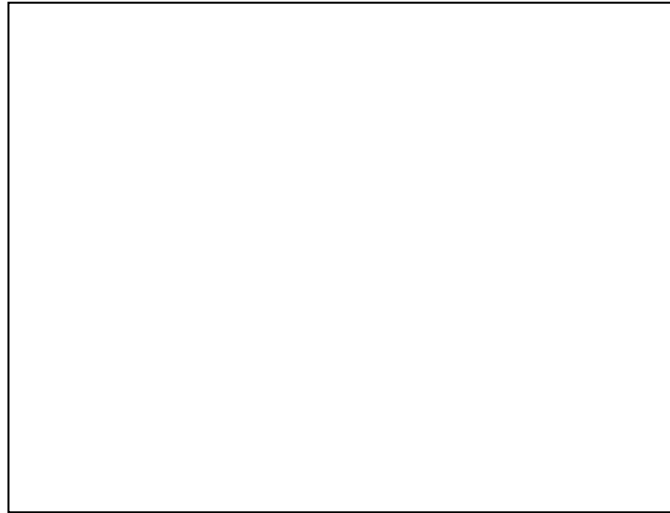


**Attachment 3A: Declaration of Restrictive Covenant, Form A – Any Section of DRC
Encumbers the Entire Property**



This instrument prepared by:
Dirk M. Smits, Esq.
Vernis & Bowling of the Florida Keys, P.A.
81990 Overseas Highway, 3rd Floor
Islamorada, FL 33036

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter “Declaration”) is made by the School Board of Monroe County, Florida, a body corporate existing under the laws of the State of Florida, formerly known as The Board of Public Instruction of Monroe County, Florida (hereinafter “GRANTOR”) and the Florida Department of Environmental Protection (hereinafter “FDEP”).

RECITALS

A. GRANTOR is the fee simple owner of that certain real property situated in the County of Monroe, State of Florida, more particularly described in **Exhibit “A”** attached hereto and made a part hereof (hereinafter the “Property”)

B. The FDEP Facility Identification Number for the Property is *COM_355111*. The facility name at the time of this Declaration is Gerald Adams Elementary School (hereinafter “GAES”). serves to memorialize the presence of impacted soils and

groundwater in concentrations exceeding the FDEP's standards and to outline those restrictive covenants made by the Grantor governing the Property as set forth herein.

C. The Property and the adjoining properties appeared to be wetlands-type land and/or submerged land in the 1950's. By the 1960's, the Property had been in-filled with soils and debris. By 1975, the former GAES School was built onsite. Prior to redevelopment with the present-day GAES, a Report of Geotechnical Exploration was prepared by Nutting Engineers in August 2016. The report documented the presence of buried debris at the Property, which was underlain by natural limestone. Following the discovery of debris, environmental site assessment activities were initiated. Previous assessment activities had been conducted at the Property by EE&G Environmental Services, LLC (EE&G), Nutting Environmental (hereinafter "Nutting") and Gallagher Bassett Technical Services (GBTS). The documents noted below were previously submitted to the FDEP and are part of the public record. These documents should be reviewed for additional context and assessment information about the Property. The documents included the following:

- Report of Geotechnical Exploration - Nutting August 2016
- Site Assessment Report (SAR) – EE&G June 2017
- Soil Management Plan (SMP) – EE&G June 2017
- Supplemental Site Assessment Data – EE&G July 2017
- Site Rehabilitation Completion Report (SRCR) – GBTS September 2020

During the site assessments of the Property, soils were identified to contain the presence of total arsenic, barium, lead, dioxins, PCBs and polynuclear aromatic hydrocarbons (PAHs). Therefore, the closure strategy was to cap these soils with an engineering control cap to prevent direct exposure. Additionally, the groundwater was identified during the site assessments to contain ammonia, total iron and isopropyl benzene. Therefore, the closure strategy was to restrict the use of groundwater for potable or irrigation purposes. The school facility is currently using municipally-provided water for drinking (potable) and irrigation purposes, as the general groundwater quality is considered a poor / low yield aquifer. Storm water drainage was designed to collect in retention ponds and discharge to a deep injection well.

More information about the engineering control surficial cap installed across the Property is documented in the following reports by GBTS that are incorporated herein by reference:

1. *Site Assessment Report dated April 7, 2022 submitted by Gallagher Bassett Technical Services;*
2. *No Further Action with Conditions Proposal or Site Rehabilitation Completion Report dated April 7, 2022, submitted by Gallagher Bassett Technical Services;*
and
3. *Consent Orders*

D. The site assessments reports noted in Recital C set forth the nature and extent of contamination that is documented on the Property. These reports confirm that

contaminated soil and groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exist on the Property. Also, these reports document that the groundwater contamination does not extend beyond the Property boundary, and the groundwater contamination is not migrating.

E. It is GRANTOR's and FDEP's intent that the restrictions set forth in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Property and the environment to the contaminants, and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP will not issue a Conditional Site Rehabilitation Completion Order (hereinafter "Order") upon recordation of this Declaration. Based on the recommended implementation of institutional and engineering controls for soil and groundwater and a recorded DRC, FEDP's District and Business Support Program (DBSP) concurs with "No Further Action" for this Property.

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Property that the Property be held subject to certain restrictions and engineering controls, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. GRANTOR hereby imposes the following restrictions and requirements:

{{GROUNDWATER USE RESTRICTIONS.}}

- a. Groundwater Use. There shall be no use of the groundwater under the Property. There shall be no drilling for water conducted on the Property, nor shall any wells be installed on the Property other than monitoring or other wells pre-approved in writing by FDEP's Division of Waste Management (DWM) in addition to any authorizations required by the Division of Water Resource Management (DWRM) and the Water Management District (WMD).
- b. Dewatering. For any dewatering activities on the Property, a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated. FDEP will rely on this Declaration, Rule 62-621.300, F.A.C., and the guidance incorporated therein, and prior FDEP DWM review of any dewatering plan as the institutional controls to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to dewatering activities on the

contaminated site. Rule 62-621.300, F.A.C., requires issuance of a permit when conducting dewatering in the area of a contaminated site. FDEP DWM can only approve a dewatering plan that ensures the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated to avoid adversely impacting or increasing the potential for exposure to contaminants resulting in risk to human health, public safety or the environment. Unless it is demonstrated that the cleanup criteria under subsection 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available at law, may institute proceedings to revoke this Declaration and require the resumption of site rehabilitation activities if any dewatering activities are commenced without FDEP DWM prior approval.

c. Stormwater Facilities.

Existing Stormwater Features, the existence of which has been determined to not adversely affect the remaining contamination:}

Attached as "**Composite Exhibit B**", and incorporated by reference herein, is a Survey identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the Property. Such existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales, stormwater detention or retention facilities or ditches on the *Property* without prior written approval from FDEP's DWM in addition to any authorizations required by the DWRM and the WMD. A revised exhibit must be recorded when any stormwater feature is altered, modified, expanded, or constructed. FDEP will rely on this Declaration and prior FDEP review of any plan to construct new or modify existing stormwater features to ensure that there is no exposure to contaminated groundwater entering into new or expanded stormwater features resulting in risk to human health, public safety or the environment due to the contaminated site. Construction of stormwater swales, stormwater detention or retention features, or ditches on the property could destabilize the groundwater plume or increase potential for exposure to contaminants resulting in risk to human health, public safety, or the environment. For this reason, if GRANTOR seeks to construct stormwater features on the Property, GRANTOR should first consult with and receive approval from FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other applicable law. Unless it is demonstrated that the cleanup criteria under subsection 62-680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available under law, may institute proceedings to revoke this Declaration and the Conditional Site Rehabilitation Completion Order {{delete "Conditional Site Rehabilitation Order" if no Order is to be issued}}, and require the resumption of site rehabilitation activities if any such stormwater features are constructed or commenced without FDEP DWM prior approval.

SOIL RESTRICTIONS AND REQUIREMENTS.

- d. Soil Engineering Controls. The “Area of Soil Contamination” as located on the Property as shown on “**Composite Exhibit B**” shall be permanently covered and maintained with a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure (hereinafter referred to as the “Engineering Control. An Engineering Control Maintenance Plan (ECMP) has been approved by FDEP. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of FDEP. The ECMP, as amended, relating to FDEP Facility No. COM_355111, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area;
- e. Excavation and Construction. Excavation and construction below the Engineering Control is not prohibited on the Property provided any contaminated soils that are excavated are either: 1) placed back into the excavation and the Engineering Controls are reconstructed or 2) are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas.

3. In the remaining paragraphs, all references to “GRANTOR” and “FDEP” shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon, over and through and access to the Property at reasonable times and with reasonable notice to GRANTOR. Access to the Property is available via an immediately adjacent public right-of-way.

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP’s rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and FDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by this Declaration. If GRANTOR

does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall record this Declaration, and reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Property, GRANTOR agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration of Restrictive Covenant. Without limiting the generality of paragraph 3 above, it is the intention of the parties that if GRANTOR has conveyed the Property, the GRANTOR's successors and assigns shall be required to perform such notification.

7. This Declaration is binding until a release of covenant is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. GRANTOR also covenants and warrants that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR'S rights to impose the restrictive covenant described in this Declaration

---The remainder of this page is intentionally left blank.---

IN WITNESS WHEREOF, School Board of Monroe County, Florida has executed this instrument, this _____ day of _____, 2022.

GRANTOR
School Board of Monroe County, Florida

John Dick
Chairman of The School Board of Monroe County, Florida
241 Trumbo Road, Key West, FL 33040

Signed, sealed and delivered in the presence of:

_____ Date: _____

Witness
Print Name: _____

_____ Date: _____

Witness
Print Name: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____ **OR** by _____ as _____ for _____.

Personally Known _____ OR Produced Identification _____.
Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel _____.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this _____ day of _____, 2022.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

{{Name of Signatory}}
{{Title of Signatory}}
{{either "Petroleum Restoration Program," OR
"Waste Cleanup Program," OR "_____
District Office"}}
{{Mailing Address}}

*{{FDEP Site/Project Managers should provide
the above information to GRANTOR}}*

Signed, sealed and delivered in the presence of:

Witness: _____ Date: _____
Print Name: _____

Witness: _____ Date: _____
Print Name: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____ as representative for the Florida Department of Environmental Protection.

Personally Known _____ OR Produced Identification _____.
Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____