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CHRIS YAMAMOTO

CANYON COUNTY RECORDER

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CANYON COUNTY COMMISSIONERS

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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 Canyon County, a political subdivision of the state of Idaho, ("Canyon County,") 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. Canyon County, is a "holder" as defined in Idaho Code § 55-3002(6). Canyon County, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns a portion of real property located at 102 South Roswell Boulevard, Parma, County of Canyon, State of Idaho, legally described in Schedule A attached hereto (hereafter referred to as "the Property") and illustrated on the map attached as Schedule B. This Environmental Covenant specifically concerns the area of the Property identified as the Restricted Area and designated by grids on the map of the Property attached as Schedule B and incorporated herein.

Property Ownership. Canyon County 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 Canyon County, has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property was used as a petroleum bulk plant since the 1970s or early 1980s and was used as an oil company depot since at least the 1930s. As a result of these historical uses the Property became contaminated with petroleum constituents. The property was later abandoned and Canyon County obtained a tax deed for the property on June 29, 2009, because of unpaid taxes. Canyon County subsequently submitted an application and received approval for the IDEQ Brownfields program to conduct environmental site assessments of the property to evaluate the extent of contamination. Canyon County

subsequently entered into the IDEQ Voluntary Cleanup Program and remediated the contamination by excavation and monitored natural attenuation, following the activities described in the Department approved Work Plan. While the remediation efforts were successful in reducing contamination levels a risk evaluation of residual concentrations in soils in portions of the Property exceed Department targets for residential risk for vapor inhalation. 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 *Mahaffey Oil Site* file can be found at the DEQ Boise Office, 1445 North Orchard, Boise, Idaho 83706.

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

1. The Restricted Area of the Property, identified and designated by grids on Schedule B, may be used for commercial and industrial uses only. The Restricted Area shall not be used for residential purposes or any permanently occupied human habitation (including hotels or motels), school, day care, or hospital use.

Breach and Cure of Activity and Use Limitations. Canyon County, 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, Canyon County, 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 Canyon County, or any successors in interest, and the 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. Canyon County, 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 soils and groundwater are at levels the Department deems, in writing, to be consistent with 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 Canyon County, 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, Canyon County, 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 Canyon County, 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. Canyon County, or 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 Canyon County, or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Canyon County, 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 Canyon County, 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 Canyon County, 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: Canyon County  
ATTN: Prosecuting Attorney, Civil Division  
1115 Albany St.  
Caldwell, ID 83605

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 Canyon County, or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Canyon County 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.