



**Missouri  
Department  
of Natural  
Resources**

**DECLARATION OF RESTRICTIVE COVENANT AND GRANT OF ACCESS**

This Restrictive Covenant and Grant of Access entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between \_\_\_\_\_, a Missouri corporation, having a mailing address of \_\_\_\_\_, as party of the first part, and Missouri Department of Natural Resources (the department), a political subdivision of the State of Missouri, having a mailing address of P. O. Box 176, 205 Jefferson Street, Jefferson City, Missouri 65102, as party of the second part. \_\_\_\_\_ entered into a Letter of Agreement pursuant to the Voluntary Cleanup Program (VCP), § 260.565, *et seq.*, RSMo, with the department for the \_\_\_\_\_, a site of environmental contamination located at \_\_\_\_\_ in the city of \_\_\_\_\_, Missouri, as shown on the site map attached hereto as Exhibit A, hereinafter referred to as “the Property,” and more particularly described as follows:

**(insert legal description here)**

The Agreement requires [Voluntary Party] to file a Restrictive Covenant and Access with the \_\_\_\_\_ County Recorder of Deeds for the Property in the event that contaminants of concern remain at the site above unrestricted land use levels for any reason following the investigation and remediation of the site under the Voluntary Cleanup Program.

Pursuant to the Agreement, [Voluntary Party] implemented certain response activities at the Property, including the following:

**(insert response activities which have been conducted i.e. soil removal to remediate xyz contaminants in whatever area of the site; placement of engineered cap; remediation of groundwater; asbestos or lead paint abatement, etc.)**

Because contaminants of concern will remain at levels above those appropriate for unrestricted use of the property, this Restrictive Covenant is being recorded with the \_\_\_\_\_ County Recorder of Deeds for the purposes of protecting public health and safety, the environment, and to prevent interference with the performance, operation, and maintenance of any future response activities selected and/or undertaken by the department, any party acting as an agent for the department, or any party acting pursuant to a work plan approved by the department.

For the purposes of this Restrictive Covenant and Grant of Access, the term “Property Use A” refers to property whose use is unrestricted and that is either being used for residential use, or is zoned for residential use, or access to the Property is not restricted and children under 18 years of age are on the Property more than 250 days per year. “Property Use B” refers to property not included in “Property Use A”, which is publicly accessible with public access limited to non-routine visits, and where visitors are not supervised while on the property, commonly referred to as “commercial use.” “Property Use C” refers to property not included in “Property Use A” or “B” which is not publicly accessible, and where visitors are supervised while on the property, commonly referred to as “industrial use.”

If any provision of this Restrictive Covenant and Grant of Access is the subject of any laws or regulations established by any federal, state, or local government, the stricter of the two standards shall prevail.

NOW THEREFORE, **(insert name of property owner)**, **(insert mailing address of owner)** (hereinafter referred to as the “Owner”), hereby imposes restrictions on the Property and covenants and agrees that:

**1. Purpose.**

In accordance with the Agreement, the purpose of this Restrictive Covenant is to assure:

[INSERT APPROPRIATE FORM PARAGRAPH(S) HERE FROM ATTACHMENT:

**A. Purpose(s) of Restrictive Covenant ]**

**2. Restrictions Applicable to the Property.**

In furtherance of the purposes of this Restrictive Covenant, Owner shall assure that use, occupancy, and activity of and at the Property are restricted as follows:

[INSERT APPROPRIATE FORM PARAGRAPH(S) HERE FROM

**A. Restrictions**

to include [Use Restrictions, Disturbance Restrictions, and/or Construction Restrictions]

The Owner shall prohibit all activities as presented above that will result in human exposures above those specified in the site assessment, risk assessment or remedial action plan performed or approved by the Missouri Department of Health and Senior Services for the Property or that would result in the release of a hazardous substance that was contained as a part of the remedial action.

[RESTRICTIONS DO NOT PREVENT . . . ]

**3. Potential Hazards.**

Except as provided in Paragraph 7 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

**A.** Create a risk of migration of contaminants or a potential health hazard to human health or the environment.

**B.** [Result in disturbance of the structural integrity of the engineered controls designed or utilized at the Property to contain contaminants or limit human and/or ecological exposure to contaminants.]

**4. Maintenance and Inspection Requirements**

[insert description of engineering control], as previously described and shown in Exhibit \_\_\_\_, is serving as an engineered control to prevent exposure to [subsurface soil, water contamination, etc]. To assure that this engineered control remains an effective barrier to exposure, the Owner shall take the following measures:

- A. Visually inspect the integrity of the [cap, concrete floor etc.] surface annually, at a minimum. Particular attention shall be given to any expansion joints, cracks, floor drain openings, and any other routes of potential exposure to subsurface soils.
- B. Repair and seal any areas of concern in the [cap, concrete floor, etc.] identified during the aforementioned inspections. These areas of concern also include the widening of existing seams or expansion joints, cracks, or other openings providing potential exposure to subsurface soils.
- C. \_\_\_\_\_

**D. In addition to the Owner's annual inspections, the Owner shall submit to the department every two years a written report signed by the owner that addresses the following:**

- 1. Owner's inspection and, as necessary, maintenance of the cap
- 2. Inspection report and certification shall be performed by a professional engineer every even-numbered year and required to be submitted to the department
- 3. The current uses of the property and assurances that the property is not being used for residential purposes. (i.e., "Property Use A" as described in the CALM document and in the fourth paragraph of this document.)
- 4. Current ownership status and any anticipated (i.e. known to owner) changes of claims on the title.

E. The owner may submit and the department shall consider fairly a change in the frequency of inspection and reporting if warranted by technical facts.

**5. Alterations of Property.**

Owner shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Restrictive Covenant unless the Owner has first recorded the department's written approval of such alteration upon the land records of \_\_\_\_\_ County Recorder of Deeds. The Owner may appeal the department's decisions regarding proposed

alterations to the Missouri Hazardous Waste Management Commission pursuant to 10 CSR 20-15.010(9).

**6. Interfering Activities.**

The Owner shall prohibit all activities on the Property which may interfere with the response activities, operation and maintenance, long-term monitoring, or measures necessary to assure the effectiveness and integrity of the remedial action.

**7. Emergencies.**

In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraph 3 above may be suspended, provided such risk cannot be abated without suspending such Paragraph and the Owner:

- A. Immediately notifies the department of the emergency;
- B. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- C. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- D. Implements a plan approved in writing by the department, on a schedule approved by the department, to ensure that the Property is remediated or restored to its condition prior to such emergency.

**8. Grant of Access to the department.**

Owner hereby grants and conveys to the department, its agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, access to the Property. Pursuant to this Agreement, the department, its agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the department deems necessary for any one or more of the following purposes:

- A. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Restrictive Covenant;
- B. Ensuring that any remediation implemented complies with state law, including, but not limited to, § 260.350, *et seq.*, RSMo; § 260.565, *et seq.*, RSMo; § 260.435, *et seq.*, RSMo; § 260.500, *et seq.*, RSMo;
- C. Performing any additional investigations or remediation deemed necessary to protect human health and the environment as related to the VCP-approved remedial action plan;
- D. [if engineering controls are used:] Ensuring the structural integrity of any engineering controls described in this Restrictive Covenant and Grant of

Access and their continuing effectiveness in containing contaminants and limiting human and ecological exposure to the contaminants.

- 9. Notice and Time of Entry onto Property.**  
Entry onto the Property by the department pursuant to this Agreement shall be upon reasonable notice (not less than 2 weeks) and at reasonable times, provided that entry shall not be subject to these limitations if the department determines that immediate entry is necessary to protect human health or the environment.
- 10. Notice to Lessees and Other Holders of Interest in the Property.**  
Owner, or any future holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with this Restrictive Covenant and Grant of Access. The failure to include such provision shall not affect the validity or applicability to the Property of this Restrictive Covenant and Grant of Access.
- 11. Enforceability of Restrictions; Persons Entitled to Enforce Restrictions.**  
The restrictions in this Restrictive Covenant on use, occupancy, and activity of and at the Property shall be enforceable in an appropriate Court by Owner and/or by the department, their successors, transferees, and assigns. Owner agrees that the restrictions are enforceable, and agrees not to challenge the appropriate circuit court's jurisdiction. If the department believes that the Owner has failed to comply with the terms of the Restrictive Covenant or Institutional Control Contract, within 30 calendar days of notice from the department that a deficiency has been found the Owner shall respond with a proposed plan to remedy the deficiency. If the Owner fails to remedy the deficiency or the remedy is unacceptable to the department, the department may order compliance and seek judicial enforcement. Furthermore, the department may take enforcement action against the Owner and impose, as a last resort, any applicable penalties.
- 12. Written Notice of Property Conveyance Required.**  
The Owner shall provide written notice to the Director of the department, of the intent to transfer an interest in the Property not less than 14 days prior to the expected date of transfer. This notice shall include the name and business address of the transferee and the expected date of transfer.
- 13. Property Conveyance – Continuance of Provisions.**  
The Owner shall not convey any title, Access, or other interest in the Property without adequate and complete provision for the continued implementation, operation, and maintenance of any remedial action that has been implemented on the Property and without assuring prevention of the releases and exposures described in the provisions of Paragraph 1, above.

**14. Duration of Restrictive Covenant.**

The restrictions and other requirements described in this Restrictive Covenant and Grant of Access shall run with the land and shall be binding upon any future Owners, heirs, successors, lessees, or assigns and their authorized agents, employees, or persons acting under their direction or control. This Restrictive Covenant and Grant of Access shall continue into perpetuity, unless and until rescinded by the department. A copy of this Restrictive Covenant and Grant of Access shall be provided to all heirs, successors, assigns, and transferees of Owner.

If any provision of this Restrictive Covenant and Grant of Access is held invalid by any Court of competent jurisdiction, invalidity of any such provision shall not affect the validity of any other provisions hereof. Also, such provisions shall continue unimpaired in full force and effect.

**15. Amending, Modifying, or Rescinding the Restrictive Covenant**

This Restrictive Covenant and Grant of Access shall not be amended, modified or terminated except by a written instrument executed by and between the Owner at the time of the proposed amendment, modification, or termination and the department. Within five (5) days of executing an amendment, modification, or termination of this Restrictive Covenant and Grant of Access, the Owner shall record such amendment, modification, or termination, on the appropriate form provided by the department, with the \_\_\_\_\_ County Recorder of Deeds, and within five (5) days thereafter, the Owner shall provide a true copy of the recorded amendment, modification, or termination to the department.

In the event the department determines that risks posed by the site have substantially changed subsequent to the execution of this Restrictive Covenant and Grant of Access (e.g., contaminant levels at the site change, or cleanup levels change), the department may rescind this Restrictive Covenant and Grant of Access.

**16. Disputes**

Any disputes regarding provisions of this covenant that cannot be resolved by the department and the property owner will be addressed pursuant to 10 CSR 25-15.010(9).

**17. Institutional Control Contract**

The department's Hazardous Waste Program requires that owners of property

enrolled in the Voluntary Cleanup Program for which a Restrictive Covenant and Grant of Access is required, enter into an Institutional Control Contract with the department. Owner of the Property has entered into such an Contract with the department. Said Contract is attached hereto as Exhibit B and by this reference made a part hereof.

SIGNATURES

The undersigned property owner or person executing this Restrictive Covenant and Grant of Access on behalf of the Owner represents and certifies that they are truly authorized and have been fully empowered to execute and deliver this Restrictive Covenant and Grant of Access.

STATE OF MISSOURI     )  
  )  
COUNTY OF             )     SS

Property owner(s) or authorized representative(s) thereof

Type or Print : \_\_\_\_\_ Signature \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print : \_\_\_\_\_ Signature \_\_\_\_\_ Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Owner(s) or Owner’s authorized representative(s) of the above-described Property has caused this Restrictive Covenant and Grant of Access to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Signed in the presence of Property Owner/Authorized Representative subscribed and acknowledged.

Subscribed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.



## MODEL PARAGRAPHS FOR USE IN RESTRICTIVE COVENANT

### 1. Purpose(s) of Restrictive Covenant

Insert one or more of the following as applicable at section 1 of the restrictive covenant

- A. That the Property is used in a manner consistent with the risk assessment and resulting risk-based cleanup standards for the Property, which assessment has either been prepared or approved by the Missouri Department of Health and Senior Services.
- B. That groundwater at the Property is not utilized [at all; or for domestic uses such as drinking or bathing].
- C. That humans are not exposed to soils at the Property contaminated with substances in concentrations exceeding the levels established in the cleanup plan or risk assessment for the Property, which assessment has either been prepared or approved by the Missouri Department of Health and Senior Services.
- D. That storm water or water of other origin does not infiltrate soils at the Property contaminated with substances in concentrations exceeding the pollutant mobility criteria established by the department.
- E. That Buildings are not constructed over soils [or ground water] at the Property contaminated with substances in concentrations exceeding the volatilization criteria established by the department [or that pose a risk of forming dangerous levels of vapors inside such buildings].
- F. That the engineered control(s) described herein are not disturbed and are properly maintained to prevent human and ecological exposure to soils at the Property polluted with substances in concentrations exceeding the levels established in the cleanup plan or risk assessment for the Property.
- G. Other (as circumstances require).

### 2. Restrictions

Restrictions 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 will be negotiated between the property owner and the department.

USE RESTRICTIONS:

- A. **Commercial Use (Scenario B) (Includes C):** The Property currently meets the department standards for restricted commercial use (Property Use B) and, based on reports on file at the department offices in Jefferson City, Missouri, the contaminants

present pose no significant present or future risk to human health or the environment based on restricted use of the Property. No further response action for the Property is required by the department as long as the Property is not to be used for residential (Property Use A) or other purposes constituting unrestricted use. Since Property Use B cleanup standards are equal to or more stringent than Property Use C (industrial use), the Property also meets or exceeds Property Use C standards and may be used for Property Use C uses. The Property shall not be used for purposes other than commercial or industrial uses. If any person desires in the future to use the Property for residential or other purposes constituting unrestricted use, the department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Property Use A would define the use of the site.

- B. Industrial Use (Scenario C) Only:** The Property currently meets the department standards for restricted industrial use (Property Use C) and, based on reports on file at the department offices in Jefferson City, Missouri, the contaminants present pose no significant present or future risk to human health or the environment based on restricted industrial use of the Property. No further response action for the Property is required by the department as long as the Property is not to be used for residential or other purposes constituting unrestricted use (Property Use A) or for commercial purposes (Property Use B). The Property shall not be used for purposes other than industrial uses. If any person desires in the future to use the Property for residential or other purposes constituting unrestricted use or for commercial purposes, the department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Property Use A or Property Use B would define the use of the site.
- C. Commercial (B) or Industrial (C) With Engineering Controls:** The Property currently meets the department standards for restricted commercial use and, based on reports on file at the department offices in Jefferson City, Missouri, the contaminants present pose no significant present or future risk to human health or the environment based on restricted commercial use of the Property. No further response action for the Property is required by the department as long as the Property is not to be used for residential or other purposes constituting unrestricted use. The Property is protective for restricted commercial use as long as the **(insert engineering or other physical controls in place)** is/are maintained to prevent exposure. The Property shall not be used for purposes other than commercial uses. If any person desires in the future to use the Property for residential or other purposes constituting unrestricted use, the department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Property Use A would define the

use of the site.

- D. Industrial (C) With Engineering Controls:** The Property currently meets the department standards for restricted industrial use and, based on reports on file at the department offices in Jefferson City, Missouri, the contaminants present pose no significant present or future risk to human health or the environment based on restricted industrial use of the Property. No further response action for the Property is required by the department as long as the Property is not to be used for residential or other purposes constituting unrestricted use or for commercial purposes. The Property is protective for restricted industrial use as long as the **(insert engineering or other physical controls in place)** is/are maintained to prevent exposure. The Property shall not be used for purposes other than industrial uses. If any person desires in the future to use the Property for residential or other purposes constituting unrestricted use or for commercial purposes, the department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Property Use A or Property Use B would define the use of the site.

GROUNDWATER RESTRICTIONS:

- E. Contaminants above GTARC; No Drilling or Use of Groundwater:** The groundwater beneath the Property contains contaminants identified in reports on file at the department offices in Jefferson City, Missouri at concentrations that exceed the cleanup standards of the department. Therefore, the owner and operator of the Property must prevent: use of and exposure to the groundwater; any artificial penetration of the groundwater-bearing unit(s) containing contaminants which could result in cross-contamination of clean groundwater-bearing units; installation of any new groundwater wells on the Property, except those used for investigative purposes; use of groundwater for drinking or other domestic purposes and the use of groundwater for purposes other than domestic purposes; release of groundwater to surface water bodies, whether such release is the result of human activities or is naturally occurring. Should a release of contaminated groundwater occur, the owner must take action to contain and properly dispose of such groundwater. [Groundwater beneath the Property shall be monitored by the owner in accordance with specific requirements of the department-approved monitoring plan unless or until the department approves any modifications].
- F. Contaminants above GTARC; No Drilling or Use of Groundwater; Engineering Controls for Groundwater:** The groundwater beneath the Property contains contaminants identified in reports on file at the department offices in Jefferson City,

Missouri at concentrations that exceed the cleanup standards of the department, and **(insert physical or engineering controls)** have been constructed in the area located on the map attached as “**Exhibit ( )**.” The physical or engineering controls must remain in place and effective in accordance with the department-approved **(insert name of plan)** unless or until the department approves any modifications.

Additionally, the owner and operator of the Property must prevent: use of and exposure to the groundwater; any artificial penetration of the groundwater-bearing unit(s) containing contaminants which could result in cross-contamination of clean groundwater-bearing units; the installation of any new groundwater wells on the Property, except those used for investigative purposes; the use of groundwater for drinking or other domestic purposes and the use of groundwater for purposes other than domestic purposes; and release of groundwater to surface water bodies, whether such release is the result of anthropic activities or is naturally occurring. Should a release of contaminated groundwater occur, the owner must take action to contain and properly dispose of such groundwater. [Groundwater beneath the Property shall be monitored by the owner in accordance with specific requirements of the department-approved monitoring plan unless or until the department approves any modifications].

**DISTURBANCE RESTRICTIONS:**

- H. **No Disturbance of Soil:** Soil at the Property contains contaminants, as identified in reports on file at the department offices in Jefferson City, Missouri, at concentrations exceeding the department’s cleanup standards for **(commercial (Property Use B), industrial (Property Use C))** use **[in the areas shown on the map at Exhibit ( ) attached hereto]**. Therefore, soil at the Property **[in the areas shown on the map at Exhibit ( ) attached hereto]** shall not be excavated or otherwise disturbed in any manner without the written permission of the department. Should the owner or operator desire to disturb soil at the Property **[in one or more of the areas shown on the map at Exhibit ( ) attached hereto]**, they shall request permission to do so from the department at least 30 days before the soil disturbance activities are 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.
- I. **Disturbance of Soil Permitted Under Approved Soil Management Plan:** Soil at the Property contains contaminants, as identified in reports on file at the department offices in Jefferson City, Missouri, at concentrations exceeding the department’s cleanup standards for **(commercial (Property Use B)/industrial (Property Use C))** use **[in the areas shown on the map at Exhibit ( ) attached hereto]**. Therefore, soil at the Property **[in the areas shown on the map at Exhibit ( ) attached hereto]** shall not be excavated or otherwise disturbed in any manner unless under the provisions of

the department-approved Soil Management Plan attached hereto as Exhibit \_\_\_\_.

CONSTRUCTION RESTRICTIONS:

- J. Soil at the Property contains contaminants, as identified in reports on file at the department offices in Jefferson City, Missouri, at concentrations exceeding the department's cleanup standards for **(commercial (Property Use B)/industrial (Property Use C))** use **[in the areas shown on the map at Exhibit ( ) attached hereto]**. Therefore, no buildings may be constructed on the Property **[in the areas shown on the map at Exhibit ( ) attached hereto]** except with the written permission of the department. Should the owner or operator desire to construct a building on the Property **[in one or more of the areas shown on the map at Exhibit ( ) attached hereto]**, they shall request permission to do so from the department at least 30 days before construction is anticipated to begin. Based on the potential hazards associated with the construction activities, the department may deny the request to construct or may require specific protective or remedial actions before allowing such construction activities to occur.