

4442686 MULTI

RecFee - \$89.00 Pages: 6 - ATER WYNNE LLP  
Clark County, WA 4/9/08 11:51 AM



AFTER RECORDING  
RETURN TO:

e Peter H. Haller  
Ater Wynne LLP  
Suite 1501, 601 Union Street  
Seattle, WA 98101-3981

Real Estate Excise Tax  
Ch. 11 Rev. Laws 1951  
\$ 147.01 has been paid  
Recpt 623836 Date 4.9.08  
Sec. 61, see Affd. No.  
Doug Lasher  
Clark County Treasurer  
BY Deputy

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

GRANTOR: 34<sup>th</sup> Avenue Investments, LLC,  
a Washington Limited Liability corporation

GRANTEE: BOC, a division of The BOC Group, Inc.  
n/k/a Linde, Inc. a Delaware corporation

LEGAL DESCRIPTION: NW quarter of Section 12, T 2 North, R 1 East, W.M.  
(Abbreviated)

ADDITIONAL LEGAL: See attached Exhibit A

ASSESSOR'S TAX  
PARCEL NUMBER: 097835-011

OTHER REFERENCES: None

This Easement Agreement and Restrictive Covenant is entered into between the Grantor, 34<sup>th</sup> Avenue Investments, LLC, a Washington limited liability corporation, and BOC, a division of The BOC Group, Inc., the Grantee.

WHEREAS, according to Title Report Order No. K157014, by Chicago Title Insurance Company, dated August 29, 2007, and the records of Clark County, Washington, the Grantor is the owner of certain real property (the "Property") located in Clark County, Washington, which is legally described in Exhibit A, and depicted in Exhibit B, which are attached hereto and incorporated herein, and

WHEREAS, Grantor is not aware of any other party with an ownership interest in the Property, and

WHEREAS, the Grantee was a party to one or more administrative orders on consent ("Agreed 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 entered into a judicially approved consent decree ("Consent Decree") in the United States District Court for the Western District of Washington (Civil Action No. C07-5163 FDB) on June 29, 2007, which also requires the Grantee to continue to perform environmental clean up and remediation activities at the Site, and

WHEREAS, the Grantee requires continued 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, its successors, transferees and assigns hereby conveys without warranty 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 Agreed 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, maintaining and abandoning of ground water wells, pipeline or other remediation equipment or facilities. In undertaking its activities hereunder, the Grantee shall make reasonable efforts to avoid impacting the Grantor's development of the Property.
2. The Grantor also grants the above described rights of access for the purposes herein 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, its successors, transferees and assigns 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, its

successors, transferees and assigns further covenants that it shall not install ground water wells nor shall it use ground water beneath the Property for as long as environmental cleanup and remediation activities are being performed. The Grantor agrees that this covenant shall be effective upon execution and shall run with the land and be binding upon its 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. The grantee shall exercise its rights hereunder so as not to materially interfere with the use of the easement area by the Grantor or its assigns or successors. At such time as the use of any well(s) installed in the easement area by the Grantee is (are) no longer required by the Grantee, the Grantee shall remove/abandon same in accordance with all applicable regulatory requirements. As part of the Grantee's installation of or removal/abandonment of any well(s) hereunder, the Grantee shall repair any damage to the roadway occupied by 34<sup>th</sup> Avenue. The Grantee agrees to indemnify and hold harmless the Grantor and its officers, directors and employees against any claim or cause of action related to the Grantee's installation, monitoring, use of or removal/abandonment of any well(s) that the Grantee has installed pursuant to this Access Easement and Restrictive Covenant.

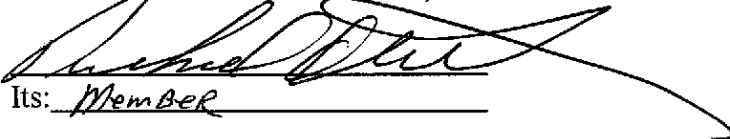
5. The interpretation and performance of this Access Easement and Restrictive Covenant shall be governed by the laws of the United States, or if there is no such applicable federal law, then by the laws of the State of Washington.

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 parties identified as Grantors herein, the obligations imposed by this document shall be joint and several. Any person(s) executing this Access Easement and Restrictive Covenant represent that he/she/they have the authority to do so on behalf of the Grantor.

IN WITNESS WHEREOF, the Grantor has executed this Access Easement and Restrictive Covenant on the 28<sup>th</sup> day of September 2007.

34<sup>th</sup> AVENUE INVESTMENTS, LLC

  
Its: Member

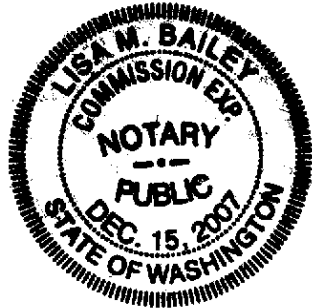
STATE OF WASHINGTON

COUNTY OF CLARK

I certify that I know or have satisfactory evidence that RICHARD DBEST 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 34<sup>th</sup> AVENUE INVESTMENTS, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 28, 2007



Lisa M. Bailey  
Name: Lisa M. Bailey  
Notary Public for the State of: Washington  
Residing at: Vancouver  
My Commission expires: 12-15-07

Unofficial Copy

CHICAGO TITLE INSURANCE COMPANY

EXHIBIT 'A'

DESCRIPTION:

ORDER NO: K153806

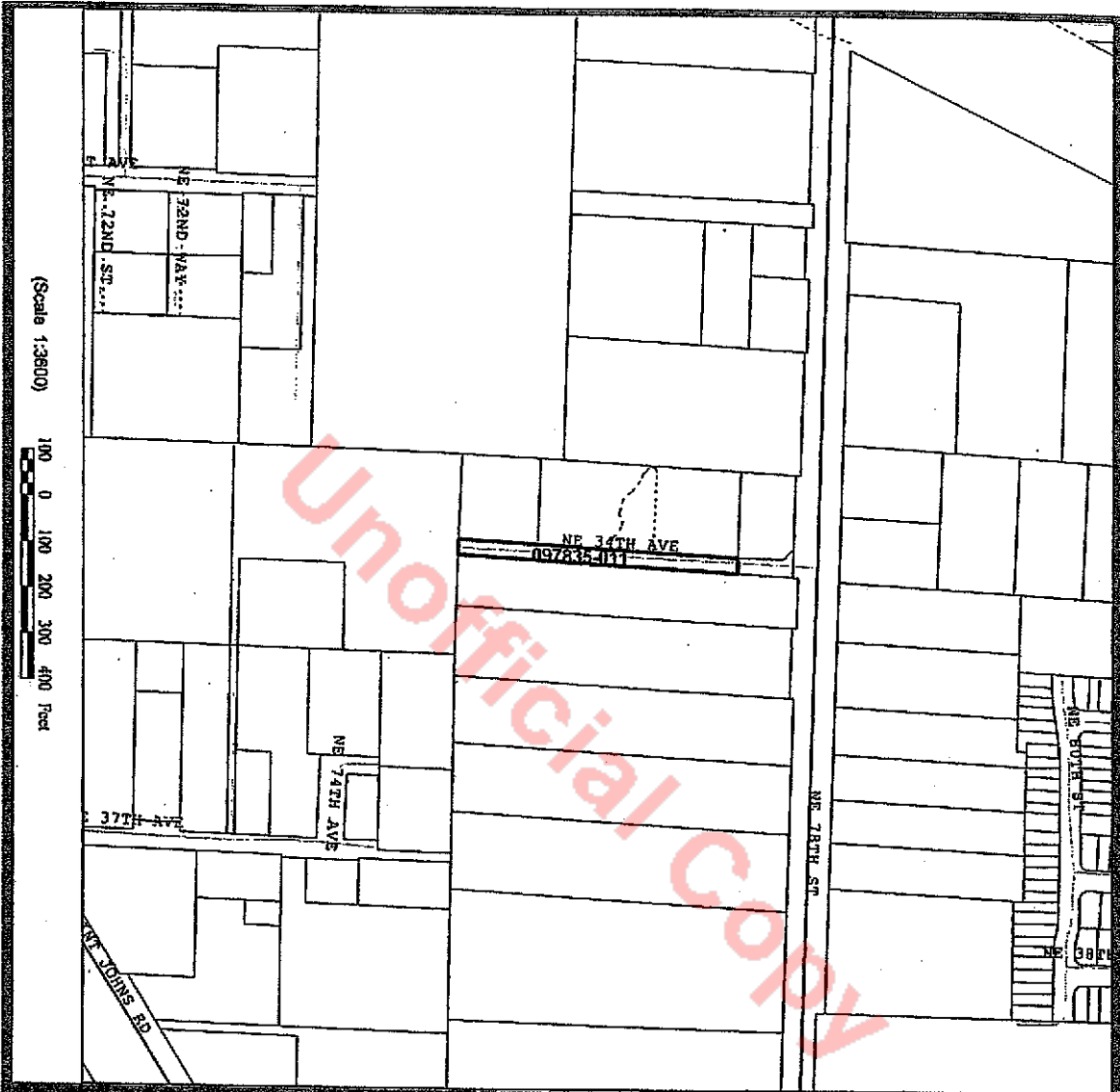
A parcel of property in the James Fitzgerald Donation Land Claim in the North half of Section 12, Township 2 North, Range 1 East of the Willamette Meridian, in Clark County, Washington, and being Lot 1, Hidden Garden Tract, as recorded in Volume 'E' of Plats at Page 67, records of said County.

EXCEPT the following described tract:

COMMENCING at the Southeast corner of said Lot 1; thence North  $03^{\circ}47'12''$  East along the East line of said Lot 1 a distance of 608.66 feet to the TRUE Point of Beginning; thence North  $87^{\circ}17'50''$  West 223.06 feet to the West line of said Lot 1; thence North  $03^{\circ}34'40''$  East along said West line 169.28 feet to the North line of said Lot 1; thence South  $88^{\circ}12'11''$  East along said North line 223.77 feet to the Northeast corner of said Lot 1; thence South  $03^{\circ}47'12''$  West along the East line of said Lot 1 a distance of 172.83 feet to the TRUE Point of Beginning.

EXCEPT N.E. 34<sup>th</sup> Avenue.

EXHIBIT #     A



(Scale 1:3800)

100 0 100 200 300 400 Feet

Serial Number: 09753-011  
 Owner: 34TH AVE INVESTMENTS LLC  
 Address: 0

NW 1/4 of Section 12 T2R1E WM

Major Roads  
 Easements  
 Roads

EXHIBIT # B



Title Dept

Print Date: Jan 29 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.

