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| ODOT RE 400  Rev. 03/2010 | Environment Resource Easement  Acquisition by State |

**Perpetual Environmental Resource Easement**

Know All Men By These Presents That:\*Name(s) of Grantor(s)\*, the Grantor(s) herein, in consideration of the sum of $\*Amount\*, to be paid by the State of Ohio, Department of Transportation, does hereby grant, bargain, sell, convey and release to the State of Ohio for the use and benefit of the Department of Transportation, the Grantee herein, a perpetual environmental resource easement for \*stream/wetland/bat/etc\* mitigation, the exact terms and provisions of which are set out below, within the following described real estate [“Premises”]:

PARCEL(S): \*Nos. of all easement parcels being transferred\*-\*Suffix(s)\*

\*CTY-RTE-SEC\*

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

Prior Instrument Reference: \*Volume, Page, OR, Microfiche, etc\* \*County\* Recorder’s Office.

Being a part of \*County\* County Tax Parcel No. \*\*\*

And \*Name(s) of Grantor(s)\*, for Choose an item. and Choose an item. successors and assigns (hereinafter referred to as “Grantor”) , hereby covenant(s) with Grantee, its successors and assigns, that Choose an item. Choose an item. the true and lawful owner(s) of the Premises, and Choose an item. lawfully seized of the same in fee simple, and Choose an item. good right and full power to grant, bargain, sell, convey and release the same in the manner aforesaid, and that the same are free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions, and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules, and regulations; and (d) any and all taxes and assessments not yet due and payable; and that \*Name(s) of Grantor(s)\* will warrant and defend the same against all claims of all persons whomsoever.

This perpetual easement is acquired by Grantee pursuant to Section 5501.31 of the Ohio Revised Code, which authorizes the Director of Transportation, State of Ohio, to (a) purchase and/or appropriate land to replace wetlands, incident to any highway improvement, that the director is or may be authorized to locate or construct, or (b) purchase property from a willing seller to replace, preserve, or conserve any environmental resource if the replacement, preservation, or conservation is required by state or federal law. As hereinafter used, the word “Grantor” includes the plural, and words in the masculine include the feminine or neuter.

The nature, character, and extent of the easement, estate, and interest in the Premises being conveyed to Grantee shall constitute and be a perpetual servitude upon the Premises. Said easement, estate, interest, and servitude shall be those restrictions set out below, which are now and forever imposed upon the use of the Premises. To that end, and for the purpose of accomplishing the intent of the parties hereto, Grantor covenants, on behalf of himself and his heirs, successors and assigns, with Grantee to do and/or refrain from doing, severally and collectively, upon the Premises the various acts hereinafter mentioned. It is expressly understood and intended by Grantor that the doing and refraining from doing such various acts hereinafter mentioned upon the Premises shall be for the benefit of Grantee.

The restrictions hereby imposed upon Grantor’s use of the Premises and the acts which Grantor covenants to do and to refrain from doing upon said Premises are as follows:

[S] 1. The Premises shall be maintained by Grantor in its natural state; for the purposes of this easement, the term “natural state” means: the physical status quo ante of the Premises immediately prior to the time Grantor executed this easement, as such physical status may change or evolve due to only natural causes.

[S] 2. Grantor shall not, nor permit others to, use, exercise, or transfer any development rights on or to the Premises, or any portion thereof. For purpose of this section, “development rights” include, 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 Grantor executed this easement, Grantor shall not, nor permit others to, place or erect any buildings, billboards, or other structures of any kind, either temporary or permanent, on the Premises, except as otherwise expressly provided herein.

[S] 4. Within the boundaries of the Premises, Grantor shall not, nor permit others to, engage in any of the following activities: (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, Grantor shall not, nor permit others to, apply or use any herbicides or pesticides except as expressly approved and prescribed in writing by Grantee; nor shall Grantor apply or use, nor permit others to apply or use, any such approved and prescribed herbicides or pesticides in any manner or method except as may be expressly approved and prescribed in writing by Grantee.

**OR**

[O] 5. Within the boundaries of the Premises, Grantor shall not, nor permit others to, use any herbicides or pesticides except those herbicides and pesticides that are safe for use near water; any such permissible herbicide or pesticide used or 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 application or use of a permissible 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 permissible 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; and any such permissible herbicide or pesticide shall be applied by only a person licensed or certified to apply the same.

[S] 6. Grantor shall not, nor permit others to, erect power transmission lines on the Premises without the express written consent of Grantee.

Provided, however, Grantor hereby expressly reserves unto himself and his heirs, successors and assigns, all such rights in the Premises necessary to maintain, repair, and replace 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 as may be needed to continue to provide Grantor, his heirs, successors and assigns, with such utilities and services in the same manner as Grantor enjoyed immediately prior to the time Grantor executed this easement. When maintaining, repairing, or replacing ­any such utilities, related equipment, or services, Grantor shall use the minimum area within the boundaries of the Premises as may be necessary to accomplish the task; all such work on utilities, related equipment, and services shall be performed in such manner as Grantor and Grantee may agree upon in a writing signed by each of them; 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, Grantor shall not, nor permit others to, remove or destroy by human agency any trees, ground cover, or other vegetation without the express written consent of Grantee.

**OR**

[O] 7. Within the boundaries of the Premises, Grantor shall not, nor permit others to, remove or destroy by human agency any trees, shrubs, ground cover or other vegetation 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 as may be approved in writing by Grantee; (B) if done selectively from an upland buffer area, or dead, diseased or injured trees for Grantor’s personal use from any portion of the Premises; (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.

Grantor shall not, nor permit others to, 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. Grantor shall at all times keep the Premises free and clear of any garbage, trash, and machinery; and Grantor shall not, nor permit others to, accumulate or store any materials on the Premises. Provided, however, no provision of this instrument shall be interpreted or construed as imposing upon Grantor any duty to remove garbage, trash, machinery, or other unsightly material left or deposited upon the Premises unlawfully by persons acting without Grantor’s consent.

[S] 9. Within the boundaries of the Premises, Grantor may engage in wildlife management practices and activities but only if such a wildlife management practice or activity is deemed to be sound by state and federal wildlife resource management agencies as a whole, and such practice or activity is consistent with the obligations set forth herein.

[S] 10. Except as otherwise expressly provided for herein, Grantor shall not, nor permit others to, engage in any use of or activities on the Premises that might endanger its natural state.

[S] 11. Grantee has the right to periodically enter upon and inspect the Premises for violations of the terms of this perpetual easement. If, within sixty (60) days after receiving Grantee’s written notice of a violation, Grantor fails to remove, eliminate, or cure any such violation, Grantee may remove, eliminate, or cure any such violation by Grantor at the sole expense of Grantor; Grantee is hereby invested with the right to bring suit against Grantor to collect any such expenses, which shall include the reasonable attorneys’ fees incurred by Grantee in prosecuting such a collection action.

[S] 12. Grantee may, at its exclusive election, post or clearly mark the boundaries of the Premises so as to indicate and notify all public and private persons or entities that the Premises are subject to the easement, estate, interest, and servitude granted herein.

[S] 13. Grantee has the unfettered right to assign its rights, titles and interests acquired in the Premises by virtue of this easement, with any such assignee enjoying any and all rights, titles and interests in the Premises, including those relevant to inspection, enforcement and posting, the same as if such assignee was the Grantee named herein.

[S] 14. Except as otherwise expressly provided for herein, Grantor reserves unto himself, his heirs, successors and assigns, all rights, titles, and interests in the Premises, including the right to use the Premises for any and all purposes not inconsistent with the easement, estate, and interest granted herein, such as but not limited to hunting, fishing, and other recreational uses. Provided however, in the course of exercising any such recreational uses, Grantor, his heirs, successors and assigns shall not use any type of vehicle whatsoever, whether it is motorized or otherwise propelled or powered, nor shall horse riding activities of any kind be permitted.

**OR**

[O] 14. Except as otherwise expressly provided for above, Grantor reserves unto himself, his heirs, successors and assigns, all rights, titles, and interests in the Premises, including the right to use the Premises for any and all purposes not inconsistent with the easement, estate, and interest granted herein, such as but not limited to hunting, fishing, and other recreational uses. Provided however, in the course of exercising any such recreational uses, Grantor, his heirs, successors and assigns shall not use any type of vehicle whatsoever, whether it is motorized or otherwise propelled or powered, nor shall horse riding activities of any kind be permitted; provided, further however, Grantor may use any mode of transportation within the Premises if such mode of transportation is necessary for the mitigation site activities necessary to comply with the restrictions imposed by this easement.

**OR**

[O] 14 Except as otherwise expressly provided for above, Grantor reserves unto himself, his heirs, successors and assigns, all rights, titles, and interests in the Premises, including the right to use the Premises for any and all purposes not inconsistent with the easement, estate, and interest granted herein, such as but not limited to hunting, fishing, and other recreational uses. Provided however, in the course of exercising any use expressly provided for above or any such recreational uses, Grantor, his heirs, successors and assigns shall not use any type of vehicle whatsoever, whether it is motorized or otherwise propelled or powered, nor shall horse riding activities of any kind be permitted; provided further that Grantor may for the express purposes of agricultural management, woodland management or wildlife management use a vehicle or horse on the roads and trails situated within the Premises.

[O] 15. Grantor reserves unto himself, his heirs, successors and assigns the right to, or permit others to, use the Premises in the following ways:

(A) As a nature study or to conduct habitat enhancement project endeavors consistent with the terms of this Environmental Resource Easement;

(B) For the specific commercial use of selling any wood or wood products generated from the allowable cutting mentioned above in Section 7;

(C) For the maintenance and repair any existing gates and fences on the Premises, or to erect additional gates and fences in the interior of the Premises to control trespassing; provided, however, the design of any such additional gates or fences will not significantly diminish the natural qualities of the Premises; and

(D) For the maintenance and repair of any existing trails and roadways on the Premises.

[O] 16. This Section will identify the existence and location of any existing oil/gas wells or leases.

Grantor shall coordinate with all the operators and/or lessees of the aforementioned oil and/or gas wells or leases and the State of Ohio, Environmental Protection Agency, to assure that: (A) the impact of the operation, installation and maintenance of any oil and/or gas well, and any equipment ancillary thereto, including but not limited to storm water runoff and water quality, is minimal; (B) any impact on water resource setback areas is avoided to the greatest extent possible so as to protect water quality; and (C) any area within the Premises disturbed by the activities of such an operator and/or lessee of an oil and/or gas well or lease is restored to its natural state. Grantor shall provide written notice immediately to Grantee (and the assignee of Grantee’s rights, titles and interests in the Premises, if any) of any significant chemical release or spills on the Premises caused in connection with the operation of the oil and/or gas lease identified above, and the potential impact any such oil and/or gas lease activities might have on the Premises.

* **SEE ACKNOWLEDGEMENT FORMS RE 244-I THROUGH RE 249-I FOR THE**

**CORRECT FORM OF THE SIGNATURE BLOCK FOR EACH OWNER,**

**AND INSERT AS NEEDED**

* **DELETE THESE INSTRUCTIONS UPON FORMATTING EACH OWNER’S**

**SIGNATURE BLOCK**