

579920

NO. \_\_\_\_\_  
AT THE REQUEST OF  
LATAH COUNTY TITLE CO.  
DATE & HOUR  
7-15-16 11:13  
HENRIANNE K. WESTBERG  
LATAH COUNTY RECORDER  
FEE \$ 43.<sup>00</sup> BY: *[Signature]*

THIS INSTRUMENT FILED AS AN  
ACCOMMODATION ONLY. IT HAS  
NOT BEEN EXAMINED AS TO ITS  
EXECUTION, INSURABILITY OR  
AFFECT ON TITLE.

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**

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Bennett Holdings, L.C. 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. Bennett Holdings, L.C. is a "holder" as defined in Idaho Code § 55-3002(6). Bennett Holdings, L.C., as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property located at 1306 Mountain View Road County of Latah, State of Idaho, legally described by the deed included as part of Attachment A (hereafter referred to as "the Property"). The Property is described as Parcel RPM 0640001005A on the map within Attachment B.

Property Ownership. Bennett Holdings, L.C. 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 Bennett Holdings, L.C. 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 a gas station, becoming contaminated with Benzene, Ethylbenzene, Naphthalene, and MTBE. Limited soil excavation and onsite land treatment was conducted and the LUST site was closed on 4/19/2002. Subsequently the site release was reopened as the result of a property transaction assessment. The assessment identified additional areas of contamination and resulted in additional monitoring and remediation via excavation of soil. Residual chemical concentrations in soil and groundwater onsite after the additional remediation exceeded DEQ

risk evaluation screening for unrestricted use. This Environmental Covenant is required in order to protect human health and the environment.

Name and Location of Administrative Record. A copy of the Go Further Gas Environmental Covenant can be found at the DEQ Lewiston Regional Office 1118 "F" St. Lewiston, ID 83501.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Bennett Holdings, L.C., 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 groundwater under, the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or an industrial or commercial use.
2. The Property, and any portion thereof, may be used for commercial and industrial uses only. 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.

Breach and Cure of Activity and Use Limitations Bennett Holdings, L.C., 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 Bennett Holdings, L.C. 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 Bennett Holdings, L.C. 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 soils and groundwater 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 Bennett Holdings, L.C., 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, Bennett Holdings, L.C., 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 Bennett Holdings, L.C., 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. Bennett Holdings, L.C., 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 Bennett Holdings, L.C. or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Bennett Holdings, L.C., 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 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 Bennett Holdings, L.C. 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 Bennett Holdings, L.C. 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: Ms. Shelley L. Bennett  
Bennett Holdings, LC  
2279 Moser Street  
Moscow, ID 83843

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 Bennett Holdings, L.C. or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Bennett Holdings, L.C. 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: *John H. Tippetts*  
Printed Name: John H. Tippetts  
Title: Director, Idaho Department of Environmental Quality  
Date: \_\_\_\_\_

State of Idaho            )  
                                      ) ss.  
County of Ada            )

On this 11 day of July, in the year 2016, before me, a Notary Public in and for said County and State, personally appeared John H. Tippetts, 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: *11/21/2020*

Signature and Acknowledgments

Accepted:


Property Owner Bennett Holdings, LC

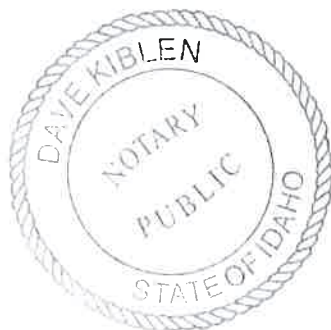
Signature:   
 Printed Name: Ms. Shelley L. Bennett  
 Title: Registered member  
 Date: 6/30/16

State of Idaho )  
 County of Latah ) ss.

On this 30 day of June in the year 2016, before me, a Notary Public in and for said County and State, personally appeared Ms. Shelley L. Bennett, known or identified to me to be the reg. member of Bennett Holdings, LLC that executed this Environmental Covenant, and acknowledged to me that Bennett Holdings, LLC 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:   
 Residing at: Moscow  
 Commission Expires: 7-18-18



**Attachment A   Legal Description and  
Deed of Property**

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D/K

55293A

564344

NO. \_\_\_\_\_ AT THE REQUEST OF: \_\_\_\_\_  
 \_\_\_\_\_ LATAH COUNTY RECORDERS CO.  
 DATE & HOUR \_\_\_\_\_  
 3-5-14 2:35  
 SUSAN PETERSEN  
 LATAH COUNTY RECORDER  
 FEE \$ 13.00 BY \_\_\_\_\_

### WARRANTY DEED

For Value Received UMONT, LLC, a Washington limited liability company

the Grantors, hereby grant(s), bargain(s), sell(s), convey(s) and warrant(s) unto

Bennett Holdings, L.C., an Idaho limited liability company

the Grantees, whose current address is: 2279 Moser Street Moscow, Idaho 83843

the following described premises, located in Latah County State of Idaho to wit:


The West 30 feet of Lots 1 and 2, the West 30 feet of the North 10 feet of Lot 3, and all of Lots 4 and 5, Block 1, Mercer, Addition to the City of Moscow, as shown by the recorded plat thereof.

**TOGETHER WITH** all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including all water and water rights, ditch and ditch rights.

**SUBJECT** to reservations in United States Patent, restrictive covenants, existing and recorded rights-of-way and easements, zoning and building ordinances, and taxes and assessments as prorated between the parties hereto.

**TO HAVE AND TO HOLD** the said premises, with their appurtenances unto the said Grantees successors, heirs and assigns forever. Said Grantors do hereby covenant to and with said Grantees, that Grantors are owners in fee simple of said premises; that said premises are free from all encumbrances except as hereinabove set forth and that Grantors will warrant and defend the same from all lawful claims whatsoever.

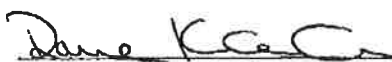
Dated this 28<sup>th</sup> day of February, 2014.

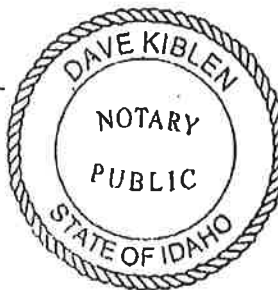
  
 \_\_\_\_\_  
 UMONT, LLC  
 By: Eric Busch, managing member

STATE OF IDAHO                    )  
   ) ss.  
 COUNTY OF LATAH                )

On this 28th day of February, 2014 before me, the undersigned, a Notary Public, in and for said State, personally appeared Eric Busch, managing member of UMONT, LLC known to me, and/or identified to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

  
 \_\_\_\_\_  
 Notary Public:  
 Residing at: Moscow, Idaho  
 My commission expires: 7/18/18



## Attachment B Map of Restricted Area

