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Id. Dept. of Env. Quality
2008 APR 16 A 11:49

Recording Requested By and
When Recorded Return to:

749679

MARIE SCOTT
BONNER COUNTY RECORDER
LA DEPUTY

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

DECLARATION OF ENVIRONMENTAL COVENANT

This Declaration of Environmental Covenant (Declaration) made by Ivan and Hazel M. Sleight, ("Property Owner") its successors and assigns, and the Idaho Department of Environmental Quality ("Department"), its successors and assigns, sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Restrictions") designed to protect natural resources and maintain air and water quality, upon and subject to which the Property (as identified below) and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and/or conveyed.

Each and all of the Restrictions are imposed pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015, and the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130. For purposes of this Declaration, the Department shall be a "holder" as defined in Idaho Code § 55-3002(6). Property Owner and the Department agree that each and all of the Restrictions are enforceable by the Department, against Property Owner.

Ownership. Property Owner is the fee simple owner of certain real property near the City of Spirit Lake, County of Bonner, State of Idaho, described as NW 1/4, NE 1/4, Section 31, Township 54 North, Range 4 West of the Boise Meridian (hereafter referred to as "the Property") and is subject to this Declaration.

Provisions to Run With the Land. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

Recording/Filing of Declaration. This Declaration and any amendment or termination of the Declaration shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Declaration is located. The Declaration shall be recorded within five (5) days of the effective date of this Declaration. Property Owner shall provide to the Department a copy of this Declaration evidencing its recording in compliance with this provision within ten (10) days of the effective date of this Declaration. In addition, a copy of the recorded Declaration shall be provided by Property Owner to the following persons: (a) each person that signed the Declaration; (b) each person holding a recorded interest in the real property subject to the Declaration; (c) each person in possession of the real property subject to the Declaration; (d) each municipality or other unit of local government in which real property subject to the Declaration is located; and (e) any other person the Department requires. The validity of the Declaration is not affected by failure to provide a copy of the Declaration as required under this section. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Reason for Restrictions. The Property described above was previously used to operate Hico of Spirit Lake (a petroleum storage tank system), becoming contaminated with hazardous materials, including, without limitation, benzene, toluene, total xylenes, and petroleum hydrocarbons. On February 28, 2007, Coleman Oil, the operator of the petroleum storage tank system, notified the Department of a release at the Property and began the clean-up. Coleman Oil implemented a corrective action plan ("CAP") on the Property. This Declaration is required because after implementing the CAP there are residual concentrations of petroleum constituents in soil underlying the Property. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Property shall be limited to protect human health and the environment.

Restrictions on Use. By acceptance and recordation of this Declaration, Property Owner, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as set forth below. Property Owner, and respective successors in interest, shall be solely responsible for demonstrating that use in the Property is in conformity with the following:

1. No residential buildings of any kind or nature shall be constructed or located on the Property.
2. The Property, and any portion thereof, may be used for commercial and industrial uses only. The Property shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
3. There shall be no excavation of soil at, and there shall be no extraction of ground water under, the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.
4. Any activity on the Property that may result in the release or exposure to the environment of a petroleum constituent that remains on the Property as part of the CAP is prohibited without prior written approval from the Department.

The foregoing restrictions on use are herein referred to as the "Restricted Uses."

The Restricted Uses are imposed out of an abundance of caution due to the former use of the Property and because certain environmental risk evaluations of the Property indicate the presence of petroleum hydrocarbons at various locations in the soils which may present a risk to public health and the air and water quality at the Property. Property Owner intends further that the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from releases or threatened release of hazardous substances or petroleum hydrocarbons.

Amendment by Consent. The Declaration may be amended by consent pursuant to Idaho Code § 55-3010.

Termination by Consent. The Restricted Uses set forth above shall apply to the Property, or any subdivided portion thereof, unless Property Owner, or its successor in interest, applies to the Department to have this Declaration removed with respect to all or part of the Property and:

1. the Property or subdivided portion thereof is shown in a Department approved investigation or risk assessment not to contain contaminated soils or groundwater; or
2. contaminated soils and groundwater are remediated to levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Thereafter, the Declaration shall then be terminated pursuant to Idaho Code § 55-3010(1).

Conveyance of Property. Within thirty (30) days of the closing of any sale, lease, or other conveyance of all or any portion of the Property, the former Owner (in the case of a sale) or Occupant (in the case of a lease) and the then current Owner or Occupant of the Property, or part thereof, conveyed shall provide written notice to the Department of the name and address of all the then Owners and/or Occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Declaration, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, or by administrative order.

Enforcement. Failure of Property Owner, or its successor in interest, to comply with any of the Restrictions set forth herein shall be grounds for the Department, or its successor, to require that the Owner modify or remove any improvements, including without limitation, all buildings, regradings and subsurface structures or wells, constructed in violation of this Declaration. Violation of this Declaration shall be grounds for the Department, or its successor, to file civil actions against the Owner as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Property Access. The Department shall have a right of access to the Property for the purposes of ensuring compliance with the Declaration and the Restricted Uses.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as either Property Owner or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

PROPERTY OWNER:

Hazel and Ivan Sleight
PO Box 692
Hayden Lake, ID 83835

THE DEPARTMENT: Idaho Department of Environmental
Quality

ATTN: Joe Nagel
1410 N. Hilton
Boise, ID 83706

Costs and Expenses. All costs of removing this Declaration, including the cost of any remediation or abatement of any environmental condition of or pertaining to the Property, regardless of mechanism used and the frequency thereof, shall be borne by the party seeking such removal.

Partial Invalidity. If any portion of the Declaration or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Declaration are solely for the convenience of the parties and are not a part of the Declaration.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Declaration, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Declaration shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and Property Owner or any other responsible party. Nothing in this Declaration shall affect the obligations of Property Owner or any other responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this Declaration shall be the date of signature by the Department.

Accepted:

Idaho Department of Environmental Quality - Holder

Signature: 

Printed Name: Toni Hardesty

Title: Director, Idaho Department of Environmental Quality

Date: _____

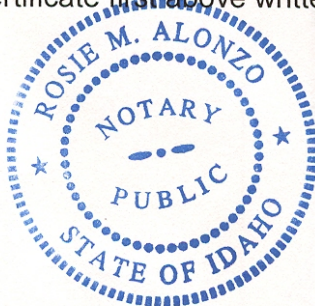
State of Idaho)

) ss.

County of Ada)

On this 1 day of April, in the year 2008, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Declaration of Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: Rosie M. Alonzo

Residing at: Nampa, Idaho

Commission Expires: 1-30-09

Property Owner

By:

Printed:

Its:

Date:

Ivan Sleight

Ivan Sleight

3-15-08

[NOTE: SIGNATURES MUST BE NOTARIZED. See Idaho Code § 55-711 through § 55-715 for proper acknowledgment language.]



Cathryn S. Pavlak

Office of the Clerk of the District Court, Ex-Officio Auditor and Recorder, Bonner County, Idaho

RECEIVED this day the
following Instrument as
shown on Reception Record
of even date herewith.

MARIE SCOTT,
Clerk of the District Court,
and ex-officio Auditor and
Recorder.

LA

Deputy.

Fees must be paid in
advance.

Sandpoint, Idaho, _____

4/16/08

Inan + Hazel Sleight

TO

REQUEST OF

Id. Dept. of Env. Quality. Dept of Env. D.
Declaration of
Environmental Covenant

Fees \$ _____

0

Any inquiry regarding this Instrument
please refer to this number:

749679



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

April 8, 2008

Mr. Ivan Sleight
13399 East 49th Drive
Yuma, AZ 85367

Dear Mr. Sleight:

Thank you for signing the Declaration of Environmental Covenant (Declaration) for the Hico of Spirit Lake, Idaho property. The Director of the Department of Environmental Quality (DEQ) has signed the declaration.

The last step in the process requires the Declaration be recorded with the Bonner County Recorder's office. This would normally be done by you. However, since you are in Arizona for the winter, I asked DEQ staff from the Coeur d'Alene office to have it recorded for you. I will send you a recorded copy as soon as I receive it. Please let me know if this arrangement is not acceptable for any reason.

Thank you for your assistance in this matter.

Sincerely,


Joe Nagel

Property Redevelopment Manager

cc: Hazel & Ivan Sleight
PO Box 692
Hayden Lake, ID 83835
Geoff Harvey, DEQ-CDA
Jim Coleman
Coleman Oil Company
335 Mill Rd
Lewiston, ID 83501