

**CONDITIONAL CLOSURE RESTRICTIVE COVENANT**

**ONLY FOR USE WITH A CCA PER RULE 62-772.401**

**NOT APPLICABLE FOR RULE 62-780**

This instrument prepared by:

Name of person \_\_\_\_\_

Company (if applicable) \_\_\_\_\_

mailing address \_\_\_\_\_

\_\_\_\_\_

**DECLARATION OF INTERIM RESTRICTIVE COVENANT**

THIS DECLARATION OF INTERIM RESTRICTIVE COVENANT (hereinafter "Declaration") is made by \_\_\_\_\_ *{{if applicable "a/an \_\_\_\_\_"}}*

*{{Full Name of all Property Owners above}} {{If owner is an LLC or a corporation please insert above}}*

(hereinafter "GRANTOR") and the Florida Department of Environmental Protection (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 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 on the following date(s) \_\_\_\_\_.

C. The discharge report(s) set forth what was known about the contamination on the Property at the time of the report. These reports confirm that contaminants as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exist on the Property. This Declaration does not satisfy the requirements of closing a contaminated site pursuant to Rule 62-780.680, F.A.C.

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 cleanup activities and after. The FDEP makes no representations that the restrictions contained herein are sufficient to protect human health and the environment.

E. FDEP has agreed to a Conditional Closure Agreement (CCA), pursuant to Rule 62-772.401, F.A.C., upon recordation of this Declaration. FDEP can unilaterally revoke the CCA if the conditions of this Declaration or the CCA 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 the CCA 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.***

**Wells.** 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.

**Stormwater.** 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 DEP'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. DEP'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.

**Dewatering.** For any dewatering activities, a plan signed and sealed by a Florida-registered professional engineer or Florida-registered professional geologist that ensures the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated must be submitted to FDEP's DWM. FDEP DWM will keep the plan in the site file as documentation of site conditions and will rely on this professional certification. In addition, other federal, state, or local permits, 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 to FDEP's DWM.

***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 limited 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 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 FDEP shall record this declaration, and GRANTOR shall reference these specific 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.

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

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

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 Signature

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

Witness's mailing address: \_\_\_\_\_  
\_\_\_\_\_

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

Witness Signature

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

Witness's mailing address: \_\_\_\_\_  
\_\_\_\_\_

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: \_\_\_\_\_

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

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Signature

Name: Billy Hessman

Title: Program Administrator

Petroleum Restoration Program

2600 Blair Stone Road, Mail Station 4545

Tallahassee, Florida 32399-2400

Signed, sealed and delivered in the presence of:

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

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

Witness's mailing address: \_\_\_\_\_

\_\_\_\_\_

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

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

Witness's mailing address: \_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF LEON

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: \_\_\_\_\_