Recording Requested By and When Recorded Return to:

Ax Yewer, Deputy Prosecuting Attorney Ada County Prosecuting Attorney's Office 200 W. Front Street, Room 3191 Boise, Idaho 83702 ADA COUNTY RECORDER Phil McGrane BOISE IDAHO Pgs=16 BONNIE OBERBILLIG ADA COUNTY PROSECUTOR 2020-001457 01/06/2020 12:44 PM NO FEE



(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 FOR THE ADA COUNTY HIDDEN HOLLOW CELL CLOSURE/POST-CLOSURE CARE

Ada County, a duly formed and existing county pursuant to the laws and Constitution of the State of Idaho, GRANTOR, grants this Environmental Covenant. As provided in Idaho Code § 55-3008, Ada County is also the GRANTEE.

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Ada County, Central District Health ("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. Ada County is a "holder" as defined in Idaho Code § 55-3002(6). Ada County, as the current property owner ("Owner") grants this Environmental Covenant to all signatories to this instrument.

<u>Property</u>. This Environmental Covenant concerns real property commonly known as the Hidden Hollow Cell located at 10300 N. Seaman Gulch Road, Boise, Idaho 83714, County of Ada, State of Idaho. More particularly, the acreage subject to this Environmental Covenant is legally described in Exhibit A attached hereto (hereafter referred to as "the Property"). A map (in the form of a record of survey) of the Property is attached as Exhibit B.

<u>Property Ownership.</u> Owner 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 Owner has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property was used as a municipal solid waste landfill (MSWLF) and contains buried municipal solid waste. Idaho Code § 39-7415(c)(4) provides for the closure of all MSWLF units. The District has regulatory authority over closure/post-closure of landfills in Ada County, and certified final closure of the MSWLF on the Property on April 30, 2018. This Environmental Covenant is required to maintain the approved alternative landfill cover system, storm water control systems, and other environmental control systems located on the Property, and to ensure public safety and the protection of human health and the environment.

Name and Location of Administrative Record. A copy of the landfill record, including the most recently approved closure/post closure plan, can be found at the Department's Boise Regional Office, Solid Waste Program, 1445 N. Orchard Street, Boise, ID.

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

- 1. There shall be no residential or agricultural use of the Property or any portion thereof.
- 2. There shall be no extraction of groundwater under the Property for industrial or commercial use, drinking by animals or human beings, irrigation, or for any other purpose, unless necessary as part of an environmental investigation or remediation project.
- 3. All existing buildings, enclosures, other structures, including all environmental control system components (together, Improvements) are identified in the approved closure/post-closure care plan. Prior to construction of any new Improvements, or any change to the footprint of any Improvements, the closure/post-closure care plan must be modified or amended and approved by the District and the Department.
- 4. No closure/post-closure uses of the Property shall disturb the integrity of the final cover or the function of the environmental control systems, including, but not limited to, any groundwater monitoring, storm water control, or landfill gas extraction systems.
- 5. There shall be no excavation of soil in the areas where the final cover system or storm water control system have been placed, unless specifically approved by the Department. Excavation in an area identified as containing asbestos shall require prior notification and compliance with 40 CFR 61.154(j).
- 6. Any modifications or amendments to the closure/post closure care plan that do not conform to the Activity and Use Limitations specified in this Environmental Covenant shall also require amendment to this Environmental Covenant in order to be effective.

Breach and Cure of Activity and Use Limitations. Owner, 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 Owner 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 Owner or any successors in interest, and Department.

Amendment by Consent. The Owner, or its successors in interest, may seek consent to terminate one or more Activity and Use Limitation(s) that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department and the District that said limitation(s) are no longer necessary to protect human health and the environment. Re-purposing of the property, or a portion thereof, may be possible through such a demonstration. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

<u>Duration and Termination</u>. The Environmental Covenant is perpetual unless all wastes are removed from the Property and the Owner, or its successors in interest, request permission from the Department and District to terminate consistent with Idaho Code § 55-3010, or the Environmental Covenant is otherwise terminated by court action as provided in Idaho Code § 55-3009.

<u>Provisions to Run With the Land</u>. 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 Owner, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the Department and the District. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, Owner, 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 § 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by Owner, 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.

<u>Compliance Reporting</u>. Owner, or its 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 this Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Owner or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Owner, 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 the Owner or its successors-in-interest, as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

<u>Non-Waiver</u>. 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.

<u>Property Access</u>. The Department and the District 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, the District, 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 Owner 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:

Ada County

ATTN: Director, Ada County Solid Waste Department

10300 N. Seaman Gulch Road

Boise, ID 83714

THE DEPARTMENT:

Idaho Department of Environmental Quality

ATTN: Assessment and Compliance Bureau Chief Waste Management and Remediation Division

1410 N. Hilton Boise, ID 83706

THE DISTRICT:

Central District Health

ATTN: Environmental Health Director

707 N Armstrong Pl Boise, ID 83704

<u>Costs and Expenses.</u> 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.

<u>Partial Invalidity</u>. 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.

<u>Headings</u>. 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 OWNER or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of OWNER 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.

By:

Russell Duke, District Director
Central District Health Department

Central District Health Department

STATE OF IDAHO) ss. County of Ada)

On this 18th day of Nov., 2019, before me, a Notary Public in and for said County and State, personally appeared Russell Duke, known or identified to me to be the Director of the Central District Health Department that executed this Environmental Covenant, and acknowledged to me that the Central District Health Department 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: Boise, ID
Commission Expires: 11-15-2024

By: Kendra Kenyon, Commissioner By: Lachiondo, Commissioner By: Rick Visser, Commissioner ATTEST: Phil McGrane, Ada County Clerk by Trent Tripple, Chief Deputy STATE OF IDAHO)) ss. County of Ada This record was acknowledged before me on this 22Nd day of October, 2019, by Kendra Kenyon, Diana Lachiondo, and Rick Visser, as the Board of Ada County Commissioners.

Commission Expires

Board of Ada County Commissioners

EXHIBIT A

LEGAL DESCRIPTION

(5 pages – attached)

EXHIBIT A

Property Description for the Hidden Hollow Landfill Parcel January 28, 2019

A parcel of land in Lot 2 Block 1 of Hidden Hollow Subdivision, recorded in Plat Book 53 at Pages 4782-4789 of Ada County Records in Section 12, Township 4 North, Range 1 East of the Boise Meridian, Ada County, more particularly described to wit:

Commencing at the Northeast Corner of Section 12, Township 4 North, Range 1 East of the Boise Meridian, a found 5/8 inch iron pin with a yellow plastic cap marked PLS 5461, that bears North 02°13'15" East 2611.30 from the East 1/4 Corner of said Section 12, a found brass monument marked by PE/PLS 856;

Thence along a random line South 70°52′10″ West 2361.37 feet to a brass monument in concrete marked Seaman;

Thence North 67°22'38" East 97.98 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359, the INITIAL POINT of this description.

Thence 216.48 feet along the arc of a non-tangent curve to the right having a radius of 265.85 feet, with a central angle of 46°39'25" and a chord bearing of North 12°51'11" East a distance of 210.55 feet to a calculated point not set;

Thence 179.33 feet along the arc of a non-tangent curve to the right having a radius of 220.07 feet, with a central angle of 46°41'28" and a chord bearing of North 59°27'55" East a distance of 174.41 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 87°09'24" East 97.31 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 81°12'26" East 106.14 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence South 62°15'48" East 46.35 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 29°12'42" East 267.31 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 45°06'05" East 60.37 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 58°51'47" East 139.41 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 39°28'44" East 61.29 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence South 54°58'15" East 143.25 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence South 68°07'58" East 42.77 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 44°41'17" East 122.44 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 61°52'02" East 123.84 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 63°41'19" East 138.43 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 371.48 feet along the arc of a non-tangent curve to the right having a radius of 517.03 feet, with a central angle of 41°09′59" and a chord bearing of South 43°09′44" East a distance of 363.54 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 377.48 feet along the arc of a non-tangent curve to the right having a radius of 512.68 feet, with a central angle of 42°11'10" and a chord bearing of South 01°27'11" East a distance of 369.01 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 20°32'11" West 133.49 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 156.30 feet along the arc of a non-tangent curve to the right having a radius of 471.88 feet, with a central angle of 18°58'41" and a chord bearing of South 31°02'26" West a distance of 155.59 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 39°48'19" West 196.27 feet to a set 5/8 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 30.88 feet along the arc of a non-tangent curve to the left having a radius of 145.96 feet, with a central angle of 12°07'18" and a chord bearing of South 34°14'10" West a distance of 30.82 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 30°13'17" West 62.50 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 26°15'43" West 188.59 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 155.11 feet along the arc of a non-tangent curve to the left having a radius of 517.66 feet, with a central angle of 17°10'05" and a chord bearing of South 17°57'45" West a distance of 154.53 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 11°51'25" West 171.03 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence 106.82 feet along the arc of a non-tangent curve to the right having a radius of 299.49 feet, with a central angle of 20°26'06" and a chord bearing of South 24°47'19" West a distance of 106.25 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence South 38°06'11" West 39.59 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 48.95 feet along the arc of a non-tangent curve to the right having a radius of 390.84 feet, with a central angle of 07°10'35" and a chord bearing of South 47°59'28" West a distance of 48.92 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 78.67 feet along the arc of a non-tangent curve to the right having a radius of 386.11 feet, with a central angle of 11°40'26" and a chord bearing of South 59°51'23" West a distance of 78.53 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 265.53 feet along the arc of a non-tangent curve to the left having a radius of 142.81 feet, with a central angle of 106°32'06" and a chord bearing of South 27°59'35" West a distance of 228.90 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 91.94 feet along the arc of a non-tangent curve to the right having a radius of 56.63 feet, with a central angle of 93°01'09" and a chord bearing of South 24°59'49" West a distance of 82.17 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence South 67°48'58" West 181.94 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 148.67 feet along the arc of a non-tangent curve to the right having a radius of 559.67 feet, with a central angle of 15°13'11" and a chord bearing of South 76°32'43" West a distance of 148.23 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence 258.78 feet along the arc of a non-tangent curve to the right having a radius of 920.72 feet, with a central angle of 16°06'13" and a chord bearing of South 89°45'53" West a distance of 257.93 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence North 82°35'06" West 85.62 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 192.52 feet along the arc of a non-tangent curve to the right having a radius of 414.64 feet, with a central angle of 26°36'10" and a chord bearing of North 68°24'42" West a distance of 190.80 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 58°21'35" West 42.92 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 148.50 feet along the arc of a non-tangent curve to the left having a radius of 1082.55 feet, with a central angle of 07°51'35" and a chord bearing of North 62°03'52" West a distance of 148.39 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 65°18'30" West 138.60 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 63°22'01" West 111.00 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 297.50 feet along the arc of a non-tangent curve to the right having a radius of 1009.91 feet, with a central angle of 16°52'41" and a chord bearing of North 54°40'33" West a distance of 296.42 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence North 45°49'07" West 397.90 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359:

Thence 134.43 feet along the arc of a non-tangent curve to the left having a radius of 326.27 feet, with a central angle of 23°36'26" and a chord bearing of North 56°45'19" West a distance of 133.48 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 00°49'46" East 421.90 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 59°50'20" East 235.46 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 55°22'46" East 238.02 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 59°30'25" East 290.70 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 44°19'16" East 142.25 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence 177.20 feet along the arc of a non-tangent curve to the left having a radius of 379.60 feet, with a central angle of 26°44'47" and a chord bearing of North 29°16'51" East a distance of 175.60 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 13°32'16" East 283.36 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 18°23'26" East 326.17 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359;

Thence North 37°33'46" East 214.72 feet to a set 1/2 inch iron pin with a plastic cap marked JLH PLS 5359, marking the Initial Point of this description.

The Parcel contains 107.48 acres, more or less.



EXHIBIT B

RECORD OF SURVEY

(1 page – attached)

EXHIBIT B

