**Instructions for Completing Deed Restriction**

1. Add permit holder name and address on first page, upper left-hand corner, under “After recording, return to:”. Leave room for the county recorder’s stamp; usually this is in the upper right hand half of the first page.
2. After title (Declaration of Covenants), enter name of project, DSL permit number.
3. On declaration line, enter landowner name (which may or may not be the applicant).
4. Under Recital #1, add Removal-Fill Permit # (“APP00\_\_\_\_\_”).
5. Under Article 1 Definitions 1.2, add landowner name.
6. Under Article 5 A. USE RESTRICTIONS, insert additional use restrictions (see examples 1 – 7).
7. Under Article 5 C. RESERVED RIGHTS, insert specific uses for which you reserve the right to use the property (must be consistent with the purposes outlined in the removal-fill permit).
8. Create Exhibit A – legal description of the Property boundary and labeled map of the property indicating the locations of wetlands, streams, existing structures, stormwater treatment features, and easements located on the property.
9. Attach Exhibit A to the Deed Restriction and submit the electronic copy to DSL for review.
10. Upon preliminary approval, DSL will request that the permit holder obtain the **landowner signature** on the last page of the Deed Restriction and have it notarized.
11. Return the Deed Restriction document with original signatures to DSL for DSL signature on the easement conveyance.
12. DSL will sign and return the original to the permit holder.
13. The permit holder must file the Deed Restriction with original signatures with the county clerk’s office for the county in which the permit site is located.
14. Have a copy of the filed Deed Restriction sent to DSL.

After recording, return to:

*{Insert Applicant name & Address}*

*{leave room for Recorder’s stamp}*

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOR THE**

**{*Name of Project, DSL permit # \_\_\_\_\_\_\_*}**

THIS DECLARATION is made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ {*landowner name}*, (“Declarant”).

# RECITALS

1. Whereas, Declarant is the owner of the real property described in Exhibit “A,” attached hereto and by this reference incorporated herein, and has designated the Property as a minimization mitigation site in accordance with Removal-Fill Permit # \_\_\_\_\_\_\_\_\_\_\_ (the "DSL Permit") approved by the Oregon Department of State Lands (“Department”).

2. Whereas, Declarant desires and intends to provide for the perpetual protection and conservation of the wetland and waterway functions and values of the Property, and to this end desires to subject the Property to the covenants and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property;

3. Whereas, the Department has accepted commitment of the Property as minimization of impacts under ORS 196.800 et seq. and as an element of its favorable decision for Removal-Fill Permit # \_\_\_\_\_\_\_\_\_\_

# ARTICLE 1

# DEFINITIONS

1.1 “Declaration” shall mean the covenants, restrictions, easement, and all other provisions set forth in the Declaration of Covenants and Restrictions.

1.2 “Declarant” shall mean and refer to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*landowner name*), the owner of the Property, and the owner’s heirs, successors, and assigns.

1.3 “DSL permit” shall mean the final document approved by the Department that includes minimization mitigation. A copy of the DSL permit may be obtained at the Department of State Lands, 775 Summer St. NE, Salem, OR 97301; phone 503-986-5200.

1.4 “Property” shall mean and refer to all real property subject to this Declaration, as more particularly set forth in Exhibit “A.”

**ARTICLE 2**

**PROPERTY SUBJECT TO THIS DECLARATION**

The Property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration. {*Exhibit “A” must be a surveyed legal description, and map illustrating the specific area subject to this Declaration. The map legend shall indicate the approximate locations of wetlands, streams, any existing structures such as roads, utility lines, or stormwater treatment features, and any easements located within or across the Property.}*

**ARTICLE 3**

**DECLARANT REPRESENTATIONS**

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge, that no hazardous materials or contaminants are present that conflict with the conservation purposes intended; that the Property is in compliance with all federal state, and local laws, regulations, and permits; that there is no pending litigation affecting, involving, or relating to the Property that would conflict with the intended conservation use; and that the Property is free and clear of any and all liens, claims, restrictions, easements and encumbrances that would interfere with the ability to protect and conserve the Property.

**ARTICLE 4**

**GENERAL DECLARATION**

Declarant, in order to discharge in part its obligations under the DSL permit, declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and in this Declaration, in order that it shall remain substantially in its, preserved, and natural condition, in perpetuity. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. No modification or release of this Declaration will be effective unless authorized in writing by the Department. Any amendments must be signed by the Department and must be recorded in the official records of the county in which the Property is located.

# ARTICLE 5

## USE RESTRICTIONS, MANAGEMENT RESPONSIBILITIES,

## AND RESERVED RIGHTS

Declarant is subject to any and all easements, covenants and restrictions of record affecting the Property.

A. USE RESTRICTIONS. Except as necessary to maintain the Property consistent with this Declaration and the DSL permit, the actions prohibited by this covenant include:

1. *{Insert Covenants here. List, by number, all of the things not allowed in the conservation area. See following examples.}*
2. There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any native vegetation in the Property, nor any disturbance or change in the natural habitat of the Property unless it is consistent with maintaining the wetland and waterway functions and values of the Property. Hazard trees that pose a specific threat to safety and existing structures including fences or pedestrian trails may be felled and left on the Property. Dry grass only may be mowed after July 1 to abate fire hazard.
3. There shall be no agricultural, commercial, or industrial activity undertaken or allowed in the Property; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.
4. No domestic animals shall be allowed to graze or dwell on the Property.
5. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any storage nor dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Property in any manner unless approved in writing by the Department .
6. There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards or other advertising material, vehicles or other structures on the Property.
7. There shall be no legal or de facto division, subdivision or partitioning of the protected Property.
8. Use of motorized off-road vehicles is prohibited except on existing roadways.

B. MANAGEMENT RESPONSIBILITIES. Declarant shall take all reasonable action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the natural condition of the Property or that are otherwise inconsistent with this Declaration.

C. RESERVED RIGHTS. Declarant reserves all other rights accruing from Declarant's ownership of the Property including but not limited to the exclusive possession of the Property; the right to exclude others; the right to transfer or assign Declarant's interest in the same; the right to quiet use and enjoyment of the Property; the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its wetland or waterway functions and values, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

The Declarant specifically reserves the right to use the Property for the purposes of {*insert* *specific action, e.g. hunt ducks*} \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which reserved rights are deemed to be consistent with the purposes enumerated in this declaration and the permit.

**ARTICLE 6**

**GENERAL PROVISIONS**

A. NOTICE. The Department shall be provided with a 60-day advance written notice of any legal action concerning this Declaration, or of any action to extinguish, void or modify this Declaration, in whole or in part. This Declaration, and the covenants and restrictions contained herein, are intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded Declaration shall accompany said notice. The Department may, but is not required to, extinguish, void or modify the protective instrument upon receipt of that Notice if it determines that conditions have changed such that the development of those portions of the property would be consistent with the protection, conservation, and best use of waters of the state; the protective instrument is no longer necessary to mitigate for the effect of the activity that was authorized under the relevant permit, and the extinguishment, voidance or modification would otherwise be consistent with the Oregon Removal Fill law. Any extinguishment, voidance or modification must be signed by the Department and recorded with the county in which the protective instrument was originally recorded. The decision of whether to release the protective instrument is solely within the Department’s discretion.

B. VALIDITY. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has executed

this instrument this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ {*Owners name*}

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, Oregon

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF OREGON )

) ss:

County of\_\_\_\_\_\_\_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*date*) by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of person*) as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*title*) of Applicant firm’s name of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Oregon.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Notarial Officer

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

GRANTEE: The State of Oregon, Department of State Lands, approves Declarant’s conveyance of an easement in favor of the Department.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attachment:

Exhibit A, legal description and labeled map of the Property