### Attachment 3B: Declaration of Restrictive Covenant Form B – Only Portions of the Property of GRANTOR are to be Encumbered

*{{****FORM B****: THIS FORM SHOULD BE USED IF* ***ONLY PORTIONS OF THE PROPERTY OF GRANTOR ARE TO BE ENCUMBERED.****}}*

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 RESTRICTIVE COVENANT**

 THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter “Declaration”) is made by *{{property owner}}* *{{“, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (state name) corporation}}*, and its successors and assigns (hereinafter “GRANTOR”), and the Florida Department of Environmental Protection and its successors and assigns (hereinafter “FDEP”). This Declaration is neither extinguished nor affected by the Marketable Record Title Act pursuant to section 712.03, Florida Statutes (F.S.).

RECITALS

A. GRANTOR *{{name of owner on the deed and on the title search report should precisely match 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”). The portion of the Property that is being restricted by this Declaration is more particularly described in Exhibit “A” attached hereto and made a part hereof (hereinafter the “Restricted Property”). *{{Attach exhibit of legal descriptions of both the Property and the Restricted Property that is to be encumbered, clearly labeling each legal description.}}*

B. The FDEP Facility Identification Number for the Restricted 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 Restricted 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}};*
2. *Site Assessment Report Addendum dated \_\_\_\_\_\_, submitted by {{Company that prepared report}};*
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 that is located on the Restricted 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.), exist*{s}* on the Restricted Property. Also, these reports document that the groundwater contamination does not extend beyond the Restricted Property boundaries, 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 DRC under Risk Management Option (RMO) II; however, RMO III does contemplate contamination beyond the source property boundaries, which would require agreement by the adjacent property owners to put an DRC on their properties as well. If there is no groundwater contamination, state where the contamination remains, such as soil or sediment, and where the contamination is located. In the case where a Conditional Site Rehabilitation Completion Order (Order) will not be issued immediately after the recording of the DRC, state which contamination will be addressed by the restriction in addition to 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 on-going, and it is unknown at this time whether a long-term restriction on the use of the groundwater will be required.”*) Additionally, this document should NOT be used to indicate which parties are or are not liable for the contamination.}}*

E. It is GRANTOR’s and FDEP’s intent that the restrictions in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Restricted 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 Conditional Site Rehabilitation Completion Order (hereinafter “Order”) upon recordation of this Declaration. {{If other controls must be put in place before the Order can be issued, then list what those controls are, e.g.,“and upon establishment of institutional controls on the adjacent parcel(s) [Insert address(es) and/or parcel IDs] that together compose the contaminated site.” or “upon establishment of the Florida Department of Transportation Memorandum of Understanding (FDOT MOU) institutional control on the adjacent parcel within the contaminated site.”}} FDEP can unilaterally revoke the Order if the conditions of this Declaration or other requirements of the Order are not met. Additionally, if concentrations of *{{generally, list the contamination that remains, e.g., “petroleum products’ chemicals of concern”}}* increase above the levels approved in the Order, or if a subsequent discharge occurs at the Restricted 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 found 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 no Order will be issued after the establishment of the DRC, then delete the previous paragraph regarding the Order and use language similar to the following:* “FDEP will not issue a Conditional Site Rehabilitation Completion Order upon recordation of this Declaration because *[add as appropriate,* “Site rehabilitation of the remaining contaminated {{groundwater or soil}} is ongoing.”*OR*, “Non-source property that is part of the contaminated site has not been remediated.” *OR, state a different reason for not issuing the Order.] If cleanup criteria are later met, then FDEP, may issue a Conditional Site Rehabilitation Completion Order, or amend or repeal this Declaration, as appropriate.”}}*

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Restricted Property that an Order be obtained and that *{{delete “an Order be obtained and that” if an Order will not be issued upon recordation of this DRC and the establishment of any other required controls on the contaminated site}}* the Restricted Property be held subject to certain restrictions *{{*“and engineering controls,” *if appropriate}}*, all of which are more particularly hereinafter set forth*.*

NOW, THEREFORE, *to induce FDEP to issue the Order and for other {{if no Order will be issued upon recordation of this DRC, then delete “to induce FDEP to issue the Order and for other” and insert* “in compliance with the consent order in OGC Case #”*; OR, if no consent order, then insert “for”}}* 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 on the Restricted Property the following restrictions and requirements, as depicted on Exhibit B: *{{Note: The following should be provided as an exhibit: A Specific Purpose Survey, Boundary Survey or Sketches of Accompanying Legal Descriptions (collectively, “Survey”) prepared in accordance with the Minimum Technical Standards (MTS) that depicts the Restricted Property and includes periodic points identified along its boundary referenced to the State Plane Coordinates System or geographical coordinates. The Survey should be a clearly labeled, legible attachment to the DRC (e.g., Exhibit \_\_) 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”).}}*

*{{****GROUNDWATER USE RESTRICTIONS:*** *In most cases groundwater and stormwater restrictions will apply to the entire property, rather than to just restricted portion(s) of the property. If that is the case, then use DRC Form A. See the FDEP Institutional Controls Procedures Guidance document for more details regarding the limited circumstances where groundwater or stormwater restrictions can apply to only a portion of the property.* *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 District}}*

1. Groundwater Use. There are restrictions on use of the groundwater under the Restricted Property.Any monitoring wells installed on the Restricted Property shall be 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).

For any other groundwater wells to be installed on the Restricted Property, a plan signed and sealed by a Florida-registered professional engineer or Florida-registered professional geologist to address and ensure there will be no exposure to contaminated groundwater must be submitted to the FDEP’s DWM. The plan must include the well location, drilling method, casing depth, total depth, proposed maximum daily flow rate and volume, and a technical evaluation (including calculations, fate and transport modeling, as applicable) to demonstrate that the proposed groundwater extraction will not cause the spread or migration of contaminated groundwater and that receptors will not be exposed as a result of contaminant migration. The plan shall also outline the procedures for proper characterization, handling and disposal of any contaminated media encountered during installation. FDEP’s DWM will keep the plan in the site file as documentation of site conditions and will rely on this professional certification for demonstrating compliance with this restriction. A revised exhibit must be amended to the Declaration and recorded when any groundwater well is altered, modified, expanded, or constructed. The GRANTOR is advised that other federal, state, or local laws and regulations may apply to this activity. A copy of all permits obtained for the installation of groundwater wells at the Restricted Property must be provided along with the plan submitted toFDEP’s DWM. *{{The remainder of this paragraph is intended to conform with language in other documents and should not be changed when drafting the DRC for a particular property.}}* FDEP will rely on this Declaration and certified plan to construct new or modify existing groundwater wells to ensure that there is no exposure to contaminated groundwater entering into new or expanded groundwater wells resulting in risk to human health, public safety or the environment due to the contaminated site. Construction of groundwater wells on the Restricted Property could destabilize the groundwater plume or increase potential for exposure to contaminants resulting in risk to human health, public safety, or the environment. For this reason, if GRANTOR seeks to construct groundwater wells on the Restricted Property, GRANTOR shall submit the certified plan to FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other federal, state, or local laws and regulations that may apply to this activity.Unless it is demonstrated that the cleanup criteria under subsection 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available under law, may institute proceedings to revoke this Declaration and the Conditional Site Rehabilitation Completion Order {{delete “Conditional Site Rehabilitation Order” if no Order is to be issued}}, and require the proper abandonment of the wells and the resumption of site rehabilitation activities if any such groundwater wells are constructed or commenced without submittal of a certified plan.

1. Dewatering. For any dewatering activities on the Restricted Property,a plan signed and sealed by a Florida-registered professional engineer or Florida-registered professional geologist to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated must be submitted to FDEP’s DWM. The plan must include the location(s) of the dewatering activity and the effluent disposal area(s) relative to known areas of groundwater contamination, proposed flow rates, duration, volume, estimated drawdown, (based upon design calculations), a technical evaluation demonstrating that the dewatering will not cause the migration of contamination and procedures for proper characterization, treatment and handling of any contaminated groundwater that may be encountered during dewatering. FDEP’s DWM will keep the plan in the site file as documentation of site conditions and will rely on this professional certification for demonstrating compliance with this restriction.The GRANTOR is advised that other federal, state, or local laws and regulations may apply to this activity. A copy of all permits obtained for the implementation of dewatering must be provided along with the plan submitted toFDEP’s DWM.*{{The remainder of this paragraph is intended to conform with language in other documents and should not be changed when drafting the DRC for a particular property.}}* FDEP will rely on this Declaration, Rule 62-621.300, F.A.C., and the guidance incorporated therein, and the signed and sealed dewatering plan as the institutional controls to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to dewatering activities on the contaminated site. Rule 62-621.300, F.A.C., requires a permit when conducting dewatering in the area of a contaminated site. For this reason, if GRANTOR seeks to conduct dewatering on the Restricted Property, GRANTOR shall submit the signed and sealed plan to FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other federal, state, or local laws and regulations that may apply to this activity. The dewatering plan must ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated to avoid adversely impacting or increasing the potential for exposure to contaminants resulting in risk to human health, public safety or the environment. Unless it is demonstrated that the cleanup criteria under subsection 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available at law, may institute proceedings to revoke this Declaration and the Conditional Site Rehabilitation Completion Order *{{delete “and the Conditional Site Rehabilitation Order” if no Order will be issued}}* and require the resumption of site rehabilitation activities if any dewatering activities are commenced without submittal of a signed and sealed plan.
2. Stormwater Facilities.

{Option 1: No Stormwater Features:} There shall be no stormwater swales, stormwater detection or retention facilities, or ditches on the Restricted Property.

{Option 2: Existing Stormwater Features, the existence of which has been determined to not adversely affect the remaining contamination:}

Attached as Exhibit \_\_, and incorporated by reference herein, is a Survey *{{a Specific Purpose Survey, Boundary Survey or Sketches Accompanying Legal Descriptions prepared in accordance with the Minimum Technical Standards (MTS) that depicts an area and includes geographical coordinates referenced to the State Plane Coordinates System or other geographical coordinates. Such a legal description and Survey should be a clearly labeled, legible attachment to the Declaration and the area to be noted should also be clearly labeled on the drawing (e.g., “stormwater swale,” “stormwater detention or retention facility,” “ditch.”}}* identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the Restricted Property. 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 theRestricted Property*.*

If stormwater features must be constructed, modified, altered or expanded, a plan signed and sealed by a Florida-registered professional engineer or a Florida-registered professional geologist must be submitted to FDEP’s DWM in addition to any authorizations required by the DWRM and the WMD. The plan must include the feature location, construction and design specifications relative to known areas of soil and groundwater contamination, and a technical evaluation (including calculations, fate and transport modeling, as applicable) to demonstrate that the new stormwater facilities will not cause the migration of contamination. The plan shall also outline the procedures for proper characterization, handling and disposal of any contaminated media that may be encountered during construction. FDEP’s DWM will keep the plan in the site file as documentation of site conditions and will rely on this professional certification for demonstrating compliance with this restriction. The GRANTOR is advised that other federal, state, or local laws and regulations may apply to this activity. A copy of all permits obtained for the implementation of dewatering must be provided along with the plan submitted toFDEP’s DWM A revised exhibit must be amended to the Declaration and recorded when any stormwater feature is altered, modified, expanded, or constructed. *{{The remainder of this paragraph is intended to conform with language in other documents and should not be changed when drafting the DRC for a particular property.}}* FDEP will rely on this Declaration and certified plan to construct new or modify existing stormwater features to ensure that there is no exposure to contaminated groundwater entering into new or expanded stormwater features resulting in risk to human health, public safety or the environment due to the contaminated site. Construction of stormwater swales, stormwater detention or retention features, or ditches on the Restricted Property could destabilize the groundwater plume or increase potential for exposure to contaminants resulting in risk to human health, public safety, or the environment. For this reason, if GRANTOR seeks to construct stormwater features on the Restricted Property, GRANTOR shall submit the certified plan to FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other federal, state, or local laws and regulations that may apply to this activity.Unless it is demonstrated that the cleanup criteria under subsection 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available under law, may institute proceedings to revoke this Declaration and the Conditional Site Rehabilitation Completion Order {{delete “Conditional Site Rehabilitation Order” if no Order is to be issued}}, and require the resumption of site rehabilitation activities if any such stormwater features are constructed or commenced without submittal of a certified plan.

*{{****SOIL RESTRICTIONS:*** *The DRC 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 DRC language to include for soils may depend on the intended future land use.*

*In general, ECs (e.g., caps, parking lots, building foundation) should be identified on a Survey that is incorporated by reference as an exhibit to the Declaration. The Survey consists of a* *Specific Purpose Survey, Boundary Survey or Sketches Accompanying Legal Descriptions* *prepared in accordance with the Minimum Technical Standards (MTS) that depicts the restricted area and includes geographical coordinates of points along the boundary of the area noted referenced to the State Plane Coordinates System, or other geographical coordinates. Such a Survey should be a clearly labeled, legible exhibit to the Declaration and the area to be restricted should also be clearly labeled on the drawing (e.g., “area of EC,” “capped area,” “location of slurry wall,” “restricted area”). The terms used to label locations on the survey should match the terms used in the text of the document discussing that location.}}*

1. Soil Engineering Controls. *{{Use this language when leachability CTLs are exceeded:}}* The “Area of Soil Contamination” as located on the Restricted Property and shown on Exhibit \_\_ 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”). *{{OR, use the following 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 Restricted Property, and as shown on Exhibit \_\_ shall be permanently covered and maintained with a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure (hereinafter referred to as the “Engineering Control”).” *[Note: two feet of clean soil is the minimal cap required to address direct exposure, but GRANTOR may use the more rigorous impermeable cap (e.g., parking lot) if desired, in which case the impermeable cap should be described in the Engineering Control Maintenance Plan.]}}* An Engineering Control Maintenance Plan (ECMP) has been approved by 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. The ECMP may be amended upon the prior written consent of 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.
2. Excavation and Construction. Excavation and construction below the Engineering Controlis not prohibited on the Restricted Property provided any contaminated soils that are excavated are either: 1) placed back into the excavation and the Engineering Controls are reconstructed or 2) 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.
3. Subdivision of Restricted Property. *{{If the criteria for direct exposure were met using average soil contaminant concentrations calculated based on a 95% Upper Confidence Limit (UCL) approach and subdivision of the exposure units (EUs) needs to be prohibited, 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 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 Restricted Property may not be subdivided into parcels smaller than *{{size}}* without prior written approval from FDEP’s Division of Waste Management.A subsequent amendment to this Declaration shall be recorded on the Restricted Property in accordance with Paragraph 7.”

*{{****LAND-USE RESTRICTIONS:*** *Land use restrictions generally will apply to the entire property, rather than to just restricted portion(s) of the Property. If that is the case use DRC Form A. 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, however there are occasions when both are required. A restriction on the use of the land must be clearly described.*

*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 using the look-up tables for cleanup target levels. But, simply using the term “residential,” 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 DWM and OGC from the classification codes available to meet the RMO II/III requirements for closure are conservative based upon an assumption that the LUR is the only restriction being used.*

*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, 2017, because it is one of the only comprehensive and standardized systems for categorizing human activity and use of the land.*

*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 GRANTOR 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.}}*

1. Land Use Restrictions. The following uses of the Restricted 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, 2017 (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 519120 Libraries and Archives; Code 531110 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 Restricted Property at reasonable times and with reasonable notice to GRANTOR. *{{Please select the appropriate language depending on how access will be granted. If access is granted via the entire/parent property, insert,* “Access to the Restricted Property is granted via providing access to the Property located at *{{insert address}}* and as defined in Exhibit A.”

*If access will be via an immediately adjacent public right-of-way, insert* “Access to the Restricted Property is provided via an immediately adjacent public right-of-way *{{insert street name}}.”*

*If access is via an access easement, insert* “Access from a public right of way across an access easement to the Restricted Property is granted by the following Access Easement Agreement:

1. GRANTOR is the fee simple owner of certain real property located in *{{insert county}}* County, Florida, as more particularly described in Exhibit “\_\_,” attached hereto and made a part hereof (hereinafter the “Easement Parcel”). *{{Exhibit \_\_ should be the legal description & Survey of the easement area or easement corridor, which provides access from an existing public right of way to the Restricted Property. The Survey consists of a* *Specific Purpose Survey, Boundary Survey or Sketches Accompanying Legal Descriptions* *prepared in accordance with the Minimum Technical Standards (MTS) that depicts the Easement Parcel and includes geographical coordinates of points along the boundary of the area referenced to the State Plane Coordinates System, or other geographical coordinates. The Survey should be a clearly labeled, legible exhibit to the Declaration.}}*
2. FDEP desires to use the Easement Parcel in order to cross over private property to gain access to the Restricted Property for the purpose of inspecting, viewing and monitoring the Restricted Property and GRANTOR’S compliance with the obligations set forth in this Declaration related to the Restricted Property;
3. GRANTOR desires to grant to FDEP an easement for this purpose;
4. For and in consideration of the terms, conditions, and mutual covenants contained herein and other good and valuable consideration received by each party, the sufficiency of which are hereby acknowledged, the parties hereby agree to the following:
5. GRANTOR hereby grants to FDEP a non-exclusive easement for ingress and egress in and upon the Easement Parcel for the purpose described above (hereinafter, the “Easement”).
6. The terms of the Easement shall commence upon the date of full execution of this Declaration and shall continue in perpetuity. This Easement shall terminate and be of no further force and effect upon the termination of this Declaration by FDEP.
7. GRANTOR agrees that FDEP and its employees, contractors, and agents shall have ingress and egress to and from the Restricted Property over and across the Easement Parcel to affect the purposes of this Easement.
8. In order to ensure the perpetual nature of the Easement, GRANTOR shall reference this Declaration in any subsequent deed of conveyance, including the recording information for this Declaration.
9. GRANTOR hereby represents and warrants that GRANTOR has fee title in the Easement Parcel; and GRANTOR represents and warrants that it has the power and authority to grant this Easement. With respect to its use of the Easement Parcel, FDEP shall be responsible for injury or damage to persons or property for which it is found legally liable.
10. GRANTOR reserves the right to use, or authorize others to use, the Easement Parcel in any manner not inconsistent with, or which will not unreasonably interfere with, the rights granted herein, provided, however, that GRANTOR shall not disturb or block access in any way without prior approval from FDEP.
11. In the event FDEP determines that the Easement Parcel is no longer needed for the purposes set forth herein, FDEP may terminate this Declaration by notifying GRANTOR, in writing, at least sixty (60) days prior to the date of such termination. In such event, FDEP agrees to execute an instrument (e.g., amendment or repeal of the Declaration) in recordable form, releasing this Easement.
12. This Easement shall be binding upon and inure to the benefit of the parties specified herein.
13. This Easement does not impact or modify any other legal authority FDEP may have to inspect the Easement Parcel or Restricted Property for regulatory purposes pursuant to Chapters 376 and 403, Florida Statutes.
14. *[Optional – If the Easement Parcel is long and would take too much time to walk the full length to gain access to the Restricted Property add the following: “*GRANTOR shall maintain the Easement Parcel so that a standard sized motor vehicle can traverse the Easement Parcel.”*]*

*{{The remaining paragraphs 5 – 9 are based on principles of real property law and include necessary language in order to create an enforceable and durable DRC. Generally, these paragraphs should not be modified.}}*

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Restricted Property, run with the land and with the title to the Restricted 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 Restricted 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 below. 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 this Declaration. 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.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall record this Declaration, and GRANTOR shall 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 Restricted Property, GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration. Without limiting the generality of paragraph 3 above, it is the intention of the parties that if GRANTOR has conveyed the Restricted Property, the GRANTOR’s successors and assigns shall be required to perform such notification.

7. This Declaration is binding until a release 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 the FDEP to remove or amend 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 amendments, including new or revised exhibits, 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 Restricted Property in fee simple and has good right to create, establish, and impose this Declaration on the use of the Restricted 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 Restricted 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.

***---The remainder of this page is intentionally left blank.---***

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

 IN WITNESS WHEREOF, *{{Name of GRANTOR}}* has executed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

GRANTOR

*{{Company Name, If Applicable}}*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*{{Printed Name of Signatory}}*

*{{And, provide document proving signatory’s authorization to sign on GRANTOR’s behalf}}*

*{{Title of Signatory}}*

*{{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 by means of [ ]  physical presence or [ ]  online notarization, this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_,

by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **OR** by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Personally Known \_\_\_\_\_\_\_ OR Produced Identification \_\_\_\_\_\_\_\_\_.

 Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Notary Public

Commission No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires \_\_\_\_\_\_\_\_\_\_\_\_\_

*{{Place a hard page break here so that none of GRANTOR’s signature page is on FDEP’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

*{{Name of Signatory}}*

*{{Title of Signatory}}*

*{{either “Petroleum Restoration Program,” OR “Waste Cleanup Program,” OR “\_\_\_\_\_\_\_\_\_\_\_\_ District,” whichever is applicable}}*

*{{Mailing Address*}}

*{{FDEP site/project manager should provide the above information to GRANTOR}}*

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 by means of [ ]  physical presence or [ ]  online notarization, 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: \_\_\_\_\_\_\_\_\_\_\_\_\_