

RECEIVED

JUL 20 2009

DEPT. OF ENVIRONMENTAL QUALITY
WASTE PROGRAM

Recording Requested By and
When Recorded Return to:

RECEIVED

MAY 29 2009

Office of the Attorney General
IDEQ

RECEIVED

MAY 26 2009

DEQ-Coeur d'Alene
Regional Office

DANIEL J. ENGLISH 7P I 2222316000
KOOTENAI CO. RECORDER Page 1 of 7
AAA Date 07/15/2009 Time 14:47:54
REC-REQ OF AMBER HALVERSON
RECORDING FEE: 21.00
2222316000 XX

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 Thomas L. D. Brickert (OWNER), 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. Thomas Brickert is the "holder" as defined in Idaho Code § 55-3002(6). OWNER, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns a portion of real property located at 6902 West Seltice Way in the city of State Line, and County of Kootenai, State of Idaho, legally described as portions of unplatted tax # 2014 property and platted track # 179 property, Section 1, Township 50N, Range 6W. The restricted area of the Property is legally described in the attached Schedule A (hereafter referred to as "the Restricted Area"). See also attached map of the restricted area of the Property marked as Attachment B.

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

Reason for Activity and Use Limitations. The Property described above is currently used to operate a gas station, becoming contaminated with gasoline from a fuel dispensing line release that was discovered on April 18, 2008. The OWNER implemented a corrective action plan ("CAP") on the Property. This Environmental Covenant is required because the CAP resulted in residual concentrations of gasoline constituents in soil underlying the Restricted Area of 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 Restricted Area of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the Site Risk Assessment may be found at the Idaho Department of Environmental Quality, Coeur d'Alene Regional Office, in Coeur d'Alene, Idaho.

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

1. The Restricted Area of the Property , and any portion thereof, may be used for commercial and industrial uses only. The Restricted Area of 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.
2. There shall be no excavation of soil below a depth of ten feet at the Restricted Area of the Property for any purpose.
3. Any activity on the Restricted Area of the Property that may result in the release or exposure to the environment of a contaminant that remains on the Restricted Area of the Property as part of the CAP is prohibited without prior written approval from the Department.

The OWNER, or its successors in interest, shall be solely responsible for demonstrating that use on the Restricted Area of the Property is in conformity with the Activity and Use Limitations. The Activity and Use Limitations are imposed due to the presence of petroleum constituents in soil which may present a risk to natural resources, human health, and the environment at the Property.

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.

Termination by Consent. The Activity and Use Limitations shall apply to the Restricted Area of the Property , or any subdivided portion thereof, unless OWNER, or its successors in interest, applies to the Department to have this Environmental Covenant terminated pursuant to Idaho Code § 55-3010 and demonstrates that:

1. the Restricted Area of the Property or any subdivided portion thereof is shown in a Department-approved document not to contain contaminated soils; or
2. contaminated soils are at levels the Department deems in writing to be adequate for the Restricted Area of 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 the 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. The Environmental Covenant or any amendment or termination shall be recorded by OWNER, 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, OWNER, 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 the recorded Environmental Covenant, or any amendment or termination, shall be provided by OWNER, or by its successors in interest, 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 the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section. The Activity and Use Limitations set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Enforcement. The Department and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against OWNER or its successors-in-interest, including subsequent owners of the Restricted Area of the Property and any other person using the Restricted Area of the Property. Failure of OWNER, or its successor in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, to require that the Owner correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant 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 this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Restricted Area of the Property , or part thereof, the Conveyor of the Restricted Area of the Property , shall provide written notice to the Department and each municipality or other local government in which the Restricted Area of the Property is located, the name and address of all the then Owners and/or Occupants of the Restricted Area 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 Restricted Area 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 OWNER 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: Thomas L. D. Brickert
P. O. Box 459,
Post Falls, ID 83877-0459

THE DEPARTMENT:
Idaho Department of Environmental Quality
ATTN: Joe Nagel
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 Restricted Area of 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.

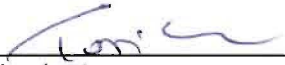
Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Restricted Area of the Property entered into between the Department and OWNER or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of OWNER 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 Restricted Area 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: Toni Hardesty
Title: Director, Idaho Department of Environmental Quality
Date: 6/12/09

State of Idaho)
) ss.
County of Ada)

On this 12 day of June, in the year 2009, 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 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: Nampa, Idaho
Commission Expires: 1/30/2015

Signature and Acknowledgments

Accepted:

Property Owner

Signature: _____

Printed Name: _____

Title: _____

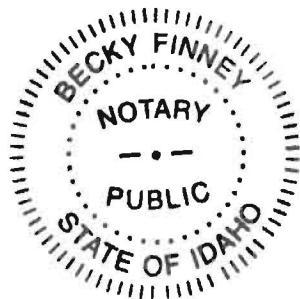
Date: _____

Thomas L. D. Brickert
Thomas L. D. Brickert
Owner
May 20, 2009

State of Idaho, county of Teton, ss.

On May 20, 2009, before me, the undersigned Notary Public, personally appeared Thomas L. D. Brickert, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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: _____

Becky Finney
Coeur d'Alene
09-22-09

DANIEL J. ENGLISH, KOOTENAI CO. RECORDER451 GOVERNMENT WAY
COEUR D'ALENE, ID 83816-9000KOOTENAI COUNTY
RECEIPT FOR PAYMENT

Telephone: 208-446-1480

07/15/2009 2:47PM

Receipt Number: 06069525

Batch: A90715

Status: Generated

Comment: 9

Source	Paid By	Reference	Amount Tendered
Check	AMBER HALVERSON	13114	21.00
		Total Amount Tendered	21.00

No.	For	Book/Page	File ID	Pgs.	Recording Time/Account Name	Amount Assessed
1	MISC XX		I 2222316000	7	07/15/2009 2:47 PM RECORDING FEE	21.00
Revenue Tax 0.00						
Document Charges						21.00
Non-Document Charges						0.00
Total Assessed						21.00
Amount Tendered						21.00
Total Due						0.00

**LEGAL DESCRIPTION
IDEQ / BRICKERT
ENVIRONMENTAL COVENANT
RESTRICTED PROPERTY**

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 50 NORTH, RANGE 6 WEST, B.M., IN STATE LINE VILLAGE, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS (THE BASIS OF BEARING BEING S 82°52'09" E, FROM MILE POST 88 ON THE WASHINGTON / IDAHO BORDER TO RIGHT-OF-WAY MONUMENT 6+28.3 ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SELTICE WAY):

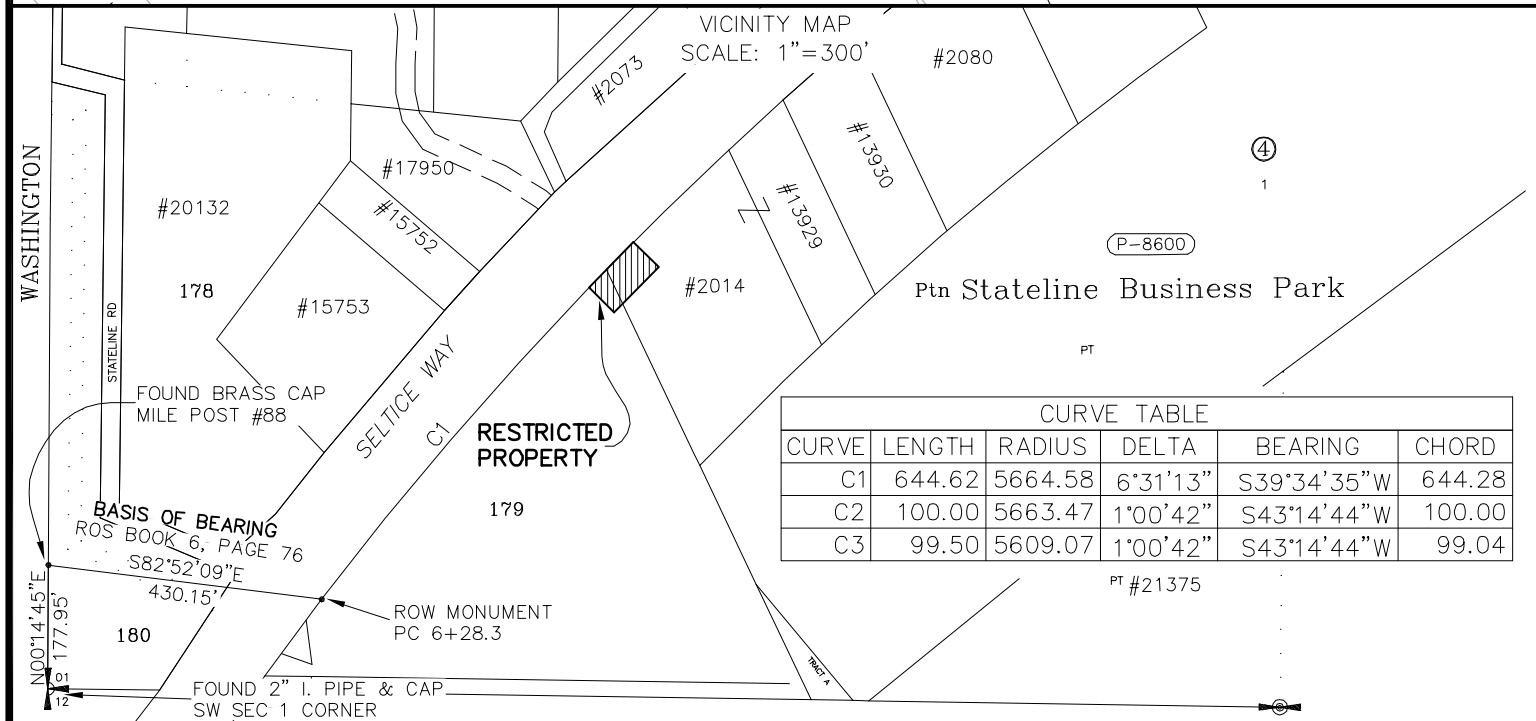
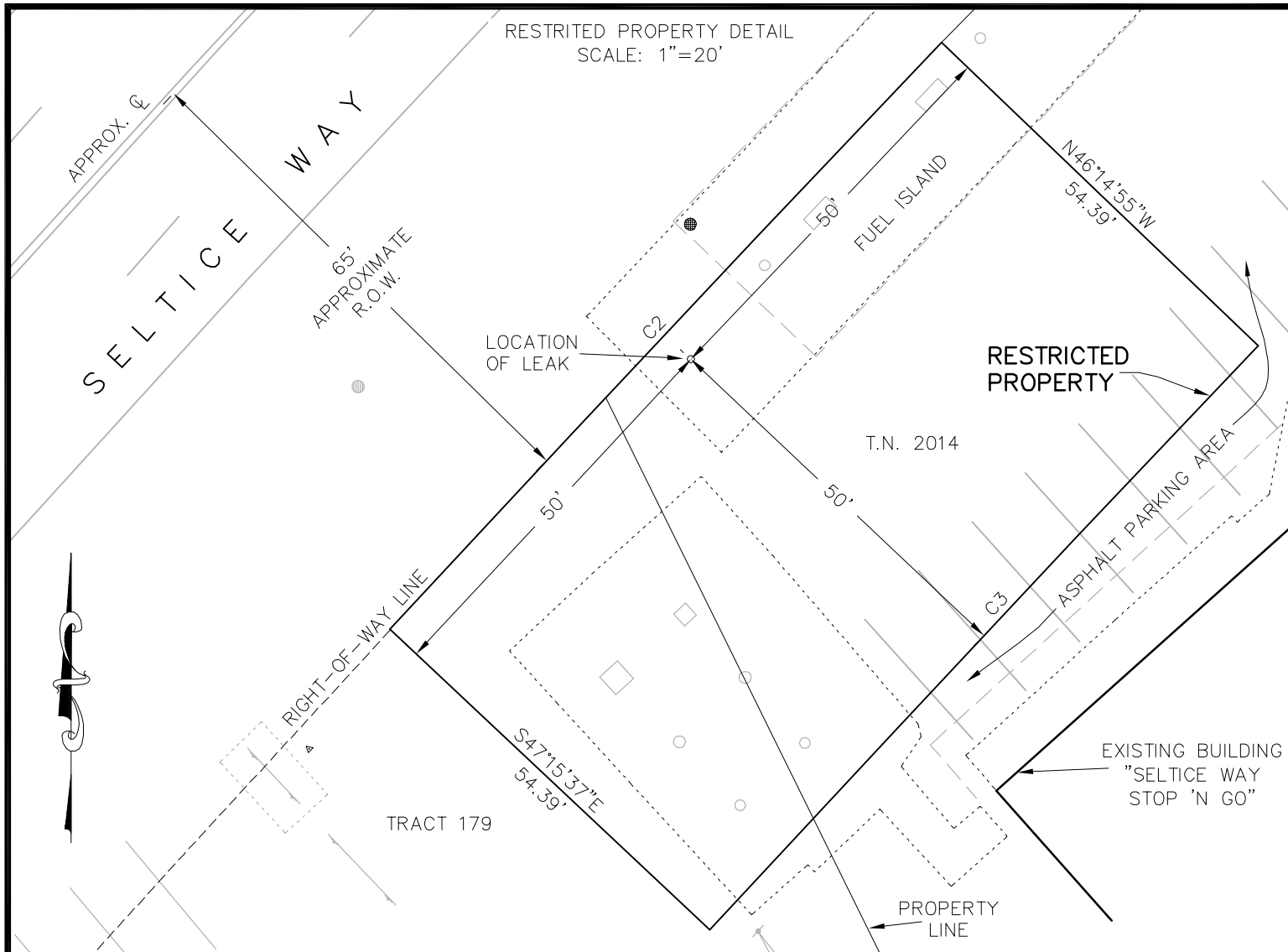
COMMENCING AT THE RIGHT-OF-WAY MONUMENT 6+28.3 ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SELTICE WAY, FROM WHICH MILE POST 88, ON THE WASHINGTON / IDAHO BORDER BEARS N 82°52'09" W, 430.15 FEET; THENCE ALONG THE SAID SOUTHEASTERLY RIGHT-OF-WAY LINE 644.62 FEET ALONG A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 5664.58 FEET, A CENTRAL ANGLE OF 06°31'13", A CHORD BEARING OF N 39°34'35" E, AND A CHORD DISTANCE OF 644.28 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;


THENCE 100.00 FEET ALONG A NON-TANGENT CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, SAID CURVE HAVING A RADIUS OF 5663.47 FEET, A CENTRAL ANGLE OF 1°00'42", A CHORD BEARING OF N 43°14'44" E AND A CHORD DISTANCE OF 100.00 FEET;

THENCE LEAVING THE SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, S 46°14'55" E, 54.39 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST;

THENCE 99.04 FEET ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 5609.08 FEET, A CENTRAL ANGLE OF 01°00'42", A CHORD BEARING OF S 43°14'44" W AND A CHORD DISTANCE OF 99.04 FEET;

THENCE N 47°15'37" W, 54.39 FEET TO THE TRUE POINT OF BEGINNING; CONTAINING APPROXIMATELY 0.124 ACRES (5413 S.F.), MORE OR LESS.



TITLE: IDEQ/BRICKERT ENVIRONMENTAL COVENANT RESTRICTED PROPERTY ILLUSTRATION			<i>FRAME & SMETANA, PA</i> <i>Consulting Engineers</i> 603 North 4th Street, Coeur d'Alene, Idaho, 83814 Ph. (208)664-2121/Fax: 765-5502/ Email: smetana@adelphia.net	 SHEET 1 OF 1
SCALE: NOTED	DATE: 4/1/09	FILE: S205PHD-SITE2.dwg		