

## **DECLARATION OF RESTRICTIONS**

This Declaration of Restrictions to Run with the Land (Declaration) made by Richard and Doris Gludt ("the Gludts"), their 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). The Gludts and the Department agree that each and all of the Restrictions are enforceable by the Department, against the Gludts.

Ownership. The Gludts are the fee owners of certain real property in the City of Troy, County of Latah, State of Idaho, described as 412 South Main Street and is subject to this Declaration ("Property"). The Property is legally described as follows:

Troy Original, Block 10, Lots 19-22, inclusive

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.

**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. The Gludts 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.** The Property was previously used to operate a gas station, becoming contaminated with hazardous or deleterious materials, including, without limitation petroleum contaminants ("Contaminants"). An investigation of the petroleum contaminates was conducted on the Property. This Declaration is required because the investigation identified residual concentrations of Contaminants in soil and groundwater underlying the Property. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Property shall be limited to protect human health and the environment.

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

1. No new buildings of any kind or nature shall be constructed or located on the Property.
2. The Property, and any portion thereof, may be used for commercial and industrial uses only. The Property shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
3. There shall be no excavation of soil at, and there shall be no extraction of ground water under, the Restricted Area for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.
4. Any activity on the Property that may result in the release or exposure to the environment of a petroleum constituent that remains on the Property, 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 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 Contaminants at various locations in the soils 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). The Gludts intend 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 the Contaminants.

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 soils or groundwater;
- B. Contaminated soils and groundwater are remediated to levels the Department deems in writing to be adequate for the Property to be developed for any of the Restricted Uses; or
- C. The Gludts, or their 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 the Gludts, or their 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,

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: *Toni Hardesty*  
Toni Hardesty, Director  
Idaho Department of Environmental Quality

8/16/04  
Date

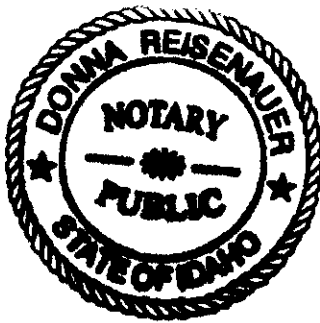
Richard and Doris Gludt

By: *Richard Gludt*  
Richard Gludt

9/4/04  
Date

By: *Doris Gludt*  
Doris Gludt

8/4/04  
Date



STATE OF IDAHO COUNTY OF LATAH  
SUBSCRIBED AND SWORN TO BEFORE ME THIS  
27th DAY OF August, 2004.  
Donna Reisenauer 11-21-2009  
Notary Public Commission Exp

DECLARATION OF RESTRICTIONS- 5

490183  
IN PRESENCE OF:  
*Doris Gludt*  
DATE & HOUR:  
8.27.04 9:42  
SUSAN PETERSEN  
LATAH COUNTY RECORDER  
FEE \$ 15.00 BY *[Signature]*  
*picked up*