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GOVERNOR

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## Model Restrictive Covenant

This model has been approved by the Missouri Department of Natural Resources (MDNR) for use at tank sites where the owner/operator's corrective action plan includes recording a covenant in his chain of title to mitigate an identified risk.

The model may be used as is, or it may be modified. *You are encouraged to work with your claims adjuster to develop appropriate language, and you are strongly encouraged to submit your "final" version to the MDNR before filing it with the county recorder.*

Suggested text for insertion into the covenant to address risks most commonly encountered at tank sites appears on the next page. The model covenant follows.

Occasionally, a corrective action plan will propose use of a restrictive covenant on a property adjacent to the tank site; however, your consultant should discuss this with the adjacent property owner and you before including this in a corrective action plan.

Contact the PSTIF at 800-765-2765 for more information.

9/5/13



**Petroleum Storage Tank Insurance Fund**

P.O. Box 836 • JEFFERSON CITY, MO 65102 • PHONE (573) 522-2352 • FAX (573) 522-2354

## Sample Text for Insertion into Model Restrictive Covenant

*Choose only the paragraph(s) applicable to your situation*

### **For restricting groundwater use:**

“Groundwater from the Property shall not be used for any purpose, except that groundwater samples may be collected for laboratory analysis, and groundwater may be collected and/or treated during excavation or construction activities.”

“Installation of drinking water wells on the Property is prohibited.”

“Installation of a drinking water well on the Property is prohibited unless the well is cased to a depth of \_\_\_ feet.”

“Installation of a well is prohibited unless the well is cased to a depth of \_\_\_ feet, except that this prohibition shall not apply to groundwater monitoring wells.”

“Groundwater at depths of \_\_\_ or less beneath the Property shall not be used for any purpose except for monitoring wells for investigative purposes.”

### **For restricting indoor inhalation exposures:**

“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*].”

“Any building constructed on the Property shall be built with a vapor barrier to mitigate the potential migration of vapors from the petroleum that remains in the [*soil/groundwater*].”

“Any building constructed in an area [*describe the restricted area, such as ‘located within x feet of \_\_\_\_\_ Street,’ or ‘east of the north/south centerline of the property,’ etc.*] shall be built with a vapor barrier

### **For restricting land use:**

“The property shall not be used for residential purposes, including but not limited to single-family homes, duplexes, multiplexes, apartments, condominiums, schools, retirement or senior/child-care centers, or any similar use where persons can be expected to continually reside.”

## DECLARATION OF RESTRICTIVE COVENANT REGARDING PETROLEUM CONTAMINATION

This Restrictive Covenant is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Owner (hereinafter referred to as "Owner"). Owner is the owner in fee simple of certain real property commonly known and numbered as [insert street address], and legally described as:

[insert here if space allows, or refer to Exhibit].

Whereas, a release or releases of petroleum from one or more [underground / aboveground] storage tanks at the Property described above has been addressed under the oversight of the Missouri Department of Natural Resources (MDNR) pursuant to the provisions of Chapter 319 RSMo, and implementing regulations, and the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks* [insert date / version].; and

Whereas, a risk assessment for the Property has been completed and, upon completion of any necessary corrective action and proper recording of this Covenant, the MDNR has determined that no additional action is required to address such release(s), so long as the restrictions referenced below are complied with, and MDNR will provide written documentation of the same upon the proper recording of this Covenant; and

Whereas, after completion of the actions described in the Corrective Action Plan approved by the Department on [date], contaminants of concern, which include, but may not be limited to [(list remaining COCs here)], will remain on the Property above levels that allow for the unrestricted use of the Property; and

Whereas, Owner acknowledges that if the restrictions described below are not followed in the future, further corrective action may be required; and

Whereas, records related to the petroleum release(s) and all resulting response actions are currently located in MDNR's offices in Jefferson City, Missouri, and may be

obtained from MDNR through a request directed to MDNR's Custodian of Records, referencing the site identification number of *[insert ST number or R number]*;

NOW THEREFORE, the Owner hereby imposes restrictions on the Property and covenants and agrees that:

**1. RESTRICTIONS APPLICABLE TO THE PROPERTY** -- Owner shall assure that use, occupancy, and activity of and at the Property are restricted as follows:

*[Insert appropriate restrictions.]*

**2. 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. The failure to include such provision shall not affect the validity or applicability to the Property of this Restrictive Covenant.

**3. PROPERTY CONVEYANCE – CONTINUANCE OF PROVISIONS** -- Owner shall not convey any title, access, or other interest in the Property without reference to this Declaration of Restrictive Covenant.

**4. DURATION OF RESTRICTIVE COVENANT(S)** -- The restriction(s) and other requirements described in this Restrictive Covenant shall run with the land and shall be binding upon Owner and any future owners, heirs, successors, lessees, or assigns and their authorized agents, employees or persons acting under their direction or control.

**5. AMENDING, MODIFYING, OR RESCINDING THE RESTRICTIVE COVENANT(S)** -- This Restrictive Covenant shall not be amended, modified, or terminated except that the Owner may apply to MDNR or any successor agency to amend, modify, or terminate the Restriction(s). If MDNR or its successor agency grants its approval, such approval shall be filed and recorded with the office of the recorder of the county in which the Property is situated.

The undersigned Owner or person executing this Restrictive Covenant on behalf of the Owner represent and certifies that *[he/she/it]* is truly authorized and has been fully empowered to execute and deliver this Restrictive Covenant.

