

Recording Requested By and
When Recorded Return to:
Perry Law, P.C.
Attention: Mark B. Perry
P.O. Box 637
Boise, Idaho 83701-0637

Instrument # 201577

POWER COUNTY, IDAHO
01-13-2012 10:53:26 AM No. of Pages: 10
Recorded for: ALLIANCE TITLE - PRODUCTION CE
CHRISTINE STEINLICHT Fee: \$37.00
Ex-Officio Recorder Deputy: Linda Annen
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115403 KF

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

This instrument is an Environmental Covenant ("Environmental Covenant") executed by South Bay Development Co., LLC, ("South Bay"), Wells Fargo Bank, N.A., ("Wells Fargo") 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. South Bay is a "holder" as defined in Idaho Code § 55-3002(6). South Bay, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property commonly known as 2791 Lakeview Road, American Falls, Idaho 83211 located in the County of Power, State of Idaho, legally described on EXHIBIT A ATTACHED HERETO (hereafter referred to as "the Property").

Property Ownership. South Bay 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 South Bay has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above was previously used to operate a truck stop, becoming contaminated with fuel in the area of the diesel dispensers and small releases in the tank basin. On November 17, 2011 Wells Fargo entered into an agreement with the Department to execute and record an Environmental Covenant. On or about January 6, 2012 South Bay entered into an agreement with Wells Fargo ratifying the decision to execute and record an Environmental Covenant. On or about January 16, 2012 South Bay became the fee simple owner of the Property by way of a Special Warranty Deed.

Name and Location of Administrative Record. A copy of the Hilltop Truck Stop, American Falls, Idaho file can be found at the Idaho Department of Environmental Quality, Attention Ralph A. Oborn, 444 Hospital Way #300, Pocatello, Idaho 83201.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, South Bay, 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. **No groundwater wells may be drilled on any portion of the Property known to contain residual contamination, or in areas downgradient of it extending to the Property boundary. This would include, generally, the former underground storage tank basin and diesel fueling islands and areas to the north and east. The portion of the Property subject to this limitation is more specifically delineated and described on Exhibit B attached hereto.**
2. **No residential use may occur on any portion of the Property known to contain residual contamination, or in areas downgradient of it extending to the Property boundary. This does not inhibit commercial, industrial, retail, or hotel development for these areas. The portion of the Property subject to this limitation is more specifically delineated and described on Exhibit B attached hereto.**

South Bay, or its successors in interest, shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. The Activity and Use Limitations are imposed due to conditions resulting from former uses of the Property.

Amendment by Consent. The 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 the Environmental Covenant to a new holder is an amendment.

Termination by Consent. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, unless South Bay, or its successors in interest, applies to the Department to have this Environmental Covenant terminated pursuant to Idaho Code § 55-3010 and demonstrates that:

1. **The Property or any subdivided portion thereof is shown in a Department approved document not to contain contaminated soils or groundwater,**
- OR**
2. **Contaminated soils and groundwater are at levels the Department deems in writing to be adequate for the Property or any subdivided portion thereof to be developed for unrestricted use.**

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 the 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. The Environmental Covenant or any amendment or termination shall be recorded by South Bay, 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, South Bay, 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 the recorded Environmental Covenant, or any amendment or termination, shall be provided by South Bay, or by its successors in interest, to the following persons: (a) each person that signed the 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 the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section. The Activity and Use Limitations set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Enforcement. The Department and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against South Bay or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of South Bay, or its successor in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, to require that the Owner correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant 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 this Environmental Covenant, upon five (5) days written notice to South Bay.

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 then 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 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

South Bay or its successors, Wells Fargo 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.

OWNER: South Bay Development Co., LLC
2625 Daves Road
American Falls, Idaho 83211-5203

WELLS FARGO: Wells Fargo Bank, N.A.
Attention: Ellen M. Sargent
5080 Spectrum Drive, 5th Floor
Addison, Texas 75001

WITH COPY TO: Perry Law, P.C.
Attention: Mark B. Perry
2627 West Idaho Street
P.O. Box 637
Boise, Idaho 83701-0637

THE DEPARTMENT: Idaho Department of Environmental Quality
Attention: Ralph A. Oborn
Regarding: Hilltop Truck Stop, American Falls, Idaho
444 Hospital Way #300
Pocatello, Idaho 83201

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 the 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 the 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 voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and South Bay or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of South Bay 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 instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

Signature and Acknowledgments

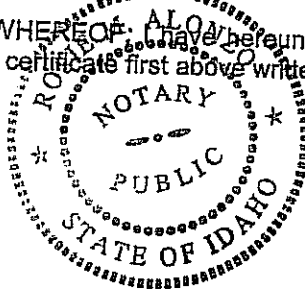
Accepted:
Idaho Department of Environmental Quality

Signature: [Handwritten Signature]
Printed Name: Toni Hardesty
Title: Director
Date: 1/11/2012

State of Idaho)
County of Ada) ss.

On this 11 day of January, in the year 2012, 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 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. Alongo
Residing at: Nampa, Idaho
Commission Expires: 1/30/2015

Signature and Acknowledgments

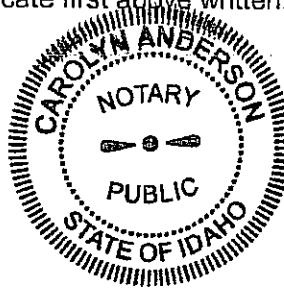
Accepted:
South Bay Development Co., LLC

Signature: *David Zimmerman*
Printed Name: David Zimmerman
Title: Member
Date: 1-9-12

State of Idaho)
County of Power) ss.

On this 9th day of Jan., in the year 2012, before me, a Notary Public in and for said County and State, personally appeared David Zimmerman, known or identified to me to be the Member of South Bay Development Co., LLC, the limited liability company that executed this Environmental Covenant, and acknowledged to me that South Bay Development Co., LLC 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: *Carolyn Anderson*
Residing at: American Falls, ID
Commission Expires: March 30, 2017

Signature and Acknowledgments

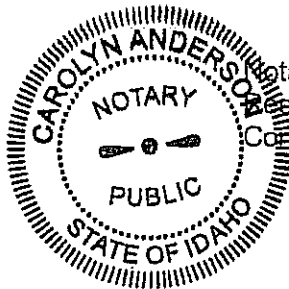
Accepted:
South Bay Development Co., LLC

Signature: *Lorene Zimmerman*
Printed Name: Lorene Zimmerman
Title: Member
Date: Jan. 7-2012

State of Idaho)
County of Power) ss.

On this 9th day of Jan., in the year 2012, before me, a Notary Public in and for said County and State, personally appeared Lorene Zimmerman, known or identified to me to be the Member of South Bay Development Co., LLC, the limited liability company that executed this Environmental Covenant, and acknowledged to me that South Bay Development Co., LLC 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: *Carolyn Anderson*
Residing at: American Falls, Idaho
Commission Expires: March 30, 2017

Signature and Acknowledgments

Accepted:

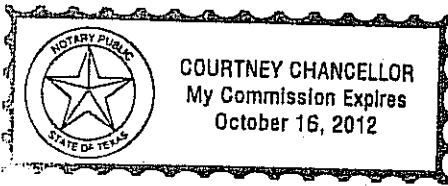
Wells Fargo Bank, N.A.

Signature: Ellen M. Sargent
Printed Name: Ellen M. Sargent,
Title: Loan Adjustor
Date: 01-06-2012

State of TEXAS)
County of Dallas) ss.

On this 6th day of January, in the year 2012, before me, a Notary Public in and for said County and State, personally appeared Ellen M. Sargent, known or identified to me to be a Loan Adjustor of Wells Fargo Bank, N.A., the corporation that executed this Environmental Covenant, and acknowledged to me that Wells Fargo Bank, N.A. 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 TEXAS: Courtney Chancellor
Residing at: Dallas County
Commission Expires: 10/16/12

Exhibit A

A tract of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 7 South, Range 31 East of the Boise Meridian, Power County, Idaho, described as follows: Beginning at a one-half inch iron rod with a plastic cap marked L.S. 843 on the Southeasterly right-of-way of I-86 as shown on State Highway Plans for I-1024(9), from which a concrete Highway right-of-way monument that is 170.00 feet right of centerline station 923+20 bears S. 72°46'56" W. 460.00 feet; thence N. 72°46'56" E. along said right-of-way 496.83 feet; thence N. 61°01'36" E. along said right-of-way 203.96 feet to a concrete Highway right-of-way monument that is 585.00 feet right of centerline station 934+00 of said Highway; thence S. 28°58'24" E. 246.31 feet to the Northerly right-of-way of the Falls Irrigation District Main Canal East; thence along said canal right-of-way from a tangent bearing N. 74°49'58" W. along a curve to the left having a radius of 131.62 feet through a central angle of 21°19'24" for an arc length of 48.98 feet; thence S. 83°50'38" W. along said canal right-of-way 387.66 feet; thence along said canal right-of-way along a curve to the left having a radius of 346.48 feet through a central angle of 18°51'35" for an arc length of 164.55 feet; thence S. 64°59'03" W. along said canal right-of-way 178.88 feet; thence along said canal right-of-way along a curve to the left having a radius of 250.99 feet through a central angle of 7°04'22" for an arc length of 30.98 feet; thence N. 17°11'01" W. 134.30 feet to the point of beginning. Being the same property conveyed to California Oil Company, dba Standard Oil Company of California, by Warranty Deed dated April 5, 1965, recorded April 5, 1965, as Instrument No. 87541, records of Power County, Idaho.

ALSO

A tract of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 7 South, Range 31 East of the Boise Meridian, Power County, Idaho, described as follows: Beginning at a one-half iron rod with a plastic cap marked L.S. 843 on the Southeasterly right-of-way of I-86 as shown on State Highway Plans for I-1024(9) from which a concrete Highway right-of-way monument that is 170.00 feet right of centerline station 923+20 bears S. 72°46'56" W. 460.00 feet; thence S. 17°11'01" E. 134.30 feet to the Northerly right-of-way of the Falls Irrigation District Main Canal East; thence along said canal right-of-way from a tangent bearing S. 57°54'41" W. along a curve to the left having a radius of 250.99 feet through a central angle of 20°08'17" for an arc length of 88.22 feet; thence S. 37°46'24" W. along said canal right-of-way 78.40 feet; thence along said canal right-of-way along a curve to the right having a radius of 54.59 feet through a central angle of 38°42'57" for an arc length of 36.89 feet; thence S. 76°29'21" E. 121.53 feet; thence N. 17°13'04" W. 218.20 feet to the Southeasterly line of said State Highway; thence N. 72°46'56" E. along said Highway right-of-way 300.00 feet to the point of beginning. Being the same property conveyed to Chevron Oil Company, dba Standard Oil Company of California, by Warranty Deed dated September 6, 1967, recorded September 8, 1967, as Instrument No. 91189, records of Power County, Idaho.

Exhibit B: Hilltop Truck Stop Restriction Area (Approximate)

