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Clark County, WA 3/13/08 2:46 PM



AFTER RECORDING
RETURN TO:

Peter H. Haller
Ater Wynne LLP
601 Union Street, Suite 1501
Seattle, WA 98101

Real Estate Excise Tax
Ch. 11 Rev. Laws 1951

EXEMPT

Affd. # Date 3-6-08
For details of tax paid see

Affd. #

Doug Lasher
Clark County Treasurer

By UM
Deputy

**EASEMENT AGREEMENT AND RESTRICTIVE COVENANT
REGARDING ENVIRONMENTAL REMEDIATION**

GRANTOR: Heritage Development, LLC, a Washington limited liability company (formerly known as Heritage Development, Inc., a Washington corporation)

GRANTEE: BOC, a division of The BOC Group, Inc.

LEGAL DESCRIPTION: Lot: 1 Volume: 1 Page: 81 Section: 12 Township: 2 Range: 1 East (Abbreviated)

ADDITIONAL LEGAL: See attached Exhibit A

ASSESSOR'S TAX
PARCEL NUMBER: 149311-000

CROSS REFERENCE: None

This Easement Agreement and Restrictive Covenant is entered into between the Grantor, Heritage Development, LLC, a Washington limited liability company, and BOC, a division of The BOC Group, Inc., the Grantee.

WHEREAS, the Grantor is the owner of certain real property (the "Property") located in Clark County, Washington, which is legally described in Exhibit A, which is attached hereto and incorporated herein, and depicted on Exhibit B, which is also attached hereto and incorporated herein.

WHEREAS, the Grantee was a party to one or more Administrative Orders on Consent ("Orders") issued by the U.S. Environmental Protection Agency ("EPA") which required the

Grantee to perform environmental clean up and remediation at the Boomsnub/Airco Superfund Site ("Site") which Site includes the Property, and

WHEREAS, the Grantee and the EPA have entered into a judicially approved consent decree ("Consent Decree") in the United States District Court Western District of Washington (Civil Action No. C07-5163 FDB) which will also require the Grantee to perform environmental clean up and remediation activities at the Site, and

WHEREAS, the Grantee, the EPA and the Washington Department of Ecology ("Ecology") require access to the Property to perform the required environmental clean up and remediation activities, and

WHEREAS, the Grantor is willing to grant a right of access over the Property for the purposes of implementing, facilitating and monitoring the aforementioned environmental cleanup and remediation activities, and

WHEREAS, the Grantor is also willing to covenant to the Grantee, to the EPA and to Ecology that it will refrain from using the Property in any manner that would interfere with or affect the implementation, integrity or protectiveness of the environmental cleanup and remediation activities to be performed by the Grantee. The foregoing covenant is not intended to prohibit the Grantor's development of the Property in accordance with applicable Clark County codes, regulations, requirements and standards, as long as such development does not interfere with or adversely affect the Grantee's performance of environmental cleanup and remediation.

NOW, THEREFORE: for adequate consideration received it is agreed as follows:

1. The Grantor on behalf of itself and their successors, transferees and assigns hereby conveys to Grantee and its representatives, successors, transferees and assigns a non-exclusive easement to enter upon the Property at reasonable times for the purposes of undertaking and completing environmental clean up and remediation activities for as long as required or as may be required by the aforementioned Orders and Consent Decree. The activities of Grantee may include but are not limited to: (a) conducting and monitoring environmental cleanup and remediation work, (b) verifying data and information related to the work, (c) conducting investigations on the Property, (d) obtaining soil and ground water samples, (e) assessing the need for, planning and implementing additional actions at or near the Site, (f) assessing the implementation of quality control practices, (g) inspecting or copying records related to the work, (h) determining whether the Property is being used consistent with the terms of the restrictive covenant contained in Paragraph 3 herein, and (i) installing and abandoning of ground water wells, pipeline, and other remediation equipment and facilities. Grantee agrees that its activities, as described herein, shall be conducted at reasonable times and in a reasonable manner to minimize any disruption of Grantor's business operations on the Property. Grantee further agrees to repair any damage to the Property caused by Grantee's activities as described herein. In

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this regard, in undertaking its activities hereunder, the Grantee shall exert best efforts to avoid impacting or interfering with the Grantor's development of the Property. At the conclusion of remediation activities on the Property and as approved by the EPA, the Grantee will remove components of the remediation system that are abandoned in place to a depth below the surrounding soil surface and shall restore surface conditions.

2. The Grantor also grants the above described rights of access for the purposes therein to the EPA and its representatives, Ecology and its representatives and other appropriate parties as designated by the EPA.

3. The Grantor on behalf of itself and their successors, transferees and assigns, hereby covenants that it shall refrain from using the Property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the environmental clean up and remediation activities for as long as these activities are being performed. The Grantor, on behalf of itself and their successors, transferees and assigns further covenants that it will not install ground water well(s) nor shall it use ground water beneath the Property for potable purposes for as long as environmental cleanup and remediation activities are being performed. The Grantor agrees that this covenant shall take effect upon execution and shall run with the land and be binding upon his successors, transferees and assigns and shall be enforceable by the Grantee, the United States on behalf of the EPA, Ecology or other appropriate parties designated by the EPA. The foregoing covenant is not intended to prohibit the Grantor's development of the Property in accordance with applicable Clark County codes, regulations, requirements and standards, as long as such development does not interfere with or adversely affect the Grantees' performance of environmental clean up and remediation.

4. Grantee hereby agrees it shall place its ground water wells, pipelines and other remediation equipment and facilities only at the locations on the Property which are not occupied by buildings as of the date of this instrument. In the future, Grantee agrees to relocate such equipment and facilities upon reasonable notice by Grantor in the event that the Grantor's approved development plans provide for the construction of buildings on portions of the Property then occupied by the Grantee's equipment or facilities. Grantor agrees to allow such relocation to occur.

5. No right of access to the Property by the general public is granted hereunder.

6. The interpretation and performance of this Access Easement and Restrictive Covenant shall be governed by the laws of the United States, or if there is no such applicable federal law, then by the laws of the State of Washington.

7. If any provision of this Access Easement and Restrictive Covenant is found to be invalid or unenforceable, the remainder of its provisions shall not be affected thereby.

8. If there are two or more persons identified as Grantors herein, the obligations imposed by this document shall be joint and several.

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IN WITNESS WHEREOF, the Grantor has executed this Access Easement and Restrictive Covenant on the 26 day of September, 2007.

J. Bryan Halbert
Heritage Development, LLC

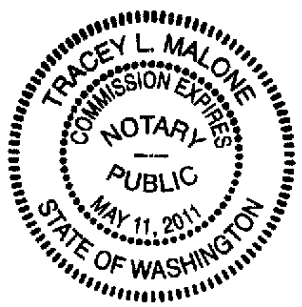
By: J. Bryan Halbert
Its: Member

STATE OF Washington)

COUNTY OF Clark)

I certify that I know or have satisfactory evidence that J. Bryan Halbert 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 MEMBER of HERITAGE DEVELOPMENT, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9-26-07



Tracey L. Malone
Name: Tracey L. Malone
Notary Public for the State of: Washington
Residing at: Vancouver, WA
My Commission expires: May 11, 2011

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EXHIBIT 'A'

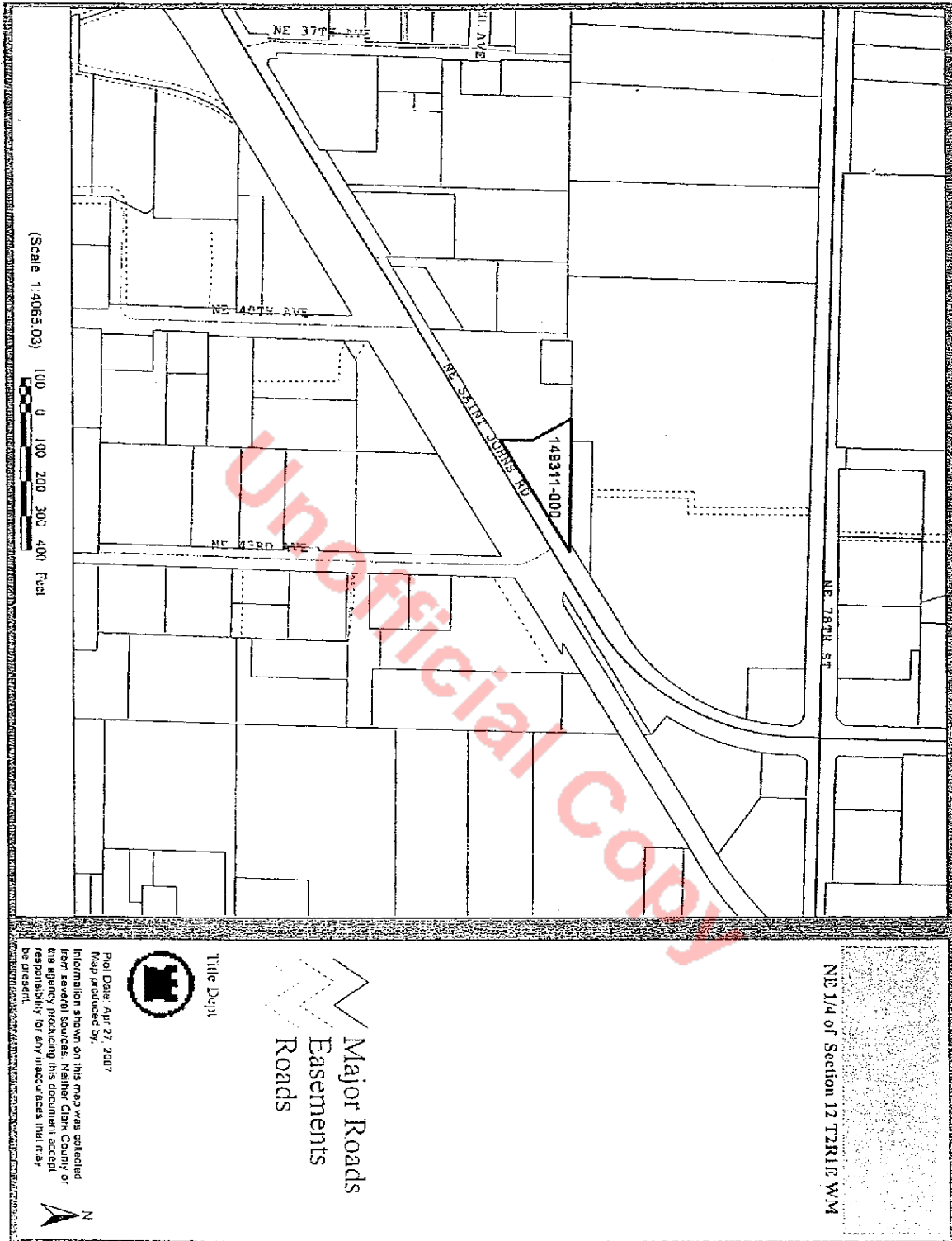
DESCRIPTION:

Lot 1 of Short Plat No. 81, recorded April 19, 1977 in Book 1 of Short Plats, Page 081, and under Auditor's File No. G 759370, records of Clark County, Washington; being a portion of Section 12, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPTING THEREFROM that portion as conveyed to Clark County, Washington under Auditor's File No. 8006250057 and Auditor's File No. 972030173 for St. John's Road.

Unofficial Copy

EXHIBIT # A



NE 1/4 of Section 12 T2R1E WM

Major Roads
Easements
Roads



Title Data

Plot Date: Apr 27, 2007
Map produced by:

Information shown on this map was collected from several sources. Neither Clark County or the agency producing this document accept responsibility for any inaccuracies that may be present.



EXHIBIT # B