

COMMISSION AGENDA ITEM  
DOCUMENT ROUTING FORM

① ✓ 4/4/17 (L)

Today's Date: 3/31/17

DOCUMENT TITLE: Access Agreement - Mount Olive Gardens #1, Inc. - Reimbursement for Playground Equipment

COMM. MTG. DATE: 9/7/16 CAM #: 16-0741 ITEM #: CM-10 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Shaniece Louis / Ext. 5036

CIP FUNDED: ☐ YES ☐ NO

2) City Attorney's Office # of originals attached: 1 Approved as to Form: ☒ YES ☐ NO

Date to CCO: 3/31/17 RBD - Approved by RBD prior to his retirement but was never routed for signature due to mixup of original document.  
Initials

3) City Clerk's Office: # of originals: 1 Routed to: Gina Ri/CMO/X5013 Date: 4/3/17

4) City Manager's Office: CMO LOG #: April Date received from CCO: 4/3/17

Assigned to: L. FELDMAN ☒ S. HAWTHORNE ☐ C. LAGERBLOOM ☐  
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM  
(Initial/Date) ☐ PENDING APPROVAL (See comments below)  
Comments/Questions:

Forward \_\_\_ originals to ☐ Mayor ☒ CCO Date: 4/4/17

5) Mayor/CRA Chairman: Please sign as indicated. Forward \_\_\_ originals to CCO for attestation/City seal (as applicable) Date: \_\_\_\_\_

**INSTRUCTIONS TO CLERK'S OFFICE**

City Clerk: Retains 1 original and forwards 1 copy to: Todd Hiteshew (Name/Dept/Ext)

Attach \_\_\_ certified Reso #        ☐ YES ☒ NO Original Route form to CAO -  
\*\*\*\*Please email an executed copy to Shaniece Louis\*\*\*\*



August 23, 2016

Avolene Change, President  
Mount Olive Gardens No. 1, Inc.  
4360 W OAKLAND PARK BLVD.  
LAUDERDALE LAKES FL 33313

Re: Parcels "A" and "B" of the Replat of Blocks 13 and 14, LINCOLN PARK, 1<sup>st</sup> ADDITION, according to the Plat thereof, recorded in Plat Book 71, Page 15 of the Public Records of Broward County, Florida; said lands lying, situate and being in the City of Fort Lauderdale, Broward County, Florida.

Tax Identification No. 5042 04 42 0010

Street Address: 1601 N.W. 6<sup>th</sup> Court  
Fort Lauderdale, FL 33311

(See BCPA data sheet & aerial attached as **Exhibit "A"**)

(Hereinafter, "Property")

### **Permission To Access Property**

Dear Mrs. Change,

The City of Fort Lauderdale ("CITY") is attempting to follow-up with a remedial strategy approved by the Florida Department of Environmental Protection ("FDEP"). The strategy will include the implementation of a woven geotextile filter fabric across the impacted area then covered with 1-foot of clean sand. An examination of the public records indicates that you are the President of Mount Olive Gardens #1, Inc., a Florida corporation, ("MT. OLIVE") which is the Owner of the Property.

With your permission, the CITY proposes to have its contractors enter upon the Property for the purpose of installing engineering controls as follows:

1. An engineering control barrier will be installed that encompasses approximately 4,500 square feet, including approximately 90-foot east-west (sidewalk to sidewalk), and 50-foot north-south (sidewalk to building) ("Project Area").

Permission To Access Property  
Mount Olive Gardens #1, Inc.  
City of Fort Lauderdale  
Folio # 5042 04 42 0010

1

### **Office of the City Manager**

100 North Andrews Avenue, Fort Lauderdale, Florida 33301  
Telephone (954) 828-5013 Fax (954) 828-5599  
[www.fortlauderdale.gov](http://www.fortlauderdale.gov)

2. A permeable woven geotextile filter fabric will be installed across the surface of the affected area, and the fabric then covered with 1-foot of clean sand and then re-sodded to minimize erosion of the soils above the fabric. This engineering control will raise the grade approximately 1-foot across the area, which already has a minimum of 0.5 feet of non-impacted soils.

3. During the installation of the engineering control, dust will be minimized by frequent watering.

4. A Dust and Erosion Control Plan will be implemented during Source Removal activities to minimize migration of affected media.

5. It is anticipated that the installation of the engineering control will be complete within approximately ten (10) days after commencement of the remediation, and will begin within approximately fifteen (15) business days after receipt of counter-execution of this letter by you indicating your permission to the CITY to proceed with the remediation.

6. CITY contractors will need cooperation from tenants to allow unrestricted access to complete installation of the engineering controls. As such, limited access to certain portions of the work area as it proceeds across the Property may be imposed temporarily to restrict access of tenants to excavation areas. CITY will install orange plastic security fence around the perimeter of the Project Area and will have a security guard on duty during non-remediation hours, including weekends and holidays. CITY contractors will diligently minimize disruption of daily access activities and be sensitive to the access needs of the tenants. Subject to the conditions set forth herein, during the remediation process referenced herein, CITY agrees to allow GRANTOR'S tenants to park in the Greg Brewton Sustainable Development Center parking lot, 700 N.W. 19<sup>th</sup> Avenue, Fort Lauderdale, FL ("DSD Parking Lot") after the City's normal business hours. Access will be limited through the East gate only, keeping the West gate locked.

(a) MT. OLIVE tenants who elect to park in the DSD Parking Lot shall agree to indemnify and hold CITY harmless against all claims for injury or loss of property, personal injury, or death caused by the wrongful acts or omissions of MT. OLIVE or its tenants accessing the CITY's DSD Parking Lot as referenced above.

(b) Only those tenants of MT. OLIVE that execute the Permission To Park, Release, and Hold Harmless Application/Agreement ("Release") shall be given permission to park in the CITY's DSD Parking Lot. The tenant's vehicle that is identified in the Release must display a sticker affixed to the driver's side front windshield in order to gain access to the CITY's DSD Parking Lot. The City shall issue the sticker upon execution of the Release.

7. The CITY will reimburse MT. OLIVE for monies spent for new playground equipment and installation at a new location on the site away from the restricted area up to a maximum of \$35,000. Mt. Olive Gardens #1 Inc. will need to develop a scope of work for the

playground equipment and solicit three formal bids of which the best\_responsible value added bidder will be awarded the job. The bids and the recommended awardee will be sent to the City for recordkeeping. Once the playground equipment has been installed, MT. OLIVE shall submit the invoice and a canceled check to the City and City shall reimburse MT. OLIVE within thirty (30) days.

8. With reservation of all rights pursuant to Article VII, Section 10, Pleading Credit, subject to the conditions and limitations set forth in Florida Statute Section 768.28, as same may be amended from time to time, the CITY agrees to indemnify MT. OLIVE against all claims for injury or loss of property, personal injury, or death caused by the negligent acts or omissions of the City with respect to the remediation work outlined herein.

8.1 In the event any existing improvements to MT. OLIVE's Property are damaged as a result of the CITY's conduct of the remediation project, CITY agrees to restore such damaged improvements and fixtures, including the sprinkler and irrigation systems, chain-link fencing, sidewalks, berms, parking lot improvements, vegetation, air conditioning system component parts and equipment, plants, vegetation and trees.

9. Within approximately thirty (30) days of completion of the remediation work, the City's Environmental Consultant will submit to the Florida Department of Environmental Regulation ("FDEP") an Engineering Control Verification Report, which will include a summary of the process and supporting maps, photos and clean fill delivery receipts.

10. Upon FDEP's approval of the Engineering Verification Report, FDEP will require a Declaration of Restrictive Covenant ("Declaration") from the Property Owner. The purpose of this Declaration is to memorialize knowledge of this impacted area, to outline a protocol for maintaining the barrier and to confirm the requirements of soil handling in the event that future redevelopment disturbs the barrier.

11. Attached hereto as Exhibit "B" is a sample Declaration prepared by FDEP, designed to cover all situations. FDEP will ultimately approve the text of a Declaration which is narrowly tailored to fit the circumstances of your Property. You will ultimately be expected to execute the FDEP approved Declaration.

12. If you agree to the foregoing terms and conditions relating to access to the Property, remediation work to be performed on the Property and conditions relative thereto, together with reimbursement for destruction of playground equipment and execution of final FDEP approved Declaration of Restrictive Covenant, please execute below on behalf of Mount Olive Gardens No. 1, Inc., a Florida corporation and return the original executed document to me.

Thank you for your kind cooperation in this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Lee R. Feldman', with a long horizontal flourish extending to the right.

Lee R. Feldman,  
City Manager

E:\Recovered\rbd\_office\2016\Environmental\MountOlive\8-24-16 DRA AMENDED Access Declation.rbd.5.redline.docx  
E:\Recovered\rbd\_office\2016\Environmental\MountOlive\8-24-16 DRA AMENDED Access Declation.rbd.5.clean.docx

**PERMISSION TO ACCESS PROPERTY  
FOR THE PURPOSES  
SET FORTH ABOVE**

I, AVOLENE CHANGE, as President of Mount Olive Gardens No.1, Inc., a Florida corporation, the Owner of the Property identified above, do hereby grant the City of Fort Lauderdale and its contractors access to the Property for the purposes described above, including remediation work to be performed and conditions relating thereto together with reimbursement for destruction of playground equipment and execution of a final FDEP approved Declaration.

Mount Olive Gardens No. 1, Inc.

By: *Avolene Change*  
Avolene Change, President

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this August 25, 2016, by **AVOLENE CHANGE** as President of Mount Olive Gardens #1, Inc. a Florida corporation, on behalf of the corporation. She is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

*Bernadette Pelliccia*

Notary Public, State of Florida

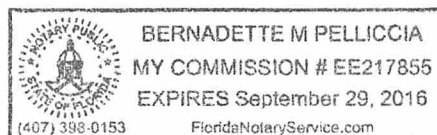
(Signature of Notary taking Acknowledgment)

*Bernadette Pelliccia*

Name of Notary Typed, Printed or Stamped

My Commission Expires:

September 29, 2016  
Commission Number EE 217855



Permission To Access Property  
Mount Olive Gardens #1, Inc.  
City of Fort Lauderdale  
Folio # 5042 04 42 0010

*PA*



**EXHIBIT "A"**

**BROWARD COUNTY PROPERTY APPRAISER'S  
DATA SHEET AND  
AERIAL PHOTO**

**EXHIBIT "B"**

**FDEP TEMPLATE**  
**DECLARATION OF RESTRICTIVE COVENANT**

PA



<b>Site Address</b>	1601-1799 NW 6 COURT, FORT LAUDERDALE	<b>ID #</b>	5042 04 42 0010
<b>Property Owner</b>	MOUNT OLIVE GARDENS #1 INC % NELSON & ASSOCIATES INC	<b>Millage</b>	0312
<b>Mailing Address</b>	5181 NATORP BLVD #140 MASON OH 45040	<b>Use</b>	03

Abbreviated Legal Description	LINCOLN PARK FIRST ADD REPLAT OF BLKS 13 & 14 71-15 B PARCEL A & B
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**The just values displayed below were set in compliance with [Sec. 193.011](#), Fla. Stat., and include a reduction for costs of sale and other adjustments required by [Sec. 193.011\(8\)](#).**

## Property Assessment Values

[Click here to see 2015 Exemptions and Taxable Values as reflected on the Nov. 1, 2015 tax bill.](#)

Year	Land	Building	Just / Market Value	Assessed / SOH Value	Tax
2016	\$373,030	\$4,620,980	\$4,994,010	\$4,500,130	
2015	\$373,030	\$3,742,270	\$4,115,300	\$4,091,030	\$13,500.00
2014	\$373,610	\$3,402,060	\$3,775,670	\$3,719,120	\$13,500.00

### 2016 Exemptions and Taxable Values by Taxing Authority

	County	School Board	Municipal	Independent
Just Value	\$4,994,010	\$4,994,010	\$4,994,010	\$4,994,010
Portability	0	0	0	0
Assessed/SOH	\$4,500,130	\$4,994,010	\$4,500,130	\$4,500,130
Homestead	0	0	0	0
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exempt Type 34-15	\$4,500,130	\$4,994,010	\$4,500,130	\$4,500,130
Taxable	0	0	0	0

## Sales History

Date	Type	Price	Book/Page or CIN
6/1/1970	WD	\$15,087	4368 / 726

## Land Calculations

Price	Factor	Type
\$3.00	124,344	SF
Adj. Bldg. S.F. (Card, Sketch)		47662
Units		60

## Special Assessments

Fire	Garb	Light	Drain	Impr	Safe	Storm	Clean	Misc
03								
R								
60								

Property Id: 504204420010



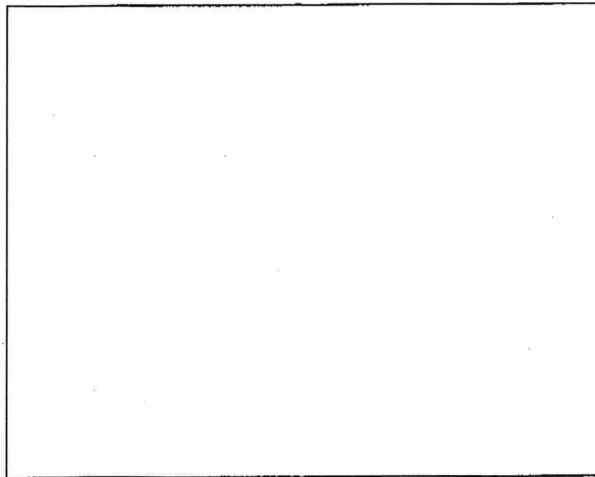
August 30, 2016

1:1,000  
0 25 50 m  
0 45 90 180 ft

**EXHIBIT "B"**

**FDEP TEMPLATE**  
**DECLARATION OF RESTRICTIVE COVENANT**

**{{FORM B: THIS FORM SHOULD BE USED IF ONLY PORTIONS OF THE PROPERTY OF GRANTOR ARE TO BE ENCUMBERED AND ACCESS IS AVAILABLE FROM ADJACENT PUBLIC RIGHT OF WAY OR THROUGH A SEPARATE RECORDED ACCESS EASEMENT AGREEMENT.}}**



This instrument prepared by:  
{{name, company & full mailing  
address of NON-FDEP person  
who prepared covenant – typically the real property  
owner or attorney}}

#### **DECLARATION OF {{INTERIM}} RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration")  
is made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by {{property owner}} {{", a  
\_\_\_\_\_ corporation}} (hereinafter "GRANTOR") and the Florida Department  
of Environmental Protection (hereinafter "FDEP").

#### **RECITALS**

A. GRANTOR is the fee simple owner of that certain real property situated in the County of \_\_\_\_\_, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Restricted Property") {{attach legal description of **only** the portions of the property that are to be encumbered as Exhibit A (owner name should precisely match GRANTOR); or, if short enough, restate the legal description here as part of the Recital A paragraph.}};

B. The FDEP Facility Identification Number for the Restricted Property is {{\_\_\_\_\_ or EPA # or other #, if applicable}}. The facility name at the time of this Declaration is {{\_\_\_\_\_}}. This Declaration addresses the discharge that was reported to the FDEP on {{date}};

C. *{{Basic information regarding contamination, **brief** history of discharge/cleanup, etc.—it is rarely necessary to list each & every report prepared}}*. The discharge of *{{drycleaning solvents, petroleum products, etc.; insert the appropriate remaining contaminants}}* on the Restricted Property is documented in the following reports that are incorporated by reference *{{ONLY what is applicable to the remaining contamination on the site should be listed: Example}}*:

1. Site Assessment Report dated \_\_\_\_\_, submitted by {{Company that prepared report}}; and
5. Site Assessment Report Addendum dated \_\_\_\_\_, submitted by {{Company that prepared report}}; and etc.
6. No Further Action with Conditions Proposal or Site Rehabilitation Completion Report dated \_\_\_\_\_, submitted by {{Company that prepared report}}; and
7. Consent Orders}}

D. The reports noted in Recital C set forth the nature and extent of the contamination described in Recital C that is located on the Restricted Property. These reports confirm that contaminated *{{soil and/or groundwater and/or surface water and/or sediment}}* as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Restricted Property. Also, these reports document that the groundwater contamination does not extend beyond the Restricted Property boundaries, that the extent of the groundwater contamination does not exceed 1/4 acre, and the groundwater contamination is not migrating. *{{Be sure this is accurate to the particular site. If not, briefly summarize what is correct. This language is included as it is the most common RC under Risk Management Option (RMO) II; however, RMO III does contemplate contamination beyond the Restricted Property boundaries, which would require agreement by the adjacent owners to put an RC on their properties as well. If there is no groundwater contamination, state where the contamination remains, such as soil or sediment. This is especially true in the case of Interim RCs. State which contamination will be addressed by the restriction and which contamination will continue to be remediated, i.e., "This declaration imposes restrictions on the area of soil contamination. While groundwater should not be utilized, groundwater remediation is ongoing and it is unknown at this time whether a long-term restriction on the use of the groundwater will be required. Additionally, FDEP prefers that this document NOT be used to indicate which parties are or are not liable for the contamination.}}*

*{{If the criteria for direct exposure were met using average soil contaminant concentrations calculated based on a 95% Upper Confidence Limit (UCL) approach, the following paragraph should be added: "The criteria for direct exposure of contamination*

in the soil was based upon an average soil contaminant concentration calculated using a 95% Upper Confidence Limit (UCL) approach with an exposure unit (EU) of *{{SIZE OF UNIT}}* pursuant to Rule 62-780.680, F.A.C. Therefore, the Property may not be subdivided into parcels smaller than *{{size}}* without prior written approval from FDEP's Division of Waste Management." See also paragraph 6 below.}}

E. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure of users or occupants of the Restricted Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter "Order") upon recordation of this Declaration. FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of *{{generally, list the contamination that remains, for example, "petroleum products' chemicals of concern"}}* increase above the levels approved in the Order, or if a subsequent discharge occurs at the Restricted Property, FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. *{{9 digit #; or other appropriate tracking number, as applicable}}*, can be found by contacting the appropriate FDEP district office or Tallahassee program area. *{{Only reference an Order if this is a final remedy and an Order will be issued}};*

*{{If this is an Interim RC (not considered a final remedy), then delete the previous paragraph regarding the Order and use language similar to the following: "FDEP will not issue a Site Rehabilitation Completion Order with Conditions upon recordation of this Declaration because contaminated {{groundwater or soil}} remains at the site at levels above applicable cleanup target levels. Site rehabilitation of the remaining contaminated {{groundwater or soil}} is ongoing. If cleanup target levels are later met, then GRANTOR and FDEP, or their successors and assigns, may agree in writing to amend or remove this Declaration."}}*

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Restricted Property that an Order be obtained and that *{{delete "an Order be obtained and that" if this is an Interim RC and no SRCO will be issued}}* the Restricted Property be held subject to certain restrictions *{{and engineering controls}}*, all of which are more particularly hereinafter set forth. *{{A Specific Purpose Survey, Boundary Survey or Sketches Accompanying Legal Descriptions prepared in accordance with the Minimum Technical Standards (MTS) that depicts the restricted area and includes four corners referenced to the State Plane Coordinates System or geographical coordinates should be provided. Such a legal description and Survey should be a clearly labeled attachment to the RC and the area to be encumbered should also be clearly labeled on the drawing (e.g., "area of EC," "capped area," "location of slurry wall," "restricted area," etc. and should be included as part of the exhibit).}}*

NOW, THEREFORE, to induce FDEP to issue the Order *{{or, if an Interim RC: "in compliance with the consent order in OGC Case #", or if not consent order, then leave blank}}* 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 *{{while standard in many other real property transactions, FDEP does not require payment for the opportunity to use the conditional closure option; therefore, any discussion of payment in this document is typically inappropriate}}*:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. GRANTOR hereby imposes on the Restricted Property the following restriction*{{s}}*:

***GROUNDWATER USE RESTRICTIONS.** In most cases groundwater and stormwater restrictions will apply to the entire property, rather than to just restricted portion(s) of the Property. If that is the case, then use RC Form A. See guidance document for more details regarding the limited circumstances where groundwater or stormwater restrictions can apply to only a portion of the Property.}}*

a. There shall be no use of the groundwater under the Restricted Property. There shall be no drilling for water conducted on the Restricted Property nor shall any wells be installed on the Restricted Property other than monitoring wells pre-approved in writing by FDEP's Division of Waste Management (DWM), in addition to any authorizations required by the Division of Water Resource Management and the Water Management Districts. Additionally, there shall be no stormwater swales, stormwater detention or retention facilities, or ditches on the Restricted Property. For any dewatering activities, a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

*{{The following is alternate language for paragraph 2.a. for a Property that has existing stormwater features, the existence of which has been determined not to adversely affect the remaining contamination.}}*

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*{{a. i. There shall be no use of the groundwater under the Restricted Property. There shall be no drilling for water conducted on the Restricted Property, nor shall any wells be installed on the Restricted Property other than monitoring wells pre-approved in writing by FDEP's Division of Waste Management (DWM) in addition to any authorizations required by the Division of Water Resource Management (DWRM) and the Water Management District (WMD) .*

*a.ii. For any dewatering activities on the Restricted Property a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated.*

a.iii. *Attached as Exhibit C, and incorporated by reference herein, is a Survey identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the Restricted Property. Such existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales, stormwater detention or retention facilities or ditches on the Restricted Property without prior written approval from FDEP's DWM in addition to any authorizations required by the DWRM and the WMD. A revised exhibit must be recorded when any stormwater feature is altered, modified, expanded, or constructed.}}*

***{{ SOIL RESTRICTIONS:*** *The RC language used to address soils contamination depends in part on whether the concern is Direct Exposure, Leachability, or both [see cleanup criteria in Chapter 62-780, F.A.C., and tables of cleanup target levels (CTLs) in Ch. 62-777, F.A.C., for further guidance.] Additionally, the choice of which RC language to include for soils may depend on the intended future land use. In general, ECs (e.g., caps, parking lots, building foundation, etc.) should be identified on a Survey that is incorporated by reference as Exhibit B. Below are examples.}}*

b.i. *{{Use this language when leachability CTLs are exceeded:}}*The area of soil contamination as located on the Restricted Property shall be permanently covered and maintained with an impermeable material that prevents human exposure and prevents water infiltration (hereinafter referred to as "the Engineering Control"). An Engineering Control Maintenance Plan (ECMP) relating to FDEP Facility No. *{{9 digit #; or other appropriate tracking number, as applicable}}* dated \_\_\_\_\_, 20\_\_\_\_, prepared by \_\_\_\_\_, has been approved by the Department. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of the Department. The ECMP, as amended, relating to FDEP Facility No. *{{9 digit #; or other appropriate tracking number, as applicable}}*, can be found by contacting the appropriate FDEP district office or Tallahassee program area;

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*{{OR}}*

b.i. *{{Use this language when the problem is direct exposure of the soil and leachability is not a concern:}}* The area of soil contamination as located on the Restricted Property shall be permanently covered and maintained with a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure *{{Note: this is the minimal cap required to address direct exposure, but the owner may opt for a hard surface cap (e.g., a parking lot) depending on intended future land use}}* (hereinafter referred to as "the Engineering Control"). An Engineering Control Maintenance Plan (ECMP) relating to FDEP Facility No. *{{9 digit #; or other appropriate tracking number, as applicable}}* dated \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_, prepared by \_\_\_\_\_, has been approved by the Department. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of the Department. The ECMP, as amended, relating to FDEP Facility No. {{9 digit #; or other appropriate tracking number, as applicable}}, can be found by contacting the appropriate FDEP district office or Tallahassee program area; and

b.ii. *{{Use this language regardless of which b.i. is used above}}* Excavation and construction deeper than two feet below land surface *{{OR, if the soil cap is impermeable it should read "Excavation and construction beneath the impermeable material"}}* is not prohibited on the Restricted Property provided any contaminated soils that are excavated are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas. For any dewatering activities, a plan pre-approved by FDEP's Division of Waste Management must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated. Nothing in this Declaration shall prevent, limit or restrict any excavation or construction at or below the surface outside the boundary of the Restricted Property.

***{{LAND-USE RESTRICTIONS: Land use restrictions generally will apply to the entire property, rather than to just restricted portion(s) of the Property. If that is the case use RC Form A. If the above options describing ECs such as soil caps or concrete pads are not utilized to control exposure, then the following land-use restriction language should be used to address soil contamination. Typically, a soil cap EC and a Land-Use Restriction should not both be used on the same property for the same contamination. A restriction on the use of the land must be clearly described. Reliance ONLY on local zoning or land use classifications is insufficient to adequately restrict the use of the land or adequately describe the restriction in perpetuity. Additionally, there is often confusion because the cleanup rule categories for land use are lumped into "residential" and "commercial/industrial." This is for ease of using the look-up tables for cleanup target levels. The categories listed below provide the detail necessary to adequately protect human health based on calculations using the various land-use scenarios' exposure duration and frequency. The categories are consistent with the Ch. 62-777, F.A.C., cleanup target levels and governing statutes regarding acceptable risk levels under Florida's risk-based corrective action principles. These codes come from the North American Industry Classification System, United States, 2012, because it is one of the only comprehensive and standardized systems for categorizing human activity and use of the land. Simply using the term "residential," for example, will create inconsistent application and interpretation of what this limitation means across the state because every local government creates its own definition for each land use category, including***

*"residential." The categories selected by OGC and the DWM Director are conservative based upon an assumption that the Land-Use Restriction is the only restriction being used. In order to utilize the Land-Use Restriction option for an RMO II closure, contaminant levels in soils should not exceed the "commercial/industrial" cleanup target levels. If using the Land-Use Restriction option for an RMO III closure, then a site-specific alternative cleanup target level may be established using appropriate risk assessment methodologies. Lastly, if the owner wants a land-use restriction but does not want to use the default land-use restrictions listed below, then the RMO III closure option should be conducted. It is recommended that you speak with FDEP site or project manager before pursuing this option.}}*

c. The following uses of the Restricted Property are prohibited: agricultural use of the land including forestry, fishing and mining; hotels or lodging; recreational uses including amusement parks, parks, camps, museums, zoos, or gardens; residential uses, and educational uses such as elementary or secondary schools, or day care services. These prohibited uses are specifically defined by using the North American Industry Classification System, United States, 2012 (NAICS); Executive Office of the President, Office of Management and Budget. The prohibited uses by code are: Sector 11 Agriculture, Forestry, Fishing and Hunting; Subsector 212 Mining (except Oil and Gas); Code 512132 Drive-In Motion Picture Theaters; Code 51912 Libraries and Archives; Code 53111 Lessors of Residential Buildings and Dwellings; Subsector 6111 Elementary and Secondary Schools; Subsector 623 Nursing and Residential Care Facilities; Subsector 624 Social Assistance; Subsector 711 Performing Arts, Spectator Sports and Related Industries; Subsector 712 Museums, Historical Sites, and Similar Institutions; Subsector 713 Amusement, Gambling, and Recreation Industries; Subsector 721 Accommodation (hotels, motels, RV parks, etc.); Subsector 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations; and Subsector 814 Private Households.

3. In the remaining paragraphs, all references to "GRANTOR" and "FDEP" shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby ~~granted a right of entry upon and access to the Restricted Property at reasonable times~~ and with reasonable notice to GRANTOR. Access to the Restricted Property is granted by {{an adjacent public right of way OR an access easement agreement recorded contemporaneously with this declaration.}} {{Note: If FDEP does not have access to the Restricted Property from a public right of way or through a recorded Access Easement Agreement, then use RC Form A.}}

{{The remaining paragraphs 5 – 9 are based on Real Property Law and include necessary language in order to create an enforceable and durable RC. Generally, these paragraphs should not be modified.}}

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Restricted Property, run with the land and with the title to the Restricted 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 Restricted 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 7 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 Restricted Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Restricted Property.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Restricted Property, GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration of Restrictive Covenant.

7. This Declaration is binding until a release of covenant is executed by 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 the 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 amendments must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

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8. 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.

9. 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. *{{Do not use the next sentence if an Owner's Notice to Encumbrance Holder has been utilized.}}* 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. *{{Use the next statement*

*only if any joinders and consents or subordinations are executed.}}* A joinder and consent, or subordination of liens, mortgages, or encumbrances, as applicable, is attached hereto. *{{Place a hard page break here so that none of GRANTOR's signature page is on the pages of text.}}*

IN WITNESS WHEREOF, {{GRANTOR}} has executed this instrument, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR  
{{COMPANY NAME, IF APPLICABLE}}

By: \_\_\_\_\_  
Name: {{PRINTED NAME}}  
Title:  
Full Mailing Address:

Signed, sealed and delivered in the presence of:

\_\_\_\_\_ Date: \_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_, by \_\_\_\_\_.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

*{{Place a hard page break here so that none of GRANTOR's signature page is on the  
pages of text.}}*

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel. \_\_\_\_\_.

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

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Division of Waste Management  
\_\_\_\_\_ Cleanup Program *{{fill in blank  
with either Petroleum or Waste}}*  
*{{ or }}*  
*{{fill in appropriate District, if applicable}}*  
\_\_\_\_\_ District Office  
*{{Mailing Address}}*, Mail Station *{{ }}*,  
*{{City}}*, Florida *{{Zip Code}}*  
**SITE/PROJECT MANAGER SHOULD  
PROVIDE THIS INFORMATION TO OWNER**

Signed, sealed and delivered in the presence of:

Witness: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_, by \_\_\_\_\_ as representative for the Florida  
Department of Environmental Protection.  
Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print Name of Notary Public

Commission No. \_\_\_\_\_

Commission Expires: \_\_\_\_\_

#### ATTACHMENT 4: ACCESS EASEMENT AGREEMENT

[To be used to ensure access to a restricted area in a partial encumbrance for larger parcels when the owner does not want to encumber the entire larger parcel; or when the parcel will be subdivided, and the owner wishes to have a stand-alone Access Easement Agreement as opposed to incorporating the access easement in the RC.]

#### ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **[insert property owner(s)]** whose mailing address is **[insert mailing address]** (hereinafter referred to as "GRANTOR") a \_\_\_\_\_ **[insert type of entity, if applicable, i.e., a Florida Corporation, Florida Limited Partnership, etc.]**, and its successors and assigns, and the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and its successors and assigns (hereinafter referred to as "DEPARTMENT").

#### WITNESSETH:

WHEREAS, GRANTOR is the fee simple owner of certain real property (hereinafter "Easement Parcel") located in **[insert county]** County, Florida, as more particularly described in Exhibit "A", **[Exhibit is the legal description & Survey of the easement area which provides access from an existing public right of way to the RC restricted area]** attached hereto and by reference made a part hereof; and

WHEREAS, on even date herewith, the DEPARTMENT and GRANTOR have entered into that certain Declaration of **[Interim]** Restrictive Covenant, encumbering certain property more particularly described in Exhibit "B" (the "Restricted Area") as more particularly described therein (the "Restrictive Covenant"); and

WHEREAS, the DEPARTMENT desires to use the Easement Parcel in order to gain access to the Restricted Area for the purpose of inspecting, viewing and monitoring the Restricted Area and GRANTOR's compliance with the obligations set forth in the Restrictive Covenant related to the Restricted Area; and

WHEREAS, the DEPARTMENT's actions on the Restricted Area are taken in an attempt to ensure compliance with the requirements contained in the Restrictive Covenant encumbering the Restricted Area; and

WHEREAS, GRANTOR desires to grant to DEPARTMENT an easement for the aforementioned purpose.

NOW, THEREFORE, for and in consideration of the terms, conditions, and mutual covenants contained herein and other good and valuable consideration received by each party, the sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. GRANTOR hereby grants to DEPARTMENT, its legal successors and assigns, a non-exclusive easement for ingress and egress in and upon the Easement Parcel for the purposes described above (hereinafter, the "Easement").
  2. The terms of the Easement shall commence upon the date of full execution of this Easement and shall continue in perpetuity; provided, however, this Easement shall terminate and be of no further force and effect upon the termination of the Restrictive Covenant by the DEPARTMENT.
  3. GRANTOR agrees that DEPARTMENT and its employees, contractors, and agents shall have ingress and egress to and from the Restricted Area over and across the Easement Parcel to affect the purposes of this Easement.
  4. In order to ensure the perpetual nature of this Easement, the GRANTOR and its successors and assigns shall reference this Easement in any subsequent deed of conveyance, including the recording information for this Easement.
  5. GRANTOR hereby represents and warrants that GRANTOR has fee title in the Easement Parcel; and GRANTOR represents and warrants that it has the power and authority to grant this Easement. With respect to its use of the Easement Parcel, DEPARTMENT shall be responsible for injury or damage to persons or property for which it is found legally liable.
  6. GRANTOR reserves the right to use or authorize others to use the Easement Parcel in any manner not inconsistent with or which will not unreasonably interfere with the rights granted herein, provided, however, that GRANTOR shall not disturb or block access in any way without prior approval from the DEPARTMENT.
  7. In the event DEPARTMENT determines that the Easement Parcel is no longer needed for the purposes set forth herein, DEPARTMENT may terminate this Easement by notifying GRANTOR, in writing, at least sixty (60) days prior to the date of such termination. In such event, DEPARTMENT agrees to execute an instrument in recordable form, releasing this Easement.
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8. This Easement shall be binding upon and inure to the benefit of the parties specified herein, their legal representatives, successors and assigns.
  9. This Easement does not impact or modify any other legal authority the DEPARTMENT may have to inspect the Easement Parcel or Restricted Area for regulatory purposes pursuant to Chapters 376 and 403, Florida Statutes.
  10. **[Optional - if the easement is long & would take too much time to walk the full length to gain access to the restricted area add the following:**  
GRANTOR shall maintain the Easement Parcel so that a standard sized two-wheeled drive motor vehicle can traverse the Easement Parcel.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and have caused this Easement to be executed as of the day and year first above written.

*If there is a large space or gap between pages – please insert into that space:*  
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
INSERT SIGNATURE PAGES IN FORMAT OF RESTRICTIVE COVENANT