

## ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction (.Restriction.) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **[property owner]**, and its successors and/or assigns (hereinafter, the “Grantor”).

### WITNESSETH:

WHEREAS, the Grantor \_\_\_\_\_ (name) is the owner in fee simple of certain real property identified as **[specify Plat, Lot(s), address and Town or City]** Rhode Island (the “Property”), more particularly described in Exhibit A (Legal Description) which is attached hereto and made a part hereof;

WHEREAS, the Property (or portion thereof identified in the Class I survey which is attached hereto as Exhibit 2A and is made a part hereof) has been determined to contain soil and/or groundwater which is contaminated with certain **[hazardous materials and/or petroleum]** in excess of applicable **[residential or industrial/commercial direct exposure criteria, and/or applicable groundwater objectives]** criteria pursuant to the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (“Remediation Regulations”);

WHEREAS, the Grantor has determined that the environmental land use restrictions set forth below are consistent with the regulations adopted by the Rhode Island Department of Environmental Management (“Department”) pursuant to R.I.G.L. § 23-19.14-1 et seq.;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: **[Remedial Decision Letter/ Settlement Agreement/ Order of Approval/ Remedial Approval Letter]** issued pursuant to the Remediation Regulations;

WHEREAS, to prevent exposure to or migration of **[hazardous materials and/or petroleum]** and to abate hazards to human health and/or the environment, and in accordance with the **[Remedial Decision Letter/ Settlement Agreement/ Order of Approval/ Remedial Approval Letter]**, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the **[Property/Contaminated Site]**;

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

WHEREAS, the Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against the Grantor and the Grantor’s successors and assigns.

NOW, THEREFORE, Grantor agrees as follows:

**A. Restrictions Applicable to the [Property/Contaminated Site]:** In accordance with the [Remedial Decision Letter/ Settlement Agreement/ Order of Approval/ Remedial Approval Letter], the use, occupancy and activity of and at the [Property/ Contaminated Site] is restricted as follows:

- i No residential use of the [Property/Contaminated Site] shall be permitted that is contrary to Department approvals and restrictions contained herein;
- ii No groundwater at the [Property/Contaminated Site] shall be used as potable water;
- iii No soil at the [Property/Contaminated Site] shall be disturbed in any manner without written permission of the Department's Office of Waste Management, except as permitted in the Remedial Action Work Plan (RAWP) or Soil Management Plan (SMP) approved by the Department in a written approval letter dated \_\_\_\_\_(date) Exhibit B and attached hereto;
- iv [Humans engaged in activities at the [Property/Contaminated Site] shall not be exposed to soils containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department approved direct exposure criteria set forth in the Remediation Regulations];
- v [Water at the [Property/Contaminated Site] shall be prohibited from infiltrating soils containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department approved leachability criteria set forth in the Remediation Regulations];
- vi [No subsurface structures shall be constructed on the [Property/Contaminated Site] over groundwater containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department approved GB Groundwater Objectives set forth in the Remediation Regulations];
- vii [The engineered controls at the [Property/ Contaminated Site] described in the [RAWP or SMP] contained in Exhibit B attached hereto shall not be disturbed and shall be properly maintained to prevent humans engaged in [residential or industrial/commercial] activity from being exposed to soils containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department-approved [residential or industrial/commercial] direct exposure criteria in accordance with the Remediation Regulations]; and
- viii [The engineered controls at the [Property/ Contaminated Site] described in the [RAWP or Soil Management Plan SMP] contained in Exhibit B attached hereto shall not be disturbed and shall be properly maintained so that water does not infiltrate soils containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department-approved leachability criteria set forth in the Remediation Regulations.]

**B. No action shall be taken, allowed, suffered, or omitted at the [Property/ Contaminated Site] if such action or omission is reasonably likely to:**

- i Create a risk of migration of hazardous materials and/or petroleum;
- ii Create a potential hazard to human health or the environment; or
- iii Result in the disturbance of any engineered controls utilized at the **[Property/Contaminated Site]**, except as permitted in the Department-approved **[RAWP or SMP]** contained in Exhibit B.

**C. Emergencies:** In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to, maintenance and repair of utility lines or a response to emergencies such as fire or flood, the application of Paragraphs A (iii.-viii.) and B above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

- i Grantor shall notify the Department's Office of Waste Management in writing of the emergency as soon as possible but no more than three (3) business days after Grantor's having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);
- ii Grantor shall limit both the extent and duration of the suspension to the minimum period reasonable and necessary to adequately respond to the emergency;
- iii Grantor shall implement reasonable measures necessary to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;
- iv Grantor shall communicate at the time of written notification to the Department its intention to conduct the emergency response actions and provide a schedule to complete the emergency response actions;
- v Grantor shall continue to implement the emergency response actions, on the schedule submitted to the Department, to ensure that the **[Property/Contaminated Site]** is remediated in accordance with the Remediation Regulations (or applicable variance) or restored to its condition prior to such emergency. Based upon information submitted to the Department at the time the ELUR was recorded pertaining to known environmental conditions at the **[Property/Contaminated Site]**, emergency maintenance and repair of utility lines shall only require restoration of the **[Property/Contaminated Site]** to its condition prior to the maintenance and repair of the utility lines; and
- vi Grantor shall submit to the Department, within ten (10) days after the completion of the emergency response action, a status report describing the emergency activities that have been completed.

- D. Release of Restriction; Alterations of Subject Area:** The Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the **[Property/Contaminated Site]** inconsistent with this Restriction unless the Grantor has received the Department's prior written approval for such alteration. If the Department determines that the proposed alteration is significant, the Department may require the amendment of this Restriction. Alterations deemed insignificant by the Department will be approved via a letter from the Department. The Department shall not approve any such alteration and shall not release the **[Property/Contaminated Site]** from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the **[Property/Contaminated Site]** in accordance with applicable regulations.
- E. Notice of Lessees and Other Holders of Interests in the [Property/Contaminated Site]:** The Grantor, or any future holder of any interest in the **[Property/Contaminated Site]**, shall cause any lease, grant, or other transfer of any interest in the **[Property/Contaminated Site]** to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Restriction. The failure to include such provision shall not affect the validity or applicability of this Restriction to the **[Property/Contaminated Site]**.
- F. Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.
- G. Binding Effect:** All of the terms, covenants, and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each owner and any other party entitled to control, possession or use of the **[Property/Contaminated Site]** during such period of ownership or possession.
- H. Inspection & Non-Compliance:** It shall be the obligation of the Grantor, or any future holder of any interest in the **[Property/Contaminated Site]**, to provide for annual inspections of the **[Property/Contaminated Site]** for compliance with the ELUR in accordance with Department requirements.

**[An officer or director of the company with direct knowledge of past and present conditions of the [Property/Contaminated Site] (the "Company Representative"), or] A** qualified environmental professional will, on behalf of the Grantor or future holder of any interest in the **[Property/Contaminated Site]**, evaluate the compliance status of the **[Property/Contaminated Site]** on an annual basis. Upon completion of the evaluation, the **[Company Representative or]** environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of any interest in the **[Property/Contaminated Site]** an evaluation report detailing the findings of the inspection, and noting any compliance violations at the **[Property/Contaminated Site]**. If the **[Property/Contaminated Site]** is determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of any interest in the **[Property/Contaminated Site]** shall submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the **[Property/Contaminated**

**Site]** into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan.

In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation, all Department approvals and agreements relating to the **[Property/Contaminated Site]** may be voided at the sole discretion of the Department.

**I. Terms Used Herein:** The definitions of terms used herein shall be the same as the definitions contained in Section 3 (DEFINITIONS) of the Remediation Regulations.

IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

**[Name of person(s), company, LLC or LLP]**

By: \_\_\_\_\_  
Grantor (signature) Grantor (typed name)

STATE OF RHODE ISLAND

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

In (CITY/TOWN), in said County and State, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

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

My Comm. Expires: \_\_\_\_\_