

Recording Requested By and  
When Recorded Return to:

## ACCOMMODATION RECORDING

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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 D.Y. Boise River, LLC ("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. OWNER is also 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 real property 2850 West Fletcher Street in Boise 83702, County of Ada, State of Idaho. The Property is legally described in the attached Schedule A.

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 was previously used as a bulk petroleum storage and distribution facility, becoming contaminated with arsenic, lead, selenium, aroclor 1260, benzene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene, ethylbenzene, naphthalene, total xylenes, and benzo(a)anthracene. On July 16, 2012, OWNER entered into a Voluntary Remediation Agreement with the Department, through the Voluntary Cleanup Program, to remediate the Property. OWNER implemented an approved Voluntary Remediation Workplan ("Workplan") on the Property. This Environmental Covenant is required because the Workplan resulted in residual concentrations of arsenic, selenium, and benzo(a)anthracene in groundwater underlying the Property. These concentrations are above allowable risk-based concentrations as determined by the

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Department. Therefore future use of the Property shall be limited to protect human health and the environment.

A copy of the administrative file for the former Goodman Oil (Fletcher Street) facility can be found at the IDEQ State Office located at 1410 North Hilton, Boise, Idaho 83706.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, 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 (the "Activity and Use Limitations"):

1. There shall be no extraction of groundwater (except for assessment or remediation purposes) under, the Property including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

Breach and Cure of Activity and Use Limitations OWNER, 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, the OWNER 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 the OWNER or any successors in interest, and 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. The OWNER, 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 concentrations the Department deems in writing to be adequate to allow extraction 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.

Compliance Reporting. OWNER, 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 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 Property and any other person using 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, and/or any party to this Environmental Covenant to require that the OWNER, or its successor in interest, 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 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 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 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: D.Y. Boise River, LLC  
4414 S. Gekeler Ln.  
Boise, ID 83716

THE DEPARTMENT: Idaho Department of Environmental Quality  
**ATTN:** State Response Program 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.

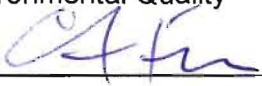
Idaho Code References. All references to the Idaho Code sections include successor provisions.

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 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 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:

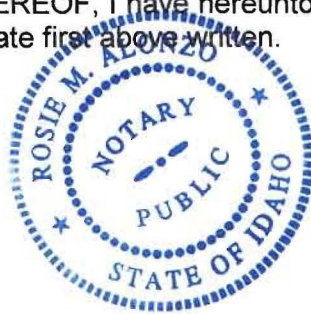
Idaho Department of Environmental Quality

Signature:   
Printed Name: \_\_\_\_\_  
Title: Director, Idaho Department of Environmental Quality  
Date: 6/11/13

State of Idaho            )  
                                      ) ss.  
County of Ada            )

On this 11 day of June, in the year 2013, before me, a Notary Public in and for said County and State, personally appeared Curt A. Fransen, 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.

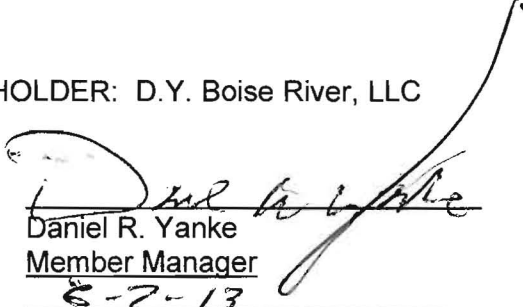


Notary Public for Idaho: Rosie M. Alonzo  
Residing at: Nampa, Idaho  
Commission Expires: 11/30/2015

Signature and Acknowledgments

Accepted:

OWNER and HOLDER: D.Y. Boise River, LLC

Signature:   
Printed Name: Daniel R. Yanke  
Title: Member Manager  
Date: 8-2-13

State of Idaho )  
)ss:  
County of Ada )

On this 7<sup>th</sup> day of June, in the year 2013, before me a Notary Public in and for said County and State, personally appeared Daniel R. Yanke, known or identified to me to be the Member Manager of D.Y. Boise River, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that D.Y. Boise River, LLC 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.

(SEAL)



Notary Public for Idaho 

Residing at: Eagle, Idaho

Commission Expires: 7-1-2014

## **Schedule A**



April 24, 2012



**PARCEL 1**  
**GOODMAN OIL PROPERTY**

Parcel 1 as shown on Record of Survey Number 9176, Instrument 112032485, corrected by an Affidavit of Correction, Instrument 112037807, records of Ada County being a parcel previously described in a Warranty Deed, recorded in Book 403 of Deeds at Pages 217-218, less that portion deeded to the State of Idaho in Book 200 of Deeds and Page 232, records of Ada County being situated in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 4, Township 3 North, Range 2 East, Boise Meridian is more particularly described below,

Commencing at the  $\frac{1}{4}$  corner common to said Section 4 and Section 9 of said Township and Range thence along the south line of said Section 4 South  $88^{\circ}46'47''$  West 869.82 feet (formerly S.  $89^{\circ}52'$  West 871.05 feet) to a point, thence leaving said section line

North  $1^{\circ}13'15''$  West 94.17 feet (formerly North  $0^{\circ}08'$  West 94 feet) to the **POINT OF BEGINNING**, thence

North  $37^{\circ}20'09''$  West 195.34 feet to the southeasterly Right-Of-Way line of the Old Oregon Trail (F.A.P. 86-A re-open) now known as Fairview Avenue, thence

South  $75^{\circ}00'44''$  West 93.44 feet along said southeasterly Right-Of-Way to a  $\frac{5}{8}$ " rebar marking Station 43+70, 40' right of said Oregon Trail (F.A.P. 86-A re-open), thence leaving said southeasterly Right-Of-Way

South  $61^{\circ}13'45''$  West 192.28 feet to a point on the East or right bank of the Boise River, thence along said right bank

South  $47^{\circ}24'04''$  East 93.06 feet to a found  $\frac{5}{8}$ " rebar and cap stamped "M&T", thence

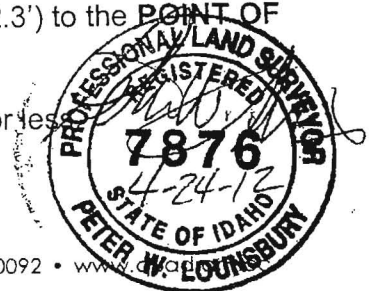
South  $43^{\circ}04'06''$  East 102.48 feet to a point on said South line of Section 4, marked by a  $\frac{1}{2}$ " rebar and cap stamped "M&T", thence leaving said right bank

North  $88^{\circ}46'47''$  East 125.07 feet (formerly North  $89^{\circ}52'$  East 46 feet) along said South line of Section 4 to the intersection with the Northerly Right-of-Way of the Boise Valley Traction Company, marked by a bare  $\frac{5}{8}$ " rebar thence along said Northerly Right-Of-Way

North  $69^{\circ}17'03''$  East 155.52 feet (formerly Northeasterly 158 feet) to a  $\frac{5}{8}$ " rebar and cap stamped "M&T", thence

North  $37^{\circ}20'09''$  West 52.28 feet (formerly North  $36^{\circ}26'$  West 52.3') to the **POINT OF BEGINNING**.

Said Parcel Contains 61,905 square feet or 1.421 acres, more or less





April 24, 2012

**PARCEL 2  
GOODMAN OIL PROPERTY**

Parcel 2 as shown on Record of Survey Number 9176, Instrument 112032485, corrected by an Affidavit of Correction, Instrument 112037807, records of Ada County being a parcel previously described in a Warranty Deed, recorded in Book 403 of Deeds at Pages 213-214, records of Ada County being situated in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 4, Township 3 North, Range 2 East, Boise Meridian is more particularly described below,

Commencing at the SW Corner of said Section 4 thence North  $88^{\circ}46'47''$  East 2658.66 feet to the  $\frac{1}{4}$  corner common to said Section 4 and Section 9 of said Township and Range thence North  $40^{\circ}05'48''$  West 497.22 feet (formerly North  $40^{\circ}20'$  West 495.1 feet) to a point on the northerly line of West Fletcher Street (formerly Fairview Avenue) to a  $\frac{1}{2}$ " rebar and cap marked "PLS 7876", thence along said Northerly line South  $56^{\circ}19'10''$  West 416.19 feet (formerly South  $56^{\circ}03'$  West 417 feet) to the **POINT OF BEGINNING**, thence leaving said northerly line

North  $33^{\circ}40'34''$  West 171.29 feet (formerly North  $33^{\circ}57'$  West 170 feet) to a found  $\frac{3}{4}$ " rebar on the southeasterly Right-Of-Way line of the Old Oregon Trail (F.A.P. 86-A re-open) now known as Fairview Avenue, thence along said southeasterly Right-Of-Way line

South  $75^{\circ}00'44''$  West 236.59 feet (formerly South  $74^{\circ}32'$  West 232 feet) to a point, thence leaving said southeasterly Right-Of-Way

South  $37^{\circ}20'09''$  East 247.62 feet (formerly South  $36^{\circ}26'$  East 248.74 feet) to a  $\frac{5}{8}$ " rebar and cap marked "M&T" on said northerly line of West Fletcher Street, thence along said northerly line

North  $56^{\circ}19'10''$  East 208.31 feet (formerly North  $56^{\circ}03'$  East) to the **POINT OF BEGINNING**.

Said Parcel Contains 44,934 square feet or 1.032 acres, more or less.





April 24, 2012

**PARCEL 3  
GOODMAN OIL PROPERTY**

Parcel 3 as shown on Record of Survey Number 9176, Instrument 112032485, corrected by an Affidavit of Correction, Instrument 112037807, records of Ada County being a parcel previously described in a Warranty Deed, recorded in Book 403 of Deeds at Pages 215-216, records of Ada County being situated in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 4, Township 3 North, Range 2 East, Boise Meridian is more particularly described below,

Commencing at the SW Corner of said Section 4 thence North  $88^{\circ}46'47''$  East 2658.66 feet to the  $\frac{1}{4}$  corner common to said Section 4 and Section 9 of said Township and Range thence North  $40^{\circ}05'48''$  West 497.22 feet (formerly North  $40^{\circ}20'$  West 495.1 feet) to a point on the northerly line of West Fletcher Street (formerly Fairview Avenue) being the **POINT OF BEGINNING**, thence along said northerly line

South  $56^{\circ}19'10''$  West 416.19 feet (formerly South  $56^{\circ}03'$  West 417 feet), thence leaving said northerly line

North  $33^{\circ}40'34''$  West 171.29 feet (formerly North  $33^{\circ}57'$  West 170 feet) to a found  $\frac{3}{4}$ " rebar on the southeasterly Right-Of-Way line of the Old Oregon Trail (F.A.P. 86-A re-open) now known as Fairview Avenue, thence along said southeasterly Right-Of-Way line

North  $75^{\circ}00'44''$  East 454.24 feet (formerly North  $74^{\circ}32'$  East 454.4 feet) to a point, thence leaving said southeasterly Right-Of-Way

South  $04^{\circ}56'15''$  East 29.32 feet (formerly South  $5^{\circ}25'$  East 29.4 feet) to the **POINT OF BEGINNING**.

Said Parcel Contains 42,202 square feet or 0.969 acres, more or less.





April 24, 2012

**PARCEL 4  
GOODMAN OIL PROPERTY**

Parcel 4 as shown on Record of Survey Number 9176, Instrument 112032485, corrected by an Affidavit of Correction, Instrument 112037807, records of Ada County being a parcel previously described in a Warranty Deed, recorded in Book 403 of Deeds at Pages 215-216, records of Ada County being situated in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 4, Township 3 North, Range 2 East, Boise Meridian is more particularly described below,

Commencing at the SW Corner of said Section 4 thence North  $88^{\circ}46'47''$  East 2658.66 feet to the  $\frac{1}{4}$  corner common to said Section 4 and Section 9 of said Township and Range thence North  $40^{\circ}05'48''$  West 497.22 feet (formerly North  $40^{\circ}20'$  West 495.1 feet) to a point on the northerly line of West Fletcher Street (formerly Fairview Avenue) being the **POINT OF BEGINNING**, thence leaving said northerly line

North  $04^{\circ}56'15''$  West 29.32 feet (formerly North  $5^{\circ}25'$  West 29.4 feet) to a point on the southeasterly Right-Of-Way line of the Old Oregon Trail (F.A.P. 86-A re-open) now known as Fairview Avenue, thence along said southeasterly Right-Of-Way line

North  $75^{\circ}00'44''$  East (formerly North  $74^{\circ}32'$  East) 20.10 feet to an unmarked ITD brass capped highway marker, thence South  $04^{\circ}47'26''$  East 22.01 feet (formerly South  $5^{\circ}25'$  East 20.8 feet) to an unmarked ITD brass capped highway marker on the northerly line of said West Fletcher Street, thence along said northerly line

South  $56^{\circ}19'10''$  West 22.50 feet (formerly South  $56^{\circ}03'$  West 23 feet) to the **POINT OF BEGINNING**.

Said Parcel Contains 507 square feet or 0.012 acres, more or less.

