

15

Recording Requested By and  
When Recorded Return to:

ADA COUNTY RECORDER Christopher D. Rich	<b>2017-001214</b>
BOISE IDAHO Pgs=15 BONNIE OBERBILLIG	01/05/2017 01:08 PM
FIRST AMERICAN TITLE AND ESCROW COMPANY	\$52.00

ELECTRONICALLY RECORDED - DO NOT  
REMOVE THE COUNTY STAMPED FIRST  
PAGE AS IT IS NOW INCORPORATED AS  
PART OF THE ORIGINAL DOCUMENT.

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

*WILD.MLC*

**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 JOSHNIK LLC, an Idaho Limited Liability Company ("JOSHNIK") and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015 ("Act"). This Environmental Covenant sets forth restrictions and/or obligations on real property designed to protect natural resources, human health, and the environment. JOSHNIK is a "holder" as defined in Idaho Code § 55-3002(6). JOSHNIK, as the current property owner grants this Environmental Covenant to all signatories to this instrument; provided, however, the rights of the Department and its successors are those of an agency as set forth in the Act. Neither the Department nor its successors own any interest in the Property.

Property. This Environmental Covenant concerns real property 620 Vista Avenue, Boise, Idaho in Ada County and legally described in the deed hereto and marked as Attachment A (hereafter referred to as "the Property"). The Restricted Area is the entire Property as illustrated on the map attached hereto and marked as Attachment B.

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

Reason for Activity and Use Limitations. The 2006 petroleum release at Stinker Store # 24 was discovered when a UST that contained gasoline was decommissioned. Petroleum contamination was identified in the shallow and deeper aquifers. An air sparging / soil vapor extraction system operated at the site intermittently from 2010 through 2015. This Environmental Covenant is required because residual concentrations of Benzene, Toluene, and Ethylbenzene in groundwater remain underlying the Property. These concentrations are above allowable risk-based concentrations as defined by the Department; therefore future use of the Property shall be limited to protect human health and the environment.

Current risk-based standards require that no individual carcinogenic contaminant exceed  $1 \times 10^{-6}$  risk and that the cumulative risk of all carcinogenic contaminants not exceed  $1 \times 10^{-5}$ , the hazard index of all noncarcinogenic chemicals not exceed 1; or that no contaminant exceeds their Residential Use Screening Level (RUSL) or Remedial Action Target Level (RATL).

The current highest sample concentration for the chemical of interest and the respective RUSL is shown in the table below.

Chemical of Interest	Groundwater RUSL mg/L	Groundwater 6-29-2016 mg/L
Benzene	0.005	<b>0.183</b>
Toluene	1	<b>3.93</b>
Ethylbenzene	0.7	<b>1.12</b>

Name and Location of Administrative Record. A copy of former Stinker Station #24 (Facility Identification Number 3-010045) administrative record can be found at the DEQ Boise Regional Office, 1445 N. Orchard, Boise, ID 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, JOSHNIK, 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 groundwater 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. JOSHNIK, 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, JOSHNIK 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 JOSHNIK 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. JOSHNIK, 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 groundwater 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 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. JOSHNIK, 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. An example compliance form is attached to this document.

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 JOSHNIK 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: JOSHNIK LLC  
ATTN: Charley Jones  
3184 W Elder  
Boise, ID 83707

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

*[signatures begin on next page]*

Signature and Acknowledgments  
Accepted:

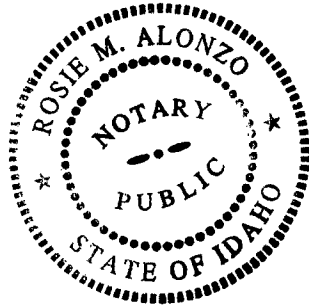
Idaho Department of Environmental Quality

Signature: *John H. Tippet*  
Printed Name: John H. Tippet  
Title: Director, Idaho Department of Environmental Quality  
Date: Dec. 20, 2016

State of Idaho            )  
  ) ss.  
County of Ada            )

On this 20 day of December, in the year 2016, before me, a Notary Public in and for said County and State, personally appeared John H. Tippet, 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: Nampa, ID  
Commission Expires: 11/21/2020

Signature and Acknowledgments

Accepted:

JOSHNIC LLC,  
An Idaho Limited Liability Company

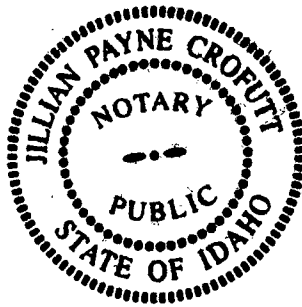
Signature:   
Charley D. Jones, Member

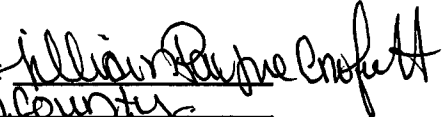
Date: 12-7-16

State of Idaho            )  
  ) ss.  
County of Ada            )

On this 7<sup>th</sup> day of December, 2016, before me, a Notary Public in and for said State, personally appeared Charley D. Jones known or identified to me to be a member of JOSHNIC LLC, the Limited Liability Company that executed the instrument or the person who executed the instrument on behalf of such corporation, and acknowledged to me that the corporation 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: Carson County  
Commission Expires: 11/09/2021

**NOTICE OF ANNUAL COMPLIANCE REPORTING  
FOR ENVIRONMENTAL COVENANT**

This Notice of Annual Compliance Reporting for Environmental Covenant form is to assist property owners with the Compliance Reporting provision included in the Environmental Covenant. Owner[s] 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. This annual report requirement runs from the effective date of the Environmental Covenant, the date on which the Environmental Covenant was officially recorded with the property deed.

MAIL ANNUAL NOTICE TO:

Idaho Department of Environmental Quality  
State Response Program Manager  
1410 N. Hilton  
Boise, ID 83706

CURRENT PROPERTY OWNER NAME: \_\_\_\_\_

DATE OF ANY OWNERSHIP CHANGES THIS PAST YEAR:

PROPERTY NAME AND ADDRESS:

\_\_\_\_\_  
ENVIRONMENTAL COVENANT

COUNTY RECORDERS INSTRUMENT NUMBER:

GENERAL DESCRIPTION OF ACTIVITY AND USE LIMITATION(S):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***OWNER(S) VERIFIES COMPLIANCE WITH THE ACTIVITY AND USE LIMITATIONS IDENTIFIED IN THE ABOVE REFERENCED ENVIRONMENTAL COVENANT IN THIS ANNUAL REPORT FILED WITH THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY.***

\_\_\_\_\_  
PROPERTY OWNER REPRESENTATIVE (PRINT/TYPE) TITLE

\_\_\_\_\_

SIGNED

DATE



# Attachment A Legal Description and Deed of Property

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233203

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Roger E. Crist  
Post Office Box 2326  
Ketchum, Idaho 83340

ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 08/25/03 02:51 PM  
DEPUTY Bonnie Oberbillig  
RECORDED - REQUEST OF  
Pioneer  
AMOUNT 96.00

32



103144143

ORIGINAL IN RED

(Space above line for Recorder's use)

TRUSTEE'S DEED

ROGER E. CRIST (hereinafter called "Successor Trustee"), as Successor Trustee under the Deed of Trust hereinafter particularly described, does hereby Bargain, Sell and Convey, without warranty, to JOSHNIK, an Idaho Limited Liability Company, whose current address is: c/o Charlie Jones, P. O. Box 7627, Boise, ID 83707, all of the real property situated in the County of Ada County, State of Idaho, described as follows:

See Exhibit A attached hereto.

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust between **Randy C. Lind**, as Grantor, **Pioneer Title Company of Ada County, an Idaho Corporation**, as Trustee herein, and **Idaho Capital, an Idaho Limited Liability Company**, as Beneficiary, recorded September 22, 1999 as Instrument No. 99094139, records of Ada County, Idaho, said Beneficiary assigned its interest to JOSHNIK, an Idaho Limited Liability Company pursuant to an Assignment dated July 11, 2003 recorded in the Records of Ada County, Idaho as Instrument No. 103115488, and **Roger E. Crist** was appointed Successor Trustee pursuant to an Appointment of Successor Trustee recorded November 20, 2002 as Instrument No. 102136743, Records of Ada County, Idaho, and after fulfillment of the conditions specified in said Deed of Trust authorizing conveyance as follows:

(a) Default occurred in the obligations for which such Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell property pursuant to the terms of said Deed of Trust. Notice of Default was recorded as Instrument No. 102136744, Records of Ada County, the nature of such default being as set forth in said notice of default. Such default still existed at the time of sale.

(b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered or certified mail, by personal service upon the occupants of said real property, by posting in a conspicuous place on said premises and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more

fully appears in affidavits recorded at least 20 days prior to the date of sale as set forth in the Affidavit of Service by Mail, recorded November 26, 2002 as Instrument No. 102140189, Records of Ada County, Idaho, in the Affidavit of Posting and/or Service recorded January 6, 2003 as Instrument No. 103001984, Records of Ada County, Idaho, and in the Proof of Publication recorded January 21, 2003 as Instrument No. 103010478, Records of Ada County, Idaho.

(c) The sale date of March 27, 2003 was stayed by the filing of a Bankruptcy Petition on behalf of Randy C. Lind. Upon Dismissal of the Bankruptcy Proceeding in Case No. 03-01045-13 in U. S. Bankruptcy Court, District of Idaho, *In Re: Randy C. Lind*, and pursuant to Idaho Code § 45-1506A, as Successor Trustee of the Deed of Trust referred to in the Notice of Rescheduled Trustee's Sale attached hereto as **Exhibit A**, said Notice was recorded in the Records of Ada County on May 22, 2003. Also on May 21, 2003 a mailing of said Notice was done as set forth in the Affidavit of Mailing attached hereto as **Exhibit B** which Affidavit was recorded in the Records of Ada County, Idaho on May 27, 2003.

Also, said Notice was published in a newspaper of general circulation in Ada County, Idaho once a week for three successive weeks with the last publication at least 10 days prior to said rescheduled sale as per the Affidavit of Publication attached hereto as **Exhibit C**.

(d) The sale date of June 24, 2003 was stayed by the filing of a Bankruptcy Petition on behalf of Randy C. Lind. Upon dismissal of the Bankruptcy Proceeding in Case No. 03-02302 in U. S. Bankruptcy Court, District of Idaho, *In Re: Randy C. Lind*, and pursuant to Idaho Code § 45-1506A, as Successor Trustee of the Deed of Trust referred to in the Notice of Rescheduled Trustee's Sale attached hereto as **Exhibit D**, said Notice was recorded in the Records of Ada County on July 24, 2003. Also, on July 18, 2003 a mailing of said Notice was done as set forth in the Affidavit of Mailing attached hereto as **Exhibit E** which Affidavit was recorded in the Records of Ada County, Idaho on July 24, 2003.

Also, said Notice was published in a newspaper of general circulation in Ada County, Idaho once a week for three successive weeks with the last publication at least 10 days prior to said rescheduled sale as per the Affidavit of Publication attached hereto as part of **Exhibit F**. As required by Idaho Code § 45-1506A(4), the Trustee's Affidavit Re: Second Rescheduled Sale is attached hereto as **Exhibit G**.


(e) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) *supra* and of the Affidavits referred to in paragraphs (b) and (c) *supra* shall be and they are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.

(f) All requirements of law regarding the mailing, personal service, posting, publication and recording of the notice of default, and notice of sale and notice of rescheduled sale and for all other notices have been complied with.

(g) Not less than 120 days elapsed between the giving of notice of sale by registered or certified mail and the sale of said property and not less than 30 days have elapsed between the giving of notice of rescheduled sale by certified mail and the sale of the property pursuant to Idaho Code § 45-1506A.

(h) Trustee, at the time and place of sale fixed by said notice of rescheduled sale, at public auction, in one parcel, struck off to Grantee, being the highest bidder thereof, the property herein described for the sum of \$369,308.58, subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs.

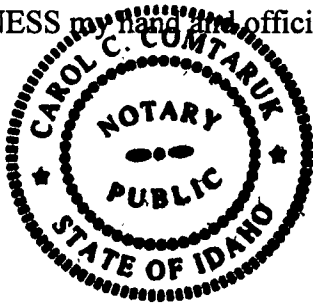
IN WITNESS WHEREOF, the Grantor, as Successor Trustee, executed this instrument this 21<sup>st</sup> day of August, 2003.

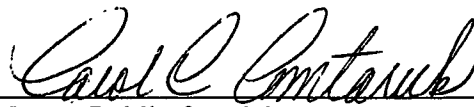
  
\_\_\_\_\_  
ROGER E. CRIST, Successor Trustee

STATE OF IDAHO )  
                                ) ss.  
County of Blaine    )

On this 21<sup>st</sup> day of August, 2003, before me, a Notary Public in and for the State of Idaho, personally appeared ROGER E. CRIST, as Successor Trustee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Boise  
Commission Expires: 3.25.04

rec\lind-trusteedeed.ded

THAT PORTION OF THE HILLCREST ADDITION TO BOISE, IDAHO, ACCORDING TO THE PLAT THEREOF, FILED IN BOOK 9 OF PLATS AT PAGE 417, RECORDS OF ADA COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VISTA STREET, 30 FEET WIDE, AND THE SOUTHWESTERLY LINE OF RIDENBAUGH DITCH, AS SAID STREET AND DITCH ARE SHOWN ON SAID PLAT; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE AND PROLONGATION THEREOF, 445 FEET, MORE OR LESS TO THE SOUTHERLY LINE OF SEGO AVENUE, 30 FEET WIDE, AS SAID STREET IS SHOWN ON SAID PLAT; THENCE WESTERLY ALONG SAID SOUTHERLY LINE 380 FEET, MORE OR LESS, TO THE INTERSECTION WITH THE SOUTHERLY PROLONGATION OF SAID EAST LINE OF VISTA STREET; THENCE NORTH ALONG SAID EAST LINE, 240 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT

THE WEST 6 FEET THEREOF DEEDED TO BOISE CITY BY WARRANTY DEED RECORDED JULY 13, 1971 AS INSTRUMENT NO. 776198.

END OF LEGAL DESCRIPTION

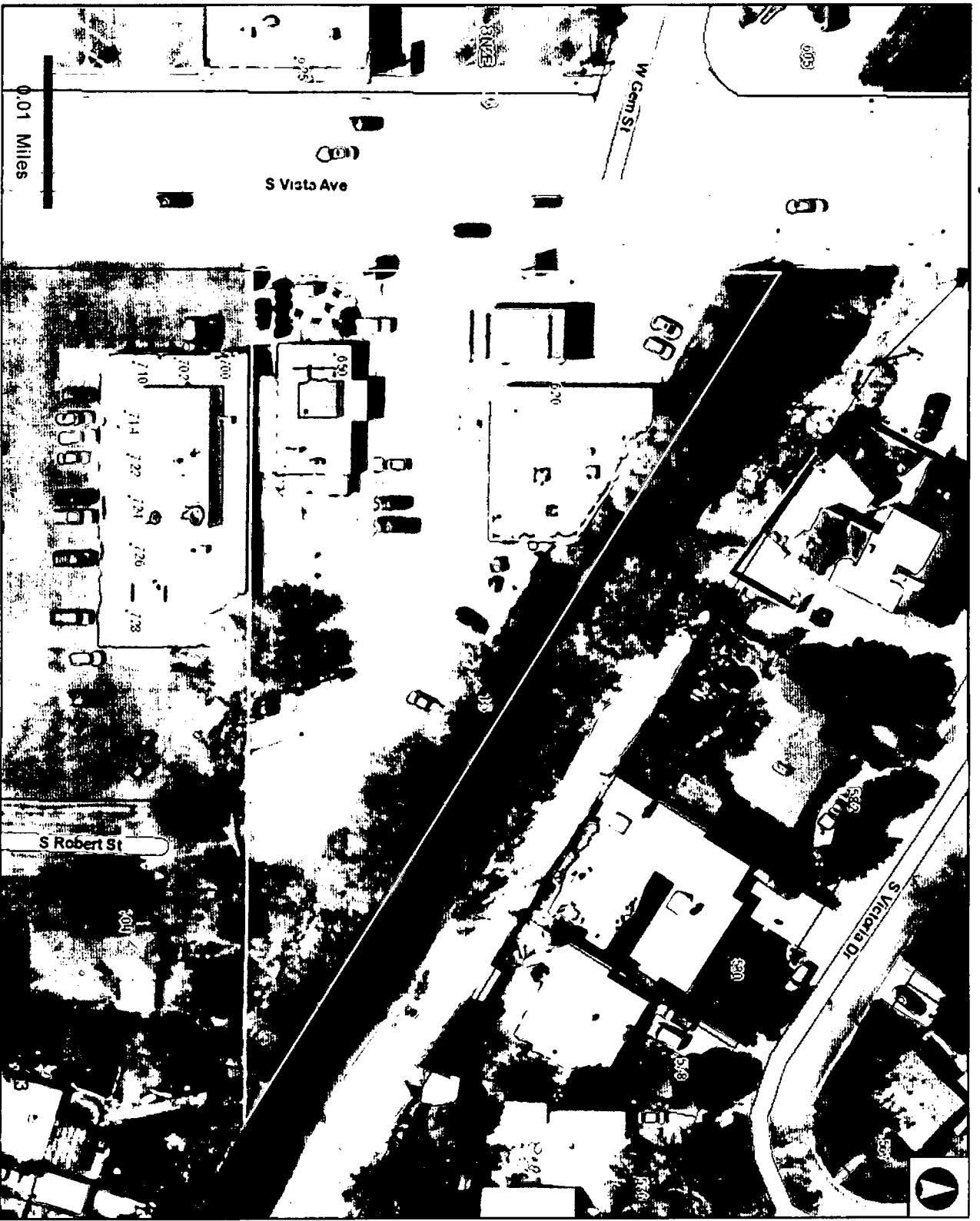
**EXHIBIT A**

# Attachment B Map of Restricted Area

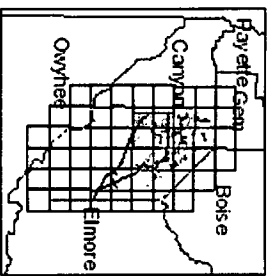
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# Ada County Assessor

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION OR LEGAL PURPOSES.



0.01 Miles



**Legend**

- Railroad
- Roads (<2,000 scale)
- <all other values>
- Interstate
- Ramp
- Principal Arterial
- Collector
- Minor Arterial
- Local
- Parks
- Alley
- Driveway
- Parks
- Address
- Townships
- Sections
- Condos
- Parcels

11/18/2016