



INSTITUTIONAL CONTROL GUIDANCE FOR CONTAMINATED SITES REGULATED BY SECTION 24-44(2), CODE OF MIAMI-DADE COUNTY

This document provides general guidelines for preparing an institutional control, in the form of a covenant running with the land ("covenant") and recorded in the public records of Miami-Dade County, to qualify for a No Further Action (NFA) with conditions as set forth in Section 24-44 (2)(k)(ii), Code of Miami-Dade County ("the Code"). Institutional controls are restrictions on the use of or access to a site to eliminate or manage exposure of human and environmental receptors to contaminants of concern (COCs). Engineering controls, such as caps, barriers, fences or slurry walls, may be used in conjunction with institutional controls to eliminate or minimize exposure to or migration of COCs.

Applicability

These guidelines apply to contaminated sites at which the property owner(s) has/have elected to implement an institutional control to qualify for an NFA with conditions.

Process Checklist

The following items shall be provided to the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (hereinafter referred to as "Department") for approval prior to recording the covenant:

1. A draft (unsigned) copy of the proposed covenant, consistent with the covenant template attached and available on the Department's website. The covenant shall include the following:
 - a. A copy of the legal description of the property (Exhibit A). If only a portion of the site is to be restricted, then in addition to the legal description for the entire property, a copy of either a survey or a legal description of that portion of the site which is subject to the restrictions;
 - b. A summary of the contamination assessment report including summary table(s) of analytical results, site map(s) (indicating the north direction, drawn to scale, and including a graphical representation of the scale) with property boundaries, institutional control boundaries, sample locations and sample results (Exhibit B); and

- c. If applicable, a summary of the Department-approved engineering control plan, including the contaminant of concern plume map, drawn to scale, with the engineering control superimposed and a detailed description of the construction, maintenance, and, as appropriate, monitoring of the engineering control (Exhibit C).

Additional guidance for covenant completion:

- I. The owner(s) name on the proposed covenant must match the name of the current property owner(s) at the time the covenant is filed in the public records.
 - II. The correct signature block on the covenant shall be selected (i.e., individual or corporation), and the option not used shall be deleted. Note that if the property owner is neither an individual nor a corporation (i.e., LLC, LLP, etc.), then the covenant shall substitute the type of entity that owns the property. For all entities, please indicate the state where the entity was formed and the required signatories, as stated in the Opinion of Title.
 - III. Note that on the standard covenant form, the language within brackets shall be modified, as appropriate; the language and format of the remaining portions of the covenant should be consistent with the template covenant, except as provided above with respect to the signature block.
 - IV. The Miami-Dade County Clerk's Office does not currently record images or documents in color; therefore, no images shall be included and all exhibits (i.e., tables, graphs, etc.) shall be provided in black and white to ensure that recorded documents will be legible and capable of being properly reproduced.
 - V. Please note that the Miami-Dade County Clerk's Office recommends a maximum page size for recording of 8.5 inches by 14 inches and a minimum font size of 12.
 - VI. All exhibits to the covenant must be properly labeled and numbered sequentially with the covenant. The title of the exhibits and their reference in the body of the covenant must be identical.
2. A draft (unsigned) Opinion of Title. A sample Opinion of Title is attached. Note the following:
- a. The property owner shall provide notice of the Department's approval of the use of institutional controls to individuals or entities with an interest in or claim to the property (i.e., mortgages, liens, financial notes, leases and easements). A sample notice to individuals or entities with an interest in or claim to the property is attached. The Department shall be provided with complete copies of the notices that have been made, together with proof of delivery of the notice to each

encumbrance holder. Proof of delivery may include certified mail, return receipt requested, signed acknowledgement of receipt obtained by a courier or delivery service, or other commercially recognized method.

- b. A joinder must be provided for and executed by any person or entity who must join (for example, a mortgage company), as specified in the Opinion of Title. All required joinders must be recorded along with the restrictive covenant. The joinder cannot be executed until there is a final version of the restricted covenant. A sample joinder is attached.
- c. If an easement intersects with the restricted area, the Opinion of Title shall identify what right(s) the easement holder has and copies of the easement shall be provided. Additionally, a scaled site diagram shall be provided identifying the easement in reference to the restricted area. If the restriction could affect or be affected by the easement holder's rights, then the owner will need to acquire a joinder.
- d. Copies of all leases/subleases or assigned leases shall be provided along with the Opinion of Title. Note that the conditions of the covenant may not conflict with the rights of the leasees/tenants.
- e. The Opinion of Title shall state who is authorized to sign the restrictive covenant on behalf of each property owner.
- f. The Opinion of Title shall be current (i.e., must be signed no more than 30 days prior to the recording of the restrictive covenant).

Be advised that the covenant and opinion of title will be reviewed for legal sufficiency by the Miami-Dade County Attorney's Office before final approval.

After written approval of the covenant by the Department, the property owner executes the covenant and records the fully executed covenant in the public records of Miami-Dade County. A receipt (i.e., copy of the covenant stamped with the book and page number in the upper right hand corner) indicating where and when the covenant was recorded shall be submitted to the Department prior to issuance of the RBCA site closure permit and subsequently the NFA with conditions letter.

If the covenant designates water supply well prohibitions, a copy of the recorded covenant shall be submitted to the South Florida Water Management District and the Miami-Dade County Health Department.

Enforcement of Controls

The RBCA site closure permit constitutes a lawful order of the Director of the Department and provides the means by which the institutional and, if appropriate, engineering controls shall be maintained and monitored. Compliance with the conditions of the permit and the covenant are required by law and are necessary to protect human health and the environment. If conditions of the permit or the covenant are violated, enforcement action may be initiated and, if corrective action is not taken within thirty (30) days or as otherwise approved by the Department, the NFA with conditions may be rescinded.

Removing Institutional and Engineering Controls

To remove an institutional or engineering control, the current property owner must submit a written request to the Department with appropriate sampling data demonstrating that the conditions set forth in Section 24-44 (2)(k)(i) of the Code have been achieved qualifying the site for an NFA without conditions. If this is demonstrated to the satisfaction of the Department, Director or the Director's designee shall, as appropriate, modify or release the restrictive covenant in accordance with Section 24-44 (2)(k)(ii) of the Code.

This instrument was prepared by:

Name:

Address:

(Space reserved for Clerk)

COVENANT RUNNING WITH THE LAND IN FAVOR OF
MIAMI-DADE COUNTY, FLORIDA, REQUIRING
INSTITUTIONAL CONTROLS [AND ENGINEERING
CONTROLS *(include if engineering controls applicable, remove if
not, apply throughout)*] AT REAL PROPERTY LOCATED AT
_____, (Municipality), MIAMI-DADE
COUNTY, FLORIDA.

The Owner, _____, holds the fee simple
title to the real property legally described as set forth in Exhibit A, attached hereto and incorporated
herein by reference, and located at _____, Miami-Dade
County, Florida, and furthermore identified for ad valorem tax purposes by *[(choose one and
remove brackets)* all or part] of Folio Number[(s)]
_____ (hereinafter referred to as
the “Property”), hereby creates a covenant pursuant to Section 24-44 (2)(k)(ii) of Chapter 24, Code
of Miami-Dade County, Florida, on behalf of the Owner, heirs, successors, grantees and assigns,

running with the land to and in favor of Miami-Dade County, a political subdivision of the State of Florida (hereinafter referred to as the “County”), its successors, grantees and assigns, pursuant to Section 24-44 (2)(k)(ii) of Chapter 24 of the Code of Miami-Dade County, Florida, with respect to the Property as follows:

The Owner covenants and agrees to the following:

A. The Owner of the Property has elected to implement institutional [and engineering controls] on the Property to obtain approval for a No Further Action with Conditions proposal pursuant to Section 24-44 (2)(k)(ii) of Chapter 24 of the Code of Miami-Dade County, Florida. The institutional [and engineering controls] that are applicable to the Property have been initialed as set forth below. These institutional [and engineering controls] afford a level of protection to human health, public safety and the environment that is equivalent to that provided by Section 24-44 (2)(f)(i) and Section 24-44 (2)(f)(ii) of Chapter 24, Code of Miami-Dade County, Florida. The applicable institutional [and engineering controls] are set forth as follows:

(Omit line items below that are not applicable)

1. ____ The Property shall not be used for residential purposes.
2. ____ The Property shall not be used for a children’s nursery, children’s day care center, children’s school, children’s camp, or any other similar facility.
3. ____ Groundwater from the Property shall not be used for drinking water purposes.
4. ____ Groundwater from the Property shall only be withdrawn for monitoring of pollution.

5. ____ Contaminated [soil or groundwater (*choose one or both and remove brackets*)], as delineated in the Site Assessment Report dated _____ and approved by the Director of the Miami-Dade County Department of [(*choose name of Department at time of Site Assessment Report approval and remove others and brackets, apply throughout*) Environmental Resources Management or Permitting, Environment and Regulatory Affairs or Regulatory and Economic Resources, Division of Environmental Resources Management], shall not be removed from the Property without prior written approval of the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or its assigns. The Site Assessment report shall remain on file with the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, or its successors or assigns, and is summarized for informational purposes in Exhibit B, which is incorporated by reference.

6. ____ Other applicable institutional controls as set forth below:

7. ____ Engineering control[(s)], detailed in the Engineering Control Plan dated _____ and approved by the Director of the Miami-Dade County Department of [Environmental Resources Management or Permitting, Environment and Regulatory Affairs or

Regulatory and Economic Resources, Division of Environmental Resources Management]. The Engineering Control Plan shall remain on file with the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or assigns, and is summarized for informational purposes in Exhibit C, which is incorporated by reference.

B. Prior to the entry into a landlord-tenant relationship with respect to the Property, the Owner agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Covenant.

C. For the purpose of inspecting for compliance with the institutional [and engineering controls] contained herein, the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or its assigns, shall have access to the Property at reasonable times and with reasonable notice to the Owner of the Property. In the event that the Owner does not or will not be able to comply with any of the institutional [and engineering controls] contained herein, the Owner shall notify in writing the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or its assigns, within three (3) calendar days.

D. This Covenant may be enforced by the Director of the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources

Management, its successors or its assigns, by permanent, temporary, prohibitory, and mandatory injunctions as well as otherwise provided for by law or ordinance.

E. The provisions of this instrument shall constitute a covenant running with the land, shall be recorded, at the Owner's expense, in the public records of Miami-Dade County and shall remain in full force and effect and be binding upon the undersigned, their heirs, legal representatives, estates, successors, grantees and assigns until a release of this Covenant is executed and recorded in the Public Records of Miami-Dade County, Florida.

F. This Covenant is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years after the date this Covenant is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless the Covenant is modified or released by Miami-Dade County.

G. Upon demonstration to the satisfaction of the Director of the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or its assigns, that the institutional controls [and engineering controls] set forth in this Covenant are no longer necessary for the purposes herein intended because the criteria set forth in Section 24-44 (2)(k)(i) of Chapter 24 of the Code of Miami-Dade County, Florida have been met, the Director of the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or its assigns, shall, upon written request of the Owner, release this Covenant.

H. The Owner shall notify the Director of the Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, its successors or its assigns, within thirty (30) days of any conveyance, sale, granting or transfer of the Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

I. The term Owner shall include the Owner and its heirs, successors and assigns.

(Choose Individual or Corporation and remove the one not applicable)

IN WITNESS WHEREOF, the undersigned, being the Owner of the Property, agrees to the provisions of this Covenant, hereby create same as a Covenant Running with the Land in favor of Miami-Dade County, Florida, and set their hands and seal unto this Covenant this _____ day of _____, _____.

INDIVIDUAL

WITNESSES:

OWNER:

sign _____ sign _____

print _____ print _____

address _____ address _____

sign _____

print _____

address _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

sign _____

print _____

State of Florida at Large (Seal)

My Commission Expires: _____

[OR]

IN WITNESS WHEREOF, the undersigned, being the Owner of the Property, agrees to the terms of this Covenant, hereby create same as a Covenant Running with the Land, and set their hands and seal unto this Covenant this _____ day of _____, _____.

CORPORATION

WITNESSES:

sign _____ Corporation _____, Inc.

print _____ sign _____

address _____ print _____

sign _____ Title _____

print _____ Address _____

address _____

sign _____

print _____

address _____

(corporate seal)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, as _____ of _____, Inc., a Florida corporation, on behalf of the corporation. He or she is personally known to me or has produced _____ as identification and who take an oath.

NOTARY PUBLIC:

sign _____

print _____

State of Florida at Large (Seal)

My Commission Expires: _____

OPINION OF TITLE

To: Miami-Dade County

With the understanding that this Opinion of Title is furnished to Miami-Dade County, as inducement for acceptance of a Covenant Running With the Land pursuant to Chapter 24, Code of Miami-Dade County, covering the real property, hereinafter described, it is hereby certified that I have examined a complete Abstract of Title covering the period from the beginning to the _____ day of _____, _____, at the hour of _____, inclusive, of the following described property:

I am of the opinion that on the last mentioned date, the fee simple title to the above-described real property was vested in:

Note: For Limited Partnership, Limited Liability Company or Joint Venture indicate parties comprising the Limited Partnership, Limited Liability Company or Joint Venture and identify who is authorized to execute.

Subject to the following encumbrances, liens and other exceptions (If "none" please indicate):

1. RECORDED MORTGAGES:

2. RECORDED CONSTRUCTION LIENS, CONTRACT LIENS AND JUDGMENTS:

3. GENERAL EXCEPTIONS:

4. SPECIAL EXCEPTIONS:

I *HEREBY CERTIFY* that I have reviewed all the aforementioned encumbrances and exceptions and that none of them hinder or affect the recording or enforcement of the _____.

Therefore, it is my opinion that the following party(ies) must join in the agreement in order to make the _____ a valid and binding covenant on the lands described herein.

<u>Name</u>	<u>Interest</u>	<u>Special Exception Number</u>
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The following is a description of the aforementioned abstract and its continuations:

<u>Number</u>	<u>Company Certifying</u>	<u>No. of Entries</u>	<u>Period Covered</u>
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I *HEREBY CERTIFY* that the legal description contained in this Opinion of Title coincides with, and is the same as, the legal description in the proffered, recordable agreement.

I, the undersigned, further certify that I am an attorney-at-law duly admitted to practice in the State of Florida and a member in good standing of the Florida Bar.

Respectfully submitted this _____ day of _____, _____.

Name

Print Name

Florida Bar No. _____

Address:

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, who is personally known to me or has produced _____, as identification.

Notary Public

My Commission Expires:

Print Name

**JOINDER BY MORTGAGEE
CORPORATION**

The _____ undersigned _____, a
_____ (state) corporation and Mortgagee under that certain mortgage from
_____ dated the _____
day of _____, _____, and recorded in Official Records Book
_____, Page _____, of the Public Records of Miami-Dade County, Florida,
covering all/or a portion of the property described in the foregoing agreement, does hereby
acknowledge that the terms of this agreement are and shall be binding upon the undersigned and
its successors in title.

IN WITNESS WHEREOF, these presents have been executed this _____ day of
_____, _____.

Witnesses:

Signature

Print Name

Address

Signature

Print Name

Address

Name of Corporation

Address:

By _____
(President, Vice-President or CEO*)

Print Name: _____

**[*Note: All others require attachment of original
corporate resolution of authorization]**

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by _____
(Name)
the _____ of _____ corporation, on
(Title) (Name)
behalf of the corporation. He/She is personally known to me or has produced
_____, as identification.

Witness my signature and official seal this _____ day of _____,
_____, in the County and State aforesaid.

(Signature)
Notary Public-State of _____

(Print Name)

My Commission Expires: _____

Sample notice to individuals or entities with an interest in or claim to the property

Name of Interest Holder
Address of Interest Holder

RE: Notice of Intent to Conditionally Close a Contaminated Site Using an Institutional Control

Dear [insert name]:

You are receiving this notice because you are holder of the following recorded instrument: [Insert Name and date of Instrument, along with recording information taken from the Title Report], (a copy of which is attached hereto), on certain property owned by [Owner's name] ("Owner").

In connection with certain environmental site rehabilitation activities on the property, the person responsible for site rehabilitation has requested that the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM) approve a No Further Action with Conditions (NFAC) Proposal with Institutional Controls or with Engineering and Institutional Controls for a contaminated site relating to this property. {Owner} intends to restrict exposure to contamination in the following manner: {describe the restrictions such as land use restrictions, water use restrictions, caps over contaminated soil, etc.} that will be set forth in a covenant running with the land ("covenant") and recorded in the public records of Miami-Dade County.

Attached to this letter is a summary of the contamination addressed by the Institutional Control, including the type of contamination, the affected media and the location of the contamination. Please contact the undersigned if you have any questions regarding this notice. In addition, you may contact {DERM Technical Reviewer} to discuss the status of the work. Complete copies of the NFAC Proposal and the draft covenant are available online at <http://ecmrer.miamidade.gov>. Please use the DERM case number {case number} when communicating with DERM or accessing the online records.

Holders of recorded interests have 30 days from receipt of this notice to provide comments to DERM. Within the 30-day comment period, holders of recorded interests may request additional time for review. Such comments should be sent to DERM {name, address and email of DERM Technical Reviewer}.

Sincerely,

cc: [DERM Technical Reviewer who should receive comments]