

ATTACHMENT E
DECLARATION OF RESTRICTIVE COVENANTS ON REAL
PROPERTY

THIS DECLARATION OF RESTRICTIVE COVENANTS ON REAL
PROPERTY (Restrictive Covenants) is made by [insert owner's name] as of [insert date].

RECITALS

WHEREAS, [insert owner's name] is the owner of certain real property (the Subject Property) located in [insert county name] County, Montana, is shown on Attachment 1 and is more particularly described as:

[insert property description]

WHEREAS, the Subject Property is or was previously located within the [insert facility name] (Facility) upon which hazardous or deleterious substances have come to be located; and

WHEREAS, [insert voluntary cleanup applicant's name] is seeking approval from the Montana Department of Environmental Quality (DEQ) for a Voluntary Cleanup Plan (VCP) for the Facility]. As part of the VCP, [insert voluntary cleanup applicant's name] and its officers, employees, agents, representatives, predecessors, successors in interest, and assignees desires to restrict development on the Subject Property and [insert owner's name] is willing to record and comply with such restrictions:

NOW, THEREFORE, [insert owner's name] hereby agrees and declares:

1. No wells may be drilled within the boundaries of the Subject Property without the express prior written approval of DEQ. Groundwater within the Subject Property may not be used for any purpose other than sampling without the express prior written approval of DEQ. The integrity of any monitoring wells must be maintained and no seals may be removed on any closed wells.
2. No soil or soil caps shall be disturbed in any manner, including without limitation drilling or excavation, without the express prior written approval of DEQ. It is the [insert owner's name] intent that this limitation be construed as broadly as possible to prohibit any type of excavation whatsoever.
3. No residential development or use, including but not limited to permanent residential use; temporary residential use; limited residential use; short-term residential use; children's day care; mobile homes with or without footings; mobile home with or without a pad; or camping shall occur upon the Subject Property. It is the [insert owner's name] intent that this limitation be construed as broadly as possible to prohibit any type of residential use whatsoever.

4. No structures, containments, footings for any purpose, or similar below ground appurtenances may be constructed upon the Subject Property.
5. No irrigation of any kind may occur on the Subject Property.
6. No action shall be taken, allowed, suffered, or omitted on the Subject Property if such action or omission is reasonably likely to create a risk of migration of hazardous or deleterious substances or a potential hazard to public health, safety, or welfare or the environment or result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Facility to contain hazardous or deleterious substances or limit human or environmental exposure to the hazardous or deleterious substances.
7. [Insert owner's name] agrees to provide DEQ and its representatives and contractors, [insert voluntary cleanup applicant's name], and all representatives and contractors of any person conducting DEQ-approved remedial actions on the Subject Property access at all reasonable times to the Subject Property.
8. At all times after [insert owner's name] conveys its interest in the Subject Property and no matter what person or entity is in title to or in possession of the Subject Property, [insert owner's name] agrees that [insert voluntary cleanup applicant's name] and its agents shall retain the right to enter the Subject Property at reasonable intervals and at reasonable times of the day in order to inspect for violations of the Restrictive Covenants contained herein.
9. As part of its VCP, [insert voluntary cleanup applicant's name] has agreed to enforce the requirements of these Restrictive Covenants and take prompt action to correct any violations of these Restrictive Covenants. [Insert voluntary cleanup applicant's name] has also agreed to notify DEQ within 30 calendar days of receiving actual or constructive notice of any violation or potential violation of these Restrictive Covenants. [Insert owner's name] specifically agrees that the remedy of "specific performance" of these Restrictive Covenants shall be available to [insert voluntary cleanup applicant's name] in such proceedings. .
10. DEQ shall also be entitled to enforce these Restrictive Covenants as an intended beneficiary thereof. [Insert owner's name] specifically agrees that the remedy of "specific performance" of these Restrictive Covenants shall be available to DEQ in such proceedings. Venue for enforcement of these Restrictive Covenants by DEQ shall be in the state First Judicial District Court, Montana.
11. The provisions of these Restrictive Covenants of the Subject Property shall run with the land and bind all holders, owners, lessees, occupiers, and purchasers of the Subject Property. These restrictive covenants apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property shall include these Restrictive Covenants. [Insert owner's name] will notify DEQ of any proposed conveyance of all or a portion of the Subject

Property at least 30 days prior to any such conveyance. [Insert owner's name] and all future owners will provide notice to all potential purchasers by providing a copy of these Restrictive Covenants prior to the conveyance of all or a portion of the Subject Property and shall provide a copy of this notice to DEQ.

12. [Insert owner's name] and all future owners shall cause the requirements of these Restrictive Covenants to be placed in all instruments that convey an interest in the Subject Property and shall file this document with the county clerk and recorder in [] County, [], Montana.

13. The rights provided to DEQ in this declaration include any successor agencies of DEQ.

IN WITNESS WHEREOF, [insert owner's name] has executed this Declaration of Restrictive Covenants on Real Property as of the first date written above.

[INSERT OWNER'S NAME]

By:

State of Montana)

:ss.

County of [insert county name])

On this __ day of _____, 20__, personally appeared _____, before me, a Notary Public for the State of Montana, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

(SEAL)

NOTARY PUBLIC FOR THE STATE OF MONTANA

Residing at _____

My Commission Expires: _____