

Recording Requested By and  
When Recorded Return to:

**Instrument # 273826**

IDAHO CITY, BOISE COUNTY, IDAHO

5-6-2021 01:30:08 PM No. of Pages: 12

Recorded for : STEPHEN WHITELEY

MARY T. PRISCO

Fee: 43.00

Ex-Officio Recorder Deputy

Index to: MISCELLANEOUS



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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 **GRANTORS**, Stephen Whiteley, ("Whiteley"), and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. Whiteley, 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. Whiteley is also a "holder" as defined in Idaho Code § 55-3002(6). For recording indexing purposes the holder, Whiteley, is the **GRANTEE** as provided in Idaho Code §55-3008.

Property. This Environmental Covenant concerns real property located at 445 Hwy 55, Horseshoe Bend, in Boise County, identified as Parcel Number RPH0002006008B and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as "the Property"). The Property is depicted in the map attached as Schedule B.

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

Reason for Activity and Use Limitations. The Property described above includes a 1-story wood-frame and block-masonry slab constructed building (convenience store) with partial basement and a gasoline filling station that includes underground storage tanks (USTs), dispensing units, and mobile home with detached shed. A phase II environmental site assessment of the site was performed in 2019 and contamination was discovered in the soil above allowable risk-based concentrations. In 2020 and 2021, additional assessment activities were conducted to include soil sampling and ground water sampling. Using current site conditions, a risk evaluation model was prepared to determine risk exposure. The analytical results for the soil and ground water samples are above allowable risk-based concentrations as determined by the Department. This Environmental Covenant is required because residual concentrations of benzene, ethylbenzene, and naphthalene in soil remain underlying the

Property above allowable risk-based concentrations as determined by the Department. Ground water concentrations of benzene, ethylbenzene, toluene, xylene, and naphthalene are above allowable risk-based concentrations 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 Administrative Record. A copy of Ray's Corner Market (Facility Identification Number 3-080020) administrative records can be found at the DEQ Boise Regional Office, 1445 N Orchard St, Boise, ID 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Whiteley, 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, excluding the 25-by 60-square foot, north-south oriented mobile home described as a 1976 Hacienda, Serial Number #13793x6v. Future residential use and/or occupancy upon the mobile home's removal or sale is prohibited. Exclusion Area Map with location and coordinates of the specified mobile home is displayed in Attachment B.

Breach and Cure of Activity and Use Limitations. Whiteley, 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, Whiteley 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 Whiteley 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. Whiteley, 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 soil, soil vapor, and ground water are 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 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 ten (10) 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. Whiteley, 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 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 Whiteley 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:

**ATTN:** Stephen Whiteley  
445 Hwy 55  
Horseshoe Bend, ID 83629

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 Whiteley or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of Whiteley 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: Stephen Whiteley

Property Owner:

Signature: Stephen Whiteley  
Printed Name: Stephen Whiteley  
Title: Owner  
Date: 3/31/2021

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho, county of Baile, ss.

On this 31<sup>st</sup> day of MARCH, in the year 2021, before me, a Notary Public in and for said County and State, personally appeared Stephen Whiteley, identified to me to be the person that 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 for Idaho: Terrie Nolan  
Residing at: Horseshoe Bend Idaho  
Commission Expires: Sept. 28, 2024

## Attachment A   Legal Description and Deed of Property

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Instrument # 206000

IDAHO CITY, BOISE COUNTY, IDAHO

2005-12-12 04:04:05 No. of Pages: 2

Recorded for: ALLIANCE TITLE

RORA A. CANODY

Fee: 6.00

Ex-Officio Recorder Deputy  
Index to: DEEDS

*[Signature]*

## WARRANTY DEED

Order No.: AT-5000528944AK

### FOR VALUE RECEIVED

David C. Doxey, who acquired title as an unmarried man; AND Edward L. Doxey and Dawne M. Doxey, as Co-Trustees of the Edward L. & Dawne M. Doxey Trust under trust agreement dated effective February 1, 2002.,

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Stephen Whiteley, an unmarried person,

whose current address is

21 Wormwood Street, Boston, MA, 02210,

the grantee(s), the following described premises, in Boise County, Idaho, TO WIT:

Lots 3 through 10, inclusive in Block 6 of Horseshoe Bend Townsite Amended, according to the official plat thereof, filed in Book 5 of Plats at Page(s) 356, Official Records of Boise County, Idaho.

EXCEPT any mobile home or house trailer located thereon.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: November 22, 2005

*[Signature]*  
David C. Doxey

*[Signature]*  
Dena L. Doxey, spouse of David C. Doxey

Edward L. Doxey and Dawne M. Doxey as Co-Trustees of the Edward L. & Dawne M. Doxey Trust Under trust agreement dated effective February 1, 2002

*[Signature]*  
By: Edward L. Doxey, Trustee

*[Signature]*  
By: Dawne M. Doxey, Trustee

State of Idaho

County of Ada

On this 9<sup>th</sup> day of December 2005, before me, a Notary Public in and for said state, personally appeared David C. Doxey and Dena L. Doxey, known or identified to me to be the persons whose names are subscribed to the within Instrument and acknowledged to me that they executed 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.



*[Signature]*  
Notary Public for the State of Idaho  
Residing at: Boise  
Commission Expires: 3-30-10

State of Texas }  
County of Harris } ss.

On this 29 day of Nov, in the year 2005, before me, a Notary Public in and for said state, personally appeared Edward L. Doxey and Dawne M. Doxey, known or identified to me to be the person whose name is subscribed to the foregoing instrument as Co-Trustees of the Edward L. and Dawne M. Doxey Trust under trust agreement dated effective February 1, 2002, and acknowledged to me that they executed the same as Co-Trustees.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Allandra Kitchens  
Notary Public for the State of Texas  
Residing at: Harris County  
Commission Expires: 11-12-08

## Attachment B    Map of Restricted Area

# Restricted Area Map With Exclusion

Ray's Corner Mart



Parcel #: RPH0002006008B  
Address: 445 ID-55  
City: Horseshoe Bend, ID.

## Corner Coordinates \*decimal degrees

#1: Lat = 43.91485 / Long = -116.19758  
#2: Lat = 43.91485 / Long = -116.19748  
#3: Lat = 43.91468 / Long = -116.19746  
#4: Lat = 43.91468 / Long = -116.19756



0 50 100 Feet

## Legend



Mobile Home Boundary



Boise County Parcel Boundary



Mobile Home Corners