

Instrument # 1740024
Bonneville County, Idaho Falls, Idaho
01/17/2023 12:48:03 PM No. of Pages: 14
Recorded for: CONRAD & BISCHOFF
Penny Manning Fee: \$49.00
Ex-Officio Recorder Deputy
Index to: MISCELLANEOUS RECORDING

Recording Requested By and
When Recorded Return to:

Instrument # 1739997
Bonneville County, Idaho Falls, Idaho
01/17/2023 09:49:46 AM No. of Pages: 12
Recorded for: CONRAD & BISCHOFF
Penny Manning Fee: \$43.00
Ex-Officio Recorder Deputy
Index to: MISCELLANEOUS RECORDING

Re-Record for Missing page

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

Conrad & Bischoff, GRANTOR, grants this Environmental Covenant. As provided in Idaho Code §55-3008, Conrad & Bischoff is the GRANTEE.

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Conrad & Bischoff, LLC, ("Conrad") 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. Conrad is a "holder" as defined in Idaho Code § 55-3002(6). Conrad, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property 2251 N Holmes Avenue, County of Bonneville, State of Idaho, legally described as Parcel Number RP02N38E077436 (hereafter referred to as "the Property"). The Property is legally described in the attached Schedule A. The Restricted Area of the Property is legally described and depicted in the survey attached as Schedule B.

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

Reason for Activity and Use Limitations.

A bulk petroleum storage plant occupies the majority of the site (2.94 acres). Multiple warehouses, above-ground storage tanks (ASTs), above-ground fuel piping, and three dispenser islands are located at the bulk plant. A petroleum release impacting soil was discovered in 2020 during an environmental assessment. Additional soil borings were installed in 2021 and 2022 to delineate the release plume. A risk evaluation was performed. This

Environmental Covenant is required because residual benzene, ethylbenzene, xylene, and naphthalene concentrations in soil remain underlying the Restricted Area of the Property above allowable risk-based concentrations as determined by the Department. Therefore, future use of the Restricted Area of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the can be found at the Wright Oil & Tire Co (Facility Identification Number 6-100158) administrative records can be found at the DEQ Idaho Falls Regional Office, 900 N. Skyline Drive, Suite B, Idaho Falls, ID 83402.

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

1. The Restricted Area of the Property, and any portion thereof, may be used for commercial and industrial uses only. The Restricted Area of 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.
2. No buildings of any kind or nature shall be constructed or located on the Restricted Area of the Property.
3. Excavation or any other disturbances of soil in the Restricted Area of the Property below a depth of 5 feet are prohibited, except that soil may be excavated in conjunction with a soil management plan or other activities that are approved by the DEQ prior to conducting excavation activities. Soils management plan shall be submitted to the DEQ 30 days prior to excavation in the Restricted Area.

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

Amendment by Consent. This 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 this Environmental Covenant to a new holder is an amendment. The holder waives their right to sign the amendment as provided in Idaho Code § 55-3010(1)(c).

Duration and Termination. The Activity and Use Limitations shall apply to the Restricted Area of 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. Conrad, or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Restricted Area of the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

Contaminated soils are at levels the Department deems in writing to be adequate for the

Restricted Area of the Property to be developed for unrestricted use.

Upon a request and demonstration of the record for termination of the Environment Covenant, the Department will take all reasonable steps to locate or identify holders to determine consent to terminate. If the Department finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence, the holder waives their right to sign the termination as provided in Idaho Code § 55-3010.

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 Restricted Area 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 Restricted Area of the Property unless expressly stated as applicable to a specific portion of the Restricted Area 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 every county in which any portion of the Property subject to the Environmental Covenant is located. This Environmental Covenant or any amendment or termination shall be recorded by Conrad, 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, Conrad, 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 this recorded Environmental Covenant, or any amendment or termination, shall be provided by Conrad, or by its successors in interest, to the following persons: (a) each person that signed this 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. Conrad, 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 this Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Conrad, or its successors in interest, including subsequent owners of the Property and any other person using the Restricted Area of the Property. Failure of Conrad, or its successors 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 Conrad 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 Conrad, 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 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 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 address as a party, or its successors to this Environmental Covenant, may designate in a written notice given to the other parties to this Environmental Covenant. 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:

Conrad & Bischoff, LLC
P.O. Box 50106
Idaho Falls, ID 83401

THE DEPARTMENT:

Idaho Department of Environmental Quality
ATTN: Assessment and Compliance Bureau Chief
Waste Management and Remediation Division
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 this 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 this 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 Consent Order or other agreement relating to remediation of the Property entered into between the Department and Conrad, or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Conrad, or any other responsible party under such 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:

CONRAD & BISCHOFF, LLC "Property Owner"

Signature: *[Handwritten Signature]*
 Printed Name: John Seale
 Title: GM
 Date: 30 Nov 2022

State of Idaho, county of, ss.

On this 30 day of Nov, in the year 2022, before me, a Notary Public in and for said County and State, personally appeared John Seale, identified to me to be the property owner that executed this Environmental Covenant.

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: *[Handwritten Signature]*
 Residing at: Lathrop
 Commission Expires: 10-16-2023

Attachment A Legal Description and Deed of Property

Instrument # 1681510
Bonneville County, Idaho Falls, Idaho
04/09/2021 11:04:26 AM No. of Pages: 3
Recorded for: FIRST AMERICAN TITLE INSURANCE COMPANY - NCS MINNEAPOLIS
Penny Manning Fee: \$15.00
Ex-Officio Recorder Deputy Rupchurch
Index to: DEED, QUIT-CLAIM

**Recording Requested by
and After Recording Mail To:**

Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Attn: Adrienne J. Bell

NCS-1047984-1-MPLS (CFNF)

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

APN: RP02N38E077436 & RPA00008077439

QUITCLAIM DEED

THIS QUITCLAIM DEED is made to be effective as of this 7th day of April, 2021, by Conrad & Bischoff, LLC, a Delaware limited liability company (successor by conversion to Conrad & Bischoff, Inc.) ("Grantor"), and Conrad & Bischoff, LLC, a Delaware limited liability company ("Grantee"), whose address is 2251 North Holmes Avenue, Idaho Falls, Idaho 83401.

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor does hereby convey, release, remise and forever quitclaim unto Grantee and to his successors and assigns, all of Grantor's right, title and interest in and to that certain real property located in Bonneville County, Idaho, and more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein as if set forth in full, together with all and singular tenements, hereditaments, and appurtenances thereunto appertaining.

[Signature Page Follows]

EXHIBIT A

Legal Description of the Property

The Land referred to herein below is situated in the County of Bonneville, State of ID, and is described as follows:

Beginning at a point on the West right-of-way line of the Lewisville Highway, which point is South 600.00 feet and West 33.29 feet from the East Quarter corner of Section 7, Township 2 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; thence West 218.00 feet; thence North 100.00 feet; thence East 217.96 feet to the West right-of-way line of the Lewisville Highway; thence turning and running in a southerly direction along the West right-of-way line of the Lewisville Highway along the arc of a 114,551.6 foot radius curve to the right 100.00 feet through a central angle of $00^{\circ}03'$ to the Point of Beginning

Also:

Beginning at a point South 600.00 feet along the East section line of Section 7, and West 33.29 feet to the West right-of-way line of the Lewisville Highway from the East 1/4 Corner of Section 7, Township 2 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; thence West 218.00 feet; thence South 200.00 feet; thence East 216.40 feet to the West right-of-way line of the Lewisville Highway; thence North $00^{\circ}28'29''$ East 86.62 feet along said right-of-way line; thence along the arc of a 114,551.6 foot radius curve to the left 113.38 feet through a central angle of $00^{\circ}03'25''$ to the Point of Beginning

Also:

Beginning at a point that is South 500.00 feet along the section line and West 251.29 feet from the East 1/4 corner of Section 7, Township 2 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, and running thence South 300.00 feet; thence West 300.00 feet; thence North 243.52 feet to a point on a curve with a radius of 825.00 feet and a tangent that bears North $68^{\circ}40'35''$ East; thence to the right along said curve 307.04 feet to the Point of Beginning.

16469366_v2

Exhibit A

Attachment B Map of Restricted Area



3153 McNeil Drive
Idaho Falls, ID 83402

(208) 542-6120

BOUNDARY DESCRIPTION
RESTRICTED AREA
REVISED 9/30/2022

A parcel of land is located in the City of Idaho Falls and also being a part of the Southeast 1/4 of Section 7, Township 2 North, Range 38 East, B.M. Bonneville County, Idaho more particularly described as follows;

Commencing at the east 1/4 corner of said Section 7 inst. No. 1733148 from which the southeast corner of said Section 7 inst. No. 1598058 bears $S00^{\circ}21'42''W$ 2631.87 feet the Basis of Bearing of this description, thence along the section line $S00^{\circ}21'42''W$ 645.58 feet to a calculated point. Thence leaving the section line $N88^{\circ}39'28''W$ 165.62 feet to a set 1/2" iron rod and plastic cap marked "KA 10786" also being the POINT OF BEGINNING. Thence $S01^{\circ}19'30''W$ 70.00 feet to a set 1/2" iron rod and plastic cap marked "KA 10786". Thence $N88^{\circ}39'11''W$ 80.00 feet to a set 1/2" iron rod and plastic cap marked "KA 10786". Thence $N01^{\circ}19'30''E$ 70.00 feet to a set 3/4" unmarked brass plug in concrete with magnet at the bottom. Thence $S88^{\circ}39'11''E$ 80.00 feet to the point of beginning.

Parcel contains 0.13 acres, 5,600 SQ. FT.



