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Type of template: MOECA covenant with MDNR as sole “Department”

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(ABOVE SPACE RESERVED FOR RECORDER’S USE)

Document Title: Environmental Covenant

Document Date:

Grantor:

[address]

Grantee:

[address]

Department:

Missouri Department of Natural Resources
P.O. Box 176, 1101 Riverside Drive, Jefferson City, Missouri 65102

Legal Description:

[Insert here if space allows OR refer to attached Exhibit]

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between the Grantor, _____ (“Owner”), the Grantee, _____ (“Holder”), and the Missouri Department of Natural Resources (“Department”) pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RSMo and Missouri Risk Based Corrective Action Rules 10 CSR 25-18.010 Owner, Holder, and the Department may collectively be referred to as the “Parties” herein.

RECITALS

WHEREAS, Owner is the owner in fee simple of certain real property commonly known and numbered as _____ [site name and address] _____, shown on the site map attached hereto as Exhibit A, and legally described as:

[insert legal description of the real property OR reference and attach as Exhibit B]

(the “Property”);

WHEREAS, the Property is situated in _____ County [NOTE: name each County where any portion of the Property is located, and/or “the City of St. Louis”], Missouri;

WHEREAS, Owner desires to grant to the Holder this Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Missouri Environmental Covenants Act;

WHEREAS, the Missouri Department of Natural Resources enters into this covenant as a “department” pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039 RSMo, with all the attendant rights of a “department” under such Act, which include but are not limited to having a right to enforce this Covenant;

WHEREAS, Holder enters into this covenant as a “holder” pursuant to the Missouri Environmental Covenants Act, with all the attendant rights of a “holder” under such Act, which include but are not limited to acquiring an interest in the Property and a right to enforce this Covenant;

[Select type of site:]

[For BVCP sites:] WHEREAS, _____ [Remediating Party] entered into a Letter of Agreement (“Agreement”) for the Property pursuant to the Department’s Brownfields/Voluntary Cleanup Program (“BVCP”), § 260.565, et seq., RSMo. This Agreement requires [Remediating Party] to file an Environmental Covenant for the Property with the appropriate recorder of deeds in the event that chemicals of concern remain at the site above standards that are protective of unrestricted land use, following the investigation and remediation of the site under the BVCP.

[For DERT sites:] _____ [Remediating Party] enrolled in the Department’s Drycleaning Environmental Response Trust (“DERT”) Fund for the oversight of investigation and cleanup of contamination on the Property in accordance with Sections 260.900 to 260.960

RSMo, and 10 CSR 25-17.010 to -17.170. Consistent with 10 CSR 25-17.080 and 10 CSR 25-18.010, this Environmental Covenant is being filed with the appropriate recorder of deeds because chemicals of concern remain at the site above levels that are protective of unrestricted land use, following the investigation and remediation of the site under the DERT Fund.

WHEREAS, the environmental response project conducted at the Property included the following activities:

[Provide background summary including as appropriate:

- *Investigative history, regulatory program*
- *brief description of the contamination, type, location, extent, and contaminants of concern*
- *Source for risk assessment methodology and remediation standards selected (i.e. MRBCA 2006, CERCLA/RAGS, etc.); this is a key element providing the basis for the covenant*
- *Summary of response actions taken, i.e. soil removal to remediate xyz chemicals in some portion of the site; placement of engineered cap; remediation of groundwater; asbestos or lead paint abatement, etc.*
- *Any other info considered appropriate]*

WHEREAS, upon completion of the response actions described above, contaminants of concern, which include but may not be limited to *[(list remaining COCs here)]*, remain on the Property above levels that are protective of unrestricted use of the Property; and

WHEREAS, the remedies described above are deemed protective if and only if the protective measures described in this Covenant remain in place for as long as the contaminants of concern remain at the Property.

NOW THEREFORE, Owner, Holder, and the Department agree to the following:

1. Parties.

The Owner, Holder, and the Department are parties to this Environmental Covenant, and may enforce it as provided in Section 260.1030, RSMo.

2. Activity and Use Limitations.

Owner hereby subjects the Property to, and agrees to comply with, the following activity and use limitations:

[insert appropriate paragraph(s) here from Attachment "Model Activity and Use Limitations" to include Land Use Restrictions, Soil Restrictions, Groundwater Restrictions, and/or Construction Restrictions]

If any person desires in the future to use the Property for any purpose or in any manner that is prohibited by this Covenant, the Department and the Holder must be notified in advance so that a Modification, Temporary Deviation, or

Termination request can be considered as described below. Further analyses and/or response actions may be required prior to any such use.

3. Running with the Land.

This Covenant shall be binding upon Owner and Owner's heirs, successors, assigns, and other transferees in interest (collectively referred to as "Transferees") during their period of ownership, and shall run with the land, as provided in Section 260.1012, RSMo, subject to amendment or termination as set forth herein. The term "Transferee(s)," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees (subject to applicable lender liability protections prescribed by law), easement holders, and/or lessees.

4. Location of Files and Records.

Records of this environmental response project for the Property are currently located in the Department's offices in Jefferson City, Missouri. Information regarding the project may be obtained from the Department through a request under Chapter 610 RSMo, commonly referred to as the Missouri Sunshine Law, to the Department's Custodian of Records, referencing the site identification name of _____ *[name and/or ID # of site/facility per the Department's record keeping system]*.

5. Enforcement.

Compliance with this Covenant may be enforced as provided in Section 260.1030, RSMo. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority under any other applicable law.

In addition to or in lieu of any other remedy authorized by law, prior to taking legal action to enforce this Covenant, the Department may require Owner/Transferee to submit a plan to investigate and/or correct any alleged violation of this Covenant. If such Owner/Transferee fails to act within the required timeframe or if the Department finds a proposed remedy unacceptable, the Department may pursue any remedy authorized by law.

6. Right of Access.

Owner, on behalf of itself and any Transferees, hereby grants to the Holder and the Department and their respectively authorized agents, contractors, and employees, the right to access the Property at all reasonable times for implementation, monitoring, inspection, or enforcement of this Covenant and the related environmental response project. Nothing herein shall be deemed to limit or otherwise impede the Department's rights of access and entry under federal or state law or other agreement.

7. Compliance Reporting.

Owner/Transferee shall submit to Holder and the Department, by no later than January 31st of each year, documentation verifying that the activity and use limitations imposed hereby were in place and complied with during the preceding calendar year. The Compliance Report shall include the following statement, signed by Owner/Transferee:

I certify that to the best of my knowledge, after thorough evaluation of appropriate facts and information, the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

In the event that an Owner, Transferee, or Holder becomes aware of any noncompliance with the activity and use limitations described in paragraph 2 above, such person or entity shall notify all other Parties to this Covenant in writing as soon as possible, but no later than 10 business days thereafter.

8. Additional Rights.

[Section 260.1009.2(6), RSMo provides that the Covenant may include rights of the Holder in addition to the right to enforce the Covenant. Please insert any such additional rights here. If none, delete.]

9. Notice upon Conveyance.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20____, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF _____ COUNTY, _____, ON _____, 20____, AS DOCUMENT _____, BOOK____, PAGE _____.

Owner/Transferee shall notify Holder and the Department within ten (10) days following each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

10. Representations and Warranties.

Owner hereby represents and warrants to Holder and the Department:

- a) that Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;

- b) that this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected; and

[include one of the following, as appropriate:]

[option 1: c) only]

- c) that Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered.

[option 2: both d) and e)]

- d) that Owner has identified all other parties who hold any interest (e.g., encumbrance) in the Property and notified such parties of Owner's intention to enter into this Covenant; and
- e) to the extent that other interests in the Property exist, Owner *[and any other person who holds an interest]* has agreed to subordinate such interest to this Covenant, pursuant to Section 260.1006.4, RSMo, and the subordination agreement *[(attached hereto as Exhibit __, or recorded at _____)]*.

11. Amendments, Termination, and Temporary Deviations.

This Covenant may be amended or terminated by approval of the Department, **Holder**, *[Delete Holder if Owner=Holder]* and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to section 260.1027 RSMo. Any other Parties to this Covenant hereby waive the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by the Department in lieu of a permanent amendment to this Covenant. Owner/Transferee may submit a written request to the Department to temporarily deviate from specified requirements described herein for a specific purpose and timeframe, which shall not exceed 90 days. Any such request shall be transmitted to the Holder and the Department as described below. The request must specifically invoke this paragraph of this Covenant, fully explain the basis for such temporary deviation, and demonstrate that protection of human health and the environment will be maintained. The Department shall evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

12. Severability.

If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law.

This Covenant shall be governed by and interpreted in accordance with the laws of the State of Missouri.

14. Recordation.

Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Owner shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner shall be responsible for any costs associated with recording this Covenant.

15. Effective Date.

The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of the county in which the Property is situated.

16. Distribution of Covenant.

Within thirty (30) days following the recording of this Covenant, or any amendment or termination of this Covenant, Owner/Transferee shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the Covenant as recorded with the appropriate recorder of deeds (including book and page numbers) to: (a) each of the Parties hereto; (b) each person holding a recorded interest in the Property, including any mortgagees or easement holders; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated by the Department.

17. Contact Information.

Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Owner/Transferee:

[title]
[address]

If to Holder:

[title]
[address]

If to Department:

Project Manager – [site name]
[Program/Section within DNR], Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176

Owner/Transferee, Holder, or the Department may change the designated recipient of such notices by providing written notice of the same to each other. If the Department provides notice to a former Owner/Transferee, then such Owner/Transferee shall so notify both the Department and the current Owner/Transferee of the Property.

18. Reservation of Rights.

This Covenant is a necessary component of the environmental response project described above. Nothing in this Covenant shall be construed so as to relieve any Owner/Transferee from the obligation to comply with this Covenant during their period of ownership [*see note above***], or with any other source of law. This Covenant is not a permit, nor does it modify any permit, order, agreement, decree, or judgment issued under any federal, State, or local laws or regulations, and the Department does not warrant or aver in any manner that an Owner/Transferee's compliance with any aspect of this Covenant will result in compliance with any such requirements. The Department reserves all legal and equitable remedies available to enforce the provisions of this Covenant or any other legal requirement, and/or to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Property. Nothing herein shall be construed so as to prevent the Department or Holder from taking any independent actions as allowed by law.

FOR DEPARTMENT

Field Code Changed
Field Code Changed

By: _____ Date: _____
David J. Lamb, Director
Hazardous Waste Program
Missouri Department of Natural Resources
PO Box 176
Jefferson City, MO 65102-0176

STATE OF MISSOURI)
)
COUNTY OF _____)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared David J. Lamb, Director of the Hazardous Waste Program of the Missouri Department of Natural Resources, a state agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Director and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public

MODEL ACTIVITY AND USE LIMITATIONS

Activity and Use Limitations (AULs) fall into several categories including land use restrictions, groundwater, disturbance, and construction. Depending on site-specific conditions, restrictions other than those listed here may be appropriate, and may be agreed upon by the Owner and the Department.

LAND USE RESTRICTIONS:

- A. *This “No Residential Land Use” restriction is often used in Covenants, and may appear by itself or in combination with other restrictions for soil and groundwater. It prohibits all residential uses, including but not limited to schools and child-care centers. While schools and child-care centers may not be considered residential uses for purposes of many local zoning schemes, these uses might not be safe for children under the typical risk assessment approaches used for non-residential exposures, and are therefore often prohibited as a safety measure. Special cases can be considered on a site-specific basis.*

No Residential Land Use:

Based on reports on file at the Department’s offices in Jefferson City, Missouri, the Property currently meets the Department’s standards for non-residential use. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place.

The Property shall **not** be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, child-care facilities, or any land use where persons can be expected to reside.

- B. *This “Restricted Residential Land Use” restriction is a special category which allows a site with contamination above residential target levels to be used for apartments, condominiums, or similar residential uses when it is safe to do so. This restriction would typically be used in connection with other additional restrictions. Examples might include an apartment complex with contaminated soil capped under a parking lot, or non-volatile contaminants under a building foundation. Such uses may be currently existing or planned redevelopment. The approach is most often used with Brownfield redevelopment. In any acceptable scenario, actual exposures to the residents must not exceed a Residential level in order to use this provision. For example, exposed surface soil would have to meet Residential target levels so that residents could safely use green space. The property owner, rather than each tenant, is responsible for carrying out any special management of the residual contamination to prevent exposures. If an engineered barrier is involved, a restriction pertaining to*

such engineered control would also be used. Single family homes, duplexes and similar developments (whether rental or owner occupied) are not suitable for this provision.

Restricted Residential Land Use:

Based on reports on file at the Department's offices in Jefferson City, Missouri, the Property currently meets the Department's standards for non-residential use and for certain limited residential uses. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place.

The Property may be used for non-residential purposes, and/or multi-family residential purposes such as apartments or condominiums; provided, however, that the Property shall **not** be used for single family homes, duplexes, or [*include as appropriate: schools, child-care facilities, etc.*].

SOIL RESTRICTIONS:

- C. *This "No Disturbance of Soil" restriction prohibits all disturbance of soil in a specified area and depth on the property, unless done in accordance with a Department-approved plan. The "Construction Worker Notice" restriction is also used when soil at the site (or in a specific area) exceeds target levels appropriate for construction worker exposure. It is not used at all sites with soil disturbance restrictions, since safe levels of contaminants for construction worker exposure differ from those for residents and non-residents. Note that while the Department may review and approve Soil Management Plans in connection with a "No Disturbance of Soil" restriction, the Department does not review and approve Worker Health and Safety Plans. While the Covenant can prohibit construction work at the site (or in a specific area) unless soil is managed appropriately and appropriate measures are taken to protect workers, the Department will not approve, and the Covenant need not specifically describe, what those worker safety protective measures should be. It is the responsibility of those proposing to disturb contaminated soils to ensure that appropriate worker safety protective measures are taken in accordance with applicable health and safety laws and regulations.*

No Disturbance of Soil:

Based on reports on file at the Department's offices in Jefferson City, Missouri, contaminants of concern remaining at the Property exceed the Department's standards for [*non-residential use and/or construction worker exposure*], but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the property so long as the soil is not disturbed such that exposure would result.

Therefore, soil on the Property [*this may be limited to certain areas shown in a map attached hereto as Exhibit ____, which is hereby incorporated by reference*] shall not be excavated or otherwise disturbed

[*choose one of the following:*]

- 1) in any manner without the prior written approval of the Department. If an Owner/Transferee desires to disturb soil at the Property [*in one or more of the designated areas*], then such Owner/Transferee shall request permission to do so from the Department at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the Department may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur.

[*or:*]

- 2) except in accordance with the Department-approved Soil Management Plan attached hereto as Exhibit ____, which is hereby incorporated by reference.

Contaminated soil may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the Department and Holder verbally or in writing as soon as practicable, but no later than 48 hours after the disturbance. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report describing such emergency and any response actions.

[*Use when Construction Worker levels are exceeded:*]

Construction Worker Notice

In the event that construction work is to be performed that may expose workers to contaminated soil on the Property [*this may be limited to areas and depths shown on the map attached hereto as Exhibit ____, which is hereby incorporated by reference*], Owner/Transferee shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that results in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant [*and Management Plan, if applicable*] to any individuals responsible for the construction. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years, and shall provide copies of such records to the Department and/or Holder upon request.

- D. *This "Engineered Controls for Soil" restriction is used to ensure that physical barriers or other systems designed to prevent exposure to contaminated soil are properly inspected and maintained, and are not disturbed, removed or inactivated.*

The most common examples are a placing a cap over any soil contaminated above levels that are protective of potential uses, or installing vapor barriers or passive or active venting systems under buildings to prevent infiltration of volatile contaminants. A Management Plan can be included as an Exhibit to guide future site activities, such as inspection, maintenance and repair of the control, utility trenching and repair, installation of fence or sign posts, modification or construction of buildings, or any other anticipated activities as appropriate. Such plan may provide for any record-keeping, Department notification, and/or Department approval of various activities. Self-inspection items and reporting schedule requirements may also be included in the plan.

Engineered Controls for Soil:

Based on reports on file at the Department's offices in Jefferson City, Missouri, contaminants of concern remaining in the soil at the Property do not pose a significant current or future risk to human health or the environment so long as the engineered control(s) described below is/are maintained so as to prevent exposure, release, or migration of contaminants from the soil.

Therefore, the following engineered controls must remain in place and remain effective in accordance with the Department-approved ____ [insert name of plan] ____, unless and until the Department provides written approval for any modifications:

[Insert requirements for maintenance of engineered controls. If appropriate, refer to Management Plan included as an Exhibit. Alternatively, describe how the control (e.g. Soil Cap, Parking Lot, pavement, building slab, etc.) and contaminated soil in the area of the Property shown in Exhibit __ must be effectively maintained (as an exposure barrier, a rainwater infiltration barrier, etc.) as specified in ____ [Management Plan] _____. Or that the active or passive venting system or vapor barrier installed in a particular area of the Property must be effectively maintained according to ____ [Management Plan] ____.]

GROUNDWATER RESTRICTIONS:

- E.** *This "No Drilling or Use of Groundwater" restriction prohibits the use of contaminated groundwater beneath the site. It also prohibits drilling for other purposes that could spread the contamination to deeper aquifers. Certain activities would be allowed under plans approved by the Department, such as the installation of monitoring wells, withdrawal of samples for analysis, or drilling of wells or withdrawal of water for remediation purposes.*

No Drilling or Use of Groundwater:

Based on reports on file at the Department's offices in Jefferson City, Missouri, contaminants of concern remain in groundwater in one or more zones beneath the Property at levels exceeding the Department's standards for groundwater use. Such

exceedances include: *[describe contaminants and what standard they exceed; e.g. benzene exceeds domestic use standard]*.

Therefore, in addition to any applicable state or local well use restrictions *[provide citation if existing restrictions are known to apply]*, the following restrictions shall apply to the Property:

- 1) Groundwater from *[this may be limited to only certain contaminated zones]* the Property shall not be consumed or otherwise used for any purpose, except for the collection of samples for environmental analysis purposes, collection or treatment of groundwater for remedial purposes, or collection or treatment of groundwater as part of excavation or construction activities.
- 2) There shall be no drilling or other artificial penetration of any groundwater-bearing unit(s) containing contaminants, unless performed in accordance with a Department-approved work plan;
- 3) Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with a Department-approved work plan.

- F.** *This “Engineered Controls for Groundwater” restriction is used to ensure that physical barriers or other systems designed to prevent exposure to contaminated groundwater are properly inspected and maintained, and are not disturbed, removed or inactivated. Common examples include: (1) passive or active underground systems designed to control the movement of groundwater such as a pumping system or bentonite slurry wall, (2) systems designed to passively or actively treat groundwater such as flow-through chemical or bio-filters, or (3) vapor barriers and passive or active venting systems under buildings to prevent infiltration of volatile contaminants emanating from a groundwater plume. A management plan can be included as an Exhibit to guide future site activities, such as inspection, maintenance, and repair of the control, utility trenching and repair, installation of fencing or sign posts, modification or construction of buildings, or any other anticipated activities as appropriate. Such plan may provide for any record-keeping, Department notification, and/or Department approval of various activities. Self-inspection items and reporting schedule requirements may also be included in the plan.*

Engineered Controls for Groundwater:

Based on reports on file at the Department’s offices in Jefferson City, Missouri, contaminants of concern remaining in the groundwater beneath the Property do not pose a significant current or future risk to human health or the environment so long as the engineered control(s) described below is/are maintained so as to prevent exposure, release, or migration of contaminated groundwater.

Therefore, the following engineered controls must remain in place and remain effective in accordance with the Department-approved ____*[insert name of plan]*____, unless and until the Department provides written approval for any modifications:

[Insert requirements for maintenance of engineered controls. If appropriate, refer to Management Plan included as an Exhibit. Alternatively, describe how the control and contaminated groundwater in the area of the Property shown in Exhibit __ must be effectively maintained (as an exposure barrier, a rainwater infiltration barrier, etc.) as specified in ____ [Management Plan] _____. Or that the active or passive venting system or vapor barrier installed in a particular area of the Property must be effectively maintained according to ____ [Management Plan] ____.]

- G.** *These “No Construction Worker Exposure to Groundwater” and “Construction Worker Notice” restrictions are used when groundwater at the site (typically shallow groundwater that would be encountered in an excavation) exceeds target levels appropriate for construction worker exposure. They are not used at all sites with soil or groundwater restrictions, since safe levels of contaminants for construction worker exposure differ from those for residents and non-residents. Note that while the Department may review and approve Soil Management Plans in connection with this restriction, the Department does not review and approve Worker Health and Safety Plans. While the Covenant can prohibit construction work at the site (or in a specific area) unless soil is managed appropriately and appropriate measures are taken to protect workers, the Department will not approve, and the Covenant need not specifically describe, what those worker safety protective measures should be. It is the responsibility of those proposing to disturb contaminated soils to ensure that appropriate worker safety protective measures are taken in accordance with applicable health and safety laws and regulations.*

No Construction Worker Exposure to Groundwater:

Based on reports on file at the Department’s offices in Jefferson City, Missouri, contaminants of concern remaining at the Property exceed the Department’s standards for construction worker exposure to groundwater, but do not pose a significant current or future risk to human health or the environment so long as direct exposure is prevented.

Therefore, construction workers shall not be exposed to groundwater on the Property *[this may be limited to areas and depths shown on the map attached hereto as Exhibit __, which is hereby incorporated by reference]*

[choose one of the following:]

- 1) in any manner without the prior written approval of the Department. If an Owner/Transferee desires to disturb soil at the Property *[in one or more of the designated areas]*, then such Owner/Transferee shall request permission to do so from the Department at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the Department may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur.

[or:]

- 2) except in accordance with the Department-approved Management Plan attached hereto as Exhibit ____, which is hereby incorporated by reference.

Contaminated groundwater may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the Department and Holder verbally or in writing as soon as practicable, but no later than 48 hours after the disturbance. Any contaminated groundwater disturbed as part of an emergency response action must remain in the excavation, or properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report describing such emergency and any response actions.

Construction Worker Notice:

In the event that construction work is to be performed that may expose workers to contaminated groundwater on the Property [*this may be limited to areas and depths shown on the map attached hereto as Exhibit ____, which is hereby incorporated by reference*], Owner/Transferee shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that may result in exposure to such groundwater, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant [*and Management Plan, if applicable*] to any individuals responsible for the construction. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years, and shall provide copies of such records to the Department and/or Holder upon request.

CONSTRUCTION RESTRICTIONS:

- H. *This "No Construction of Buildings" restriction prohibits the construction of enclosed buildings without the Department's written approval, and is usually used when vapor intrusion from contaminated soil or groundwater would be expected to make such a building unsafe.*

No Construction of Buildings:

Based on reports on file at the Department's offices in Jefferson City, Missouri, contaminants of concern remaining at the Property exceed the Department's standards for [*residential/non-residential use*] related to [*subsurface soil/groundwater to indoor air exposure for volatile contaminants*] [*in certain areas of the Property*].

Therefore, no enclosed buildings may be constructed on the Property [*in the areas shown on the map attached hereto as Exhibit ____, which is incorporated herein by reference*] without written approval from the Department. If an Owner/Transferee desires to construct a building on the Property [*or in specified areas shown on the map*], then such Owner/Transferee shall request, in writing, approval from the Department at least 60 days before construction is anticipated to begin. Based on the

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potential hazards associated with the construction, the Department may approve the request, deny the request, or may require specific protective or remedial actions before allowing construction activities to occur. Construction shall not be initiated prior to receipt of written approval from the Department.

