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| ODOT RE 405-BRev. 03/13  |  | Restrictive Environment Covenant on Land Acquired for Non-Environmental Purposes |

 **Restrictive Covenant**

This Restrictive Covenant has been executed on the \_\_\_\_\_\_ day of Click or tap to enter a date. , by the State of Ohio, Department of Transportation, 1980 West Broad St. Columbus, Ohio 43223.

**Whereas**, pursuant to applicable law and by virtue of a certain instrument of record at \*Recording Data\*, Recorder’s Office, \*County Name\* County, Ohio, the State of Ohio, Department of Transportation, [hereinafter “ODOT”] is the owner in fee simple of a certain parcel of real estate situated in the State of Ohio, County of \*County Name\*, and the Choose an item. of \*Name of City/ Village/Township\* [hereinafter Choose an item.] and more specifically described as:

**\*PARCEL\*-****\*Suffix(s)\***

 \*CTY-RTE-SEC\*

 See Exhibit A Attached Hereto And By This Reference Made A Part Hereof

Prior Instrument Reference:\*Recording Data from Deed by which ODOT took title\*, \*County Name\* County Recorder’s Office.

\*County Name\* County Auditor Parcel No. \*?\*

**Whereas**, the Premises was acquired in \*Year Acquired\* in connection with a certain highway project or other facilities of ODOT; and the Director of Transportation has now determined that it would be in the best interests and welfare of the public and the State of Ohio, Department of Transportation, for the Premises to be subject to certain restrictions to protect environmental resources, as may be required or found desirable by the Clean Water Act (33 U.S.C. 125, et seq.) or like or similar federal and state laws;

**OR**

**Whereas**, the Property was acquired in \*Year Acquired\* in connection with a certain highway project or other facilities of ODOT; and the Director of Transportation has now determined that it would be in the best interests and welfare of the public and the State of Ohio, Department of Transportation, for a certain area or portion of the Property as more specifically described in Exhibit B attached hereto and by this reference incorporated herein [“Premises”] to be subject to certain restrictions to protect environmental resources as may be required or found desirable by the Clean Water Act (33 U.S.C. 125, et seq.) or like or similar federal and state laws;

**Whereas**, pursuant to Sections 401 and 404 of the Clean Water Act, (33 U.S.C. 1251 et. seq.), and other federal or state laws, the Ohio Environmental Protection Agency [hereinafter “OEPA”] and the United States Army Corps of Engineers [hereinafter “USACE”] require stream, wetland, and other environmental mitigation through the issuance of certifications and permits, respectively, for the unavoidable impacts to streams, wetlands and other areas of the environment resulting from the construction and maintenance of Ohio’s state highways; and

**Whereas**, in exchange for OEPA and USACE issuing such a certificate and permit, respectively, ODOT has agreed to forever preserve and maintain the Premises in its natural state.

**Now Therefore**, for the express purpose of maintaining the Premises in its natural state, the following restrictions are placed upon the use of the Premises, to wit:

**DURATION**

This Restrictive Covenant shall be perpetual and runs with the land as an enforceable encumbrance.

**PROHIBITED AND RESTRICTED ACTIVITIES**

[S] 1. The Premises shall be maintained in its natural state; as used herein the term “natural state” means: the physical status quo ante of the Premises immediately prior to the time this instrument was executed and recorded, as such physical status may change or evolve due to only natural causes.

[S] 2. The development rights on or to the Premises or any portion thereof, shall not be used, exercised, or transferred in any manner whatsoever. As used herein the term “development rights” includes, without limitation, any and all rights, however designated, now or hereafter associated with the Premises or any other property that may be used, pursuant to applicable zoning laws or other governmental laws or regulations, to compute permitted size, height, bulk or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Premises.

[S] 3. Other than those existing on the Premises immediately prior to the time this instrument was executed and recorded, no buildings, billboards, or other structures of any kind, either temporary or permanent, shall be placed or erected on the Premises, except as otherwise expressly provided herein.

[S] 4. Within the boundaries of the Premises, none of the following activities shall be engaged in: (a) industrial, (b) commercial, (c) farming, (d) animal husbandry, including the maintenance of livestock, (e) agricultural, (f) horticultural, (g) filling, (h) excavating, (i) removing, mining, or extracting top soil, sand, gravel, rock, minerals, coal, gas, oil, or other materials, (j) building additional or new roads, or (k) changing the topography in any manner, except such changes in topography as may be caused by natural forces.

[S] 5. Within the boundaries of the Premises, no herbicide or pesticide shall be applied or used except those that are safe for use near water. Any such herbicide or pesticide applied in or around surface water must be labeled by its manufacturer as being appropriate for use in and around standing or flowing water. Any such use or application of a herbicide or pesticide shall be done in accordance with the methods prescribed by the State of Ohio, Department of Agriculture (“ODA”) and in accordance with the instructions included with the herbicide or pesticide by the manufacturer; if there is a conflict between the methods prescribed by ODA and the manufacturer’s instructions, the methods prescribed by ODA shall control. All such herbicides or pesticides shall be applied by only a person licensed or certified to apply the same.

[S] 6. Other than those existing on the Premises immediately prior to the time this instrument was executed and recorded, no telephone lines and related equipment, electric lines and related equipment, water wells and water lines and related equipment, or other utility lines or mains and related equipment shall be placed or erected on the Premises, except as otherwise expressly provided herein.

Provided, however, all such existing telephone lines and related equipment, electric lines and related equipment, water wells and water lines and related equipment, or other utility lines or mains and related equipment may be maintained, repaired, or replaced as may be needed to continue to provide such utilities and services in the same manner as existed immediately prior to the time this instrument was executed and recorded. When maintaining, repairing, or replacing ­any such utilities, related equipment, or services, only the minimum area within the boundaries of the Premises as may be necessary to accomplish the task shall be used; and, upon completion of such work, the area within the boundaries of the Premises used to effectuate any such maintenance, repair, or replacement of the utilities, related equipment, or services shall be restored to its previous state or condition, or as near thereto as may be practicable under the circumstances.

[S] 7. Within the boundaries of the Premises, no tree, ground cover, or other vegetation shall be removed or destroyed by human agency, except as otherwise expressly provided herein.

**OR**

[O] 7. Within the boundaries of the Premises, no tree, shrub, ground cover or other vegetation shall be removed or destroyed by human agency by pruning, cutting, mowing or any other activity except: (A) if done to control or prevent hazards, disease, fire or for other good husbandry practices; (B) if done selectively from an upland buffer area, or dead, diseased or injured trees; (C) if done in accordance with a direction or order contained in a Forest Stewardship/Management Plan issued by a State Service Forester or a professional private consulting forester; or (D) if required for the protection of an existing oil pump located adjacent to Premises.

No entity of any nature whatsoever, including but not limited to the State of Ohio, its institutions, agencies, commissions, instrumentalities, and political subdivisions, shall engage in any form of commercial clear cutting or harvesting of trees, shrubs, ground cover or other vegetation. Any cutting and/or harvesting done pursuant to subsections (A) through (D) of this Section 7 shall be supervised by an approved Master Logger, unless the State Service Forester or professional private consulting forester deems such supervision by a Master Logger not necessary for the proposed activity.

[S] 8. The Premises shall be kept at all times free and clear of any garbage, trash, and machinery; and no entity of any nature whatsoever, including but not limited to the State of Ohio, its institutions, agencies, commissions, instrumentalities, and political subdivisions, shall accumulate or store any materials on the Premises. Provided, however, no provision of this instrument shall be interpreted or construed as imposing upon any entity, including but not limited to the State of Ohio, its institutions, agencies, commissions, instrumentalities, and political subdivisions, any duty to remove garbage, trash, machinery, or other unsightly material left or deposited upon the Premises unlawfully by any other entity.

[S] 9. Within the boundaries of the Premises, no one shall engage in any wildlife management practices and activities except those that are deemed to be sound by federal and state wildlife resource management agencies as a whole, and the practice or activity is consistent with the obligations set forth herein.

[S] 10. Except as otherwise expressly provided for herein, no one shall engage in any use of or activities on the Premises that might endanger its natural state.

[S] 11. The boundaries of the Premises may be posted or clearly marked so as to indicate and notify all public and private persons or entities that the Premises are subject to the restrictions imposed by this instrument. Provided, however, no provision of this instrument shall be interpreted or construed as imposing upon any entity, including but not limited to the State of Ohio, its institutions, agencies, commissions, instrumentalities, and political subdivisions, any duty to post or otherwise mark the boundaries of the Premises.

**NOTICE UPON CONVEYANCE**

Any and all instruments hereafter executed conveying any interest in the property shall contain a notice of the Restrictive Covenant and provide the recorded location of this covenant.

The notice shall be substantially similar to the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A RESTRICTIVE COVENANT, DATED Click or tap to enter a date. RECORDED IN THE OFFICIAL RECORDS OF THE \*COUNTY NAME\* COUNTY RECORDER ON Click or tap to enter a date. IN \*REFERENCE TO CORRECT RECORDING DATA\*

 **In Witness Whereof**, the Director of Transportation, by and through his duly authorized agent, has hereunto set his hand on the date indicated immediately beneath his signature.

STATE OF OHIO

DEPARTMENT OF TRANSPORTATION

JACK MARCHBANKS PH.D., Director

 Date: , 20

 By: \*Type Name of ODOT Signer\*

 \*Type Title of ODOT Signer\*

State of Ohio

 ss:

County of \*County Name\*

Be It Remembered, that on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, before me the subscriber, a Notary Public in and for said state and county, personally came the above named \*Type Name of ODOT Signer\* the duly authorized representative of the State of Ohio, Department of Transportation, who acknowledged the foregoing instrument as the voluntary act and deed of the State of Ohio, Department of Transportation.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

NOTARY PUBLIC

My Commission expires:

This document was prepared by or for the State of Ohio, Department of Transportation, on forms approved by the Attorney General of Ohio.