

**CONDITIONAL CLOSURE INTERIM RESTRICTIVE COVENANT**

ONLY FOR USE WITH A DRYCLEANING SOLVENT CLEANUP PROGRAM REQUEST FOR ADVANCED SITE ASSESSMENT PURSUANT TO SUBSECTION 376.3078(14), F.S.

This instrument prepared by:

Name \_\_\_\_\_  
Company (if applicable) \_\_\_\_\_  
mailing address \_\_\_\_\_  
\_\_\_\_\_

**DECLARATION OF INTERIM RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration") is made by \_\_\_\_\_ {{if applicable "a/an \_\_\_\_\_" }} {{Full Name of all Real Property Owners}} {{If owner is an LLC or a corporation please insert above}} (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, County Property Appraiser's parcel number \_\_\_\_\_ more particularly described in the legal description that is recorded in County of \_\_\_\_\_, book \_\_\_\_\_ and page \_\_\_\_\_ (Exhibit 1) (copy of the current deed to the property) attached hereto and made a part hereof (hereinafter the "Property");
- B. The FDEP Facility Identification Number for the Property is \_\_\_\_\_. The facility name at the time of this Declaration is \_\_\_\_\_. This Declaration addresses the discharge(s) reported to the FDEP through submittal of the Drycleaning Solvent Cleanup Program (DSCP) Application and Site Screening Report Form, submitted to the Department and completed on the following date {enter the date of the Site Screening Report Form [available in OCULUS]} \_\_\_\_\_.
- C. The Site Screening Report Form set forth what was known about the contamination on the Property at the time of the report. This report confirmed that contaminants as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exist on the Property. The FDEP makes no representations that the restrictions contained herein are sufficient to protect human health and the environment.
- D. 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 during the DSCP's Advanced Site Assessment activities and after.
- E. Upon recordation of this Declaration, FDEP has agreed to enter into Real Property Owner Intent to Execute an Interim Restrictive Covenant Agreement (hereafter "Agreement") and to perform an Advanced Site Assessment pursuant to subsection 376.3078(14), F.S., of the Property's DSCP-eligible contaminated site. FDEP can unilaterally revoke the Agreement if the conditions of this Declaration or the Agreement are not met.
- F. GRANTOR deems it desirable and in the best interest of all present and future owners of the Property that the Property be held subject to certain restrictions, all of which are more particularly hereinafter set forth. In the remaining paragraphs, all references to "GRANTOR" and "FDEP" shall also mean and refer to their respective successors and assigns.

NOW, THEREFORE, to induce FDEP to enter into the Real Property Owner Intent to Execute an Interim Restrictive Covenant Agreement and to perform Advanced Site Assessment 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:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. GRANTOR hereby imposes the following restrictions and requirements:

**GROUNDWATER USE RESTRICTIONS.** There shall be no drilling for water conducted on the Property, nor shall any wells be installed on the Property, other than monitoring or other wells pre-approved in writing by FDEP's Division of Waste Management (FDEP DWM), in addition to any authorizations required by the Division of Water Resource Management and the Florida Water Management Districts. If an existing well is located at the Property, it is understood that the contamination at the site may pose a risk to this well and use of the well may pose a risk of exposure from the contamination. Additionally, there shall be no new stormwater swales, stormwater detention or retention facilities, or ditches on the Property. 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.

**SOIL RESTRICTIONS.** Soil contamination may exist on the Property, therefore, to reduce the risk of exposure to those using the property, the owner shall ensure that following uses of the property are prohibited including: residential, recreational, gardening, or other uses that may expose people to contaminated soil. Grantor needs to ensure that the Property is used appropriately considering this risk.

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

4. 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 6 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.

5. In order to ensure the perpetual nature of this Declaration, the 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 Property, GRANTOR agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration.

6. 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.

7. 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.

8. 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. 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.

ATTACH AS EXHIBIT 1 THE CURRENT DEED TO PROPERTY

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IN WITNESS WHEREOF, \_\_\_\_\_ (Grantor) has executed this instrument, this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR \_\_\_\_\_ Print Name: \_\_\_\_\_

Signature

Print or Type Company Name & title (if applicable): \_\_\_\_\_ Print or Type 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

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Name: Jennifer Farrell

Title: Program Administrator

By: \_\_\_\_\_

Signature

Waste Cleanup Program

2600 Blair Stone Road, Mail Station 4505 Tallahassee, Florida 32399-2400

Signed, sealed and delivered in the presence of:

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF LEON

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: \_\_\_\_\_