

2020-007394

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CHRIS YAMAMOTO

CANYON COUNTY RECORDER

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MISC

SELKIRK INC

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**, Selkirk, Inc. (Selkirk), the property deed holder and business operator validated in the Secretary certificate included in Attachment A, and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. Selkirk, 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. Selkirk is also a "holder" as defined in Idaho Code § 55-3002(6). For recording indexing purposes the holder, Selkirk, is the **GRANTEE** as provided in Idaho Code §55-3008.

Property. This Environmental Covenant concerns real property located at 1820 E Fargo Avenue, Nampa Idaho, in Canyon County, identified as Parcel Number R3120400000 and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as the "Property").

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

Reason for Activity and Use Limitations.

The Property described above is currently operating as Selkirk, a multinational conglomerate that produces electronics and HVAC equipment. In July 1990, two 1,000-gallon gasoline underground storage tanks (USTs) were removed and a petroleum release was discovered on the property south of Selkirk, located at 1917 E Fargo Avenue. This property currently operates as Forage Genetics International, LLC (Forage) and was formerly Allied Seed Cooperative, Inc. (Allied). In December 1990, Allied entered into a consent order with the Department to assess and remediate the petroleum release. Records indicate Allied conducted ground water sampling and operated a pump and treat system from 1990 to 1999. Based on Allied's ground

water sampling, ground water containing petroleum hydrocarbons at the Allied property impacted ground water at the Property. Assessment activities resumed in 2012 to include ground water sampling, soil vapor sampling, and the preparation of a risk evaluation. The most current ground water sampling event performed in 2017 indicated benzene, ethylbenzene, and naphthalene impact the ground water at the Property. The Department compared current and historical data of petroleum hydrocarbons in ground water impacted by the Allied petroleum release, which indicated the petroleum plume in ground water appears to be stable and/or decreasing in size. Consequently, an Environmental Covenant on the Property is suitable to serve as an institutional control to remedy risk associated with the ground water contamination. This Environmental Covenant is required because concentrations of benzene, ethylbenzene, and naphthalene in ground water at the Property are above allowable risk-based concentrations for groundwater ingestion as determined by the Department. Therefore, future use of the Property shall be limited to protect human health and the environment.

The Environmental Covenant applies solely to the petroleum plume originating from the 1990 Allied UST release and migrating to the Property. Two separate halogenated solvent plumes, not associated with the Allied ground water petroleum plume, may potentially impact groundwater at the Property. These halogenated solvent plumes originated from a facility (Van Waters & Rogers aka Univar USA, Inc. Nampa) located in an upgradient groundwater flow direction from the Property, and a facility (Great Western Chemical aka McCall Oil aka BHS Acquisitions), located in an upgradient of cross-gradient groundwater flow direction from the Property. Both facilities have previously entered into Consent Orders with the Department for the assessment, monitoring, and remediation of their respective halogenated solvent releases.

Name and Location of Administrative Record. A copy of Allied Seed Cooperative Inc. operating as "Forage Genetics International" (Facility Identification Number 3-140022; EDMS Number 2011BAZ244) administrative records; Univar USA Inc. Nampa (EDMS Number 2011BAZ6725) administrative records; and Dubois Chemicals Yard (EDMS Number 2011BAZ616) administrative reports can be found at the DEQ Boise Regional Office, 1445 N Orchard Street, Boise, ID 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Selkirk, and any successors in interest, are hereby limited from using the Property, now or at any time in the future, as specifically set forth below:

There shall be no extraction of ground water under the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use. Ground water may be extracted as part of an environmental investigation or remediation project.

Breach and Cure of Activity and Use Limitations. Selkirk, 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, Selkirk 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 Selkirk or any successors in interest, and the 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. Selkirk, 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:

Contaminated ground water is 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 this Environmental Covenant shall be recorded in the County Recorder's Office of the county in which the Property subject to this Environmental Covenant is located. The owner of the Property shall record this Environmental Covenant, and any amendment or termination thereof, within thirty (30) days following receipt of the Department's signature hereon. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, the owner of the Property 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 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 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 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 Environmental Covenant is not affected by failure to provide a copy of this Environmental Covenant as required under this section.

Compliance Reporting. Selkirk, 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 to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner of the Property and any other person using the Property. Failure of the owner or any other user of the Property 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 or user of the Property 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 owner or user of the Property 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 Selkirk 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.

OWNERS:

Selkirk, Inc.
ATTN: Kevin Redd – Plant Manager
1820 E Fargo Ave, Nampa, ID 83687
Nampa, ID 83687

And

Selkirk, Inc.
ATTN: Jim Kaboski – VP & GM Hart & Cooley
507 E. Michigan St.
Milwaukee, WI 53202

THE DEPARTMENT:

Idaho Department of Environmental Quality
ATTN: Assessment & Compliance Unit 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 Selkirk or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of Selkirk 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:

Property Owner: Selkirk, Inc.

Signature: [Handwritten Signature]
Printed Name: JAMES L. KABOSKI
Title: VP/GM HART + COOLEY
Date: JANUARY 7, 2020

State of Wisconsin)
) SS:
County of Milwaukee)

On this 7th day of January, in the year 2020, before me, a Notary Public in and for said County and State, personally appeared James L. Kaboski, personally known or identified to me as the individual who executed this Environmental Covenant.

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: [Handwritten Signature]
Residing at: MILWAUKEE, WI
Commission Expires: 2-25-22

Karen M. Barkas
Notary Public
State of Wisconsin

Attachment A Legal Description and
Deed of Property



Secretary Certificate

I, Michael R. Peterson, Secretary of Johnson Controls, Inc., a Wisconsin corporation, hereby confirm that Selkirk Corporation, a Delaware corporation with Registered Address at 1209 Orange Street, Wilmington, Delaware 19801, is a wholly owned indirect subsidiary company of Johnson Controls, Inc.

A handwritten signature in black ink, appearing to read 'MRP', written over a horizontal line.

Michael R. Peterson, Secretary

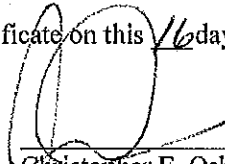


SECRETARY'S CERTIFICATE

I, Christopher E. Osborne, Secretary of Selkirk Corporation, a Delaware corporation, (the "Company"), do hereby certify that:

- 1. James Kaboski, was on December 31, 2019 and at all times subsequent thereto, including the date hereof, the duly appointed, qualified and acting Vice President of the Company;
- 2. Attached hereto and made a part hereof as Addendum A is an excerpt from the Company's Bylaws which are in full force and effect.

IN WITNESS WHEREOF, I have signed this certificate on this 16 day of January 2020.

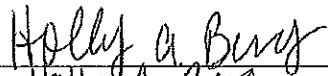


 Christopher E. Osborne
 Secretary

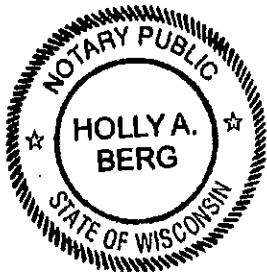
State of Wisconsin

County of Milwaukee

This signature was acknowledged before me in Milwaukee, Wisconsin USA on January 16, 2020 by Christopher E. Osborne.



 Holly A. Berg, Notary Public
 My commission expires: 07/24/2021
 Notary Seal



Addendum A

5.03. The President. The President shall be the chief executive officer of the corporation, shall preside at all meetings of the stockholders and the Board of Directors, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall direct the affairs and policies of the corporation, subject to any direction which may be given by the Board of Directors. The President shall have authority to designate the duties and powers of the officers and delegate special powers and duties to specified officers, so long as such designations shall not be inconsistent with applicable laws, these bylaws, or action of the Board of Directors. The President shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

5.04. The Vice Presidents. If a Vice President is elected by the Board of Directors, then in the absence of the President or in the event of his inability or refusal to act, any Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall perform such other duties and have such other powers as the Board of Directors or the President may from time to time prescribe.

EXHIBIT "A"

A portion of the North Half of the Northwest Quarter of Section 14, Township 3 North, Range 2 West, Boise Base and Meridian, Nampa, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the Northwest corner of section 14, Township 3 North, Range 2 West, Boise Base and Meridian, Canyon County, Idaho, and running

South 0 degrees 24'05" West 993.39 feet along the Westerly boundary of said Section 14 to the Northwest corner of the South Half of the Southwest Quarter of the Northwest Quarter of the Northwest Quarter, said Section 14; thence continuing

South 0 degrees 24'05" West 220.00 feet along said Westerly boundary of Section 14, to a point on the centerline of East Fargo Avenue; thence

South 89 degrees 35'55" East 575.00 feet along the centerline of East Fargo Avenue to a point on the centerline of North 17th Street; thence continuing

South 89 degrees 35'55" East 259.89 feet along the centerline of East Fargo Avenue to a point; thence

North 0 degrees 24'05" East 25.00 feet perpendicularly distant from the centerline of East Fargo Avenue to a point on the Northerly boundary line of East Fargo Avenue, said point being the TRUE POINT OF BEGINNING; thence continuing

North 0 degrees 24'05" East 193.05 feet to a point on the Southeasterly boundary of Egbert's acreage Plat No. 1, as recorded in the office of the Canyon County Recorder in Plat Book 3, Page 11; thence

North 53 degrees 34'30" East 624.73 feet along said boundary line to a point on the Southerly right of way line of the Oregon Short Line Railroad Company lead track; thence

South 89 degrees 35'55" East 410.04 feet along said right of way line to a point on the Westerly boundary line of North 20th Street; thence

South 0 degrees 24'05" West 547.51 feet along said boundary line to a point of curve; thence

Southwesterly 31.42 feet along a curve to the right having a radius of 20.00 feet, a tangent of 20 feet a deflection angle of 90 degrees 00' right and whose long chord bears

South 45 degrees 24'05" West to a point on tangent on the Northerly boundary line of East Fargo Avenue; thence

North 89 degrees 35'55" West 890.11 feet along said boundary line to the TRUE POINT OF BEGINNING.

Except all minerals in or under said land including but

Continuation of Exhibit A

not limited to metals, oil and gas, coal, stone and mineral rights, mining rights and easement rights or other matters relating thereto whether express or implied as excepted in Warranty Deed recorded January 22, 1976 as Instrument No. 779282.

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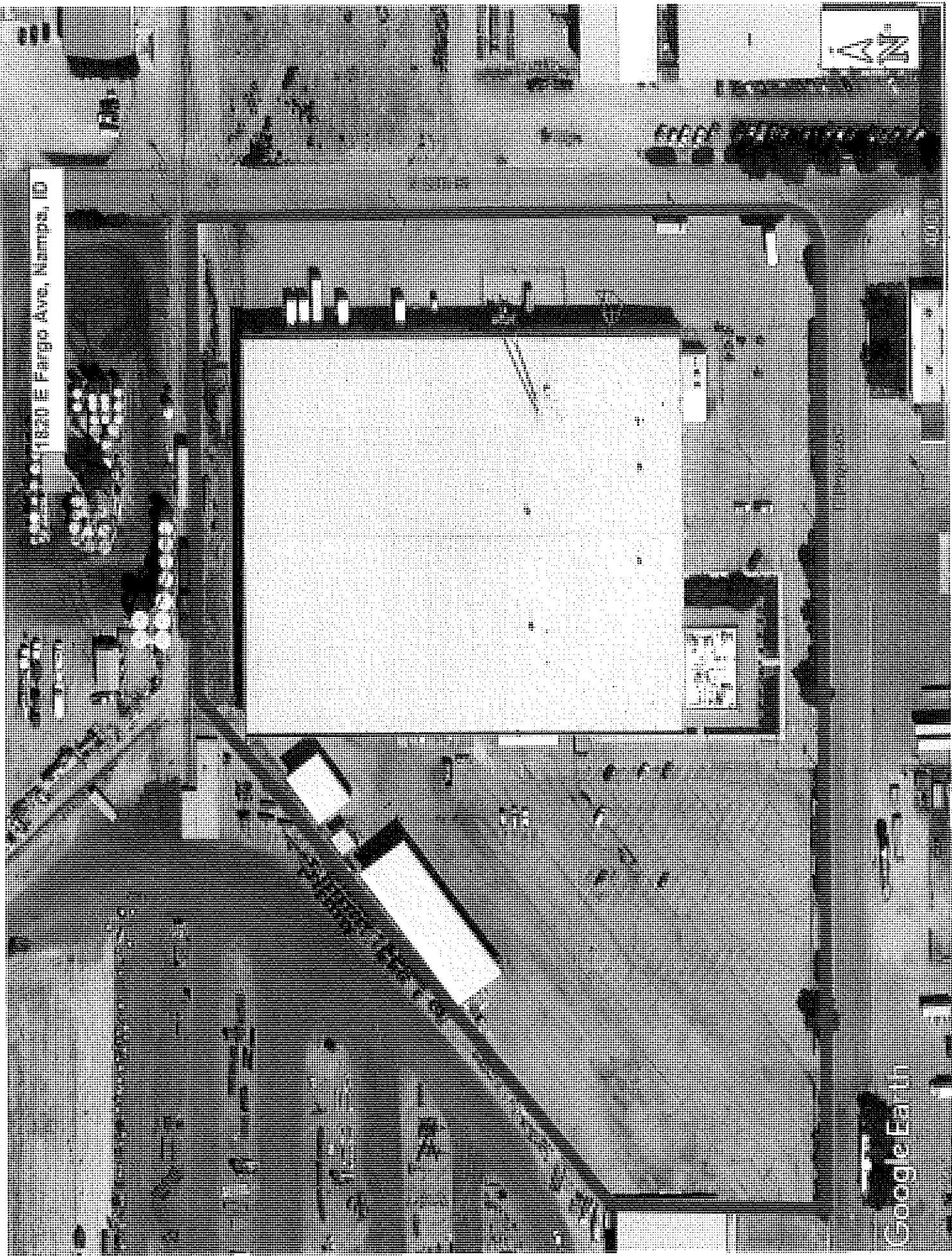
RECORDED

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NED J KERR
CANYON CNTY RECORDER
BY *[Signature]*

REQUEST *[Signature]*
TYPE *[Signature]*

Attachment B Map of Restricted Area



1630 E Fargo Ave, Nampa, ID

Google Earth