



Florida Department of Environmental Protection

Northwest District Office
160 West Government Street, Suite 308
Pensacola, Florida 32502 - 5740

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

October 2, 2017

Sent via e-mail to:

jim_howes@co.escambia.fl.us

Mr. James Howes, Chief
Recycling Operations
Escambia County Waste Services Department
13009 Beulah Road
Pensacola, Florida 32533-8831

Subject: Acknowledgment of Intent to Propose Conditional Closure
2906 North Palafox [aka Escambia County Transfer Station]
Pensacola, Escambia County
FDEP Facility ID# COM_333054
Contamination Discovery Date: February 18, 2013 (Non-program)

Dear Mr. Howes:

The Department reviewed the Limited Scope Remedial Action Plan (LSRAP) dated October 25, 2016 and subsequent submittals prepared by Cameron-Cole, LLC (Cameron-Cole) on behalf of Escambia County Waste Services Department for the arsenic, lead and benzo(a)pyrene equivalents detections at the site referenced above. The Northwest District is prepared to issue a Conditional Site Rehabilitation Completion Order (SRCO) for this discharge/discovery provided that a Declaration of Restrictive Covenant, with the following restrictions on the use of the property, is completed and recorded in the county land office where the property deed is recorded for the above-referenced property:

- 1) engineering controls
- 2) land use restriction
- 3) digging restriction
- 4) groundwater use restriction.

Enclosed for your reference is a Sample Restrictive Covenant to be used as an example when preparing a draft covenant. You may also access the Department's *Institutional Controls Procedures Guidance* (ICPG) document in its entirety by going to www.dep.state.fl.us/waste/categories/pcp. The link titled "Institutional Controls Registry (ICR)" appears in the right margin menu. Choose this link, then scroll to the bottom of the page to find the link to an MS Word version of the ICPG and additional support documents.

The electronic file for this site is located in the FDEP's OCULUS electronic document system at <http://depedms.dep.state.fl.us/Oculus/>. In order to log in, click the "PUBLIC OCULUS LOGIN" button or type "netuser" as both the user name and password. On the left hand side of the screen, select the appropriate catalog based on the type of contaminated site (i.e. "Waste Cleanup"); search by "Property," and select the "Facility-Site ID" under "Property." Enter the facility identification number COM_333054 and click on "Search." If there are a large number of records you may want to sort them in chronological order by selecting "[Document Date](#)" and clicking on "Refresh." For electronic documents for this site, click on the following link then click the "PUBLIC OCULUS LOGIN" button:

[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=hitlist&\[freeText=\]&\[folderName=\]&\[profile=\]&\[creator=\]&\[entityType=any\]&\[createdDateTo=\]&\[catalog=5\]&\[searchBy=Property\]&\[sortBy=Facility-Site+ID\]&\[createdDate=\]&{Facility-Site+ID= EQ COM 333054}](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=hitlist&[freeText=]&[folderName=]&[profile=]&[creator=]&[entityType=any]&[createdDateTo=]&[catalog=5]&[searchBy=Property]&[sortBy=Facility-Site+ID]&[createdDate=]&{Facility-Site+ID= EQ COM 333054})

Please utilize the IC Checklist found in Attachment 5 of the ICPG to help prepare your submittal for FDEP review. Attachment 2 *Institutional Control Tips* of the ICPG is also helpful. The following information should be provided:

- 1) A copy of the source property's deed. If a restrictive covenant will be recorded on off-site property's a copy of those deeds.
- 2) A copy of the property's legal description.
- 3) If proposing a partial encumbrance, then a copy of the legal description for the part of the property that will be restricted as Exhibit B to the restrictive covenant and a [Specific Purpose Survey, Boundary Survey or Sketch and Description of the restricted area, as defined under Chapter 5J-17, F.A.C. and prepared using the](#) minimum technical standards (MTS) that includes all corners of the restricted area labeled with the State Plane Coordinates (SPC) system or geographical coordinates.
- 4) If the IC is a restrictive covenant, [an Ownership and Encumbrance Report, Title Insurance Commitment or Title Insurance Policy](#) that reflects all parties having an interest in the Property, including owners, lienors or easement holders. The search should normally commence with the instrument

constituting the root of title under the Marketable Record Title Act (MRTA) (evidence of title that is at least 30 years old) and should include a review of all subsequently recorded instruments that are not eliminated by MRTA.

- 5) If the IC is a restrictive covenant, copies of all documents showing an interest in the property (e.g., mortgages, leases, liens, easements, etc.).
- 6) A Survey of the location of these interests in the property in relation to location of the proposed restricted area.
- 7) Copies of the notices required in Attachments 19-21, of the ICPG, as appropriate, or the draft notice and schedule to submit such notices.
- 8) If the IC is a restrictive covenant, copies of the “Actual Notice of Intent to Approve Use of Institutional Controls” sent to each recorded mortgage holder, easement holder and leaseholder as well as to the local government with jurisdiction over the Property, along with evidence of receipt of such notice. See Attachment 9 of the ICPG.
- 9) If a Restrictive Covenant will be used as the IC, then a copy of the draft RC. If the PRSR proposes reliance on an alternative IC, then copies of the relevant documents and information in support of the alternative IC.

Please provide the above documentation to the Northwest District. Should you have any questions, please contact me at 850-595-0558, or sally.cooey@dep.state.fl.us or at the letterhead address.

Sincerely,



Sally M. Cooley, P.G.
Cleanup Section Project Manager

Enclosure: Sample Restrictive Covenant

ec: Patrick Johnson, Director, Waste Services Department ptjohnso@co.escambia.fl.us
Brent Schneider, P.E., Waste Services Department bdschneider@co.escambia.fl.us
Stephen West, Esq., Escambia County sgwest@co.escambia.fl.us
John Bondurant, Cameron-Cole, jbondurant@cameron-cole.com
Ben Fortson, P.G., Cameron-Cole, bfortson@cameron-cole.com

**Attachment 3: Sample Declaration Of Restrictive Covenant,
Forms A And B**

Sample Declaration of Restrictive Covenant Forms A and B are in this attachment. Use Form A if any section of the RC encumbers the entire property or if access to the restricted areas will be provided by access provisions of paragraph 4. Use Form B if only portions of the property are to be encumbered and access is available from adjacent public right of way or through a separate recorded access easement agreement.

In the following sample RCs, {{ }} double brackets indicate information that should be provided by the owner/responsible party, instructions for using the template, or optional language (e.g., the word "Interim" in the heading). At least a three inch by three inch (3"x3") blank space must be reserved at the top right hand corner of the first page, and a one inch by three inch (1"x3") space must be reserved at the top right hand corner on each subsequent page of the document.¹ **Please** instruct your office staff to refrain from date stamping in this blocked area.

Once the form is completed, please remove the italicized instructions.

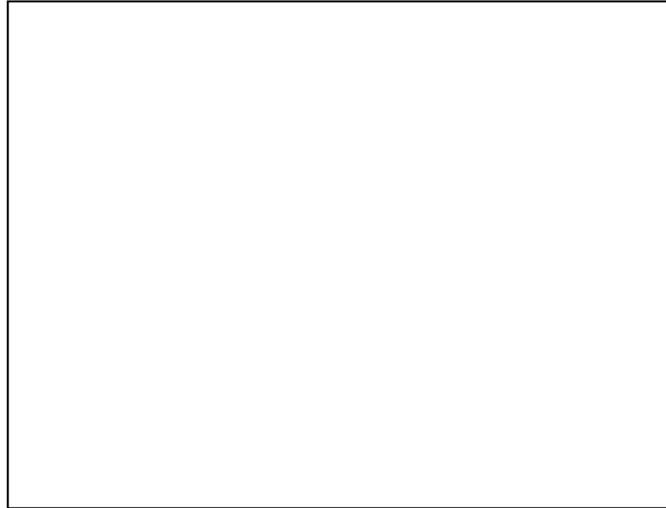
REMEMBER: this is sample language only. The site/project manager shall review and approve of the actual restriction language selected for the RC prior to sending the covenant, with the supporting documentation, to OGC. If there is a consent order addressing this discharge, please mirror exactly the language used in the consent order to describe the discharge, contamination and restrictions in this document. If the consent order was executed some time ago, it may be necessary to clarify that language in the RC; please do so, but reference the consent order language first.

(Please insert page numbers at the bottom of each page in the "page X of Y" format, and ensure that all Exhibits to the RC include such page numbering.)

¹ See Section 695.26, F.S.

Attachment 3: Form A – Any Section of RC Encumbers the Entire Property

FORM A: THIS FORM SHOULD BE USED IF ANY SECTION OF THE RC ENCUMBERS THE ENTIRE PROPERTY OF GRANTOR OR IF ACCESS TO THE RESTRICTED AREAS WILL BE PROVIDED BY ACCESS PROVISIONS OF PARAGRAPH 4.



This instrument prepared by:
[[name, company & full mailing address of NON-FDEP person who prepared covenant – typically the real property owner or attorney]]

DECLARATION OF *[[INTERIM]]* RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter “Declaration”) is made by *[[property owner]]* *[[“ a _____ corporation”]]* (hereinafter “GRANTOR”) and the Florida Department of Environmental Protection (hereinafter “FDEP”).

RECITALS

- A. GRANTOR is the fee simple owner of that certain real property situated in the County of _____, State of Florida, more particularly described in Exhibit “A” attached hereto and made a part hereof (hereinafter the “Property”) *[[attach legal description of the property as Exhibit A (owner name should precisely match GRANTOR); or, if short enough, restate the legal description here as part of the Recital A paragraph.]]*;
- B. The FDEP Facility Identification Number for the Property is *[[_____ or EPA # or other #, if applicable]]*. The facility name at the time of this Declaration is *[[_____]]*. This Declaration addresses the discharge that was reported to the FDEP on *[[date]]*.

C. *{{Basic information regarding contamination, **brief** history of discharge/cleanup, etc.—it is rarely necessary to list each & every report prepared}}*. The discharge of *{{drycleaning solvents, petroleum products, etc.; insert the appropriate remaining contaminants}}* on the Property is documented in the following reports that are incorporated by reference *{{ONLY what is applicable to the remaining contamination on the site should be listed: Example}}*:

1. *Site Assessment Report dated _____, submitted by {{Company that prepared report}}; and*
2. *Site Assessment Report Addendum dated _____, submitted by {{Company that prepared report}}; and etc.*
3. *No Further Action with Conditions Proposal or Site Rehabilitation Completion Report dated _____, submitted by {{Company that prepared report}}; and*
4. *Consent Orders*

D. The reports noted in Recital C set forth the nature and extent of the contamination described in Recital C that is located on the Property. These reports confirm that contaminated *{{soil and/or groundwater and/or surface water and/or sediment}}* as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Property. Also, these reports document that the groundwater contamination does not extend beyond the Property boundary, that the extent of the groundwater contamination does not exceed 1/4 acre, and the groundwater contamination is not migrating. *{{Be sure this is accurate to the particular site. If not, briefly summarize what is correct. This language is included as it is the most common RC under Risk Management Option (RMO) II; however, RMO III does contemplate contamination beyond the Property boundaries, which would require agreement by the adjacent owners to put an RC on their properties as well. If there is no groundwater contamination, state what contamination remains, such as soil or sediment, and where the contamination is located. This is especially true in the case of Interim RCs. State which contamination will be addressed by the restriction and which contamination will continue to be remediated, i.e., “This declaration imposes restrictions on the area of soil contamination. While groundwater should not be utilized, groundwater remediation is ongoing and it is unknown at this time whether a long-term restriction on the use of the groundwater will be required.” Additionally, FDEP prefers that this document NOT be used to indicate which parties are or are not liable for the contamination.}}*

{{If the criteria for direct exposure were met using average soil contaminant concentrations calculated based on a 95% Upper Confidence Limit (UCL) approach, the following paragraph should be added: “The criteria for direct exposure of contamination in the soil was based upon an average soil contaminant concentration calculated using {{If “poor quality” criteria were used in closing the site “These reports confirm that groundwater underlying the Property is ‘poor quality’ as defined by Chapter 62-780, F.A.C.”}}

a 95% Upper Confidence Limit (UCL) approach with an exposure unit (EU) of *{{SIZE OF UNIT}}* pursuant to Rule 62-780.680, F.A.C. Therefore, the Property may not be subdivided into parcels smaller than *{{size}}* without prior written approval from FDEP’s Division of Waste Management.” *See also paragraph 6 below.}}*

E. It is the intent that the restrictions in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter “Order”) upon recordation of this Declaration. FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of *{{generally, list the contamination that remains, for example, “petroleum*

products' chemicals of concern"}} increase above the levels approved in the Order, or if a subsequent discharge occurs at the Property, FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. *{{9 digit #: or other appropriate tracking number, as applicable}}*, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area. *{{Only reference an Order if this is a final remedy and an Order will be issued}}*;

{{If this is an Interim RC (not considered a final remedy), then delete the text of the previous paragraph regarding the Order and use language similar to the following: "FDEP will not issue a Site Rehabilitation Completion Order with Conditions upon recordation of this Declaration because contaminated {{groundwater or soil}} remains at the site at levels above applicable cleanup target levels. Site rehabilitation of the remaining contaminated {{groundwater or soil}} is ongoing. If cleanup target levels are later met, then GRANTOR and FDEP, or their successors and assigns, may agree in writing to amend or remove this Declaration."}}

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Property that an Order be obtained and that *{{use "an Order be obtained and that" only if this is a final remedy RC for which the site will receive an SRCO with Conditions; delete the phrase if it is an Interim RC and no SRCO is being issued at this time}}* the Property be held subject to certain restrictions *{{and engineering controls}}*, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce FDEP to issue the Order *{{if an Interim RC, then: "in compliance with the consent order in OGC Case #", or if not consent order, then leave blank}}* and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows *{{while standard in many other real property transactions, FDEP does not require payment for the opportunity to use the conditional closure option; therefore, any discussion of payment in this document is typically inappropriate}}*:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. GRANTOR hereby imposes the following restrictions and requirements: ***{{Note: the preparer needs to carefully consider whether the described restriction should be imposed on the entire Property or only on a described portion of the Property. If the restriction applies to a portion of the Property, then the following should be provided as an exhibit: A Specific Purpose Survey, Boundary Survey or Sketches Accompanying Legal Descriptions (collectively, "Survey") prepared in accordance with the Minimum Technical Standards (MTS) that depicts the restricted area and includes four of its corners referenced to the State Plane Coordinates System or geographical coordinates should be provided. Such a legal description and Survey should be a clearly labeled attachment to the RC (e.g., Exhibit B) and the area to be restricted should also be clearly labeled on the Survey using the same phrasing as is used in the restriction paragraphs below (e.g., "Groundwater Restriction Area," "Soil Contamination Area," "Area of EC," "Capped Area," "Location of Slurry Wall," "Restricted Area," etc., and should be included as part of Exhibit "B")}}***

{{GROUNDWATER USE RESTRICTIONS. In most cases groundwater and stormwater restrictions will apply to the entire Property, rather than to just a portion of the Property. See guidance document for more details regarding the limited circumstances where groundwater or stormwater restrictions can apply to a portion of the Property or a portion of the aquifer. If groundwater use restrictions are to be applied to only a portion of the Property, then a Specific Purpose Survey, Boundary Survey or Sketches Accompanying

Legal Descriptions (collectively, "Survey") prepared in accordance with the Minimum Technical Standards (MTS) that depicts the restricted area and includes four of its corners referenced to the State Plane Coordinates System or geographical coordinates should be provided. Such a legal description and Survey should be a clearly labeled attachment to the RC (e.g., "Exhibit B") and the area to be groundwater use restricted should also be clearly labeled on the Survey using the same phrasing as is used in the restriction paragraphs below (i.e., "Groundwater Restriction Area"). If groundwater use will be restricted to a portion of the aquifer, then the aquifer depth above which there will be no groundwater use or access must be clearly specified. The installation of wells accessing groundwater below a contaminated portion of an aquifer must have prior approval by the FDEP's Division of Waste Management (DWM) and the Water Management Districts}}

a. There shall be no use of the groundwater under the *}}* "portion of the," if a portion} Property *}}* if a portion then: "described as "Groundwater Restriction Area" in Exhibit B (hereinafter to be referred to as "Groundwater Restriction Area")"}. There shall be no drilling for water conducted on the *}}* "Property" OR "Groundwater Restriction Area," if a portion}}, nor shall any wells be installed on the *}}* "Property" OR "Groundwater Restriction Area," if a portion), other than monitoring or other wells pre-approved in writing by FDEP's DWM, in addition to any authorizations required by the Division of Water Resource Management and the Water Management Districts. Additionally, there shall be no stormwater swales, stormwater detention or retention facilities, or ditches on the *}}* "Property" OR "Groundwater Restriction Area," if a portion). For any dewatering activities, a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

}} The following is alternate language for paragraph 2.a. for a Property that has existing stormwater features, the existence of which has been determined not to adversely affect the remaining contamination.}}

}} a. i. There shall be no use of the groundwater under the *}}* "portion of the" if a portion} Property *}}* if a portion then: "described as "Groundwater Restriction Area" in Exhibit B (hereinafter to be referred to as "Groundwater Restriction Area")"}. There shall be no drilling for water conducted on the *}}* "Property" OR "Groundwater Restriction Area," if a portion}}, nor shall any wells be installed on the *}}* "Property" OR "Groundwater Restriction Area," if a portion} other than monitoring or other wells pre-approved in writing by FDEP's Division of Waste Management (DWM) in addition to any authorizations required by the Division of Water Resource Management (DWRM) and the Water Management District (WMD).

a.ii. For any dewatering activities on the *}}* "Property" OR "Groundwater Restriction Area," if a portion}}, a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated.

a.iii. Attached as Exhibit C, and incorporated by reference herein, is a Survey identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the *}}* "Property" OR "Groundwater Restriction Area," if a portion}}. Such existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales, stormwater detention or retention facilities or ditches on the *}}* "Property" OR "Groundwater Restriction Area," if a portion}} without prior written approval from FDEP's DWM in addition to any authorizations required by the DWRM and the WMD. A revised exhibit must be recorded when any stormwater feature is altered, modified, expanded, or constructed.}}

SOIL RESTRICTIONS AND REQUIREMENTS. *The RC language used to address soils contamination depends in part on whether the concern is Direct Exposure, Leachability, or both [see cleanup criteria in Chapter 62-780, F.A.C., and tables of cleanup target levels (CTLs) in Ch. 62-777, F.A.C., for further guidance.] Additionally, the choice of which RC text to include for soils may depend on the intended future land use. In general, ECs (e.g., caps, parking lots, building foundation, etc.) should be identified on a Survey that is incorporated by reference as Exhibit B. If, however, the EC is to apply to the entire property, then the EC must cover or cap the entire property and be maintained on the entire property. Below are examples.} Where the soil restriction and requirement language is to apply to a portion of the Property, a Specific Purpose Survey, Boundary Survey or Sketches Accompanying Legal Descriptions (collectively, "Survey") prepared in accordance with the Minimum Technical Standards (MTS) that depicts the restricted area and includes four corners referenced to the State Plane Coordinates System or geographical coordinates should be provided. Such a legal description and Survey should be a clearly labeled attachment to the RC (e.g., Exhibit B) and the area to be restricted should also be clearly labeled on the Survey using the same phrasing as is used in the restriction paragraphs below (e.g., "Soil Contamination Area," "Area of EC," "Capped Area," "Location of Slurry Wall," etc.)}*

b.i. *{Use this language when leachability CTLs are exceeded:}* The "Area of Soil Contamination" as located on *{"the portion of," if a portion}* the Property and shown on Exhibit B shall be permanently covered and maintained with an impermeable material that prevents human exposure and prevents water infiltration (hereinafter referred to as "the Engineering Control"). An Engineering Control Maintenance Plan (ECMP) has been approved by the FDEP. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of the Department. The ECMP, as amended, relating to FDEP Facility No. *{9 digit #; or other appropriate tracking number, as applicable}*, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area;

{OR}

b.i. *{Use this language when the problem is direct exposure of the soil and leachability is not a concern:}* The "Area of Soil Contamination" as located on the *{"the portion of," if a portion}* the Property as shown on Exhibit B shall be permanently covered and maintained with a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure *{Note: this is the minimal cap required to address direct exposure, but the owner may opt for a hard surface cap (e.g., a parking lot) depending on intended future land use}* (hereinafter referred to as "the Engineering Control"). An Engineering Control Maintenance Plan (ECMP) has been approved by the Department. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of the FDEP. The ECMP, as amended, relating to FDEP Facility No. *{9 digit #; or other appropriate tracking number, as applicable}*, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area; and

b.ii. *{Use this language regardless of which b.i. above is used}* Excavation and construction below the Engineering Control is not prohibited on the *{"Property" OR*

“Soil Contamination Area,” if a portion}} provided any contaminated soils that are excavated are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas. For any dewatering activities, a plan pre-approved by FDEP’s Division of Waste Management must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated. *{{If this restriction applies only to the Soil Contamination Area, then insert: “Nothing in this Declaration shall prevent, limit or restrict any excavation or construction at or below the surface outside the boundary of the Engineering Control Area.}}*

LAND-USE RESTRICTIONS: *If the above options describing ECs such as soil caps or concrete pads are not utilized to control exposure, then the following land-use restriction language should be used to address soil contamination. Typically, a soil cap EC and a Land-Use Restriction should not both be used on the same property for the same contamination. A restriction on the use of the land should be clearly and exhaustively described and should apply to the Property, rather than to a portion of the Property. Reliance ONLY on local zoning or land use classifications is insufficient to adequately restrict the use of the land or adequately describe the restriction in perpetuity. Additionally, there is often confusion because the cleanup rule categories for land-use are lumped into “residential” and “commercial/industrial.” This is for ease of use for the look-up tables for cleanup target levels. The categories listed below provide the detail necessary to adequately protect human health based on calculations using the various land-use scenarios’ exposure duration and frequency. The categories are consistent with the Ch. 62-777, F.A.C., cleanup target levels and governing statutes regarding acceptable risk levels under Florida’s risk-based corrective action principles. These codes come from the North American Industry Classification System, United States, 2012, because it is one of the only comprehensive and standardized systems for categorizing human activity and use of the land. Simply using the term “residential,” for example, will create inconsistent application and interpretation of what this limitation means across the state because every local government creates its own definition for each land use category, including “residential.” The categories selected by OGC and the DWM Director are conservative based upon an assumption that the Land-Use Restriction is the only restriction being used. In order to utilize the Land-Use Restriction option for an RMO II closure, contaminant levels in soils should not exceed the “commercial/industrial” cleanup target levels. If using the Land-Use Restriction option for an RMO III closure, then a site-specific alternative cleanup target level may be established using appropriate risk assessment methodologies. Lastly, if the owner wants a land-use restriction but does not want to use the default land-use restrictions listed below, then the RMO III closure option should be conducted. It is recommended that you speak with FDEP site or project manager before pursuing this option.}}*

c. The following uses of the Property are prohibited: agricultural use of the land including forestry, fishing and mining; hotels or lodging; recreational uses including amusement parks, parks, camps, museums, zoos, or gardens; residential uses, and educational uses such as elementary or secondary schools, or day care services. These prohibited uses are specifically defined by using the North American Industry Classification System, United States, 2012 (NAICS), Executive Office of the President, Office of Management and Budget. The prohibited uses by code are: Sector 11 Agriculture, Forestry, Fishing and Hunting; Subsector 212 Mining (except Oil and Gas); Code 512132 Drive-In Motion Picture Theaters; Code 51912 Libraries and Archives; Code 53111 Lessors of Residential Buildings and Dwellings; Subsector 6111 Elementary and Secondary Schools; Subsector 623 Nursing and

Residential Care Facilities; Subsector 624 Social Assistance; Subsector 711 Performing Arts, Spectator Sports and Related Industries; Subsector 712 Museums, Historical Sites, and Similar Institutions; Subsector 713 Amusement, Gambling, and Recreation Industries; Subsector 721 Accommodation (hotels, motels, RV parks, etc.); Subsector 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations; and Subsector 814 Private Households.

3. In the remaining paragraphs, all references to “GRANTOR” and “FDEP” shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon, over and through and access to the Property at reasonable times and with reasonable notice to GRANTOR.

{{The remaining paragraphs 5 – 9 are based on Real Property Law and include necessary language in order to create an enforceable and durable RC. Generally, these paragraphs should not be modified.}}

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP’s rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and FDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall record this declaration, and reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Property, GRANTOR agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration of Restrictive Covenant.

7. This Declaration is binding until a release of covenant is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. *{{Do not use the next sentence if an Owner's Notice to Encumbrance Holder has been utilized.}}*

GRANTOR also covenants and warrants that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR'S rights to impose the restrictive covenant described in this Declaration. *{{Use the next statement only if any joinders and consents or subordinations are executed.}}* A joinder and consent, or subordination of liens, mortgages, or encumbrances, as applicable, is attached hereto.

{{Place a hard page break here so that none of GRANTOR'S signature page is on the pages of text.}}

IN WITNESS WHEREOF, {{GRANTOR}} has executed this instrument, this _____ day of _____, 20__.

GRANTOR
{{COMPANY NAME, IF APPLICABLE}}

By: _____
Name: {{PRINTED NAME}}
Title:
Full Mailing Address:

Signed, sealed and delivered in the presence of:

_____ Date: _____
Witness
Print Name: _____

_____ Date: _____
Witness
Print Name: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Personally Known _____ OR Produced Identification _____.
Type of Identification Produced _____.

Signature of Notary Public

{{Place a hard page break here to ensure that none of FDEP's signature page is on GRANTOR's signature page.}}

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel _____.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this ____ day of _____, 20__.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Emile D. Hamilton
Director
Northwest District Office
160 West Government Street, Suite 308
Pensacola, Florida 32502

: _____

Signed, sealed and delivered in the presence of:

Witness: _____ Date: _____

Print Name: _____

Witness: _____ Date: _____

Print Name: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ , 20 __, by _____ as representative for the Florida Department of Environmental Protection.

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____