STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by: **Barbee Mill Co., Inc.**	**FIRST AMENDMENT to AGREED ORDER** **No. DE 5396**

TO: **Barbee Mill Co., Inc.**
Attention: Mr. Robert Cugini, Vice President
P. O. Box 359
Renton, WA 98057

The Parties hereby agree to the following minor amendment to Agreed Order No. DE 5396:

1. **Agreed Order Section VII, Terms and Conditions of Order**, was originally improperly numbered, and is hereinafter referred to as **Section VIII**.

2. Without affecting the enforceability of any other section, **Section VIII.Q (Financial Assurances)** is wholly substituted and replaced to read in full as follows.

Q. Financial Assurances

Pursuant to WAC 173-340-440(11), the Barbee Mill Co., Inc. shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures. However, Ecology agrees that the Barbee Mill Co., Inc. need not provide financial assurance to cover the completion of the storm water pond as described in Section VII.A.f, as long as Conner Homes at Barbee Mill provides a bond to the City of Renton, which the City finds acceptable, to secure the completion of this work. Except in the event of (1) Barbee Mill Co., Inc.'s dissolution, (2) Barbee Mill Co., Inc.'s bankruptcy, or (3) in circumstances where compliance with the following terms would be futile or impossible, Ecology agrees not to seek funds from these financial assurance mechanisms without first substantially complying with any and all Ecology obligations under Section VIII.E (regarding insufficient progress), Section VIII.B (Remedial Action Costs), and Section VIII.C (Implementation of Remedial Action). Additionally, except in the event of (1) Barbee Mill Co., Inc.'s dissolution, (2) Barbee Mill Co., Inc.'s bankruptcy, or (3) in circumstances where seeking payment from Barbee Mill Co., Inc. would be futile or impossible, Ecology agrees to provide Barbee Mill Co., Inc. with at least ninety (90) days to pay Ecology's remedial action costs, as described under Section VIII.B, before seeking funds from the financial assurance mechanisms for these costs.

Before accessing funds from the financial assurance mechanisms for the first time, Ecology shall provide Barbee Mill Co., Inc. with 14 calendar days written notice. After accessing financial assurance funds for the first time, Ecology shall thereafter provide Barbee Mill Co., Inc. with, at a minimum, concurrent notice of written demands for financial assurances funds. However, in no event will Ecology be required to provide Barbee Mill Co., Inc. with notice under this paragraph in the event Barbee Mill Co., Inc. dissolves or is otherwise no longer available to be reached after Ecology's reasonable attempts to contact Barbee Mill Co., Inc. through Barbee Mill Co., Inc.'s designated Project Coordinator.

Within sixty (60) days of the effective date of this Order, the Barbee Mill Co., Inc. shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. On or before December 20, 2010, the Barbee Mill Co., Inc. shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology. After initially providing financial assurances in a form acceptable to Ecology, Barbee Mill Co., Inc. may choose at any time to change financial assurance mechanisms by providing proof of the new financial assurances mechanism sufficient to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures (except for costs to cover completion of the storm water pond in the circumstances described above), in a form acceptable to Ecology. Once Ecology has approved the new financial assurances mechanisms, Ecology shall provide Barbee Mill Co., Inc. with a written release of the superseded financial assurance mechanisms.

The Barbee Mill Co., Inc. shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of the Barbee Mill Co., Inc.'s fiscal year if the financial test or corporate guarantee is used, and

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the work to be performed under this Order that results in increases or decreases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified scope of work for this Order will revise the anniversary date established under this Section to become the date of issuance of such revised or modified scope of work.

Effective date: Dec 16, 2010.

BARBEE MILL CO., INC.

Robert Cugini
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DEPARTMENT OF ECOLOGY

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