

*****For questions pertaining to this easement, please contact the Division of Real Properties at (502) 564-2111.*****

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is entered into by and between the [NAME], [address] (hereinafter "Grantor") and COMMONWEALTH OF KENTUCKY, by and through the Finance and Administration Cabinet, for the use and benefit of the, Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, KY 40601, (hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantor is the landowner of certain real property (hereinafter "Easement Area") located in _____ County, Kentucky, and more particularly described in the legal description and survey plat attached hereto and incorporated herein as Exhibit A, and the Grantor's signatory hereto has the right and authority to execute this Deed of Conservation Easement and bind Grantor; and,

WHEREAS, the Grantee has an agreement with United States Army Corps of Engineers (USACE) authorized by KRS 150.255 pursuant to the Clean Water Act (CWA 404: 33 U.S.C. 1251 et seq.) for the purpose of providing mitigation which shall be protected in perpetuity by this Easement (hereinafter the "Project"); and,

WHEREAS, implementation of the Project by the Grantee will enhance and protect streams and as a consequence, benefit adjoining landowners, the public, and the overall environment; and,

WHEREAS, pursuant to KRS 382.800, Grantee is a governmental body empowered to hold an interest in real property under the laws of the Commonwealth of Kentucky or the United States.

NOW, THEREFORE, in consideration of the mutual covenants contained herein including improvements to the Grantors property, Grantor does hereby convey to Grantee a Conservation Easement (hereinafter "Easement") pursuant to KRS 382.800, in perpetuity, over the Easement Area to be held for the sole benefit of Grantee, consisting of the following:

- (1) The conservation easement shall be for the following purposes:
 - (a) protection of the aquatic habitat; and,
 - (b) protection of vegetative buffer.
- (2) For purposes of construction and/or maintenance to the Easement Area, Grantee, or individual(s) present on behalf of the Grantee, has the right to enter the Easement Area and all of the immediate area surrounding the Easement Area reasonably necessary for construction and/or maintenance to the Easement Area

(hereafter "Project Area") in a reasonable manner and at reasonable times with advanced written notice.

- (3) Grantee, or individual(s) present on behalf of the Grantee, has the right to enter the Easement Area to monitor the project and to determine compliance with this easement.
- (4) Grantor may conduct any lawful activity in the Project Area so long as it is consistent with Grantee's stated mission and does not interfere with the protection of (a) aquatic habit (b) vegetative buffer.
- (5) There shall be no planting or introduction of any species of vegetation within the Project Area unless specifically authorized in writing by Grantee.
- (6) Except as deemed necessary by the Grantee, there shall be no filling, excavation, dredging, mining, drilling, removal of any material other than trash, dumping, motorized vehicle traffic, livestock, alteration of the land or habitat or any other activity or presence which would conflict with the purpose of this easement.
- (7) There shall be no construction or placement of any structure with the exception of hunting stands within the Easement Area without prior written approval from the Grantee.
- (8) In the event of a violation by Grantor of any term, condition, or restriction contained in this Easement, Grantee shall notify Grantor in writing of any such violation, and Grantee shall state the action(s) required to be taken by the Grantor to remedy the violation within a stated time frame of not less than 30 days. If the violation has not been corrected upon expiration of the time frame, the Grantee, in conjunction with USACE, may enforce the easement through legal action.
- (9) In the event that damage is caused to the Easement Area by a deliberate, reckless or negligent act of Grantor, Grantee shall notify Grantor in writing of the damage, and Grantee shall state the action(s) required to be taken by the Grantor to remedy the violation within a stated time frame of not less than 30 days. If the violation has not been corrected upon expiration of the time frame, the Grantee, in conjunction with USACE, may enforce the easement through legal action.
- (10) This Easement shall be a burden upon and shall run with the property in the Easement Area as shown on Exhibit A in perpetuity and shall bind Grantor, its successors and assigns forever.
- (11) This Easement does not grant access to the general public.
- (12) Neither Grantee nor Grantor shall be responsible for acts by third parties and either party may seek any/all available legal remedies as a result of such acts.

- (13) Grantee may elect to, but shall have no duty to, maintain the Easement Area after five years or within five years if the project is determined unsuccessful by the USACE.
- (14) Grantor shall be required to obtain prior written approval from the Grantee in advance of altering existing easement(s) or granting new easement(s) in the Easement Area.
- (15) Grantor shall notify Grantee in writing within 30 days of change of ownership in the Easement Area.

TO HAVE AND TO HOLD this Conservation Easement together with all the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, _____, Grantor, has executed this Deed of Conservation Easement this ____ day of _____, 20__.

GRANTOR:

[NAME]

By: _____

Its: _____

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF _____)

I, the undersigned, certify that the foregoing Deed of Conservation Easement was produced before me in my said County and State and duly acknowledged and sworn to by _____, for and on behalf of [NAME], this ____ day of _____, 20__.

Notary Public, State-at-Large

My Commission expires: _____.

IN WITNESS WHEREOF, the Grantee accepts this deed of conservation easement this _____ day of _____, 20__.

GRANTEE:

By: _____
Commonwealth of Kentucky

Name: Lori H. Flanery
Title: Secretary
Finance and Administration Cabinet

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF _____)

I, the undersigned, certify that the foregoing Deed of Conservation Easement was produced before me in my said County and State and duly acknowledged and sworn to by Lori H. Flanery, Secretary, Finance and Administration Cabinet, this _____ day of _____, 2011.

Notary Public, State-at-Large

My Commission expires: _____.

RECOMMENDED:

Department of Fish and Wildlife Resources

By: _____
Jonathan Gassett, Commissioner

Reviewed as to form and legality:

Patrick W. McGee, Attorney
Finance and Administration Cabinet

THIS INSTRUMENT PREPARED BY:

William R. Dexter, Attorney
Executive Director
Office of Legal Services
Tourism, Arts and Heritage Cabinet
2400 Capital Plaza
500 Mero Street
Frankfort, Kentucky 40601

DRAFT