

2024-030664

RECORDED

09/25/2024 01:24 PM



00830998202400306640120127

Recording Requested By and
When Recorded Return to:

RICK HOGABOAM
CANYON COUNTY RECORDER
Pgs=12 MBROWN NO FEE
MISC
STATE OF IDAHO

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

[PROPERTY OWNER'S NAME], GRANTOR, grants this Environmental Covenant. As provided in Idaho Code §55-3008, Boise VZ LLC is the GRANTEE.

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Boise VZ LLC, ("Boise VZ LLC"), 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. Boise VZ LLC is a "holder" as defined in Idaho Code § 55-3002(6). Boise VZ LLC, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property 716 Blaine Street County of Canyon, State of Idaho, legally described as 22-4N-3W SW Caldwell Original Lots 8 & 9, BLK 19 (hereafter referred to as "the Property"). The Property is legally described in the attached Schedule A. The Property is depicted on the map attached as Schedule B.

Property Ownership. Boise VZ LLC 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 Boise VZ has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above is an adjacent, downgradient property to the former Nalls Service that operated a retail fueling business that had underground storage tanks, associated piping, dispensers, becoming contaminated with benzene, ethylbenzene and naphthalene. This Environmental Covenant is required because the Brownfields site investigation demonstrated that residual concentrations benzene, ethylbenzene, and naphthalene in soil and groundwater underlying the Property. The 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 Nalls Service files can be found at the Boise Regional Office located at 1445 N. Orchard in Boise, Idaho. The files are under two different programs, Leaking Underground Storage Tank file EDMS 2011BBK813 and Brownfields file EDMS 2022BBC2.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Boise VZ LLC, 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:

1. There shall be no excavation of soil at depth below 10 feet 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. Ground water may be extracted as part of an environmental investigation or remediation project.
2. Excavation or any other disturbances of soil in the Restricted Area of the Property are prohibited, except that soil may be excavated in conjunction with a soil management plan or other activities that are approved by the Department prior to conducting excavation activities. Soils management plan shall be submitted to the Department 30 days prior to excavation in the Restricted Area.

Breach and Cure of Activity and Use Limitations. Boise VZ LLC, 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, Boise VZ LLC, 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 Boise VZ LLC, or any successors in interest, and Department.

Amendment by Consent. This 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 this Environmental Covenant to a new holder is an amendment. The HOLDER waives their right to sign the amendment as provided in Idaho Code § 55-3010(1)(c).

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. Boise VZ LLC, 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 ground water are at levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Upon a request and demonstration of the record for termination of the Environment Covenant, the Department will take all reasonable steps to locate or identify HOLDERS to determine

consent to terminate. If the Department finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence, the Holder waives their right to sign the termination as provided in Idaho Code § 55-3010.

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 this 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. This Environmental Covenant or any amendment or termination shall be recorded by Boise VZ LLC, 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, Boise VZ LLC, 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 this recorded Environmental Covenant, or any amendment or termination, shall be provided by Boise VZ LLC, or by its successors in interest, to the following persons: (a) each person that signed this 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 this Environmental Covenant is not affected by failure to provide a copy of this Environmental Covenant as required under this section.

Compliance Reporting. Boise VZ LLC, 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 this Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Boise VZ LLC, or its successors in interest, including subsequent owners of the Property and any other person using the Property. Failure of Boise VZ LLC, or its successors 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 Boise VZ LLC 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 Boise VZ LLC], 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 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 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 address as a party, or its successors to this Environmental Covenant, may designate in a written notice given to the other parties to this Environmental Covenant. 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: Boise VZ LLC
 1365 Country Club Road
 Hood River, OR 97031

THE DEPARTMENT: Idaho Department of Environmental Quality
 ATTN: Assessment and Compliance Bureau Chief
 Waste Management and Remediation Division
 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 this 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 this 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 Consent Order or other agreement relating to remediation of the Property entered into between the Department and Boise VZ LLC, or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Boise VZ LLC, or any other responsible party under such 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.

Signature and Acknowledgments
Accepted:

Property Owner Boise VZ LLC

Signature: *[Handwritten Signature]*

Printed Name: THOMAS VEAZIE

Title: MANAGING PARTNER

Date: 1/31/24

State of Idaho, county of, ss.

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

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: *Leiah Dschaak*
Residing at: 1707 12th St Hood River OR 97031
Commission Expires: 04/01/2025

Schedule A



AFTER RECORDING MAIL TO:

Boise VZ LLC
Attn: Thomas Veazey
1365 Country Club Road
Hood River , OR 97031

ELECTRONICALLY RECORDED - DO NOT
REMOVE THE COUNTY STAMPED FIRST
PAGE AS IT IS NOW INCORPORATED AS
PART OF THE ORIGINAL DOCUMENT.

| |
|--|
| 2023-024023 RECORDED 07/27/2023 02:16 PM CHRIS YAMAMOTO CANYON COUNTY RECORDER Pgs=2 NHANEY \$15.00 TYPE: DEED FIRST AMERICAN TITLE AND ESCROW ELECTRONICALLY RECORDED |
|--|

TRUSTEES WARRANTY DEED

File No.: 4106-4074919 (RR)

Date: **July 27, 2023**

For Value Received, **Stanley A. Marks and Charlene C. Marks, Co-Trustees of the Stan and Charlene Marks Family Trust Agreement dated January 6, 2015**, hereinafter referred to as Grantor, does hereby grant, bargain, sell and convey unto **Boise VZ LLC, an Idaho limited liability company**, hereinafter referred to as Grantee, whose current address is **1365 Country Club Road, Hood River , OR 97031**, the following described premises, situated in **Canyon County, Idaho**, to wit:

LEGAL DESCRIPTION: Real property in the County of Canyon, State of Idaho, described as follows:

Lots 8 and 9 in Block 19 of CALDWELL, IDAHO, according to the plat thereof, filed in Book 1 of Plats at Page 20, Records of Canyon County, Idaho.

APN: **04693000 0**

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Schedule B

