

Recording Requested By and  
When Recorded Return to:

**Instrument # 694935**

BINGHAM COUNTY

3-8-2018 11:31:55 AM No. of Pages: 11

Recorded for : IDAHO DEPARTMENT OF ENVIRONMENTAL

PAMELA W. ECKHARDT

Fee: 0.00

Ex-Officio Recorder Deputy



SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

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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.**

### **ENVIRONMENTAL COVENANT**

This instrument is an Environmental Covenant ("Environmental Covenant") executed by the **GRANTOR** City of Aberdeen, ("Aberdeen"), and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. Aberdeen, as the current property owner, grants this Environmental Covenant to all signatories to this instrument. 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. Aberdeen is also a "holder" as defined in Idaho Code § 55-3002(6). For recording indexing purposes the holder, Aberdeen, is the **GRANTEE** as provided in Idaho Code §55-3008.

Property. This Environmental Covenant concerns real property located at 33 North Main Street, Aberdeen, Idaho, in Bingham County, identified as Parcel Number RP3039001 and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as "the Property"). The Property is depicted in the map attached as Schedule B.

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

Reason for Activity and Use Limitations. The Property described above consists of one building that is currently used as Aberdeen City Hall. Aberdeen's city center has a history of petroleum contamination in ground water. Environmental investigations conducted by the Department and private environmental consultants indicate multiple sources exist that have contributed to petroleum contamination in groundwater underlying portions of the downtown core of Aberdeen. Three petroleum contamination sources surrounding the Property (Aberdeen City Hall) are identified in the Department's Leaking Underground Storage Tank (LUST) database at the following addresses: 14 North Main Street (El Jalisiense), 78 North Main Street (Maverik #177), and 17 West Lincoln Ave (Wright Auto Service & Repair). Ground water cleanup difficulties have been encountered due to the clay based soils in Aberdeen. Remediation efforts on the

surrounding petroleum contaminated source properties include soil excavation and groundwater vacuum extraction.

The area of concern impacted by the aforementioned LUST properties is bounded by 1st Street Southeast to the east, North 1st Street West to the west, West Lincoln Avenue to the north and West Central Avenue to the south. The Department and others have installed and sporadically monitored a network of approximately 40 ground water monitoring wells in and around the area of concern. The current, most comprehensive sampling of 31 ground water monitoring wells from the ground water monitoring well network was performed in 2017 by the Department's environmental contractor which revealed residual benzene, ethylbenzene and 1,2-dichloroethane concentrations in ground water above regulatory screening levels in the area of concern. The Department compared current and historical data and the ground water petroleum plume appears stable and/or decreasing in size, consequently an Environmental Covenant on the Property is suitable to serve as an institutional control to remedy risk associated with the ground water contamination. This Environmental Covenant is required because ground water concentrations are above allowable risk-based concentrations underlying the Property 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 Jerry's Oil Company aka Wright Auto Service & Repair (Facility Identification Number 5-060112), El Jalisiense (Facility Identification Number 5-060612), and Maverik #177 (Facility Identification Number 5-060144) administrative record can be found at the DEQ Pocatello Regional Office, 444 Hospital Way, Pocatello, ID 83201.

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

There shall be no extraction of ground water 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. Aberdeen, 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, Aberdeen 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 Aberdeen 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. Aberdeen, 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. Aberdeen, 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 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 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 Aberdeen 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.

ABERDEEN:

City Hall  
**ATTN:** Mayor Larry Barrett  
33 N. Main  
Aberdeen, ID 83210

THE DEPARTMENT:

Idaho Department of Environmental Quality  
**ATTN:** Assessment & Compliance Unit 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.

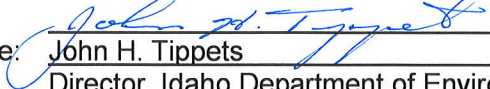
Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and Aberdeen or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of Aberdeen 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:

Idaho Department of Environmental Quality

Signature:   
Printed Name: John H. Tippet  
Title: Director, Idaho Department of Environmental Quality  
Date: 2/21/2018

State of Idaho                     )  
  ) ss.  
County of Ada                    )

On this 21 day of February in the year 2018, 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: Pampa, Idaho  
Commission Expires: 11/21/2020

ENVIRONMENTAL COVENANT



Signature and Acknowledgments

Accepted:

Property Owner:

Signature:

Printed Name:

Title:

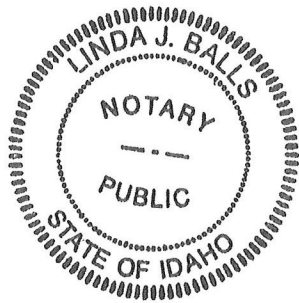
Date:

Larry Barrett  
LARRY BARRETT  
MAYOR  
2-6-18

State of Idaho, county of Bingham, ss.

On this 6<sup>th</sup> day of Feb., in the year 2018, before me, a Notary Public in and for said County and State, personally appeared Larry Barrett known or identified to me to be the Mayor of the City of Aberdeen that executed this Environmental Covenant, and acknowledged to me that the City of Aberdeen 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:

Commission Expires:

Linda J. Balls  
Aberdeen ID  
2-27-2024

ENVIRONMENTAL COVENANT

# Attachment A   Legal Description and Deed of Property

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# QUITCLAIM DEED

Instrument # 694052

BINGHAM COUNTY

2-1-2018 10:59:20 AM No. of Pages: 1

Recorded for : GARRETT H. SANDOW

PAMELA W. ECKHARDT Fee: 0.00

Ex-Officio Recorder Deputy


Grantors, Norvin L. Brown and A. Arlene Brown, husband and wife, for good and valuable Consideration, the receipt of which hereby is acknowledged, do hereby REMISE, RELEASE and forever QUITCLAIM, unto Grantee, the **CITY OF ABERDEEN, an Idaho Municipal Corporation**, with an address of P.O. Box 190, Aberdeen, Bingham County, Idaho, 83210 and to Grantees' heirs and assigns, the following described real estate situated in Bingham County, Idaho, to wit:

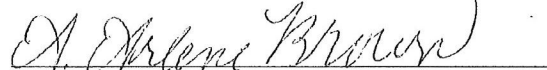
**Lots 8 and 9 in Block 92 of the Aberdeen Townsite, now City of Aberdeen, Bingham County, Idaho, according to the Amended Plat recorded in Book 3 of Plats, Page 54, records of said County.**

Together with all improvements, ditches, ditch rights, easements, hereditaments and appurtenances thereto.

Subject to such rights, easements, covenants, restrictions and zoning regulations as appear of record or by use upon premises.

IN WITNESS WHEREOF, Grantors have hereunto subscribed their names to this instrument this 31 day of January, 2018.

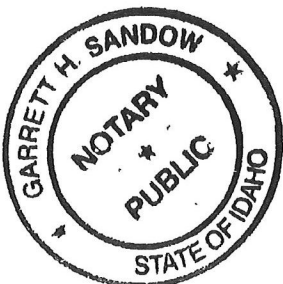
  
Norvin L. Brown

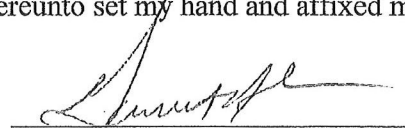
  
A. Arlene Brown

STATE OF IDAHO    )  
                              ) ss.  
County of Bingham    )

On this 31 day of January, 2018, before me the undersigned, a Notary Public for Idaho, personally appeared, Norvin L. Brown and A. Arlene Brown, known or identified to me to be the persons whose names are subscribed to the within instrument, and being by me first duly sworn, declared that the statements herein are true, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



  
Notary Public for Idaho  
Residing at Blackfoot, Idaho  
My Commission Expires: 5/12/2020

694052

## Attachment B    Map of Restricted Area



33 N Main Street, Aberdeen, ID

Legend

 City Hall Restricted Area

Google Earth

© 2017 Google

W Central Ave

39

100 ft



694935