

After recording return to:

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



201001250145

Skagit County Auditor

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14 2:27PM

GUARDIAN NORTHWEST TITLE CO.

DOCUMENT TITLE: Easement

REFERENCE NUMBER OF RELATED DOCUMENT: [N/A]

98718-5

GRANTOR(S): Sierra Pacific Industries

GRANTEE(S): T.J. Pounder & Co. of U.S. Inc., operating as Husky Asphalt Marketing Company

ABBREVIATED LEGAL DESCRIPTION: SE ¼, SEC 09 TWP 34N RGE 03E

ADDITIONAL LEGAL DESCRIPTION ON PAGE 10 OF DOCUMENT.

ASSESSOR'S TAX/PARCEL NUMBER(S): P21268 to benefit P129955

This easement is being granted for monetary value

# STORM WATER EASEMENT

## PARTIES

- 1.1 Grantor. Sierra Pacific Industries, a California corporation
- 1.2 Grantee. T.J. Pounder & Co. of U.S. Inc, a North Dakota corporation, operating through an operating division known as Husky Asphalt Marketing Company

## EASEMENT

2.1 Grant of Perpetual Easement. Grantor hereby grants to Grantee a nonexclusive easement, subject to all preexisting easements, as described herein of the type described herein for the purposes described herein ("Storm Water Easement").

2.2 Purpose. The purpose of this Storm Water Easement is to allow for the construction, maintenance, operation and use of a Storm Water System over, across and under the Burdened Property.

2.3 Storm Water System. The storm water from the Benefited Property is conveyed through the Easement Area via storm lines, gutters and sheet flow above and below ground to the storm water detention and treatment facility located on a portion of Lot 8 as depicted on Exhibit A attached hereto and a part hereof, and after treatment currently exits the south side of the detention and treatment facility and ultimately discharges into the public drainage facility known as "Indian Slough" (the "**Storm Water System**"). This Storm Water System is for storm water only and does not include any process water from the operation of the asphalt cement terminal and emulsion blending plant and is for the benefit of the Benefited Property which originates at the Benefited Property.

2.4. Location of Easement Area. The location of the Easement Area is delineated in Exhibit A attached hereto.

2.5 Benefited Property. This Storm Water Easement is to benefit the following described real property situated in the County of Skagit, State of Washington:

Lot 7, "Sierra Pacific Binding Site Plan PL 08-0315" approved November 16, 2009 and recorded November 16, 2009 as Skagit County Auditor's File No 200911160068; TOGETHER WITH access and utility easements appurtenant thereto as delineated on the face of the Binding Site Plan over, across and under a Westerly portion of Lot 6 and Easterly portion of Lot 8.



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All of the above being a portion of the North ½ of the Southeast ¼ of Section 9, Township 34 North, Range 3 East W.M.

Said premises being also known as Parcel P129955.

2.6 Burdened Property. This Storm Water Easement is to burden the real property situated in the County of Skagit, State of Washington described in Exhibit B attached hereto.

2.7 Term of Storm Water Easement. The term of this Storm Water Easement is perpetual.

2.8 Appurtenant Easement. The benefits and burdens granted and imposed by this instrument shall run with the lands described herein.

2.9 Maintenance Responsibility. Except as otherwise provided in paragraph 2.10 hereof, Grantor covenants on behalf of itself and its successors in interest to the Burdened Property to maintain the Storm Water System and to ensure that the owner and/or occupier of the Benefited Property has the continuing right to use and operate the Storm Water System for the Benefited Property, including the right of discharge of storm water from the Benefited Property into the public drainage facility beyond the detention and treatment facility.

2.10 Shared Responsibility for Capital Improvements. If, after all of the lots created on the face of the Binding Site Plan recorded under AF number 200911160068 (the "New Lots"), that utilize this detention basin and treatment facility, have been fully developed and constructed, capital improvements to the Storm Water System are required by any government agency having jurisdiction over the Storm Water System, Grantor, Grantee and all other properties benefiting from the Storm Water System as provided in the Binding Site Plan shall each bear a proportionate share of such costs based upon relative impervious areas of the parcels.

2.11 Indemnity. Grantor shall protect, defend, indemnify and hold Grantee and its agents, employees, and representatives harmless for, from and against any and all claims, including without limitation common law 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 the Storm Water System and Easement Area and are caused by the acts or omissions of Grantor, including without limitation, the (i) right of operation and use by Grantee of the Storm Water System and Easement Area and discharge of storm water from the Benefited Property into the public drainage facility beyond the detention and treatment facility as provided for by Grantor in this Storm Water Easement, including paragraph 2.9 hereof; (ii) use, storage, release, contamination, spill or spread of any Hazardous Substance(s) on, under, over, into or about the Storm Water System or Easement Area by Grantor



or its agents, employees, representatives or subcontractors; (iii) violation of any federal, state or local law, statute, regulation or ordinance pertaining to the use of the Easement Area or Storm Water System by Grantor; or (iv) breach or default of Grantor's responsibility to maintain the Storm Water System as provided for in paragraph 2.9 hereof. For the purposes of this Storm Water Easement, "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..

2.12. Remedies. If Grantor herein fails to perform its maintenance responsibility as provided for in paragraph 2.9 hereof, Grantee may, after five (5) business days' notice, take all action it deems appropriate to enforce such covenant, including (i) commencing an action for an injunction or to specifically enforce this covenant and (ii) entering upon the Easement Area for the purpose of curing such breach (such as by performing or causing to be performed maintenance of the Storm Water System). The remedies set forth in this paragraph 2.12 shall be at the sole cost and expense of Grantor failing to perform its obligations under this Storm Water Easement and Grantor shall immediately reimburse Grantee for the cost of such cure upon demand, including reasonable attorneys' fees and costs for enforcing such reimbursement right or otherwise pursuing an injunction or specific performance.

2.13 Consideration. No monetary consideration shall be paid for this Storm Water Easement, consideration being the mutual benefit to Grantor and Grantee.

### **GENERAL PROVISIONS**

3.1. Severability. The unenforceability, invalidity or illegality of any provision of this Storm Water Easement shall not render any other provision unenforceable, invalid or illegal.

3.2. Attorneys' Fees. If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Storm Water Easement or because of an alleged dispute, breach, default or misrepresentation in connection with this Storm Water Easement, 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



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in its favor under this Storm Water Easement 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 Storm Water Easement and to survive and not be merged into any such judgment. For purposes of this paragraph 3.2, the "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.

3.3. Governing Law. This Storm Water Easement shall be construed and interpreted in accordance with the laws of the State of Washington.

3.4. Counterparts. This Storm Water Easement 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.

3.5. No Waiver. No waiver of any breach of any covenant or provision in this Storm Water Easement shall be deemed a waiver of any other covenant or provision in this Storm Water Easement, 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.

3.6. Interpretation. This Storm Water Easement 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.

3.7. Entire Storm Water Easement. This Storm Water Easement contains the entire Storm Water Easement between the parties with respect to the subject matter hereof, and expressly supersedes all previous or contemporaneous Storm Water Easements regarding any term(s) or provision(s) of this Storm Water Easement.

3.8. Amendment. This Storm Water Easement may not be modified or amended except by a written instrument executed by both parties.

3.9. Covenant Running With Land. This Storm Water Easement shall run with the land and inure to the benefit of future owners and occupants of the Benefited Property in perpetuity.

3.10. Incorporation of Exhibits. All Exhibits attached hereto are hereby



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incorporated by reference.

3.11 Successors. This Storm Water Easement is binding upon and shall inure to the benefit of the current owners of the Benefited Property and the Burdened Property, and their respective successors in interest to such Benefited Property and Burdened Property, and shall bind every person or entity having any fee, leasehold or other interest in such property or any portion of such property at any time.

3.12 Recording. A fully executed counterpart of this Storm Water Easement shall be recorded in the real property records of Skagit County, Washington.

SKAGIT COUNTY, WASHINGTON  
REAL ESTATE EXCISE TAX

JAN 25 2010

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



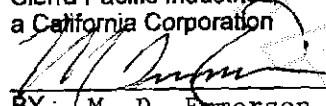
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DATED this 13<sup>th</sup> day of January, 2010.

GRANTOR:

Sierra Pacific Industries  
a California Corporation

  
BY: M. D. Emerson  
ITS: Vice President

GRANTEE:

T.J. Pounder & Co of U.S.  
a North Dakota Corporation

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_



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DATED this 13<sup>th</sup> day of Jan, 2010.


GRANTOR:

Sierra Pacific Industries,  
a California Corporation

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

GRANTEE:

T.J. Pounder & Co of U.S.  
a North Dakota Corporation

  
BY: \_\_\_\_\_  
ITS: H.C. (Chuck) Juergens  
General Manager  
Refined Products



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STATE OF WASHINGTON )

) ss.

COUNTY OF SKAGIT )

H.C. (Chuck) Juergens  
General Manager

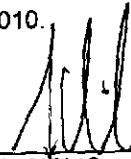
I certify that I know or have satisfactory evidence that

Refined Products

\_\_\_\_\_ is the person who appeared before me, and said  
person acknowledged that he/she signed this instrument, on oath stated that  
he/she was authorized to execute the instrument, and acknowledged it as the  
Gm, Refined Products [title] of T. J. Pounder & Co of U.S. Inc. to be the free and  
voluntary act of such party for the uses and purposes mentioned in the  
instrument.

DATED this 13 day of January, 2010.

(SEAL/STAMP)

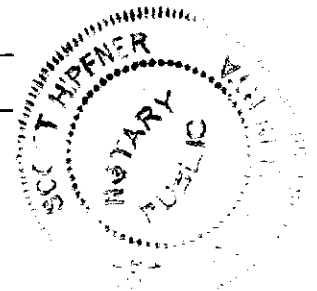


NOTARY PUBLIC

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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



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ACKNOWLEDGEMENT

State of California  
County of Shasta

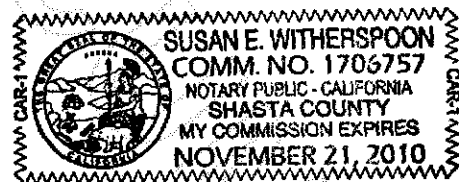
On January 13, 2010 before me, Susan E. Witherspoon,  
Notary Public  
(insert name and title of the officer)

personally appeared M.D. Emerson, 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)



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**Exhibit B**  
**Lands Burdened by the Easement**

Pond detention and treatment facilities located on a portion of Lot 8 as depicted on Exhibit A attached hereto,

That portion of the "county road and utility easements" conveyed to Skagit County by instrument recorded Auditor's File No. 200107270007 as depicted on Exhibit A attached hereto; and the private access easement granted to Lots 6 & 7 of the "Sierra Pacific Binding Site Plan PK 08-0315, recorded under AF number 200911160068 as depicted on Exhibit C attached hereto.



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# SIERRA PACIFIC BINDING SITE PLAN

PORTION OF SECTION 9, TOWNSHIP 24 NORTH, RANGE 3 EAST, W&S

001.000	1	001.000	1	001.000
001.000	2	001.000	2	001.000
001.000	3	001.000	3	001.000
001.000	4	001.000	4	001.000
001.000	5	001.000	5	001.000
001.000	6	001.000	6	001.000
001.000	7	001.000	7	001.000
001.000	8	001.000	8	001.000
001.000	9	001.000	9	001.000
001.000	10	001.000	10	001.000

PL08-0315  
LEONARD BOUDNOT and SPOUSE, INC.  
200 300th Street E., Suite 100, Maple Valley, WA 98043  
2008-07-06



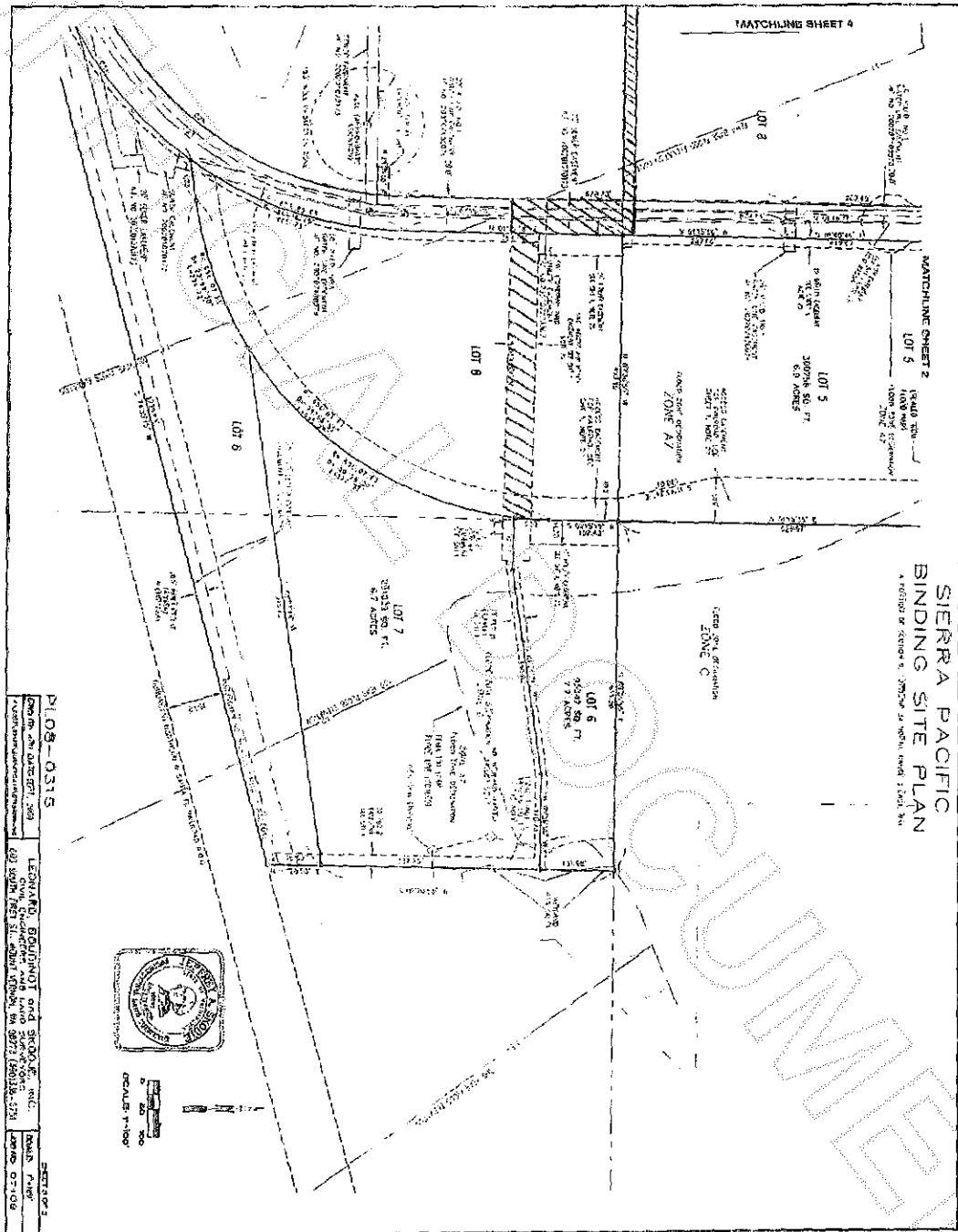
SCALE: 1"=500'

Exhibit A



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Exhibit C



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Exhibit C

