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RecFee - \$89.00 Pages: 6 - ATER WYNNE LLP  
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: Powell Distributing Company, Inc. an Oregon corporation  
GRANTEE: BOC, a division of The BOC Group, Inc.  
LEGAL DESCRIPTION: Section: 12 Township: 2 North Range: 1 East  
(Abbreviated)  
ADDITIONAL LEGAL: See attached Exhibit A  
ASSESSOR'S TAX  
PARCEL NUMBER: 144510-000  
CROSS REFERENCE: None

This Easement Agreement and Restrictive Covenant is entered into between the Grantor, Powell Distributing Company, Inc. an Oregon corporation, 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.

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 the clean up is being done 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 clean up 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 that it will use its best efforts to avoid impacting Grantor's future development of the Property. Grantee agrees to repair any damage to the Property caused by Grantee's activities as described herein. Grantee further agrees that when the clean up is completed that it will prepare and record an instrument which will extinguish this Easement Agreement and Restrictive Covenant.

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.

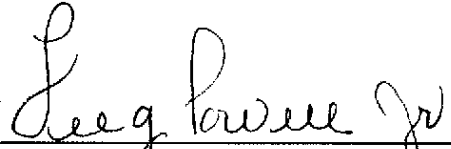
3. The Grantor on behalf of itself and their successors, transferees and assigns, hereby covenants that it shall refrain from using the Property in any manner that would interfere with or

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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.

4. No right of access to the Property by the general public is granted hereunder.
5. 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.
6. 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.
7. If there are two or more persons identified as Grantors herein, the obligations imposed by this document shall be joint and several.

IN WITNESS WHEREOF, the Grantor has executed this Access Easement and Restrictive Covenant on the 14<sup>TH</sup> day of SEPTEMBER, 2007.

  
\_\_\_\_\_  
Powell Distributing Company, Inc.

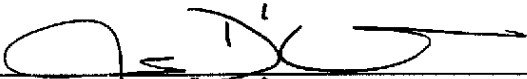
By: LEE G POWELL JR  
Its: PRESIDENT

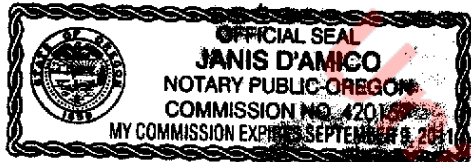
STATE OF Oregon

COUNTY OF Multnomah

I certify that I know or have satisfactory evidence that Lee G Powell Jr 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 President of POWELL DISTRIBUTING COMPANY, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Sept 14, 2007

  
Name: Janis D'Amico  
Notary Public for the State of: Oregon  
Residing at: Portland, Oregon  
My Commission expires: Sept 9, 2011



Official Copy

EXHIBIT 'A'

DESCRIPTION:

PARCEL I

That portion of Section 12, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington and of the Peter Fulkerson Donation Land Claim, described as follows:

BEGINNING at the intersection of the East line of said claim with the North line of said Section 12; thence West along the North line of said Section 210 feet; thence South parallel with the East line of said claim, 210 feet; thence East parallel with the North line of said Section 210 feet; thence North 210 feet to the Point of Beginning.

EXCEPT that portion conveyed to Clark County under Auditor's File Nos. G 292030, G 293134, 8006060015, 8008110006, 8012110054, and 3025052.

PARCEL II

BEGINNING at a point that bears South  $16^{\circ}56'47''$  West 217.74 feet from a brass disk marking the intersection of St. John's Road with the North line of said Section 12, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington, said point being on the Westerly right-of-way line of said St. John's Road; thence from a tangent which bears South  $14^{\circ}36'48''$  West, along the arc of a 676.22 foot radius curve left through a central angle of  $00^{\circ}58'11''$  a distance of 11.45 feet; thence North  $88^{\circ}22'25''$  West, 150.74 feet; thence North  $01^{\circ}52'00''$  East, 11.13 feet; thence South  $88^{\circ}22'25''$  East, 153.35 feet to the Point of Beginning.

EXHIBIT #   A

NE 1/4 of Section 12 T2R1E WM

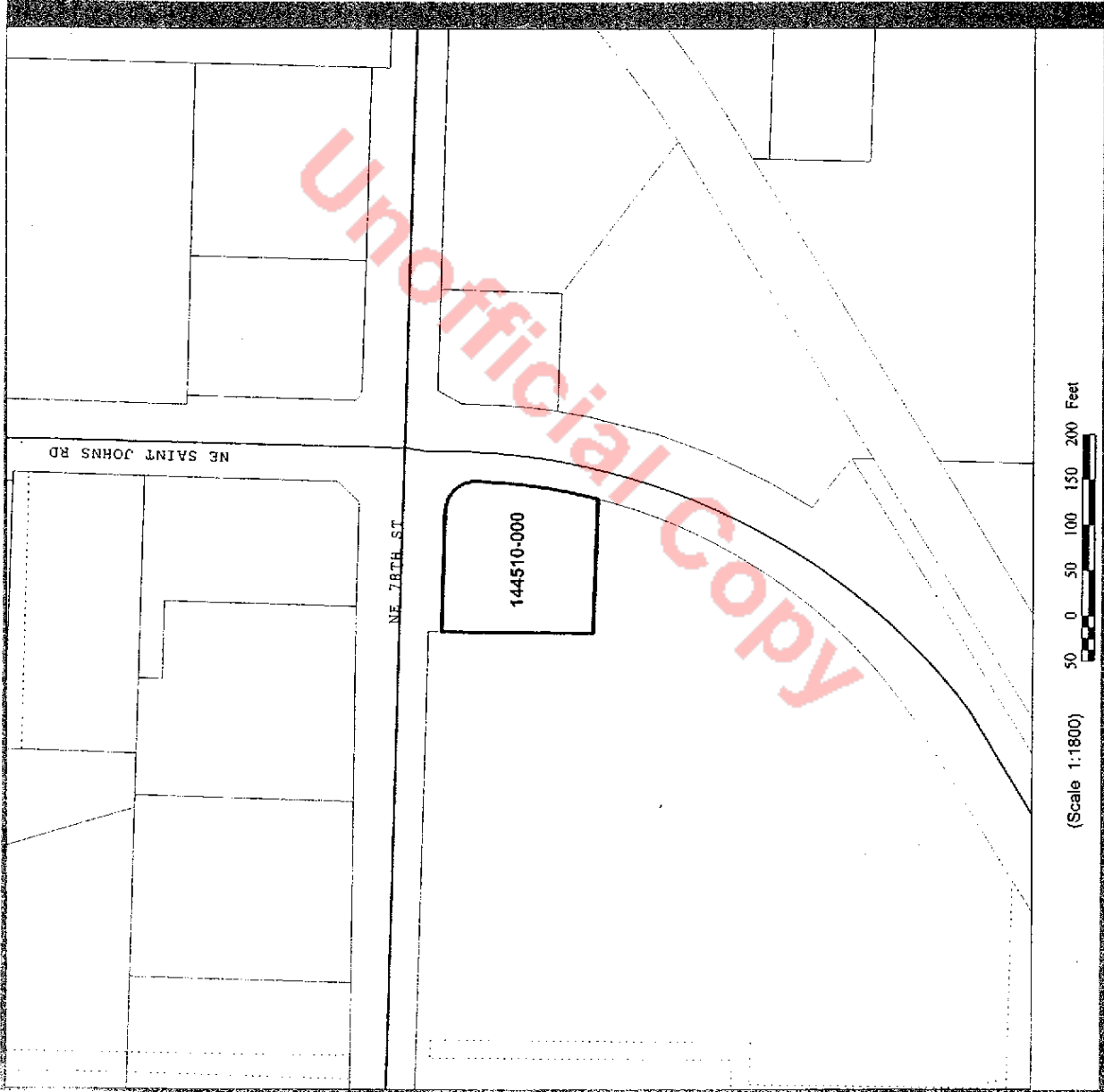
Serial Number: 144510-000  
Owner: POWELL DISTRIBUTING CO INC  
Address: 4409 NE 78TH ST

Major Roads  
Easements  
Roads

Title Dept



Plot Date: May 27, 2005  
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.



(Scale 1:1800) 50 0 50 100 150 200 Feet

EXHIBIT # B