

When recorded, return to:

[Name of Owner or person designated by Owner]

[Address]

**DECLARATION OF ENVIRONMENTAL USE RESTRICTION
FOR PROPERTY WITH ENGINEERING CONTROL
AND NON-RESIDENTIAL RESTRICTION**

[ADEQ Program Name]

[Facility Name]

[Facility Address]

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 parcel number(s) is/are _____.

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 exposure pathways which have been eliminated or reduced.

G. Engineering/Institutional Control Statements. Because Owner is using an engineering control and 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 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 contact with the soil. The engineering control consists of the following:

[describe the control]

2. The engineering control was constructed on _____
[state the date the control was completed]

3. The maintenance requirements of the institutional control are that Owner assures that the restricted area not be subject to residential use as defined in by A.R.S. § 49-151. The maintenance requirements of the engineering control are:

[describe maintenance requirements]

The maintenance requirements for the engineering control are specified in the Engineering Control Plan document dated *[insert date]*. Owner agrees to maintain the specified maintenance requirements and implement the procedures outlined in the document.

4. In order to protect the public health and the environment, the engineering control and the institutional control must remain in place because contaminant levels exceed residential soil standards, and because:

[state the other reason(s) why the engineering control is necessary, if applicable, or insert “NA”]

5. If any person desires to cancel or modify the engineering control or institutional control in the future, the person shall obtain the Department’s prior written approval. Any modification of the engineering or

institutional control without the Department's prior written approval is void and a violation of this Declaration.

6. 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 engineering control and institutional control are 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.
7. 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.
8. Owner agrees to provide a copy of the Engineering Control Plan document dated *[insert date]* to the subsequent purchaser of the property. Additional copies can be obtained through the *[insert applicable ADEQ Program]*.
9. If institutional or engineering controls will affect a right-of-way that is owned, maintained or controlled by a public entity for public benefit, the owner shall obtain the public entity's written consent prior to implementing the institutional control or constructing the engineering control.

H. Engineering Control Plans/Financial Assurance. The engineering control plan and financial assurance mechanism prescribed by A.R.S. § 49-152.01 are as follows:

[briefly describe the plan and mechanism]

Subsequent owner(s) or transferee(s) shall demonstrate financial assurance within thirty days of the sale or transfer of the property for which a financial assurance mechanism is required, if a government entity used a government financial test or a government guarantee test to meet financial assurance requirements.

I. Periodic Inspections and Reports. Because Owner has elected to use an engineering control and institutional control to satisfy the requirements of A.R.S. §§ 49-152 or 49-158, Owner shall maintain the controls to ensure that they continue to protect public health and the environment, and shall inspect the engineering control at least once each calendar year or more. In accordance with the Engineering Control Plan Document dated *[insert date]*, the engineering control(s) shall be inspected every *[insert name of month(s)]*. Within thirty days after each inspection the owner shall submit to the Department a written report that:

1. Describes the condition of the engineering control and the status of the institutional control;
2. States the nature and cost of all restoration made to the engineering control during the calendar year;
3. Includes current photographs of the engineering control; and
4. Describes the status of the financial assurance mechanism prescribed by A.R.S. § 49-152.01, and a certification that the financial assurance mechanism is being maintained.

The inspection report shall be submitted to the Department's DEUR Program Coordinator at the following address: 1110 W. Washington Street, Phoenix Arizona 85007.

J. 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.

K. 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. The release portion of the fee specified in R18-7-604 was / was not *[circle one]* paid for this Declaration. If Owner elected, pursuant to R18-7-605, not to pay the release portion with the original fee, a release will not be granted until the Department receives payment of the release portion of the fee specified in R18-7-604, which is in effect at the time of the release request.

L. Sale or Transfer of the Property. At least five working days before the sale or other transfer of title to or an interest in the property or any portion of the property, the Owner and buyer or transferee shall provide written notice and written commitment as required by A.R.S. §49-152.01(C).

M. Failure to Comply. If Owner fails to comply with this declaration or to implement the Engineering Control Plan document dated *[insert date]*, the Department shall give Owner written notice by certified mail of the failure. If Owner fails to take the action specified in the Department's notice, the Department may issue an order pursuant to A.R.S. §§ 49-152.02 and 49-158(I) and take any other action allowed by law.

N. 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 occurs:
 - (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.