

2022-034669

RECORDED

07/14/2022 02:15 PM

Recording Requested By and
When Recorded Return to:



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CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=17 TYOUREN

\$58.00

MISC

ROBERT FRANKLIN

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

Franklin United Incorporated., GRANTOR, grants this Environmental Covenant. As provided in Idaho Code §55-3008, Franklin United Incorporated is the GRANTEE.

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

Property. This Environmental Covenant concerns real property at 2309 Franklin Road, Caldwell, Canyon County, State of Idaho, (hereafter referred to as "the Property"). The Property is legally described and depicted in Schedule A. The Property and Restricted Area are depicted and described in Schedule B.

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

Reason for Activity and Use Limitations. The Property is used as a petroleum fuel bulk storage and distribution facility (dispensing islands plus on-and-off-transport via a tanker trucks/loading rack).

Petroleum contamination within the subsurface was initially identified in the late 1980's. On August 19, 2003, Franklin United entered into a Consent Order with the Department to address the petroleum impacts to the Property's soil and groundwater. As required by the Consent Order, Franklin United conducted corrective action activities at the Property. After implantation of the corrective action activities residual concentrations of petroleum contaminants remain in site soil and ground water. 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 project file, UNITED OIL (BONICO), Electronic Data Management System file number 2011BAZ6687 can be found at the Department of Environmental Quality, Boise Regional Office located at 1445 North Orchard Street in Boise, Idaho.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Franklin United, 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. Ground water may be extracted as part of an environmental investigation or remediation project.
2. The Restricted Area of the Property, as described in Schedule B, may be only used for commercial and industrial uses. The Restricted Area 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.
3. New commercial or industrial buildings shall not be constructed on the Restricted Area, as described in Schedule B, of the Property. Existing buildings and structures may be used, maintained, and repaired for commercial and industrial uses. Commercial or industrial structures that are not intended for human occupancy, such as pipes, pumps, storage tanks, or similar structures, may be constructed in the Restricted Area.
4. Excavation or any other disturbances of soil within the Restricted Area, as described in Schedule B, 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. The soil management plan shall be submitted to the Department 30 days prior to excavating in the Restricted Area.

Breach and Cure of Activity and Use Limitations Franklin United, 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. 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. Franklin United, 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 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 Franklin United, 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, Franklin United, 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 Franklin United, 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. Franklin United, 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 Franklin United or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of Franklin United, 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 Franklin United 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 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 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.

FRANKLIN UNITED: Mr. Robert Franklin
 220 Eastland Drive South
 Twin Falls, Idaho 83301

THE DEPARTMENT: Idaho Department of Environmental Quality
 ATTN: Assessment and Compliance Bureau Chief
 Waste Management and Remediation Division
 1410 N. Hilton
 Boise, Idaho 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 Franklin United or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Franklin United 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:

Franklin United Inc.

Signature:

Robert L. Franklin III

Printed Name:

Robert L. Franklin III

Title:

President

Date:

June 10, 2022

State of Idaho, county of *Lincoln*, ss.

On this *10* day of *June*, in the year 2022, before me, a Notary Public in and for said County and State, personally appeared *Robert L. Franklin III* known or identified to me to be the *President* of Franklin United Inc., that executed this Environmental Covenant, and acknowledged to me that Franklin United Inc. 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: *Marcy Ambrose*
Residing at: *Lincoln Falls, ID*
Commission Expires: *10.22.22*

Schedule A
Property
Description

Property Legal Description (Pursuant to Canyon County Assessor)

- Tax Parcel: 35148000 0
- PIN: 35148000 0
- Acres: 5.584
- Site Address: 2309 Franklin Road
- Legal: 23-4N-3W SW TX 98661 in SWSW
- Section: 23
- Township: 4 North
- Range: 3 West

MAP A
Property Boundary
Franklin United, Inc.
2309 Franklin Road, Caldwell, Idaho
Canyon County Assessor Parcel: R3514800000
Instrument Number: 9832011, Sections 23, T4N, R3W



WARRANTY DEED

PC 25518
 PC 25518
 9830571
 9832011
 THIS WARRANTY DEED, made as of the 13th day of August, 1998, between BOB NICHOLS OIL COMPANY, INC., an Idaho Corporation ("GRANTOR"), and FRANKLIN UNITED, INC. an Idaho Corporation, whose address is 220 Eastland Drive South, P.O. Box 405, Twin Falls, Idaho 83303-405 ("GRANTEE");

5159
 WITNESSETH:

The GRANTOR, for and in consideration of the sum of Ten and No/100ths Dollars, lawful money of the United States of America, and other good and valuable consideration, to it in hand paid by the GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the GRANTEE, and to its successors and assigns forever, all of the following described real property situate in the County of Canyon, State of Idaho, to-wit:

Real property described on "Exhibit A" attached hereto and made a part hereof.

SUBJECT TO:


1. Unpatented mining claims and reservations or exceptions in patents or in Acts authorizing the issuance thereof.
2. General taxes for the year 1998.
3. Non-delinquent special assessments, if any, for the City of Caldwell, Idaho.
4. Non-delinquent liens and assessments of the Pioneer Irrigation District, and the rights and powers of said District as by law provided.
5. Rights-of-way for irrigation and drainage ditches and canals and roads.
6. Power Line Easement in favor of Idaho Power Company, recorded July 13, 1928, as Instrument No. 164365, records of Canyon County, Idaho.
7. Power Line Easement in favor of Idaho Power Company, recorded February 4, 1943, as Instrument No. 276541, records of Canyon County, Idaho.
8. Power Line Easement in favor of Idaho Power Company, recorded April 3, 1948, as Instrument No. 336033, records of Canyon County, Idaho.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including any and all water rights, mineral rights, easements, rights-of-way, and all improvements located thereon; the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said real property, as well in law as in equity, of the said GRANTOR.

TO HAVE AND TO HOLD all and singular the above-described real property, together with the appurtenances unto the said GRANTEE, and to its successors and assigns forever, and the GRANTOR hereby covenants to and with the said GRANTEE and its successors and assigns, that the GRANTOR is the owner in fee simple of said real property; that said real property is free from all encumbrances except as may be otherwise expressly specified herein; and that the GRANTOR will warrant and defend said real property from all lawful claims whatsoever.

IN WITNESS WHEREOF, the GRANTOR has caused its corporate name to be hereto subscribed by its President pursuant to resolution of its Board of Directors as of the date and year first above written.

BOB NICHOLAS OIL COMPANY, INC.

By 
PRESTON R. NICHOLAS, President

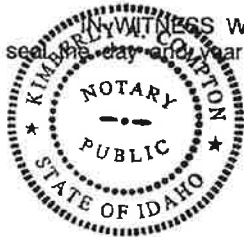
STATE OF IDAHO)

County of Canyon)

ss:

On this 13th day of August, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared PRESTON R. NICHOLAS, known or identified to me to be the President of BOB NICHOLAS OIL COMPANY, INC., an Idaho Corporation, the Corporation that executed the foregoing instrument or the person who executed the foregoing 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)



Notary Public for Idaho
Residing at Wilder, Idaho
My Commission Expires: 1-27-99

WARRANTY DEED - 2

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

A portion of the Southwest Quarter of the Southwest Quarter of Section 23, Township 4 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at the Southeast corner of the Southwest Quarter of the Southwest Quarter, Section 23; thence
South 89° 31' 10" West, along the Southerly boundary of the Southwest Quarter of the Southwest Quarter of said Section 23 a distance of 830 feet; thence
North 0° 24' 28" West a distance of 332.3 feet; thence
North 89° 31' 15" East a distance of 830 feet; thence
South 0° 24' 28" East a distance of 332.3 feet to the POINT OF BEGINNING.

REQUEST PIONEER - CALDWELL
TYPE *Wep for 900*

BY *John J. Kerr*
REC'D J. KERR
CANYON CNTY RECORDER

98 AUG 14 PM 1 52

RECORDED

9830571

EXHIBIT "A"

A portion of the Southwest Quarter of the Southwest Quarter of Section 23, Township 4 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at the Southeast corner of the Southwest Quarter of the Southwest Quarter, Section 23; thence

South 89° 31' 10" West, along the Southerly boundary of the Southwest Quarter of the Southwest Quarter of said Section 23, a distance of 821.49 feet (formerly shown of record as 830 feet), thence

North 0° 24' 28" West a distance of 332.41 feet (formerly shown of record as 332.3), thence

North 89° 31' 15" East a distance of 821.22 (formerly shown of record as 830 feet), thence

South 0° 24' 28" East a distance of 332.41 feet (formerly shown of record as 332.3) to the POINT OF BEGINNING.

REQUEST PIONEER - CALDWELL
TYPE 18.00

BY [Signature]
CANYON COUNTY RECORDER
HENRY J. KERR

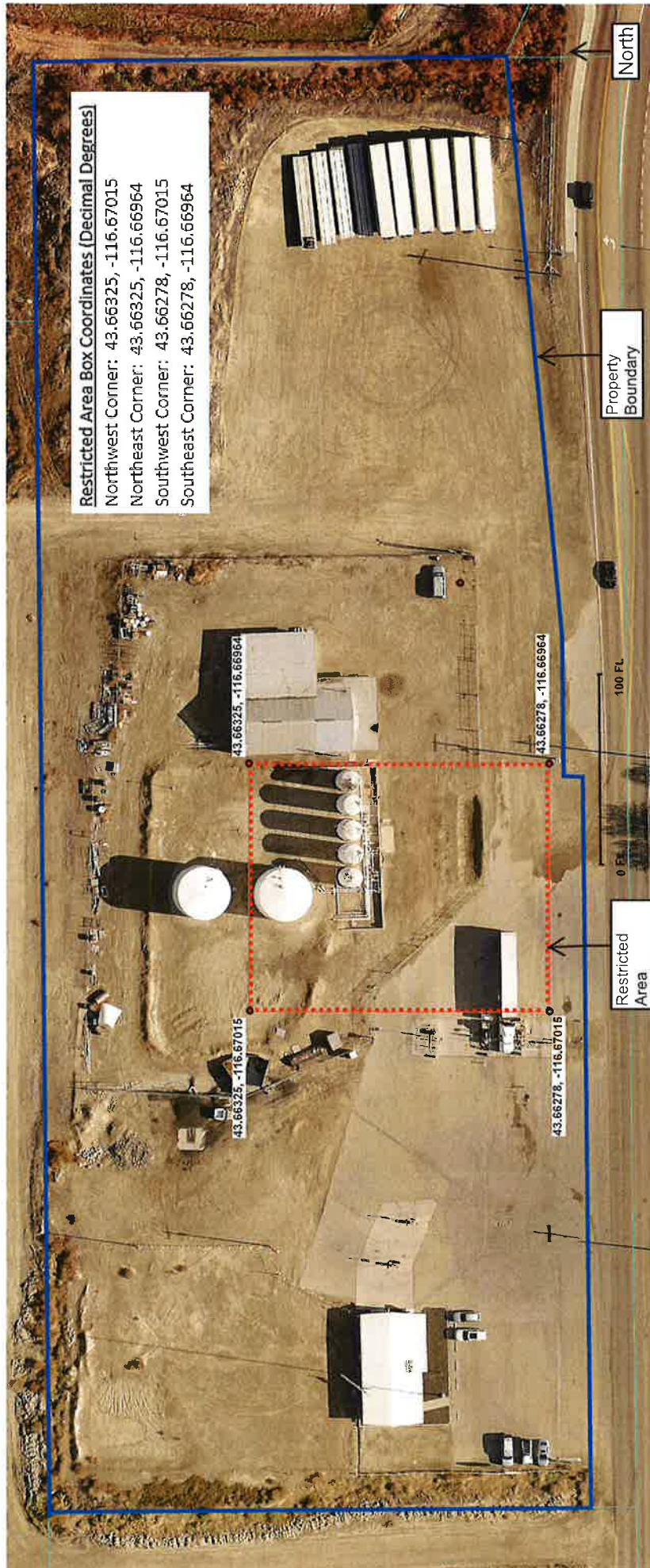
RECORDED

98 AUG 26 PM 4 41

9832011

**Schedule B
Restricted
Area
Description**

RESTRICTED AREA
(Defined by Dashed Outline with Corner Coordinates)
United Oil Caldwell Bulk Plant
2309 Franklin Road, Caldwell, Idaho 83605



Coordinates per Google Maps

February, 2022

GROUNDWATER USE RESTRICTED AREA
(Entire Property)
United Oil Caldwell Bulk Plant
2309 Franklin Road, Caldwell, Idaho 83605



February 2022