

Recording Requested By and  
When Recorded Return to:



Eckhardt Properties-Shady Acres, LLC  
425 South Whitley Drive  
Suite 4  
Fruitland, Idaho 83619

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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**

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Eckhardt Properties-Shady Acres, LLC, an Idaho limited liability company ("Shady Acres"), 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 the Property defined below as "Activity and Use Limitations". The Activity and Use Limitations are designed to protect natural resources, human health, and the environment. Eckhardt Properties-Shady Acres, LLC, an Idaho limited liability company is a "holder" as defined in Idaho Code § 55-3002(6). Shady Acres, 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.

1. Property. This Environmental Covenant concerns real property located at 4150 W State Street, Eagle, Idaho, Ada County, State of Idaho and is legally described in the attached Exhibit A (hereafter referred to as "the Property"). The aerial photograph attached hereto as Exhibit B shows the Property outlined in red.
2. Property Ownership. Shady Acres hereby represents and warrants (or, alternatively, attaches a title commitment to this Environmental Covenant) 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 Shady Acres has the power and authority to enter into this Environmental Covenant.
3. Reason for Activity and Use Limitations. The Property described above is used to operate a retail fueling station and convenience store and became contaminated with gasoline fuel constituents including benzene, toluene, ethylbenzene, total xylenes, and naphthalene.

The contamination was the result of an overfill spill accident during a delivery of fuel to one of the station's underground storage tanks. The spill was estimated at approximately 700 gallons. A consent order was not issued for the Property by the Department. Brown and Caldwell, on behalf of the property owner prepared a Risk Evaluation Report and Risk Management Plan (2007) and implemented corrective action for the Property. The Department requires this Environmental Covenant for protection of human health and the environment because at the completion of the corrective actions, residual concentrations of benzene in groundwater underlying the Property are above the Department's Residential Use Screening Levels of 5 micrograms per liter in two of the monitoring wells, SVE-1 and SVE-3, present at the site (7.89 and 70.8 micrograms per liter, respectively). In addition reported results from the indoor air monitoring sample collected at the Property on September 3, 2015 indicated that, based on concentrations of benzene, ethylbenzene, and naphthalene, cumulative risk exceeded one per one hundred thousand (1 E-5) for potential future residential receptors but was acceptable for current commercial receptors. As of the date of this Environmental Covenant, the most recent monitoring report for all historical data is the following: October 5, 2015, Brown and Caldwell, *Groundwater and Air Monitoring Report, Shady Acres Sinclair Station, 4150 West State Street, Eagle, Idaho*.

4. Name and Location of Administrative Record. A copy of the Risk Evaluation Report and Risk Management Plan (2007) and *Groundwater and Air Monitoring Report, Shady Acres Sinclair Station (2015)* prepared by Brown and Caldwell, as well as other site documents can be found at the Department of Environmental Quality Boise Regional Office, 1445 N. Orchard St., Boise, ID 83706.

5. Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, the Property is restricted as specifically set forth below ("Activity and Use Limitations"):

5.1. 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. Notwithstanding the foregoing, groundwater may be extracted as part of an environmental investigation or remediation project ("Groundwater Limitations").

5.2. The Property, and any portion thereof, may be used for commercial and industrial uses only. 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 ("Commercial and Industrial Limitations").

6. Breach and Cure of Activity and Use Limitations The owner of the Property 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 of the Property 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 of the Property and Department.

7. 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. The Department will not withhold its consent if the other parties agree to assignment of the Environmental Covenant to a new holder.

8. 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. Any party to the Environmental Covenant and any person with an interest in the Property may seek consent to terminate the Groundwater 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 concentrations of benzene in groundwater underlying the Property are at levels the Department confirms in writing to meet standards for the Property to allow extraction of groundwater. Any party to the Environmental Covenant and any person with an interest in the Property may seek consent to terminate the Commercial and Industrial 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 concentrations of benzene, ethylbenzene, total xylenes and naphthalene for indoor air are at levels that meet the residential use screening levels.

9. 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.

10. 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.

11. 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 this Environmental Covenant is located. The owner of the Property shall record this Environmental Covenant, and any amendment or termination, within ten (10) days following receipt of the Department's signature thereon. 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.

12. Compliance Reporting. The owner of the Property 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 and marked as Attachment 1.

13. Enforcement. The Department and any party of 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 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 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 of the Property as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

14. 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.

15. 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.

16. 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 owners and 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.

17. 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 the owner of the Property 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: Eckhardt Properties-Shady Acres, LLC  
425 South Whitley Drive  
Suite 4  
Fruitland, Idaho 83619

THE DEPARTMENT: Idaho Department of Environmental Quality  
**ATTN:** State Response Program Manager  
1410 N. Hilton  
Boise, ID 83706

18. 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.

19. 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.

20. 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.

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

22. 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 agreement (if any) relating to remediation of the Property entered into between the Department and Shady Acres or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Shady Acres or any other responsible party under such voluntary 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.

23. 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]*





EXHIBIT "A"

**A  
L  
S**

*Unlimited Boundaries, Inc. dba ALS*  
**LAND SURVEYING & PLANNING**

1103 W. Main St.  
Middleton, Idaho 83644  
208-383-3838 (p) 208-385-9001 (f)

DESCRIPTION  
FOR  
ECI LLC  
COMMERCIAL PROPERTY  
PARCEL B

The following describes a parcel of real property, situate in the Northeast Quarter of the Southwest Quarter of Section 12, Township 4 North, Range 1 West, Boise Meridian, Ada County, Idaho being more particularly described as follows:

Commencing at the Southwest corner of Section 12; Thence, along the westerly boundary of said Section 12, N00°49'31"E 1322.59 feet to the South 1/16 corner of Section 11 and said Section 12; Thence, along the northerly boundary of the SW1/4 of the SW1/4 of said Section 12, S89°36'06"E, 1326.57 feet to the SW 1/16 corner of said Section 12, shown on Record of Survey, Instrument Number 101079595, from which the southwest corner of said Section 12 bears, S45°41'50"W, 1880.25 feet (formerly N44°51'00"E, 1866.68 feet), as described in Bargain and Sale Deed, Instrument Number 100010224; Thence, along the southerly boundary of the NE1/4SW1/4 of said Section 12, as shown on said Record of Survey, Instrument Number 101079595, S89°36'06"E 281.02 feet to a found 5/8" iron pin, which is also shown on Record of Survey, Instrument Number 107139275, on the westerly boundary of said Deed, and the **POINT OF BEGINNING**.

Thence, N86°17'13"E, 317.45 feet to a set 1/2" iron pin and the southwest bank of a canal and the boundary of said Deed;

Thence, continuing along said bank and said boundary, S48°25'01"E, 67.28 feet to a found 1/2" iron pin;

Thence, continuing along said bank, S54°05'35"E, 86.04 feet (formerly S55°43'40"E), as shown on said Record of Survey, to a found 1/2" iron pin and the southeast corner of said Deed, and the northerly right-of-way of State Highway 44.

Thence, along said northerly right-of-way line, S80°39'02"W, 316.25 feet to a set 1/2" iron pin (formerly S79°01'00"W), as shown on said Record of Survey;

Thence, 151.66 feet along a curve to the left, said curve having a radius of 22,978.31 feet, central angle of 00°22'41" and a chord bearing of S83°16'30"W, a distance of 151.66 feet to a found 5/8" iron pin and the southwest corner of said Deed;

Thence, N10°10'22"E, 145.96 feet (formerly N08°32'E), to the **POINT OF BEGINNING**, comprising 1.135 acres more or less and is subject to any easement or reservations of the above described parcel.

Commercial Property, Parcel B

1



**SUBJECT TO:**

The following describes a 30.00 feet wide ingress-egress easement, being 15.00 feet each side of the following described centerline, situate in the Southwest Quarter of Section 12, Township 4 North, Range 1 West, Boise Meridian, Ada County, Idaho being more particularly described as follows.

Commencing at the Southwest corner of said Section 12, N00°49'31"E, 1322.59 feet to the South 1/16 Corner of Section 11 and said Section 12; Thence, along the northerly line of the SW 1/4 of the SW 1/4 of said section 12, S89°36'06"E, 1326.57 feet to the SW 1/16 corner;

Thence, along the southerly line of the NE1/4SW1/4 of said Section 12, N89°36'06"W 281.02 feet to a point on the westerly line of the land described in Bargain and Sale Deed, Instrument No. 100010224;

Thence, S10°10'22"W, 145.96 feet, along the westerly line of said Deed to the southwest corner of said Deed and to a point on the Northerly right-of-way line of State Highway 44;

Thence, along said right-of-way, 15.67 feet along a curve to the right, said curve having a radius of 22,978.31 feet, a central angle of 00°02'21" and a chord bearing of N83°06'19"E, 15.67 feet to the centerline of said ingress-egress easement and the **POINT OF BEGINNING.**

Thence, along said centerline N10°10'22"E, 100.10 feet;

Thence, N48°42'16"E, 70.48 feet to the **POINT OF TERMINUS** of said centerline.

The side lines of said ingress and egress easement are to be either lengthened or shortened to intersect the terminus line.

The basis of bearings for the above described, is that which is shown on Record of Survey, Instrument Number 101079595, between the found monuments for the Southwest corner of said Section 12 and the West 1/4 corner of said Section 12, being N00°49'31"E.



Exhibit B – Map of Restricted Area



Attachment 1  
**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