

[Model VCA – September 2014]

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE: *{Insert name of Real Property Owner}*
{Insert Property Address (street, city, state, zip code)}
{Insert Facility Name and Identification Number}

OGC Case No. _____

VOLUNTARY CLEANUP AGREEMENT PURSUANT TO SECTION 376.3078(11), F.S.

This Voluntary Cleanup Agreement (“Agreement”) is entered into between the State of Florida Department of Environmental Protection (“Department” or “FDEP”), and _____, (“Real Property Owner” or “RPO”), to reach agreement on a schedule to conduct site rehabilitation pursuant to Section 376.3078(11), Florida Statutes (F.S.). The parties agree to the following:

1. The Department is the agency of the State of Florida with the authority and power to enforce the provisions of Chapters 376 and 403, F.S.
2. _____ is the “Real Property Owner” as defined in Section 376.301, F.S., and owns the real property located at _____ in the City of _____, in _____ County, Florida (the “Property”) that is the subject of this Agreement. The Property is described in **Exhibit A**, incorporated by reference herein, which is a composite exhibit that includes evidence of ownership in the form of a deed and a legal description, as well as a detailed labeled map identifying the location of the Property. The Property is contaminated with “drycleaning solvents” as a result of the operation of a “drycleaning facility” or “wholesale supply facility,” as these terms are defined in Paragraph 4 below, specifically the _____ *{Insert facility name}* (FDEP Facility ID# _____). *{If the RPO is or has also been the facility owner/operator, it should be noted in this paragraph. It should also be noted whether the contaminated site is eligible for the Drycleaning Solvent Cleanup Program (DSCP).}*
3. The Real Property Owner has agreed to conduct voluntary “site rehabilitation” at the drycleaning solvent “Contaminated Site,” as these terms are defined in Paragraph 4 below, in accordance with Section 376.3078(11), F.S. The RPO agrees to obtain any local, state or federal approvals or permits required for the site rehabilitation work and to conduct the necessary site rehabilitation consistent with local, state, and federal laws, rules and ordinances. All site rehabilitation shall be consistent with the cleanup criteria in Section 376.3078(4), F.S., the requirements of the Contaminated Site Cleanup Criteria Rule, Chapter 62-780, Florida Administrative Code (F.A.C.), and the Contaminant Cleanup Target Levels Rule, Chapter 62-777, F.A.C. For the purpose of this Agreement, the RPO meets the definition of Person Responsible for Site Rehabilitation (PRSR), pursuant to Chapter 62-780.200, F.A.C.
4. **Definitions.** “Contaminated Site,” as defined in Section 376.301, F.S., means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the

environment. The Contaminated Site is defined irrespective of property boundaries; therefore, the Contaminated Site at issue may extend beyond the boundaries of the Property. "Site rehabilitation," as defined in Section 376.301, F.S., means the assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site. For purposes of sites subject to the Resource Conservation and Recovery Act, as amended, the term includes removal, decontamination, and corrective action of releases of hazardous substances. For purposes of this Agreement, the hazardous substances at issue are "drycleaning solvents" per Section 376.301, F.S., meaning any and all nonaqueous solvents used in the cleaning of clothing and other fabrics and includes perchloroethylene (also known as tetrachloroethylene) and petroleum-based solvents, and their breakdown products. For purposes of this definition, "drycleaning solvents" only includes those drycleaning solvents originating from use at a drycleaning facility¹ or by a wholesale supply facility,² also defined in Section 376.301, F.S.

5. **Statutory Immunity.** Pursuant to Section 376.3078(11), F.S., an RPO who voluntarily initiates and conducts site rehabilitation shall be immune from any administrative or judicial action brought by or on behalf of any person, state or local government, or agency thereof to compel or enjoin site rehabilitation or pay for the cost of rehabilitation of environmental contamination, and to pay any fines or penalties regarding rehabilitation, as long as the RPO:

- a. Conducts contamination assessment and site rehabilitation consistent with state and federal laws and rules;
- b. Conducts such site rehabilitation in a timely manner according to a rehabilitation schedule approved by the Department; and
- c. Does not deny the Department access to the Contaminated Site.

6. **Site Rehabilitation Schedule.** Attached hereto and incorporated herein as **Exhibit B** is the Site Rehabilitation Schedule approved by the Department for the Contaminated Site. Continued compliance with this Agreement, including compliance with Chapters 62-780 and 62-777, F.A.C., and the Exhibit B Site Rehabilitation Schedule, constitutes compliance with the requirements of Section 376.3078(11), F.S., and shall satisfy the RPO's obligations, if any, under 40 Code of Federal Regulations section 264.111 as adopted by reference in Chapter 62-730, F.A.C.

7. **Imminent Hazard.** Nothing herein shall be construed to limit the authority of the Department to undertake any action in response to, or to recover the costs of responding to, conditions at or from the Property that require the Department to take action to abate an imminent hazard to the public health, welfare or the environment.

8. **Submittals.** An electronic or paper copy of all reports, plans and data required by this Agreement that are submitted to the Department should be sent to *{insert project manager's name, title, e-mail and physical address at District Office.}* The Department prefers electronic submissions.

¹ "Drycleaning facility" means a commercial establishment that operates or has at some time in the past operated for the primary purpose of drycleaning clothing and other fabrics utilizing a process that involves any use of drycleaning solvents. The term "drycleaning facility" includes laundry facilities that use drycleaning solvents as part of their cleaning process. The term does not include a facility that operates or has at some time in the past operated as a uniform rental company or a linen supply company regardless of whether the facility operates as or was previously operated as a drycleaning facility.

² "Wholesale supply facility" means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

9. **Document Review.** The Department shall review any submitted plan or report required by this Agreement and will provide the RPO with written responses as to the completeness and technical adequacy of the submittals. Department approval of any plan or report shall not be unreasonably withheld. If additional information is reasonably necessary for the Department to evaluate the plan, or if the Department reasonably identifies incompleteness or technical inadequacy, the Department will make a written request to the RPO for additional information or revisions to the extent reasonably necessary or required. The RPO shall provide all requested information or revisions in writing to the Department within the time limits specified in the Exhibit B Site Rehabilitation Schedule, from date of receipt of said request, or such longer period of time as specified by the Department. The Department shall provide the RPO with the additional time to respond if the RPO requests a time extension in writing prior to the lapse of scheduled timeframes and establishes good cause for additional time to provide the requested information or revisions. Upon submittal of additional information or revisions by the RPO, the Department will notify the RPO in writing as soon as practicable whether the plan or report is approved. Such approval may not be unreasonably withheld. Once a plan or report has been approved in writing by the Department, it shall become effective and made a part of the Agreement. Actions required by the approved plan shall be completed within the timeframes identified in the Exhibit B Site Rehabilitation Schedule, upon receipt of the Department's written notification to the RPO that the plan or report has been approved. If, after reasonable requests for additional information by the Department and failure by the RPO to reasonably respond to such requests, a plan or report is not approved by the Department, then the Department, at its discretion, may continue to request additional information or modifications to the submission with time-certain deadlines, or notify the RPO that it believes the RPO is out of compliance with this Agreement and Chapter 62-780, F.A.C. In such event, the Department may terminate this Agreement pursuant to the provisions in Paragraph 11 below, and pursue any remedies legally available to it.

10. **Delay.** If any event, including administrative or judicial challenges by third parties unrelated to the RPO, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Agreement, then the RPO may request an extension of time to comply with the affected requirements. The RPO shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the RPO and could not have been or cannot be overcome by the RPO's due diligence. Economic circumstances shall not be considered circumstances beyond the control of the RPO, nor shall the failure of a contractor, subcontractor, material man or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of the RPO, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the RPO shall notify the Department orally as soon as reasonably practicable, but no more than 72 hours later and shall, within seven (7) calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the RPO intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the RPO, then the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from

such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of the RPO to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of the RPO's right to request an extension of time for compliance with the requirements of this Agreement. The Site Rehabilitation Schedule attached as Exhibit B may be amended in writing by the mutual consent of the Department and the RPO.

11. **Failure to Comply.** Nothing in this Agreement relieves the RPO of the obligation to comply with all applicable rules. Non-compliance with applicable rules shall be grounds for termination of this Agreement, but shall not terminate any obligation to conduct site rehabilitation that the RPO may otherwise have. Time is of the essence in conducting site rehabilitation at the Contaminated Site. Failure to strictly comply with the Site Rehabilitation Schedule set forth in Exhibit B shall be considered a breach of this Agreement and shall constitute grounds for termination of this Agreement. If the RPO fails to comply with the provisions of this Agreement, the Department will notify the RPO in writing of any breach of this Agreement. The RPO will have 60 days from receipt of the letter from the Department to return to compliance or to negotiate a modification to this Agreement with the Department for good cause shown. The 60-day grace period does not apply if an imminent hazard exists at the site. If such imminent hazard exists, the RPO shall act immediately to abate the hazard. If the project is not returned to compliance with this Agreement and a modification cannot be negotiated, then this Agreement and the immunity provisions of Section 376.3078(11), F.S., are revoked, and the Department may pursue any remedies legally available to it.

12. **Administrative Rights and Mediation.** With regard to any agency action taken by the Department concerning the RPO's compliance with Chapters 62-780 and 62-777, F.A.C., at the subject Contaminated Site, the RPO may file a Petition for Formal or Informal Administrative Hearing. The petition must contain the information set forth in Rules 28-106.201 or Rule 28-106.301, F.A.C., and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of the Department's agency action the RPO intends to challenge. Failure to file a petition within this time period shall constitute a waiver by the RPO of its right to request an administrative proceeding under Sections 120.569 and 120.57, F.S. The Department's determination, upon expiration of the 21-day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into this Agreement and made a part of it. All other aspects of this Agreement shall remain in full force and effect at all times. If both parties agree, the Department and the RPO may mediate the dispute as provided in Section 120.573, F.S. If the parties agree to mediation, the time for filing a petition pursuant to this Paragraph shall be tolled until such time as the mediation concludes. Upon notice from the Department that the mediation is unsuccessfully concluded, the RPO shall have 21 days to file its petition as provided herein. If the RPO seeks an administrative proceeding pursuant to this Paragraph, the Department may take such action as is authorized by law.

13. **Assignment.** If the RPO becomes divested of all ownership interest in the Property, the RPO shall notify the Department of the change in ownership within 30 days after such divestiture. The RPO shall not assign any rights or responsibilities under this Agreement to any other party without the written consent of the Department. However, the Department shall not withhold its consent to such an assignment if: (a) the proposed assignee meets all of

the eligibility criteria under Section 376.3078(11), F.S.; and (b) the proposed assignee has agreed, in writing, to assume all obligations of the RPO under the terms of this Agreement, including the Exhibit B schedule and timely performance of site rehabilitation tasks. The assignment shall be effective only upon the execution of an amendment to this Agreement by the assignee and the Department. Any lapses in tasks, whether due to assignment or otherwise, will be considered non-compliance with this Agreement and may be considered grounds for termination as described in Paragraph 11. The RPO may not assign this Agreement if the RPO is not in compliance with its terms.

14. **Voluntary Cleanup Tax Credits.** The parties agree and acknowledge that, pursuant to s. 376.30781, F.S., a Voluntary Cleanup Tax Credit (VCTC) based upon a percentage of the costs of voluntary cleanup activity that is integral to site rehabilitation may be allowed at a drycleaning-solvent-contaminated site. In order to be eligible to receive the VCTC, all eligibility criteria must be met pursuant to s. 376.30781, F.S. Furthermore, not all activities that are approved or performed in association with a Voluntary Cleanup Agreement are eligible for the state's VCTC. Only costs incurred and paid that are integral, necessary and required for "site rehabilitation", as that term is defined in Paragraph 4, are eligible for the VCTC. Nothing contained herein is intended to limit the VCTC otherwise available to the RPO under applicable law. General information about the VCTC Program is available at <http://www.dep.state.fl.us/waste/categories/vctc/default.htm>. For specific questions regarding the VCTC Program, please contact the FDEP's Waste Cleanup Program at (850) 245-8927.

15. **Site Access.** During the time period for implementation of this Agreement, the RPO agrees to allow the Department access to the Property and further gives consent to the Department for the collection of samples of any wastes, wastewaters, sludges, air, soils, groundwater, surface water, or sediments from any location on the Property at any reasonable time. Nothing in this Paragraph shall be construed to indicate that the Department surrenders its rights under Sections 403.091 and 403.858, F.S.

16. **Property Modifications.** During the time period for implementation of this Agreement, the RPO agrees that no substantial modifications on the Property will occur in the area of the Contaminated Site without prior notification to the Department and coordination with the site rehabilitation activities. If the Department determines that a previous Department approval was based upon conditions on the Property or the Contaminated Site that have been substantively changed, then the RPO will be notified in writing and the approval will be rescinded.

17. **Governing Law.** This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida and any applicable local regulations. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in connection herewith shall be brought in *{Insert applicable County}*, Florida.

18. **Entirety of Agreement.** This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement, unless otherwise provided herein.

IN WITNESS WHEREOF, each of the parties has made and executed this Voluntary Cleanup Agreement on the date set forth for each signature of each representative below:

FOR THE REAL PROPERTY OWNER:

Print Name of RPO (or duly authorized representative)
Title: _____

Signature of RPO (or duly authorized representative)

Date

DONE AND ORDERED this _____ day of _____, 20XX, in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

{Insert Name of District Director}
_____ District Director
{Insert District Address}
Telephone: xxx/ xxx-xxxx

Approved as to form and legality:

Lisa M. Duchene, FDEP Attorney Date

FILING AND ACKNOWLEDGMENT FILED,
on this date, pursuant to Section 120.52, F.S.,
with the designated Department Clerk, receipt
of which is hereby acknowledged.

Clerk Date

cc: Lisa M. Duchene, DEP/OGC
 Lea Crandall, DEP/OGC
 Jennifer A. Farrell, DEP/DSCP
 _____ District files