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DEPT. OF ENVIRONMENTAL QUALITY  
WASTE PROGRAM

Recording Requested By and  
When Recorded Return to:

FILED BY  
*Kelly Brainerd*  
2007 NOV 15 A 10:59  
2400  
DEPT. OF ENVIRONMENTAL QUALITY  
BONNER COUNTY RECORDER  
*LR* DEPUTY

740997

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**DECLARATION OF ENVIRONMENTAL COVENANT**

This Declaration of Environmental Covenant (Declaration) made by Milltown Park LLC, a Delaware Limited Liability Company, ("MPLLC") 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, human health and the environment, upon and subject to which the Property (as identified below) and every portion thereof shall be improved, used, occupied, leased, 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). MPLLC and the Department agree that each and all of the Restrictions are enforceable by the Department, against MPLLC or successors in interest.

Ownership. MPLLC is the fee simple owner of certain real property in the City of Sandpoint, County of Bonner, State of Idaho, described as that portion of the Southeast Quarter of Section 15, Township 57 North, Range 2 West, Boise Meridian, City of Sandpoint, Bonner County, Idaho (hereafter referred to as "the Property") and is subject to this Declaration. The Property is legally described in the attached Schedule A.

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 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 Restrictions as herein established must be adhered to 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 by MPLLC within five (5) days of receipt of this Declaration signed by the Department. Within five (5) days of the recording of this Declaration MPLLC shall provide to the Department a copy of this recorded Declaration evidencing compliance with this provision. In addition, a copy of the recorded Declaration shall be provided by MPLLC to the following persons: (a) each person that signed the Declaration; (b) each person holding a recorded interest in the Property subject to the Declaration; (c) each person in possession of the Property subject to the Declaration; (d) each municipality or other local government in which the 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 was previously used to operate a planer mill, which released hazardous materials, including petroleum hydrocarbon-related compounds and metals. MPLLC implemented corrective action on the Property beginning on August 16, 2006. The corrective action included demolition of buildings, foundations, and subsurface concrete structures; removal of an underground storage tank; inspection and cleaning of catch basins; removal of approximately 2000 cubic yards of petroleum-containing soil; backfill of excavated areas; and regrading of the land surface. The corrective action also included investigation of soil and groundwater. The results of the corrective action are documented in "Site Closure Report, Milltown Park LLC Property – Former Louisiana Pacific Planer Mill Site, Sand Point, Idaho" and dated March 2007. This Declaration is required because residual concentrations of arsenic, barium, cadmium, chromium, and lead ("Metals") exceed Initial Default Target Levels ("IDTL") in a localized area of groundwater underlying the Property. However, groundwater samples collected from six (6) temporary monitoring wells throughout the Property did not contain Metals above IDTL screening levels. Future use of groundwater for human consumption at the Property shall be limited to protect human health and the environment. A copy of the Site Closure report may be found at the Idaho Department of Environmental Quality, Coeur d'Alene Regional Office in Coeur d'Alene, Idaho.

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

1. Any extraction of groundwater from under the Property for human consumption 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 due to conditions resulting from former uses of the Property, specifically the presence of Metals in groundwater above IDTL screening levels in two (2) grab groundwater samples collected from the central portion of the Property

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 M PLLC, or its successors in interest, applies to the Department to have this Declaration terminated, pursuant to Idaho Code § 55-3010, with respect to all or part of the Property and:

1. the Property or any subdivided portion thereof is shown in a Department-approved document not to contain groundwater with Metals above IDTL screening levels; or
2. any Metals above IDTL screening levels in groundwater has been remediated to levels the Department deems in writing to be below IDTL screening levels.

**Conveyance of Property.** Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyer 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 Declaration, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

**Enforcement.** Failure of M PLLC, 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 groundwater 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 M PLLC 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.

Milltown Park LLC:

Milltown Park LLC  
36 Washington Street, Suite 390  
Wellesley, MA 02481

THE DEPARTMENT:

Idaho Department of Environmental Quality  
**ATTN:** Joe Nagel  
1410 N. Hilton  
Boise, ID 83706

**Costs and Expenses.** All costs of terminating this Declaration, including the cost of any remediation or abatement of any environmental condition related to restrictive uses of or pertaining to the Property, shall be borne by the party seeking such termination.

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.

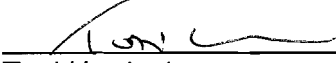
Idaho Code References. All references to the Idaho Code sections include successor provisions.

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 MPLLC or any other responsible party. Nothing in this Declaration shall affect the obligations of MPLLC 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:

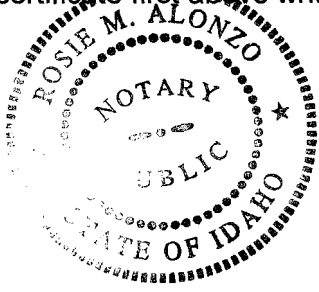
Idaho Department of Environmental Quality - Holder

Signature:   
 Printed Name: Toni Hardesty  
 Title: Director, Idaho Department of Environmental Quality  
 Date: 11/16/07

State of Idaho            )  
                                   ) ss.  
 County of Ada            )

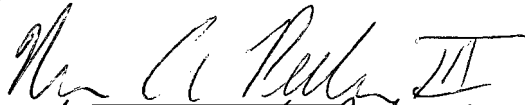
On this 16 day of November, in the year 2007, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Declaration of Environmental Covenant, and acknowledged 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, ID  
 Commission Expires: 1/30/09

Property Owner

By:   
Printed: Norman A. Pedersen  
Its: Mandarin Principal  
Date: October 31, 2007

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

Notary: SOFIA EYASSU  
Sofia Eyassu 10-31-07  
my com. exp 01-25-2013

**SCHEDULE A**

Date of Policy: **October 2, 2006 at 8:00 a.m.**

Policy No.: **S39900**

Policy Amount: **\$**

Premium: **\$**

1. Name of Insured:

**Milltown Park LLC, a Delaware Limited Liability Company**

2. The estate or interest in the land which is covered by this policy is:

**Fee Simple**

3. Title to the estate or interest in the land is vested in:

**Milltown Park LLC, a Delaware Limited Liability Company**

4. The Land referred to in this Policy is described as:

**PARCEL I:**

**That portion of the Southeast quarter of Section 15, Township 57 North, Range 2 West, B.M., Bonner County, Idaho, described as follows:**

**Commencing at the South quarter corner of said Section 15; thence North 00° 37' 55" East along the North-South centerline of said Section 15, a distance of 30.00 feet; thence South 89° 30' 41" East, a distance of 30.00 feet to a point lying on the easterly right of way of Boyer Avenue and the Northerly right of way of Larch Street in the City of Sandpoint, and the True Point of Beginning of this description; thence South 89° 30' 41" East along said Northerly right of way line of said Larch Street, 470.00 feet; thence leaving said right of way, North 00° 37' 55" East, 85.00 feet; thence South 89° 30' 41" East, 151.00 feet; thence North 00° 37' 55" East, 75.00; thence South 89° 30' 41" East, 147.03 feet to the Westerly right of way line of the Spokane International Railroad (Union Pacific Railroad); thence North 00° 16' 00" East, along said railroad right of way 945.67 feet to a point of curvature and the beginning of the Spokane International to Great Northern Railway transfer track; thence along a curve to the left, having a radius of 437.02 feet, through a central angle of 8° 10' 00", an arc distance of 62.29 feet to a point of compound curvature; thence along a curve to the left, having a radius of 547.99 feet, through a central angle of 13° 15' 00", an arc distance of 126.72 feet; thence leaving said right of way, North 89° 29' 10" West, 111.06 feet; thence North 00° 16' 00" East, 174.95 feet to a point on said right of way of said transfer track, said point is on curve to the left, the center of which bears**

South  $47^{\circ} 00' 35''$  West, 547.99 feet distant; thence along said curve to the left, having a radius of 547.99 feet, through a central angle of  $28^{\circ} 57' 05''$ , an arc distance of 276.90 feet to a point on the Southerly right of way line of the Great Northern to Northern Pacific Railroad transfer track; thence along said Southerly right of way line, North  $78^{\circ} 42' 04''$  West a distance of 386.02 feet to said Easterly right of way line of said Boyer Avenue; thence South  $00^{\circ} 37' 55''$  West, along said Easterly right of way, a distance of 1682.61 feet to the True Point of Beginning.

**PARCEL II:**

That portion of the Southeast quarter of Section 15, Township 57 North, Range 2 West, B.M., Bonner County, Idaho, described as follows:

Commencing at the South quarter corner of said Section 15; thence North  $00^{\circ} 37' 55''$  East along the North-South centerline of said Section 15, a distance of 1718.34 feet to a point on the Southerly right of way line of the Great Northern to Northern Pacific Railroad transfer track; thence along said Southerly right of way line, South  $78^{\circ} 42' 04''$  East a distance of 599.96 feet to a point of intersection with the Easterly right of way line of the Spokane International to Great Northern Railway transfer track being the True Point of Beginning, said point is on a non-tangent curve to the right, the center of which bears South  $35^{\circ} 47' 29''$  West, 597.99 feet distant; thence Southeasterly along said curve to the right, having a radius of 597.99 feet, though a central angle of  $06^{\circ} 20' 29''$ , an arc distance of 66.19 feet; thence leaving said Easterly right of way, North  $00^{\circ} 16' 00''$  East, a distance of 31.29 feet to said Southerly right of way line of said Great Northern to Northern Pacific Railroad transfer track; thence North  $78^{\circ} 42' 04''$  West, along said Southerly right of way, a distance of 52.60 feet to the True Point of Beginning.