

JUN 26 2003

DECLARATION OF RESTRICTIONS

DEPARTMENT OF
ENVIRONMENTAL QUALITY
BOISE REGIONAL OFFICE

This Declaration of Restrictions is to Run with the Land (Declaration) made by Donald F Murphy and Bonnie Murphy, Husband and Wife ("Murphy's") its successors and assigns, and the State of Idaho Department of Environmental Quality ("Department"), its successors and assigns, sets forth protective provisions, covenants, restrictions, 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 Idaho Uniform Conservation Easement Act, Idaho Code 55-2101 through 2109, and the Idaho Environmental Protection and Health Act, Idaho Code 39-101 through 39-130, and Idaho Code 39-7202(1)(Supp.1996). For purposes of this Declaration, the Department shall be a "holder" as defined in Idaho Code 55-2101(2) Murphy's and the Department agree that each and all of the Restrictions are enforceable by the Department, against Murphy's or their successor(s).

Ownership. Murphy's are the fee owner of certain real property in the City of Caldwell, County of Canyon, State of Idaho, described as Industrial Site #2, lots 1-10 of block 2 in Township 4 North, Range 3 West, Section 21 and is subject to this Declaration ("Property"). The Property is legally described as follows:

See Exhibit A for Legal Description

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 specified Restricted 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 shall be recorded in the county recorder's office in the county where the Property is located within five (5) days of the effective date of this Declaration. Murphy's 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. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Restricted Portion. A portion of the Property ("Restricted Portion") described and depicted in Exhibit "B" attached hereto and made a part hereof was previously used to operate a 500-gallon petroleum storage tank system, becoming contaminated with gasoline, including, without limitation, benzene, toluene, total xylenes, and petroleum hydrocarbons. This Declaration is required because residual concentrations of petroleum constituents in soil and groundwater underlying the Restricted Portion. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Restricted Portion shall be limited to protect human health and the environment.

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

1. The Restricted Portion, and any portion thereof, may be used for commercial and industrial uses only. The Restricted Portion shall not be used for residential purposes or any permanently occupied human habitation (including hotels or motels), schools, day care or hospital use.
2. There shall be no excavation of impacted soil without properly treating (or other approved method) the removed impacted soil, if needed or required. Impacted ground water in the Restricted Portion shall not be extracted for the purpose of drinking by animals or human beings, irrigation or an industrial or commercial use but can be extracted for the purpose of treating or testing.
3. Any activity on the Restricted Portion that may result in the release or exposure to the environment of a petroleum constituent that remains on the Restricted Portion is prohibited without prior written approval from the Department.

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

The Restricted Uses are imposed out of an abundance of caution due to the former use of the Restricted Portion and because certain environmental risk evaluations of the Restricted Portion indicate the presence of petroleum hydrocarbons at various locations in the soil which may present a risk to public health and the air and water quality at the Property. Further the Restrictions are imposed in furtherance of the public policy as stated in Idaho Code 39-7202(1)(Supp. 1996). Murphy's 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.

Variance and Termination. The Restricted Uses set forth above shall apply to the Restricted Portion, or any subdivided portion thereof, unless:

- A. The Restricted Portion or subdivided portion thereof is shown in a Department approved risk assessment not to contain petroleum hydrocarbons in the soils or groundwater or to be within acceptable risk levels;
- B. Contaminated soils and groundwater are remediated to levels the Department deems in writing to be adequate for the Restricted Portion to be developed for any of the Restricted Uses; or
- C. Murphy's, or its successor in interest, applies to the Department to have this Declaration removed with respect to all or part of the Restricted Portion pursuant to laws, rules and regulations then in effect, and a formal determination is made by the Department in writing to remove the land-use restrictions.

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 the conveyance of the Property except as otherwise provided by law, or by administrative order.

Enforcement. Failure of Murphy's, 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 Agreement. 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 Conservation Easement Act, Idaho Code 55-2101, *et. seq.*

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 Murphy's, 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.

Mr. and Mrs. Donald F. Murphy
503 W. Ross Lane
Caldwell, Idaho 83605
(208) 459-9152

THE DEPARTMENT:

Idaho Department of Environmental Quality
1445 North Orchard
Boise, Idaho 83706-2239
(208) 373-0550

Costs and Expenses. All costs of removing this Declaration, including the cost of any remediation or abatement of any environmental conditions of or pertaining to the Property, regardless of mechanism used and frequency thereof, shall be borne by the party seeking such removal. This Declaration shall run with the land and be binding on Murphy's and its successors and assigns.

Partial Invalidity. If any portion of this Restrictions 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 the Declaration are solely of 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 obligations of Murphy's or any other responsible party or other agreement for a different contaminated issue. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental conditions of the Property, and the Department reserves the right to take appropriate actions 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

By: [Signature]

Printed: Katherine B. Kelly

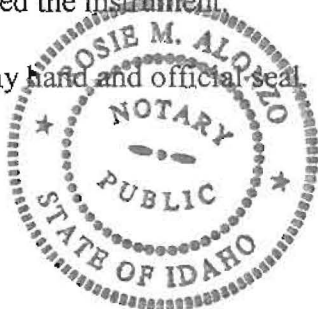
It

Date: 11/7/03

Minister, Boise Regional Office

On the 17 day of June, 2003 before me, a Notary Public, in and for the State of Idaho, personally appeared Katherine B. Kelly, known to be to be the person whose name is subscribed in the within instrument and acknowledged to me that s/he executed the same in his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public for Idaho: Rosie M. Alayzo

Residing at: Nampa, ID

My Commission expires: 1-30-09

Property Owner

By: [Signature]

Printed: Donald F Murphy

Its:

Date: 6-11-03

By: [Signature]

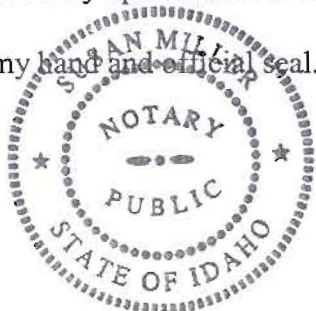
Printed: Bonnie Murphy

Its:

Date: June 11, 2003

On the 11 day of June, 2003 before me, a Notary Public, in and for the State of Idaho, personally appeared Donald F Murphy & Bonnie Murphy, known to be to be the person whose name is subscribed in the within instrument and acknowledged to me that s/he executed the same in his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public for Idaho: Susan Miller

Residing at: Caldwell

My Commission expires: 12/27/03

Exhibit A



6	5	4	3	2	1
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36

SURVEY INST 9605263
 BRAIN DR VALUE APPR JRC
 CLASS IN REAP 00 MAN 99 UNIT 0
 PARCEL 3R4218002001B H/O & C/B N
 PRIOR ACCOUNT 2R 2763-000- -0
 02 MH on Property NO
 03 Traits 04 Companion Sheet

01 3R 2763-000- -0 DOL-02 6 SCH 13

MURPHY, DONALD F
 & MURPHY, BONNIE J-M/W

503 W ROSS LN
 CALDWELL ID 83605

21-4N-3W NW INDUSTRIAL SITE #2 +218
 LT 1-10 L5 TX 98157 BLK 2

315 KIT AVE, CA

T. 4N., R. 3W., Sec. 21
 Industrial Site Addition no. 2
 Lots 1-10 of Block 2

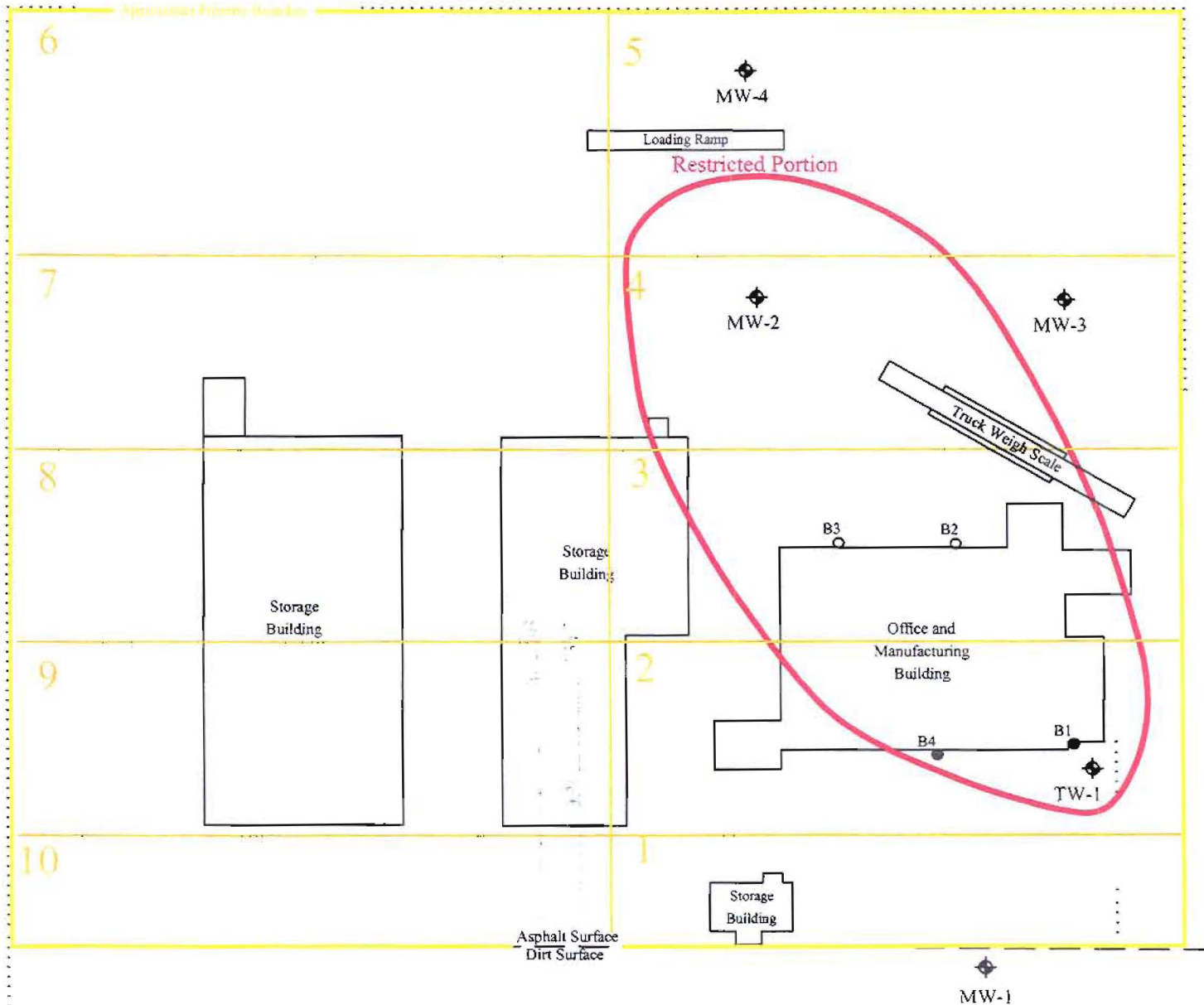
Restricted portion within
 Lots 2-5 of Block 2

315 Kit Ave., Caldwell

SCALE: 1 inch = 200 feet



Drain Ditch



North Kit Avenue

EXHIBIT "B" TO DECLARATION OF RESTRICTIONS

Chain-Link Fence



May 2003

SITE ESTIMATED PLUME BOUNDARY
and RESTRICTED PORTION

Lot lines and Numbers Shown

Map is not from Professional Survey

200338504

RECORDED

2003 JUN 24 PM 1 10

G NOEL HALES
CANYON CNTY RECORDER
BY *gmane*

REQUEST *Murphy, David F.*
TYPED *Doc Fee \$24.00*