

2019-061430

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CANYON COUNTY RECORDER

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TEEGARDEN, MEGHAN

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**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.**

AMENDED ENVIRONMENTAL COVENANT

DTB Properties LLC, GRANTOR, grants this Amended Environmental Covenant. As provided in Idaho Code §55-3008, DTB Properties LLC is the GRANTEE.

This Amended Environmental Covenant supersedes and replaces the 2009 Environmental Covenant recorded on this property on January 12, 2009 as instrument number 2009001363. The 2009 Environmental Covenant is hereby terminated through the consent and recording of this Amended Environmental Covenant by the parties herein.

This instrument is an Environmental Covenant ("Amended Environmental Covenant") executed by DTB Properties LLC, ("OWNER") and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Amended 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. DTB Properties LLC is a "holder" as defined in Idaho Code § 55-3002(6). Nutrien Ag Solutions, Inc is also "holder" as defined in Idaho Code § 55-3002(6) and has the right of access to the property granted in connection with enforcement of the covenant pursuant to 55-3004(2)(c). DTB Properties LLC, as the current property owner grants this Amended 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 nor Nutrien Ag Solutions, Inc, as a holder own any interest in the Property.

Property. This Amended Environmental Covenant concerns real property located at 10257 Highway 20-26, Parcel Number 342940000, County of Canyon, State of Idaho (hereafter referred to as "the Property"). The Property is legally described as follows:

That part of the North One-Half of the Northeast Quarter of Section 29, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Northwest Corner of the Northeast Quarter of the Northeast Quarter of Section 29, Township 4 North, Range 2 West, of the Boise Meridian, Canyon County, Idaho; thence

South 108.5 feet along the West line of said Quarter to the intersection of said West line with the Southwesterly right-of-way line of the Oregon Short Line Railway Company, the True Point of Beginning; thence

South 19°17' East 1,262 feet along the right-of-way of said Railway; thence West 417 feet parallel to the North line of the North One-Half of the Northeast Quarter of Section 29, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho to a point in the West line of the Northeast Quarter of the Northeast Quarter of said Section 29; thence

North 1,040 feet along said West line to a point 260.5 feet South of the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 29; thence

North 19°17' West 276 feet parallel and 50 feet from the Southwesterly right-of-way line of aforesaid Railway, to a point on the North line of the North One-Half of the Northeast Quarter of said Section 29; thence

North 89°54' East 53 feet along the said North line to the intersection of said North line with the Southwesterly right-of-way line of the aforesaid Railway, a point 37.8 feet West of the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 29; thence

South 19°17' East along the said right-of-way line 114.9 feet to the True Point of Beginning.

Except that portion deeded to the State of Idaho as recorded in Highway Right of Way Deed recorded March 29, 1946 as Instrument No. 308777, records of Canyon County, Idaho.

A Property map is presented as Exhibit 1 in the attached Schedule A.

Property Ownership. DTB Properties LLC hereby represents and warrants to the other signatories to this Amended Environmental Covenant that it is the sole owner of the property, holds fee simple title to the property and DTB Properties LLC has the power and authority to enter into this Amended Environmental Covenant.

Reason for Activity and Use Limitations. The Property was previously owned by Western Farm Service, Inc. and operated as a bulk agricultural products distribution facility. On August 28, 2001, Western Farm Service, Inc. entered into a Consent Order with the Department to address contamination in soil and groundwater impacted by facility operations and conducted site investigations and remediation of the property. Western Farm Service, Inc. later merged with Crop Production Services, which became Nutrien Ag Solutions Inc. in 2018 and sold the Property to DTB Properties LLC. On January 12, 2009 Crop Production Services, as successors in interest to Western Farm Service, and the Department executed and recorded an Environmental Covenant, instrument number 2009001363 in Canyon County, for this property

(2009 Environmental Covenant). This 2009 Environmental Covenant addressed activity and use limitations to protect soil and groundwater impacted by nitrate, ammonia, dinoseb, dieldrin, and benzene detected beneath portions of the site.

Since 2009 Crop Production Services, and successor Nutrien Ag Solutions Inc, conducted additional remediation of the Property. As a result of the additional remediation activities performed by Nutrien Ag Solutions, Inc., many of the activity and use limitations described in the 2009 Environmental Covenant are no longer applicable or required. However, concentrations of nitrate and ammonia in ground water continue to remain at concentrations exceeding applicable risk-based screening levels underlying the Property.

This Amended Environmental Covenant replaces and supersedes the 2009 Environment Covenant. This Amended Environmental Covenant is required because concentrations of nitrate in groundwater exceed the maximum contaminant level (MCL) for drinking water and both nitrate and ammonia are suspected to be present in soil beneath the lined stormwater evaporation pond at the southwest corner of the site (Restricted Area of the Property). This Restricted Area is identified in the map attached Exhibit 2 in Schedule A. The engineering control provided for through the environmental covenant restricts the potential for additional impacts to groundwater.

Name and Location of Administrative Record. A copy of the project file (General Remediation WR UNOCAL PUREGRO UNIT NO 771330 3-GR-0045, EDMS number 2011BAZ6730) can be found at the DEQ Boise Regional Office located at 1445 N. Orchard Street in Boise, Idaho.

Activity and Use Limitations. By acceptance and recordation of this Amended Environmental Covenant, DTB Properties LLC, 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. But for the exceptions contained herein, there shall be no extraction of groundwater under the Property for any purpose, including, without limitation, drinking by animals or human beings. Groundwater from the existing water supply wells at the Property can continue to be used for potable purposes. Any future water well at the Property that is proposed to be used for potable purposes will be completed at a depth greater than 200 feet and will require Department approval prior to installation. Groundwater from any depth may be extracted as part of an environmental investigation or remediation project.
2. Excavation or any other disturbance of soil in the Restricted Area of the Property, as shown on Exhibit 2 of Schedule A, is prohibited unless written approval is received from the Department.
3. The integrity of the stormwater evaporation pond liner must be maintained as the engineering control for the Restricted Area for the protection of groundwater. The liner shall be maintained according to the Operation and Maintenance Plan incorporated into this Declaration and attached as Schedule B. DTB Properties LLC, or its successor in interest, shall comply with the Operation and Maintenance Plan. The Operation and Maintenance Plan may be modified upon mutual consent from the Department and DTB Properties LLC, or its successor in interest, as provided in the Uniform Environmental Covenants Act, Idaho Code § 55-3010.

Breach and Cure of Activity and Use Limitations DTB Properties LLC, 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 Amended 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 Amended 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. DTB Properties LLC, 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:

The Restricted Area, as shown in a Department-approved investigation or risk assessment, no longer poses undue risk to human health or the environment and

The concentrations of nitrate and ammonia in the overall groundwater beneath the Property are deemed by the Department, in writing, to be adequate 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 Amended Environmental Covenant. This Amended 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 Amended Environmental Covenant or any amendment or termination shall be recorded by DTB Properties LLC, or its successors in interest, within ten (10) days of receipt of this Amended Environmental Covenant signed by the Department. Within ten (10) days of the recording of this Amended Environmental Covenant, or any amendment or termination, DTB Properties LLC, or its successors in interest, shall provide to the Department a copy of this recorded Amended Environmental Covenant, or any amendment or termination of this Amended Environmental Covenant. Upon receipt of the copy of the recorded Amended 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 Amended Environmental Covenant, or any amendment or termination, shall be provided by DTB Properties LLC, or by its successors in interest, to the following persons: (a) each person that signed the Amended 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 Amended Environmental Covenant is not affected by failure to provide a copy of the Amended Environmental Covenant as required under this section.

Compliance Reporting. DTB Properties LLC, 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.

DTB Properties LLC will report inspection results to the Idaho Department of Environmental Quality (IDEQ) on an annual basis. If Liner repairs are necessary, the Property Owner will notify IDEQ at least 30 days in advance of conducting the repair and repair activities will be documented in the annual report.

Enforcement. The Department and any party of the Amended Environmental Covenant shall have authority to enforce the Activity and Use Limitations against DTB Properties LLC, or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of DTB Properties LLC, 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 Amended Environmental Covenant to require that DTB Properties LLC correct or remove any violations of this Amended Environmental Covenant. Violation of this Amended 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 DTB Properties LLC 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 Amended 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 Amended 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 Amended 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 DTB Properties LLC, 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: DTB Properties LLC
ATTN: Dennis T. Baird
President and Property Owner
PO Box 1658
Boise, ID 83701

THE DEPARTMENT: Idaho Department of Environmental Quality
ATTN: Assessment and Compliance Unit Manager
Waste Management and Remediation Division
1410 N. Hilton
Boise, ID 83706

HOLDER: Nutrien
C/O Legal Department
3005 Rocky Mountain Avenue
Loveland, CO 80538

Costs and Expenses. All costs of terminating this Amended 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 Amended 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 Amended Environmental Covenant are solely for the convenience of the parties and are not a part of the Amended Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Amended Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Amended 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 DTB Properties LLC or any other responsible party. Nothing in this Amended Environmental Covenant shall affect the obligations of DTB Properties LLC 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 Amended Environmental Covenant is recorded at the county recorder's office.

Signature and Acknowledgments

Accepted:

Idaho Department of Environmental Quality

Signature: *John H. Tippetts*

Printed Name: John H. Tippetts

Title: Director, Idaho Department of Environmental Quality

Date: 3/12/2017

State of Idaho)

) ss.

County of Ada)

On this 3rd day of June, in the year 2017, before me, a Notary Public in and for said County and State, personally appeared John H. Tippetts, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Amended 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: *Darika L. Barnes*

Residing at: BOISE, ADA COUNTY

Commission Expires: 08/02/2025

Signature and Acknowledgments

Accepted:

Property Owner: DTB Properties LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

[Signature]
DENNIS BAIRD
OWNER DTB PROPERTIES
12/2/2019

State of _____

County of _____

ss.

On this 2nd day of Dec, in the year 2019, before me, a Notary Public in and for said County and State, personally appeared Dennis Baird, known or identified to me to be the President of DTB Properties that executed this Amended Environmental Covenant, and acknowledged to me that such 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 _____

Residing at: _____

Commission Expires: _____

[Signature]
Helene E. Wolfgram
Boise, Idaho
10/31/2020

Signature and Acknowledgments

Accepted:

Holder: Nutrien Ag Solutions, Inc

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Spencer Harris
Spencer Harris
Region Manager
12/13/2019

State of CO)

County of LARIMER) ss.

On this 13th day of Dec, in the year 2019, before me, a Notary Public in and for said County and State, personally appeared SPENCER HARRIS, known or identified to me to be the REGION MANAGER that executed this Amended Environmental Covenant, and acknowledged to me that such 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 Colorado
Residing at: Loveland
Commission Expires: Aug 8, 2020



Dakota Martin

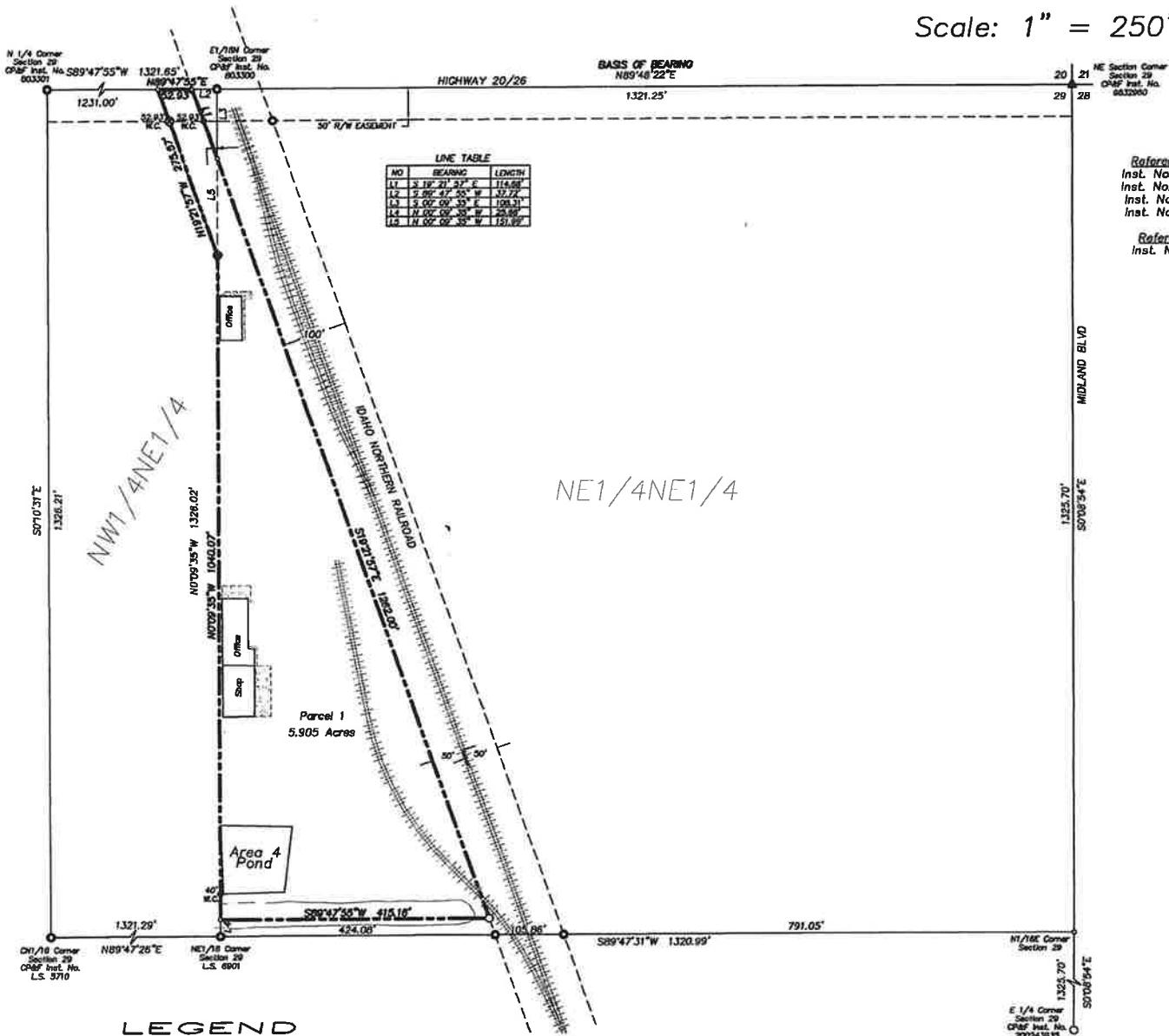
SCHEDULE A

EXHIBIT 1

A PORTION OF THE N 1/2 NE 1/4 OF SECTION 29,
TOWNSHIP 4 NORTH, RANGE 2 WEST, BOISE MERIDIAN,
CANYON COUNTY, IDAHO

0' 250' 500'

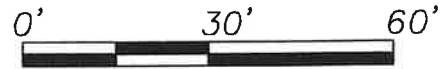
Scale: 1" = 250'



SURVEY FOR		RUBIK ENVIRONMENTAL, INC.
Drawn By:	TJW	Skinner Land Survey Precision Land Surveyors, P.C. 21851 Upper Pleasant Ridge Rd. Caldwell, Idaho 83607 (208)-454-0933 WWW.SKINNERLANDSURVEY.COM
Date:	Jan. 25, 2018	
Surveyed By:	TJW	
Job No.	JA0618	

EXHIBIT 2

A PORTION OF THE N 1/2 NE 1/4 OF SECTION 29,
TOWNSHIP 4 NORTH, RANGE 2 WEST, BOISE MERIDIAN,
CANYON COUNTY, IDAHO



Scale: 1" = 30'



E1/16N Corner
Section 29
CP&F Inst. No.
803300

BASIS OF BEARING
N89°48'22"E

NE Section Corner
Section 29
CP&F Inst. No.
9832960

HIGHWAY 20/26

1321.25'

20 21
29 28

S88°47'40"E
110.86'

Area 4
POND

103.67'
S7°06'52"W

S44°00'29"W
1754.87'

1325.70'
S0°08'54"E

MIDLAND BLVD

N1/16E Corner
Section 29



SURVEY FOR:

RUBIK ENVIRONMENTAL, INC.

Drawn By: TJW

Date: Jan. 25, 2018

Surveyed By: TJW

Job No. JA0618

**Skinner
Land Survey**

Precision Land Surveyors, P.C.
21851 Upper Pleasant Ridge Rd.
Caldwell, Idaho 83607
(208)-454-0933
WWW.SKINNERLANDSURVEY.COM



Thomas J. Wellard, PLS
Rodney Clark, PE

January 25, 2018

Legal Description for
Rubik Environmental, Inc.
Restricted Area 4
Job No. JA0618

Area 4

This parcel is a portion of the NE ¼ NE ¼ of Section 29 in Township 4 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows:

COMMENCING at the Northwest corner of the NE ¼ NE ¼ of Section 27, (E1/16N Corner, Section 29), a found 5/8 inch diameter rebar;

thence North 89° 48' 22" East along the North boundary of the NE ¼ NE ¼ a distance of 1321.25 feet to the Northeast corner of the NE ¼ NE ¼, a found railroad spike;

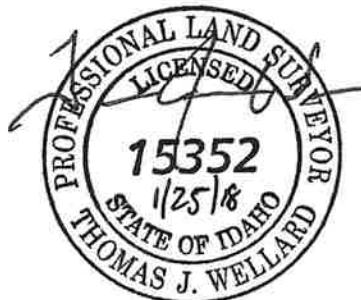
thence South 44° 00' 29" West a distance of 1754.87 feet to the **TRUE POINT OF BEGINNING**;

thence South 88° 25' 00" West a distance of 94.38 feet;

thence North 01° 56' 25" West a distance of 107.87 feet;

thence South 88° 47' 40" East a distance of 110.86 feet;

thence South 07° 06' 52" West a distance of 103.67 feet to the **TRUE POINT OF BEGINNING**, containing 0.248 acres, more or less.



SCHEDULE B

OPERATION AND MAINTENANCE PLAN

The stormwater evaporation pond (Pond) located on the Property has been designated as a Restricted Area (RA) due to the potential for nitrate in soil beneath the pond to impact groundwater. The base and sidewalls of the Pond are lined with an impermeable, high density, polyethylene (PPL-24) liner (the Liner) which serves as an engineering control cap to prevent surface water infiltration through underlying soil and subsequently leaching nitrate to groundwater.

The Property Owner shall ensure that the integrity and impermeability of the Liner is maintained. At a minimum, the Liner shall be inspected on an annual basis when there is little or no water in the pond and the condition of the Liner is clearly visible. The Liner inspection will consist of visual observation for signs of discoloration, rips, stretching, excessive weathering or other visible damage which may indicate the impermeability of the liner has been compromised. If it is determined that the Liner has been compromised, the method for repair will be dependent upon the degree of damage. If there is a rip or uncharacteristic stretching at a single location and the Liner exhibits limited weathering, then the compromised area may be repaired by removing the damaged section and applying a replacement patch of equivalent liner material that is welded to the remaining Liner. If multiple portions of the Liner are ripped or exhibit uncharacteristic stretching, then the entire Liner shall be replaced. Liner repair and/or replacement shall be conducted by a licensed general contractor or liner installation contractor.

The Property Owner will report inspection results to the Idaho Department of Environmental Quality (IDEQ) on an annual basis. If Liner repairs are necessary, the Property Owner will notify IDEQ at least 30 days in advance of conducting the repair and repair activities will be documented in the annual report.

