

2018 DUTY TO DEFEND SETTLEMENT AGREEMENT AND PARTIAL RELEASE

This Duty to Defend Settlement Agreement And Partial Release (the “Defense Agreement”) is entered into by and between the Port of Seattle (“the Port of Seattle”) and Great American Insurance Company and Great American Insurance Company of New York, formerly known as American National Fire Insurance Company (collectively “the Great American Companies”) as of the Effective Date (as defined in Section II.D. of this Defense Agreement). The Port of Seattle and the Great American Companies are collectively referred to as the “Parties.”

I. RECITALS

A. Numerous Environmental Actions (as defined in Section II.A. of this Defense Agreement) have been asserted against the Port of Seattle arising out of the alleged contamination of land, groundwater, and sediments at or adjacent to certain sites in Washington.

B. The Port of Seattle alleges that the Great American Companies issued certain insurance policies to the Port providing general liability coverage. The Port contends that the Great American Companies owe a duty to defend the Port of Seattle under these policies. The list of the Great American Companies’ insurance policies, upon which the Port of Seattle currently claims a duty to defend the Environmental Actions (hereafter, the “Policies”), is attached hereto as Exhibit A and incorporated by this reference.

C. The Port of Seattle and the Great American Companies entered into a Duty to Defend Settlement Agreement and Partial Release on or about February 12, 1997 (hereafter, the “1997 Agreement”), resolving certain alleged defense obligations. In the 1997 Agreement, the Great American Companies agreed to defend the Port of Seattle with respect to environmental actions identified in that agreement, subject to a reservation of rights to challenge their ultimate obligation to indemnify the Port of Seattle.

D. In the 1997 Agreement, the Great American Companies agreed to pay certain past defense costs incurred by the Port of Seattle before the 1997 Agreement was reached. In the

1997 Agreement, the Great American Companies also agreed to pay certain defense costs to be incurred after February 12, 1997, with respect to environmental actions listed in that agreement, subject to a reservation of the right to challenge the reasonableness, necessity, characterization as defense or indemnity costs and relationship to the defense of the environmental actions of all claimed defense costs incurred by the Port.

E. After the 1997 Agreement was reached, the Port of Seattle submitted claims for defense and indemnity with respect to certain of the Environmental Actions that did not exist at the time of the 1997 Agreement, involving claims concerning investigation and potential cleanup relating to the Lower Duwamish Waterway, including Terminal 117 and Terminal 115 North. The Great American Companies agreed to defend the Port with respect to such Environmental Actions, subject to a reservation of the right to challenge the reasonableness, necessity, characterization as defense or indemnity costs and relationship to the defense of the Environmental Actions of all claimed defense costs incurred by the Port, and subject to a reservation of rights to challenge their ultimate obligation to indemnify the Port of Seattle.

F. The Port of Seattle has subsequently tendered costs to the Great American Companies, incurred after February 12, 1997, which the Port of Seattle contends were incurred for the defense of the Environmental Actions. The Great American Companies have acknowledged certain defense costs have been incurred and have paid certain of the defense costs claimed by the Port of Seattle with respect to the Environmental Actions, and have disputed or reserved their right to dispute the reasonableness, necessity, characterization as defense or indemnity costs, and relationship to the defense of the Environmental Actions of certain other costs claimed by the Port of Seattle.

G. The Port of Seattle and the Great American Companies entered into a 2014 Duty to Defend Settlement Agreement and Partial Release on or about August 26, 2014 (hereafter, the “2014 Agreement”), resolving certain alleged defense obligations. In the 2014 Agreement, the Great American Companies agreed to continue to defend the Port of Seattle with respect to Environmental Actions identified in that agreement, subject to a reservation of rights to dispute

the reasonableness, necessity, characterization as defense or indemnity costs, and relationship to the defense of the Environmental Actions of certain costs claimed by the Port of Seattle and to challenge their ultimate obligation to indemnify the Port of Seattle.

H. The Port of Seattle and the Great American Companies desire to amicably resolve and to discontinue certain aspects of their dispute concerning the Great American Companies' duty to defend the Port of Seattle, with respect to certain costs that the Port of Seattle has incurred as defense costs concerning the Environmental Actions, as defined below as Certain Past Incurred Defense Costs.

I. By this Defense Agreement, the Port of Seattle and the Great American Companies are resolving only the claims relating to Certain Past Incurred Defense Costs. The Parties reserve all their respective rights concerning the Great American Companies' alleged duty to defend the Port of Seattle with respect to (1) costs the Port of Seattle claims or will claim as defense costs for work performed for the defense of Environmental Actions after December 31, 2014, and (2) the Port of Seattle's claims for indemnity.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Port of Seattle and the Great American Companies agree as follows:

II. DEFINITIONS

A. "Environmental Actions" shall mean those claims or demands already tendered by the Port of Seattle to the Great American Companies concerning the claims identified in Exhibit B to this Defense Agreement, including for such Environmental Actions any demand, claim, suit, request for relief, action or forbearance of any kind, proceeding, notice of partial or total responsibility made, asserted, or filed against the Port of Seattle by the United States Environmental Protection Agency, any other federal, state, local or other governmental or quasi-

governmental agencies and/or private persons, organizations or entities for alleged property damage, cleanup, remediation or any other harm, injury, damage, or violation or need for remedy of any kind, and/or any other claim, demand, or cause of action arising out of the Port of Seattle's alleged, actual, threatened, potential or vicarious acts, omissions, liability or responsibility, including but not limited to alleged liability or responsibility as a generator, disposer, manufacturer, distributor, transporter, or operator, or as a present or former lessee, lessor or owner of real property, whether at law or in equity, and whether sounding in tort, in contract, equity, nuisance, trespass, negligence or strict liability or any statutory, regulatory, equitable or legal theory.

B. "Claims" shall mean any past or present liabilities, rights, obligations, subrogation rights, contribution rights, counts, demands, actions, causes of action, lawsuits, complaints, cross-complaints, counter-complaints, potentially responsible party letters, notices of responsibility, requests, letters, administrative proceedings, inquiries, orders, notices, and allegations of whatsoever nature, character, or kind whether seeking damages (consequential or punitive), costs, expenses, injunctive relief, or any other kind or type of relief, including but not limited to any effort to obtain insurance benefits, whether for defense, indemnity or otherwise, and including any effort to seek recovery relating to the handling or disposition of any request for insurance benefits, whether sounding in tort, breach of contract, breach of any duty of good faith and fair dealing, bad faith, breach of statutory duties, actual or constructive fraud, actual or constructive breach of fiduciary duty, or any other theory.

C. The "Port of Seattle" or "the Port" shall mean the Port of Seattle, its agents, servants, employees, attorneys, elected officials, representatives, predecessors, successors, and assigns, but does not include any third parties such as tenants.

D. The “Great American Companies” shall mean Great American Insurance Company and Great American Insurance Company of New York, formerly known as American National Fire Insurance Co., all other Great American affiliates, their parents, affiliates and subsidiaries, and their agents, servants, employees, attorneys, representatives, predecessors, successors and assigns.

E. “Effective Date” shall mean the last date on which this Defense Agreement is executed by any of the Parties as reflected on the signature pages of this Defense Agreement.

F. “Certain Past Incurred Defense Costs” shall mean costs for any work performed by or on behalf of the Port of Seattle on or before December 31, 2014 for the defense of the Environmental Actions (except for T117 NRD costs) and for the defense of any other Claims, but shall exclude (1) the invoices and amounts set out in Attachment “A,” which the Port reserves the right to seek recovery as indemnity from the Great American Companies and as to which Great American reserves the right to deny coverage; (2) agency oversight cost invoices received from EPA, the Washington Department of Ecology, or the Elliott Bay Trustee Council after January 1, 2017 for agency work done prior to January 1, 2015; and (3) any invoices for work performed after December 31, 2014 for the defense of the Environmental Actions or any other Claims.

III. PAYMENT BY THE GREAT AMERICAN COMPANIES OF THE SETTLEMENT AMOUNT

Within 45 days after the Effective Date, the Great American Companies shall deliver to the Port of Seattle at the Seattle address of its counsel, Miller Nash Graham & Dunn LLP, a check payable to the Port of Seattle in the amount of \$5,146,167.84.

IV. NOTICE TO OTHER INSURERS AND RIGHT OF CONTRIBUTION

The Great American Companies have asserted that certain other insurers may be obligated to defend the Port of Seattle in the Environmental Actions. As provided in the 1997 Agreement and the 2014 Agreement, the Port of Seattle has previously provided tenders to other insurers that issued policies to the Port of Seattle, and to certain insurers whose policies may potentially provide coverage to the Port as an additional insured. Still other insurers may provide coverage to the Port as an additional insured.

Upon request by the Great American Companies, the Port of Seattle agrees to cooperate and use reasonable, good faith efforts to provide notice, including notice of lost policy claim, to any other insurers that are later discovered to have a potential obligation to defend the Port of Seattle with respect to the Environmental Actions. The Great American Companies reserve their right to seek contribution from other insurers for payment of any of the Port of Seattle's defense costs. The Port of Seattle agrees to cooperate with the Great American Companies in their attempt to seek contribution from other insurers to the extent consistent with applicable law and as required under the Policies. The Port of Seattle reserves the right to seek recovery from the Great American Companies under policy provisions for costs incurred in cooperation with the Great American Companies' effort to seek contribution from other insurers for payment of the Port of Seattle's defense costs, with the exception of costs incurred by the Port of Seattle to provide notice and notice of the lost policy claims to such other insurers. The Great American Companies also reserve the right to pay such costs or to dispute payment of such costs based upon the policy provisions.

V. THE GREAT AMERICAN COMPANIES' CONTINUED ACCEPTANCE OF THE DUTY TO DEFEND THE PORT OF SEATTLE

With respect to work performed after December 31, 2014, the Great American Companies shall continue to provide a defense to the Port of Seattle with respect to the Environmental Actions, under the general liability coverages of the Great American Policies at issue, under a reservation of rights as articulated in correspondence between the Great American

Companies and the Port of Seattle, and subject to the agreements listed in Section VI.F. of this Agreement. The defense provided pursuant to this Section V is made without reservation of any right to recoup such defense costs from the Port of Seattle. The Great American Companies' acceptance of their duty to defend with respect to the Environmental Actions is made with all previously asserted reservations of rights to challenge their ultimate obligation to indemnify the Port of Seattle. The Port of Seattle's appointed defense counsel shall continue to defend the Port of Seattle in the Environmental Actions. The Great American Companies reserve the right to challenge the reasonableness, necessity, characterization as defense or indemnity costs and relationship to the defense of the Environmental Actions of all defense costs not resolved by this Defense Agreement. The Great American Companies shall also be provided with reasonable documentation of future claimed defense costs, including a listing of future defense costs, proof of payment, unredacted legal fee invoices, invoices from consultants and other reasonable documentation requested by the Great American Companies.

As long as the Port of Seattle continues to claim defense costs from the Great American Companies with respect to the Environmental Actions, the Port shall post on the Website summaries of claimed costs, and invoices and other documentation supporting its claimed defense costs. The Port of Seattle shall promptly advise the Great American Companies when it has completed the posting of such costs for each six month calendar period (*i.e.*, January through June and July through December). Following such notification by the Port, subject to its reservation of rights and other rights specified in this Defense Agreement, and subject to the December 5, 2014 letter agreement between the Port of Seattle and the Great American Companies, the Great American Companies shall commence an initial review of the Port of Seattle's claim for costs incurred for work performed during each such six-month period. The Great American Companies shall complete an initial review within three months after receiving notification from the Port that the Port has completed the posting of such costs for a six month period and shall make payment it deems appropriate directly to the vendors or the Port of Seattle,

within that three month period. The Port of Seattle reserves its right to contest the Great American Companies' determinations of appropriate payment.

If, at any time subsequent to notifying the Great American Companies that it has completed the posting of claimed defense costs for each six month calendar period on the Website, the Port of Seattle modifies, adds, or subtracts information or sums relative to the claimed costs, it must promptly notify the Great American Companies that it has made a change and provide details regarding each such change.

The Port of Seattle agrees that the Great American Companies have the right to apply the following available credits and offsets to any costs posted on Livelink on or after January 1, 2015: Department of Ecology grants (G1100254, G1400397, and TCPRA-2014-SepSEP-00051 for the T-117 claim; TCPRA-2014-SepSEP-00052 for the T-115 North and T-115 South claims; and TCPRA-2014-SepSEP-00053 for the LDW claim as well as any Department of Ecology grants issued after December 31, 2014) and applicable cost share agreements between the Port of Seattle and other entities (the Memorandum of Agreement between the Port of Seattle and The Boeing Company, the City of Seattle, and King County entered into on or about June 9, 2000; the Memorandum of Agreement between the Port of Seattle, the City of Seattle, and King County entered into on or about March 27, 2006; and the Memorandum of Agreement, First Amendment between the Port of Seattle and the City of Seattle entered into on or about March 1, 2007 and any other applicable cost sharing agreement entered into after December 31, 2014). The Great American Companies agree that the Port of Seattle has the right to contest whether the amounts of such credits or offsets were properly calculated or applied with respect to any specific charges or invoices.

VI. RELEASE

A. In consideration of the payment by the Great American Companies of \$5,146,167.84, the Port of Seattle hereby fully and forever releases and discharges the Great

American Companies and their employees, officers, directors, agents, and attorneys from the following:

1. All claims under the Policies and any other insurance policies issued to the Port by the Great American Insurance Companies, known or unknown, including policies providing property coverages, for Certain Past Incurred Defense Costs, and
2. Any claims arising out of the Great American Companies' previous alleged refusal to accept and to pay for Certain Past Incurred Defense Costs, including all such claims for:
 - a. breach of contract;
 - b. declaratory relief pursuant to the Declaratory Judgment Act;
 - c. breach of fiduciary duty;
 - d. bad faith;
 - e. violations of the Consumer Protection Act, Insurance Fair Conduct Act, or of any regulations or statutes pertaining to insurance and handling of claims under insurance contracts;
 - f. negligence, compensatory, punitive, or statutory damages and claims for attorney fees pursuant to Olympic Steamship Co. v. Centennial Ins. Co., under policy provisions or otherwise, which concern exclusively Great American Companies' previous refusal to accept and to pay for Certain Past Incurred Defense Costs; and
 - g. prejudgment interest on the Certain Past Incurred Defense Costs.

B. In furtherance of the Port's release in this Defense Agreement of the Great American Companies relating to Certain Past Incurred Defense Costs, and notwithstanding the Port's reservation to make certain claims in the future to the Great American Companies for costs other than Certain Past Incurred Defense Costs, the Port agrees not to submit as an

indemnity claim to the Great American Companies any item of work performed concerning the Environmental Actions on or before December 31, 2014, unless such item is specifically listed on Attachment "A" to this Defense Agreement.

C. This release extends only to the Great American Companies' conduct prior to the Effective Date of this Defense Agreement, and only to claims arising from the Great American Companies' alleged duty to defend with respect to Certain Past Incurred Defense Costs. The Port of Seattle is not hereby releasing any possible claims that may arise after the Effective Date of this Defense Agreement, including possible claims for costs other than Certain Past Incurred Defense Costs, possible claims for indemnity under the policies, breach of contract, declaratory relief, breach of fiduciary duty, bad faith, violations of the Consumer Protection Act, prejudgment interest, or attorney fees that may arise after the Effective Date of this Defense Agreement.

D. The Parties specifically agree that nothing in this Defense Agreement shall impair, release, or effect in any way claims that the Port of Seattle has asserted against the Great American Companies for costs other than Certain Past Incurred Defense Costs, or indemnity with respect to the Environmental Actions, including claims for associated relief such as claims for attorneys' fees. However, in its indemnity claims, the Port of Seattle releases and agrees not to assert claims for attorneys' fees incurred in claiming a defense from the Great American Companies through 2014, and agrees to permit court review of legal fee invoices for apportionment of legal fees incurred solely in connection with its defense costs claims which have been resolved by this Defense Agreement. Nothing in this Defense Agreement shall impair the Port of Seattle's right to claim any and all attorneys' fees in connection with its pursuit of indemnification claims or otherwise, except as provided herein.

E. In consideration of the releases provided by the Port of Seattle in this Section VI., the Great American Companies agree not to seek any further credits for the following:

1. Seattle Iron and Metals Corporation's ("SIMC") payment of \$1,391,994.73 in resolving the Port of Seattle's claims with respect to the Environmental Actions;
2. Grant payments to the Port of Seattle from the Washington Department of Ecology related to work performed by or on behalf of the Port of Seattle prior to December 31, 2014, except as reserved in Attachment A; or
3. Cost-sharing payments to the Port of Seattle under cost-sharing agreements related to work performed by or on behalf of the Port of Seattle through December 31, 2014, except as reserved in Attachment A.

Subject to the above provisions of this Section VI.E. and Attachment A, the Port of Seattle reserves the right to contest credits for any grant payments and cost-sharing payments with respect to any claim made by the Port of Seattle for indemnity, and the Great American Companies reserve the right to assert that they are entitled to such credits.

F. The Parties specifically agree that nothing in this Defense Agreement shall impair, release, or affect in any way:

1. the 1997 Agreement, except as modified by Sections III, IV, V and VI of this Defense Agreement, and the February 27, 1998 Confidential Settlement, Release, and Hold Harmless Agreement;
2. the Port of Seattle's right to claim any and all costs incurred for work performed after December 31, 2014 for the defense of the Environmental Actions, subject to the provisions of Section VI.F.7., below;
3. with respect to the Port of Seattle's claims for costs incurred for work performed after December 31, 2014 for the defense of Environmental Actions, the interim agreement between the Port of Seattle and the Great American Companies regarding offsets for certain reimbursements from other potentially responsible parties, dated October 1, 2012;
4. the agreement between the Port of Seattle and the Great American Companies regarding funding of fees, costs, and expenses (hereafter, "PRP Recovery Costs")

incurred by or on behalf of the Port of Seattle in seeking recovery from potentially responsible parties (“PRPs”) for investigation and remediation costs with respect to Terminal 91, dated December 14, 2012, and the Great American Companies’ reservation of the right to contend that it and the Port of Seattle entered into a prior, longstanding agreement with respect to the Great American Companies’ payment of PRP Recovery Costs and the benefit the Great American Companies receive for recoveries from PRPs with respect to certain of the Environmental Actions, and the Port of Seattle’s reservation of the right to contend that the Great American Companies and the Port of Seattle did not enter into such a prior or binding agreement;

5. the agreement between the Port of Seattle and the Great American Companies regarding funding of PRP Recovery Costs with respect to the Lower Duwamish Waterway, dated April 30, 2013, and the Great American Companies’ reservation of the right to contend that it and the Port of Seattle entered into a prior, longstanding agreement with respect to the Great American Companies’ payment of PRP Recovery Costs and the benefit the Great American Companies receive for recoveries from PRPs with respect to certain of the Environmental Actions, and the Port of Seattle’s reservation of the right to contend that the Great American Companies and the Port of Seattle did not enter into such a prior or binding agreement;

6. the agreement between the Port of Seattle and the Great American Companies regarding funding of PRP Recovery Costs with respect to the East Waterway, dated November 24, 2014, and the Great American Companies’ reservation of the right to contend that it and the Port of Seattle entered into a prior, longstanding agreement with respect to the Great American Companies’ payment of PRP Recovery Costs and the benefit the Great American Companies receive for recoveries from PRPs with respect to certain of the Environmental Actions, and the Port of Seattle’s reservation of the right to contend that the Great American Companies and the Port of Seattle did not enter into such a prior or binding agreement;

7. the agreement between the Port of Seattle and the Great American Companies regarding ongoing costs re the Terminal 117 and Terminal 91 claims, dated December 5, 2014; and

8. the Great American Companies' reservations of rights with respect to (a) the Port of Seattle's claims for costs incurred for work performed after December 31, 2014 for defense of Environmental Actions, and (b) the Port of Seattle's claims for indemnity.

VII. ALLOCATION OF CERTAIN INDEMNITY PAYMENTS UNDER THIS AGREEMENT

The Parties agree that (a) part of the settlement amount under this Agreement, specifically the sum of \$824,266.84 (as summarized by the invoices listed on Attachment B), represent indemnity payments made by the Great American Companies pursuant to this Agreement, and (b) the Great American Companies may allocate that sum as indemnity payments among its Policies, subject to the agreement of the Parties as to that allocation. If the Parties are unable to reach an agreement as to allocation of these indemnity payments among the Great American Companies' Policies, the Parties shall participate in non-binding mediation concerning such allocation first, and if the Parties do not reach an agreement in such mediation, either Party may resolve such dispute through arbitration using the commercial rules of the American Arbitration Association, or such other protocols that the Parties may agree. If and to the extent any other insurer disputes the indemnity allocation under this Section and prevails in litigation, the Parties hereto agree to abide by that final judgment after all appeals have been exhausted in such litigation or the time to file an appeal has expired, and any monies paid under this Section by the Great American Companies shall be reallocated in accordance with that judgment; provided that each Party to this Agreement receives prompt notice of the filing of such litigation and has an adequate opportunity to intervene in such litigation. Notwithstanding any of the foregoing in this Section VII, no Party is obligated to appeal such judgment.

VIII. INSURER PROTECTION PROVISIONS.

A. The Port of Seattle and the Great American Companies recognize that this Agreement fully and finally extinguishes the amount of the payment obligations of the Great American Companies to the Port of Seattle for Certain Past Incurred Defense Costs, subject to potential reallocation of the indemnity payments under Section VII above. The Port of Seattle further agrees that, as of the Effective Date, the Port of Seattle withdraws its tender of Claims against the Great American Companies with respect to Certain Past Incurred Defense Costs, and the Port of Seattle agrees that as of the Effective Date the Great American Companies shall have no obligation to any Person relating to Certain Past Incurred Defense Costs.

B. With the exception of claims for contribution that may be asserted by Bedivere Insurance Company, formerly known as American Employers Insurance Company (“Bedivere”), the Great American Companies and U.S. Fire Insurance Company (“U.S.Fire”) *inter se*, the Port of Seattle and the Great American Companies will cooperate with each other in seeking a court order barring any Person that is not a Party to this Agreement from seeking contribution, subrogation, or recovery under any other theory from the Great American Companies with respect to Certain Past Incurred Defense Costs, if and when the Port of Seattle or the Great American Companies elect to seek such an order. With respect to any contribution claim among and between Bedivere, the Great American Companies and/or U.S. Fire, the Port of Seattle will not cooperate with any of these companies in seeking a court order barring any one of them seeking contribution, subrogation, or recovery under any other theory against any one of them with respect to Certain Past Incurred Defense Costs. The Port of Seattle agrees not to seek any further payments for Certain Past Incurred Defense Costs from Bedivere, the Great American Companies or U.S. Fire, except that, with respect to Bedivere, the Port of Seattle reserves the right to seek payments for Bedivere’s application of the SIMC credit relating to Certain Past Incurred Defense Costs.

C. The provisions of this Section VIII.D. shall apply only if the Port of Seattle or the Great American Companies have first sought a court order barring any Person other than

Bedivere and U.S. Fire that is not a Party to this Agreement from seeking contribution, subrogation, or recovery under any other theory from the Great American Companies with respect to Certain Past Incurred Defense Costs, and the Port of Seattle or the Great American Companies have not succeeded in obtaining such an order. Subject to the satisfaction of the condition set out above in this Section VIII.D.:

1. In any Claim, proceeding, suit or action involving the Port of Seattle and one or more of the Port of Seattle's insurers, where the Port of Seattle has brought or brings Claims against any insurer other than Bedivere and U.S. Fire that is not a Party to this Agreement, and any such insurer(s) assert(s) any Claim against the Great American Companies for recovery of amounts that comprise Certain Past Incurred Defense Costs, which the Port of Seattle has sought or seeks from such insurer(s), any Claim made by, or judgment or other award obtained by, the Port of Seattle against such other insurer(s) shall be automatically reduced by the amount, if any, that the Great American Companies would have been liable to pay to other insurer(s) as a result of such insurer(s)'s Claim against the Great American Companies, so that the Claim by such other insurer(s) against the Great American Companies is thereby satisfied and extinguished entirely. Such a reduction in the Port of Seattle's Claim, judgment or other award against such insurers(s) will be accomplished by subtracting from the Claim, judgment, or other award against such other insurer(s) the share of the Claim, judgment or other award, if any, that is allocable to the Great American Companies.

2. The Port of Seattle further agrees that, in order to effectuate the terms of this Section VIII.D., in any action referred to in this Section where the Great American Companies are not parties, the Port of Seattle shall use its best efforts to obtain a finding from that court of what amount of Certain Past Incurred Defense Costs the Great American Companies would have been required to pay such other

insurer under its Claim against the Great American Companies, before entry of judgment or other award as to such other insurer.

3. To ensure that such a reduction under this Section VIII.D. is accomplished, the Great American Companies shall be entitled to assert this Section VIII.D. as a defense in any Claim against it for recovery of Certain Past Incurred Defense Costs by one or more of the Port of Seattle's insurers, or any other insurer relating to Claims by the Port of Seattle against such insurers, and shall be entitled to have the court or other appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect the Great American Companies from any liability for such recovery sought by such other insurer.

D. In any future settlement agreement between the Port of Seattle and one or more of the Port of Seattle's insurers that are not Parties to this Agreement, where such insurer(s) assert(s), or could assert any Claim against the Great American Companies relating to Certain Past Incurred Defense Costs, the Port of Seattle shall seek to obtain a release of any claim against the Great American Companies from the settling insurer, so that the Claim by such other insurer against the Great American Companies for Certain Past Incurred Defense Costs is thereby satisfied and extinguished entirely.

E. In consideration of the promises in this Section VIII., the Great American Companies agree to not pursue any other insurer for any amounts paid hereunder for Certain Past Incurred Defense Costs, unless another insurer pursues contribution, indemnity, subrogation or any other type of recovery for Certain Incurred Past Defense Costs against the Great American Companies, in which case the Great American Companies reserve all rights, including the right to assert amounts paid hereunder and any other amounts paid to or on behalf of the Port of Seattle as a set off against the claims being made by another insurer. Notwithstanding the foregoing sentence, the Great American Companies retain the right to pursue any claim the Great American Companies have against U.S. Fire Insurance Company or Bedivere Insurance

Company, formerly known as One Beacon, successor to American Employers Insurance Company.

IX. DISCLOSURE AND NONDISCLOSURE

A. The Parties agree that the terms of this Agreement, and all matters relating to the terms, negotiation and implementation of the Agreement, shall not be disclosed to Persons that are not Parties to this Agreement, except by order of court or otherwise required by law or with the written agreement of all Parties, provided that the Parties may disclose this Agreement: (i) as compelled by law, including but not limited to the provisions of the State of Washington Public Records Act, Rev. Code Wash. §§ 42.56 *et seq.* (the “Public Records Act”); (ii) to reinsurers of the Great American Companies, directly or through intermediaries, provided the recipients agree not to disclose such information to other Persons; and (iii) to outside auditors or accountants of any Party, provided the recipients agree not to disclose such information to other Persons. This Agreement may also be disclosed, as required, to a governmental authority that properly requires disclosure by one of the Parties, including, but not limited to, the Internal Revenue Service.

B. Except as required by law, in the event a Person other than the Parties, by way of document request, interrogatory, subpoena, questioning at deposition or trial, request under the Public Records Act, or otherwise, attempts to compel disclosure of the Agreement or anything else protected by this Section XIV., the Party from whom disclosure is sought shall immediately provide copies of all notice papers, orders, requests or other documents in order to allow the other Party to take such protective steps as may be available and appropriate. Such notice shall be made to the following persons:

TO THE GREAT AMERICAN COMPANIES:

Office of General Counsel
Great American Insurance Company
301 East Fourth Street
Cincinnati, OH 45202
Telephone: (800) 437-3901

Philip R. Matthews, Esq.
William J. Baron, Esq.
Duane Morris LLP
One Market Street, Spear Tower
Suite 2200

Facsimile: (513) 369-3825

San Francisco, CA 94105
Telephone: (415) 957-3000
Facsimile: (415) 957-3001
prmatthews@duanemorris.com
wjbaron@duanemorris.com

TO THE PORT OF SEATTLE:

Elizabeth Black, Senior Port Counsel
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121
Telephone: (206)787-4697
Facsimile: (206)787-3205
black.e@portseattle.org

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Miller, Nash, Graham & Dunn LLP
2801 Alaskan Way, Suite 300
Seattle, WA 98121
Telephone: (206)777-7472
Facsimile: (206)340-9599
michael.fandel@millernash.com

C. In the event a Person other than the Parties, by way of document request, interrogatory, subpoena, questioning at deposition or trial, request under the Public Records Act, or otherwise, attempts to compel disclosure of the Agreement or anything else protected by this Section IX., the Party from whom disclosure is sought shall not provide the Agreement or other requested information to such Person until after the other Party to this Agreement has had reasonable time and opportunity to take protective steps as may be appropriate. In the event such Person seeks to compel disclosure of the Agreement or other information protected by this Section IX., and in the event that a court, government official, or governmental body (other than the Internal Revenue Service) requests or requires disclosure of this Agreement or anything else protected by this Section IX., the Party from whom disclosure is sought shall promptly give written notice by email to the other Party.

D. Material protected by this paragraph shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Federal Rules of Evidence and similar provisions of state law or state rules of court.

X. NO CONSTRUCTION AGAINST EITHER PARTY

The wording of this Defense Agreement was reviewed and accepted by legal counsel for the Port of Seattle and the Great American Companies prior to its being signed by them, and neither the Port of Seattle nor the Great American Companies shall be entitled to have any wording of this Defense Agreement construed against the other Party in the event of any dispute arising between them in connection with it.

XI. NO ASSIGNMENT

Neither Party hereto shall assign this Defense Agreement without first obtaining the written consent of the other Party hereto; provided, however, that this Section shall not prohibit any assignment by a Party hereto by merger, consolidation, operation of law or to a Party who succeeds to any of such Party's assets. Subject to the foregoing, this Defense Agreement shall extend to and be binding upon the Parties hereto and their successors and assigns.

XII. INADMISSIBILITY OF AGREEMENT

Any evidence of the existence, terms or negotiation of this Defense Agreement shall be inadmissible in any litigation, provided, however, that such evidence may be offered in an action seeking solely to enforce the terms of this Defense Agreement, or in an action by the Great American Companies to recover contribution or other amounts from the Port of Seattle's other insurers. This Defense Agreement has been entered into in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence and similar state law provisions which preclude the introduction of evidence regarding settlement negotiations or agreements. The Parties shall, however, be permitted to disclose the fact that the Great American Companies have agreed to defend the Port of Seattle in Environmental Actions, under reservation of rights.

XIII. INTEGRATION/SEVERABILITY

Except as set forth in Section VI.F., this Defense Agreement constitutes a single integrated contract expressing the entire agreement of the Parties hereto. Except as set forth in Section VI.F., of this Defense Agreement, there have been no other representations or agreements, whether oral or written, in regard to this Defense Agreement or its subject matter.

If any provision of this Defense Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect.

XIV. EXECUTION OF COUNTERPARTS

This Defense Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as an original instrument, as if all Parties to all the counterparts had signed the same instrument.

XV. NO ADMISSION AND NO APPLICATION TO THIRD PARTIES

This Defense Agreement is the product of informed negotiations and involves compromises of the Parties' previously stated legal positions. Except as expressly set forth herein, this Defense Agreement is without prejudice to positions taken by the Port of Seattle or the Great American Companies with regard to other persons or entities. All actions taken and statements made by the Parties to this Defense Agreement, or by their respective representatives, relating to this Defense Agreement or participation in this Defense Agreement, including its development and implementation, shall be without prejudice or value as precedent, and shall not be used as a standard by which other matters may be judged, except as to a breach, alleged breach, and/or enforcement of the provisions of this Defense Agreement.

PORT OF SEATTLE

GREAT AMERICAN INSURANCE
COMPANY

By _____

By _____

GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK, formerly
known as AMERICAN NATIONAL FIRE

INSURANCE COMPANY

By _____

STATE OF WASHINGTON

COUNTY OF KING

) ss.
)

On this ____ day of _____, 2018, before me personally appeared _____, to me known to be the _____ of PORT OF SEATTLE, the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

Given under my hand and official seal this ____ day of _____, 2018.

(Signature)

(Name legibly printed or stamped)

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

STATE OF OHIO

COUNTY OF HAMILTON) ss.
)

On this ____ day of _____, 2018, before me personally appeared _____, to me known to be the _____ of GREAT AMERICAN INSURANCE COMPANY and GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY, the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Name legibly printed or stamped)

Notary Public in and for the State of _____, residing at _____.
My appointment expires _____.

EXHIBIT A

<u>Policy Period</u>	<u>Insurer</u>	<u>Policy No.</u>
1/1/64 - 1/1/65	Great American	LX84870
1/1/65 - 1/1/66	Great American	LX89900
1/1/66 - 1/1/67	Great American	LX6267450
1/1/67 - 1/1/70	Great American	UAP 3888524
1/1/70 - 1/1/74	Great American	UAP 1153908
1/1/74 - 1/1/77	Great American	UAP 2646000
1/1/78 - 1/1/80	Great American	SLP 9456178
1/1/80 - 1/1/81	American National Fire	SLP 9461168
1/1/81 - 1/1/82	American National Fire	SLP 9465924
1/1/82 - 1/1/83	Great American	SLP 9472449
1/1/83 - 1/1/84	American National Fire	SLP 9438815
1/1/84 - 1/1/85	American National Fire	SLP 6255023
1/1/85 - 1/1/86	American National Fire	SLP 6255023

EXHIBIT B

CLAIM LIST

1. East Waterway and West Waterway environmental claims
Seattle, Washington
2. Terminal 91 environmental claims, including Terminal 91 Uplands and T 91
Sediments
Seattle, Washington
3. Natural Resource Damage claims, Elliott Bay/Duwamish River, including T117
NRD and Lower Duwamish NRD
Seattle, Washington
4. Lower Duwamish Waterway environmental claims
Seattle, Washington
5. Terminal 117 environmental claims
Seattle, Washington
6. Terminal 115 North environmental claims
Seattle, Washington
7. Terminal 115 South environmental claims
Seattle, Washington
8. South Park Marina environmental claims
Seattle, Washington