

**Instrument # 335609**

EMMETT, GEM, IDAHO  
7-8-2021 12:11:52 PM No. of Pages: 11  
Recorded for : ID DEPT OF ENVIRONMENTAL QUALITY  
SHELLY TILTON Fee: 40.00  
Ex-Officio Recorder Deputy *John A. [Signature]*  
Index to: COVENANTS

Recording Requested By and  
When Recorded Return to:

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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 the **GRANTORS**, Linden and Janice Carr, ("Carr"), and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. Carr, 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. Carr is also a "holder" as defined in Idaho Code § 55-3002(6). For recording indexing purposes the holder, Carr, is the **GRANTEE** as provided in Idaho Code §55-3008.

Property. This Environmental Covenant concerns real property located at 21850 Main Ola Street, Ola, Idaho, in Gem County, identified as Parcel Number RP10N01E253349 and legally described in the deed attached hereto and marked as Attachment A (hereafter referred to as "the Property"). The Restricted Area of the Property is depicted in the map attached as Schedule B.

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

Reason for Activity and Use Limitations. The Property described above is a former mercantile business. In 1993, the Department received a report from the Environmental Protection Agency (EPA) of an unauthorized removal of an underground storage tank (UST) system identified on the north side of the building. The USTs were unregistered, so their size and contents were unknown. The Department directed the former owner to excavate the tank basin to evaluate the potential impacts from petroleum hydrocarbons. The former owner removed soil to a depth of approximately 11 feet below grade. Soil samples from the base of the excavation exhibited concentrations of gasoline range constituents that exceeded applicable regulatory limits.

In 2019, a Department contractor installed soil borings and a soil-vapor point. Soil, soil-vapor, ambient air, and indoor air samples were analyzed during the assessment. This Environmental

Covenant is required because residual concentrations of benzene, ethylbenzene and naphthalene in soil at depth remain underlying the Property. In addition, soil vapor collected outside of the building exhibited concentrations of benzene, ethylbenzene and xylene. Soil and soil vapor 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 Ola Mercantile (Facility Identification Number 3-230033) administrative records can be found at the DEQ Boise Regional Office, 1445 N Orchard, Boise, ID 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Carr, 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. No buildings of any kind or nature shall be constructed or located on the Restricted Area of the Property.
2. Excavation or any other disturbances of soil at a depth of 4 feet or greater on the Restricted Area of the Property are prohibited, except that soil may be excavated in conjunction with a soil management plan or other activities that are approved by the Department prior to conducting excavation activities.

Breach and Cure of Activity and Use Limitations. Carr, 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, Carr 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 Carr 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. Carr, 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 soil and soil vapor are 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. Carr, 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 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 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 Carr 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.

OWNERS: (see

**ATTN:** Linden and Janice Carr  
21850 Main Ola Street  
Ola, ID 83657

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 Carr or any other responsible party.

Nothing in this Environmental Covenant shall affect the obligations of Carr 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: Jess Byrne  
Printed Name: Jess Byrne  
Title: Director, Idaho Department of Environmental Quality  
Date: 7/1/2021

State of Idaho            )  
  ) ss.  
County of Ada            )

On this 1st day of July, in the year 2021, 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: P. Wilson  
Residing at: Boise ID  
Commission Expires: 9/23/23



RECEIVED  
JUN 28 2021  
DEPT. OF ENVIRONMENTAL QUALITY  
WASTE PROGRAM

Signature and Acknowledgments

Accepted:

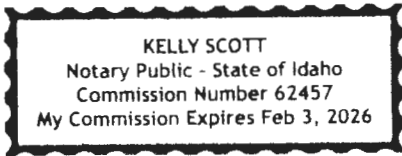
Property Owner: Linden and Janice Carr

Signature: Linden L. Carr / Janice M Carr  
Printed Name: LINDEN L. CARR / JANICE M CARR  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho, county of Coeur, ss.

On this 22 day of JUNE, in the year 2021, before me, a Notary Public in and for said County and State, personally appeared LINDEN + JANICE CARR, identified to me to be the \_\_\_\_\_ 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: Kelly Scott  
Residing at: Emmett, ID  
Commission Expires: 2/3/24

# Attachment A Legal Description and Deed of Property

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From: songman7001@frontier.com  
Subject:  
Date:  
To:

**Instrument # 315914**

EMMETT, GEM, IDAHO  
5-1-2018 08:49:02 AM No. of Pages: 1  
Recorded for : JARED L WILSON  
SHELLY TILTON Fee: 15.00  
Ex-Officio Recorder Deputy *Shelly Tilton*  
Index to: QUIT CLAIM DEED

**QUITCLAIM DEED**

**FOR VALUE RECEIVED,**

**LINDEN LLOYD CARR and JANICE M. CARR** do hereby convey, release, remise and forever quitclaim unto:

**LINDEN LLOYD CARR and JANICE M. CARR**, whose current address is 31288 Paradise Lane, Lenore, Idaho, 83541-6156, the following described premises:

A parcel of land lying in the NW¼ of Section 25, Township 10 North, Range 1 East, Boise Meridian, Gem County, Idaho, described as:

Commencing at the section corner common to Sections 23, 24, 25, 26, T. 10 N., R. 1 E., B.M. being a 5/8-inch rebar with 2-inch aluminum cap CP&F #178822;  
Thence S. 0°55'19" W. on the section line between Sections 25 and 26 a distance of 553.00 feet to a 5/8-inch rebar being the **True Point of Beginning**;  
Thence S. 69°38'43" E. a distance of 124.15 feet to a 5/8-inch rebar;  
Thence S. 9°59'08" W. a distance of 74.98 feet to a 5/8-inch rebar;  
Thence N. 88°36'55" W. a distance of 105.27 feet to a 5/8-inch rebar being on the section line between Sections 25 and 26;  
Thence N. 0°55'19" E. on said section line a distance of 114.50 feet to the Point of Beginning.

Said described parcel of land contains 10,604.9 square feet or 0.243 acres, more or less, includes all water and ditch rights appurtenant to or used in connection with the properties being sold or conveyed hereby and is subject to rights-of-way or easements of record or in use.

TO HAVE AND TO HOLD said premises, unto said grantees their heirs and assigns forever.

Dated: April 19 2018

*Linden L Carr*

**LINDEN LLOYD CARR**

*Janice M Carr*

**JANICE M. CARR**

State of Idaho }  
County of Nez Perce } ss

On this 19th day April, 2018 before me, a Notary Public in and for said state, personally appeared **LINDEN LLOYD CARR and JANICE M. CARR**, 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.

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

**STEPHANIE NIDA**  
Notary Public  
State of Idaho

*Stephanie Nida*  
Notary Public for the State of Idaho  
Residing at Lenore  
Exp. 09/19/2019

## Attachment B Map of Restricted Area

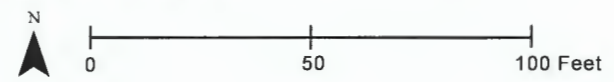
# Restricted Area Map



INSTRUMENT NO. 3351009  
 PAGES 11 OF 11



**Parcel #: RP10N01E253349**  
**Address: 21850 Main Ola Street**  
**City: Ola, ID.**



Corner	Coordinates *decimal degrees
#1:	Lat = 44.17834 / Long = -116.29251
#2:	Lat = 44.17820 / Long = -116.29251
#3:	Lat = 44.17820 / Long = -116.29247
#4:	Lat = 44.17827 / Long = -116.29246
#5:	Lat = 44.17826 / Long = -116.29230
#6:	Lat = 44.17829 / Long = -116.29230

**Legend**

- Restricted Area Corners
- ⬢ Approx. Restricted Area
- ⬢ Gem County Parcel Boundary