

2013-049520

RECORDED

10/28/2013 01:09 PM



CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=8 RECORD2

\$31.00

MISC

JACKSON OIL CO

Recording Requested By and
When Recorded Return to:

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 Jacksons Food Stores, Inc., a Nevada corporation ("OWNER") 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. OWNER is a "holder" as defined in Idaho Code § 55-3002(6). OWNER, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 3rd and 7th East Grove Street, Parma, County of Canyon, State of Idaho, legally described as 09-5N-5W NW BATES ADDITION LT 20 & TX 6 IN LT 21-24 BLK 40 LESS HWY and 09-5N-5W NW BATES ADDITION LTS 17-19 INC BLK 40 LS HWY & TX 11149 and identified as parcels R18968010 and R18968 (hereafter referred to as the "Property"). The Property is more fully described in the attached Schedule A.

Property Ownership. 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 described above was previously owned by Dave Reynolds. During the Reynolds ownership, a June 30, 1995 decommissioning of six underground storage tanks led to the discovery of a petroleum release. Source removal was performed in the former underground storage tank basin area during the 1995 decommissioning and on the west and south sides of the Property during the construction of the new Jacksons store in use by Owner. Compliance ground water monitoring subsequent to the source removal indicates residual concentrations of benzene and ethyl benzene in soil and/or groundwater underlying the Property. These concentrations are above allowable risk-based concentration 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 the Jacksons Food Store #143 file can be found at the DEPARTMENT office located at 1445 North Orchard, Boise, Idaho 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, OWNER, 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.
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.

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 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. The OWNER, 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 soils and groundwater 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 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. 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 Section 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.

Compliance Reporting. Owner[s], 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 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.

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 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: Jacksons Food Stores, Inc.
 3450 East Commercial Court
 Meridian, Idaho 83642

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 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 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.

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:

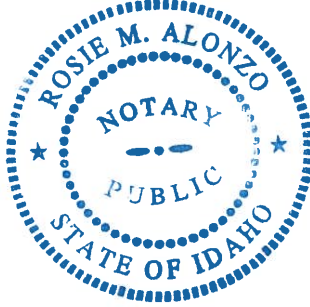
DEPARTMENT: Idaho Department of Environmental Quality

Signature: 
 Printed Name: Curt A. Fransen
 Title: Director, Idaho Department of Environmental Quality
 Date: 10/17/13

State of Idaho)
) ss.
 County of Ada)

On this 18 day of October, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared Curt A. Fransen, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality 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: Rosie M. Alonzo
 Residing at: Hamper, Idaho
 Commission Expires: 1/30/2015

Signature and Acknowledgments

Accepted:

OWNER: Jacksons Foods Stores, Inc.

Signature: 

Printed Name: John D. Jackson

Title: Owner/CEO

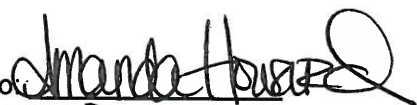
Date: _____

State of Idaho)
) ss.
County of Ada)

On this 8th day of October, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared John D. Jackson, known or identified to me to be the Owner/CEO of Jacksons Food Stores, Inc. that executed this Environmental Covenant, and acknowledged to me that Jacksons 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: 
Residing at: Boise, ID
Commission Expires: 10/20/15

Schedule A
(Legal Description)

Lots 17, 18, 19, 20, 21, 22, 23 and 24 of Block 40 of Bates Addition to Parma, Canyon County, Idaho, according to the official plat thereof, filed June 13, 1906 in Book 2 of Plats at Page 16, official records of Canyon County, Idaho.

Excepting therefrom:

A strip of land as surveyed and shown on the official plat of the South Branch Old Oregon Trail (F.A.P. 144-D) Highway Survey on file in the office of the Department of Public Works of the State of Idaho and lying over and across Lots No. 17, 18, 19, 20, 21, 22, 23 and 24 of Block 40 of Bates Addition to Parma, Canyon County, Idaho.

Beginning at the Southeast corner of Lot No. 17 of Block No. 40 of Bates Addition to Parma; thence Northeasterly along the Southeasterly line of said Northerly right-of-way boundary line of the South Branch Old Oregon Trail (F.A.P. 144-D) Highway Survey; thence Northwesterly 201.8 feet along the arc of a 1116 foot radius curve right to a point on the Northwesterly line of said Block No. 40; thence Southwesterly 35.7 feet to the Southwest corner of said Block No. 40 a distance of 200 feet to the Point of Beginning.

Further Excepting

A parcel of land being a portion of Lot 17 of Block 40 of Bates Addition to Parma, as shown on the official plat thereof on file in the office of the Canyon County, Idaho, Recorder, situate in the Northwest quarter of Section 9, Township 5 North, Range 5 West, Boise Meridian, Parma City, Canyon County, Idaho, being more particularly described as follows:

Beginning at the most Easterly corner of said Lot 17, which is the Point of Beginning; thence
37 South 7°11'20" West, 140.18 feet, more or less, along the Southeasterly boundary of said Lot 17 to the Northeasterly right-of-way of Grove Street; thence 15.07 feet along the Northeasterly right-of-way of Grove Street along a non-tangent curve deflecting to the right, with a radius of 1116.00 feet, a central angle of 00°46'25", a long chord of 15.07 feet and chord bearing of North 47°27'34" West; thence North 37°11'20" East, 138.78 feet along a line 15.00 feet Northwesterly of and parallel to the Southeasterly boundary of said Lot 17 to the Northeasterly boundary of said Lot 17; thence South 52°48'40" East, 15.00 feet along the Northeasterly boundary of said Lot 17 to the Point of Beginning.

Schedule A (Cont.)

Jackson's Parma, Idaho



Fri Sep 20 2013 12:05:31 PM.