

2008061856

Recording Requested By and
When Recorded Return to:

RECORDED

2008 NOV 24 AM 9 33

WILLIAM H. HURST
CANYON CNTY RECORDER
BY

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

DECLARATION OF ENVIRONMENTAL COVENANT

This Declaration of Environmental Covenant (Declaration) made by Bob Nicholes Oil Company of Nampa, INC. (BONICO), its successors and assigns, and the Idaho Department of Environmental Quality ("Department"), its successors and assigns, sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Restrictions") designed to protect natural resources, human health and the environment, upon and subject to which the Property (as identified below) and every portion thereof shall be improved, used, occupied, leased, encumbered and/or conveyed. BONICO, as the current property owner grants this Environmental Covenant to all signatories to this instrument

Each and all of the Restrictions are imposed pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015, and the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 through 39-130. For purposes of this Declaration, the Department shall be a "holder" as defined in Idaho Code § 55-3002(6). BONICO and the Department agree that each and all of the Restrictions are enforceable by the Department, against BONICO or successors in interest.

Ownership. BONICO is the fee simple owner of certain real property in the City of Nampa, County of Canyon, State of Idaho, described as that portion of 14-3N-2W SW TAX 28 IN SESW (hereafter referred to as "the Property") and is subject to this Declaration. The Property is legally described in the attached Schedule A. BONICO 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 BONICO has the power and authority to enter into this Environmental Covenant.

Provisions to Run With the Land. Each and all of the Restrictions 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 Restrictions 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 Restrictions as herein established must be adhered to and that their

interest in the Property shall be subject to the Restrictions contained herein.

Recording/Filing of Declaration. This Declaration and any amendment or termination of the Declaration shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Declaration is located. The Declaration shall be recorded by BONICO within five (5) days of receipt of this Declaration signed by the Department. Within five (5) days of the recording of this Declaration BONICO shall provide to the Department a copy of this recorded Declaration evidencing compliance with this provision. In addition, a copy of the recorded Declaration shall be provided by BONICO to the following persons: (a) each person that signed the Declaration; (b) each person holding a recorded interest in the Property subject to the Declaration; (c) each person in possession of the Property subject to the Declaration; (d) each municipality or other local government in which the Property subject to the Declaration is located; and (e) any other person the Department requires. The validity of the Declaration is not affected by failure to provide a copy of the Declaration as required under this section. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Reason for Restrictions. The Property described above was previously used to operate a bulk fueling facility, becoming contaminated with petroleum chemicals of concern. On May 7, 2004, BONICO entered into a Consent Order with the Department to remediate the Property. BONICO implemented a corrective action plan ("CAP") on the Property. This Declaration is required because the CAP resulted in residual concentrations of dissolved petroleum chemicals of concern in groundwater underlying the Property. These concentrations may be at or above risk-based screening levels as determined by the Department and for which future use of the Property shall be limited to protect human health and the environment. A copy of the Site Closure report may be found at the Idaho Department of Environmental Quality, Boise Regional Office in Boise, Idaho.

Restrictions on Use. By acceptance and recordation of this Declaration, BONICO, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as set forth below. BONICO and respective successors in interest shall be solely responsible for demonstrating that use in the Property is in conformity with the following:

- 1. Any extraction of groundwater from under the delineated area of Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use is prohibited without prior written approval from the Department. (See attached Schedule B for delineated area)*

The foregoing restrictions on use are herein referred to as the "Restricted Uses."

The Restricted Uses are imposed due to conditions resulting from former uses of the Property, specifically the presence of dissolved petroleum chemicals of concern in groundwater which may present a risk to natural resources, human health and the environment at the Property.

Amendment by Consent. The Declaration may be amended by consent pursuant to Idaho Code § 55-3010.

Termination by Consent. The Restricted Uses set forth above shall apply to the Property, or any subdivided portion thereof, unless BONICO, or its successors in interest, applies to the Department to have this Declaration terminated with respect to all or part of the Property and:

1. the Property or any subdivided portion thereof is shown in a Department-approved document not to contain contaminated soils or groundwater; or
2. contaminated soils and groundwater are remediated to levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Thereafter, the Declaration shall then be terminated pursuant to Idaho Code § 55-3010(1).

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 Declaration, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Enforcement. Failure of BONICO, or its successor in interest, to comply with any of the Restrictions set forth herein shall be grounds for the Department, or its successor, to require that the Owner modify or remove any groundwater wells constructed in violation of this Declaration. Violation of this Declaration shall be grounds for the Department, or its successor, to file civil actions against the Owner as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Property Access. The Department shall have a right of access to the Property for the purposes of ensuring compliance with the Declaration and the Restricted Uses.

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 BONICO 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.

Bob Nicholes Oil
Company of Nampa, INC.

Bob Nicholes Oil Co. of Nampa, Inc.
James V. Voyles, Pres.
4737 N Tumbleweed Pl
Boise, ID 83713-2566

THE DEPARTMENT:

Idaho Department of Environmental Quality
ATTN: Joe Nagel
1410 N. Hilton
Boise, ID 83706

Costs and Expenses. All costs of terminating this Declaration, including the cost of any remediation or abatement of any environmental condition related to restrictive uses of or pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of the Declaration 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 Declaration are solely for the convenience of the parties and are not a part of the Declaration.

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

Reservation of Rights. Notwithstanding any provision of this Declaration, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Declaration 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 BONICO or any other responsible party. Nothing in this Declaration shall affect the obligations of BONICO 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.

Accepted:

Idaho Department of Environmental Quality - Holder

Signature: *Toni Hardesty*

Printed Name: Toni Hardesty

Title: Director, Idaho Department of Environmental Quality

Date: _____

State of Idaho)

) ss.

County of Ada)

On this 21st day of November in the year 2008, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Declaration of 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.



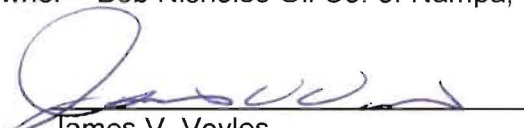
Notary Public for Idaho: *Christine Allbritton*

Residing at: Boise, Idaho

Commission Expires: 10-18-2014

Accepted:

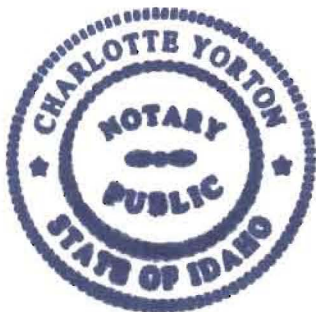
Property Owner – Bob Nicholes Oil Co. of Nampa, Inc.


By: 
Printed: James V. Voyles
Its: President
Date: Nov. 26, 2008

State of Idaho, county of Ada, ss.

On this 21st day of Nov, in the year 2008, before me, a Notary Public in and for said County and State, personally appeared James V. Voyles, known or identified to me to be the president of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, 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 Idaho: 
Residing at: Boise, Idaho
Commission Expires: 12/14/2013

SCHEDULE A

A parcel of land located in the Easterly one-half of the Southwest Quarter of Section 14, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, more particularly described as follows:

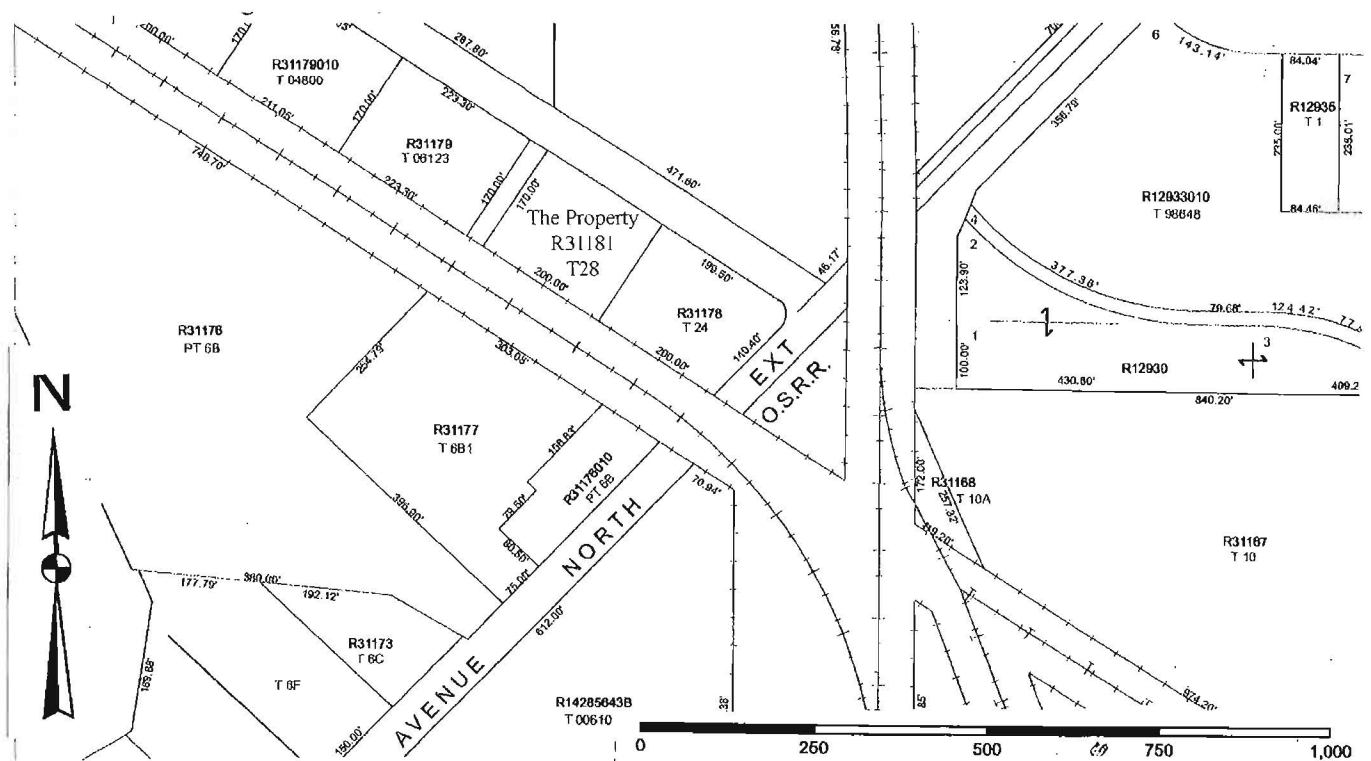
Commencing at a brass cap marking the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 14, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho; thence South $0^{\circ} 16' 30''$ East 1,245 feet as of record (1,237.20 feet as of actual third order field survey) along the Westerly boundary of the said Northeast Quarter of the Southwest Quarter of Section 14 to its intersection with the Northeasterly right of way boundary of the Spur Track of the Union Pacific Railroad Co. as marked by a 5/8" reinforcing rod; thence South $57^{\circ} 30'$ East 787.3 feet as of record (835.85 feet as of actual third order field survey) along said Northeasterly right of way of the Spur Track of the Union Pacific Railroad Company to a 5/8" reinforcing rod marking the TRUE POINT OF BEGINNING;

thence continuing South $57^{\circ} 30'$ East 200 feet along the Northeasterly right of way of the Spur Track of the Union Pacific Railroad Co. to a 5/8" reinforced rod that is North $57^{\circ} 30'$ West 200 feet from the intersection of the Northeasterly right of way of the Spur Track of the Union Pacific Railroad Co. with the Northwesterly right of way boundary of 11th Ave. No. Extension;

thence North $32^{\circ} 30'$ East 170 feet to a 5/8" reinforced rod;

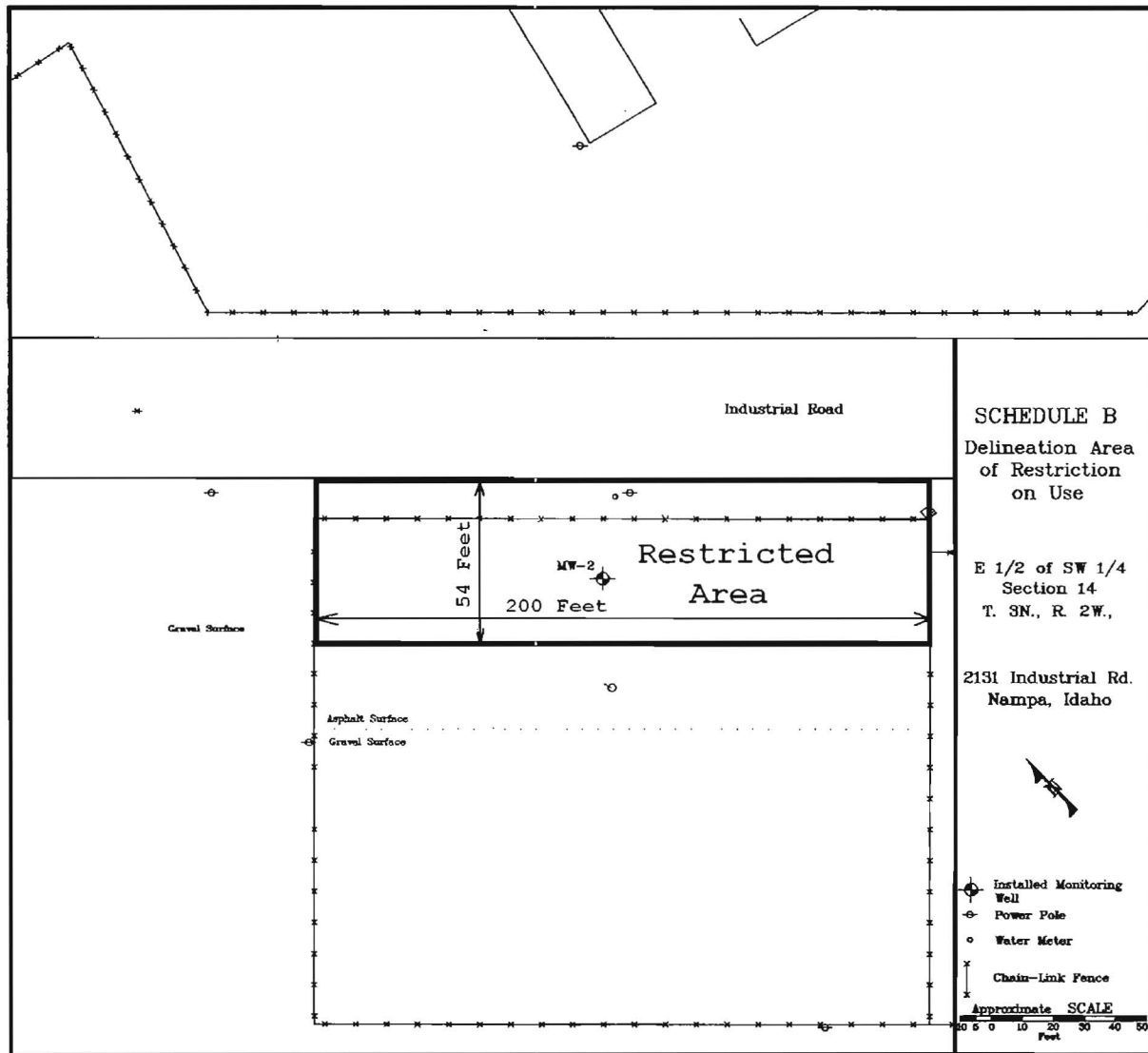
thence North $57^{\circ} 30'$ West 200 feet to a 5/8" reinforcing rod;

thence South $32^{\circ} 30'$ West 170.00 feet to THE REAL POINT OF BEGINNING; said tract containing 0.78 acres, more or less.



SCHEDULE B

Delineated Area of Restrictions on Use



SCHEDULE C
Deed(s)

SCHEDULE C-1

Deed (June 26, 1958)
Nampa Industrial Corporation to Bob Nicholes Oil Co., Inc.
Page 1

ALL-CORPORATION WARRANTY DEED

INSTRUMENT NO. 464405 393

This instrument, made this 26th day of June, 1958, in the year of our Lord one thousand nine hundred and fifty-eight, between

NAMPA INDUSTRIAL CORPORATION,
A corporation duly organized and existing under the laws of the State of Idaho and having its principal office in Idaho at Nampa in the County of Canyon, party of the first part, and **BOB NICHOLAS OIL CO., INC.,** a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in the State of Idaho, at Caldwell County of Canyon, State of Idaho, part of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of

ONE THOUSAND AND NO/100-----(\$1,000.00)-----DOLLARS,

lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors ~~and assigns~~ and assigns forever, all the following described real estate situated in the County of Canyon

State of Idaho, to-wit: A 31 of land located in the Easterly one-half of the Southwest one-quarter of Section 14, Twp. 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho more particularly described by metes and bounds as follows: Commencing at a brass cap marking the NW corner of the NE 1/4, of the SW 1/4, Sec. 14, T 3 N, R 2 W, B.M. and running thence S. 0° 16' 30" E. 1,245 feet, as of record (1,237.20 feet as of actual third order field survey) along the Westerly boundary of the said NE 1/4, SW 1/4, Sec. 14 to its intersection with the Northeastly right of way boundary of the Spur Track of the Union Pacific Railroad Co. as marked by a 5/8" reinforcing rod; Thence S. 57° 30' E. 787.3 feet, as of record (835.85 feet as of actual third order field survey) along the said Northeastly right of way of the Spur Track of the Union Pacific Railroad Co. to a 5/8" reinforcing rod marking the TRUE POINT OF BEGINNING; Thence continuing S. 57° 30' E. 200.00 feet along the said Northeastly right of way of the Spur Track of the Union Pacific Railroad Co. to a 5/8" reinforcing rod that is N. 57° 30' W. 200.00 feet from the intersection of the Northeastly right of way of the Spur Track of the Union Pacific Railroad Co. with the Northwestly right of way boundary of Eleventh Avenue North Extended; Thence N. 32° 30' E. 170.00 feet to a 5/8" reinforcing rod; Thence N. 57° 30' W. 200.00 feet to a 5/8" reinforcing rod; Thence S. 32° 30' W. 170.00 feet to the point of beginning; said tract containing 0.78 acres, more or less.

PLATTED
DEC 12 1958
KENNETH STEPHENSON
ASSISTANT

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors ~~and assigns~~ and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part its successors ~~and assigns~~ and assigns, against the said party of the first part, and its successors, and against all and

SCHEDULE C-1

Deed (June 26, 1958)

Nampa Industrial Corporation to Bob Nicholes Oil Co., Inc.

Page 2

394

every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In Witness Whereof, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

John C. Wengert
By *Nampa Industrial Corp*
Its *Vice President*
Attest *Robert W. Sarles*
Its *Secretary*

STATE OF IDAHO,
COUNTY of Canyon
On this 26th day of June in the year 1958, before me, a Notary Public in and for the said State, personally appeared John C. Wengert and Robert W. Sarles, known to me to be the Vice President and Secretary, of the corporation that executed this instrument or the person who executed this instrument on behalf of said corporation, and acknowledged to me that such corporation executed this instrument. I have hereunto set my hand and affixed my official seal, the day and year in this certificate.

[Notary Seal]
Notary Public for the State of Idaho,
Residing at Nampa, Idaho.

464335
No. _____
Corporation Warranty Deed
Nampa Industrial Corp
- TO -
Bob Nicholes Oil Co. Inc.
State of Idaho, _____
County of Canyon
This _____ day of _____, 1958, at _____, Idaho, in my office and duly recorded in Book 258 of _____ at page 393

Bob Nicholes
By *John C. Wengert*
Deputy
Mail to *Box 549 Caldwell*

SCHEDULE C-2

Current Deed (August 30, 1968) Bob Nicholes Oil Co., Inc. to Bob Nicholes Oil Co. of Nampa, Inc. Page 1

Printed and for sale by Syme-Tark Company, Boise

211-CORPORATION WARRANTY DEED

INSTRUMENT NO. 616709 BOOK 320 PAGE 163

This Indenture, Made this 30th day of August, 1968, in the year of our Lord one thousand nine hundred and sixty-eight between

BOB NICHOLAS OIL CO., INC., an Idaho corporation
a corporation duly organized and existing under the laws of the State of Idaho
and having its principal office in Idaho at Caldwell In the County of Canyon, party of the first part, and

BOB NICHOLAS OIL CO. OF NAMPA, INC., an Idaho corporation
with its principal place of business at Nampa, County of Canyon, State of Idaho party of the second part.

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of

TEN AND NO/100-----(\$10.00)----- DOLLARS,
and other good and valuable consideration
lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its **SUCCESSORS** ~~XXXX~~ and assigns forever, all the following described real estate situated in the Canyon, County of Canyon, State of Idaho, to wit: A parcel of land located in the Easterly one-half of the Southwest one-quarter of Section 14, Township 3 North, Range 2 West Boise Meridian, Canyon County, Idaho, more particularly described by metes and bounds as follows:

COMMENCING At a brass cap marking the Northwest corner of the Northeast Quarter of the Southwest Quarter, Section 14, Township 3 North, Range 2 West of the Boise Meridian, and running thence South 0° 16' 30" East 1,245 feet, as of record (1,237.20 feet as of actual third order field survey), along the Westerly boundary of the said Northeast Quarter Southwest Quarter, Section 14 to its intersection with the Northeastly right of way boundary of the Spur Track of the Union Pacific Railroad Co. as marked by a 5/8" reinforcing rod; thence South 57° 30' East 787.3 feet, as of record (835.85 feet as of actual third order field survey), along the said Northeastly right of way of the Spur track of the Union Pacific Railroad Co. to a 5/8" reinforcing rod marking the TRUE POINT OF BEGINNING; thence continuing South 57° 30' East 200.00 feet along the said Northeastly right of way of the Spur Track of the Union Pacific Railroad Co. to a 5/8" reinforcing rod that is North 57° 30' West 200.00 feet from the intersection of the said Northeastly right of way of the Spur Track of the Union Pacific Railroad Co. with the Northwesterly right of way boundary of Eleventh Avenue North Extended; thence North 32° 30' East 170.00 feet to a 5/8" reinforcing rod; thence North 57° 30' West 200.00 feet to a 5/8" reinforcing rod; thence South 32° 30' West 170.00 feet to the point of beginning; said tract containing 0.78 acres, more or less.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its **SUCCESSORS** ~~XXXX~~ and assigns forever. And the said party of the first part, and its **SUCCESSORS**, the said premises in the quiet and peaceable possession of the said party of the second part **SUCCESSORS** ~~XXXX~~ and assigns, against the said party of the first part, and its successors, and against all and

SCHEDULE C-2

Current Deed (August 30, 1968)
Bob Nicholes Oil Co., Inc. to Bob Nicholes Oil Co. of Nampa, Inc.
Page 2

BOOK 320 PAGE 164

every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

BOB NICHOLAS OIL CO., INC.

By Preston R. Nicholes Its President.

Attest Virginia R. Bartak Its Secretary.

STATE OF IDAHO,
COUNTY OF Canyon

On this 30th day of August in the year 1968, before me the undersigned, a Notary Public in and for the said State, personally appeared PRESTON R. NICHOLAS and VIRGINIA R. BARTAK known to me to be the President and Secretary of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, 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.

Wm. S. Gifford, Jr.
Notary Public for the State of Idaho,
Residing at Caldwell, Idaho.

616709
FILED
AUG 30 4 38 PM '68
WALTER FRY
CLERK
BY W.F.
RECORDED
AT THE REQUEST OF
Bob Nicholes
IN 320 OF 163
dedal
FEE \$ 2.40
Bob Nicholes Oil
Co. Inc.
To
Bob Nicholes Oil Co.
of Nampa, Inc.
W.D.
at counter