RECEPTION#: 2007000007612 01/22/2007 at 11:54:39 AM, 1 OF 24, Doc Type:COV
Karen Long, Adams County, CO

RECEPTION#: 2007000013669,
02/07/2007 at 02:58:36 PM,1 OF 28,
Doc Type:COV
Karen Long, Adams County, CO

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RECORDED AS RECEIVED

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ADAMS COUNTY COLORADO SEAL

ENVIRONMENTAL COVENANT

Broderick Investment Company ("BIC") grants an Environmental Covenant ("Covenant") this 14 day of ~~August~~ December, 2006 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq*. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

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WHEREAS, BIC is the owner of certain property commonly referred to as Broderick Wood Products Superfund Site, located at 5800 Galapago Street, Adams County, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

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WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § § 9601, et seq. ("CERCLA"), the Property is the subject of an enforcement and remedial action pursuant to the Broderick Wood Treatment Site Record of Decisions ("ROD"), Broderick Wood Products Operable Units 1 and 2, dated March 24, 1992 and the Explanation of Significant Differences ("ESD") dated February 1995, modifying the ROD, the Consent Decree between the United States of America, the Department, and BIC in Civil Action No. 86-Z-369, entered June 26, 1995 ("Consent Decree"), and the Statement of Work ("SOW") required pursuant to that Consent Decree (collectively "the CERCLA Remedial Action Documents"); and

WHEREAS, BIC desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind BIC, its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department and the United States Environmental Protection Agency ("EPA") as a third party beneficiary.

NOW, THEREFORE, BIC hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 11, below, which shall run with the Property in perpetuity and be binding on BIC and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land. As used in this Environmental Covenant, the term OWNER means the record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the

Certified to be a full, true and correct copy of the Recorded Document consisting of 24 pages in my custody.
KAREN LONG, Adams County Clerk & Recorder
By [signature] Date 1/26/07

X X

{00320693.2}

X

RETURN TO:
DUFFORD AND BROWN
1700 BROADWAY, SUITE 2100
DENVER, CO 80202
ATTN: AMY WILSON

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*** This Environmental Covenant is being re-recorded to include the complete version of Figure G-1.

Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1. Use Restrictions

A. **Prohibition on Residential and Public Use**. No residential use shall be permitted on the Property, including, but not limited to, any single family or multi-family residential dwelling or living unit, whether permanent or temporary, and no playgrounds, parks, schools, daycare centers (whether independent or ancillary to a permitted use), recreational facilities of any type, community centers, hospitals, or adult care centers shall be located at the Property.

B. **Prohibition on Agricultural Use**. No agricultural use of the Property is permitted, including but not limited to, the cultivation or storage of any crop or the grazing, feeding or keeping of any animal for agricultural or commercial purposes. Ornamental landscaping may be permitted at the Property, provided all such landscaping activities are done in accordance with the Materials Management and Health and Safety Plan set forth in Subparagraph C, immediately below.

C. **Restriction on Excavation**. No excavation of any soils at the Property or underneath the soil cover shall occur except pursuant to the Materials Management and Health and Safety Plan (the "Plan"), attached hereto and incorporated herein as if set forth in full.

D. **Prohibition on Use of Water**. No development of surface water on the Property or groundwater under the Property shall occur except as provided in the CERCLA Remedial Action Documents.

E. **Prohibition on Well Construction**. No digging, boring, drilling, or constructing of well of any kind on the Property shall occur except for those wells used for groundwater monitoring purposes as provided in the CERCLA Remedial Action Documents.

F. **Protection of the Integrity of CERCLA Remedial Actions**. Owner shall not use the Property in any way that interferes with the operation and/or maintenance of the CERCLA Remedial Actions, including, but not limited to, the groundwater monitoring wells, any equipment or infrastructure constructed or used for the CERCLA Remedial Actions, or any cap or other covering intended to prevent contact with contaminated materials in the ground or at the surface.

2. Purpose of This Covenant. The purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substances that remain on the Property. The Covenant will accomplish this by minimizing those activities that result in disturbing the ground surface, and by implementing the institutional controls called for in the CERCLA Remedial Action and by insuring that no action interferes with the CERCLA Remedial Action features at the Property.

3. Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. BIC or its successors and assigns may request that

BIC

the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

a) a proposal to perform additional remedial work;

b) new information regarding the risks posed by the residual contamination;

c) information demonstrating that residual contamination has diminished;

d) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and other appropriate supporting information.

4. Conveyances. Owner shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property.

5. Notices to Lessees. Owner agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

6. Notification for Proposed Construction and Land Use. Owner shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

7. Inspections. The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

8. No Liability. The Department does not acquire any liability under State law by virtue of accepting this Covenant, nor does EPA acquire any liability under State law by virtue of being a third-party beneficiary.

9. Enforcement. The Department may enforce the terms of this Covenant pursuant to § 25-15-322, C.R.S. BIC and the EPA may file suit in district court to enjoin actual or threatened violations of this Covenant.

10. Owner's Compliance Certification. OWNER shall submit a Report to the Department detailing any lack of compliance with terms of this Covenant. This Report shall be submitted to the Department within 20 days of the OWNER reasonably becoming aware of the events prompting the need to provide such a Report.

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11. Notices. Any document or communication required under this Covenant shall be sent or directed to:

Broderick Wood Treatment Superfund Site Project Officer
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

And to:

Robert J. Eber
Assistant Attorney General
Environment and Natural Resources Section
Hazardous and Solid Waste Unit
Colorado Department of Law
Denver, CO 80203

With reference to the Broderick Wood Products Superfund Site

And to:

Remedial Project Manager (8EPR-SR)
Broderick Wood Treatment Superfund Site
U.S. Environmental Protection Agency
999 18th Street
Suite 300
Denver, CO 80202-2466

BIC has caused this instrument to be executed this 14 day of December, 2006.

Broderick Investment Company
390 Interlocken Crescent, Suite 490
Broomfield, CO 80021

By: _____
Tom H. Connolly

Title: Trustee

STATE OF Colorado)
) ss:
COUNTY OF Broomfield)

The foregoing instrument was acknowledged before me this 14th day of December, 2006 by Tom H. Connolly on behalf of BIC.

Notary Public

390 Interlocken Cres. #490
Address
Broomfield, Co 80021

My commission expires: 1-25-2008

Accepted by the Colorado Department of Public Health and Environment this 18th day of January, ~~2006.~~ 2007

By: Gary W. Baughman
Title: Director, HMWMD

STATE OF Colorado)
) ss:
COUNTY OF Arapahoe)

~~2006~~ 2007 The foregoing instrument was acknowledged before me this 18th day of January ~~2006~~ by Gary W. Baughman on behalf of the Colorado Department of Public Health and Environment.

Notary Public

4300 Cherry Creek Drive
Address
Denver Co 80246

My commission expires: 2-29-08