

Instrument # 835201

NEZ PERCE COUNTY

11-13-2015 09:35:19 AM No. of Pages: 11

Recorded for : TONKON TORP LLC

PATTY WEEKS

Ex-Officio Recorder Deputy

Index to: COVENANTS

Fee: 40.00

*Cindy J. Ocampo*

Recording Requested By and  
When Recorded Return to:

JEANETTE SCHUSTER

\* TONKON TORP LLP

888 SW FIFTH AVENUE, SUITE 1600

PORTLAND, OR 97204

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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 Idaho Auto Mall LLC, an Oregon limited liability company ("IAM"), 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 "AULs") on the Property described below. The AULs are designed to protect natural resources, human health and the environment. The Department is a "holder" as defined in Idaho Code § 55-3002(6). IAM, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property at 1866 Main Street, Lewiston, County of Nez Perce, State of Idaho, within Township 36 North, Range 5 West, Section 31 (hereinafter referred to as "the Property"). The Property is legally described in the attached **Exhibit A**. The area of the Property subject to the AULs is shown on the map attached as **Exhibit B**. IAM acquired the Property pursuant to a Warranty Deed recorded as Instrument No. 747058 recorded on July 31, 2007 in the records of Nez Perce County Idaho; a copy of this deed is attached as **Exhibit C**.

Property Ownership. IAM hereby represents and warrants to the Department that it is the sole owner of the Property, holds fee simple title to the property, and has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitation. The Property was operated historically as a gas service station and automobile repair shop. An affiliate of IAM, Alaska Auto Mall LLC, an Oregon limited liability company ("AAM"), owns the property directly adjacent to the Property, having an address of 1824 Main Street ("AAM Property"). The Property and the AAM Property are operated together as an automobile dealership. Together, both properties are "the Kendall Auto Property."

Historic operations at the Property, which included one or more gasoline and/or diesel underground storage tank systems, caused the Property to become contaminated with petroleum constituents.

On November 19, 2009, IAM entered into a Consent Order with the Department to remediate the Kendall Auto Property. IAM implemented a corrective action plan ("CAP") on the Kendall Auto Property. This Environmental Covenant is required because residual concentrations of petroleum hydrocarbon constituents remain in soil and groundwater at the Property at concentrations that are above allowable risk-based levels as determined by the Department. Therefore, future use of the Property shall be limited to protect human health and the environment.

Concurrently with the recording of this instrument, AAM will also record an Environmental Covenant against the AAM Property.

Public Record. A copy of the administrative records for the IAM file , Id. No. 2011BAZ3720, can be found at the Department of Environmental Quality Lewiston Regional Office, 1118 "F" St., Lewiston, ID 83501.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, IAM, 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 groundwater wells installed or groundwater extracted at the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.
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 use.
3. Any excavation of greater than five feet deep on the Property is prohibited without prior written approval from the Department.

Breach and Cure of Activity and Use Limitations. IAM, or its successors in interest, shall be responsible for demonstrating that the use of the Property is in conformity with the AULs. If any event or action occurs that constitutes or may constitute a breach of the AULs, IAM, 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 AULs within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by IAM, 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 AULs 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. IAM, or its successors in interest, may seek consent to terminate the AULs 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 soils and groundwater concentrations at the Property are below allowable risk-based levels as determined by the Department for unrestricted use.

Provisions to Run With the Land. Each and all of the AULs 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 AULs 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 AULs as herein established must be adhered to and that their interest in the Property shall be subject to the AULs 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 IAM, 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, IAM, 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 IAM, 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. IAM, or its successors in interest, shall submit to the Department on an annual basis written documentation verifying that the AULs remain in place and their compliance with the AULs.

Enforcement. The Department and any party of the Environmental Covenant shall have authority to enforce the AULs against IAM or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of IAM, or its successor in interest, to comply with any of the AULs 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 IAM 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 during business hours 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 party, 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.

IAM: Mr. David E. Blewett, Manager  
Idaho Auto Mall LLC  
8854 W. Emerald Street, Suite 260  
Boise, ID 83704

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

IAM hereby reserves on behalf of itself, its representatives, heirs and assigns, and successors all rights accruing from ownership of the Property that are not conditioned, restricted, or prohibited by this Environmental Covenant.

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.





**EXHIBIT A****Legal Description  
(1866 Main Street)**

The East 146.06 feet of Lot 11, Block 16, of Thompson's Second Addition to the City of Lewiston, according to the recorded plat thereof, records of Nez Perce County, Idaho, EXCEPT the following:

Beginning at the Northeast Comer of Lot 11, Block 16, Thompson's Second Addition; thence South 0°09' West along the East line of Block 16 a distance of 47.00 feet to a point; thence North 66°35' West a distance of 156.04 feet to a point; thence North 0°09' East parallel to the East line of Block 16 a distance of 13.41 feet to the South line of Main Street; thence South 78°47' East along the South line of Main Street a distance of 146.06 feet to the point of beginning.

ALSO EXCEPTING: The East 3.00 feet of Lot 11, Block 16, of Thompson's Second Addition to the City of Lewiston, County of Nez Perce, Idaho.



EXHIBIT B



0 100 200  
 Approximate Scale in Feet

**Legend:**


----- Property Outline

RPL1670016011C Tax Lot ID

**NOTE:** Base map prepared from an Assessor & Treasurer Map from <http://gis.co.nezperce.id.us/npcmap/>.

**Site Location**

Idaho Auto  
1866 Main Street  
Lewiston, Idaho

 Apex Companies, LLC  
 3015 SW First Avenue  
 Portland, Oregon 97201

Project Number	1773-01
August 2015	

Exhibit  
**B**

2000506090

835201

EXHIBIT C

OW

INST. NO. 747058  
FILED FOR RECORD  
FEE 6.00 REC. BY ALLIANCE TITLE

2007 JUL 31 PM 4 22

PATTY O. WEEKS  
RECORDER, NEZ PERCE CO. ID.  
BY Robert DEPUTY

AFTER RECORDING, RETURN TO:

Morris J. Galen  
Tonkon Torp LLP  
888 S.W. Fifth Avenue, Suite 1600  
Portland, OR 97204-2099

UNTIL A CHANGE IS REQUESTED,  
SEND ALL TAX STATEMENTS TO:

Mr. David E. Blewett  
Kendall Automotive Group Inc.  
P. O. Box 1318  
Eugene, OR 97440

**WARRANTY DEED**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Kenneth J. Eldred and Marsha S. Eldred, husband and wife, Grantors, grant, sell and convey to Idaho Auto Mall LLC, an Oregon limited liability company, Grantee, all that real property situated in the City of Lewiston, County of Nez Perce, State of Idaho, more particularly described as follows:

The East 146.06 feet of Lot 11, Block 16, of Thompson's Second Addition to the City of Lewiston, according to the recorded plat thereof, records of Nez Perce County, Idaho, EXCEPT the following:

Beginning at the Northeast Corner of Lot 11, Block 16, Thompson's Second Addition; thence South 0°09' West along the East line of Block 16 a distance of 47.00 feet to a point; thence North 66°35' West a distance of 156.04 feet to a point; thence North 0°09' East parallel to the East line of Block 16 a distance of 13.41 feet to the South line of Main Street; thence South 78°47' East along the South line of Main Street a distance of 146.06 feet to the point of beginning.

ALSO EXCEPTING: The East 3.00 feet of Lot 11, Block 16, of Thompson's Second Addition to the City of Lewiston, County of Nez Perce, Idaho.

and Grantors covenant and warrant that the real property is free of claims, restrictions and encumbrances except (1) easement granted to Camas Oil Company recorded May 7, 1951 in Records of Nez Perce County, as Instrument No. 228105; (2) easement granted to The Washington Water Power Company recorded March 21, 1961 in Records of Nez Perce County,

EXHIBIT C

747058

as Instrument No. 281752; (3) reservation for oil, gas and other minerals reserved by Phillip Petroleum Company by Deed recorded March 19, 1976, as Instrument No. 391595. Grantors will warrant and defend Grantee's title against any and all persons who may claim any interest in the real property described above.

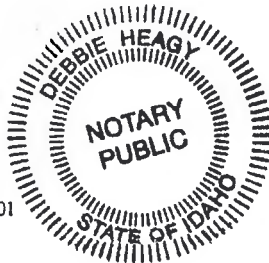
~~June~~ <sup>July</sup> 31, 2007.

Kenneth J. Eldred 7-31-07  
Kenneth J. Eldred

Marsha S. Eldred  
Marsha S. Eldred

STATE OF IDAHO            )  
  ) ss.  
County of Nez Perce        )

The foregoing instrument was acknowledged before me this 31st day of ~~June~~ <sup>July</sup> 2007 by <sup>D.H.</sup> Kenneth J. Eldred and Marsha S. Eldred.



Debbie Heagy  
Notary Public for Idaho  
My Commission Expires: 8/3/2011

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