

Recording Requested By and  
When Recorded Return to:

Microfilm No. **525955**  
At 9:44 Day Dec 20 09  
At 1:29 O'Clock P M  
ABBIE MACE  
FREMONT CO RECORDER  
Fee \$ 21 - 35 Deputy  
Recorded at Request of  
East Central Idaho  
Planning & Development  
Assoc.

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 East - Central Idaho Planning Development Association, ("ECIPDA"), 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. ECIPDA is a "holder" as defined in Idaho Code § 55-3002(6). ECIPDA, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 505 S Bridge Street, St. Anthony in County of Fremont, State of Idaho, and legally described in Attachment A (hereafter referred to as "the Property").

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

Reason for Activity and Use Limitations. The Property described above was previously used to operate the Cougar Corner gas station for at least the past thirty years with three underground storage tanks (USTs) on site. The Property became contaminated with petroleum hydrocarbons and chlorinated solvents. In 2009, through the Department's Brownfields program, a risk assessment was conducted during the property's underground storage tank decommissioning activities. Soil samples were collected indicating the presence of benzene, naphthalene, and trichloroethene above the initial default target levels (IDTLs) from the Department's 2004 Risk Evaluation Manual for risk-based screening levels. Additionally, soil contamination by benzene and trichloroethene were deemed to pose an unacceptable risk to groundwater beneath the Property. This Environmental Covenant is required due to residual concentrations of petroleum hydrocarbons and chlorinated solvents in soil underlying the Property. These concentrations

are above risk-based screening levels as determined by the Department and for which 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 report entitled *September 30, 2009, Brownfields Assessment Report for the Cougar Corner, 505 South Bridge Street, St. Anthony, Idaho* can be found at the Department of Environmental Quality Idaho Falls Regional Office. A copy of this report is also retained by the Department of Environmental Quality State Office Brownfields program in Boise, Idaho.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, ECIPDA, 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. There shall be no extraction of ground water under the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.

ECIPDA, or its successors in interest, shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations.

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 Property, or any subdivided portion thereof, unless ECIPDA, 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 Property or any subdivided portion thereof is shown in a Department-approved document not to contain benzene and trichloroethene in the soils; and/or
2. soil contaminants identified in the site assessment document 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 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 ECIPDA, 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, ECIPDA, 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 fully executed Environmental Covenant, and any amendment or termination therein, the Department shall post a copy of the fully executed instrument in the public Registry that it maintains 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 ECIPDA, 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 ECIPDA or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of ECIPDA, 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 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 ECIPDA 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.

ECIPDA: East-Central Idaho Planning & Development Association, Inc.

David D. Ogden, President  
299 East 4th North, Rexburg, ID 83440  
Phone: (208) 356-4524, Ext. 319  
Fax: (208) 356-4544

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

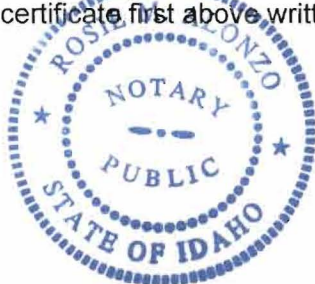
Idaho Department of Environmental Quality

Signature:   
Printed Name: Toni Hardesty  
Title: Director, Idaho Department of Environmental Quality  
Date: \_\_\_\_\_

State of Idaho            )  
                                      ) ss.  
County of Ada            )

On this 8 day of December, 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: Damper, ID  
Commission Expires: 1-30-2015



525955

Signature and Acknowledgments

Accepted:

Property Owner: East-Central Idaho Planning & Development Association, Inc.

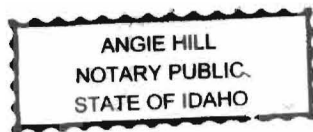
Signature: [Signature]  
Printed Name: David D. Ogden  
Title: Loan Manager  
Date: 12-2-09

State of Idaho)

County of Madison)ss.

On this 2nd day of December, in the year 2009, before me, a Notary Public in and for said County and State, personally appeared David D. Ogden (Insert name of officer of corporation), known or identified to me to be the Loan Manager (Insert title) of the East-Central Idaho Planning & Development Association, Inc., that executed the instrument, and acknowledged to me that such corporation 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: [Signature]  
Residing at: Keyburg  
Commission Expires: 12/22/2010

## EXHIBIT "A"

The East 75 feet of Lots 1 and 2 and the East 75 feet of the North 10 feet of Lot 3, Block 20 South, St. Anthony Addition, Fremont County, Idaho, also described as beginning at the Northeast corner of said Block 20 and running thence Southerly along the Eastern line of said Block 20, 90.0 feet; thence Westerly and parallel to the Northern line of said Block 20, 75.0 feet; thence Northerly and parallel to the Eastern line of said Block 20 a distance of 90.0 feet to the Northern line of said Block; thence Easterly along the Northern marginal line of said Block 20 a distance of 75.0 feet to the point of beginning. Together with a right of way over the West 70.0 feet of Lots 1 and 2 and the West 70.0 feet of the North 10.0 feet of Lot 3, Block 20 South St. Anthony Addition for construction and maintenance of sewer line.



RECEIVED  
DEC 15 2009  
DEPT. OF ENVIRONMENTAL QUALITY  
WASTE PROGRAM

David D. Ogden, Loan Manager  
East-Central Idaho Planning &  
Development Association, Inc.  
299 East 4<sup>th</sup> North, Rexburg, ID 83440  
Phone: (208) 356-4525, Ext. 319  
Fax: (208) 356-4544,  
Cell: (208) 390-4525  
E-Mail: [david.ogden@ecipda.net](mailto:david.ogden@ecipda.net)

EQUAL OPPORTUNITY LENDER

December 10, 2009

Joe Nagel  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

Re: Former Cougar Corner Gas Station, St. Anthony, ID, Declaration of Environmental Covenant

Dear Mr. Nagel,

I am enclosing the original Declaration of Environmental Covenant that Eric Traynor said you needed.  
Thanks for all the help you gave us in completing this project.

Sincerely,



David D. Ogden  
President

Enc.

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