

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

Gary Blanc
Sierra Pacific Industries
19794 Riverside Ave.
Anderson, CA 96007



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GUARDIAN NORTHWEST TITLE CO.

This easement is being granted for no monetary value

98718-3

DOCUMENT TITLE: Real Property Covenant, Access and Rail Easement

REFERENCE NUMBER OF RELATED DOCUMENT: N/A

GRANTOR(S): Sierra Pacific Industries

GRANTEE(S): T.J. Pounder & Co. of U.S. Inc, a North Dakota corporation operating through an operating division known as Husky Asphalt Marketing Company

ABBREVIATED LEGAL DESCRIPTION: SE 1/4, SEC 09 TWP 34N RGE 03E

ADDITIONAL LEGAL DESCRIPTION ON PAGE __ OF DOCUMENT.

ASSESSOR'S TAX/PARCEL NUMBER(S): P129949, P129950, P129951, P129952, 129953, 129954, P129955, P21268, P21234, P129963

REAL PROPERTY COVENANT
AND
EASEMENTS AGREEMENT

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

easement
JAN 25 2010

Amount Paid \$~~0~~
Skagit Co. Treasurer
By *Adam* Deputy

This REAL PROPERTY COVENANT AND EASEMENTS AGREEMENT is made and entered into as of the 13th day of January, 2010 ("Effective Date"), by and among Sierra Pacific Industries, a California corporation ("SPI") and T.J. Pounder & Co. of U.S. Inc., a North Dakota corporation operating through an operating division known as Husky Asphalt Marketing Company ("Husky").

RECITALS

A. SPI owns certain real property in Skagit County, Washington which property is more specifically depicted and described in Exhibit A attached hereto and incorporated herein including "Sierra Pacific Binding Site Plan No. PL08-0315."

B. The Binding Site Plan consists of eight (8) lots as generally depicted on Exhibit B attached hereto and incorporated herein. The total acreage of all Lots is 110.6 acres and the acreage of each Lot is as follows:

<u>Lot</u>	<u>Acreage</u>
1	11.7
2	3.8
3	3.8
4	4.0
5	6.9
6	2.2
7	6.7
8	71.5

C. Lots 2, 3, 4, 5, 6, 7 and 8 will benefit from the Railroad Easement granted herein and shall share costs associated with the Railroad Easement in the manner set forth in this Agreement. Parcel P21269, such parcel being depicted on Exhibit A attached hereto, could in the future benefit from the Railroad Easement granted herein and if rail service is established to any of these parcels they will participate in the costs associated with the Railroad Easement in the manner set forth herein. Lots 5, 6, 7 and 8 will benefit from the Roadway Easements granted herein and shall share costs associated with the Roadway Easements in the manner set forth in this Agreement.

D. Concurrently herewith, SPI has conveyed to Husky Lot 7 of the Binding Site Plan. Husky plans to build a liquid asphalt terminal facility on Lot 7 and anticipates receiving deliveries of liquid asphalt and other commodities by rail at that facility.

E. In connection with Husky's acquisition of Lot 7, Husky requires that SPI do, among other things, the following: (a) agree to provide railroad switching services for the Lot Owners; (b) grant a railroad easement benefiting certain Lots (including Lot 7) and burdening certain other Lots; and (c) grant roadway easements benefiting Lot 5, Lot 6 and Lot 7 and burdening Lot 8.

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

"Affiliate" means any Person who controls, is controlled by, or is under common control with the referenced Person. A Person "controls" another Person if the Person: (a) is a general partner, officer, director, or employer of the referenced Person; (b) directly or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced Person; (c) controls in any manner the election of a majority of the directors of the referenced Person; or (d) has contributed more than twenty percent of the capital of the referenced Person. A Person "is controlled by" another Person if the other Person: (i) is a general partner, officer, director, or employer of the Person; (ii) directly or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the Person; (iii) controls in any manner the election of a majority of the directors of the Person; or (iv) has



contributed more than twenty percent of the capital of the Person.

“Agreement” means this Real Property Covenant and Easements Agreement, as it may be amended from time to time.

“Binding Site Plan” means that certain Binding Site Plan No. PL08-0315 recorded in the real property records of Skagit County, Washington on November 16, 2009 under Auditor’s File No. 200911160068.

“Easement Areas” means the Railroad Easement Area and the Roadway Easement Areas, collectively.

“Easements” means the Railroad Easement, Roadway Easement A and Roadway Easement B, collectively.

“Lot” means any lot within the Binding Site Plan.

“Lot Owner” means the owner of any Lot within the Binding Site Plan and his successor in interest to such Lot.

“Lot Owners Association” means the association of Lot Owners described in Section 10. “Maintenance Costs” means all of the costs and expenses, collectively, of the nature described in Section 3 below incurred in maintaining, repairing and replacing the Easements, Easement Areas and the permitted improvements constructed within the Easement Areas (including but not limited to the railroad trackage within the Railroad Easement).

“Occupant” means a Lot Owner and any Person who shall be, from time to time, entitled at any time to use and occupy any portion of a Lot under any lease, license or other agreement or arrangement.

“Person” means any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity.

“Prevailing Party” means the party in any action or proceeding who receives performance from another party of an alleged breach of covenant or a desired remedy where such performance is substantially equal to the relief sought in the action or proceeding; or the party determined to be the prevailing party by a court of law, arbitrator or arbitration panel.

“Railroad Easement” means the easement granted pursuant to Section 2a(i) of this Agreement.

“Railroad Easement Area” means the area depicted on Exhibit C.

“Roadway Easement A” means the easement granted pursuant to Section 2a(ii) of this Agreement.



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"Roadway Easement B" means the easement granted pursuant to Section 2a(iii) of this Agreement

"Roadway Easement Areas" means the area depicted on Exhibit D and includes the areas for both Roadway Easement A and Roadway Easement B.

"Road" means any roadway now existing or hereafter constructed within the Binding Site Plan which has been constructed in accordance with all applicable laws and ordinances and the conditions, standards, requirements and notes set forth by the terms of the Binding Site Plan.

2. EASEMENTS.

a. Grant and Descriptions of Easements.

i. Railroad Easement. SPI hereby grants to the Owners of Lots 2, 3, 4, 5, 6, 7 and 8 within the Binding Site Plan and parcel P21269, their successors, heirs and assigns, a perpetual and non-exclusive "Railroad Easement" approximately 40-80 feet in width over, across and through the area as delineated on the Binding Site Plan and depicted on Exhibit C for the location, construction, operation, use, maintenance, restoration, repair and replacement of a railroad trackage and appurtenances thereto, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation or obstacles within the limits of the Railroad Easement Area in accordance with reasonable safety practices, reserving, however, to the Lot Owners and Occupants of those Lots adjoining the Railroad Easement Area, the right to cross over the Railroad Easement Area for ingress, egress and access to and from such adjoining Lots at the points of intersection between the Railroad Easement Area and any Road now existing or hereafter constructed within the Binding Site Plan.

ii. Roadway Easement A. SPI hereby grants to the Owners of Lots 5, 6 and 7, their successors, heirs and assigns, a perpetual and non-exclusive "Roadway Easement A" approximately fifty (50) feet in width over, across and through the area depicted as "Roadway Easement A" on Exhibit D for the location, operation, maintenance, restoration, repair and replacement of a Road and for the passage of automotive vehicular and heavy equipment traffic together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation or obstacles as reasonably necessary in connection with the aforementioned uses of such Roadway Easement A.

iii. Roadway Easement B. SPI hereby grants to the Owners of Lots 6 and 7, their successors, heirs and assigns, a perpetual and non-exclusive "Roadway Easement B" approximately fifty (50) feet in width over, across and through the area depicted as "Roadway Easement B" on Exhibit D for the location, operation, maintenance, restoration, repair and replacement of a Road and for the passage of automotive vehicular and heavy equipment traffic together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation or obstacles



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as reasonably necessary in connection with the aforementioned uses of such Roadway Easement B.

b. Free Access. Each Lot Owner shall enjoy unimpeded free access to the Easement Areas, subject to the terms and conditions of this Agreement. Unless agreed to in writing by all Lot Owners benefited by the applicable Roadway Easement, there shall be no fence, division, partition or other obstruction of any type or kind placed, kept, permitted or maintained by any Owner within the Easement Areas, except as may be permitted temporarily under the terms of this Agreement or as required by applicable law.

c. Easements Appurtenant and Run With the Land. The Easements granted herein are appurtenant to the Lots and shall constitute covenants running with Lots for the specific purpose set forth herein.

d. Termination of Easements. The Easements granted herein may be terminated only upon the written consent of all Lot Owners benefited thereby and with consent of such government or regulatory agencies as may be required under applicable law, regulation or ordinance.

3. MAINTENANCE OF EASEMENT AREAS AND IMPROVEMENTS THEREIN.

a. Obligation to Maintain Easement Areas. So long as SPI or any Affiliate of SPI is a Lot Owner, SPI shall be responsible for maintenance, repair and replacement of the Roads, railroad trackage and associated appurtenances, and other permitted improvements constructed within the Easement Areas. Such maintenance, repair and replacement shall be performed in accordance with the standards set forth herein. SPI may designate any third party (including an Affiliate of SPI) to perform its obligations under this paragraph, provided that the rates, charges and fees charged by such third party shall not exceed and shall be consistent with market rates for similar services performed in Skagit County and all work performed in the Easement Areas shall be performed by qualified repairperson licensed and bonded to perform such work; provided, further, that any such designation shall not relieve SPI or any Affiliate of responsibility for their obligations hereunder. To the extent reasonably necessary to perform its maintenance, repair and replacement obligations hereunder, SPI shall have the right to temporarily close off either or both of the Easement Areas for such time as may be reasonably necessary to repair and maintain the same; provided, however, that prior to any such closure, SPI shall deliver written notice to the Lot Owners benefited by the applicable Easement of its intention to do so and shall coordinate such closure with the affected Lots Owners so as to minimize the interference with the Lot Owners' use of the Easement Areas.

b. Allocation of Maintenance Costs.

i. Railroad Easement. All Maintenance Costs incurred in connection with maintaining, repairing or replacing the Railroad Easement, the Railroad Easement Area and the permitted improvements constructed within the Railroad Easement Area.



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shall be allocated among and shared by all of the Lot Owners in accordance with each Lot Owner's respective use of the Railroad Easement as measured by the number of rail cars shipped, received or otherwise switched by or on behalf of such Lot Owner pursuant to the Railroad Easement on an annual basis. The allocation of Maintenance Costs associated with the Railroad Easement shall be reviewed and recalculated no less frequently than once every twelve (12) months. Notwithstanding the foregoing cost sharing agreement, no Lot Owner shall have any obligation to pay for any necessary maintenance, repair or replacement to the Railroad Easement, the Railroad Easement Area or the permitted improvements constructed thereon which are necessitated by the negligence, gross negligence or intentional misconduct of a particular Lot Owner or any Person accessing property or otherwise claiming authority by, through or under such particular Lot Owner. The Railroad Easement, the Railroad Easement Area and the permitted improvements constructed within the Railroad Easement Area shall be maintained, repaired and replaced by SPI or its Affiliates in accordance with FRA Class I standards or such other standards as are necessary to permit BNSF Railway Company (or its successors and assigns) to provide uninterrupted rail service to the Lot Owners for the purposes contemplated by this Agreement (including without limitation the obligation to maintain existing interchange connections with the BNSF Railway, or its successors and assigns).

Such Maintenance Costs associated with the Railroad Easement shall include, without limitation, the cost and expense of inspecting the railroad trackage and other appurtenances located within the Railroad Easement Area, clearing snow and other obstacles from the Railroad Easement Area, and performing such maintenance and repair activities necessary to ensure safe and operable rail service over the Railroad Easement Area.

ii. Roadway Easements A & B. All Maintenance Costs incurred in connection with maintaining, repairing or replacing any Road now or hereafter constructed within either Roadway Easement Area shall be allocated among and shared by the Owners of Lots 5, 6, 7 and 8 in accordance with the acreage of such Lot as a percentage of the total acreage of such Lots, as follows:

Roadway Easement A	
<u>Lot</u>	<u>Share</u>
5	7.9%
6	2.5%
7	7.7%
8	81.9%

Roadway Easement B	
<u>Lot</u>	<u>Share</u>
6	24.7%
7	75.3%

In the event any of Lots 5, 6, 7 or 8 are hereafter subdivided or if the boundaries of any such Lot are otherwise adjusted such that the acreage of such Lot differs from the acreage set forth in Recital B above, the cost allocation set forth in this Section 3(b)(ii) shall be modified to reflect the adjusted acreage such that the Maintenance Costs associated with the Roadway Easement are shared among those Lots benefited by the Roadway Easement in accordance with their respective acreages.



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Maintenance Costs associated with the Roadway Easements may include, but are not limited to, the cost and expense of paving, patching and painting Roads situated therein in order to maintain uninterrupted vehicular access in accordance with the purposes contemplated by this Agreement. Notwithstanding the foregoing cost sharing agreement, no Lot Owner shall have any obligation to pay for maintenance, repair or replacement to the Roadway Easement Area or any Road situated thereon which are necessitated by the negligence, gross negligence or intentional misconduct of a particular Lot Owner or any Person accessing such Easement Area or otherwise claiming authority by, through or under such particular Lot Owner.

c. Maintenance Cost Documentation. Upon the request of any Lot Owner, SPI (or SPI's designee if one has been selected) shall furnish to such Lot Owner all documentation relied upon in calculating the Maintenance Cost allocations described in this Agreement, including all invoices for Maintenance Costs which have been determined to be Maintenance Costs for which such Lot Owner is proportionately responsible under this Agreement and the method of computing each Lot Owner's respective use of the Railroad Easement. SPI or its designee shall maintain such records in accessible condition for at least three (3) years after their creation.

d. Collection of Maintenance Costs.

SPI shall bill each Lot Owner for such Lot Owner's share of Maintenance Costs on an annual basis. Each Lot Owner shall have thirty (30) days from receipt of such bill to pay that bill in full or provide written objection to such bill. If no written objection is made within such 30 day period, the bill shall be deemed accepted by the Lot Owner not objecting. Unpaid Maintenance Costs shall accrue interest at the rate of ten percent (10%) per annum.

4. COVENANT TO PERFORM RAILROAD SWITCHING SERVICES.

SPI covenants to provide railroad switching services (collectively, "Services") for the benefit of all Lot Owners utilizing the Railroad Easement, as may be reasonably requested by such Lot Owner(s) from time to time, subject to and in accordance with all applicable federal, state and local laws, ordinances and regulations (including but not limited to safety, security, hazardous material and labor regulations applicable within the jurisdiction in which the Lots are situated). SPI shall provide a schedule for the Switching Services with one operating crew five (5) days per week. The Switching Services shall include moving loaded and empty rail cars between the spur tracks located on any of the Lots and the BNSF interchange; switching rail cars between such locations to relieve congestion; moving loaded and empty railcars to and from car storage locations within the Binding Site Plan or other SPI property, and counting the number of rail cars switched by or on behalf of each Lot Owner. The Services will be performed at a charge of \$15 per each complete railcar movement between such locations, shall be invoiced on a monthly basis and shall be paid by each applicable Lot Owner within thirty (30) days of the date of each such monthly such invoice.



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The undersigned parties hereby agree that the foregoing covenant is connected with the use and enjoyment of Lots 2, 3, 4, 5, 6, 7 and portions of Lot 8 within the Binding Site Plan and parcel P21269 and that such covenant enhances the value of the Lots and confers substantial benefit upon them.

5. RELOCATION OF EASEMENTS.

So long as such relocation does not materially interfere with any Lot Owner's use of either the Railroad Easement or the Roadway Easement and so long as SPI or an Affiliate of SPI is a Lot Owner, SPI shall have the right at any time to relocate the Railroad Easement and/or the Roadway Easement at its sole cost and expense, provided: (a) such relocation shall only be made without material interruption to the use of the existing Railroad Easement or Roadway Easement; (b) no Easement Area shall be relocated to an area that would permit materially less roadway or railway transportation capacity to a particular Lot Owner than the existing Railroad Easement or Roadway Easement, as the case may be; (c) such relocation may not be made (i) within the boundaries of Lot 7 or (ii) otherwise, without the written consent of any Lot Owner then owning the fee interest in any Lot through which the Easement Area is proposed to be relocated, which consent may not be unreasonably withheld, delayed or conditioned.; (d) each Lot Owner shall have free and unimpeded access to and from the Easement Area and each Lot Owner shall have the legal right to access the Easement Area, as relocated, by written easement; and (e) no Lot Owner or Occupant shall be liable for any share of the cost or expense associated with such relocation.

6. INSURANCE.

Prior to using and at all times while using the Easements, each Lot Owner, SPI and any third party designated by SPI pursuant to Section 3, as appropriate, shall purchase and maintain the following insurance coverage:

a. Workers' Compensation Insurance covering claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts which are applicable to the activities to be performed in the Easement Areas or the Binding Site Plan, in the State of Washington's statutory amount;

b. Employer's Liability Insurance with a minimum limit of \$1,000,000;

c. Commercial General Liability (CGL) insurance shall be maintained with minimum limits of \$2,000,000 each occurrence; \$2,000,000 General Aggregate; and \$2,000,000 Products/Completed Operations Aggregate. CGL insurance shall cover liability arising from premises, operations, products-completed operations, personal injury and advertising injury, non-owned automobile and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). To the extent of liability assumed pursuant to Section 7, such CGL insurance shall include the other party as Additional Insured; and

d. Commercial Automobile Liability (CAL) insurance shall be maintained



with minimum limits of \$2,000,000 per occurrence. CAL insurance shall include coverage for any owned or leased vehicle. If the CAL insurance policy maintained by any Lot Owner or SPI under this Section 6(d) covers scheduled automobiles only, in no event shall such Lot Owner operate on any property within the Binding Site Plan any automobile that is not specifically listed on such schedule.

e. All policies and coverage procured by Lot Owners and SPI as required herein (collectively, "Policies") shall include a separation of insureds clause and waiver of subrogation. Each party shall require its subcontractors to maintain in full force and effect commercially reasonable insurance coverage substantially similar in form and substance to the insurance coverage required of Lot Owners and SPI in this Section 6, as appropriate to the nature of subcontractors' operations, each with minimum limits of no less than \$1,000,000 each occurrence and/or general aggregate, as applicable. Each party shall be solely responsible for monitoring compliance by its subcontractors with the aforementioned insurance requirements.

Prior to use of an Easement and upon request, each party shall provide the other with a certificate of insurance evidencing the Policies required herein. Such certificate of insurance shall provide that the coverage required herein shall not be cancelled or reduced except by written notice to the other party, giving at least thirty (30) days prior to the effective date of such cancellation or reduction.

Husky and SPI reserve the right, as permitted by law, to provide said insurance coverage through self-insurance in lieu of or in combination with, insurance policies.

7. INDEMNITY.

Each Lot Owner other than SPI and its Affiliates shall protect, defend, indemnify and hold SPI and its agents, employees and representatives harmless for, from and against any and all claims, regardless of when such claims are brought, for physical, emotional or mental injury, death, property damage or monetary damage that arise out of or relate in any way to that Lot Owner's, or its agents, employees, representatives, contractor's or subcontractor's, (i) use of or presence on an Easement or the Binding Site Plan (including but not limited to any activity resulting in a mechanic's lien); (ii) use, storage, release, contamination, spill or spread of any Hazardous Substance(s) on, under, over or about an Easement or the Binding Site Plan; (iii) violation of any federal, state or local law, statute, regulation or ordinance; or (iv) breach or default under this Agreement.

SPI and its Affiliates shall protect, defend, indemnify and hold each Lot Owner and its agents, employees, and representatives harmless for, from and against any and all claims, regardless of when such claims are brought, for physical, emotional or mental injury, death, property damage or monetary damage that arise out of or relate in any way to SPI's, or its agents, employees, representatives, contractor's or subcontractor's, (i) use of or presence on an Easement, Lot Owner's property or any other portion of the Binding Site Plan (including but not limited to any activity resulting in a mechanic's lien); (ii) use, storage, release, contamination, spill or spread of any Hazardous Substance(s) on, under, over or about an Easement or Lot Owner's property; (iii) violation of any federal, state or



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local law, statute, regulation or ordinance; or (iv) breach or default under this Agreement.

For the purposes of this Agreement, "Hazardous Substances" shall mean and include, but shall not be limited to, any and all flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, related injurious materials, whether injurious by themselves or in combination with other materials, and all substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Combination and Liability Act, as amended, 42 U.S.C. Sections 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801, et seq.; and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901, et seq..

8. PRIORITY. This Agreement shall be superior in priority to all mortgages and deeds of trust hereafter permitted or created by any Lot Owner.

9. REMEDIES. If SPI or any other Person who may become obligated to perform the covenants contained herein fails to perform any such covenant or otherwise breaches any of the foregoing covenants, any Lot Owner may, after three (3) days' notice, take all action it deems appropriate to enforce such covenants, including (i) commencing an action for an injunction or to specifically enforce these covenants and (ii) entering upon either of the Easement Areas for the purpose of curing such breach (such as by performing or causing to be performed railroad switching services or maintenance, repair or replacement to the Easement Areas). The remedies set forth in this Section 9 shall be at the sole cost and expense of the Person failing to perform its obligations under this Agreement and such Person shall immediately reimburse the Person causing the cure for the cost thereof upon demand, including reasonable attorneys' fees and costs for enforcing such reimbursement right or otherwise pursuing an injunction or specific performance.

10. LOT OWNERS ASSOCIATION.

a. Formation Upon Consent of Lot Owners. Upon the consent of Lot Owners who, in the aggregate, own Lots having acreage equal to more than fifty percent (50%) of the total acreage of all Lots within the Binding Site Plan, the Lot Owners shall form a Lot Owners Association which shall be vested with all of the powers set forth in RCW 64.38.020, as it may be amended hereafter. The governing documents of the Lot Owners Association shall contain at a minimum the following provisions:

(i) Membership in the Lot Owners Association shall be mandatory for all Lot Owners;

(ii) The Lot Owners Association shall have the power to levy fees and dues necessary to adequately maintain all common areas, including, but not limited to, utilities, shared parking facilities, open space, landscaped areas, drainage areas, railroads, and Roads within the Binding Site Plan; and

(iii) The Lot Owners Association shall be entitled to recover attorneys' fees



and other costs and expenses reasonably incurred in collecting delinquent assessments from any Lot Owner.

11. MISCELLANEOUS.

a. Severability. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal.

b. Attorneys' Fees. If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the Prevailing Party shall be entitled to recover reasonable attorney fees and costs, in addition to any other relief to which the party may be entitled. Any such attorney fees and costs incurred by the Prevailing Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such obligation to pay attorney fees and costs is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

c. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

d. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

e. No Waiver. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time or performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

f. Interpretation. This Agreement is the result of arm's length negotiation between the parties hereto and shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.

g. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and expressly supersedes all previous or contemporaneous agreements regarding any term(s) or provision(s) of this Agreement.

h. Amendment. This Agreement may not be modified or amended except by a written instrument executed by both parties.

i. Covenant Running With Land. The Easements and the covenants set forth in this Agreement touch and concern all of the Lots within the Binding Site Plan and shall



run with the land and inure to the benefit of future Lot Owners and Occupants in perpetuity.

j. Incorporation of Exhibits. All Exhibits attached hereto are hereby incorporated by reference.

k. Successors. This Agreement is binding upon and shall inure to the benefit of all current Lot Owners and their successors in interest and shall bind every Person or entity having any fee, leasehold or other interest in any Lot or any portion of a Lot at any time.

l. Recording. A fully executed counterpart of this Agreement shall be recorded in the real property records of Skagit County, Washington.

WHEREAS the parties have executed this Agreement on the Effective Date.

SPI

Sierra Pacific Industries, a California corporation

By: 

Name: M. D. Emerson

Title: Vice President



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WHEREAS the parties have executed this Agreement on the Effective Date.

SPI

Sierra Pacific Industries, a California corporation

By: _____

Name: _____

Title: _____

THIS AGREEMENT IS ACKNOWLEDGED AND AGREED TO on the date set forth below by T.J. Pounder & Co. of U.S. Inc., a North Dakota corporation operating through an operating division known as Husky Asphalt Marketing Company

HUSKY

T.J. Pounder & Co. of U.S. Inc., a North Dakota corporation operating through an operating division known as Husky Asphalt Marketing Company

By: _____

Name: _____

Title: _____

H.C. (Chuck) Juergens

General Manager

Refined Products



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SPI ACKNOWLEDGEMENT

State of California
County of Shasta

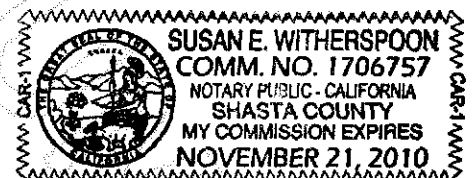
On January 13, 2010 before me, Susan E. Witherspoon,
Notary Public
(insert name and title of the officer)

personally
appeared M. D. Emmersch, who
proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledge to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan E. Witherspoon (Seal)



Skagit County Auditor

County of _____

On Jan. 13, 2010 before me,

SCOTT HIPFNER

Barrister & Solicitor

707 - 8th Avenue S.W.

Box 6525, Station D

Calgary, Alberta

T2P 3G7

(insert name and title of the officer)

H.C. (Chuck) Juergens

General Manager

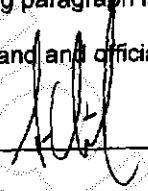
personally
appeared

who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledge to
me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

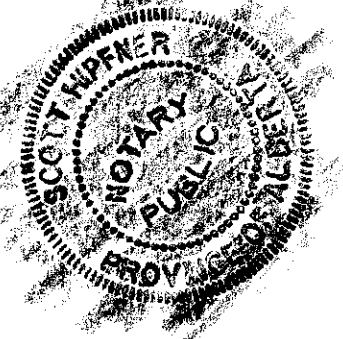
WITNESS my hand and official seal.

Signature



(Seal)

SCOTT HIPFNER
Barrister & Solicitor
707 - 8th Avenue S.W.
Box 6525, Station D
Calgary, Alberta
T2P 3G7



HUSKY ACKNOWLEDGEMENT



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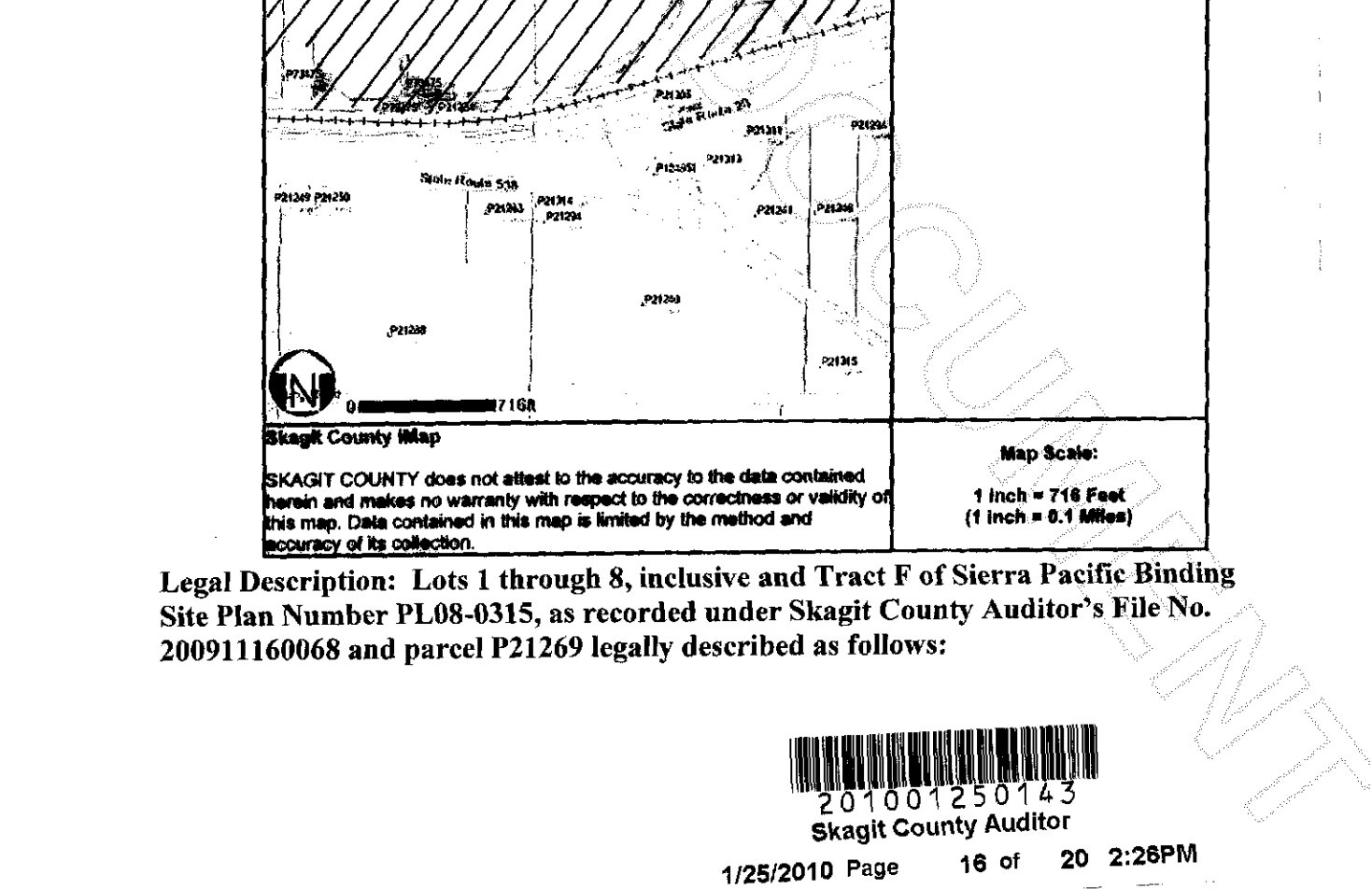
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By Road



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Exhibit A (continued)

Parcel A:

That portion of the East half of the East half of Section 9, Township 34, Range 3, W.M., described as follows:

BEGINNING at the Southwest corner of Tract B of that certain survey recorded August 27, 1980 in Volume 3 of Surveys, Page 59, under Auditor's File No. 8006270075;

Thence South $0^{\circ}33'15''$ West 500 feet ;

Thence North $89^{\circ}32'40''$ East 500 feet to the Southeast corner of that certain tract of land conveyed to the State of Washington, by instrument recorded under Auditor's File No. 549339;

Thence South $45^{\circ}02'58''$ West 190.60 feet;

Thence North $24^{\circ}08'39''$ West 93.60 feet;

Thence South $65^{\circ}51'21''$ West 79.00 feet;

Thence South $24^{\circ}08'39''$ East 123.61 feet;

Thence South $45^{\circ}02'58''$ West 85.97 feet to the East line of a 30 foot roadway easement as described by instrument recorded under Auditor's File No. 549337;

Thence South $1^{\circ}32'30''$ East along the East line of said Easement 34.90 feet to the North line of that certain tract of land conveyed to Warren and Viola Good and described in paragraph (A) by instrument recorded under Auditor's File No. 670057;

Thence South $89^{\circ}32'40''$ West 124.05 feet;

Thence North $0^{\circ}30'$ East 138.00 feet to a point on the South line of the Southeast quarter of the Northeast quarter of Section 9 which lies South $89^{\circ}32'40''$ West, a distance of 726.00 feet from the Southeast corner of said subdivision ;

Thence South $89^{\circ}32'40''$ West 610.86 feet to the Southwest corner of the Southeast quarter of the Northeast quarter of Section 9;

Thence North $0^{\circ}26'25''$ East along the West line of the East half of the Northeast quarter of said Section 9, a distance 2716.64 feet to the North line of said Section 9;

Thence North $89^{\circ}48'29''$ East 492.26 feet to the Northwest corner of said Tract B;

Thence South $0^{\circ}33'15''$ West along the West line of said tract 2064.45 feet to the point of beginning;

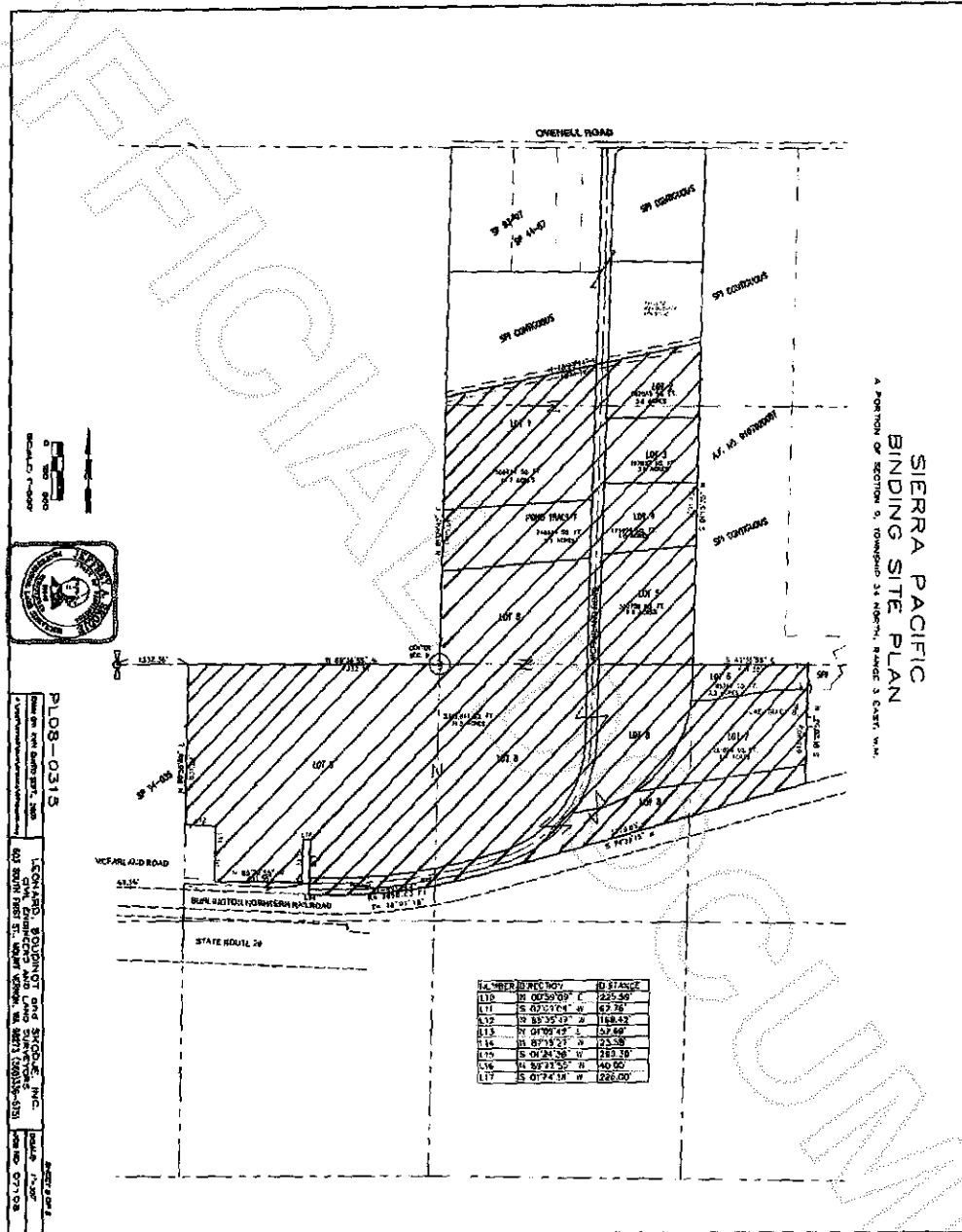
Situated in Skagit County, Washington



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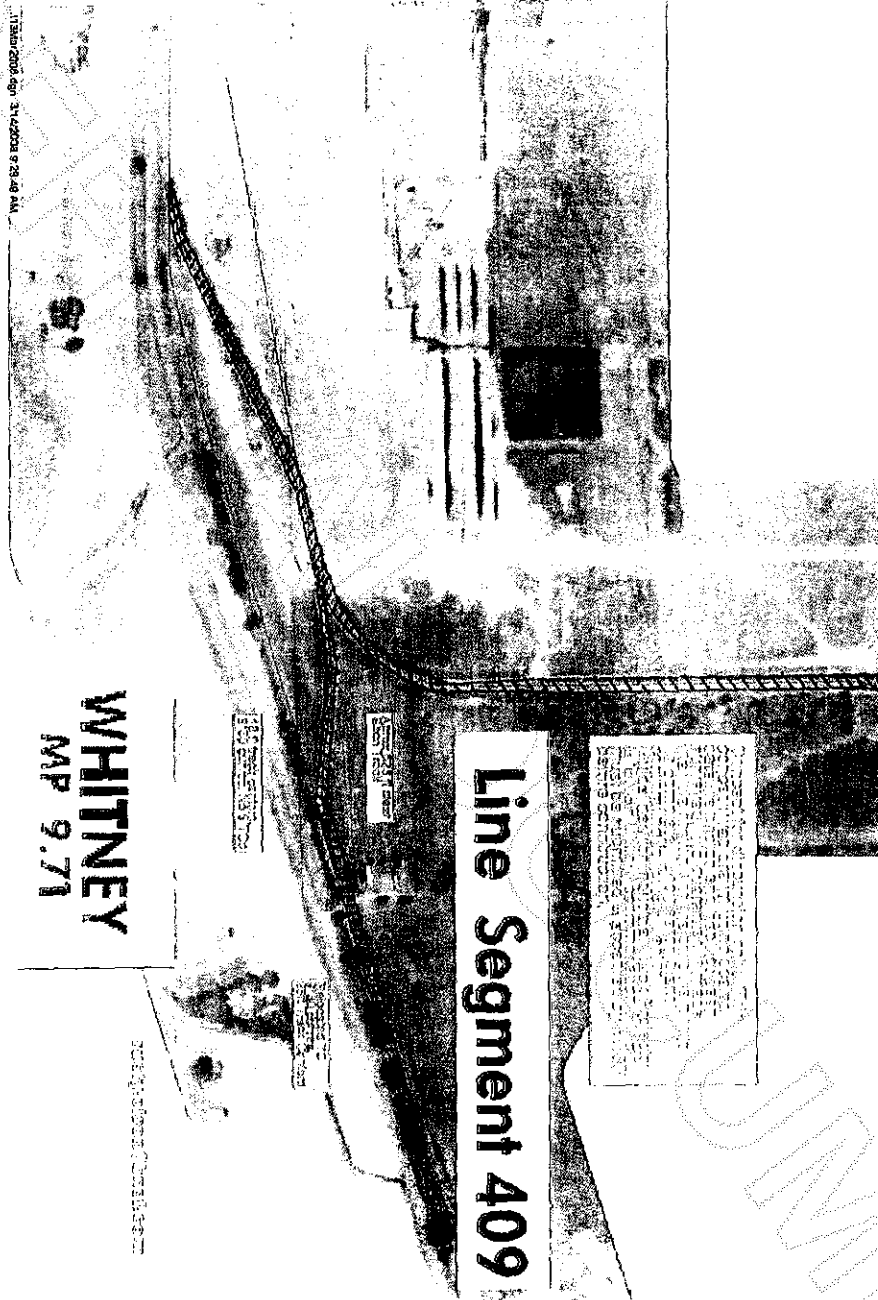
Exhibit B
Sierra Pacific Binding Site Plan PL08-0315



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Exhibit C
Description of Railroad Easement



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