

2023-023976

RECORDED

07/27/2023 11:48 AM



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CHRIS YAMAMOTO

CANYON COUNTY RECORDER

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\$43.00

MISC

TERRY HARVEY

Recording Requested By and
When Recorded Return to:

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

Terry and Dee Harvey Trust, GRANTOR, grants this Environmental Covenant. As provided in Idaho Code §55-3008, Terry and Dee Harvey Trust is the GRANTEE.

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Terry and Dee Harvey Trust, ("Harvey Trust") 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. Harvey Trust is a "holder" as defined in Idaho Code § 55-3002(6). Harvey Trust, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property currently identified as C & R American at 117 E Main, Middleton, County of Canyon, State of Idaho, legally described as Parcel R184700000, LOTS 8,9,10, and 11 of Block 1 Neth's First Addition East, (hereafter referred to as "the Property"). The Property is legally described in the attached Schedule A. The entire Property is restricted and depicted in the map attached as Schedule B.

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

Reason for Activity and Use Limitations. The Property described above was a gasoline station from 1931 until approximately 1992; after that it was operated as an automotive repair shop. The two original underground storage tanks (USTs) are believed to have been 500-gallons and 1,000-gallons in size. Three replacement USTs were installed in 1974 (one 1,000-gallon and two 2,000-gallon); these were used to store gasoline and diesel fuel. These three tanks plus a 500-gallon diesel/stove oil tank were decommissioned and removed in 1998 and a petroleum

release was confirmed. The UST basin was over-excavated to remove petroleum contaminated soil. Two additional tanks (believed to be the original 500-gallon and 1,000-gallon tanks) and soil were removed in October 2001. Remediation using oxygen diffusion occurred from 2021 to 2023. This Environmental Covenant is required because residual concentrations of benzene, ethylbenzene, xylenes, and naphthalene remain in groundwater underlying the Property. These concentrations are above allowable risk-based concentrations 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 the Laeger Auto Repair (currently C & R American), facility identification number 3-140008, administrative records can be found at the DEQ Boise Regional Office, 1445 N Orchard Street, Boise, ID 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Harvey Trust, 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 groundwater under the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation, or an industrial or commercial use. Groundwater may be extracted as part of an environmental investigation or remediation project.

Breach and Cure of Activity and Use Limitations. Harvey Trust, 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, Harvey Trust, 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 Harvey Trust, 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 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. Harvey Trust, 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.

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 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 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 Harvey Trust, 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, Harvey Trust, 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 Harvey Trust, 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. Harvey Trust, or 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 Harvey Trust, or its successors in interest, including subsequent owners of the Property and any other person using the Property. Failure of Harvey Trust, 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 Harvey Trust 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 Harvey Trust, 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:

Terry and Dee Harvey Trust
ATTN: Terry Harvey
1272 W. White Sands Drive
Meridian, ID 83646

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 Harvey Trust, or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Harvey Trust, 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:

Idaho Department of Environmental Quality

Signature: *Jess Byrne*
Printed Name: Jess Byrne
Title: Director, Idaho Department of Environmental Quality
Date: 7/26/2023

State of Idaho)
) ss.
County of Ada)

On this 26 day of July, in the year 2023, before me, a Notary Public in and for said County and State, personally appeared Jess Byrne, 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: *Elaine Ganino*
Residing at: BOISE, IDAHO
Commission Expires: 7/22/27

Signature and Acknowledgments
Accepted:

Terry and Dee Harvey Trust

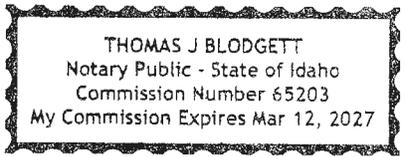
Signature: [Handwritten Signature]
Printed Name: Terry Harvey
Title: Trustee
Date: 7-14-2023

State of Idaho, county of Ada, ss.

On this 14th day of July, in the year 2023, before me, a Notary Public in and for said County and State, personally appeared Terry Harvey, identified to me to be trustee of the Terry and Dee Harvey Trust that executed this Environmental Covenant, and acknowledged to me that the Terry and Dee Harvey Trust 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: [Handwritten Signature]
Residing at: Meridian, ID
Commission Expires: 03/12/2027



Attachment A Legal Description and Deed of Property

2019-022888

RECORDED

05/28/2019 03:59 PM



CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=2 DLSTEPHENS

\$15.00

DEED

TERRY HARVEY

AFTER RECORDING RETURN TO:
TERRY & DEE HARVEY
1272 W. WHITE SANDS DRIVE
MERIDIAN, ID. 83646

QUITCLAIM DEED

GRANTOR:
TERRY L. HARVEY, Manager of MANFORD COYL LLC

GRANTEE:
TERRY LYNN HARVEY and DEEVONNE KAY HARVEY AS CO-TRUSTEES OF THE TERRY AND DEE HARVEY TRUST AND THEIR SUBSTITUTES AND SUCCESSORS AS TRUSTEES THEREUNDER

GRANTEE ADDRESS:
1272 W. WHITE SANDS DRIVE, MERIDIAN, ID. 83646

DESCRIPTION OF REAL PROPERTY CONVEYED BY THIS DEED:

Situated in the County of CANYON, State of IDAHO

The real estate more particularly described UPON THE ATTACHED EXHIBIT "A"

Subject to any encumbrances thereon

FOR VALUE RECEIVED, the above name Grantor does hereby convey, release, remise, and forever QUITCLAIM unto the above named Grantee, the real property above described together with the appurtenances.

This deed is given for estate planning purposes to vest title to the property in a living trust established by Grantor. There is no value consideration in cash or property.

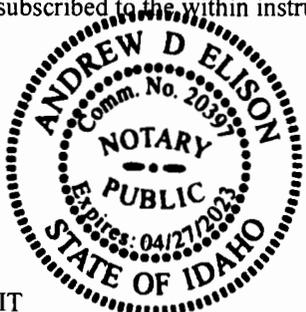
Dated: May 21, 2019

TERRY LYNN HARVEY

DEEVONNE KAY HARVEY

STATE OF IDAHO)
) ss
COUNTY OF CANYON)

On this date of May 21, 2019 before me, a Notary Public in and for said State, personally appeared TERRY LYNN HARVEY AND DEEVONNE KAY HARVEY, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.



Notary Public for State of Idaho
Comm. Expires: APRIL 27, 2023

EXHIBIT "A"

LOTS 8, 9, 10, AND 11 of Block 1 Neth's First Addition East, to Middleton, Idaho, as appears by the corrected Plat thereof, filed May 16, 1907, in book 2 of Plats, at Page 59, records of Canyon County, Idaho;

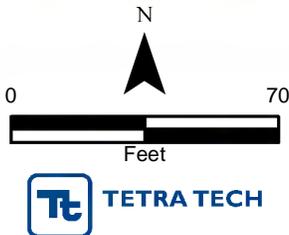
Together with all water, water rights, ditches and rights of way for ditches appurtenant thereto or in anywise appertaining;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Attachment B Map of Restricted Area



Service Layer Credits:



Restricted Area Map

C&R American
117 East Main Street
Middleton, Idaho