

2013-017841

RECORDED

04/23/2013 10:55 AM



CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=15 MBROWN

NO FEE

MISC

STATE OF IDAHO

Recording Requested By and
When Recorded Return to:

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING ACTIVITY
AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL COVENANTS
ACT, IDAHO CODE § 55-3001, et seq.**

ENVIRONMENTAL COVENANT

This instrument is an Environmental Covenant ("Environmental Covenant") executed by James L. Vavold and Linda L. Vavold, as Co-Trustees of The James L. & Linda L. Vavold Trust (here in referred to as "Vavold") and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. Vavold is a "holder" as defined in Idaho Code § 55-3002(6). Vavold, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 407 N. 10th Ave., and 915 E. Chicago St., Caldwell, County of Canyon, State of Idaho, legally described as 22- 4N- 3W SE Caldwell original plat, Lot 8, Lot 9, NW ½ of Lot 10, SE ½ of Lot 10, Lot 11, Lot 12 less tax 1, Block 42, Parcels RO 4878000 and 4879000 (hereafter referred to as "the Property"). The Property is also described in the attached map and Schedule A.

Property Ownership. Vavold hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the property, holds fee simple title to the property and Vavold has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above was impacted from petroleum releases from the former API Food Mart site at 402 N. 10th Avenue, Caldwell Idaho, and at the former Fleetway No. 2 station at 320 N. 10th Avenue, Caldwell, Idaho. Underground storage tanks were removed following an extensive excavation of petroleum contaminated soils from both facilities in 1993. This Environmental Covenant is required because residual concentrations of benzene, ethylbenzene, and naphthalene exist in groundwater underlying the Property. These concentrations are above allowable risk-based concentrations as determined

by the Department therefore future use of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the JACKSONS FOOD STORE NO 82 UST 3-140097 Old API Weivoda Food Mart can be found at the Boise Regional Office, 1445 North Orchard, Boise, Idaho 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Vavold, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

There shall be no extraction of groundwater under, the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

Breach and Cure of Activity and Use Limitations Vavold, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, the Owner or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or any successors in interest, and Department.

Amendment by Consent. The Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. Vavold or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

Contaminated groundwater is at levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations 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 Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent 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, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Environmental Covenant is located. The Environmental Covenant or any amendment or termination shall be recorded by Vavold, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the Department. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, Vavold, or its successors in interest, shall provide to the Department a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination therein, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by Vavold, or by its successors in interest, to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; and (e) any other person the Department requires. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

Compliance Reporting. Vavold, or and any successors in interest, shall submit to the Department on an annual basis written documentation verifying that the activity and use limitations remain in place and their compliance with the activity and use limitations.

Enforcement. The Department and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Vavold or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Vavold, or its successor in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, and/or any party to this Environmental Covenant to require that the Owner correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the Department, or its successor, and/or any persons identified in Idaho Code § 55-3011 to file civil actions against the Vavold or its successors-in-interest, as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Non-Waiver. No failure on the part of the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's or any holder's rights to enforce such term.

Property Access. The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyor of the Property, shall provide written notice to the

Department and each municipality or other local government in which the Property is located, 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 Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

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 Vavold 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.

OWNER: James L. Vavold and Linda L. Vavold
Co-Trustees of the James L. & Linda L. Vavold Trust
13511 Purple Sage Road
Caldwell, ID. 83607

THE DEPARTMENT:
Idaho Department of Environmental Quality
ATTN: State Response Program Manager
1410 N. Hilton
Boise, ID 83706

Costs and Expenses. All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of the Environmental Covenant 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 Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

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

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant 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 Vavold or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Vavold 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 instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

Accepted:

Signature:

Title: Director, Idaho Department of Environmental Quality

Date: 9/17/13

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) SS.

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

Residing at: Kotse, ID

Commission Expires: 9/23/17



Signature and Acknowledgments

Accepted:

Property Owner

Signature: James L Vavold

Printed Name: James L. Vavold

Title:

Date: 4-15-13

State of Idaho, county of Canyon ss.

On this 15th day of April, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared James L. Vavold, known or identified to me to be the Trustee for the James L. & Linda L. Vavold Trust that executed this Environmental Covenant, and acknowledged to me that the James L. & Linda L. Vavold Trust 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: Sheila Stone

Residing at: Caldwell ID

Commission Expires: 6-14-2016

Signature and Acknowledgments

Accepted:

Property Owner

Signature:

Linda L. Vavold

Printed Name: Linda L. Vavold

Title:

Date:

4/15/13

State of Idaho, county of Blaine, ss.

On this 4th day of April, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared Linda L. Vavold, known or identified to me to be the Trustee for the James L. & Linda L. Vavold Trust that executed this Environmental Covenant, and acknowledged to me that the James L. & Linda L. Vavold Trust 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: Sheila Stone

Residing at: Caldwell, ID

Commission Expires: 6-14-2016

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

James L. and Linda L. Vavold
13511 Purple Sage Road
Caldwell, ID 83607

REQUEST *James L. Vavold*
TYPE *100* FEE *9.00*

G NOEL HALE
CANYON CNTY RECORDER
McLaughlin

FEB 10 AM 11 35

RECORDED

200407530

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SPECIAL WARRANTY DEED

GRANTOR:

JAMES L. VAVOLD, dealing with his sole and separate property, joined by his spouse LINDA L. VAVOLD.

GRANTEE:

JAMES L. VAVOLD and LINDA L. VAVOLD, as Co-Trustees of THE JAMES L. & LINDA L. VAVOLD TRUST under Trust Agreement dated effective January 19, 2004, and their substitutes and successors as Trustee thereunder.

GRANTEE'S MAILING ADDRESS FOR TAX NOTICES:

13511 Purple Sage Road, Caldwell, ID 83607.

DESCRIPTION OF REAL PROPERTY CONVEYED BY THIS DEED:

Situated in the County of Canyon, State of Idaho:

The real estate more particularly described upon Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

TOGETHER WITH all improvements thereon and all appurtenances thereto.

FOR GOOD AND SUFFICIENT CONSIDERATION, the above-named Grantor does hereby GRANT and CONVEY unto the above-named Grantee, the real property above described. This deed is given for estate planning purposes, without valuable consideration in cash or property, to vest title to the property in a revocable living trust established by Grantor parties.

Grantor WARRANTS that Grantor has good right and authority to execute and deliver this deed to the Grantee, and that Grantor is the owner in fee simple of said premises, subject only to those encumbrances of record, if any, which were made, suffered, or assumed by the Grantor. If the premises conveyed hereby are subject to any encumbrance securing indebtedness for the payment of which Grantor is presently personally liable, nothing herein contained shall be construed to release Grantor from such personal liability.

The singular terms "Grantor" and "Grantee" as used in this instrument shall be construed to include the plural.

DATED: Feb 9, 2004.

James L. Vavold
JAMES L. VAVOLD
Linda L. Vavold
LINDA L. VAVOLD

STATE OF IDAHO)
COUNTY OF Adair)ss.

On this 9th day of February, 2004, before me, a Notary Public in and for said State, personally appeared JAMES L. VAVOLD and LINDA L. VAVOLD, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Sheila Stone
Notary Public for Idaho
Residing at: Caldwell, ID
Comm. Expires: 3-5-2007

**EXHIBIT "A" TO
SPECIAL WARRANTY DEED**

LEGAL DESCRIPTION OF PROPERTY

Gene T Kuehn
Canyon County Assessor
1115 Albany St. - Room 343
Caldwell, ID 83605

2003

**ASSESSMENT NOTICE
& ESTIMATE OF TAX**

**THIS IS NOT A BILL.
DO NOT PAY.**

REGULAR ROLL 05/23/2003

For any questions, please notify the Assessor's Office immediately

Assessor's Telephone Number: (208) 454-7431

Parcel Address: 407 N 10TH AVE, CA

PARCEL DESCRIPTION:

ACCOUNT NO. 3R 4879000 0
22-4N-3W SE CALDWELL ORIGINAL
SE1/2 OF LOT10, ALL LOT11, LOT12
LESS TAX 1 BLK 42-RESTAURANT-

3R 4879000 0 *****5-DIGIT SCH 83605



VAVOLD, JAMES L
P O BOX 972
CALDWELL ID 83606-0972

Appeals of your property value must be filed in
writing, on a form provided by the County, by:

JUNE 23, 2003

Tax Code Area: 001-00

Parcel Number: C1210042010A

200407533

RECORDED

FEB 10 AM 11 36

G NOEL HALES
CANYON CNT RECORDER

REQUEST
TYPE *James L. Vavold*
FEE *9.00*

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

James L. and Linda L. Vavold
13511 Purple Sage Road
Caldwell, ID 83607

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SPECIAL WARRANTY DEED

(Personal Residence)

NOTICE TO ASSESSOR

This deed reserves a "life estate" to the Grantor party or parties named below. After the recording of this deed, the said Grantor party or parties will continue to be deemed to be the "owner" of the property described herein for property tax purposes pursuant to I.C. §55-1001(4), §63-602G, and §63-701(8), and during the continuation of said life estate the property will continue to be "owner occupied" for purposes of the Homeowner Exemption and any other property tax relief provided under the laws of the State of Idaho.

GRANTOR:

JAMES L. VAVOLD and LINDA L. VAVOLD, husband and wife.

GRANTEE:

JAMES L. VAVOLD and LINDA L. VAVOLD, as Co-Trustees of THE JAMES L. & LINDA L. VAVOLD TRUST under Trust Agreement dated effective January 19, 2004, and their substitutes and successors as Trustee thereunder.

GRANTEE'S MAILING ADDRESS FOR TAX NOTICES:

13511 Purple Sage Road, Caldwell, ID 83607.

DESCRIPTION OF REAL PROPERTY CONVEYED BY THIS DEED:

Situated in the County of Canyon, State of Idaho:

The real estate more particularly described upon Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

TOGETHER WITH all improvements thereon and all appurtenances thereto.

RESERVING, HOWEVER, to Grantors, and to the survivor after the death of either Grantor, a LIFE ESTATE to use and occupy the improvements situated upon the above described property as and for Grantors' personal residence; SUBJECT, HOWEVER, to Trustee's right to terminate said life estate under certain circumstances more fully set forth in the Trust

Agreement of the above named Trust, by notice of termination recorded in the public records of the County in which the property conveyed hereby is situated. Grantors agree that the life estate reserved hereby is non-assignable and non-transferable, and in the event Grantor parties, or a surviving Grantor, join in execution of any future conveyance of the property described herein, such joinder shall be deemed to constitute a voluntary surrender of the life estate reserved hereby, thereby immediately extinguishing the reserved life estate without further act or deed by any person or party. For purposes of the preceding sentence, a Grantor shall be deemed to have "joined in the execution of" a conveyance whether such Grantor executes the same individually, or in the capacity of Trustee or Co-Trustee of THE JAMES L. & LINDA L. VAVOLD TRUST.

FOR GOOD AND SUFFICIENT CONSIDERATION, the above-named Grantor does hereby GRANT and CONVEY unto the above-named Grantee, the real property above described. This deed is given for estate planning purposes, without valuable consideration in cash or property, to vest title to the property in a revocable living trust established by Grantor parties.

Grantor WARRANTS that Grantor has good right and authority to execute and deliver this deed to the Grantee, and that Grantor is the owner in fee simple of said premises, subject only to those encumbrances of record, if any, which were made, suffered, or assumed by the Grantor. If the premises conveyed hereby are subject to any encumbrance securing indebtedness for the payment of which Grantor is presently personally liable, nothing herein contained shall be construed to release Grantor from such personal liability.

The singular terms "Grantor" and "Grantee" as used in this instrument shall be construed to include the plural.

DATED: February 9, 2004.

James L. Vavold
JAMES L. VAVOLD
Linda L. Vavold
LINDA L. VAVOLD

STATE OF IDAHO)
COUNTY OF Canyon) ss.

On this 9 day of February, 2004, before me, a Notary Public in and for said State, personally appeared JAMES L. VAVOLD and LINDA L. VAVOLD, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Sheila Stone
Notary Public for Idaho
Residing at Caldwell, ID
Comm. Expires: 3-5-2004

**EXHIBIT "A" TO
SPECIAL WARRANTY DEED**

LEGAL DESCRIPTION OF PROPERTY

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Canyon County Assessor
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2003

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& ESTIMATE OF TAX**

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REGULAR ROLL 05/23/2003

PARCEL DESCRIPTION:

ACCOUNT NO. 3R 4878000 0
22-4N-3W SE CALDWELL ORIGINAL
LOTS 8&9 & NW1/2 OF LOT 10 BLK 42
-HOUSE-

For any questions, please notify the Assessor's Office immediately

Assessor's Telephone Number: (208) 454-7431

Parcel Address: 915 E CHICAGO ST. CA

3R 4878000 0 *****5-DIGIT SCH 83605



VAVOLD, JAMES L
P O BOX 972
CALDWELL ID 83606-0972

Appeals of your property value must be filed in
writing, on a form provided by the County, by:

JUNE 23, 2003

Tax Code Area: 001-00

Parcel Number: C1210042008A

