

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

Husky Energy
Asphalt Marketing
707 8th Avenue SW
Box 6525 Station D
Calgary, Alberta
T2P3G7



201001250144

Skagit County Auditor

1/25/2010 Page

1 of 10 2:27PM

This easement is being granted for no monetary value

GUARDIAN NORTHWEST TITLE CO.

DOCUMENT TITLE: Use Easement

98718-4

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 6 OF DOCUMENT.

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

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

Easement

JAN 25 2010

USE EASEMENT AGREEMENT

Amount Paid ☒
Skagit Co. Treasurer
By *Hearn* Deputy

This USE EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 25th day of January, 2010 ("Effective Date"), by and among Sierra Pacific Industries, ("SPT") 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 known as "Sierra Pacific Binding Site Plan No. PL08-0315" which property is more specifically described in Exhibit A attached hereto and incorporated herein.

B. The Binding Site Plan consists of eight (8) lots as generally depicted on Exhibit B attached hereto and incorporated herein.

C. Concurrently herewith, SPI has conveyed to Husky Lot 7 of the Binding Site Plan. Husky intends to make use of Lot 7 to develop and construct thereon an asphalt cement terminal and emulsion blending plant, attendant to which SPI and Husky anticipate the generation and emission of noise, odor, vibration, fumes, vapors, exhaust, dust and fuel particles which (i) are inherent in such operations and (ii) are likely to be emitted in levels exceeding those emitted by, and which might be annoying to, other Lot Owners within the Binding Site Plan.

D. In connection with Husky's acquisition of Lot 7, Husky requires that SPI deliver this Agreement setting forth certain easements for the benefit of Husky and Lot 7 and burdening certain other Lots within the Binding Site Plan.

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

1. DEFINITIONS.

"Agreement" means this Easement 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.

"Easements" means, collectively, the easements granted herein.

"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.

"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.

2. EASEMENTS.

a. Grant and Descriptions of Easements.

SPI hereby grants to Husky, its successors, heirs and assigns, a perpetual and non-exclusive series of easements over the Binding Site Plan for the benefit of Lot 7 and burdening all other Lots within the Binding Site Plan which easements shall grant



and permit Husky, and future owners of Lot 7 so long as Lot 7 is used as an asphalt cement terminal and emulsion blending plant, the right and privilege, in the airspace above the Binding Site Plan from the surface extending upward to the limits of legal ownership, to cause or permit in said airspace: (i) noise and vibration; (ii) odor, fumes, vapors and exhaust; and (iii) dust, dirt and fuel particulates all in levels typically encountered with and reasonably attendant to the manufacture, distribution, storage and transportation of, by heavy duty truck and rail, asphalt cement, the by products and inputs thereof and the emulsion blending processes associated with the manufacture of asphalt cement; provided, however, that the foregoing activities described in items (i) through (iii) shall in no event be in violation of any applicable law, regulation or ordinance.

b. Easements Appurtenant and Run With the Land. The Easements granted herein are appurtenant to Lot 7 and shall constitute covenants running with Lot 7 for the specific purpose set forth herein. SPI and Husky agree that the Easements are connected with the use and enjoyment of Lot 7, substantially enhance the value of Lot 7 and confer substantial benefit upon it.

c. Termination of Easements. The Easements granted herein may be terminated only upon the written consent of Husky and with consent of such government or regulatory agencies as may be required under applicable law, regulation or ordinance.

3. RELEASE. SPI, on behalf itself, its successors, and assigns, hereby releases, waives and discharges any and all claims, causes of action, demands or liabilities which may hereafter accrue against Husky arising from Husky's emission of noise, odor, vibration, fumes, exhaust, dirt, dust and fuel particles which result from Husky's construction and operation of an asphalt cement terminal and emulsion blending plant on Lot 7, provided such operations are conducted in accordance with applicable laws, regulation and ordinances. The types of claims, causes of action, demands and liabilities hereby released include, but are not necessarily limited to, claims for nuisance, trespass, conversion, and physical invasion of property.

4. PRIORITY. The Easements shall be superior in priority to all mortgages and deeds of trust hereafter permitted or created by any Lot Owner.

5. 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



201001250144

Skagit County Auditor

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 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 the 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.



201001250144

Skagit County Auditor

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

SPI

Sierra Pacific Industries, a California corporation

By: *M. D. Emerson*

Name: M. D. Emerson

Title: Vice President

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: _____

Exhibit A – Legal Description of Binding Site Plan
Exhibit B – Depiction of Lots



201001250144

Skagit County Auditor

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: H.C. (Chuck) Juergens

Title: General Manager

Refined Products

Exhibit A - Legal Description of Binding Site Plan

Exhibit B - Depiction of Lots



201001250144

Skagit County Auditor

1/25/2010 Page

6 of

10 2:27PM

SPI ACKNOWLEDGEMENT

State of California
County of Shasta

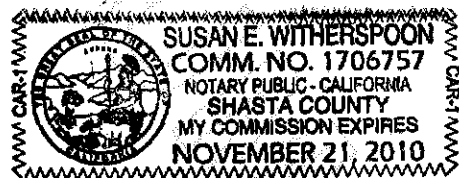
On 1-13-10 before me, Susan E. Witherspoon,
Notary Public
(insert name and title of the officer)

personally appeared M.D. Emmerson, 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)



201001250144
Skagit County Auditor

County of _____

On Jan. 13, 2010 before me,

SCOTT HIPFNER
Barrister & Solicitor
707 - 8th Avenue S.W.
Box 6525, Station D
(insert name and title of the officer)
Calgary, Alberta
T2P 3G7

personally appeared H.C. (Chuck) Juergens
General Manager
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



201001250144
Skagit County Auditor

1/25/2010 Page 8 of 10 2:27PM

Exhibit A
Legal Description of Binding Site Plan

**Lots 1 through 8, inclusive and Tract F of Sierra Pacific Binding Site Plan Number
PL08-0315, as recorded under Skagit County Auditor's File No. 200911160068**



201001250144

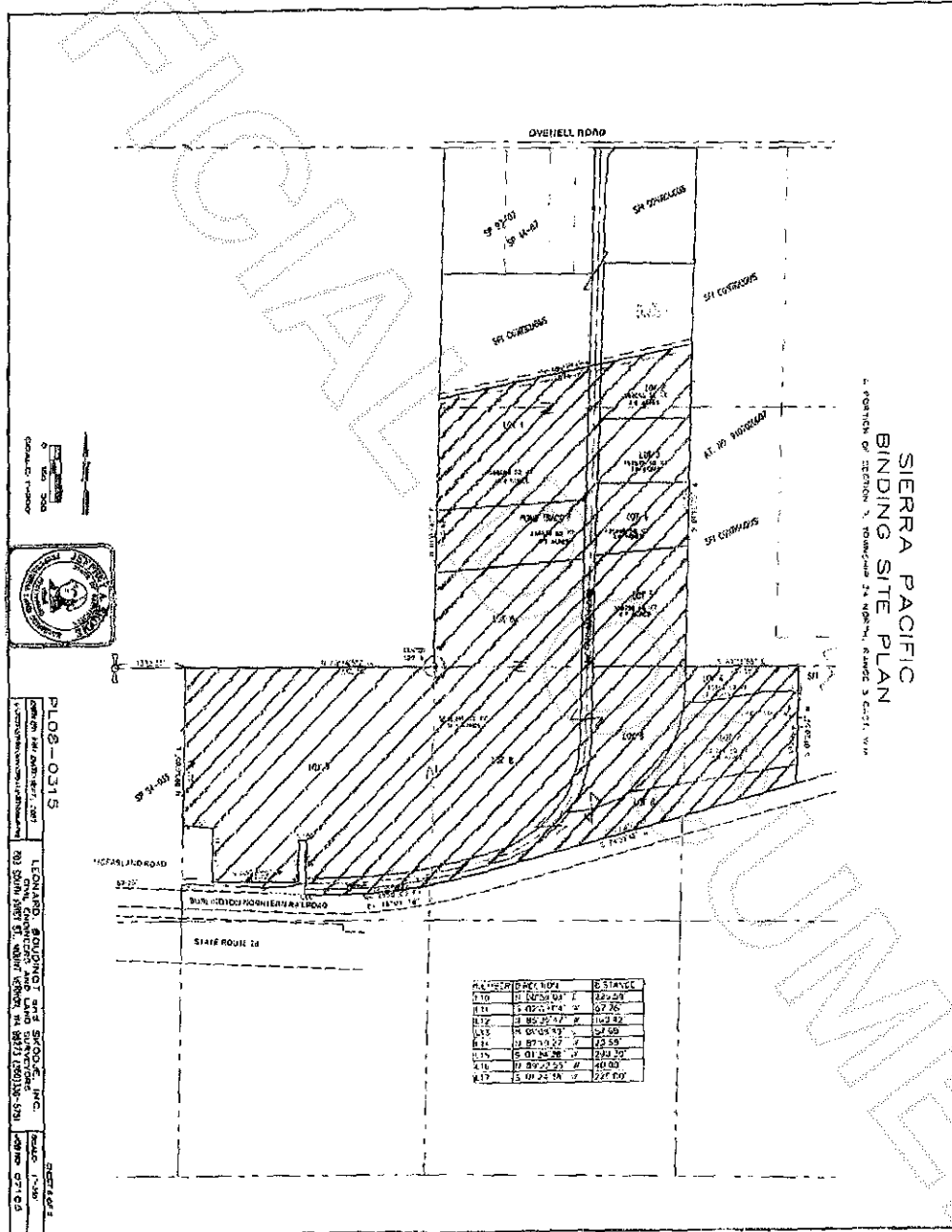
Skagit County Auditor

1/25/2010 Page

9 of 10 2:27PM

Exhibit B Depiction of Lots

Exhibit B
Sierra Pacific Binding Site Plan PL08-0315



201001250144

Skagit County Auditor