

2024-004172

RECORDED

02/12/2024 01:32 PM

Recording Requested By and
When Recorded Return to:



00797023202400041720150153

RICK HOGABOAM

CANYON COUNTY RECORDER

Pgs=15 PBRIDGES

\$52.00

MISC

MUSSELL CONSTRUCTION

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

[PROPERTY OWNER'S NAME], GRANTOR, grants this Environmental Covenant. As provided in Idaho Code §55-3008, Mussell Construction, Inc. is the GRANTEE.

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

Property. This Environmental Covenant concerns real property located at 306 Kimball Avenue in Caldwell, Idaho, 83605 County of Canyon, State of Idaho, legally described as 22-4N-3W Caldwell Original Lots 10, 11, & 12 BLK 19. (hereafter referred to as "the Property"). The Property is legally described in the attached Schedule A. The Property [and Restricted Area(s)] are depicted in the map attached as Schedule B.

Property Ownership. Mussell Construction, Inc. 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 Mussell Construction, Inc. 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 former Nails Service that operated a retail fueling business that had underground storage tanks, associated piping, dispensers, becoming contaminated with benzene, ethylbenzene and naphthalene. This Environmental Covenant is required because the Brownfields site investigation demonstrated that residual concentrations benzene, ethylbenzene, and naphthalene in soil and groundwater underlying the Property. These

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 the Nalls Service files can be found at the Boise Regional Office located at 1445 N. Orchard in Boise, Idaho. The files are under two different programs, Leaking Underground Storage Tank file EDMS 2011BBK813 and Brownfields file EDMS 2022BBC2.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Caldwell Urban Renewal Agency, 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 excavation of soil at depth below 10 feet and 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. Ground water may be extracted as part of an environmental investigation or remediation project.
2. Excavation or any other disturbances of soil in 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. Soils management plan shall be submitted to the Department 30 days prior to excavation in the Restricted Area.

Breach and Cure of Activity and Use Limitations. Mussell Construction, Inc., 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, Mussell Construction, Inc., 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 Mussell Construction, Inc., or any successors in interest, and Department.

Amendment by Consent. This 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 this Environmental Covenant to a new holder is an amendment. The HOLDER waives their right to sign the amendment as provided in Idaho Code § 55-3010(1)(c).

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. Mussell Instruction, Inc., 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 ground water are at levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Upon a request and demonstration of the record for termination of the Environment Covenant,

the Department will take all reasonable steps to locate or identify HOLDERS to determine consent to terminate. If the Department finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence, the Holder waives their right to sign the termination as provided in Idaho Code § 55-3010.

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 every county in which any portion of the Property subject to the Environmental Covenant is located. This Environmental Covenant or any amendment or termination shall be recorded by Mussell Construction, Inc., 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, Mussell Construction, Inc., 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 this recorded Environmental Covenant, or any amendment or termination, shall be provided by Mussell Construction, Inc., or by its successors in interest, to the following persons: (a) each person that signed this 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. Mussell Construction, Inc., 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 this Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Mussell Construction, Inc., or its successors in interest, including subsequent owners of the Property and any other person using the Property. Failure of Mussell Construction, Inc., or its successors 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 Mussell Construction, Inc. 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 Mussell Construction, Inc., 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 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 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 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 address as a party, or its successors to this Environmental Covenant, may designate in a written notice given to the other parties to this Environmental Covenant. 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: Mussell Construction, Inc.
 320 11th Ave So., Ste 207
 Nampa, Idaho 83651

THE DEPARTMENT:
 Idaho Department of Environmental Quality
 ATTN: Assessment and Compliance Bureau Chief
 Waste Management and Remediation Division
 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 this 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 this Environmental Covenant.

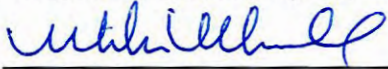
Idaho Code References. All references to the Idaho Code sections include successor provisions.

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 Consent Order or other agreement relating to remediation of the Property entered into between the Department and Mussell Construction, Inc., or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Mussell Construction, Inc., or any other responsible party under such 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:

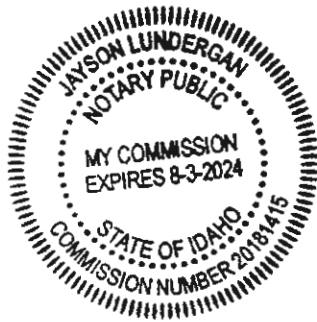
Property Owner: Mussell Construction, Inc.

Signature: 
Printed Name: MIKE MUSSELL
Title: OWNER
Date: 11/30/2024

State of Idaho, county of Canyon, ss.

[NOTE: SIGNATURES MUST BE NOTARIZED. See Idaho Code § 55-711 through § 55-715 for proper acknowledgment language.]

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: Jay Lundergan
Residing at: Nampa, ID
Commission Expires: 8-3-2024

Schedule A

2023-036787

RECORDED

11/15/2023 01:14 PM



00785928202300367870050055

CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=5 PBRIDGES

NO FEE

DEED

CITY OF CALDWELL

Space above this line for Recorder's use

SPECIAL WARRANTY DEED

The Urban Renewal Agency of the City of Caldwell, Idaho, an independent public body corporate and politic, of 411 Blaine St., Caldwell, Idaho 83605 ("**Grantor**"), for valuable consideration paid by Mussell Construction, Inc., an Idaho corporation, of 320 11th Ave. So., Ste 207, Nampa, Idaho 83651 ("**Grantee**"), does hereby sell, transfer and convey unto Grantee, all of that certain real property located in Canyon County, Idaho, and described on **Exhibit A** attached hereto and incorporated herein ("**Property**").

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all estate, right, title and interest in and to the Property.

To have and to hold, all and singular the Property together with its appurtenances unto Grantee and Grantee's successors and assigns forever.

Grantor makes no covenants or warranties with respect to title, express or implied, other than that previous to the date of this instrument, Grantor has not conveyed the same estate to any person other than Grantee and that, except as set forth herein, such estate is at the time of the execution of this instrument free from encumbrances done, made or suffered by the Grantor, or any person claiming under Grantor, subject to any and all easements, restrictions, agreements and encumbrances of record or appearing on the land as of the date of this instrument.

1. The Property is conveyed subject to the Disposition and Development Agreement entered into by and between the Grantor and Grantee and dated August 10, 2020 as implemented by any subsequent implementation agreements between Grantor and Grantee (herein collectively referred to as the "**DDA**"). The full text of the DDA and any implementation agreements are available for review at the offices of the Grantor and the City of Caldwell, Idaho.

2. Prior to the issuance by the Grantor of a certificate of completion as provided in the DDA, the Property cannot be sold by Grantee for the primary purpose of land speculation. This prohibition shall not be applicable to a transfer or transfers to any entity or entities owned or controlled by the Grantee. This prohibition shall not apply to any of such Property (or any portion thereof) subsequent to the issuance of the certificate of completion with respect to the construction of the improvements thereon or to a sale of any such Property (or any portion thereof) at foreclosure (or to a conveyance thereof in lieu of a foreclosure) pursuant to a foreclosure thereof.

D-085-23
(URA RES 2023-22)

This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the leasing or selling of any part or parts thereof or of any improvements constructed thereon.

3. The Grantee covenants by and for itself, its heirs, executors, administrators, assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property; nor shall the Grantee itself, or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

4. No violation or breach of the covenants, conditions restrictions, provisions, or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument permitted by the DDA. Provided, however, any successor of the Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

5. Ad Valorem Tax Generating Uses. For a period of twenty (20) years from the recordation of this Deed, if any portion of the Property would qualify for exemption from ad valorem taxes due to (a) such portion being leased, conveyed, or transferred to an entity exempt or partially exempt from ad valorem taxes, or (b) such portion being utilized for any use that is exempt or partially exempt from ad valorem taxes, then the Grantee or owner of such portion of the Property shall be required to make a payment in lieu of taxes to the Grantor in a sum sufficient to compensate the Grantor and all other taxing districts for any revenue not received by them due to the tax exemption. Such payment shall be due within thirty (30) days after the related taxes would have been due. Nothing herein contained shall be deemed to prohibit Grantee or owner from contesting the validity or amounts of any tax, assessment, encumbrance, or lien or to limit the remedies available with respect thereto.

6. If Grantee fails to commence construction of the Project within six (6) months from the date of closing, Grantor shall have the continuing option to buy back the Property for the per square foot price paid by Grantee. Further, if construction, once commenced, is not diligently pursued to issuance of a certificate of completion, Grantor shall have the continuing option to buy back the Property for the per square foot price paid by Grantee plus the fair value of any construction. For purposes of this Deed, the term "commence construction" shall mean Grantee's acquisition of and payment for a building permit for construction of the Project in substantial conformance with the DDA. For purposes of this Deed, the term "not diligently pursued to completion" shall mean that Grantee is more than sixty (60) days behind the Project Schedule set forth in the DDA, Grantor has complied with notice provisions of the DDA and Grantee has not commenced a program to achieve compliance with the Project Schedule set forth in the DDA that is reasonably acceptable to Grantee.

7. Covenants contained in paragraphs 2 and 6 of this Deed shall remain in effect until Grantor has issued the Certificate of Completion pursuant to the DDA. Covenants contained in paragraph 3 shall run in perpetuity. Covenants contained in paragraph 5 shall remain in effect for twenty (20) years from November 1, 2023. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. If Grantee or any subsequent owner of any portion of the Property conveys any portion of the Property, such owner shall, upon the conveyance, be released and discharged from all obligations in connection with the portion of the Property conveyed by it arising under this Deed or the DDA after the conveyance but shall remain liable for all obligations in connection with the portion of the Property so conveyed arising under this Deed prior to the conveyance. The new owner of any such portion of the Property shall be liable for all obligations arising under this Deed with respect to such portion of the Property after the conveyance.

8. In the event of any express conflict between this Deed and the DDA, the provisions of this Deed shall control.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized.

GRANTOR:

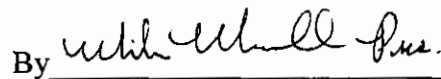
The Urban Renewal Agency of the City of
Caldwell, Idaho

By 
Jim Porter, Chair

The provisions of this Deed are hereby approved and accepted:

GRANTEE:

Mussell Construction, Inc.

By 
Mike Mussell, President

STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

On this 18th day of November, 2023, before me the undersigned, a Notary Public in and for said State personally appeared Jim Porter known or identified to me to be the Chairman of the Board of Commissioners of The Urban Renewal Agency of the City of Caldwell, Idaho that executed the said instrument, and acknowledged to me that such agency 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



Angela K. Point
NOTARY PUBLIC FOR IDAHO,
Residence: Nampa, Idaho
My Commission Expires: 12/29/2028

STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

On this 19th day of November, 2023, before me the undersigned, a Notary Public in and for said State personally appeared Mike Mussell known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, 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.

*SEAL



Angela K. Point
NOTARY PUBLIC FOR IDAHO
Residence: Nampa, Idaho
My Commission Expires: 12/29/2028

EXHIBIT A
(Legal description)

Lots 10, 11 and 12, Block 19, Caldwell Original, according to the plat thereof, filed in Book 1 of Plats at page(s) 20, records of Canyon County

Schedule B

