

PERMANENT EASEMENT
Referenced in the Right of Way section of the LPA Guide

Purpose: To give the LPA sufficient property rights to build, operate, and maintain the project facilities, where the project is located on land that is not owned by the LPA or KYTC.

Note: The template is from a recreational trails program project. Changes will have to be made so the Easement will apply to individual projects. If the LPA has any questions when making these changes it should contact its Administering Office.

SAMPLE

PERPETUAL EASEMENT
Grant from _____ [CITIZEN] _____ to _____ [LPA] _____

This Deed of Easement is made this made this _____ day of _____, 20____, by
and between _____ ("Grantor") and
[Agency building trail] ("Grantee").

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of real property in _____ County, Kentucky conveyed to the Grantor by deed dated _____ and recorded in Deed Book _____, Page _____ in the Office of the County Clerk of _____ County, Kentucky ("Grantor's Property") and has the right to convey an easement on the Grantor's Property.

WHEREAS, the Grantee is a public body politic, which has obtained a grant from the Kentucky Transportation Cabinet ("KYTC"), as governed by the Memorandum of Agreement between the Grantee and the KYTC in order to establish a public multi-use non motorized recreational trail in conjunction with the Recreational Trails Program governed by 23 U.S.C. § 206 and all other applicable law s and regulations.

WHEREAS, in connection with the above described program, the Grantee desires to acquire this Easement across Grantor's Property as more fully described below.

NOW, THEREFORE, in consideration of the mutual covenants by and between the parties hereto and the public benefit to be derived by the grant of the hereinafter described easement ("Easement"), the Grantor hereby grants and conveys unto the Grantee, its successors, lessees, and assigns a perpetual, non-exclusive and assignable multi-use public trail easement along with the right, power, and privilege to maintain a multi-use public trail and all appurtenances thereto ("Trail") along and upon all that part of Grantor's Property described on Exhibit A and identified as _____ on the Plat attached hereto as Exhibit B ("Trail Easement Area").

1. Easement Restrictions. The Easement includes the following restrictions:

- a. Grantee shall have the right but not the obligation, at Grantee's expense to construct, maintain, repair, use the Trail within the Trail Easement Area, including the right to install, maintain, repair and replace steps, trail surfacing, bridges, culverts, and other structures and improvements as permitted herein.
- b. The Trail shall be solely for public recreational purposes. The Trail shall be used only for non-motorized passive recreation and designated for foot and horse travel, bicycle use, roller-skating and skateboarding use and the like.

- c. Any structures or improvements constructed and maintained pursuant to this Easement shall be conducive to the use of the Trail and/or the safety of the Trail users. Such structures may include but shall not be limited to signage, stairways, steps, bridges, paving and surfacing material, culverts, benches, picnic tables, restrooms, parking lots, trash receptacles, and signs or markings to inform the public of the Trail location or other features. Any such structures shall not be constructed outside of the Trail Easement Area.
- d. Grantee may relocate the Trail within the Trail Easement Area at the Grantee's discretion after giving notice to the Grantor as provided in Section 1.e.
- e. Prior to initial Trail installation, Trail relocation or major maintenance activity, Grantee shall give prior written notice to Grantor as required by Paragraph 2.
- f. Use of any motorized vehicle or similar mechanical means of locomotion, including snowmobiles, or other all-terrain vehicles shall be prohibited, except that Grantee may utilize reasonable motorized vehicle and equipment in the Trail Easement Area in the event of an emergency and for construction or maintenance purposes as appropriate. Grantee may permit motor-driven wheelchairs for the use of handicapped persons within the Trial Easement Area if consistent with the purposes of this Easement. Grantee or Grantor with Grantee's prior written consent may erect and maintain such fencing and barriers within the Trail Easement Area as may be reasonably necessary to prevent access to the Trail by motor vehicles. Grantor shall not erect fences, barriers, or signs that impede access to or use of the Trail.
- g. The general topography and elevation of the Grantor's Property in the Trail Easement Area shall be maintained or restored to the approximate level as of the date hereof, except that Grantee may maintain the Trail and the Trail Easement Area as shown on the Attached Exhibit B, which is incorporated herein by reference.
- h. Except for Trail construction, maintenance, or relocation, neither Grantor nor Grantee shall permit or cause any disturbance of the surface of the Trail or the Trail Easement Area, including but not limited to filing, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the Trail or the Trail Easement Area in any manner. Further there shall be no placement, collection, or storage of trash, human waste, ashes, chemicals, hazardous or toxic substances, or any other unsightly or offensive material within the Trail Easement Area, except for trash receptacles provided for the use of Trail users, pursuant to Section 1.c. above.
- i. Grantee may clear brush as required to maintain the Trail and the Trail Easement Area, and may remove dead, dying or diseased vegetation or trees within the Trail Easement Area which poses a safety risk to Trail users. Otherwise, the Grantee may cut or remove additional vegetation or trees only with the prior written

consent of the Grantor. Grantee shall not employ herbicides, pesticides, growth inhibitors or other chemicals within the Trail Easement Area without the prior written consent of the Grantor. Grantor shall not remove any trees in the Trail Easement Area without the prior written consent of Grantee, except that Grantor may remove dead, diseased, or dying trees without prior permission of the Grantee, provided that Grantor has given Grantee notice of the proposed activity so that Grantee can divert public use of the Trail if necessary.

- j. The Grantee has the right and obligation to grant an easement to the Kentucky Transportation Cabinet that will allow, but not obligate, the Kentucky Transportation Cabinet, its successors, lessees, and assigns to share with the Grantee all of the rights, limitations and privileges given to the Grantee in this Easement.
 - k. The Grantor shall not permit any rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements or servitudes, to be constructed, developed, or maintained into, on, over, under, or across, the Trail Easement Area without the prior written permission of Grantee.
 - l. The Grantee shall have the right to perform any of its duties and obligations as a recipient of Recreational Trails Program grant funds, as described in 23 U.S.C. § 206 and all other applicable laws and regulations.
 - m. Grantor shall in no way interfere with the Grantee's fulfillment of its obligations under this Easement. Grantor shall not tamper with, destroy, deface, or otherwise impact any structure Grantee constructs or preserves pursuant to the terms of this Easement.
2. Notice and Approval. The Purpose of requiring the Grantor to notify the Grantee prior to undertaking certain permitted activities is to afford the Grantee an adequate opportunity to monitor those activities in question to ensure that they are designed and carried out in a manner that is consistent with the purpose of the Easement.
- a. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
 - b. Where approval of one of the parties is required by the Easement, that approving party shall grant or withhold its approval in writing within (30) days of receipt of the other parties written request therefore. Failure of the approving party to deliver a written response to the other party within such thirty (30) days shall be

deemed to constitute approval by the approving party of such request unless such act is contrary to any express restriction included herein. Approval may be withheld only upon a reasonable determination by the approving party that the action as proposed would be inconsistent with the purpose of this Easement.

3. Inspections. The Grantee may, but is not required to make periodic inspections of the Trail and the Trail Easement Area. Representatives of Grantee shall be permitted at all reasonable times to inspect the Trail and the Trail Easement Area.
4. Grantor's Liability. The Grantor shall be entitled to all limits of liability as set forth in KRS § 411.190, KRS 150.645 and such other applicable status that may from time to time be enacted.
5. Notice of Violation; Corrective Action. If either party determines that a violation of the terms of this Easement has occurred or is threatened, that party shall give written notice to the other party of such violation and demand that corrective action sufficient to cure the violation be taken. The violating party shall correct the violation(s) identified and report those corrections to the non violating party within the time allowed for cure outlined in Paragraph 6.
6. Remedies.
 - a. Injunction. If a party violating the Easement fails to cure the violation within sixty (60) days after receipt of notice thereof from the non violating party, or, under circumstances where the violation cannot reasonably be cured within a sixty(60) day period, fails to begin curing such violation within the sixty (60) day period, fails to continue diligently to cure such violation until finally cured, the non violating party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by restraining order, temporary or permanent injunction, and to require the restoration of the Trial and Trail Easement Area to the condition they were in prior to the violation.

In the event the Grantee seeks an injunction the Grantee shall not be required to post a bond and shall not be required to demonstrate irreparable harm or injury. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and the Grantee shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the

terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Subparagraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- b. Damages. If the violating party fails to cure the violation within sixty (60) days after receipt of notice thereof from the non violating party, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing such violation within the sixty (60) day period fails to continue diligently to cure such violation until finally cured, the non violation party may bring an action at law demanding its costs in remedying the violation itself.
- c. Emergency Enforcement. If the Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Trail or the Trail Easement Area, the Grantee may pursue any of its remedies available under this Easement without notice to Grantor and without waiting for the period provided for cure to expire.
- d. Scope of Relief. The parties' rights under this Paragraph apply equally in the event of either actual or threatened violations of this Easement.
- e. Forbearance. Forbearance by either party to exercise any of its rights under this Easement in the event of any breach of any term of this Easement by the opposite party shall not be deemed or construed to be a waiver by the non violating party of such term or of any subsequent breach of the same or any other terms of this or of any of the non violating party's rights under this Easement. No delay or omission by the non violating party shall impair such right or remedy or be construed as a waiver.
- f. Waiver of Certain Defenses. The parties acknowledge that they have both read this Easement, its terms and requirements, and both, in full knowledge of its provisions, hereby waive any defenses of latches, estoppels, or prescription with respect to any enforcement action instituted.
- g. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Trail or Trail Easement Area resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, vandalism by non related parties and earth movement.

7. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

- a. There are currently no mortgages or other liens on the property making up the Trail Easement Area except those that Grantor has informed the Grantee of in writing. Grantor shall assist the Grantee in obtaining a release of said mortgage if one is required.
 - b. No substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement has hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned or transported in, on, over, under, from or across the Trail Easement Area;
 - c. There are not now any underground storage tanks located within the Trail Easement Area, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Trail Easement Area in a manner not in compliance with applicable federal, state and local laws, regulations and requirements;
 - d. Grantor and Trail Easement Area are in compliance with federal state and local laws, regulations, ordinances, codes and requirements applicable to the Trail Easement Area and its use;
 - e. There is no pending or threatened litigation in any way affecting, involving or relating to the Trail Easement Area;
 - f. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or any alleged violation of, or failure to comply with, any use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and
 - g. There are no outstanding surface or subsurface mineral rights associated with the Trail Easement Area.
8. Taxes. Grantor shall pay immediately, when first due or owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, charges or fees of whatever description levied on or assessed against the Trail Easement Area by a competent authority which may become a lien on the Trail Easement Area, unless Grantor timely object to the amount or validity of the assessment or charge and diligently prosecutes any appeal thereof, in which case the obligation hereunder to pay such charges

shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. Grantor shall furnish Grantee with satisfactory evidence of payment upon request.

9. Toxic substances. If, at any time, there occurs, or has occurred, a release in, on, or about the Trail Easement Area of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to notify the Grantee immediately.
10. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Trail and the Trail Easement Area received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request of Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.
11. Proposed Sale of Any Portion of Trail Easement Area. Grantor shall promptly notify the Grantee in writing of any proposed sale of the Trail Easement Area, the names and addresses of Grantor's proposed successor(s) in interest, and provide the Grantee the opportunity to explain the terms of the Easement to potential new owners prior to sale closing. In any deed conveying an interest in all or part of the Trail Easement Area subject to the terms of this Easement, the Grantor shall refer to this Easement and shall indicate that the Easement is binding upon all successors in interest to the Trail Easement Area in perpetuity.
12. Runs with the Land. Except as provided in Paragraphs 17 and 18, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with all property which makes up the Trail Easement Area. This Easement shall extend to and be binding upon Grantor and Grantee and all of each of their successors and assigns. Anything contained herein to the contrary notwithstanding, an owner of any portion of the Trail Easement Area shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title or any lesser estate in the property making up the Trail Easement Area or any part thereof, including by way of example and not limitation, a lease of all or a portion of the property making up the Trail Easement Area.
13. Assignment. Grantee may convey, assign or transfer its respective rights, title and interest in this Easement to a duly authorized unit of the federal, state or local government or to a similar local, state or national organization whose purpose, inter alia, are to promote the values of the Recreational Trails program, provided that such conveyance, assignment or transfer requires the purpose for which the Easement was granted will continue to be

carried out. In the event that the grantee shall cease to be authorized to hold such easements, then the Grantee shall promptly select another qualified organization, and convey, assign, or transfer to the selected qualified organization all of its respective right, title, and interest under this Easement.

14. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary for the prompt recording of this instrument in the land records of _____ County, Kentucky. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the above described land records. This instrument may be re-recorded at any time as may be required to preserve the rights in this Easement.
15. Stipulated Percentage Interest. For purposes of allocating proceeds pursuant to Paragraphs 17 and 18, Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests in the Trail Easement Area and that such interests have a stipulated percentage interest in the fair market value of the property unencumbered by the Easement. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this Easement to the value of the whole property, without deduction for the value of the Easement on the effective date of this Easement. The stipulated percentage interest in the fair market value of the property has been determined as follows: Grantor's interest is 80% and Grantee's interest is 20%. For purposes of this paragraph, the ratio of the value of the easement to the value of the property unencumbered by the Easement shall remain constant, and the Grantor's and Grantee's percentage interest in the fair market value of the property unencumbered by the Easement thereby determinable shall remain constant.
16. Change in Economic Conditions. The fact that any use of the Trial Easement Area that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may, in the future be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement, Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. The inability of making a profit shall not impair the validity of the Easement or be considered grounds for its termination or extinguishment pursuant to Paragraph 17.
17. Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, this Easement can only be terminated or extinguished whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Such circumstances may include, but are not limited to, partial or total destruction of the Trail or the Trail Easement Area resulting from casualty. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Trail Easement Area after such termination or extinguishment, and after the satisfaction or prior claims and any costs or expenses associated with such sale, Grantor

and Grantee shall share in the net proceeds resulting from such sale in accordance with their respective percentage interest in the fair market value of the Trail Easement Area, as such interests are determined under the provision of Paragraph 15, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. Grantor shall immediately turn over such proceeds to the Grantee. Net proceeds shall also include without limitation, net insurance proceeds. In the event of extinguishment, the provisions of this Paragraph shall survive extinguishment and shall constitute a lien on the trail Easement Area with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Trail Easement Area.

18. Condemnation. If all or any part of the Trail Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interest in the Trail Easement Area subject to the taking or, in lieu purchase and all direct or incidental damages resulting therefrom. After the satisfaction of prior claims and net of expenses reasonably incurred by the Grantor and the Grantee in connection with such a taking or the prevention of a taking, the Grantor and the Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Paragraphs 15 unless otherwise provided by law.

19. The Parties. The term "Grantor" as used in this Easement shall include any and all heirs, successors, and assigns of the original Grantor. The term "Grantee" as used in this Easement shall include any and all heirs, successors and assigns of the original Grantee.

20. Agents of Grantee. Grantee may assign its rights and obligations under this instrument with regard to construction, relocation, maintenance, and management of the Trail and the Trail Easement Area to persons, entities, or agencies ("Agents") as it sees fit. Grantee shall notify Grantor if such assignment is made and shall provide Grantor the name, address, and other contact information for these Agents. The Grantor is hereby notified that the Kentucky Transportation Cabinet ("KYTC") shall have all rights transferred to the Grantee pursuant to this Easement. KYTC can be contacted at the following location:

Kentucky Transportation Cabinet
Department of Rural and Municipal Aid
200 Mero Street
Frankfort, KY 40622
Telephone: (502) 564-2060
Facsimile: (502) 564-6615
Web: http://transportation.ky.gov/Intergovernmental_Programs/

21. Interpretation. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement:

- a. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Kentucky;
- b. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Trail Easement Area shall not apply in the construction interpretation of this Easement and this instrument shall be interpreted broadly to affect its purpose and the transfer or rights and restriction on use herein contained;
- c. The parties intend to agree and bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter.
- d. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof;
- e. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any law regulation, ordinance, code or requirement relating to building materials, construction methods, interior mechanical systems (including, but not limited to, heating, air conditioning, plumbing, electrical, or gas), or use of the Trail or the Trail Easement Area. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor shall promptly notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purpose of both this Easements and such ordinance or regulation.
- f. To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter, whether by reason of applicable zoning or some other similar ordinance, such development rights shall not be exercisable on, above, or below the Trail or the Trail Easement Area during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner what would interfere with the purpose of the Easement.
- g. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation; and
- h. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written

agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of the Easement or the status of Grantee under any applicable law. Any such amendment shall be consistent with the purpose of the Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the land records of _____ County, Kentucky. Nothing in this paragraph shall require the Grantor or Grantee to agree to any amendment or bind them to negotiation.

- i. Time is of the essence concerning the provisions of this Easement.

TO HAVE AND TO HOLD said easement, together with all rights, privileges, and appurtenances thereunto belonging to the Grantee, its successors, lessees, and assigns.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands on the date indicated above.

GRANTOR(S)

[Property owner]

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

My commission expires: _____.

NOTARY PUBLIC, STATE AT LARGE, KY

GRANTEE

[AGENCY NAME]

By: [Agency representative, Title]

COMMONWEALTH OF KENTUCKY

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of
_____, 20____, by _____.

My commission expires: _____.

NOTARY PUBLIC, STATE AT LARGE, KY

This instrument prepared by: [Agency representative, Title]

SAMPLE