

Instrument # 280662

MURPHY, OWYHEE, IDAHO

4-16-2013 02:03:06 No. of Pages: 13

Recorded for : GARLANDON, LLC

CHARLOTTE SHERBURN

Ex-Officio Recorder Deputy

Index to: PROTECTIVE COVENANTS

Fee: 46.00

Mejerson

Recording Requested By and
When Recorded Return to:

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 **Garlandon, LLC (OWNER)** 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. Owner is a "holder" as defined in Idaho Code § 55-3002(6). OWNER, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 2 South Main, City of Homedale, County of Owyhee, State of Idaho, legally described as Lots 1-5 of Block 62 of the Amended Plat of the Townsite of Homedale, Owyhee County, Idaho according to the official plat thereof filed August 9, 1911 as No. 7284 on file in the office of the recorder for Owyhee County (hereafter referred to as "the Property"). The Property is also described as Tracts IV and Tract V respectively in the Warranty Deed attached as Schedule A. For the purposes of this Environmental Covenant Tracts IV and V correspond to two distinct restricted areas, Area 1(Tract IV) and Area 2(Tract V) which are depicted in Schedule B.

Property Ownership. OWNER 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 OWNER 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 retail and bulk fueling business, becoming contaminated with petroleum products. On November 23, 2009, the OWNER entered into an *Agreement for Petroleum Remediation*

portion of the remediation costs. The Department remediated the Property by implementing a corrective action plan ("CAP") on the Property. This Environmental Covenant is required because after the CAP was implemented there remained residual concentrations of benzene and ethylbenzene in groundwater underlying the Property. These concentrations are above allowable risk-based concentrations for groundwater ingestion and inhalation of vapors in indoor air as determined by the Department. Therefore groundwater extraction, building placement, and future use of the property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the records for this site, the former Cahill Oil files, can be found at the Department's Boise Regional Office located at 1445 N. Orchard in Boise, Idaho 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, OWNER, 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:

Restricted Area 1 (Lots 1-3 Block 62, also described as Tract IV in the associated warranty deed)

1. There shall be no extraction of groundwater under the Restricted Portion except for the purpose of environmental assessment or remediation, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

Restricted Area 2 (Lots 4-5 Block 62, also described as Tract V in the associated warranty deed)

2. There shall be no extraction of groundwater, except for the purpose of environmental assessment or remediation, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.
3. Restricted Area 2 may be used for commercial and industrial uses only. Area 2 shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation.
4. No buildings of any kind or nature, except in the case of small storage sheds intended for the purpose of storage and not for office use or other habitation, shall be constructed or located in Area 2.

Breach and Cure of Activity and Use Limitations OWNER, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, the Owner or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or any successors in interest, and Department.

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.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. The OWNER, or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

1. To terminate the Activity and Use limitation regarding the groundwater use prohibition in Areas 1 and 2 it must be demonstrated that contaminated groundwater is at levels the Department deems in writing to be adequate for extraction of groundwater for the proposed use
2. To terminate the Activity and Use limitation regarding the construction of buildings in Area 2, including the construction of residential buildings, risks from residual contamination, associated with vapor intrusion, are assessed and deemed by the Department in writing to be acceptable for the specified land use OR a vapor intrusion mitigation system, approved in writing by the Department, is designed, and constructed which demonstrates acceptable reduction in vapor intrusion risk for the specified use. The ability to operate and maintain the vapor mitigation system until such time as it is demonstrated to not be required for protection of human health must also be demonstrated to the satisfaction of the Department.

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 OWNER, 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, OWNER, 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 OWNER, 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.

Compliance Reporting. Owner[s], or and any successors in interest, shall submit to the Department on an annual basis written documentation verifying that the activity and use limitations remain in place and their compliance with the activity and use limitations.

Enforcement. The Department and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against OWNER or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of OWNER, 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.

Non-Waiver. No failure on the part of the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's or any holder's rights to enforce such term.

Property Access. The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

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 OWNER 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: Thomas and Joan Gaskins
11771 Eva Lane
Caldwell, Idaho 83607

THE DEPARTMENT:

Idaho Department of Environmental Quality
ATTN: State Response Program Manager
1410 N. Hilton
Boise, ID 83706

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 OWNER or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of OWNER 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: _____

Printed Name: Curt A. Fransen

Title: Director, Idaho Department of Environmental Quality

Date: 4/15/13

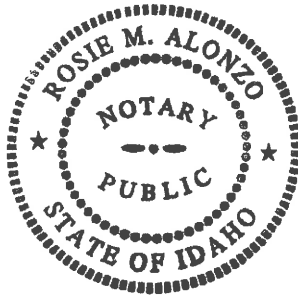
State of Idaho)

) ss.

County of Ada)

On this 5 day of April, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared Curt A. Fransen, 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. Alonzo

Residing at: Nampa, Idaho

Commission Expires: 1/30/2015

Signature and Acknowledgments

Accepted: Garlandon, LLC

Property Owner

Signature:

Printed Name:

Title:

Date:

State of Idaho

County of

ss.

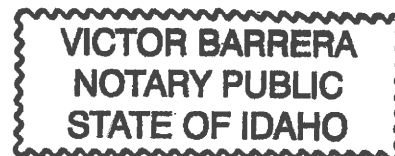
On this 29 day of March, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared Thomas Gaskins, known or identified to me to be the President of Garlandon, LLC that executed this Environmental Covenant, and acknowledged to me that Garlandon, LLC executed the 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:

Residing at:

Commission Expires:



SCHEDULE A

**LEGAL DESCRIPTION AND WARRANTY DEED FOR THE FORMER
CAHILL OIL PROPERTY, 1 MAIN STREET, HOMEDALE, IDAHO**

ACCOMMODATION WARRANTY DEED

267829

FOR VALUE RECEIVED *Thomas F. Gaskins and Joan M. Gaskins,*
husband and wife

the Grantors, do hereby grant, bargain, sell and convey unto

Garlandon, LLC

the Grantee, whose address is *P.O. Box 111 Marsing, ID 83639*

the following described premises, to-wit:

TRACT I: Lot 6 of Block 62 of the amended plat of the Township of Homedale, Owyhee County, Idaho, according to the official plat thereof filed August 19, 1984 as No. 7884 on file in the office of the recorder for Owyhee County, Idaho; and a tract of land described as follows: Commencing at the Northwest corner of Lot 1 of Block 62 of the amended plat of the Township of Homedale, Owyhee County, Idaho, the Real Point of Beginning; thence North 15 feet to the Northeast corner of Lot 6; thence South along the East line of the said Lot 6 to the Southeast corner of the said Lot 6; thence South along the East line of the said Lot 6 to the Southeast corner of the said Lot 6; thence East 15 feet to the Southeast corner of Lot 5 of said Block 62; thence North along the West 1/4 side of Lots 1 to 5, inclusive, of Block 62, to the REAL POINT OF BEGINNING, all according to the Amended Plat of the Township of Homedale Owyhee County, Idaho.

TRACT II: Lots 28, 29, 30, 31 and 32 of Block 62 of the amended plat of the Township of Homedale, Owyhee County, Idaho, according to the official plat thereof filed August 19, 1984 as No. 7884 on file in the office of the recorder for Owyhee County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: *4/1/09*

Thomas F. Gaskins
Joan M. Gaskins

STATE OF IDAHO, COUNTY OF *Canyon*

On this *1st* day of *April*, 2009,
before me, a notary public in and for said State, personally
appeared

Thomas F. Gaskins & Joan M. Gaskins

known to me to be the person(s) who name(s)
subscribed to the within instrument, and acknowledged to
me that *they* are the owner(s) of the premises therein described.

Will L. Lusk
Notary Public

Residing at *Wilder*
Comm. Expires *4/1/13*

Instrument # 267829
MURPHY, OWYHEE, IDAHO
2009-04-01 04:34:00 PM No. of Pages: 2
Recorded for: PIONEER TITLE COMPANY/OWY
CHARLOTTE SHERBURN Fee: \$8.00
Ex-Officio Recorder Deputy Impeterson
Using the DEED WARRANTY
Electronically Recorded by Sherrille



610 So. Kimball
Caldwell, Idaho 83605

PIONEER TITLE COMPANY
OF CANYON COUNTY

100 - 10th Ave. South
Nampa, Idaho 83651

August 9, 1911 as No. 7284 on file in the office of the recorder for
Cayuse County, Idaho.

TOGETHER WITH that portion of the Vested alley West of and adjacent thereto,
which would attach by operation of law.

TRACT IV:

Lots 1, 2, and 3 of Block 62 of the Amended Plat of the Town Site of
HOMEDALE, Cayuse County, Idaho, according to the official plat thereof
filed August 9, 1911 as No. 7284 on file in the office of the recorder for Cayuse
County, Idaho.

TRACT V:

Lots 4 and 5 of Block 62 of the Amended Plat of the Town Site of
HOMEDALE, Cayuse County, Idaho, according to the official plat thereof
filed August 9, 1911 as No. 7284 on file in the office of the recorder
for Cayuse County, Idaho.

SCHEDULE B

**PLAT MAP AND MAP OF RESTRICTED AREAS 1 AND 2 FOR THE
FORMER CAHILL OIL PROPERTY, 1 MAIN STREET, HOMEDALE,
IDAHO**

SECTION 9

3N 5W

