THEREOF; THENCE NORTH 65°03'32" WEST 868.86 FEET, MORE OR LESS, ALONG SAID DONATION LAND CLAIM TO A POINT SOUTH 65°03'32" EAST 1251.08 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 10°35'57" EAST 254.68 FEET, MORE OR LESS, TO A 5/8" IRON ROD WITH PLASTIC CAP; THENCE NORTH 10°35'57" EAST 257.38 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP ADJACENT TO A WOVEN WIRE FENCE; THENCE NORTH 10°34'25" EAST 526.92 FEET ALONG A WOVEN WIRE FENCE TO A LEADED BRASS SCREW AT A CORNER FENCE POST AND ANGLE POINT OF THE WOVEN WIRE FENCE; THENCE NORTH 23°49'02" EAST 269.16 FEET ALONG A WOVEN WIRE FENCE TO A 5/8" IRON ROD WITH PLASTIC CAP AT A WOVEN WIRE FENCE CORNER; THENCE NORTH 24°39'37" EAST 461.19 FEET TO A U.S.C.E. MONUMENT MARKED "VI-8"; THENCE NORTH 64°22'38" EAST 360.64 FEET TO A U.S.C.E. MONUMENT MARKED "VI-7"; THENCE ALONG A 1175.77 FOOT RADIUS CURVE RIGHT 378.54 FEET WHOSE LONG CHORD BEARS NORTH 75°46'37" EAST 376.91 FEET TO A U.S.C.E. MONUMENT MARKED "VI-6"; THENCE NORTH 29°14'26" EAST 135.35 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP AT A POINT ON THE CURVE OF THE RIGHT OF WAY LINE OF CROWLEY MARITIME CORP. ACCESS ROAD; THENCE ON A 117.00 FOOT RADIUS CURVE TO THE LEFT ALONG SAID RIGHT OF WAY LINE 66.51 FEET, WHOSE LONG CHORD BEARS NORTH 59°03'39" EAST 65.62 FEET TO A 'PK' NAIL AND SHINER MARKING THE POINT OF REVERSE CURVE OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ON SAID 50.00 FOOT RADIUS CURVE TO THE RIGHT ALONG SAID RIGHT OF WAY LINE 71.74 FEET, WHOSE LONG CHORD BEARS NORTH 87°15'17" EAST 65.74 FEET TO A "PK" NAIL AND SHINER MARKING THE BEGINNING OF CURVE ALONG SAID RIGHT OF WAY LINE; THENCE SOUTH 52°38'39" EAST 268.18 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP TO A POINT OF TANGENCY OF A CURVE TO THE LEFT ON THE ACCESS ROAD TO THE HEREIN DESCRIBED PARCEL; THENCE NORTH 37°25'25" EAST 32.03 FEET ACROSS SAID RIGHT OF WAY TO THE POINT OF

Exhibit "C"

TANGENCY ON THE NORTHERLY RIGHT OF WAY LINE OF SAID ROAD TO A 5/8" IRON ROD WITH A PLASTIC CAP; THENCE SOUTH 65°35'19" EAST 562.06 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL.

PARCEL II:

AN UNDIVIDED 55% INTEREST IN THE FOLLOWING DESCRIBED PROPERTY:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

A PORTION OF THE PATRICK MARKEYS DONATION LAND CLAIM IN SECTION 19, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, IN CLARK COUNTY, WASHINGTON;

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 17, 18, 19, AND 20; THENCE SOUTH 33°41'06" WEST 1907.59 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF THAT TRACT CONVEYED TO VANCOUVER SMELTING AND INGOT, INC., DESCRIBED AS A SANITARY SEWER TREATMENT PLANT IN SCHEDULE B-6 IN AUDITOR'S FILE NO. 8706250115, CLARK COUNTY RECORDS; THENCE SOUTH 24°08'30" WEST ALONG THE EAST LINE OF SAID SEWER PLANT PARCEL A DISTANCE OF 125.67 FEET TO THE SOUTH LINE THEREOF; THENCE NORTH 65°57'05" WEST ALONG THE SOUTH TINE OF SAID SEWER PLANT PARCEL A DISTANCE OF 137.25 FEET TO THE WEST LINE THEREOF; THENCE NORTH 24°04'55" EAST ALONG THE WEST LINE OF SAID SEWER PLANT PARCEL A DISTANCE OF 125.66 FEET TO THE NORTH LINE THEREOF; THENCE SOUTH 65°57'19" EAST ALONG THE NORTH LINE OF SAID SEWER PLANT PARCEL A DISTANCE OF 137.38 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL III:

A PARCEL OF PROPERTY IN THE JOHN MATHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID

NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET RIGHT, AS PER WSDH PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET TO A 225.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF SOUTH 81°48'57" WEST INTO SAID 225.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 225.00 FOOT RADIUS CURVE TO THE RIGHT 40.00 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 88°00'00" WEST 302.26 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 89°29'56" WEST 11.39 FEET TO A 285.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF SOUTH 89°20'25" WEST INTO SAID 285.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 285.00 FOOT RADIUS CURVE TO THE LEFT 200.52 FEET; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHEASTERLY LINE 488.75 FEET TO AN ANGLE POINT IN SAID TIDEWATER TRACT; THENCE NORTH 65°25'56" WEST ALONG THE SOUTHERLY LINE OF SAID TIDEWATER TRACT 645.61 FEET; THENCE SOUTH 25°51'49" WEST LEAVING SAID SOUTHERLY LINE 598.92 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 25°51'49" WEST 376.06 FEET; THENCE NORTH 64°08'11" WEST 96.65 FEET; THENCE SOUTH 27°26'16" WEST 49.86 FEET; THENCE SOUTH 40°49'54" WEST 30.39 FEET; THENCE SOUTH 68°13'04" WEST 40.09 FEET; THENCE SOUTH 84°48'28" WEST 28.92 FEET; THENCE NORTH 88°59'32" WEST 29.49 FEET; THENCE NORTH 78°41'19" WEST 29.76 FEET; THENCE NORTH 72°34'38" WEST 28.67 FEET; THENCE SOUTH 23°44'46" WEST 93.21 FEET; THENCE NORTH 66°15'14" WEST 727.49 FEET TO THE SOUTHEASTERLY LINE OF SAID TIDEWATER TRACT; THENCE NORTH 23°14'58" EAST ALONG SAID SOUTHEASTERLY LINE 614.15 FEET TO A POINT WHICH BEARS NORTH 65°53'24" WEST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 65°53'24" EAST 993.60 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL IV:

A PARCEL OF PROPERTY 40.00 FEET WIDE BEING 20.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE IN THE JOHN MATHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTHEAST QUARTER OF SECTION 13 AND THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 1 WEST AND THE SOUTH HALF OF SECTION 18 AND THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET RIGHT, AS PER WSDH PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET TO A 225.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF SOUTH 81°48'57" WEST INTO SAID 225.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 225.00 FOOT RADIUS CURVE TO THE RIGHT 40.00 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 88°00'00" WEST 302.26 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 89°29'56" WEST 11.39 FEET TO A 285.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF SOUTH 89°20'25" WEST INTO SAID 285.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 285.00 FOOT RADIUS CURVE TO THE LEFT 200.52 FEET; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHEASTERLY LINE 488.75 FEET TO AN ANGLE POINT IN SAID TIDEWATER TRACT; THENCE NORTH 65°25'56" WEST ALONG THE SOUTHERLY LINE OF SAID TIDEWATER PARCEL 645.61 FEET; THENCE LEAVING SAID SOUTHERLY LINE SOUTH 25°51'49" WEST 974.98 FEET; THENCE NORTH 64°08'11" WEST 96.65 FEET; THENCE SOUTH 27°26'16" WEST 49.86 FEET; THENCE SOUTH 40°49'54" WEST 30.39 FEET; THENCE SOUTH 68°13'04" WEST 40.09 FEET; THENCE SOUTH 84°48'28" WEST 28.92 FEET; THENCE NORTH 88°59'32" WEST 29.49 FEET; THENCE NORTH 78°41'19" WEST 29.76 FEET; THENCE NORTH 72°34'38" WEST 28.67 FEET; THENCE SOUTH 23°44'46" WEST 93.21 FEET; THENCE NORTH 66°15'14" WEST 541.49 FEET TO A DRAINAGE PIPE AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 23°35'14" WEST ALONG SAID PIPE 221.96 FEET TO THE NORTHEAST BANK OF THE COLUMBIA RIVER AND THE END OF THE ABOVE DESCRIBED CENTERLINE.

PARCEL V:

A PARCEL OF PROPERTY IN THE JOHN MATHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST AND

THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET RIGHT, AS PER WSDH PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST, PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET TO A 225.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF SOUTH 81°48'57" WEST INTO SAID 225.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 225.00 FOOT RADIUS CURVE TO THE RIGHT 40.00 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 88°00'00" WEST 302.26 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 89°29'56" WEST 11.39 FEET TO A 285.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF SOUTH 89°20'25" WEST INTO SAID 285.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 285.00 FOOT RADIUS CURVE TO THE LEFT 200.52 FEET; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHEASTERLY LINE (LINE REFERRED TO AS LINE "B" FROM HEREON) 488.75 FEET TO AN ANGLE POINT IN SAID TIDEWATER TRACT; THENCE NORTH 65°25'56" WEST ALONG THE SOUTHERLY LINE OF SAID TIDEWATER TRACT 645.61 FEET; THENCE SOUTH 25°51'49" WEST LEAVING SAID SOUTHERLY LINE 834.08 FEET; THENCE SOUTH 68°51'19" EAST 239.65 FEET; THENCE SOUTH 64°16'05" EAST 52.04 FEET TO THE SOUTHWESTERLY EXTENSION OF SAID LINE "B" AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 64°16'05" EAST 112.23 FEET; THENCE SOUTH 56°01'08" EAST 115.94 FEET; THENCE SOUTH 51°08'50" EAST 320.70 FEET; THENCE SOUTH 28°12'11" EAST 86.38 FEET; THENCE SOUTH 79°25'35" EAST 24.62 FEET TO THE WESTERLY LINE OF THAT TRACT CONVEYED TO VANCOUVER SMELTING AND INGOT, INC. (AS REFERRED TO IN SCHEDULE A) BY DEED RECORDED UNDER AUDITOR'S FILE NO. 8706250115 OF CLARK COUNTY RECORDS; THENCE SOUTH 10°34'25" WEST ALONG SAID WESTERLY LINE 234.86 FEET (HILL RECORD OF SURVEY, BOOK 22, PAGE 154 SOUTH 09°00'40" WEST); THENCE SOUTH 10°35'57" WEST ALONG SAID WESTERLY LINE 216.41 FEET (HILL RECORD OF SURVEY, BOOK 22, PAGE 154 SOUTH 09°00'40"

WEST); THENCE NORTH 26°15'16" WEST 72.91 FEET; THENCE NORTH 06°24'44" WEST 60.47 FEET; THENCE NORTH 14°30'34" EAST 218.85 FEET; THENCE NORTH 00°03'06" WEST 106.25 FEET; THENCE NORTH 28°12'11" WEST 61.91 FEET; THENCE NORTH 51°08'50" WEST 310.89 FEET; THENCE NORTH 56°01'08" WEST 111.36 FEET; THENCE NORTH 64°16'05" WEST 126.57 FEET TO THE SOUTHWESTERLY EXTENSION OF SAID LINE "B"; THENCE NORTH 49°01'27" EAST ALONG SAID SOUTHWESTERLY EXTENSION 43.55 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL VI:

AN EASEMENT FOR MAINTENANCE, REPAIR, REPLACEMENT, OPERATION AND REMOVAL OF A PIPELINE OVER THE FOLLOWING DESCRIBED PROPERTY:

A PARCEL OF PROPERTY IN THE JOHN MATHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST AND THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN CLARK COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET RIGHT, AS PER WSDH PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET TO A 225.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF SOUTH 81°48'57" WEST INTO SAID 225.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 225.00 FOOT RADIUS CURVE TO THE RIGHT 40.00 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 88°00'00" WEST 302.26 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 89°29'56" WEST 11.39 FEET TO A 285.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF SOUTH 89°20'25" WEST INTO SAID 285.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND

AROUND SAID 285.00 FOOT RADIUS CURVE TO THE LEFT 200.52 FEET; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHEASTERLY LINE (LINE REFERRED TO AS LINE "B" FROM HEREON) 488.75 FEET TO AN ANGLE POINT IN SAID TIDEWATER TRACT; THENCE NORTH 65°25'56" WEST ALONG THE SOUTHERLY LINE OF SAID TIDEWATER TRACT 645.61 FEET; THENCE SOUTH 25°51'49" WEST LEAVING SAID SOUTHERLY LINE 834.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 68°51'19" EAST 239.65 FEET; THENCE SOUTH 64°16'05" EAST 52.04 FEET TO THE SOUTHWESTERLY EXTENSION OF SAID LINE "B"; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHWESTERLY EXTENSION 43.55 FEET; THENCE NORTH 64°16'05" WEST 33.22 FEET; THENCE NORTH 68°51'19" WEST 241.35 FEET TO A POINT WHICH BEARS SOUTH 25°51'49" WEST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 25°51'49" EAST 40.14 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL VII:

AN EASEMENT FOR INGRESS, EGRESS, AND UTILITIES OVER THE FOLLOWING DESCRIBED PROPERTY:

A PARCEL OF PROPERTY IN THE JOHN MATHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN SAID NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET RIGHT, AS PER WSDH PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET TO A 225.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF SOUTH 81°48'57" WEST INTO SAID 225.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 225.00 FOOT RADIUS CURVE TO THE RIGHT 40.00 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH

88°00'00" WEST 302.26 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 89°29'56" WEST 11.39 FEET TO A 285.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF SOUTH 89°20'25" WEST INTO SAID 285.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 285.00 FOOT RADIUS CURVE TO THE LEFT 200.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHEASTERLY LINE 488.75 FEET TO AN ANGLE POINT IN SAID TIDEWATER TRACT; THENCE CONTINUING SOUTH 49°01'27" WEST ON AN EXTENSION OF SAID SOUTHEASTERLY LINE 740.34 FEET; THENCE NORTH 85°00'25" WEST 32.80 FEET TO A 450.00 FOOT RADIUS CURVE TO THE LEFT; THENCE AROUND SAID 450.00 FOOT RADIUS CURVE TO THE LEFT 109.66 FEET; THENCE SOUTH 81°01'50" WEST 106.38 FEET; THENCE SOUTH 86°42'18" WEST 159.83 FEET; THENCE SOUTH 25°51'49" WEST 68.71 FEET; THENCE NORTH 86"42'18" EAST 196.27 FEET; THENCE NORTH 81°01'50"EAST 109.36 FEET TO A 390.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE AROUND SAID 390.00 FOOT RADIUS CURVE TO THE RIGHT 95.04 FEET; THENCE SOUTH 85°00'25" EAST 58.25 FEET; THENCE NORTH 49°01'27" EAST 1254.53 FEET; THENCE NORTH 49°32'43" EAST 497.36 FEET TO THE CENTERLINE OF LOWER RIVER ROAD AS SHOWN ON THAT RECORD OF SURVEY RECORDED IN BOOK 29 AT PAGE 161 OF CLARK COUNTY RECORDS; THENCE NORTH 53°02'11" WEST ALONG SAID CENTERLINE 61.47 FEET TO A POINT WHICH BEARS NORTH 49°32'43" EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 49°32'43" WEST 484.51 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL VIII:

AN EASEMENT FOR INGRESS, EGRESS, AND UTILITIES OVER THE FOLLOWING DESCRIBED PROPERTY:

A 40.00 FOOT WIDE PARCEL OF PROPERTY LYING ON THE LEFT (SOUTHEAST SIDE) OF THE FOLLOWING DESCRIBED LINE IN THE JOHN MATHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET RIGHT, AS PER WSDH

PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET TO A 225.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF SOUTH 81°48'57" WEST INTO SAID 225.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 225.00 FOOT RADIUS CURVE TO THE RIGHT 40.00 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 88°00'00" WEST 302.26 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 89°29'56" WEST 11.39 FEET TO A 285.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF SOUTH 89°20'25" WEST INTO SAID 285.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID SOUTHEASTERLY LINE AND AROUND SAID 285.00 FOOT RADIUS CURVE TO THE LEFT 200.52 FEET; THENCE SOUTH 49°01'27" WEST ALONG SAID SOUTHEASTERLY LINE 488.75 FEET TO AN ANGLE POINT IN SAID TIDEWATER TRACT; THENCE NORTH 65°25'56" WEST ALONG THE SOUTHERLY LINE OF SAID TIDEWATER TRACT 645.61 FEET; THENCE SOUTH 25°51'49" WEST 974.98 FEET; THENCE NORTH 64°08'11" WEST 96.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 27°26'16" WEST 49.86 FEET; THENCE SOUTH 40°49'54" WEST 30.39 FEET; THENCE SOUTH 68°13'04" WEST 40.09 FEET; THENCE SOUTH 84°48'28" WEST 28.92 FEET; THENCE NORTH 88°59'32" WEST 29.49 FEET; THENCE NORTH 78°41'19" WEST 29.76 FEET; THENCE NORTH 72°34'38" WEST 28.67 FEET TO THE END OF THE ABOVE DESCRIBED LINE.

PARCEL IX:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY:

A PARCEL OF PROPERTY IN THE JOHN MATTHEWS DONATION LAND CLAIM AND THE WILLIAM HENDRICKSON DONATION LAND CLAIM IN THE SOUTH HALF OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

(THE FOLLOWING COURSES ARE ON A GRID BEARING WASHINGTON STATE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983. A SCALE AND ELEVATION FACTOR OF 1.000049 HAS BEEN APPLIED TO THE MEASURED FIELD DISTANCES.)

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, SAID NORTHEAST CORNER ALSO BEING THE NORTHEAST CORNER OF THE WILLIAM HATTEN DONATION LAND CLAIM, THE NORTH LINE OF SAID HATTEN DONATION LAND CLAIM BEARING SOUTH 69°29'19" WEST; THENCE SOUTH 20°09'51" EAST 6616.90 FEET TO "A LINE" STATION 10 + 55.06, 75.00 FEET

RIGHT, AS PER WSDH PLANS FOR SR 501, VANCOUVER LAKE TO PIONEER AVENUE IN RIDGEFIELD, APPROVED MAY 17, 1966; THENCE SOUTH 36°57'49" WEST PARALLEL WITH SAID "A LINE" AND A SOUTHWESTERLY EXTENSION THEREOF, 298.85 FEET TO THE CENTERLINE OF LOWER RIVER ROAD, AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 36°57'49" WEST ALONG THE SOUTHEASTERLY LINE OF THAT TRACT CONVEYED TO TIDEWATER ENVIRONMENTAL SERVICES, INC. BY DEED RECORDED UNDER AUDITOR'S FILE NO. 9104290287 OF CLARK COUNTY RECORDS 100.87 FEET; THENCE SOUTH 36°42'57" EAST 61.58 FEET TO THE NORTHWESTERLY LINE OF THAT TRACT CONVEYED TO VANCOUVER SMELTING AND INGOT, INC. (AS REFERRED TO IN SCHEDULE A) BY DEED RECORDED UNDER AUDITOR'S FILE NO. 8706250115 OF CLARK COUNTY RECORDS, SAID POINT BEING ON A 117.00 FOOT RADIUS CURVE TO THE LEFT WITH A TANGENT BEARING OF NORTH 75°20'42" EAST INTO SAID 117.00 FOOT RADIUS CURVE AT THIS POINT; THENCE ALONG SAID NORTHWESTERLY LINE AND AROUND SAID 117.00 FOOT RADIUS CURVE TO THE LEFT 66.51 FEET TO A 50.00 FOOT RADIUS CURVE TO THE RIGHT WITH A TANGENT BEARING OF NORTH 46°09'02" EAST INTO SAID 50.00 FOOT RADIUS CURVE AT THIS POINT (HILL RECORD OF SURVEY, BOOK 22, PAGE 154, DELTA 33°40'07", LENGTH 68.75 FEET, RADIUS 117.00 FEET); THENCE ALONG SAID NORTHWESTERLY LINE AND AROUND SAID 50.00 FOOT RADIUS CURVE TO THE RIGHT, 71.74 FEET (HILL RECORD OF SURVEY, BOOK 22, PAGE 154, DELTA 79°51'27", LENGTH 69.69 FEET, RADIUS 50.00 FEET); THENCE SOUTH 52°38'39" EAST ALONG THE NORTHERLY LINE OF SAID VANCOUVER SMELTING AND INGOT, INC. TRACT 15.64 FEET (HILL RECORD OF SURVEY, BOOK 22, PAGE 154, SOUTH 54°28'10" EAST); THENCE NORTH 36°57'49" EAST 15.48 FEET TO THE CENTERLINE OF LOWER RIVER ROAD; THENCE NORTH 53°02'11" WEST ALONG SAID CENTERLINE 150.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE NORTHWESTERLY 48.0 FEET AS MEASURED AT RIGHT ANGLES TO SAID SOUTHEASTERLY LINE OF SAID TIDEWATER ENVIRONMENTAL SERVICES, INC., TRACT.

3-31-09 ALCOA WATER RIGHTS DEED (BERTH AREA)

A 200.00 FOOT WIDE STRIP OF LAND LOCATED IN SECTION 19, TOWNSHIP 2 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CLARK COUNTY, WASHINGTON. THE NORTHWESTERN SIDE-LINE OF SAID STRIP BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERN CORNER OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC BY DEED RECORDED AS AUDITOR'S FILE 8706250115, RECORDS OF CLARK COUNTY WASHINGTON. SAID POINT BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE ALONG THE SOUTHERN LINES OF THAT PROPERTY CONVEYED TO THE PORT OF VANCOUVER AS DESCRIBED IN AUDITOR'S FILE 9206090248 SOUTH 65°59'34" EAST, 861.82 FEET TO A 5/8" IRON ROD W/ YELLOW PLASTIC CAP STAMPED "HILL LS 7591";

THENCE SOUTH 15°54'21" EAST, 2,655.23 FEET TO **TRUE POINT OF BEGINNING** AT THE INTERSECTION OF THE ORDINARY HIGH WATER LINE OF THE COLUMBIA RIVER WITH THE WESTERN LINE OF THAT PROPERTY CONVEYED TO THE PORT OF VANCOUVER AS DESCRIBED IN AUDITOR'S FILE 9105240201 PARCEL 1B;

THENCE ALONG THE ORDINARY HIGH WATER LINE THE FOLLOWING COURSES:

THENCE NORTH 89°29'12" WEST, 9.52 FEET;

THENCE NORTH 77°40'26" WEST, 16.60 FEET;

THENCE SOUTH 86°36'31" WEST, 77.49 FEET;

THENCE NORTH 78°50'38" WEST, 173.64 FEET;

THENCE NORTH 84°19'36" WEST, 254.87 FEET;

THENCE NORTH 76°30'55" WEST, 20.14 FEET;

THENCE NORTH 69°05'45" WEST, 310.36 FEET;

THENCE NORTH 73°25'50" WEST, 31.58 FEET;

THENCE NORTH 78°01'48" WEST, 41.07 FEET;

THENCE NORTH 75°14'34" WEST, 70.64 FEET;

THENCE NORTH 67°13'09" WEST, 106.03 FEET;

THENCE NORTH 85°08'56" WEST, 14.42 FEET;

THENCE NORTH 69°41'50" WEST, 102.24 FEET;

THENCE NORTH 62°47'21" WEST, 22.10 FEET;

THENCE NORTH 85°06'24" WEST, 12.19 FEET;

THENCE NORTH 78°40'23" WEST, 23.96 FEET;

THENCE NORTH 68°36'38" WEST, 11.78 FEET;

THENCE NORTH 54°35'29" WEST, 28.64 FEET;

THENCE NORTH 61°34'46" WEST, 105.07 FEET;

THENCE NORTH 70°03'25" WEST, 111.12 FEET;

THENCE NORTH 61°56'51" WEST, 18.49 FEET;

THENCE NORTH 66°35'10" WEST, 27.88 FEET;

THENCE NORTH 71°57'33" WEST, 28.64 FEET;

THENCE NORTH 61°44'43" WEST, 36.12 FEET;

THENCE NORTH 70°11'57" WEST, 27.01 FEET;

THENCE NORTH 75°26'06" WEST, 88.93 FEET;

THENCE NORTH 69°07'46" WEST, 82.68 FEET;

THENCE NORTH 85°00'29" WEST, 9.41 FEET;

THENCE NORTH 79°39'38" WEST, 24.20 FEET;

THENCE NORTH 71°31'12" WEST, 49.99 FEET;

THENCE NORTH 76°56'35" WEST, 34.63 FEET;

THENCE NORTH 79°53'56" WEST, 6.78 FEET;

THENCE NORTH 74°55'38" WEST, 53.64 FEET;

THENCE NORTH 73°16'30" WEST, 41.35 FEET;

THENCE NORTH 69°24'34" WEST, 52.13 FEET;

THENCE NORTH 62°17'46" WEST, 32.15 FEET;

THENCE NORTH 65°47'53" WEST, 33.52 FEET;

Exhibit "C"

THENCE NORTH 63°32'11" WEST, 25.50 FEET;

THENCE NORTH 55°03'48" WEST, 52.98 FEET;

THENCE NORTH 34°13'21" WEST, 10.50 FEET;

THENCE NORTH 48°48'47" WEST, 8.46 FEET;

THENCE NORTH 67°23'10" WEST, 34.95 FEET;

THENCE NORTH 62°28'18" WEST, 21.35 FEET;

THENCE NORTH 60°53'29" WEST, 42.70 FEET;

THENCE NORTH 62°43'59" WEST, 61.76 FEET;

THENCE NORTH 47°54'15" WEST, 13.10 FEET;

THENCE NORTH 57°42'47" WEST, 34.21 FEET;

THENCE NORTH 45°30'34" WEST, 26.68 FEET;

THENCE NORTH 63°11'33" WEST, 91.74 FEET;

THENCE NORTH 63°52'03" WEST, 43.89 FEET;

THENCE NORTH 68°40'24" WEST, 45.31 FEET;

THENCE NORTH 63°18'56" WEST, 41.82 FEET;

THENCE NORTH 55°08'42" WEST, 40.63 FEET;

THENCE NORTH 65°23'25" WEST, 39.33 FEET;

THENCE NORTH 68°13'41" WEST, 36.75 FEET;

THENCE NORTH 59°46'47" WEST, 20.47 FEET;

THENCE NORTH 56°29'02" WEST, 23.33 FEET;

THENCE NORTH 73°15'43" WEST, 30.91 FEET;

THENCE NORTH 65°05'42" WEST, 34.79 FEET TO THE EASTERN LINE OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC AS DESCRIBED IN AUDITOR'S FILE 8706250115;

THE SOUTHEASTERN SIDE-LINE OF SAID STRIP IS TO BE EXTENDED AND/OR SHORTENED TO MEET AT ANGLE POINTS, TO COMMENCE AT THE SOUTHERLY EXTENSION OF THE WESTERN LINE OF THAT PROPERTY CONVEYED TO THE PORT

OF VANCOUVER AS DESCRIBED IN AUDITOR'S FILE 9105240201 PARCEL 1B AND TO TERMINATE AT THE SOUTHERLY EXTENSION OF THE EASTERN LINE OF THAT PROPERTY CONVEYED TO VANCOUVER SMELTING AND INGOT, INC AS DESCRIBED IN AUDITOR'S FILE 8706250115.

SAID TRACT CONTAINS 588,867 SQUARE FEET / 13.52 ACRES, MORE OR LESS.

BEARINGS BASED ON THE WASHINGTON STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH ZONE AND DISTANCES ARE AT GROUND.

Exhibit "C"

2-7-11 DEED (PARCEL 1A)

REAL PROPERTY SITUATED IN THE CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON, BEING A PORTION OF THE HENRY VAN ALMAN DONATION LAND CLAIM, LYING IN THE NORTH HALF OF SECTION 20, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

A PORTION OF LOT 3 AND LOT 4 OF THE PORT OF VANCOUVER BINDING SITE PLAN RECORDED IN BOOK 53 OF SURVEYS, AT PAGE 141, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

(THE FOLLOWING DESCRIPTION IS REFERENCED TO THE WASHINGTON COORDINATE SYSTEM OF 1983, SOUTH ZONE. DIVIDE THE FOLLOWING "GRID" DISTANCES BY A COMBINED SCALE FACTOR OF 1.000042242 TO DETERMINE "GROUND" DISTANCES.)

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4, SAID CORNER BEING ON THE SOUTH RIGHT OF WAY LINE OF LOWER RIVER ROAD (SR 501) AS SHOWN ON SAID BINDING SITE PLAN; THENCE ALONG THE NORTH LINE OF SAID LOT 4 AND SAID SOUTH RIGHT OF WAY LINE NORTH 64° 04' 04" WEST 572.59 FEET TO THE NORTHWEST CORNER OF SAID LOT 4, SAID CORNER BEING THE MOST NORTHERLY NORTHEAST CORNER OF SAID LOT 3; THENCE ALONG THE NORTH LINE OF SAID LOT 3 AND SAID SOUTH RIGHT OF WAY LINE NORTH 64° 04' 04" WEST 673.53 FEET; THENCE LEAVING SAID NORTH AND SOUTH LINES SOUTH 30° 59' 21" WEST 717.83 FEET; THENCE SOUTH 58° 53' 18" EAST 1305.38 FEET TO AN ANGLE POINT ON THE EAST LINE OF SAID LOT 3; THENCE ALONG SAID EAST LINE NORTH 19° 56' 02" EAST 57.87 FEET; THENCE ALONG SAID EAST LINE AND THE EAST LINE OF SAID LOT 4 NORTH 27° 04' 10" EAST 775.48 FEET TO THE POINT OF BEGINNING.

CONTAINING 984,584 SQUARE FEET OR APPROXIMATELY 22.603 ACRES.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

EXHIBIT "D"

ALTERATIONS TO BE MADE BY LESSOR AND LESSEE

LESSOR'S INFRASTRUCTURE IMPROVEMENTS

- A connection to "The Trench" connecting the BNSF Fall Bridge Subdivision to the Port of Vancouver.
- One common arrival track estimated at 7684 feet between the two (2) innermost switches (identified as Track 4002).
- A connection to the Terminal 5 loop track facility.
- Two dedicated loop tracks for arrivals, each estimated at 7684 feet. These tracks will be identified as Tracks 4106 and 4107.
- A connection with cross-over switches capable of departing on any of two departure tracks listed below.
- Two departure tracks, each estimated at 7684 feet. These tracks are identified as Tracks 4841 and 4842.
- A connection from the departure tracks to the trench for departure.
- Two Bad Order tracks located off the loops tracks designated as Track 4109 and Track 4110. Track 4109 shall be approximately 200 feet and Track 4110 shall be 660 feet. Lessor will make additional space available for Bad Order repairs and processing.

At such time as Lessee has: (i) on a consistent basis, sustained a volume of [redacted] (ii) reasonably demonstrated that additional customer volume is likely to be achieved (e.g., through customer expressions of interest, letters of intent, memoranda of understanding or the like), and (iii) Lessee has requested in writing that Lessor proceed, then Lessor shall, within one hundred twenty (120) days, make the following available to Lessee:

- Two dedicated surge tracks, consisting of one loop track for arrivals and one departure track in the main yard (the permits for which shall be obtained by Lessee) with connection to the trench for departure.

LESSEE'S IMPROVEMENTS

Project Description

The Facility is designed to receive crude oil by rail from various sources in North America and pipe it to storage tanks where it will be held until it is loaded onto ships/vessels for transport to end users, which are expected primarily to be West Coast refineries. The Facility will include:

1. Administrative and Support Buildings. The Facility will include an approximately 3,400 square-foot office building for administrative functions and two additional buildings to house lockers, restrooms, and other employee support facilities, each consisting of approximately 3,400 square feet. These buildings will be located on the north side of the Terminal-5 Loop south of Old Lower River Road.

2. Rail Unloading Facility. The rail unloading facility will be located south of the administrative and support facilities and is designed to handle unit trains consisting of approximately [redacted] each up to 62 feet in length and powered by three locomotives for a total length of approximately [redacted] feet. At full build-out, approximately [redacted] trains, carrying up to a total of approximately [redacted] barrels of crude oil per day, will arrive via Class 1 railroad lines for staging on existing and planned tracks at the Port. Trains will arrive at Terminal 5 and travel in a clockwise direction to the unloading building on the north side of the Terminal 5 rail loop. The design will accommodate complete unit trains, eliminating the need to break trains into smaller segments during the unloading process.
The rail cars will be unloaded in a building that will be approximately 1,850 feet by 91 feet in size, with a maximum height of approximately 50 feet. The building is designed to accommodate three parallel tracks. Each track will include 30 unloading stations for a total of 90 stations. Each station will accommodate one tank car.

Unloading will be accomplished with a closed-loop system that includes dry fit connectors and emergency-automatic shut-offs. Hoses will be connected to the valves on the cars using dry fit connectors, and the crude oil will gravity-drain from the cars to the collection pipe and then to pump vaults in the building, from which the crude oil will be pumped to the storage tanks.

Approximately thirty of the unloading stations may be equipped with steam fittings to heat heavier oils to facilitate oil transfer from the tank car. Pre-steaming stations may be included in advance of the unloading building to allow heating to occur prior to reaching the unloading stations. Steam will be provided from natural gas boilers.

Pump vaults will house a series of pumps that will push the crude oil to the storage tanks on Parcel 1A.

Pedestrian bridges will be located at select spots throughout the building to allow workers to pass over the unit trains during operations. Additional pedestrian bridges will allow access to the administrative and support buildings over the existing Terminal 5 rail loops and to the interior of the rail loop.

3. Piping. A combination of above-ground and below-ground steel pipes will convey crude oil from the rail unloading facility to the tanks and from the tanks to Berths 13 and 14.

4. Storage Area. The crude oil will be stored in up to six double-bottom, above-ground steel tanks located on Parcel 1A. These tanks will be approximately 48 feet in height and 240 feet in diameter, with a shell capacity of 380,000 barrels each. Each tank will have a fixed roof to keep precipitation from reaching the inside of the tank and an internal floating roof to control tank vapor emissions to the atmosphere. The double-bottomed tanks will include a leak detection system between the tank floors. Two of the proposed tanks may include steam heating coils in their bases to maintain temperatures for heavier crude oil grades. The tanks will be enclosed by a containment berm. The containment area will be designed with a capacity at least equal to 110 percent of the volume of the largest tank plus precipitation from a 24-hour, 100-year storm event. The entire tank containment area will be lined with an impervious membrane to prevent any spills from leaving the containment area via the ground. A sump will collect storm water from the containment area; the sump will be designed to prevent crude oil-contaminated water from being pumped to the storm water disposal system in the event of a spill.

5. Marine Loading. Crude oil will be pumped by pipe to existing port Berths 13 and 14. Piping, jib cranes and related equipment will be installed on the existing dock that serves Berths 13 and 14. The loading system will incorporate automatic shutoff valves with a maximum 30-second shutoff time. A return line will allow oil to return to the storage tanks in case of a shutdown of the ship loading system.

6. Rail. Up to two additional lines will be added to the Terminal 5 loop to accommodate the rail unloading facility. The additional lines will form two complete loops inside of the existing rail loops and will begin and end near the Gateway Avenue grade separation.

Project Schedule

The Facility is subject to the exclusive jurisdiction of the Washington Energy Facility Site Evaluation Council (EFSEC). Per its enabling statute, EFSEC is to make a recommendation to the Governor regarding approval of the proposed project within 12 months of receipt of an application. The Facility may also require permits from the U.S. Army Corps of Engineers. It is anticipated that the Facility will be constructed and fully operational within 9 to 12 months from the receipt of all required permits. A more detailed timeline will be developed as the commencement of construction approaches.

Exhibit "D"