Tennessee Department of Environment and Conservation MODEL Notice of Land Use Restrictions (NLUR) and Attached Instructions

1. This model NLUR supersedes any previously models of the NLUR. This model NLUR should be used as the template beginning on January 1, 2023. Any deviations from this model must be approved by TDEC DoR and TDEC Office of General Counsel.
2. **Preparation of the NLUR addresses significant legal issues and continuing obligations in a legally recorded deed. TDEC highly encourages all parties to consult legal counsel before signing any NLUR. Preparation of an NLUR may constitute the practice of law.**
3. Remove the attached instructions (this instruction page) and delete all inapplicable language in { } or [ ] but not ( ) before finalizing the document.
4. Submit a completed electronic Word copy of the draft NLUR with all attachments for TDEC review. Please include a cover letter or email which provides contact information for the person(s) coordinating the NLUR and indicate whether you have retained legal counsel, and if so, your attorney’s contact information.
5. Please allow at least sixty (60) days for proper divisional and legal review (this review time assumes that the technical review is already complete). If there are controlling dates or deadlines TDEC needs to be aware of (for example, if the NLUR is required for a property transaction closing date or some other date), please inform your TDEC DoR Project Manager and assigned TDEC attorney as soon as practicable.
6. The model includes optional language in a few places throughout the document. Please coordinate with your assigned TDEC Project Manager, Regional Coordinator, or the Office of General Counsel to determine the correct language for your Property.
7. Include the DoR Project ID number on all submitted correspondence and draft documents.
8. In Section I. Location of Contamination, provide a brief narrative description of the contamination and remedy (as appropriate) at the Property in comparison to relevant and appropriate soil, groundwater, vapor intrusion, and/or soil gas screening levels or Maximum Contaminant Level concentrations.
9. In Section II. Restrictions: After discussing with your DoR Project Manager, insert the appropriate restrictions for the Property. Each type of limitation must be considered on a property-specific basis to determine which limitation or combination of limitations is suitable for the Property based on the applicable standards, the affected media, and the potential exposures. The types of restrictions include, but are not limited to: (a) use restrictions (e.g., prohibiting residential land use due to presence of hazardous substances in soil above Residential RSLs), (b) activity controls (e.g., to prevent exposure to contaminated ground water by prohibiting extraction or use of ground water), and (c) operation and maintenance (O&M) controls used to ensure safe reuse of the impacted Property (e.g., caps and/or covers, vapor mitigation intrusion barriers, or other appropriate systems).

General Comments on Land Use and Risk Perspectives

Risk posed by the use of land with certain environmental conditions can be broken down into six general categories. There can be variance within each category for a site-specific risk assessment. For further guidance, see EPA’s Regional Screening Levels – User Guide[[1]](#footnote-1) and Risk Assessment Guidance.[[2]](#footnote-2)

Unrestricted Residential Use – All constituents of potential concern (COPCs) are below the most current and applicable EPA regional screening level (RSL) for resident soil and vapor intrusion screening level (VISL) for residential use. This category is the most appropriate for single family home development.

Restricted Residential Use – COPCs may be above the most current EPA RSL for resident soil, EPA VISL for residential use, and possibly above commercial values. In this scenario, land use restrictions requiring engineering controls (e.g. O&M for a 2-foot soil cap or vapor mitigation system) are typically required to make the site appropriate for the specified residential use. Apartment complexes, condominiums, and other residential uses may be developed under this use category, if approved by TDEC.

Churches, Daycares, Schools, Senior Living Centers, Prisons, etc. - While these sites may be considered commercial under local zoning laws, the exposure from a risk perspective is typically somewhere between Residential and Commercial/Industrial. Commercial/Industrial land use risk perspectives only consider adult body weights in the chronic exposure scenarios. Children spending time at a school or daycare would not be considered in a default commercial/industrial risk equation. Therefore, before a property is developed with one of these uses, the site-specific exposure should be assessed. TDEC-DOR uses the residential EPA RSLs and residential EPA VISLs as the exposure default for this scenario. Any required land use restrictions would be based on a site-specific evaluation.

Parks and Recreational Areas – These must be evaluated based on the site-specific conditions and intended use. Different risk strategies would be necessary at a neighborhood children’s park, a disk golf course, or a lake used for recreation, and any required land use restrictions would be based on the site-specific evaluation.

Unrestricted Industrial/Commercial Use- All COPCs are below the most current and applicable EPA RSL values for commercial/industrial soil and below the most current and applicable EPA VISL values for commercial use. Land use restrictions prohibiting other uses (i.e. residential) are typically required.

Restricted Industrial/Commercial Use – Industrial/Commercial use is allowed so long as certain other land use restrictions, typically engineering controls, are followed.

Restricted Groundwater Use – Groundwater concentrations with COPCs above the General Use Groundwater criteria established in Rule 0400-40-03.08(2) will be restricted from use. If groundwater has not been adequately investigated, groundwater use may also be restricted if soil data indicates the potential to impact groundwater above the General Use Groundwater criteria.

This instrument prepared by:

[Attorney name and firm required, or, if prepared by Grantor, name of Grantor if prepared by Grantor personally.]

**Grantor:**

**Division of Remediation Site Number:**

**County Parcel Identification No(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant toTennessee Code Annotated section 68-212-225, the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”) has determined that this land use restriction is an appropriate remedial action at the below-described Property for the environmental conditions identified. The Register of Deeds shall record this Notice and index it in the grantor index under the name of the below-referenced Grantor. Tenn. Code Ann. § 68-212-225(d). The effective date of this Notice of Land Use Restrictions shall be the date upon which the Notice has been recorded with the Register of Deed’s Office of \_\_\_\_\_\_\_\_\_\_\_\_\_County.

Witnesseth:

WHEREAS, the Grantor, *[insert fee-simple owner of the Property]*, is the owner of real property located at [*insert street address, city and county*], State of Tennessee, the same being more particularly described in a *[Deed Book \_\_\_\_\_\_\_\_, Page \_\_\_\_\_\_\_\_\_ or Instrument No.\_\_\_\_\_\_\_]*in the Register of Deed’s Office of \_\_\_\_\_\_\_\_\_\_\_\_\_County, identified as Plat Map & Parcel No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which is more particularly described in Exhibit A, referred to herein as the “Property,” and,

WHEREAS, the Property is shown on a survey drawn by \_\_\_\_\_\_\_\_ (Tennessee LS# \_\_\_\_\_), dated \_\_\_\_\_\_\_\_\_\_\_\_\_, attached hereto as Exhibit B and incorporated herein by reference; and

*If appropriate:*

*[WHEREAS, Grantor, also sometimes referred to herein as the “Voluntary Party,” entered into a* *Brownfield Voluntary Agreement with TDEC pursuant to Tennessee Code Annotated section 68-212-224 for the purpose of addressing the real or perceived threat of the presence of hazardous substances, solid waste, or other pollutants at the Property; and]*

*[WHEREAS, in accordance with work plans approved by TDEC and the terms of the Brownfield Voluntary Agreement for the Property, TDEC has determined that this Notice of Land Use Restrictions is an appropriate remedial action for the protection of human health and the environment for the contamination identified herein, so long as these land use restrictions are instituted and observed for the Property; and,]*

*For sites with no BVA and when a No Additional Action letter is being sought:*

*[WHEREAS, these land use restrictions support the issuance of a letter of No Additional Action and protect against exposure to the [hazardous substances / petroleum / hazardous substances and petroleum] in [soil / ground water / soil and ground water, or describe other affected media] on or underlying the Property; and,]*

WHEREAS, the purpose of these land use restrictions is to ensure protection of human health and the environment by *[insert summary description of rationale for filing of the NLUR]*; and,

WHEREAS, the Grantor, for itself and its successors and/or assigns, including without limitation any agents, representatives, contractors, subcontractors, or employees thereof, has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to comply with, preserve, and maintain these restrictions in perpetuity as described herein. Any person who owns or leases a property subject to land use restrictions under Tennessee Code Annotated section 68-212-225 shall abide by the restrictions.

NOW, THEREFORE, in consideration of the foregoing, the Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions:

I. LOCATION OF CONTAMINATION

*[The purpose of this section is to explain the known environmental contamination to a prospective purchaser or future landowner and put them on notice. This is not intended to be a comprehensive rendition of all contamination found at the Property. If a BVA or Order exists, reference it with Site ID. Also include a list of COCs and their respective levels.]*

The Property is located at [*insert street address, city, and county*], Tennessee, and is also known as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ site. A [*drawing/survey*] of the entire Property was conducted by *[surveyor’s name and license number]* and is attached as Exhibit \_\_. *[DoR needs the survey on file as a digital file]*

*[This paragraph should identify the location and dimensions of the areas of potential environmental concern with respect to surveyed, permanent benchmarks.* *Tenn. Code Ann. § 68-212-225(b)(2). This can be a figure with latitude/longitude coordinates pinned to vertices of the area of contamination. Where a site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. If the extent of contamination is not fully known, this paragraph should refer to the entire Property. Tenn. Code Ann. § 68-212-225.]*

The investigation of the site identified contaminated conditions on the property which may present an unreasonable risk to public health and the environment if certain activities occur on the property. *[This paragraph should identify generally the type, location, quantity (if known), and concentrations of regulated hazardous substances and regulated substances known to exist on the site. Tenn. Code Ann. § 68-212-225. It’s helpful to include the contaminant levels of sampled media as compared to EPA RSLs, VISLs, etc.]*

*[This paragraph should have language on the remedy employed – one or two sentences; keep this brief]*

*[If applicable: Subject to a Brownfield Voluntary Agreement with TDEC pursuant to Tennessee Code Annotated section 68-212-224,]* the Property has been investigated, and certain actions have been taken to allow for development as *[describe planned redevelopment]* with *[specific conditions on development]*, as described herein, including the recording of this Notice of Land Use Restrictions.

II. RESTRICTIONS

The purpose of these land use restrictions is to ensure the protection of human health and the environment by preventing certain uses or activities that could result in exposure to contamination present at the Site through direct contact, ingestion, or inhalation. *[insert any other summary description of rationale for filing of the NLUR]*. *[If there’s an applicable BVA: Where contamination remains at the Property subject to the provisions of the Brownfield Voluntary Agreement and Soil Management Plan, there shall be no construction, use, or occupancy of the Property that results in the disturbance or excavation at the Property which may threaten the integrity of the engineering controls herein or which results in an unacceptable human exposure to contamination remaining in any media unless TDEC approval is given in accordance with the restrictions below.]* The Grantor, its successors, or assigns shall operate and maintain these land use restrictions to protect the functional integrity of the remedy in accordance with [*insert title and date of the document containing operations and maintenance requirements*]. Unless otherwise specified, the following restrictions apply to the entire Property. These restrictions shall run with the land and bind the Grantor, successors, and assigns, including without limitation any agents, representatives, contractors, subcontractors, or employees thereof. The Grantor agrees that the use of Property will be restricted as follows:

Land Use Controls

For purposes of this land use restriction, the following definition applies:

“Residential land use” means land on which a person resides. Types of dwellings associated with residential land use can include but are not limited to: single family homes; duplexes; multifamily homes such as apartments or condominiums; manufactured homes; mobile homes; group homes; jails or prisons; retirement homes; boarding houses; or dormitories. Schools, day-use senior or child-care centers, and churches are also considered residential land use even though people do not typically live there.

*[If applicable:]* “Single-family home use” means residential land use of land on which one or more persons reside in a single-family home. This definition includes but is not limited to townhomes with attached or detached side walls, duplexes, manufactured homes, mobile homes, and zero-lot-line homes.

*If the land use includes horizontal property regime (HPR) developments or other high-density single-family land use with a homeowner’s association (HOA), contact TDEC’s Office of General Counsel for appropriate language.*

Uses of the Property are restricted as follows:

*Options:*

No Residential Land Use:

The Property shall not be used for residential purposes as the term is defined above.

Residential Land Use Permitted Contingent Upon the Following Restrictions:

Based on the information provided to TDEC, the Property currently meets *[recreational, commercial, industrial, etc.]* standards for non-residential uses and for certain residential uses with activity restrictions. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place. The Property shall not be used for *[single-family home use / residential purposes as the term is defined above except [list specific residential uses that are acceptable, for example: apartments, managed communities/HPRs, other uses from the definitions list, as approved by TDEC.]*

Recreational Use

The Property shall be restricted to recreational and greenspace uses only. This restriction does not prohibit the construction of recreational infrastructure such as bathrooms, walking paths, and pavilions, along with the associated amenities.

Activity Controls

Activities on the Property are prohibited as follows:

*Options (consult with your assigned DOR project manager):*

* Contaminated media remains at the Property *[this may be limited to certain areas shown in a map attached hereto as Exhibit \_\_\_, which is hereby incorporated by reference]*. The Grantor, its successors, or assigns shall maintain the integrity of the existing *[insert asphalt pavement or building]*, which serves as an engineered barrier to prevent direct contact with the underlying contaminated soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair *[as delineated in Exhibit \_\_\_, if limited above.]* without prior written approval of TDEC’s Division of Remediation. TDEC may require written evidence demonstrating to the satisfaction of TDEC that (1) any such proposed demolition, removal, or burial of wastes or soil will not pose a danger to public health, safety, or the environment, and (2) that any such removed soil or wastes will be managed in accordance with applicable regulations to protect public health, safety, and the environment. Any approval granted by TDEC for such demolition, removal, or burial shall be in writing and must contain a reference to this instrument. A copy of this approval should be retained by the Property owner and TDEC, and the Property owner should give any Property purchaser a copy of any written approvals.
* The Grantor, its successors, or assigns shall not dig, drill, excavate, grade, or conduct any other land disturbing activity that may impact (as predetermined or reasonably suspected) soil or buried waste material underlying the Property without prior written approval of TDEC’s Division of Remediation. The Grantor, its successors, or assigns shall notify TDEC in advance and demonstrate to the satisfaction of TDEC that (1) any such proposed activity will not pose a danger to public health, safety, or the environment, (2) ) that the remaining contaminant concentrations will not present a threat to human health or the environment, and (3) that any such removed soil or wastes will be managed in accordance with applicable local, state, or federal regulations. Any approval granted by TDEC shall be in writing and must contain a reference to this instrument. A copy of this approval should be retained by the Property owner and TDEC, and the Property owner should give any Property purchaser a copy of any written approvals. The Grantor, its successors, or assigns shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment.
* The Grantor, its successors, or assigns shall not conduct any invasive activity on *[if not needed for the whole Property, list parts of the Property defined by the survey or drawings here]* the Property, including soil borings or groundwater wells, without prior written approval of TDEC’s Division of Remediation and demonstrating to the satisfaction of TDEC, through sampling and analysis approved by TDEC, that any invasive activity will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC shall be in writing and must contain a reference to this instrument. A copy of this approval should be retained by the Property owner and TDEC, and the Property owner should give any Property purchaser a copy of any written approvals.
* The groundwater beneath the Property shall not be used, accessed, extracted, or otherwise disturbed unless required by a Government agency of competent jurisdiction or otherwise approved by TDEC. This Land Use Restriction prohibits (1) the installation of groundwater wells for any purpose other than environmental monitoring and (2) the installation of groundwater wells intended for use as a potable water source.
* Gardening of produce for human consumption in on-site soil is prohibited. This restriction does not prohibit gardening in raised beds with clean soil imported from off-site as long as the root systems for any such produce have no contact with on-site soil.

Operation and Maintenance Controls

A remedial activity *[is required/has been implemented]* at the Property. As a result, actions which may result in an undesirable human or natural resource exposure or in the release of a contaminant that was contained or mitigated as part of the remedial action related to this Notice of Land Use Restrictions are prohibited as follows:

The Grantor, its successors, or assigns shall not conduct any invasive, construction, or development activities on the Property unless it is in accordance with an approved Site/Soil Management Plan, including any reporting requirement contained therein. The Grantor shall notify TDEC prior to initiating construction and development activities. This restriction does not include standard maintenance activities that do not fully penetrate the clean cover *[reference to the depth of the Property’s clean cover is needed here]* such as parking lot, lawn, or drain maintenance, or temporary alterations to maintain or repair any engineered barriers installed on the Property or utility work beneath such engineered barriers (provided that the engineered barriers are promptly replaced or restored). Engineered barriers must be maintained as long as contamination remains at the covered location(s).

*Options:*

Invasive Activity Notice

* Soil or other media at the Property that is impacted or reasonably suspected to be impacted [*this may be limited to certain areas shown in a map attached hereto as Exhibit \_\_\_, which is hereby incorporated by reference*] shall not be excavated or otherwise disturbed in any manner:

1) without the prior written approval of TDEC. Based on the potential hazards associated with the soil disturbance activities, TDEC may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur; or,

2) except in accordance with the TDEC-approved Soil Management Plan attached hereto as Exhibit \_\_\_\_, which is hereby incorporated by reference. *[If the SMP is too long to effectively attach, we can adjust this language.]*

Any and all excavated soil or other media shall be managed, transported, and disposed of in compliance with all applicable federal, state, and local laws, regulations, and ordinances including without limitation those pertaining to environmental protection and occupational safety. Any approval required or requested that is granted by TDEC shall be in writing and must contain a reference to this instrument.

The Grantor, its successors, or assigns seeking such approval shall not conduct these activities without accepting responsibility for costs incurred by TDEC in the review and oversight of work or associated with the review of any work plan or other associated documents.

* The Grantor, its successors, or assigns shall not conduct any demolition or modification of the concrete slab floor, including any TDEC-required vapor barrier that would expose the underlying soils, without notifying TDEC in advance and receiving written approval. To receive written approval, the Grantor, its successors, or assigns must demonstrate to the satisfaction of TDEC through sampling and analysis or other methods approved by TDEC that the exposed media will not pose a danger to public health, safety, or the environment. The requirements of this paragraph do not apply if it can be demonstrated to the satisfaction of TDEC that removal of structures present at the site does not damage or otherwise materially compromise the integrity of the foundations and footers underlying the existing structures that are providing an effective cover or cap. Any approval granted by TDEC shall be in writing and must contain a reference to this instrument.

Vapor Mitigation System

* A vapor mitigation system *[shall be / has been]* installed in building(s) on the Property, as shown on the figure provided in Exhibit X, due to detected concentrations of VOCs that indicate a potential VI threat. No one shall disturb, modify, damage, or remove any vapor mitigation system installed at or within any structure at the Property unless pursuant to a work plan approved in advance by TDEC. Any future replacement of such structures shall be equipped with an equivalent vapor mitigation system or, if approved in writing by TDEC, another vapor mitigation system. Any approval required or requested and that is granted by TDEC shall be in writing and must contain a reference to this instrument.
* All occupied buildings constructed on the Property shall have a vapor mitigation system approved by TDEC. No additional building shall be constructed at the Property without a TDEC-approved vapor mitigation system. The approved vapor mitigation systems shall be maintained going forward. Any approval required or requested and that is granted by TDEC shall be in writing and must contain a reference to this instrument.

Any vapor mitigation system operation and maintenance activities required by this Notice of Land Use Restriction as a condition of occupancy, including any post-vapor mitigation system installation monitoring, shall be conducted in accordance with the TDEC-approved operation and maintenance plan (Exhibit X*, if applicable*), or an updated, TDEC-approved operation and maintenance plan.

* The Grantor, its successors, or assigns shall not begin construction of any new building(s) or expand the footprint of any existing buildings at the Property without evaluating whether environmental conditions pose a threat of vapor intrusion into the new building(s) or expansion, sharing its findings with TDEC, and receiving TDEC’s written approval. If a vapor mitigation system is determined by TDEC to be warranted based upon the data evaluation in order to safely allow occupancy of such impacted buildings or expansions, construction or expansion of any impacted building(s) is prohibited until such structures are equipped with an appropriate passive or active mitigation system as proposed by the Property owner and approved by TDEC. Such system, either passive or active, shall have associated with it an appropriate period of verification sampling and Operation and Maintenance performance and reporting, with specific requirements determined by TDEC. No one shall disturb, modify, damage, or remove any vapor mitigation features at any structure at the Property unless approved in advance by TDEC and pursuant to a TDEC-approved work plan. Any approval granted by TDEC shall be in writing and must contain a reference to this instrument.

Engineered Control(s)

All soils contaminated above *[insert the applicable regulatory screening levels here]* remaining on the Property are contained within an engineered cap or cover *[either reference a site map or a TDEC-approved Soil Management Plan]*. This area(s) shall remain covered by a minimum of 24 inches [*or as determined by TDEC*] of clean soil or by an impervious surface (concrete, asphalt, or pavement). The growing of trees and other invasive activities on this area(s) is prohibited. These protections shall be maintained in accordance with a TDEC-approved Operations and Maintenance Plan (O&M) until such time as TDEC determines they are no longer needed. Any approval granted by TDEC for the restricted uses shall be in writing and must contain a reference to this instrument.

Emergency Contingencies

The Grantor, its successors, and/or assigns may only undertake invasive activities or some other disturbance of media that is or may be contaminated to complete emergency repairs to utility lines or other infrastructure on the Property or to respond to other types of emergencies (e.g., utility line break, fires, floods) if Grantor, its successors, and/or assigns take the following actions:

* 1. notify TDEC within two (2) business days of obtaining knowledge of such emergency conditions to provide TDEC with the opportunity to oversee this work;
  2. assure that the persons carrying out the excavation limit the disturbance of the soil or other media to the minimum reasonably necessary to adequately respond to the emergency;
  3. assure that the persons carrying out the excavation prepare and implement such measures necessary to prevent actual, potential, present, or future risk to human health or the environment with TDEC’s concurrence, including to undertake precautions to minimize exposure to workers responding to the emergency (e.g., provide appropriate types of protective clothing for workers conducting the excavation or other invasive activities and establish procedures for minimizing the dispersal of dust); and
  4. assure that any excavated contaminated soil is managed or disposed of in compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances including, without limitation, those pertaining to environmental protection and occupational safety.

III. GENERAL PROVISIONS

1. Access by the Department

The Property meets the definition of a hazardous substance site or brownfield project as they are defined in Tennessee Code Annotated section 68-212-202(a). In addition to any rights already possessed by the Department for access, this Notice of Land Use Restriction grants TDEC a right of reasonable access of the Property in connection with implementation or enforcement of this Notice of Land Use Restriction.

1. Compliance Enforcement

Any owner of the Property or any unit of local government having jurisdiction over any part of the Property may enforce this Notice of Land Use Restrictions by means of a civil action. The Commissioner of TDEC may enforce this Notice of Land Use Restrictions through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction. Any person who fails, neglects, or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars ($10,000) per day. Tenn. Code Ann. § 68-212-213. Nothing in this Notice of Land Use Restrictions shall restrict the Commissioner of TDEC from exercising any authority under applicable law.

*[if there is not already a cure provision in the Property-related BVA or if there is no Property-related BVA (we don’t want two potentially conflicting cure provisions):]* Any easily curable default of a relatively minor nature may be cured by Grantor and shall not constitute an Event of Default, if Grantor, after receiving written notice from TDEC demanding cure of such default: (a) cures the default within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps which TDEC deems in TDEC's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

1. Notice of Limitations in Future Conveyances

Each instrument hereafter conveying any interest in the Property subject to this Notice of Land Use Restriction shall contain a notice of the activity and use limitations set forth herein and shall provide the recorded location of this Notice of Land Use Restriction in the records of the Register of Deed’s Office specified above. Any future master plan of subdivision shall reference this Notice of Land Use Restrictions.

1. Notice to Lessees

The Grantor, its successors, or assigns agrees to incorporate either in full or by reference the restrictions of this Notice of Land Use Restrictions in any leases, licenses, or other instruments granting a right to use the Property.

This notice shall not be required for individual conveyances if there is a management company or homeowners association (HOA) that is responsible for complying with this Notice of Land Use Restriction.

1. Written Notice of the Presence of Contamination

The Grantor, its successors, or assigns agrees to include in any instrument conveying any interest in the Property or any portion thereof, including but not limited to deeds, leases, and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A NOTICE OF LAND USE RESTRICTIONS RECORDED IN THE REGISTERS OFFICE OF \_\_\_\_\_\_\_\_\_\_COUNTY ON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, INSTRUMENT NUMBER \_\_\_\_\_\_\_\_\_\_\_.

This notice shall not be required for individual conveyances if there is a management company or homeowners association (HOA) that is responsible for complying with this Notice of Land Use Restrictions.

1. Subdivision

The Grantor, its successors, or assigns shall ensure that the restrictions established by this Notice of Land Use Restrictions remain on any subdivided property.

The notice provision in Section III.5. above shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Notice.

1. Written Notice of Conveyance of Property

The Grantor, its successor, or assigns agrees to provide notice to TDEC of any conveyance (voluntary or involuntary) of any ownership interest or any conveyance of any leasehold interest in the Property (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). The Grantor, its successor, or assigns must provide TDEC with the notice within 30 days of the conveyance and include the name and business address of the transferee. The term “Transferee”, as used in this Notice of Land Use Restrictions, shall mean any future owner of any possessory interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, easement holders, or lessees. This notice shall not be required for individual conveyances if there is a management company or homeowners association (HOA) that is responsible for complying with this Notice of Land Use Restrictions.

By taking title to an interest in or occupancy of the Property, any subsequent owner, lessee, or other party is required to comply with all the restrictions set forth in this Notice of Land Use Restrictions, Tenn. Code Ann. § 68-212-225(f), unless otherwise exempted by applicable law.

1. Term

This Notice of Land Use Restrictions shall run with and bind the Property and shall be binding upon all parties having right, title, or interest in the Property or any part thereof, their heirs, successors, assigns, grantees, and lessees unless this Notice of Land Use Restrictions is made less stringent or canceled as set forth under the paragraph entitled “Amendment and Termination.”

1. Compliance Reporting

After written request by TDEC or by the end of *[insert interval for reporting determined to be necessary by TDEC; e.g., “every January following the TDEC’s approval of this Notice of Land Use Restriction” or “every third January following the TDEC’s approval of this Notice of Land Use Restriction”]*, the then current owner of the Property shall submit to TDEC written documentation stating whether or not the activity and use limitations in this Notice of Land Use Restriction are being abided by. In addition, within 1 month after any of the following events, the then-current owner of the Property shall submit, to the TDEC and the original Grantor, written documentation: (1) noncompliance with the activity and use limitations in this Notice of Land Use Restriction; transfer of the Property; (2) changes in use of the Property; or (3) filing of applications for building permits for the Property and any proposals for any site work, if the building or proposed site work will affect the contamination on the Property subject to this Notice of Land Use Restriction.

1. Amendment and Termination

After public notice and an opportunity for public input as provided in Tennessee Code Annotated section 68-212-225(e), this Notice of Land Use Restrictions may be made less stringent or canceled by the Commissioner of TDEC where the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment.

The Grantor, its successors, or assigns may request that TDEC approve a modification or termination of the Notice of Land Use Restrictions. The request shall contain information demonstrating the proposed modification or termination shall, if implemented, protect human health and the environment. TDEC shall review any submitted information and may request additional information. Information to support a request for modification or termination may include one or more of the following:

a) a proposal to perform additional remedial work;

b) new information regarding the risks posed by the residual contamination;

c) information demonstrating that contamination identified in the Notice of Land Use Restrictions has diminished;

d) information demonstrating that an engineered feature or structure is no longer necessary;

e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; or

f) other appropriate supporting information.

The Grantor, its successors, or assigns seeking approval of other land uses or to cancel or make a Land Use Restriction less stringent shall be responsible for any costs incurred by TDEC in the review and oversight of work associated with the restriction modification.

1. Severability

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

The administrative record for the Property referenced in this Notice of Land Use Restrictions is maintained by the Tennessee Department of Environment and Conservation, Division of Remediation. For further information concerning the Property refer to site number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*[TDEC approval and Grantor signature pages follow]*

Real property described in a Deed of record with the \_\_\_\_\_\_\_\_\_\_\_\_ County Register of Deeds as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This Notice of Land Use Restrictions has been reviewed and approved by the Tennessee Department of Environment and Conservation, Division of Remediation

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: James S. Sanders

Title: Director

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned, Notary Public having authority within the aforesaid State, James S. Sanders, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Director of the Division of Remediation and is authorized to execute this instrument on behalf of the Department.

WITNESS my hand, at office, this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2022.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to form and legality:

TDEC Office of General Counsel Attorney

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Attorney’s Name)

IN WITNESS WHEREOF, the undersigned has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_\_\_ 2022.

Grantor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Personally appeared before me, the undersigned Notary Public having authority within the aforesaid State, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the within named Grantor, a corporation, and that such person executed this instrument for the purposes herein contained, by signing the name of the corporation by such person as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

WITNESS, this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2022.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Commission Expiration

EXHIBIT A

LEGAL DESCRIPTION

*\*Insert legal description here\**

*(must line up exactly with current deed description – if new deed, must update this section with new legal description)*

*If updated legal description of exact parcel ID does not exist, discuss with your Division Project Manager and OGC.*

EXHIBIT B

SURVEY

*Licensed surveyor required.*

*If Property does not have a survey conducted by a licensed surveyor for the exact bounds of the Property, discuss with your Division Project Manager and OGC.*

*[insert other exhibits as necessary]*

1. https://www.epa.gov/risk/regional-screening-levels-rsls-users-guide#landuse [↑](#footnote-ref-1)
2. https://www.epa.gov/risk/risk-assessment-guidance-superfund-rags-part [↑](#footnote-ref-2)