

When recorded, return to:

[Name of Owner or person designated by Owner]

[Address]

**DECLARATION OF ENVIRONMENTAL USE RESTRICTION
FOR PROPERTY WITH INSTITUTIONAL CONTROL**

This Declaration of Environmental Use Restriction (“Declaration”), when recorded, is a covenant that runs with and burdens the Property, binds all owners and owners’ heirs, successors and assigns, and inures to the benefit of the Arizona Department of Environmental Quality (“Department”) and the State of Arizona.

This Declaration is executed and recorded by _____
[state each person’s full name and legal status, for example, unmarried man, husband and wife, an Arizona corporation, etc.] (“Owner”).

DECLARATION

Owner covenants and agrees as follows:

A. Presence of Contamination. Environmental contaminants are present on all / a portion [circle one] of real property located at

[street address or, if none, identify the nearest land references, for example, corner of Route 9 and the Arizona canal near Bisbee, Arizona], _____ [state the name of the city, town or county], Arizona (“Property”).

B. Warranty of Title. Owner is the only owner of, and holds equitable and legal title to, the Property and has authority to execute and record this Declaration.

C. Legal Description. Owner’s deed setting forth the legal description of the Property at which the contamination is located is attached and marked “Exhibit 1.” If the Declaration applies to only a portion of the Property identified in “Exhibit 1,” a legal description of the portion of the property subject to this Declaration is attached and marked as “Exhibit 2.”

The property tax number is _____ [optional].

D. Maps. The location of the Property identified in “Exhibit 1” is depicted on a map attached and marked as “Exhibit 3”; the portion of the Property subject to this Declaration is depicted on a map attached and marked as “Exhibit 4.”

E. Completion of Remediation. The date that remediation, remedial action, corrective action or response action was completed: _____ [state the date].

F. Environmental Contaminant Information. Complete the attached form “Exhibit 5, Environmental Contaminant Information,” by providing a description of each environmental contaminant subject to a remediation, remedial action, corrective action or response action, and the remaining contaminant concentrations. If this is being accomplished pursuant to Title 18, Chapter 7, Article 2, Arizona Administrative Code, Exhibit 5 need include only those concentrations that are above the predetermined residential soil remediation levels in Appendix A, referenced in R18-7-205. For risk assessments, provide the resulting site-specific cumulative excess lifetime cancer risk and hazard index. Indicate complete exposure pathways which currently exist or which may potentially exist in the future under the conditions provided for in this Declaration.

G. Institutional Control Statements. Because Owner is using an institutional control to satisfy the requirements of A.R.S. §§ 49-152 or 49-158, Owner agrees to the following:

1. The institutional control:

a. limits the use of the Property to non-residential use as defined in A.R.S. § 49-151 where natural persons are not reasonably expected to be in frequent and repeated contact with the soil. *[if “a” is not applicable, insert “NA.”]*

b. includes the following restriction:

[if applicable, insert description of other restriction; if not applicable, insert “NA.”]

2. The maintenance requirements of the institutional control are:

a. that Owner assure that the restricted area not be subject to residential use as defined by A.R.S. § 49-151. *[if “a” is not applicable, insert “NA.”]*

b. that Owner assure the following:

[if applicable, insert description of other maintenance requirements; if not applicable, insert “NA.”]

3. In order to protect the public health and the environment, the institutional control must remain in place because:

a. contaminant levels exceed residential soil standards. *[if “a” is not applicable, insert “NA.”]*

b.

[if applicable, insert other reason(s) why the restriction is necessary; if not applicable, insert “NA.”]

4. If any person desires to cancel or modify the institutional control in the future, the person shall obtain the Department's prior written approval. Any modification of the institutional control without the Department's prior written approval is void and a violation of this Declaration.

5. Owner hereby grants to the Department and its representatives, authorized agents, attorneys, investigators, consultants, advisors, and contractors the right of access to the Property at all reasonable times to verify that the institutional control is being maintained. The Department's right of access is continuing and runs with the land. If access to the Property is restricted, Owner shall have any barrier to entry opened or removed at the Department's request.

6. Owner shall incorporate the terms of this Declaration into any lease, license or other agreement that is signed by Owner and that grants a right with respect to the Property. The incorporation may be in full or by reference.

H. Institutional Control Annual Reports. Because Owner has elected to use an institutional control to satisfy the requirements of A.R.S. §§ 49-152 or 49-158, Owner shall submit to the Department a written report once each calendar year regarding the status of each institutional control.

I. Additional Information. More detailed information on the remediation is maintained and available at the Department of Environmental Quality, located at 1110 W. Washington Street, Phoenix, Arizona 85007.

J. Release of this Declaration. Request for the release of this Declaration pursuant to A.R.S. §§ 49-152(D) or 49-158(L) may be filed by owners holding all equitable and legal title to the Property or having legal authority to file the request.

K. Related Rules. If this Declaration is being used to comply with R18-12-263.01(B)(4)(d), the remaining information required by that rule is attached as Exhibits: *[state exhibit numbers or "NA."]*.

Owner *[state full name]*

[signature]

[current address of Owner]

Owner *[if more than one; state full name]*

[signature]

[current address of Owner]

Owner *[if more than one; state full name]*

[signature]

[current address of Owner]

Owner *[if more than one; state full name]*

[signature]

[current address of Owner]

This Declaration of Environmental Use Restriction was subscribed and sworn before me this _____ day of _____, 20__, by:

[state full name and legal status of each Owner]

Notary Public

My commission expires: _____

This Declaration of Environmental Use Restriction is approved this _____ day of _____, 20__, by the Arizona Department of Environmental Quality.

ARIZONA DEPARTMENT OF ENVIRONMENTAL
QUALITY, an agency of the State of Arizona,

by:

[signature of the Department's authorized agent]

Name _____
[print name of the authorized agent]

Its _____
[state person's official title]

This Declaration of Environmental Use Restriction was subscribed and sworn to before me this _____
day of _____, 20__, by:

[state full name and title of Department's agent]

Notary Public

My commission expires: _____

EXHIBIT 5

ENVIRONMENTAL CONTAMINANT INFORMATION

Contaminant Name	Chemical Abstract No.	Concentration(1)	Exposure Pathway(s)(2)	Non-residential(3)		Residential(4)	
				Carc	Non-carc	Carc	Non-carc
			Total				

- (1) Units are mg/kg. The concentration is the maximum detected at the property, or the statistically determined value representative of the site-specific contaminant distribution in the area of concern. This value is not the exposure point determined by risk assessment methodology.
- (2) Indicate all applicable complete exposure pathways as “O” for oral ingestion, “D” for dermal contact, and “I” for inhalation. One or more pathways may be eliminated by an institutional control, other than a restriction to non-residential uses. All three pathways are considered complete when the only restriction is limiting use of the Property to non-residential use.
- (3) If a risk assessment has been conducted, list the calculated non-residential risk or hazard quotient for each contaminant. At the bottom of the carcinogen (carc) column, provide the cumulative excess lifetime cancer risk. At the bottom of the non-carcinogen (non-carc) column, provide the hazard index.
- (4) Optional information, unless one of the following conditions occur:
 - (a) A risk assessment evaluation for residential uses is required by the program;
 - (b) A risk assessment evaluation is conducted for residential use which requires implementation of any land use controls; or
 - (c) The Property use may change from non-residential to residential in the reasonably foreseeable future, and no risk assessment was conducted for residential use. Standard default residential exposure assumptions must be used to determine values for this column.