



00366932201700475720120126

Recording Requested By and  
When Recorded Return to:

Joshnik LLLP  
3184 W Elder  
Boise, ID 83705

---

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.**

**AMENDED ENVIRONMENTAL COVENANT**

This instrument is an Amended Environmental Covenant (“Amended Environmental Covenant”) executed by Joshnik LLLP, an Idaho limited liability limited partnership (“Joshnik”) and the Idaho Department of Environmental Quality (“Department”) pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015 (“Act”). The original Environmental Covenant dated May 29, 2012, and recorded as Instrument Number 112050550 in the records of Ada County, is superseded by this Amended Environmental Covenant. This amendment to the original Environmental Covenant is executed pursuant to Idaho Code § 55-3010. This Amended Environmental Covenant sets forth restrictions and/or obligations (collectively referred to as “Activity and Use Limitations”) on certain real property as described below. The Activity and Use Restrictions are designed to protect natural resources, human health, and the environment. Joshnik is a “holder” as defined in Idaho Code § 55-3002(6). Joshnik, as the current property owner grants this Amended Environmental Covenant to all signatories to this instrument; provided, however, the rights of the Department and its successors are those of an agency as set forth in the Act. Neither the Department nor its successors own any interest in the Property.

1. Property. This Amended Environmental Covenant concerns the real property at 3203 N. Cole Road, Boise, County of Ada, State of Idaho, and is legally described in Exhibit A attached hereto and incorporated herein by this reference (“Property”). The entire Property is Restricted Area 1 and is shown on Exhibit B attached hereto and incorporated herein by this reference. Exhibit B also depicts Restricted Area 2 which is a portion of the Property.
2. Property Ownership. Joshnik hereby represents and warrants (or, alternatively, attaches a title commitment to this Amended Environmental Covenant) to the other signatories to this Amended Environmental Covenant that it is the sole owner of the Property, holds fee simple title to the Property and Joshnik has the power and authority to enter into this Amended Environmental Covenant.

3. Reason for Activity and Use Limitations. The Property described above is used to operate a gasoline fueling station. Petroleum fuel releases at the Property have resulted in petroleum hydrocarbon impact to both groundwater and soil. As a result of the detections of petroleum hydrocarbons described in Sections 3.1 and 3.2, future use of the Property shall be limited to protect human health and the environment.

3.1 Groundwater. This Amended Environmental Covenant is required because, after completing corrective action activities in response to a 1995 release, residual concentrations of contaminants remain in the groundwater underlying Restricted Area 1. The analyses of groundwater samples collected within Restricted Area 1 had detections of petroleum hydrocarbons, specifically Chemicals of Interest for gasoline (Col-G; IDAPA 58.01.24.800.01) exceeding Residential Use Screening Level (RUSLs; IDAPA 58.01.24.800.02; unrestricted use). The Col-G include benzene, toluene, ethylbenzene, xylenes (BTEX); methyl tert-butyl ether (MTBE); and naphthalene. Risk assessment has been implemented and light non-aqueous phase liquid (free product) has been removed and disposed.

3.2 Soil. This Amended Environmental Covenant is also required because the analyses of soil samples collected in Restricted Area 2 had detections of petroleum hydrocarbons, specifically Chemicals of Interest for diesel fuel (Col-D; IDAPA 58.01.24.800.01) exceeding RUSLs. The Col-D include (BTEX) and 11 polynuclear aromatic hydrocarbons (PAHs): acenaphthalene, anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)anthracene, chrysene, fluorine, fluoranthene, naphthalene, and pyrene. Additionally, the analyses of soil vapor samples collected in Restricted Area 2 had detections of petroleum hydrocarbons, specifically Soil Vapor Chemicals of Interest (Col-SV; IDAPA 58.01.24.800.01) exceeding soil vapor screening levels (IDAPA 58.01.24.800.02). The Col-SV include: BTEX; MTBE; and naphthalene. An assessment of subsurface diesel fuel impact was made following a suspected dispenser release and reported to the Department.

4. Name and Location of Administrative Record. A copy of the former Cole Village Chevron site documents (Facility Identification Number 3-010357) can be found at the Department's Boise Regional Office at 1445 North Orchard, Boise, ID 83706. The site is also known as Stinker Store No. 22.

5. Activity and Use Limitations. By acceptance and recordation of this Amended Environmental Covenant, Joshnik, and any successors in interest, are hereby restricted now or at any time in the future, as specifically set forth below:

5.1 Groundwater Extraction Limitation. There shall be no extraction of ground water under Restricted Area 1 and any portion thereof for any purpose including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use ("Groundwater Extraction Limitation"). Notwithstanding the Groundwater Extraction Limitation, ground water under Restricted Area 1 may be extracted as part of an environmental investigation or remediation project.

5.2 Commercial Use Limitation. Restricted Area 1 and any portion thereof may be used for commercial and industrial uses only and 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 ("Commercial Use Limitation").

5.3 Building Limitation. Risks related to Col-SV vapor intrusion shall be reassessed before an enclosed building or structure to be occupied by humans can be constructed on Restricted Area 2 or any portion thereof, and if necessary, appropriate remedial measures shall be taken to address such risks ("Building Limitation"). Such remedial measures will require prior review and approval by the Department.

5.4 Soils Management Limitation. Before soil is excavated from Restricted Area 2 or any portion thereof, a soils management plan shall be developed that addresses Col-D encountered during excavation ("Soils Management Limitation"). Such soils management plan shall be provided to the Department for review and approval prior to excavation work.

6. Breach and Cure of Limitations.

6.1 Building Limitation and Soils Management Limitation. The owner of Restricted Area 2 shall be responsible for demonstrating that use of Restricted Area 2 is in conformity with the Building Limitation and Soils Management Limitation. If any event or action occurs that constitutes or may constitute a breach of the Building Limitation or Soils Management Limitation, the owner of Restricted Area 2 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 of Restricted Area 2 and Department.

6.2 Groundwater Extraction Limitation and the Commercial Use Limitation. The owner of Restricted Area 1 shall be responsible for demonstrating that use of Restricted Area 1 is in conformity with the Groundwater Extraction Limitation and the Commercial Use Limitation. If any event or action occurs that constitutes or may constitute a breach of the Groundwater Extraction Limitation or the Commercial Use Limitation, the owner of Restricted Area 1 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 of Restricted Area 1 and Department.

7. Amendment by Consent. This Amended 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 this Amended Environmental Covenant to a new holder is an amendment. The Department will not withhold its consent if the other parties agree to assignment of this Amended Environmental Covenant to a new holder.

8. Duration and Termination.

8.1 Building Limitation. The Building Limitation shall apply to Restricted Area 2 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. Any party to this Amended Environmental Covenant and any person with an interest in Restricted Area 2 may seek consent to terminate the Building Limitation pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that detections (if any) of Col-SV in soil vapor sample analyses collected from Restricted Area 2 are at levels the Department confirms in writing to meet standards for Restricted Area 2 to be developed for use by the intended receptor.

8.2 Groundwater Extraction Limitation. The Groundwater Extraction Limitation shall apply to Restricted Area 1, 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. Any party to this Amended Environmental Covenant and any person with an interest in Restricted Area 1 may seek consent to terminate the Groundwater Extraction Limitation pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that detections (if any) of Col-G in the analyses of groundwater samples collected from Restricted Area 1 are at levels the Department confirms in writing to meet drinking water standards for Restricted Area 1.

8.3 Commercial Use Limitation. The Commercial Use Limitation shall apply to Restricted Area 1, 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. Any party to this Amended Environmental Covenant and any person with an interest in Restricted Area 1 may seek consent to terminate the Commercial Use Limitation pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that detections (if any) of Col-G in the analyses of groundwater samples collected from Restricted Area 1 are at levels the Department confirms in writing to meet standards for Restricted Area 1 to be developed for unrestricted use.

8.4 Soils Management Limitation. The Soils Management Limitation shall apply to Restricted Area 2 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. Any party to this Amended Environmental Covenant and any person with an interest in Restricted Area 2 may seek consent to terminate the Soils Management Limitation pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that detections (if any) of Col-D in soil sample analyses collected from Restricted Area 2 are at levels the Department confirms in writing to meet standards for Restricted Area 2 to be developed for unrestricted use.

9. Provisions to Run With the Land. The Building Limitation and Soils Management Limitation are imposed only on Restricted Area 2. The Building Limitation and Soils Management Limitation shall run and pass with Restricted Area 2 and shall apply to and bind the respective successors in interest thereof. The Groundwater Extraction Limitation and Commercial Use Limitation are imposed on Restricted Area 1. The Groundwater Extraction Limitation and Commercial Use Limitation shall run and pass with Restricted Area 1 and shall apply to and bind the respective successors in interest thereof.

10. Concurrence of Subsequent Owners Presumed.

10.1 Building Limitation and Soils Management Limitation. All purchasers, lessees, or possessors of Restricted Area 2 shall be deemed by their purchase, leasing, or possession of such property, to be in accord with Building Limitation and Soils Management Limitation, and to agree for and among themselves, and their successors, that the Building Limitation and Soils Management Limitation as herein established must be adhered to and that their interest in Restricted Area 2 shall be subject to the Building Limitation and Soils Management Limitation contained herein.

10.2 Groundwater Extraction Limitation and Commercial Use Limitation. All purchasers, lessees, or possessors of Restricted Area 1 shall be deemed by their purchase,

leasing, or possession of such property, to be in accord with Groundwater Extraction Limitation and Commercial Use Limitation and to agree for and among themselves, and their successors, that the Groundwater Extraction Limitation and Commercial Use Limitation as herein established must be adhered to and that their interest in Restricted Area 1 shall be subject to the Groundwater Extraction Limitation and Commercial Use Limitation contained herein.

11. Recording/Filing of Environmental Covenant. This Amended Environmental Covenant and any amendment or termination of this Amended Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to this Amended Environmental Covenant is located. The owner of the Property shall record this Amended Environmental Covenant, and any amendment or termination, within ten (10) days following receipt of the Department's signature thereon. Within ten (10) days of the recording of this Amended Environmental Covenant, or any amendment or termination, the owner of the Property shall provide to the Department a copy of this recorded Amended Environmental Covenant, or any amendment or termination of this Amended Environmental Covenant. Upon receipt of the copy of the recorded Amended Environmental Covenant, and any amendment or termination thereof, 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 Amended Environmental Covenant, or any amendment or termination, shall be provided by the owner of the Property to the following persons: (a) each person that signed the Amended 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 this Amended Environmental Covenant is not affected by failure to provide a copy of this Amended Environmental Covenant as required under this section.

12. Compliance Reporting.

12.1 Building Limitation and Soils Management Limitation. The owner of Restricted Area 2 shall submit to the Department on an annual basis written documentation verifying that the Building Limitation and Soils Management Limitation remain in place and compliance with the Building Limitation and Soils Management Limitation. An example compliance form is attached to this Amended Environmental Covenant and marked as Attachment 1.

12.2 Groundwater Extraction Limitation and Commercial Use Limitation. The owner of Restricted Area 1 shall submit to the Department on an annual basis written documentation verifying that the Groundwater Extraction Limitation and Commercial Use Limitation remain in place and compliance with the Groundwater Extraction Limitation and Commercial Use Limitation. An example compliance form is attached to this Amended Environmental Covenant and marked as Attachment 1.

13. Enforcement.

13.1 Building Limitation and Soils Management Limitation. The Department and any party of this Amended Environmental Covenant shall have authority to enforce the Building Limitation and Soils Management Limitation against the owner and anyone using Restricted Area 2. Failure of the owner of Restricted Area 2 to comply with Building Limitation and Soils Management Limitation set forth herein shall be grounds for the Department, or its successor, and/or any party to this Amended Environmental Covenant to require that the owner of the Restricted Area 2 correct or remove any violations of this Amended Environmental Covenant. Violation of this Amended Environmental Covenant shall be grounds for the Department, or its

successor, and/or any persons identified in Idaho Code § 55-3011 to file civil actions against the owner of the Restricted Area 2 as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

13.2 Groundwater Extraction Limitation and Commercial Use Limitation. The Department and any party of this Amended Environmental Covenant shall have authority to enforce the Groundwater Extraction Limitation and Commercial Use Limitation against the owner and anyone using Restricted Area 1. Failure of the owner of Restricted Area 1 to comply with the Groundwater Extraction Limitation and Commercial Use Limitation set forth herein shall be grounds for the Department, or its successor, and/or any party to this Amended Environmental Covenant to require that the owner of Restricted Area 1 correct or remove any violations of this Amended Environmental Covenant. Violation of this Amended Environmental Covenant shall be grounds for the Department, or its successor, and/or any persons identified in Idaho Code § 55-3011 to file civil actions against the owner of Restricted Area 1 as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

14. Non-Waiver. No failure on the part of the Department or any holder at any time to require performance of any term of this Amended 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.

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

16. Notice of 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 owners and occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Amended Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

17. 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 the owner of the Property 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: Joshnik LLLP  
3184 W Elder  
Boise, ID 83705

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

18. Costs and Expenses. All costs of terminating this Amended Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Groundwater Extraction Limitation, Commercial Use Limitation, Building Limitation, and Soils Management Limitation shall be borne by the party seeking such termination.

19. Partial Invalidity. If any portion of this Amended 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.

20. Headings. Headings at the beginning of each section of this Amended Environmental Covenant are solely for the convenience of the parties and are not a part of this Amended Environmental Covenant.

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

22. Reservation of Rights. Notwithstanding any provision of this Amended Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Amended 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 Joshnik or any other responsible party. Nothing in this Amended Environmental Covenant shall affect the obligations of Joshnik 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.


23. Effective Date. The effective date of this instrument shall be the date the fully executed Amended Environmental Covenant is recorded at the county recorder's office.

*[signatures begin on next page]*

Signature and Acknowledgments

Accepted:

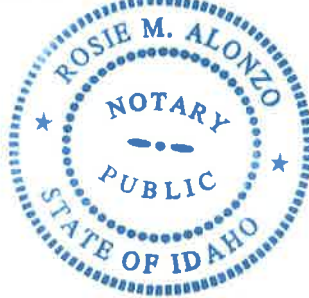
Idaho Department of Environmental Quality

Signature:   
 Printed Name: John H. Tippet  
 Title: Director, Idaho Department of Environmental Quality  
 Date: \_\_\_\_\_

State of Idaho            )  
                                   ) ss.  
 County of Ada            )

On this 23 day of May, 2017, before me, a Notary Public in and for said County and State, personally appeared John H. Tippet, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Amended 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: Pampa, ID  
 Commission Expires: 11/21/2020



Signature and Acknowledgments

Accepted:

Joshnik LLLP,  
an Idaho limited liability limited partnership

Signature:   
Charley D. Jones, general partner


Date: 3.7.17

State of Idaho            )  
  ) ss.  
County of Ada            )

On March 7, 2017, before me, a Notary Public in and for said State, personally appeared Charley D. Jones, known or identified to me to be the general partner of Joshnik LLLP, the limited liability limited partnership that executed the instrument or the person who executed the instrument on behalf of such limited liability limited partnership and acknowledged to me that such limited liability limited partnership 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: Bose, Idaho  
Commission Expires: 3/3/18

## EXHIBIT A

### EXHIBIT "A"

A portion of the Southeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at the Southeast corner of said Section 36; thence North along the township line 254.5 feet to a stake; thence West parallel with the South boundary of said Section 36, a distance of 178.3 feet to a stake; thence South parallel to the East boundary of said Section 36, a distance of 254.5 feet to a stake; thence East along the South boundary of said Section 36, a distance of 178.3 feet to the Southeast corner of said Section 36, the PLACE OF BEGINNING.

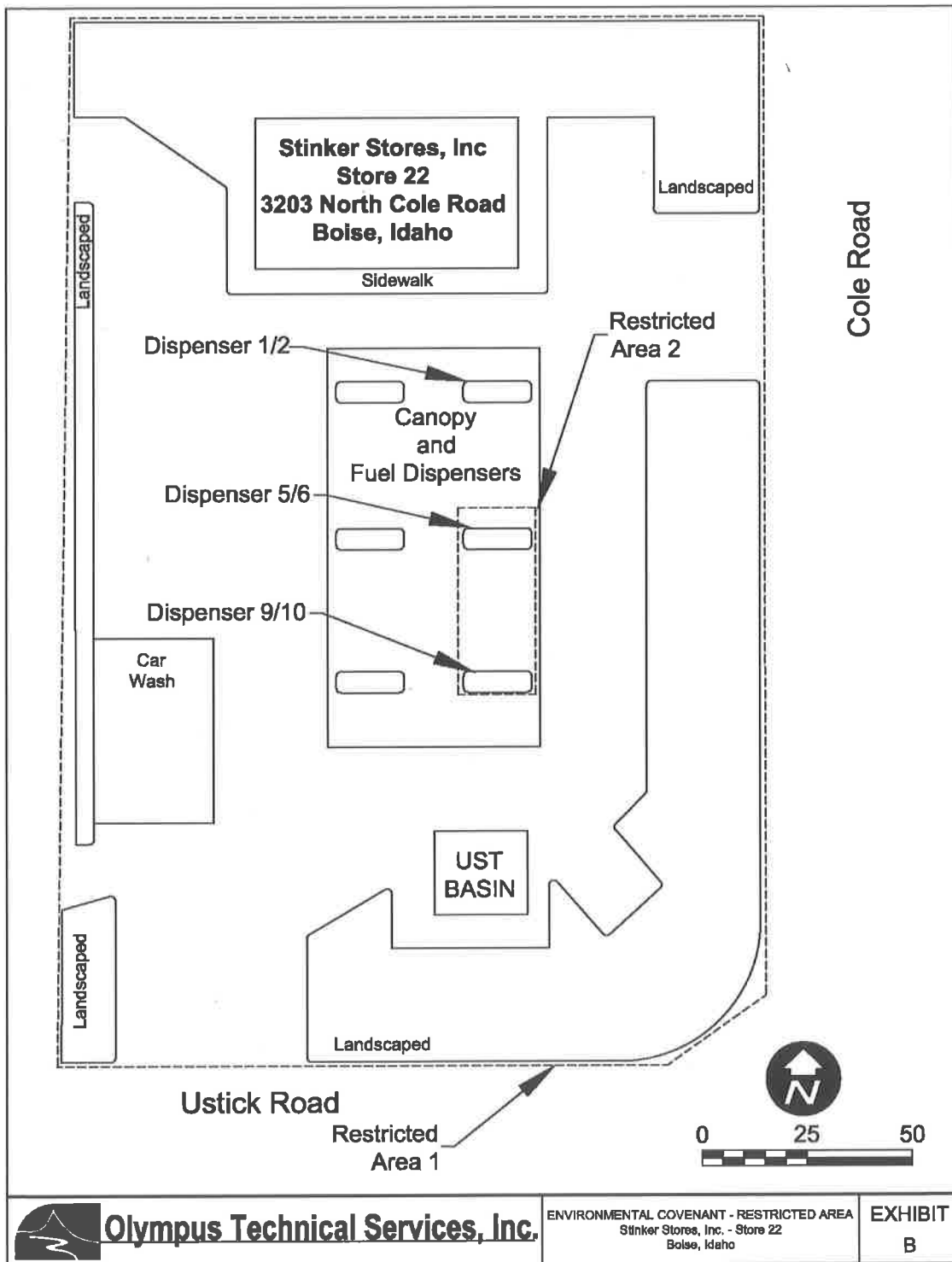
LESS AND EXCEPTING THEREFROM a parcel conveyed to the INTERMOUNTAIN GAS COMPANY being the first parcel described in Bargain and Sale Deed recorded May 24, 1996, as Instrument No. 96043904, Ada County Records, and described as follows:

A parcel of land located in the Southeast quarter of Section 36, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho more particularly described as follows:

Commencing at the Southeast corner of said Section 36 whence the East quarter corner of said Section 36 bears North 00°16'27" East a distance of 2655.82 feet; thence North 0°16'27" East along the East line of said Section 36, a distance of 254.50 feet; thence North 89°40'29" West a distance of 45.00 feet to a point on the North line of the parcel described in the deed recorded at Reception No. 95006715 in the office of the Ada County Clerk and Recorder, Boise, Idaho, said point also being the REAL POINT OF BEGINNING; thence South 0°16'27" West a distance of 5.00 feet; thence North 89°40'29" West a distance of 10.00 feet; thence North 0°16'27" East a distance of 5.00 feet to a point on the north line of said parcel described in the deed recorded at Reception No. 95006715; thence South 89°40'29" East along said north line of the parcel described in the deed recorded at Reception No. 95006715, a distance of 10.00 feet to the REAL POINT OF BEGINNING.

ALSO LESS AND EXCEPTING that portion deeded to Ada County Highway District in Warranty Deed recorded April 12, 1996, as Instrument No. 96030273, Records of Ada County, Idaho.

EXHIBIT B



Olympus Technical Services, Inc.

ENVIRONMENTAL COVENANT - RESTRICTED AREA  
Stinker Stores, Inc. - Store 22  
Boise, Idaho

EXHIBIT  
B

Attachment 1  
**NOTICE OF ANNUAL COMPLIANCE REPORTING  
FOR ENVIROMENTAL COVENANT**

This Notice of Annual Compliance Reporting for Environmental Covenant form is to assist property owners with the Compliance Reporting provision included in the Environmental Covenant. Owner[s] 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. This annual report requirement runs from the effective date of the Environmental Covenant, the date on which the Environmental Covenant was officially recorded with the property deed.

MAIL ANNUAL NOTICE TO:

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

CURRENT PROPERTY OWNER NAME: \_\_\_\_\_

DATE OF ANY OWNERSHIP CHANGES THIS PAST YEAR: \_\_\_\_\_

PROPERTY NAME AND ADDRESS: \_\_\_\_\_

\_\_\_\_\_

ENVIRONMENTAL COVENANT

COUNTY RECORDERS INSTRUMENT NUMBER: \_\_\_\_\_

GENERAL DESCRIPTION OF ACTIVITY AND USE LIMITATION(S):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***OWNER(S) VERIFIES COMPLIANCE WITH THE ACTIVITY AND USE LIMITATIONS IDENTIFIED IN THE ABOVE REFERENCED ENVIRONMENTAL COVENANT IN THIS ANNUAL REPORT FILED WITH THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY.***

\_\_\_\_\_  
PROPERTY OWNER REPRESENTATIVE (PRINT/TYPE) TITLE

\_\_\_\_\_  
SIGNED DATE