

232003

Instrument # 232003

CLEARWATER COUNTY, OROFINO, IDAHO  
10-19-2017 12:24:28 PM No. of Pages: 9

Recorded for : JENNIFER BILLUPS \*

CARRIE BIRD

Fee: 0.00

Ex-Officio Recorder Deputy Amanda Brewer

Index to: COVENANTS AND RESTRICTIONS \* return to

Recording Requested By and  
When Recorded Return to:

Pierce Recreation District  
P O Box 296  
Pierce ID 83546

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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 the **GRANTOR**, Pierce Recreation District (DISTRICT) 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. The DISTRICT is a "holder" as defined in Idaho Code § 55-3002(6). As provided in Idaho Code §55-3008, Pierce Recreation District is also the **GRANTEE**. The DISTRICT, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property 105 West Carle Street, Parcel Number RPB36N5E024800, in the city of Pierce, County of Clearwater, State of Idaho, is legally described in the attached legal description and as follows (hereafter referred to as "the Property"):

A parcel of land beginning at the Northwest corner of Lot One (1), Block Two (2), of the original Town of Pierce, County of Clearwater, State of Idaho; thence West along the South right of way line of Carle Street a distance of 60 feet to a point; thence South at right angles and parallel to the West boundary of Lot 1, Block 2; a distance of 296.5 feet to a point; thence East at right angles a distance of 296.5 feet to the point of beginning, all being within the Northwest Quarter of the Southwest Quarter of Section 2, Township 36 North, Range 5 East, containing 0.41 acres more or less.

Property Ownership. The DISTRICT 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 the DISTRICT has the power and authority to enter into this Environmental Covenant.

000588

Reason for Activity and Use Limitations. The Property formerly had an underground storage tank (UST) that contained heating oil for indoor heating of the onsite facilities. The DISTRICT implemented a corrective action plan ("CAP") on the Property. This Environmental Covenant is required because after the implementation of the CAP residual concentrations of petroleum compounds ethylbenzene and naphthalene remain in soil and benzene and ethylbenzene remain in groundwater underlying the Property at levels exceeding what the Department deems in writing to be adequate for the Property to be developed for unrestricted use.. These concentrations are above allowable risk-based concentration as determined by the Department therefore future use of the Property shall be limited to protect human health and the environment.

Name and Location of the Administrative Record. The administrative record for the 105 West Carle Street Property can be found at the Idaho Department of Environmental Quality Lewiston Regional Office, 1118 "F" St. Lewiston, Idaho.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, the DISTRICT, 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. , There shall be no extraction of groundwater under, the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use, except for the purposes of environmental remediation or sampling
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, or any permanently occupied human habitation (including hotels or motels), school, day care, or hospital use.

Breach and Cure of Activity and Use Limitations. The DISTRICT, 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 DISTRICT 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 DISTRICT 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 DISTRICT, 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 petroleum compounds benzene and ethylbenzene in groundwater and ethylbenzene and naphthalene in soil are at levels exceeding

what the Department deems in writing to be adequate for the Property 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 the DISTRICT, 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, the DISTRICT, 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 the DISTRICT, 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. The DISTRICT, 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 the DISTRICT or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of the DISTRICT, 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, and/or any party to this Environmental Covenant to require that the DISTRICT correct or remove any violations of this Environmental Covenant. Violation of this 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 DISTRICT or its successors-in-interest, 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 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 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 the DISTRICT 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.

DISTRICT:

Pierce Recreation District  
ATTN: Jennifer Billups, Manager  
105 Carle Street  
Pierce, ID 83546

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

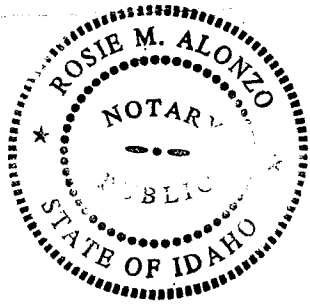
Signature: *John H. Tippetts*  
Printed Name: John H. Tippetts  
Title: Director, Idaho Department of Environmental Quality

Date: Oct. 12, 2017

State of Idaho            )  
  ) ss.  
County of Ada            )

On this 12<sup>th</sup> day of October, in the year 2017, before me, a Notary Public in and for said County and State, personally appeared John H. Tippetts, 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: *Pampa, Idaho*  
Commission Expires: *11/21/2020*

Accepted:

Pierce Recreation District Darwin Nelson

Title President of Board

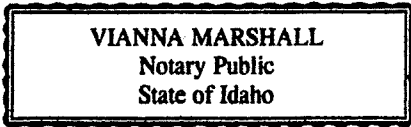
ACKNOWLEDGMENTS

State of Idaho

County of Clearwater ) ss.

On this day personally appeared before me Darwin Nelson, in his official capacity as President of the Board, known to me to be the person described in the foregoing instrument and acknowledged that he executed the same on behalf of the Pierce Recreation District as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 5<sup>th</sup> day of October, 2017.



Notary Public for Idaho: V. Marshall  
Residing at: Clearwater County  
Commission Expires:

**MY COMMISSION EXPIRES:**  
**October 26, 2018**  
**BONDED THRU NOTARY PUBLIC UNDERWRITER**

109074

RECEPTION (x)  
INDEXED (x)  
FILED ( )  
DELIVERED ( )  
MAILED ( )

ORDINANCE NO. 69

AN ORDINANCE AUTHORIZING AND DIRECTING THE TRANSFER AND CONVEYANCE TO PIERCE RECREATION DISTRICT OF CERTAIN REAL PROPERTY BELONGING TO THE CITY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF PIERCE, IDAHO:

Section 1: PREAMBLE: Whereas, the City is the owner of certain real property hereinafter described which, in the judgment of the Mayor and Council should be transferred to Pierce Recreation District in the best interests of the City; and

Whereas, the City and the Pierce Recreation District have entered into a Memorandum of Agreement, a duplicate original of which is on file with the Clerk,

Section 2: CONVEYANCE AUTHORIZED: That the following described real property belonging to the said City, situate in Clearwater County, State of Idaho, to-wit:

Beginning at the Northwest corner of Lot One (1), Block Two (2), of the original Town of Pierce, County of Clearwater, State of Idaho; thence West along the South right of way line of Carle Street a distance of 60 feet to a point; thence South at right angles and parallel to the West boundary of Lot 1, Block 2, a distance of 296.5 feet to a point; thence East at right angles a distance of 296.5 feet to the point of beginning, all being within the Northwest Quarter of the Southwest Quarter of Section 2, Township 36 North, Range 5 E.B.M., containing .41 acres more or less,

ALSO

Beginning at the Northwest corner of Lot One (1), Block Two (2) of the original Town of Pierce, County of Clearwater, State of Idaho; thence West along the South right of way line of Carle Street a distance of Sixty (60) feet to the true point of beginning; thence South at right angles and parallel to the West boundary of Lot One (1), Block Two (2) a distance of 296.5 feet to a point; thence West at right angles a distance of 120 feet to a point; thence North at right angles a distance of 296.5 feet to a point on the South right of way line of Carle Street; thence East along the South boundary of Carle Street a distance of 120 feet to the point of



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