

Recording Requested By and
When Recorded Return to:

Instrument # 413829

VALLEY COUNTY, CASCADE, IDAHO

6-5-2018 09:52:32 AM No. of Pages: 14

Recorded for : MATERIALS TESTING AND INSPECTION

DOUGLAS A. MILLER

Fee: 49.00

Ex-Officio Recorder Deputy

Index to: MISCELLANEOUS RECORD



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**, Intermountain Food Stores, Inc. ("OWNER") and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. Intermountain Food Stores, Inc., as the current property owner, grants this Environmental Covenant to all signatories to this instrument. 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. Intermountain Food Stores, Inc., is a "holder" as defined in Idaho Code § 55-3002(6). As provided in Idaho Code §55-3008, Intermountain Food Stores, Inc., as the holder is also the **GRANTEE**.

Property. This Environmental Covenant concerns real property located at 503 North Main Street, Parcel Number RPC0194006008A, Cascade, County of Valley, State of Idaho, legally described as a parcel of land situated in Section 25, Township 14 North, Range 3 East, (hereafter referred to as "the Property"). The entire Property is depicted in the map attached as Schedule A. The Property is legally described in Schedule B, (Deed). The Property is currently known as Howdy's Gas & Grub.

Property Ownership. Intermountain Food Stores, Inc., 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 Intermountain Food Stores, Inc., has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above is used to operate a fuel distributing facility and convenience store, which was contaminated with motor fuel. Intermountain Food Stores, Inc., subsequently implemented remedial action on the Property.

This Environmental Covenant is required because at the completion of the remedial actions (soil excavation, in-situ chemical oxidation injections, dual-phase extraction events), residual concentrations of benzene, toluene, ethylbenzene and naphthalene in groundwater remain underlying the Property. These concentrations are above allowable risk-based concentrations as defined by the Department; therefore future use of the Property shall be limited to protect human health and the environment.

Current risk-based standards require that no individual carcinogenic contaminant exceed their Residential Use Screening Level (RUSL) and that the cumulative risk of all carcinogenic contaminants not exceed 1×10^{-5} , the hazard index of all non-carcinogenic chemicals not exceed 1; or that no contaminant exceeds their Residential Use Screening Level (RUSL) or Remedial Action Target Level (RATL).

The current highest sample concentrations for chemicals of interest and their respective RUSL are shown in the table below.

Chemical of Interest	Groundwater RUSL ug/L	Groundwater 1-10-2018 ug/L
Benzene	5	884
Toluene	1	1,300
Ethylbenzene	50	1,170
Naphthalene	70	224

Name and Location of Administrative Record. The administrative record for Howdy's Gas & Grub (Facility Identification Number 3-430011), is located at DEQ Boise Regional Office located at 1445 N Orchard, Boise, ID 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Intermountain Food Stores, Inc., 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. Groundwater may be extracted as part of an environmental investigation or remediation project.
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.

Breach and Cure of Activity and Use Limitations Intermountain Food Stores, Inc., 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, Intermountain Food Stores, Inc., 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 Intermountain Food Stores, Inc., 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. The Department will not withhold its consent if the other parties agree to assignment of the Environmental Covenant to a new holder.

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. Any party to the Environmental Covenant and any person with an interest in the Property 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:

Contaminated ground water are currently at levels 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 Intermountain Food Stores, Inc., 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 Intermountain Food Stores, Inc., 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 Intermountain Food Stores, Inc., 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. Intermountain Food Stores, Inc., 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 Intermountain Food Stores, Inc., or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Intermountain Food Stores, Inc., 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 Owner 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 Intermountain Food Stores, Inc., 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 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 Intermountain Food Stores, Inc., 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: Intermountain Food Stores, Inc.
ATTN: Jim Tate and/or Doug Tate
Property Owner(s)
3310 Gekeler Lane
Boise, Idaho 83706

THE DEPARTMENT: Idaho Department of Environmental Quality
ATTN: Assessment & Compliance Unit Manager
Waste Management and Remediation Division
1410 North Hilton
Boise, Idaho 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 Intermountain Food Stores, Inc., or any other responsible party.

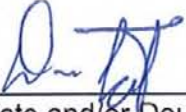
Nothing in this Environmental Covenant shall affect the obligations of Intermountain Food Stores, Inc., or any other responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department 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 Ada County Recorder's office.

Signature and Acknowledgments

Accepted:

Property Owner: Intermountain Food Stores, Inc.

Signature: 

Printed Name: Jim Tate and/or Doug Tate

Title: Owner

Date: 5-17-18

State of Idaho, county of Ada, ss.

On this 17th day of May, in the year 2018, before me, a Notary Public in and for said County and State, personally appeared Jim Tate and/or Doug Tate, known or identified to me to be the President and/or Owner(s) of Intermountain Food Stores, Inc., that executed this Environmental Covenant, and acknowledged to me that Intermountain Food Stores, Inc., 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: Teresa Ceniga

Residing at: Boise Idaho

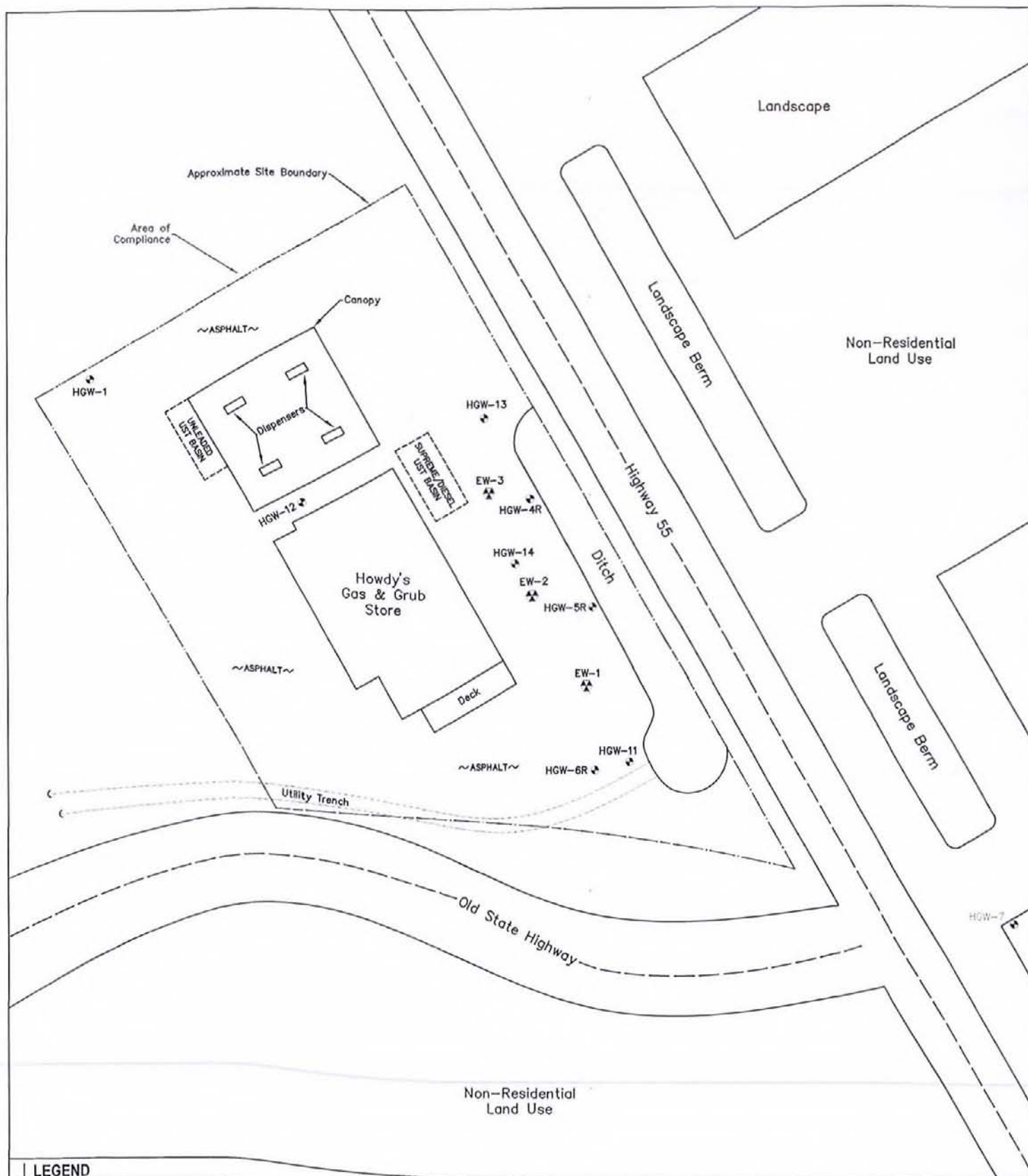
Commission Expires: 4-27-21

SCHEDULES

Schedule A – Restricted Area Map

Schedule B – Deed

SCHEDULE A



LEGEND

Approximate Monitoring Well Location and Identification

HGW-1

Approximate Extraction Well Location and Identification

EW-2



**MATERIALS
TESTING &
INSPECTION**

2791 S. Victory View Way
Boise, ID 83709-2835

Phone: 208 376-4748
Fax: 208 322-6515
E-mail: mti@mti-id.com

Schedule A Restricted Area Map

Howdy's Gas & Grub
503 North Main Street
Cascade, Idaho
09 April 2018

SCHEDULE B

Instrument # 322788

VALLEY COUNTY, CASCADE, IDAHO

2007-06-26 04:22:47 No. of Pages: 4

Recorded for: AMERITITLE

ARCHIE N. BANBURY

Ex-Officio Recorder Deputy

Index to DEEDS

Fee: 12.00

CERTIFIED COPY

Schedule 2.5.1

FORM OF WARRANTY DEED

RECORDATION REQUESTED BY:

WHEN RECORDED MAIL TO:

IC 10867

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

WARRANTY DEED

FOR VALUE RECEIVED, Terry JEiguren and Trudy MEiguren, the "Grantors," hereby GRANT, BARGAIN, SELL AND CONVEY to Intermountain Food Stores, Inc the "Grantee," whose current address is 3310 Gekeler Lane Boise, Idaho 83702 the following described real property situated in the County of Valley, State of Idaho, to-wit:

Legally described on Exhibit A attached hereto and made a part hereof

To have and to hold the said premises with their appurtenances unto the said Grantee, their successors and assigns forever. 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 this 26 day of June, 2007.

GRANTORS:

Terry Eiguren
Trudy Eiguren

STATE OF Idaho)
County of Valley) ss.

On this 26 day of June, 2007, before me, a notary public, personally appeared Terry J. Eiguren & Trudy M. Eiguren, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.



Colleen L. Cole
Notary Public for Cascade
Commission Expires: 6-10-2011

LEGAL DESCRIPTION

Parcel No. 1:

All those certain lots, pieces or parcels of land situate in Valley County, Idaho, and shown as Lots 8, 9, 10 and 11 of Block 6 of PINE GROVE ADDITION to the City of Cascade, Idaho, a plat which is recorded in the Office of the Recorder of Valley County, Idaho.

Parcel No. 2:

That portion of Lot 12 of Block 6 of PINE GROVE ADDITION to the City of Cascade, Idaho, a plat of which is recorded in the Office of the Recorder of the Valley County, Idaho, which is more particularly described below:

A parcel of land being a portion of Lot 12, Block 6, PINE GROVE ADDITION to the City of Cascade, Idaho, a plat which is recorded in the office of the Recorder of Valley County, Idaho, which parcel is located in the NW¼ of the SW¼ of Section 25, T. 14 N., R. 3 E., B.M., Valley County, Idaho, being more particularly described as follows:

Commencing at the east corner common to said Lot 12 and Lot 13 of said Block 6 of PINE GROVE ADDITION, a set 5/8 inch rebar being the TRUE POINT OF BEGINNING.

Thence a bearing of S 35°01'00" E, a distance of 124.40 feet on the east boundary of said Lot 12 to a set 5/8 inch rebar on the north right-of-way boundary of Old State Highway; Thence on a curve to the left on said right-of-way boundary, which curve has a radius of 613.00 feet, a length of 42.84 feet, and a chord which bears N 89°49'00" W, a distance of 42.83 feet to a set 5/8 inch rebar; Thence a bearing of N 35°01'00" W, a distance of 99.95 feet to a set 5/8 inch rebar on the boundary common to said Lots 12 and 13; Thence a bearing of N 55°22'55" E, a distance of 35.00 feet on said boundary common to Lots 12 and 13 to the POINT OF BEGINNING.

RESERVING unto Grantor and Grantor's successors, heirs and assigns a permanent, non-exclusive easement for the purposes of running utility and service lines, cables, conduits and pipelines under a parcel of land ten feet in width centered five feet on each side of the following-described centerline (Premises):

Commencing at the east corner common to said Lot 12 and Lot 13 of said Block 6 of PINE GROVE ADDITION, a set 5/8 inch rebar; Thence a bearing of S 35°01'00" E, a distance of 49.51 feet to the TRUE POINT OF BEGINNING of said easement centerline.

Thence a bearing of S 54°21'39" W, a distance of 35.01 feet on said centerline to the POINT OF ENDING of said easement.

The use of the easement for utility and service lines, conduits, cables and pipelines shall be for the Grantee, Grantee's successors, heirs and assigns to at all times hereafter lay utility and service lines, conduits, cables and pipelines below the ground of all nature and description including, without limitation, tele-communication lines, television cables, electricity lines, natural gas lines, sewer lines, drain line, water lines and all lines, cables, conduits and pipelines for providing services to the Appurtenant Property as hereinafter described under the Premises and to thereafter maintain, repair and replace those utility and service lines, cables, conduits and pipelines and to remove obstructions which may injure or interfere with the use, occupation and enjoyment of those lines, cables, conduits and pipelines. In making a use of the Premises for the utility and service lines, conduits, cables and pipelines and in maintaining, repairing and replacing those lines, conduits and cables, Grantee shall be required to repair any disturbance to the surface of the Premises.

Grantee and Grantee's successors, heirs and assigns shall have and hold the easement for the purposes herein provided forever.

The easement is appurtenant to and for the benefit of and shall never be severed from the real property more particularly described below (Appurtenant Property):

A parcel of land being a portion of Lot 12, Block 6, PINE GROVE ADDITION to the City of Cascade, Idaho, which is recorded in the office of the Recorder of Valley County, Idaho, which parcel is located in the NW¼ of the SW¼ of Section 25, T. 14 N., R. 3 E., B.M., Valley County, Idaho, being more particularly described as follows:

Commencing at the east corner common to said Lot 12 and Lot 13 of said Block 6 of PINE GROVE ADDITION, a set 5/8 inch rebar; Thence a bearing of S 55°22'55" W, a distance of 35.00 feet on the boundary common to said Lots 12 and 13 to a set 5/8 rebar being the **TRUE POINT OF BEGINNING**.

Thence a bearing of S 55°22'55" W, a distance of 106.52 feet on said boundary common to said Lots 12 and 13 to a found 5/8 inch rebar located on the east right-of-way boundary of Idaho Street; Thence a bearing of S 36°54'51" E, a distance of 45.71 feet on said right-of-way boundary to a set 5/8 inch rebar located on the north right-of-way boundary of the Old State Highway; Thence on a curve to the right, on said right-of-way boundary, which curve has a radius of 613.00 feet, a length of 118.72 feet, and a chord which bears N 82°37'58" E, a distance of 118.54 feet to a set 5/8 inch rebar; Thence a bearing of N 35°01'00" W, a distance of 99.95 feet to the **POINT OF BEGINNING**.

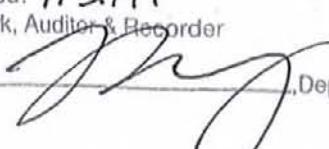
The easement shall inure to the benefit of and may be used by all persons who become the owners of the Appurtenant Property or any part thereof.

Each and all of the provisions of this easement are intended to be and shall be construed to be covenants running with the land.

LEGAL DESCRIPTION - 2
Figuren.LegalDescrip

STATE OF IDAHO, County of Valley) ss.
I hereby certify that the foregoing is a true
copy of the original on file and of record in
this office.

Dated: 7/31/17 Douglas A. Miller
Clerk, Auditor & Recorder

By:  Deputy