# (ensure that 3” by 3” space is

# left blank here for recordation)

Prepared by and Return to:

**Name**

Company and mailing address

Of the NON\_FDEP person who

prepared covenant – Typically

property owner or their representative

# DECLARATION OF RESTRICTIVE COVENANT

# AND ACCESS EASEMENT AGREEMENT

 THIS DECLARATION OF RESTRICTIVE COVENANT AND ACCESS AGREEMENT (the “Declaration and Easement”) is made by and between [disposal facility owner] (hereinafter “GRANTOR”) [a [state] corporation authorized to conduct business in Florida [if applicable]], with an address at [owner address], and THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the “Department”).

RECITALS:

1. GRANTOR is the fee simple owner of that certain real property situated in [county name] County, Florida, more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Entire Property”), within which lies the “Restricted Property,” more particularly described in Exhibit “B” attached hereto and made a part hereof.
2. The facility name at the time of this Declaration and Easement is [name of the disposal facility] (the “Facility”). The Department’s WACS Facility Identification Number is [WACS ID#]. The Facility is a [type of disposal facility] disposal facility.
3. Rule 62-701.630, Florida Administrative Code, (F.A.C.), permits the use of on-site soils rather than offsite soils as part of the Facility’s final cover, as fill, or for other construction purposes when calculating the Facility’s closure costs under certain circumstances including, but not limited to, entering into a legal agreement with the Department to ensure that the designated on-site soils will be available and accessible for the benefit of the Department, for the proposed closure-related uses.
4. The Department may need access to and use of the property for the purpose of closure of the Facility pursuant to Chapter 62-701 and GRANTOR desires to grant the Department an easement for that purpose.
5. GRANTOR deems it desirable that this Declaration and Easement be entered into and that the Restricted Property be held subject to the restrictions, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to meet the requirements of Rule 62-701.630, F.A.C., and for other 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 on the Restricted Property the following use restrictions:
3. The on-site soils maintained on the Restricted Property (Exhibit “B”) shall be available and accessible for the benefit of the Department for closure-related uses.
4. GRANTOR shall not, without the written prior consent of the Department, utilize on-site soils in the Restricted Property except for Facility closure-related uses.
5. To ensure the designated on-site soils will be available and accessible for the benefit of the Department for Facility closure related uses, GRANTOR shall submit a report by July 1st of each year following the execution of this Declaration of Restrictive Covenant that is certified by a Florida registered Professional Engineer. This report shall certify that the quantity of suitable soils needed for use as final cover of the Facility remain within the Restricted Property.
6. For the purpose of monitoring the restrictions contained herein and for the purpose of closure of the Facility pursuant to Chapter 62-701, F.A.C., the Department and its respective successors or assigns, as well as the Department’s agents, including but not limited to contractors working on closure of the Facility pursuant to Chapter 62-701, F.A.C., shall have site access to the Restricted Property at reasonable times and with reasonable notice to GRANTOR, its successors and assigns. [check that it is possible to gain access to the restricted property directly from public property like a road, if not DEP will need a separate access easement to get to the property/Facility]
7. It is the intention of GRANTOR that the restrictions contained in this Declaration shall touch and concern the Restricted Property, run with the land and title to the Restricted Property, and apply to, be binding upon, and inure to the benefit of the successors and assigns of GRANTOR and to the Department, its successors and assigns, and to any and all parties hereafter having any right, title or interest in the Restricted Property or any part thereof. The Department and its successors and assigns may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of the Department or its successors or assigns to exercise its right in the event of the failure of GRANTOR, and its successors and assigns, to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the Department’s rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and the Department as provided in Paragraph 6 hereof. These restrictions may be enforced in a court of competent jurisdiction by the Department or its successor agency, or by any other person, firm, corporation or governmental agency that may substantially benefit from these restrictions. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify the Department in writing within three (3) calendar days. Additionally, GRANTOR shall notify the Department 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.
8. To ensure the perpetual nature of these restrictions, GRANTOR, its successors and assigns, shall reference these restrictions in any subsequent deed of conveyance, including the Official Records Book and Page of record of this Declaration. Furthermore, prior to the entry into a leasehold interest with respect to the Property, GRANTOR agrees to notify in writing all proposed lessees of the Property of the existence and contents of this Declaration of Restrictive Covenant.
9. This Declaration is binding until a release of covenant is executed by the Department’s Secretary (or its designee) and by GRANTOR (or its successors and assigns), and is recorded in the [name of county] County Public Records. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both GRANTOR and the Department or their respective successors or assigns, and thereafter recorded by GRANTOR, or its successors and assigns, as an amendment hereto.
10. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.
11. GRANTOR covenants and represents that, on the date of execution of this Declaration, it is seized of the Entire Property in fee simple, and has good right to create, establish and impose this restrictive covenant on the use of the Restricted Property. [use next sentence **only** if owner did not utilize notice to encumbrance holders] GRANTOR also covenants and warrants that the Entire Property is free and clear of any and all liens, mortgages or encumbrances that could impair GRANTOR’s right to impose the restrictive covenant described in this Declaration, or that would be superior to the restrictive covenant described in this Declaration.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, GRANTOR has executed this Declaration of Restrictive

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

 [real propertyowner name]

 By:

 Name, Title

 [NOTE: Please provide the Department with the

 name and title of the individual executing the declaration on behalf of Grantor in the draft DRC.

 Such signatory must either be the real property

 owner or must provide signature authority on

 behalf of the real property owner.]

Signed, sealed and delivered in the presence of:

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

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF

 I hereby certify that on this day, before me, an officer duly authorized in the aforesaid State and County to take acknowledgements, personally appeared [facility owner name], in his capacity as [capacity] who acknowledged that he freely and voluntarily executed the same under authority vested in him by said Corporation, and that the seal affixed hereto is the true Corporate Seal of said Corporation. He is personally known to me.

 Witness my hand and official seal in County, State of Florida, this

day of , 20\_\_.

 Notary Public, State of Florida

 My Commission:

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

APPROVED AS TO FORM BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, OFFICE OF GENERAL COUNSEL.

 By:

 Ashanti I. McBride, Asst. General Counsel

 Office of General Counsel

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

FLORIDA DEPARTMENT OF

ENVIRONMENTAL PROTECTION

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

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

*[fill in appropriate District, if applicable]*

\_\_\_\_\_\_\_\_\_\_\_\_District Office

*{{Mailing Address*}}, Mail Station *\_\_*,

*{{City*}}, Florida {*{Zip Code}}*

**FDEP PROJECT MANAGER SHOULD PROVIDE THIS INFORMATION TO OWNER**

Signed, sealed and delivered in the presence of:

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

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF

 I hereby certify that on this day, before me, an officer duly authorized in the aforesaid State and County to take acknowledgements, personally appeared , in his/her capacity as of the Florida Department of Environmental Protection, who acknowledged that s/he freely and voluntarily executed the same under authority vested in him/her by said agency. S/he is personally known to me, or produced as identification.

 Witness my hand and official seal in County, State of Florida, this

day of , 20\_\_.

 Notary Public, State of Florida

 My Commission:

### EXHIBIT “A” (the Entire Property)

### EXHIBIT “B” (the Restricted Property)