

**CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release, (the “Agreement”), is entered by and between the Port of Seattle (the “Port,”) and the Port Entities, as defined in Paragraph 1.K), on one hand, and Great American Insurance Company and Great American Insurance Company of New York, formerly American National Fire Insurance Company (collectively, “Great American,”) and the Great American Entities, as defined in Paragraph 1.G), on the other hand, as of the Effective Date (as defined in Paragraph 1.D below). The Port and Great American may each be referred to as a “Party” and may be referred to collectively as the “Parties.”

**WITNESSETH THAT:**

WHEREAS, various Environmental Claims, as defined in Paragraph 1.E below, have been asserted against the Port, and Environmental Claims may be asserted against the Port in the future; and,

WHEREAS, Great American issued certain insurance policies to the Port providing general liability coverage. The Port contends that Great American owes a duty to defend the Port under certain primary policies. The list of the Great American Primary Policies, under which the Port has claimed that Great American had and has a duty to defend Environmental Claims, is included in Paragraph 1.H.; and

WHEREAS, the Port has incurred and may incur in the future certain liabilities, expenses and losses arising out of Environmental Claims; and,

WHEREAS, the Port contends that Great American is and may be obligated to provide a defense and/or indemnity to the Port with respect to Environmental Claims; and

WHEREAS, Great American contends that it has met any defense obligation it may have had with respect to past and existing Environmental Claims, and contends that there is a dispute between the Parties concerning whether certain claimed defense costs are indemnity costs and a dispute concerning whether certain coverage defenses apply to the Port’s claims for insurance benefits arising from Environmental Claims; and

WHEREAS, the Port, Great American, and certain other parties who are not Parties to this Agreement entered into a Settlement Agreement on or about July 22, 1986 resolving, among other things, certain indemnity claims asserted by the Port with respect to Terminal 5 (hereafter, the “1986 Agreement”); and

WHEREAS, the Port and Great American entered into a Duty to Defend Settlement Agreement and Partial Release on or about February 12, 1997, partially resolving claims for alleged defense costs sought by the Port with respect to certain Environmental Claims (hereafter, the “1997 Agreement”); and

WHEREAS, the Port and Great American entered into a Confidential Settlement, Release, and Hold Harmless Agreement on or about February 27, 1998, resolving certain indemnity

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claims asserted by the Port with respect to the Tulalip Site and the Harbor Island Site, as defined in that agreement (hereafter, the “1998 Agreement”); and

WHEREAS, the Port and Great American entered into letter agreements dated December 14, 2012, April 30, 2013, and October 24, 2014 relating to PRP Recovery efforts with respect to T-91, the Lower Duwamish and the East Waterway, respectively, as set out in those agreements (hereafter, respectively, the “December 12, 2012 Letter Agreement,” the “April 30, 2013 Letter Agreement,” and the “October 24, 2014 Letter Agreement”); and

WHEREAS, the Port and Great American 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 and providing for the continued defense of the Port with respect to certain environmental actions, as identified in that agreement, subject to Great American's 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 and to challenge their ultimate obligation to indemnify the Port, and related addenda to that agreement, including Addendum to 2014 Duty to Defend Settlement Agreement and Partial Release (for 2013-14 costs), dated October 30, 2015, Addendum to 2014 Duty to Defend Settlement Agreement and Partial Release (for 2015 costs), dated November 2, 2016, Addendum to 2014 Duty to Defend Settlement Agreement and Partial Release (for 2016 costs), dated September 13, 2017, and Addendum to 2014 Duty to Defend Settlement Agreement and Partial Release (for 2017 Costs), dated December 11, 2018; and

WHEREAS, the Port and Great American entered into a confidential 2018 Duty to Defend Settlement Agreement and Partial Release on or about May 29, 2018 (hereafter, the “2018 Agreement”), resolving all outstanding defense issues for certain environmental actions through the period December 31, 2014; and

WHEREAS, the Parties desire to settle any disputes in any way relating to or arising from any Environmental Claims arising out of the East Waterway/Harbor Island Occurrence, the Lower Duwamish Occurrence and the T-91 Occurrence, as defined in Paragraph

1. M. below, by making the settlement payments set forth in Article One below for the East Waterway/Harbor Island Occurrence and the Lower Duwamish Occurrence, and by entering into a coverage in place agreement for the T-91 Occurrence as set forth in Article Two of this Agreement; and

WHEREAS, by this Agreement, the Parties intend to adopt, by way of compromise, and without prejudice to or waiver of their respective positions in other matters, without trial or adjudication of any issues of fact or law, and without Great American’s admission of liability or responsibility under the Policies, a full and final settlement that releases and terminates all rights, obligations, and liabilities of the Port and Great American under the Policies, or relating to or arising from the Policies, with respect to Environmental Claims relating to or arising from the East Waterway/Harbor Island Occurrence, the Lower Duwamish Occurrence and the T-91 Occurrence as provided below.

**AGREEMENTS:**

NOW, THEREFORE, in full consideration of the foregoing and of the mutual agreements herein contained and intending to be legally bound thereby, the Parties agree as follows:

**ARTICLE ONE – GENERAL SETTLEMENT AGREEMENT**

**1. Definitions**

The following definitions will apply to the listed terms wherever those terms appear throughout this Agreement, including Article One, Article Two and Article Three. Each defined term stated in a singular form shall include the plural form, each defined term stated in plural form shall include the singular form, and each defined term stated in the masculine form or in the feminine form shall include the other. The words “include,” “includes,” and “including” are not limiting. The words “any” and “all” mean “any and all.” The terms “include,” “includes,” “including,” “any,” and “all” are not capitalized in this agreement.

**A. Affiliate**

The term “**Affiliate**” means a Person that is controlled by, under common control with, or controls another specified Person.

**B. Alleged Policies**

The term “**Alleged Policies**” shall mean the primary insurance policies allegedly issued by Great American for policy periods during 1962 and 1963.

**C. Claim**

The term “**Claim**” shall mean any past, present or future claims, rights, counts, demands, actions, causes of action, suits, debts, accounts, 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 or not presently known or suspected. For the avoidance of doubt, Claims includes any claims for insurance benefits, any claims for defense or indemnity or reimbursement of defense or indemnity costs, any claims for interest, any claims for attorneys’ fees, any claims for bad faith, breach of implied covenant of good faith and fair dealing, punitive, statutory or other extra-contractual damages of any type, any claims relating to or arising out of the Policies, and any claims relating to or arising out of the handling or disposition of any claims for insurance benefits, whether at law or equity, whether sounding in tort, breach of contract, breach of any duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, actual or constructive breach of fiduciary duty, or any other theory.

**D. Effective Date**

The term “Effective Date” shall mean the first date on which Great American has made all of the following payments comprising the Settlement Amount as defined and described in Paragraph 2: (1) the East Waterway/Harbor Island Payment, (2) the Lower Duwamish Payment, (3) the Supplemental Defense Payment, and (4) the Future Defense Payment.

**E. Environmental Claim**

The term “Environmental Claim” shall include any past, present, or future Claims by any Person relating to or arising out of the actual or alleged discharge, dispersal, release, escape, presence, or ingestion of or exposure to any Pollution or Contamination. The term “Environmental Claim” includes but is not limited to any Claims by any Person for actual or alleged property damage, bodily injury, personal injury, investigation, studies, cleanup, remediation, and/or Natural Resource Damages relating to or arising out of any Pollution or Contamination.

**F. Execution Date**

The term “Execution Date” shall mean the first date on which this Agreement has been signed by both Parties and the respective signatures have been delivered to each Party.

**G. Great American Entities**

The term “**Great American Entities**” shall mean:

(1) Great American Insurance Company and Great American Insurance Company of New York, formerly known as American National Fire Insurance Company; their predecessors; all their past and present subsidiaries and the predecessors and successors of such subsidiaries; their past and present affiliates and joint ventures, and their predecessors and successors; and all their past, present and future assigns; and

(2) any other Person that was in the past or is now affiliated with, related to or associated with Great American Insurance Company and/or Great American Insurance Company of New York, formerly known as American National Fire Insurance Company, including any corporations that have been acquired by, merged into, or combined, as of the Execution Date, with Great American Insurance Company and/or Great American Insurance Company of New York or their predecessors, past and present subsidiaries, affiliates, successors, and assigns of Great American Insurance Company and American National Fire Insurance Company; and

(3) any and all past and present directors, officers, agents, servants, employees, partners, limited partners, shareholders, members, representatives, managers and attorneys, and their respective heirs, executors, administrators and assigns, of Great American Insurance Company and/or Great American Insurance

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Company of New York, formerly known as American National Fire Insurance Company, or of any other entities included in Paragraphs 1.G.(1) and (2) above.

**H. Great American Primary Policies**

The term “**Great American Primary Policies**” shall mean the following policies issued by Great American to the Port, identified by their respective policy numbers and policy periods:

Policy No. LX84870	1/1/64 – 1/1/65;
Policy No. LX89900	1/1/65 – 1/1/66;
Policy No. LX6267450	1/1/66 – 1/1/67;
Policy No. UAP 3888524	1/1/67 – 1/1/70;
Policy No. UAP 1153908	1/1/70 – 1/1/74;
Policy No. UAP 2646000	1/1/74 – 1/1/78;
Policy No. SLP 9456178	1/1/78 – 1/1/80;
Policy No. SLP 9461168	1/1/80 – 1/1/81;
Policy No. SLP 9465924	1/1/81 – 1/1/82;
Policy No. SLP 9472449	1/1/82 – 1/1/83;
Policy No. SLP 9438815	1/1/83 – 1/1/84;
Policy No. SLP 6255023	1/1/84 – 1/1/85; and
Policy No. SLP 6255023	1/1/85 – 1/1/86.

**I. Person**

The term “**Person**” shall include an individual, a corporation, a partnership, an association, a trust, an estate, a limited liability company, any federal, state, or local government or any governmental or quasi-governmental body or political subdivision or any agency, department, board, or instrumentality thereof, and any other entity or organization.

**J. Policies**

The term “**Policies**” shall include the following:

- (1) Policies issued or allegedly issued by Great American to the Port, including the Great American Primary Policies and the Alleged Policies; and
- (2) Any and all other known and unknown insurance policies issued by the Great American Entities providing insurance to the Port.

**K. Port Entities**

The term “**Port Entities**” shall mean:

- (1) the Port of Seattle, a municipal corporation organized under the laws of the State of Washington, the Port of Seattle Commission; and

(2) all past, present, and future departments, districts, divisions, agencies, subsidiaries, commissioners, officials, officers, directors, employees, servants, representatives, agents, attorneys, predecessors, successors, joint ventures, and transferees and assigns of any of the entities included in the preceding Paragraph 1.K(1), and the heirs and assigns of any Persons identified in this Paragraph 1.K(2), but shall exclude any wholly unrelated third parties such as tenants.

**L. PRP Recoveries**

The term “**PRP Recoveries**” shall mean the amounts actually received by the Port from other PRPs as reimbursement for past, present and future costs or liabilities arising out of any cost recovery efforts funded in whole or in part by Great American.

**M. Occurrences**

The terms “**East Waterway/Harbor Island Occurrence**,” “**Lower Duwamish Occurrence**,” and “**T-91 Occurrence**” shall have the respective meanings set out below:

(1) The term “**East Waterway/Harbor Island Occurrence**” shall mean the Pollution or Contamination at or from the Harbor Island Superfund site, which encompasses all the operable units of that Superfund site, as described in the Fourth Five-Year Review Report for Harbor Island Superfund Site, prepared by the U.S. EPA, dated September 23, 2015, at page i of the Executive Summary, including all property immediately adjacent to the operable units of the Superfund site, and all actual or alleged sources of Contamination of the operable units of that Superfund site;

(2) The term “**Lower Duwamish Occurrence**” shall mean the Pollution or Contamination at or from the Lower Duwamish Waterway (“LDW”) Superfund Site, which encompasses “the northern 5 miles of the Duwamish River to the southern tip of Harbor Island (Figure 1 [on page 3 of the LDW Record of Decision (“ROD”)]), and includes upland sources of contamination as well as the waterway,” as described on page 1 of the ROD, including all property immediately adjacent to the LDW, and all actual or alleged sources of Contamination of the LDW; and

(3) The “**T-91 Occurrence**” shall mean the Pollution or Contamination at or from the Terminal 91 Facility, which encompasses the Tank Farm Affected Area (“TFAA”), the Submerged Lands Area, and the Uplands Area described in the June 2010 Agreed Order DE 7321 entered into between the Port and the Department of Ecology and shown in Exhibit A of that Agreed Order, including all property immediately adjacent to the T-91 Facility, and all actual or alleged sources of Contamination of the T-91 Facility.

The East Waterway/Harbor Island Occurrence, the Lower Duwamish Occurrence and the T-91 Occurrence are collectively referred to as the “**Three Occurrences**.”

**N. Pollution/Contamination**

The term “Pollution,” as well as the term “Contamination,” shall each include any toxic or non-toxic contaminants, pollutants, chemicals, smoke, vapors, soot, fumes, acids, alkalis, liquids, gases, sludges, tailings, waste material, irritants, nuclear material, radioactive material, radiological material, and any other physical matter of any nature that actually or allegedly resulted or results in property damage, personal injury or bodily injury.

**2. Settlement Amount, Payment Provisions and T-91 Coverage in Place Agreement**

**A. Settlement Amount**

Within thirty (30) days of the Execution Date, Great American shall pay to the Port the total amount of Twenty Four Million Nine Hundred Thirty Nine Thousand Four Hundred and Ninety-Five United States Dollars (\$24,939,495) (hereinafter, the “Settlement Amount”). The Settlement Amount consists of the total of the following four amounts: (1) \$10,127,995 to resolve indemnity Claims for the East Waterway/Harbor Island Occurrence (“East Waterway/Harbor Island Payment”), (2) \$12,086,784 to resolve indemnity Claims for the Lower Duwamish Occurrence (“Lower Duwamish Payment”), (3) \$604,560 to resolve any remaining defense issues for the submitted Environmental Claims relating to the East Waterway/Harbor Island Occurrence, the Lower Duwamish Occurrence and the T-91 Occurrence for costs incurred through December 31, 2019 (“Supplemental Defense Payment”), and (4) \$2,120,156 to resolve claimed, alleged, or potential defense costs incurred or to be incurred after December 31, 2019 relating to the East Waterway/Harbor Island Occurrence and Lower Duwamish Occurrence (“Future Defense Payment”).

**B. Settlement Payment**

The Settlement Amount shall be paid by means of a wire or ACH transfer to the Port; specific banking instructions have been provided separately and securely between the Port and Great American.

**C. T-91 Coverage in Place Agreement**

In addition to the Settlement Amount and Settlement Payment, the Port and Great American also agree to enter into a T-91 coverage in place agreement, as set forth in Article Two of this Agreement.

**D. Settlement Payment under Certain Conditions**

If, before the total Settlement Amount has been paid, the Port becomes a debtor in a bankruptcy case or insolvency proceeding, under Title 11 of the United States Code or otherwise, then, as a condition precedent to Great American’s obligations to pay any settlement money, the Port shall obtain an order from the Bankruptcy Court approving this Agreement under Bankruptcy Rule 9019 and authorizing the assumption by the debtor(s) of this Agreement under Bankruptcy Code Section 365, or in the event the insolvency case

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is proceeding under other law, shall obtain a similar order from the court overseeing the insolvency case approving this Agreement and confirming the binding effect thereof. If the Port becomes a debtor in a bankruptcy case or insolvency proceeding before the total Settlement Amount has been paid, absent a waiver by Great American of this Paragraph 2. D. of this Agreement, Great American is relieved of any obligation to pay any unpaid part of the Settlement Amount until such an order is obtained.

**3. Releases**

**A. Releases by the Port**

(1) Upon the Effective Date, the Port Entities, and any subsequently appointed trustee or representative acting for the Port Entities shall be deemed to and do hereby release, remise, covenant not to sue, and forever discharge the Great American Entities and their reinsurers (as such) from and against:

(a) any Claims for insurance benefits under the Policies, including both Claims for defense costs and indemnification costs, relating to or arising from past, present, and future Environmental Claims involving the East Waterway/Harbor Island Occurrence, including Claims relating to or arising from the East Waterway/ Harbor Island, the West Waterway, NRD Claims, or Terminal 5;

(b) any Claims for insurance benefits under the Policies, including both Claims for defense costs and indemnification costs, relating to or arising from past, present, and future Environmental Claims involving the Lower Duwamish Occurrence, including the LDW, NRD Claims, Terminal 108, Terminal 115 North, Terminal 115 South, Terminal 117, the South Park Marina, or the Thompson/Isaacson Property; and

(c) any Claims for insurance benefits under the Policies, including both Claims for defense costs and indemnification costs, relating to or arising from past, present, and future Environmental Claims involving the T-91 Occurrence, including the T-91 uplands and submerged lands and sediment claims, which are subject to the T-91 coverage in place agreement set out in Article Two of this Agreement;

(2) Upon the Effective Date, the Port Entities, and any subsequently appointed trustee or representative acting for the Port Entities shall be also deemed to and do hereby release, remise, covenant not to sue, and forever discharge the Great American Entities and their reinsurers (as such) from and against:

(a) any Claims arising out of or relating to any past, present, or future act, omission, representation, or conduct of any sort in connection with the Policies or the response to Claims under the Policies relating to the Three Occurrences, including any violations of the Consumer Protection



Act, the Insurance Fair Conduct Act, or any regulation of statute pertaining to insurance and the handling of Claims released under Paragraph 3.A.(1) of this Agreement, including all such Claims for:

- (i) breach of contract;
- (ii) declaratory relief pursuant to the Declaratory Judgment Act;
- (iii) breach of fiduciary duty;
- (iv) bad faith;
- (v) 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;
- (vi) 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 Entities' previous refusal to accept and to pay for amounts the Port claimed with respect to the Claims released under Paragraph 3.A.(1); and
- (vii) prejudgment interest on any amounts the Port claimed with respect to the Claims released under Paragraph 3.A.(1).

(3) Subject to Paragraph 4.B, the Port acknowledges and agrees that Great American's payment of the East Waterway/Harbor Island Payment and the Lower Duwamish Payment exhausts all of the Great American Primary Policies' per occurrence limits applicable to the Environmental Claims relating to or arising out of the East Waterway/Harbor Island Occurrence and the Lower Duwamish Occurrence. Upon the Effective Date, the Port agrees not to tender to Great American any Environmental Claims arising from either the East Waterway/Harbor Island Occurrence or the Lower Duwamish Occurrence, and the Port further agrees upon payment of the Settlement Amount that it will expressly withdraw any Environmental Claims previously tendered to Great American pertaining to either the East Waterway/Harbor Island Occurrence or Lower Duwamish Occurrence, or both. Once the Great American Primary Policies' per occurrence limits are exhausted for the East Waterway/Harbor Island Occurrence and the Lower Duwamish Occurrence, Great American shall have no further liability or any obligation to pay any defense, indemnity, or other costs relating to or arising from any portion of any Environmental Claim for any damages, costs or expenses arising

out of the East Waterway/Harbor Island Occurrence or Lower Duwamish Occurrence.

(4) Except as addressed in the T-91 coverage in place agreement set out in Article Two, the Parties reserve their rights with respect to exhaustion of the Great American Primary Policies for occurrences other than the East Waterway/Harbor Island Occurrence and the Lower Duwamish Occurrence. The Parties also reserve their rights with respect to whether any aggregate limits stated in the Great American Primary Policies are exhausted, except that the Parties agree that the Great American Primary Policies' aggregate limits for property damage arising out of the Port's premises or operations are exhausted under the following two Great American Primary Policies: Policy No. SLP 9456178, issued for the policy period from January 1, 1978 through January 1, 1980, and Policy No. SLP 9438815, issued for the policy period from January 1, 1983 through January 1, 1984.

(5) It is the intention of the Port Entities to reserve no rights or benefits whatsoever under or in connection with the Policies with respect to any past, present, or future Environmental Claims relating to or arising from the Three Occurrences (except as set out in the T-91 coverage in place agreement in Article Two below), and to assure the Great American Entities their peace and freedom from any Claims relating to or arising from such Environmental Claims and from all assertions of rights in connection with any such Environmental Claims.

(6) The Port Entities acknowledge that they have been advised by their attorneys with respect to the possibility of unknown Claims and future Claims they might have against the Great American Entities relating to or arising from the Three Occurrences. Subject to the coverage in place agreement set out in Article Two, the Port Entities expressly release and waive any and all rights with respect to Claims relating to or arising from the Three Occurrences, which the Port Entities do not know or suspect to exist at the time of executing this release, even as to Claims which, if known by the Port Entities, might have materially affected their settlement with the Great American Entities.

(7) The Port Entities expressly assume the risk that acts, omissions, matters, causes, or things may have occurred which the Port Entities do not know or do not suspect to exist with respect to the Three Occurrences. The Port Entities hereby waive the terms and provisions of any statute, rule or doctrine of common law which either: (a) narrowly construes releases purporting by their terms to release Claims in whole or in part based upon, arising from, or related to such acts, omissions, matters, causes, or things; or, (b) which restricts or prohibits the releasing of such Claims.

**B. Releases by Great American**

Upon the Effective Date, the Great American Entities, and any subsequently appointed trustee or representative acting for the Great American Entities, shall be deemed to release,

remise, covenant not to sue, and forever discharge the Port Entities from and against any Claims that the Great American Entities have ever had, now have or hereinafter may have relating to the Claims released by the Port Entities in Paragraph 3.A. of this Agreement, including any Claims that the Port is required to pay any deductibles or retrospective premium with respect to any Environmental Claims arising out of the Three Occurrences.

**C. Full and Complete Releases**

It is the Parties' intention that the releases provided in this Agreement shall be effective as a bar to all Claims released herein. The Parties acknowledge that they may hereafter discover facts in addition to or different from the fact that they now believe to be true with respect to the Claims released in this Agreement, but the Parties acknowledge and agree that they have taken that possibility into account in reaching this Agreement and agree that the releases given in this Agreement shall remain in effect as full and complete releases notwithstanding the existence or discovery of such additional or different facts, as to which the Parties expressly assume the risk.

**D. Parties' Right to Enforce Settlement Despite Releases**

Nothing in the release shall limit the right of the Parties to enforce any obligation under this Agreement through the Disputes provision set out in Paragraph 27, including, but not limited to, the provisions of the T-91 coverage in place agreement set forth in Article Two.

**E. Insurer Protection Provisions**

**(1) Good Faith Settlement**

The releases by the Port in this Agreement shall bar the contribution, indemnity or subrogation rights that any other insurers of the Port may have against Great American as of the Effective Date with respect to any Environmental Claim relating to or arising out of any of the Three Occurrences, provided that a court of competent jurisdiction subsequently determines that this settlement bars such claims. Unless otherwise agreed by the Parties, the Port and/or Great American shall seek such a claims bar order in the event: (1) coverage litigation is initiated between the Port and other insurers involving any Environmental Claims relating to or arising out of the Three Occurrences and the other insurers contend that the Great American Entities have unfulfilled obligations with respect to the Three Occurrences; (2) coverage litigation or contribution claims are brought against Great American by another insurer involving such Environmental Claims; or (3) one of the Parties elects to seek a claims bar order after twenty four months has passed since the Effective Date of the Agreement. When any of the preceding events occur, either the Port or Great American may pursue a good faith settlement and claims bar order involving such Environmental Claims. The Parties agree to cooperate with each other to obtain such a claims bar.

**(2) Port to use Reasonably Diligent Efforts to obtain Release from Other Insurers**

In any future settlement agreement between the Port and one or more of the Port's insurers that are not Parties to this Agreement, where such insurer(s) assert(s), or could assert any Claim against the Great American Entities relating to the matters released herein, the Port shall use reasonably diligent efforts to obtain a release of any claim against the Great American Entities from such settling insurer with respect to any Environmental Claim arising out of the East Waterway/Harbor Island Occurrence, the Lower Duwamish Occurrence, or the T-91 Occurrence, so that the Claim by such other insurer against the Great American Entities for the claims released herein is thereby satisfied and extinguished entirely. The Port agrees not to seek any further payments from any other insurer for defense costs or indemnity costs actually paid by Great American for any Environmental Claim arising out of the East Waterway/Harbor Island Occurrence, the Lower Duwamish Occurrence, or the T-91 Occurrence.

**(3) Great American's Agreement not to Pursue Other Insurers**

(a) In consideration of the promises in this Agreement, Great American agrees not to pursue any other insurer for contribution, indemnity, subrogation or any other type of recovery for any amounts Great American paid for the East Waterway/Harbor Island Occurrence or the Lower Duwamish Occurrence, unless another insurer pursues contribution, indemnity, subrogation or any other type of recovery from Great American for any monies that other insurer pays for the East Waterway/Harbor Island Occurrence or Lower Duwamish Occurrence, in which case Great American reserves all rights to assert Claims against such other insurer for amounts Great American pays under this Agreement and any other amounts Great American paid to or on behalf of the Port.

(b) Notwithstanding the foregoing Paragraph 3.E.(3)(a), Great American retains its rights, if any, to pursue any claim for contribution, indemnity, subrogation or any other type of recovery against any other insurer of the Port, including U.S. Fire Insurance Company, for any sums Great American has paid or will pay for the T-91 Occurrence, until the time that Great American has paid the Remaining T-91 Occurrence Limit, as defined in Article Two below. Great American agrees that, upon paying the Remaining T-91 Occurrence Limit, Great American shall not pursue any other insurer for contribution, indemnity, subrogation or any other type of recovery for any amounts Great American paid for the T-91 Occurrence, unless another insurer pursues contribution, indemnity, subrogation or any other type of recovery from Great American for any monies that insurer pays for the T-91 Occurrence, in which case Great American reserves all rights to assert Claims against such other insurer for amounts Great American pays under this Agreement and any other amounts Great American paid to or on behalf of the Port.

(c) Notwithstanding the foregoing. Great American retains its rights to pursue claims against its reinsurers for any payment made or obligation undertaken in connection with this Agreement.

**(4) Judgment Reduction**

Unless and until the Port or Great American, or both, have obtained a bar order as provided in Paragraph 3. E. (1) above, the following provisions shall apply:

(a) In any Environmental Claim arising out of the Three Occurrences involving the Port and one or more of the Port's insurers, where the Port has brought or brings Claims against any other insurer(s), and any such insurer(s) assert(s) any Claim against Great American for recovery of amounts that comprise defense costs or indemnity costs for the aforesaid occurrences, which the Port has sought or seeks from such insurer(s), any Claim made by, or judgment or other award obtained by, the Port against such other insurer(s) shall be automatically reduced by the amount, if any, that Great American would have been liable to pay to other insurer(s) as a result of such insurer(s)'s Claim against Great American, so that the Claim by such other insurer(s) against Great American is thereby satisfied and extinguished. Such a reduction in the Port'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 Great American.

(b) The Port further agrees that, in order to effectuate the terms of this Paragraph 3.E.(4), in any action referred to in this subparagraph where Great American is not a party, the Port shall use reasonably diligent efforts to obtain a finding from that court of what amount of defense costs and indemnity costs for the Three Occurrences Great American would have been required to pay such other insurer(s) under its Claim against Great American, before entry of judgment or other award as to such other insurer(s).

(c) To ensure that such a reduction under this Paragraph 3.E.(4) is accomplished, Great American shall be entitled to assert this Paragraph 3.E.(4). as a defense in any Claim against it for recovery of defense costs and indemnity costs for the Three Occurrences by one or more of the Port's other insurers, or any other insurer(s) relating to Claims by the Port against such insurer(s), and Great American shall be entitled to have the court or other appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect Great American from any liability for such recovery sought by such other insurer(s).

**4. Great American’s Defense of the Port, Payment of PRP Recovery Costs, and Allocation of PRP Recoveries**

**A. Status of Defense**

The Port and Great American agree that Great American’s duty to defend with respect to Claims relating to or arising out of the East Waterway/Harbor Island Occurrence or the Lower Duwamish Occurrence under the Policies and under any prior agreement, including the 1997 Duty to Defend Settlement Agreement and Partial Release, shall terminate upon the Effective Date. Upon the Effective Date, Great American shall have no further duty to defend the Port or to pay defense costs to the Port with respect to Environmental Claims relating to or arising out of the East Waterway/Harbor Island Occurrence and the Lower Duwamish Occurrence. Notwithstanding anything else contained in this Agreement, the Port’s and Great American’s rights and obligations with respect to defense of any Environmental Claims arising out of the T-91 Occurrence shall be governed by Article Two below. For the avoidance of doubt, Great American will have no further obligation to do any further review of or reimbursement of costs for the East Waterway/Harbor Island Occurrence and the Lower Duwamish Occurrence once the Effective Date occurs.

**B. PRP Recovery Efforts**

Subject to the terms set forth in this subparagraph 4.B., and notwithstanding anything set forth in any other section of this Agreement, the Port and Great American will continue to pursue PRP Recoveries from other potentially responsible parties (“PRP’s”) relating to the East Waterway Superfund claim and the Lower Duwamish Superfund claim. Notwithstanding anything else contained in this Agreement, the Port’s and Great American’s rights and obligations with respect to PRP recoveries concerning T-91 shall be governed by Article Two below.

**(1) General Provisions relating to PRP Recovery Efforts**

(a) Great American agrees to the Port’s retention of the Stoel Rives firm as counsel for PRP cost recovery efforts relating to the East Waterway Superfund claim and the Lower Duwamish Superfund claim. Fees and costs incurred by Stoel Rives for activities approved by the Port in connection with PRP cost recovery efforts at billing rates approved by Great American will be presumed reasonable and necessary, although the presumption is rebuttable. The Port and Great American reserve their rights in connection with the rates counsel charge for PRP recovery efforts after December 31, 2019. The Port and Great American agree to cooperate with one another in the pursuit of recoveries from other PRPs and the conduct of litigation with PRPs, recognizing that the Port ultimately will make final decisions relating to the PRP recovery efforts.

(b) If Great American exercises its option to stop funding PRP recoveries with respect to either the East Waterway Superfund claim or the Lower Duwamish Superfund claim as provided in this Paragraph 4,

subsequent PRP Recoveries with respect to each PRP recovery effort will be allocated to Great American and the Port in proportion to the unreimbursed PRP recovery costs paid by Great American and the Port until those costs have been fully reimbursed.

(c) Within 6 months after the Effective Date, the Port agrees to provide an accounting of the PRP Recoveries for the East Waterway and Lower Duwamish as of December 31, 2019. Within 6 months after the Effective Date, Great American agrees to provide an accounting of the PRP recovery costs for the East Waterway and the Lower Duwamish as of December 31, 2019. Unless otherwise agreed in writing, the Port and Great American agree to update those accountings for each subsequent calendar year by March 31 of the following year, until Great American has been reimbursed for its PRP recovery costs for the East Waterway and the Lower Duwamish claims. Should the Port start paying any PRP recovery costs for the East Waterway or Lower Duwamish, the Port will provide an accounting of such costs each calendar year by March 31 of the following year it pays such costs, until it has been reimbursed for such PRP recovery costs.

**(2) East Waterway PRP Recovery Efforts**

(a) Great American agrees to continue to fund (a) reasonable and necessary PRP recovery costs incurred solely on the Port's behalf with respect to the East Waterway Superfund claim, and (b) the Port's share of any reasonable and necessary PRP recovery costs incurred under agreements as of the Execution Date between the Port and King County, the City of Seattle, and/or Seattle Iron & Metals Corp. Great American shall have no obligation to fund any shares of the PRP recovery costs incurred or paid by King County, the City of Seattle, Seattle Iron & Metals Corp. and/or any other Person other than the Port with respect to the East Waterway Claim.

(b) Beginning on the date that is the third anniversary after the Execution Date, Great American may elect in its sole discretion whether to continue or stop funding PRP recovery efforts on behalf of the Port with respect to the East Waterway. If Great American elects to discontinue funding the recovery efforts, and the Port proceeds with recovery efforts at its own cost, the Port shall be entitled to repayment of its costs from any PRP Recoveries in accordance with subparagraph 4.B(1) (b) above. Great American shall retain whatever sums it has been reimbursed for PRP recovery costs at the time it elects to discontinue funding PRP recovery costs for the East Waterway.

(c) Subject to the other provisions of this Paragraph 4, the Port agrees that any PRP Recoveries at the East Waterway will first be applied to reimburse PRP recovery costs Great American and/or the Port have paid or will pay for PRP Recoveries with respect to the East Waterway claim.

(d) With respect to PRP Recoveries relating to the East Waterway, the full amount of PRP recovery costs relating to the East Waterway claim have been repaid, all amounts recovered subsequently shall be retained by the Port.

**(3) Lower Duwamish PRP Recovery Efforts**

(a) Great American agrees to continue to fund (a) reasonable and necessary PRP recovery costs incurred solely on the Port's behalf with respect to the Lower Duwamish Superfund claim, and (b) the Port's share of any reasonable and necessary PRP recovery costs incurred under agreements as of the Execution Date between the Port and King County, the City of Seattle, and/or Boeing. Great American shall have no obligation to fund any shares of the PRP recovery costs incurred or paid by King County, the City of Seattle, Boeing and/or any other Person other than the Port with respect to the Lower Duwamish Claim.

(b) Beginning on the date that is the second anniversary after the Execution Date, Great American may elect in its sole discretion whether to continue or stop funding PRP Recovery efforts on behalf of the Port with respect to the Lower Duwamish. If Great American elects to discontinue funding the recovery efforts and the Port proceeds with recovery efforts at its own cost, the Port shall be entitled to repayment of its costs from any PRP Recoveries in accordance with subparagraph 4.B.(1)(b) above. Great American shall retain whatever sums it has been reimbursed for PRP recovery costs at the time it elects to discontinue funding PRP recovery costs for the Lower Duwamish.

(c) Subject to the other provisions of this Paragraph 4, the Port agrees that any PRP Recoveries at the Lower Duwamish will first be applied to reimburse PRP recovery costs Great American or the Port have paid or will pay for PRP Recoveries with respect to the Lower Duwamish claim.

(d) With respect to PRP Recoveries relating to the Lower Duwamish, after the full amount of PRP recovery expenses relating to the Lower Duwamish have been repaid, all amounts recovered subsequently shall be retained by the Port.



**ARTICLE TWO – T-91 COVERAGE IN PLACE AGREEMENT**

(Please note that the Paragraphs in this Agreement are numbered consecutively.)

**5. General Statement of Purpose**

In summary, the Port and Great American hereby agree to resolve the Port’s insurance Claims against Great American for the Environmental Claims against the Port arising out of the T-91 Occurrence by way of a coverage in place agreement. Great American is agreeing, among other things, to pay indemnity costs after taking into consideration certain deductions from the indemnity costs claimed by the Port, including sums recovered in T-91 PRP Recoveries. The amount of indemnity to be paid by Great American with respect to Environmental Claims arising out of the T-91 Occurrence is referred to in this Agreement as the Net Port T-91 Indemnity Claim, which is defined in Paragraph 6.B. The Port and Great American agree to continue the pursuit of T-91 PRP Recoveries, and agree that money recovered from PRPs is to be allocated between the Port Entities and Great American as provided in Paragraph 11. In addition, Great American agrees to continue funding the defense of Environmental Claims arising out of the T-91 Occurrence until Great American’s indemnity payments exhaust the Policies’ limits, as set forth in this Agreement. Great American agrees to continue funding T-91 PRP recovery efforts until at least two years after the Effective Date of this Agreement. The details of the coverage in place agreement are set out in this Article Two.

**6. Definitions**

In addition to the definitions set out in Article One, the following definitions will also apply to the listed terms wherever those terms appear in Article Two of this Agreement.

**A. Net Port T-91 Indemnity Claim**

The term “**Net Port T-91 Indemnity Claim**” shall mean the sum of the Port T-91 Indemnity Claim less the T-91 Deductions.

**B. Port T-91 Indemnity Claim**

The term “**Port T-91 Indemnity Claim**” shall mean the amounts identified by the Port in accordance with the historic practice between the Parties and agreed to by the Parties as T-91 Indemnity Costs.

**C. T-91 Indemnity Costs**

The term “**T-91 Indemnity Costs**” shall mean all monies spent related to cleanup or remediation due to Pollution or Contamination, including 50% of Feasibility Study (“FS”) Costs, and shall exclude defense costs, including T-91 Great American Defense Payments, as well as T-91 Non-Tendered and Non-Covered Costs.

**D. Port T-91 Grant Reimbursements**

The term “**Port T-91 Grant Reimbursements**” shall mean the amounts, if any, that the Port is required to pay any governmental entity out of T-91 PRP Recoveries to reimburse T-91 grant monies received, as provided for and described in Paragraph 6.B.

**E. Remaining T-91 Occurrence Limit**

The term “**Remaining T-91 Occurrence Limit**” shall mean the sum of \$10,188,969 less any sums paid by Great American for indemnity for the T-91 Occurrence after the Execution Date.

**F. T-91 Deductions**

The term “**T-91 Deductions**” shall mean the following four deductions from the Port T-91 Indemnity Claim:

(1) Deductions for T-91 Unreimbursed Grant Recoveries: Monies the Port receives in grants from the Department of Ecology or other governmental agencies to pay costs included in the Port’s T-91 Indemnity Claim less **Port T-91 Grant Reimbursements** for T-91 Indemnity Costs (hereafter, “**T-91 Unreimbursed Grant Recoveries**”);

(2) Deduction for T-91 Insurance Indemnity Recoveries: Monies paid to the Port by Great American, Bedivere, or any other insurer for T-91 Indemnity Costs for the T-91 Occurrence (collectively “**T-91 Insurance Indemnity Recoveries**”);

(3) Deductions for T-91 Cost Sharing Recoveries: Any cost sharing recoveries applicable to T-91 Indemnity Costs for the T-91 Occurrence (hereafter, “**T-91 Cost Sharing Recoveries**”); and

(4) Deductions for T-91 Port PRP Recoveries for Port Indemnity Claim: The sums reimbursed to the Port from the PRP recoveries for the Port Indemnity Claim, defined as “**T-91 Port Recoveries for the Port Indemnity Claim**” in Paragraph 11.C(1) below.

**G. T-91 Great American Defense Payments**

The term “**T-91 Great American Defense Payments**” shall mean the monies paid by Great American in defending Environmental Claims relating to the T-91 Occurrence, and which include attorney’s fees and non-attorney’s fees and costs (which shall include 50% of FS costs).

**H. T-91 Non-Tendered and Non-Covered Costs**

The term “**T-91 Non-Tendered and Non-Covered Costs**” shall mean any sums for costs that the Port did not tender to Great American (e.g., certain costs related to Cruise Terminal) or for claimed costs the Port has agreed are outside coverage under the Policies, (e.g., certain costs relating to employees and overhead, which the Port is seeking to recover in its T-91 PRP recovery efforts.)

**I. T-91 PRP Recoveries**

The term “**T-91 PRP Recoveries**” shall mean the sum of the monies collected in PRP recovery efforts for defense or indemnity costs relating to an Environmental Claims arising out of the T-91 Occurrence, and shall include recoveries for T-91 Indemnity Costs, Great American Defense Payments, T-91 Non-Tendered and Non-Covered Costs, T-91 PRP Recovery Costs, and any other costs agreed by the Parties pursuant to a written amendment to Article Two of this Agreement.

**J. T-91 PRP Recovery Costs**

The term “**T-91 PRP Recovery Costs**” shall mean the monies spent to seek recovery of the Port T-91 Indemnity Claim, the T-91 Great American Defense Payments, PRP Recovery Costs, T-91 Non-Tendered and Non-Covered Costs, or any other costs the Parties have agreed to recover from other PRP’s relating to the T-91 Occurrence.

**7. Great American Agreement to Pay Certain T-91 Indemnity Costs**

**A. Payment of Net Port T-91 Indemnity Claim after Completion of PRP Recovery Efforts**

Subject to paragraph 7.B. below, after PRP recovery efforts for T-91 as set out in this Agreement have been completed and any T-91 PRP Recoveries have been distributed pursuant to Paragraph 6, Great American will pay the Net Port T-91 Indemnity Claim to the Port for the T-91 Occurrence, up to the Remaining T-91 Occurrence Limit. Great American shall not be required to pay more than the Remaining T-91 Occurrence Limit as indemnity for the T-91 Occurrence.

**B. Potential Earlier Payment of Port Net Indemnity Claim by Great American**

By mutual agreement, the Parties can agree to accelerate the determination of the Net Port T-91 Indemnity Claim for the T-91 Occurrence if the Parties agree to terminate PRP recovery efforts. Further, notwithstanding anything set forth herein, and provided that all T-91 Deductions have been appropriately calculated in the then-current T-91 accounting described in paragraph 14.A. below, Great American has the right after January 1, 2022 to pay to the Port the Net Port T-91 Indemnity Claim as calculated at that time. If Great American’s payment of the T-91 Indemnity Claim equals the amount of the then-current

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Remaining T-91 Occurrence Limit, then the Great American Primary Policies shall be exhausted for the T-91 Occurrence.

**8. Port's Agreement to Tender T-91 Indemnity Costs and any Claimed T-91 Defense Costs**

The Port agrees to identify to Great American all claimed T-91 Indemnity Costs, as well as any claimed T-91 defense costs, in accordance with the historic practice between the Parties for any tendered claim arising out of the T-91 Occurrence.

**9. Defense and Claims Processing**

**A. Great American's Continued Acceptance of the Duty to Defend for Environmental Claims arising out of the T-91 Occurrence**

With respect to work performed after December 31, 2019, and subject to Paragraph 12.A below, Great American shall continue to provide a defense to the Port with respect to Environmental Claims arising out of the T-91 Occurrence under the Great American Primary Policies, except for Policy No, SLP 9456178 for the policy period January 1, 1978 through January 1, 1980, and Policy No. SLP 9438815 for the policy period January 1, 1983 through January 1, 1984. Great American shall have no duty to defend under Policy Nos. SLP 9456178 and SLP 9438815 because the aggregate limits of those Policies are or will be exhausted. The defense provided for Environmental Claims arising out of the T-91 Occurrence shall be subject to Great American's reservation of rights as set out in prior correspondence and shall be subject to the following agreements:

(1) The 1997 Agreement, except as modified by Section III, IV, V and VI of the 2018 Agreement, and the 1998 Agreement;

(2) The Port's right to claim any costs for work performed after December 31, 2019 for the defense of the Environmental Claims, subject to the provision of Paragraph 9.A.(3) below;

(3) That with respect to the T-91 claims, costs incurred by the Port, its vendors and government agencies relating to work performed after the December 15, 2010 (the date that the Washington Department of Ecology formally accepted the cleanup Action Plan relating to T-91 TFAA) are presumptively not defense costs. The Port reserves the right to identify specific costs for work performed after December 15, 2010 that the Port considers to be non-attorneys' fees defense costs for areas outside of the TFAA. If the Port exercises this right, the Port shall specifically request that Great American review such costs under Paragraph 9.D below;

(4) Section IV of the 2018 Agreement; and

(5) Great American's reservation of rights with respect to the Port's claims for costs incurred for work performed after December 31, 2019 for defense of Environmental Claims.

The defense provided in Article Two of this Agreement is without reservation of any right of Great American to recoup such defense costs from the Port, except to the extent PRP Recovery Costs may be considered defense costs, Great American is entitled to reimbursement of PRP Recovery Costs as provided in this Agreement.

**B. Defense Counsel**

Great American agrees to the Port's retention of the K&L Gates firm as defense counsel who shall continue to defend the Port for the current Environmental Claims arising out of the T-91 Occurrence. Fees and costs incurred by K&L Gates for defense related activities at billing rates approved by Great American will be presumed reasonable and necessary, although the presumption is rebuttable. The Port and Great American reserve their rights with respect to the billing rates charged by defense counsel.

**C. Reservation of Rights**

Great American reserves the right to challenge the reasonableness and necessity of the costs claimed by the Port for defense of the Environmental Claims arising out of the T-91 Occurrence. Great American also reserves the right to characterize such costs as defense costs, T-91 Indemnity Costs or neither. Great American shall also be provided with reasonable documentation of future claimed defense costs, including a list of future defense costs, proof of payment, unredacted legal fee invoices, invoices from consultants and other reasonable documentation requested by Great American. Great American and the Port shall continue to recognize such documentation as protected by the attorney-client, work product, and joint defense privileges, and shall not disclose such documentation to third parties where such privileges are applicable.

**D. Review of Claimed Defense Costs**

(1) As long as Great American has not paid the full amount of the Remaining T-91 Occurrence Limit, and subject to Paragraph 9.A.(3) above, Great American agrees to continue to review the alleged non-attorneys' fees defense costs incurred by the Port and identified by the Port after January 1, 2020 in accordance with the historic practice between the Parties to make a determination as to what costs, if any, are defense related. This review will continue to be done in biannual installments consisting of: (1) the costs identified from January through June of each year; and (2) the costs identified from July through December of each year, pursuant the Parties' prior agreements and practices. Great American also will continue to remit payments to the Port for those costs that it determines to be remedial investigation defense costs within 90 days after the Port has notified Great American that it has completed identifying costs in accordance with the historic practice between the Parties for the pertinent 6 month period. The Port reserves its right to dispute Great American's determination. For each calendar year, Great

American agrees to categorize the unpaid costs identified in accordance with the historic practice between the Parties (generally referred to as Part A and Part B costs). The Parties will then use their best efforts to resolve any differences concerning such future Part A and Part B costs, including whether any of such costs constitute T-91 Indemnity Costs or are defense related.

(2) Notwithstanding that the Port has reserved its right to make certain indemnity claims to Great American in the future relating to or arising from Environmental Claims arising out of the T-91 Occurrence, the Port agrees not to submit any indemnity claim to Great American for amounts that the Port previously claimed as defense costs and for which the Port provided Great American with a release as to such Claims either in this Agreement or in any prior agreement between the Port and Great American.

(3) If, at any time subsequent to notifying Great American that it has completed the identification of costs, including claimed defense costs, for each six month calendar period in accordance with the historic practice between the Parties, the Port modifies, adds, or subtracts information or sums relative to such costs, it must promptly notify Great American it has made a change and provide the details regarding each such change.

#### **10. T-91 PRP Recovery Agreement**

Subject to the terms set forth in Article Two of this Agreement, including paragraphs 11, 12, 13, and 14, the Port and Great American will continue to pursue T-91 PRP Recoveries from other PRPs relating to the T-91 claims. Great American agrees to continue to fund reasonable and necessary T-91 PRP Recovery Costs incurred solely on the Port's behalf with respect to the T-91 claims.

Great American agrees to the Port's retention of the Foster Garvey PC firm as counsel for PRP cost recovery efforts. Fees and costs incurred by Foster Garvey PC for activities approved by the Port in connection with PRP cost recovery efforts at billing rates approved by Great American will be presumed reasonable and necessary, although the presumption is rebuttable. The Port and Great American reserve their rights in connection with the rates counsel charge in connection with PRP recovery efforts. The Port and Great American agree to cooperate with one another in the pursuit of recoveries from other PRPs and the conduct of litigation with PRPs, recognizing that the Port ultimately will make final decisions relating to the PRP recovery efforts.

**11. Allocation of PRP Recoveries**

T-91 PRP Recoveries shall be allocated as provided for and in the order set forth below:

**A. Reimbursement of T-91 PRP Recoveries to Great American for T-91 PRP Recovery Costs**

Subject to Paragraph 13 below, Great American shall be entitled to receive from T-91 PRP Recoveries, before any of the reimbursements set forth in Paragraph 11.B, C, D, and E below are made, a reimbursement of the sum of the T-91 PRP Recovery Costs paid by Great American to obtain the T-91 PRP Recoveries. The monies paid to Great American to reimburse the T-91 PRP Recovery Costs shall be referred to as “Great American T-91 PRP Recovery Reimbursement.” Subject to paragraph 13 below, to the extent there are T-91 PRP Recoveries, and to the extent Great American has outstanding T-91 PRP Recovery Costs that it has paid but not been reimbursed for, the Port shall pay out of T-91 PRP Recoveries any sums due to Great American on an annual basis, commencing on March 31 of each year after the Effective Date.

**B. Reimbursement of Port T-91 Grant Reimbursements**

If, as a result of successful T-91 PRP Recoveries, the Port is required by law to reimburse any governmental entity for any T-91 Unreimbursed Grant Recoveries, then, after all T-91 PRP Recovery Costs have been paid as provided for herein, the Port shall make such reimbursements to such governmental entity for the proportional share of those recoveries as required under law before making any reimbursement in Paragraph 10.C, D, and E

**C. Reimbursement of Port for T-91 Indemnity Claims and T-91 Non-Tendered and Non-Covered Costs**

After payment of the sums set out in Paragraphs 11.A and B above, the remaining sum of T-91 PRP Recoveries shall be allocated and paid to the Port as follows:

(1) 65% of T-91 PRP Recoveries, shall be paid to the Port as reimbursement of the Port T-91 Indemnity Claim (“T-91 Port Recoveries for the Port Indemnity Claim”) until recovered in full (net of the deductions for T-91 Unreimbursed Grant Recoveries, T-91 Insurance Indemnity Recoveries, and T-91 Cost Sharing Recoveries) after which 100% of the such recoveries shall be paid as reimbursement of the T-91 Non-Tendered and Non-Covered Costs until paid in full, which amount shall not exceed the remaining amount of T-91 Port Indemnity Claim; and

(2) 35% of T-91 PRP Recoveries shall be paid to the Port as reimbursement of T-91 Non-Tendered Costs and Non-Covered Costs (“T-91 Port PRP Recoveries for Non-Tendered and Non-Covered Costs”) until recovered in full (net of any deductions for grants) after which 100% of the such recoveries shall be paid as reimbursement of the T-91 Port Indemnity Claim until paid in full, which



amount shall not exceed the amount of T-91 Non-Tendered and Non-Covered Costs.

**D. Reimbursement of Great American Defense Payments and Great American Payments for T-91 Indemnity Costs**

After the sums in Paragraph 11.C immediately above are paid, and subject to paragraph 12.B. below, the remaining sum of T-91 PRP Recoveries shall be paid to Great American first for reimbursement of the T-91 Great American Defense Payments and, if any amount of T-91 PRP Recoveries remains after Great American has been fully reimbursed for T-91 Great American Defense Payments, then the remaining sum shall be paid to reimburse Great American for T-91 Indemnity Costs it paid pertaining to T-91.

**E. Remaining Sums**

After the sums set out in Paragraph 11.A, B, C, D, and E immediately above are paid, any remaining monies from T-91 PRP Recoveries shall be paid to the Port.

**12. Effect of Payment of Remaining T-91 Occurrence Limit and Allocation of PRP Recoveries after Payment of the Remaining T-91 Occurrence Limit**

**A. Exhaustion of the Remaining T-91 Occurrence Limit**

Upon the payment of the Remaining T-91 Occurrence Limit by Great American, all of the Great American Primary Policies shall be exhausted for the T-91 Occurrence. The Port agrees not to tender any Environmental Claims arising from the T-91 Occurrence to Great American, and further agrees that upon such payment it will expressly withdraw any claims previously tendered to Great American pertaining to the T-91 Occurrence. Great American will have no further obligation to defend, reimburse defense costs or indemnify the Port for any costs for any Environmental Claim arising out of the T-91 Occurrence, and will have no further obligation to fund PRP recovery efforts relating to the T-91 Occurrence once it has paid the Remaining T-91 Occurrence Limit. Once Great American has paid the Remaining T-91 Occurrence Limit, Great American shall have no further liability or any obligation to pay any defense, indemnity, or other costs relating to or arising from any portion of any Environmental Claim for any damages, costs or expenses arising out of the T-91 Occurrence.

**B. Allocation of PRP Recoveries after Exhaustion**

Whatever sums Great American has been reimbursed for PRP recovery costs at the time it pays the Remaining T-91 Occurrence Limit shall be retained by Great American. If Great American ceases funding the recovery efforts due to exhaustion of the Remaining T-91 Occurrence Limit, and the Port proceeds with recovery efforts at its own cost, any monies from PRP recovery efforts once the Port starts funding such efforts shall first be allocated as follows: The Port and Great American shall be entitled to repayment of their respective T-91 PRP Recovery Costs from any T-91 PRP Recoveries in proportion to the unreimbursed T-91 PRP Recovery Costs paid by Great American and the Port. After Great



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American has exhausted the Remaining T-91 Occurrence Limit, and after the T-91 PRP Recovery Costs have been fully repaid to Great American and/or the Port, and notwithstanding any other provision set forth in Article Two, T-91 PRP Recoveries shall be paid exclusively to the Port.

**13. Right of Great American to Cease Funding PRP Recovery Efforts**

Beginning on the date that is the second anniversary after the Execution Date, Great American may elect in its sole discretion, even if the Remaining T-91 Occurrence Limit has not been exhausted, to stop funding PRP recovery efforts on behalf of the Port with respect to T-91. If Great American elects to discontinue funding the recovery efforts and the Port proceeds with recovery efforts at its own cost under this Paragraph, the Port shall be entitled to repayment of its costs first from any additional PRP Recoveries until the Port has been fully reimbursed for its T-91 PRP Recovery Costs. Great American shall retain whatever sums it has been reimbursed for its T-91 PRP Recovery Costs at the time it elects to discontinue funding such PRP recovery costs for T-91, and shall be entitled to reimbursement of any remaining Great American T-91 PRP Recovery Costs after the Port's T-91 PRP Recovery Costs have been fully reimbursed. After Great American has been fully reimbursed for T-91 PRP Recovery Costs it has paid and will pay, T-91 PRP Recoveries shall be distributed as provided for in Paragraph 11.A, B, C, D, and E, until such time as Great American has paid the Remaining T-91 Occurrence Limit, in which event any additional PRP Recoveries shall be exclusively paid to the Port.

**14. Accounting**

**A. T-91 Accounting**

On or before the Effective Date, Great American and the Port agree to use their best efforts to come to an agreement on providing an accounting of the various items in the reimbursement formula provided under Article Two of this Agreement.

**B. PRP Recovery Accounting**

Once Great American has paid the full amount of the Remaining T-91 Occurrence Limit, and unless otherwise agreed in writing, the Port agrees to continue to update an accounting of PRP Recoveries within 3 months of the anniversary of the Effective Date each year until Great American has been reimbursed for its T-91 PRP Recovery Costs for the T-91 Occurrence.

**ARTICLE THREE – GENERAL PROVISIONS**

(Please note that the Paragraphs in this Agreement are numbered consecutively.)

**15. Reasonably Equivalent Value**

The Parties acknowledge and agree that: (i) this Agreement was bargained for and entered into in good faith and as the result of arms-length negotiations; (ii) based on their respective independent assessments, with the assistance and advice of counsel, of the probability of success in prevailing on the Parties' respective positions, the complexity of the issues; (iii) the payment and other consideration to be received by the Port Entities pursuant to this Agreement constitutes a fair and reasonable settlement of its Claims against the Great American Entities which are released in this Agreement; (iv) the payments and other benefits to be made under this Agreement constitute reasonably equivalent value for the release, indemnity, and other benefits received by the Great American Entities under this Agreement; and (v) this Agreement fully and finally resolves all issues between the Parties relating to or arising from Environmental Claims relating to or arising out of the Three Occurrences, except as expressly provided with respect to the T-91 coverage in place agreement provided in Article Two of this Agreement.

**16. Representations and Warranties**

**A. Solvency**

The Port represents and warrants that as of the date of this Agreement it is solvent, in that at fair value, its assets exceed its liabilities and it has the liquidity to pay its debts. The Port further represents and warrants that it has not filed for bankruptcy protection and that no bankruptcy action is pending in which the Port seeks relief under bankruptcy law.

**B. Ownership of Claims and No Assignment**

The Port represents and warrants that as of the date of this Agreement, it has ownership of the right to claim insurance benefits under the Policies and that it has not made or purported to make any assignment to any Person of any rights it may have under any of the Policies.

**C. Efforts to Locate Policies**

The Port and Great American represent and warrant that they have both made diligent searches for primary or excess liability policies issued to the Port and are unaware of any liability policies issued to the Port by Great American other than the Great American Primary Policies and the Alleged Policies.

**D. Authorization**

Each Party represents and warrants that it is authorized to act on behalf of all Persons described in the definition of that Party contained respectively in Paragraphs 1.G. and 1.K. of this Agreement, concerning all matters agreed upon in this Agreement.

**E. Arm's Length, Good Faith Negotiations**

Each Party acknowledges and represents that it:

(1) has participated in the negotiation of the Agreement, and has fully and carefully read this Agreement prior to execution;

(2) has been fully apprised by its counsel of the legal effect and meaning of this document and all terms and conditions of this document;

(3) has had the opportunity to make whatever investigation or inquiry it deems necessary and appropriate in connection with the subject matter of this Agreement; and

(4) is executing this Agreement voluntarily; however, the Parties agree that in making payment, pursuant to this Agreement, Great American is not acting as a volunteer.

**17. No Assignment**

No Party shall assign any rights under this Agreement without first obtaining the written consent of all other Parties to the Agreement, provided, however, that this Paragraph 17 shall not prohibit any assignment by a Party made in a merger, consolidation or by operation of law or to a Person who succeeds to all or substantially all of such Party's assets. Subject to the foregoing, this Agreement shall extend to and be binding upon the Parties hereto and their successors and assigns.

**18. Use of Proceeds**

All money paid to the Port pursuant to this Agreement is in satisfaction, defense or settlement of Environmental Claims, including reimbursement of remediation costs expended by the Port.

**19. Confidentiality**

**A. Confidentiality and Limited Disclosure Rights**

The Port Entities and the Great American Entities agree that all matters relating to the terms, negotiation, and implementation of this Agreement and the prior agreements (which are set forth in Paragraph 28.A.) shall be confidential and are not to be disclosed except by order of court or by agreement of the Parties, in writing; except that executed copies of this Agreement and the prior agreements may be disclosed: (i) as compelled by law, including

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but not limited to the provisions of the State of Washington Public Records Act, Rev. Code Wash. 42.56, et seq. (“Public Records Act”), (ii) to reinsurers of Great American and their retrocessionaires, directly or through intermediaries; or (iii) to outside counsel, auditors or accountants of any Party. This Agreement and the prior agreements may also be disclosed, as required, to the Internal Revenue Service or other U.S. governmental authority that properly requires disclosure by one of the Parties hereto.

**B. Cooperation if Third Party Seeks Discovery**

In the event a private litigant, by way of document request, interrogatory, subpoena, or questioning at deposition or trial, or a Person under the Public Records Act attempts to compel disclosure of anything protected by this paragraph, other than the final, executed copy of this Agreement, or the final, executed copies of the prior agreements, the Party from whom disclosure is sought shall decline to provide the requested information on the ground that this Agreement prevents such disclosure. In the event such private litigant seeks an order from any court or governmental body to compel such disclosure, or in the event that a court, government official, or governmental body (other than the Internal Revenue Service) requests or requires disclosure of anything protected by this Paragraph, other than the final, executed copy of this Agreement, or the final, executed copy of prior agreements, the Party from whom disclosure is sought shall immediately give written notice by email or hand-delivery to the other Party, and shall immediately provide copies of all notice papers, orders, requests or other documents in order to allow each Party to take such protective steps as may be appropriate. Notice shall be made under this Paragraph to the persons identified in Paragraph 26 of this Agreement. 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.

**C. Inadmissibility of the Agreement**

Any evidence of the existence, terms or negotiations of this Agreement or the prior agreements shall be inadmissible in any litigation or proceeding, provided, however, that the Agreement alone may be offered in (a) any proceeding seeking solely to enforce the terms of this Agreement, (b) any action to obtain a bar order or to enforce or apply judgment reduction pursuant to Paragraph 3.E, or (c) any action involving Great American defending against action brought by the Port’s other insurers, including the assertion of a good faith settlement defense or judgment reduction pursuant to paragraph 3.E. This Agreement and the prior agreements have 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.

**20. Cooperation**

**A. Cooperation with Reinsurance Inquiries**

The Port shall undertake all reasonable actions to co-operate with Great American in connection with its reinsurers, including providing assistance as requested to respond to reasonable requests for information.

**B. No Cooperation with Others**

Great American and the Port agree that they will not commence, maintain, initiate, or prosecute any Claim against each other, or voluntarily cooperate with any other Person not a Party to this Agreement with respect to any Claim against the other Party, relating to any of the matters released under this Agreement.

**21. Each Party Bears its Own Fees and Costs**

Each Party agrees to bear its own attorneys' fees and costs with respect to the presentation of and response to the Port's claims against Great American released in this Agreement or any prior agreement between the Parties relating to the Port's environmental liabilities, and with respect to the negotiation and drafting of this Agreement.

**22. Non-Prejudice and Construction of Agreement**

This Agreement is intended to be and is a compromise between the Parties and shall not be construed as an admission of coverage or liability under the Policies, nor shall this Agreement or any provision hereof be construed to reflect, waive, modify, or retract the positions of the Parties with respect to the interpretation and application of the Policies.

This Agreement is the product of informed negotiations and involves compromises of the Parties' previously stated legal positions. Accordingly, this Agreement does not reflect upon the Parties' views as to rights and obligations with respect to matters or Persons outside the scope of this Agreement. This Agreement is without prejudice to positions taken by Great American with regard to other insureds, and without prejudice with regard to positions taken by the Port with regard to other insurers. The Parties disavow any intention to create rights in third parties under or in relation to this Agreement.

This Agreement is the jointly drafted product of arms-length negotiations between the Parties with the benefit of advice from counsel, and the Parties agree that it shall be so construed. As such, neither Party will claim that any ambiguity in this agreement shall be construed against the other Party. This Agreement shall not be construed as a contract of insurance.

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**23. No Modification**

No change or modification of this Agreement shall be valid unless it is made in writing and signed by the Parties.

**24. Execution**

Each Party shall execute two original signature pages of this Agreement, and this Agreement shall not be effective unless and until Great American and the Port each execute both original signature pages. Counterparts of the signature pages may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. Upon execution, each Party shall provide each other Party a signature page containing the Party's original signature. In the event an original of this Agreement cannot later be located or produced for any reason, a legible photocopy of the Agreement shall be admissible for all intents and purposes.

**25. Governing Law**

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Washington, without reference to the State of Washington's choice of law principles.

**26. Notices**

Unless another person is designated, in writing, for receipt of notices hereunder, notices to the respective Parties shall be sent to the following persons:

For Great American:

Office of the General Counsel  
Great American Insurance Group  
Great American Insurance Group Tower  
301 E Fourth Street  
Cincinnati, OH 45202

and

Aaron B. Latto/Emmet M. Murphy  
Great American Insurance Company  
Great American Insurance Group Tower, 19th Floor  
301 E Fourth Street  
Cincinnati, OH 45202  
Email: [alatto@GAIG.com](mailto:alatto@GAIG.com)  
[emurphy@GAIG.com](mailto:emurphy@GAIG.com)

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With a copy to:

Philip R. Matthews, Esq.  
William J. Baron, Esq.  
Duane Morris LLP  
One Market Street, Spear Tower  
Suite 2200  
San Francisco, CA 94105  
Email: prmatthews@duanemorris.com  
wjbaron@duanemorris.com

For the Port:

Elizabeth C. Black  
Senior Port Counsel  
Port of Seattle  
2711 Alaskan Way  
P.O. Box 1209  
Seattle, WA 98121  
Email: black.e@portseattle.org

With a copy to:

K. Michael Fandel, Esq.  
Graham & Dunn P.C.  
Pier 70  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128  
Email: michael.fandel@millernash.com

**27. Disputes**

If the Parties have a dispute under this Agreement, which they are unable to resolve on their own, the Parties shall participate in non-binding mediation concerning such dispute. Such mediation shall take place within 90 days of either Party requesting mediation before a mutually agreed mediator. If the Parties do not reach an agreement in such mediation, the Parties shall resolve such dispute through arbitration using the commercial rules of the American Arbitration Association, or such other protocols to which the Parties agree, and in that event, either Party may initiate such arbitration.

**28. Integration**

Unless otherwise expressly stated in this Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto. Specifically, this Agreement supersedes all prior agreements between the Port and Great American concerning the defense or indemnification of Environmental

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Claims arising out of the Three Occurrences, including the agreements identified in sub-paragraph A. of this Paragraph 28, subject to the exceptions set out in sub-paragraph B of this Paragraph 28, Paragraph 9 of this Agreement, or elsewhere in this Agreement:

**A. Prior Agreements**

Subject to the express exceptions set out in Paragraphs 9, 28.B., and elsewhere in this Agreement, this Agreement supersedes the following prior agreements solely as between the Port and Great American:

- (1) the 1986 Agreement;
- (2) the 1997 Agreement;
- (3) the 1998 Agreement;
- (4) the interim agreement between the Port and Great American regarding offsets for certain reimbursements from other potentially responsible parties, dated October 1, 2012;
- (5) the December 5, 2014 Letter Agreement;
- (6) the December 14, 2012 Letter Agreement;
- (7) the April 30, 2013 Letter Agreement;
- (8) the October 24, 2014 Letter Agreement;
- (9) the 2014 Agreement;
- (10) the Addendum to the 2014 Agreement entered between the Port and Great American on or about October 30, 2015;
- (11) the Addendum to the 2014 Agreement entered between the Port and Great American on or about November 2, 2016;
- (12) the Addendum to the 2014 Agreement entered between the Port and Great American on or about September 13, 2017;
- (13) the Addendum to the 2014 Agreement entered between the Port and Great American on or about December 11, 2018; and
- (14) the 2018 Agreement

**B. Exceptions**

Notwithstanding the above provisions of this Paragraph 28, the Parties specifically agree that nothing in this Agreement shall impair, release, or affect in any way:



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- (1) All terms in the 1986 Agreement that relate to agreements between the Port or Great American and other parties to the 1986 Agreement;
- (2) All terms in the 1998 Agreement relating to the Tulalip Site and Paragraph 2.17 in the 1998 Agreement;
- (3) Section VI.B. in the 2014 Agreement; and
- (4) To the extent that the release provisions in Paragraph 3 of this Agreement do not encompass a Claim that has been released under any prior agreement involving the Port and Great American, those release provisions in such prior agreements shall remain in full force and effect; and
- (5) Section 2.7 of the 1998 Agreement.

**29. Severability**

If any provision of this Agreement is held invalid, it shall be severed from the remainder of this Agreement, and the remaining provisions shall be given full force and effect, provided the payment provisions in Paragraph 2, the insurer protection provisions in Paragraph 3.E and release provisions in Paragraph 3 remain intact.

**30. Allocation of Payments by Great American**

Great American may allocate indemnity payments made by it under either this Agreement or any prior agreement for Environmental Claims to the Great American Primary Policies in its sole discretion, except that allocation of future indemnity payments pursuant to Article Two herein shall only be allocated to policies issued prior to December 31, 1977.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representatives.

Signed: \_\_\_\_\_  
For the Port Entities

Dated: August \_\_, 2020

Signed: \_\_\_\_\_  
For the Great American Entities

Dated: August \_\_, 2020



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COUNTY OF HAMILTON     )   ss.  
  )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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 \_\_\_\_\_.