

Rec. 5-21-03 ✓

Twin Falls County, Idaho

Recorded for:
IDAHO, STATE OF

08:58am Jun. 18, 2003
2003 - 015679

No. of Pages: 4 Fee: \$60
ROBERT S. FORT
Ex-Officio Recorder
Deputy: CN

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions to Run with the Land (Declaration) made by Pipeco, Incorporated, an Idaho Corporation ("Pipeco"), 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). Pipeco and the Department agree that each and all of the Restrictions are enforceable by the Department, against Pipeco and its successors and assigns.

Ownership. Pipeco is the fee owner of certain real property in the City of Twin Falls, County of Twin Falls, State of Idaho, described as 366 Washington Street and is subject to this Declaration ("Property"). The Property is legally described as follows:

The East 110 feet of Lots 2 and 3 in Block 1 of TERRACE PARK PLACE SUBDIVISION, Twin Falls County, Idaho, according to the plat thereof, recorded in Book 1 of Plats, Page 25, records of said county.
EXCEPT THEREFROM the East 9 feet of said Lot 2.

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 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.

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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. A copy of this Declaration evidencing its recording in compliance with this provision shall be provided to the Department 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.

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

1. 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 any industrial or commercial use.

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

The Restricted Uses are imposed out of an abundance of caution due to the former use of the Property and because certain environmental risk evaluations of the Property indicate the presence of petroleum hydrocarbons in ground water under the Property which may present a health risk if ground water is extracted for any purpose at the Property. Further the Restrictions are imposed in furtherance of the public policy as stated in Idaho Code 39-7202(1)(Supp. 1996). Pipeco 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 the presence of petroleum hydrocarbons in ground water under the Property.

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

- A. the Property or subdivided portion thereof is shown in a Department approved risk assessment not to contain petroleum hydrocarbons in the ground water;
- B. contaminated ground water is remediated to levels the Department deems in writing to be adequate; or
- C. Pipeco, or its successor in interest, applies to the Department to have this Declaration removed with respect to all or part of the Property 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 other conveyance of the Property except as otherwise provided by law, or by administrative order.

Enforcement. Failure of Pipeco, 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 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 Pipeco, 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.

PIPECO, INC.:

Gordon Barry
Pipeco, Incorporated
402 Washington Street
Twin Falls, Idaho 83301

THE DEPARTMENT:

Doug Howard, Regional Administrator
Idaho Department of Environmental Quality
601 Pole Line Road, Suite 2
Twin Falls, ID 83301

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

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

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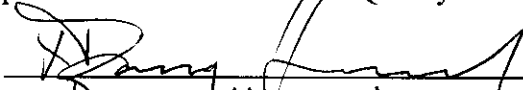
Idaho Code References. All references to the Idaho Code sections include successor provisions.

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 any responsible party. Nothing in this Declaration shall affect the obligations of any 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

By: 
Printed: Doug Howard
Its: _____
Date: 6-17-03

Property Owner

By: 
Printed: Gordon Barry
Its: Secretary - Treasurer
Date: 6-17-03

Notary Public

Signature: 
Date: 6/17/03
Notary Public Residing at: Twin Falls County
My Commission Expires on: 6/4/08

