

CCO Form: DE28A  
Approved: 12/10 (ASB)  
Revised:  
Modified:

County: Macon  
Route: 36  
Parcel: E2-0556  
File No

## CONSERVATION EASEMENT

**THIS CONSERVATION EASEMENT** is reserved this \_\_\_\_ day of \_\_\_\_\_, 2011, by the Missouri Highways and Transportation Commission, having an address of 105 W. Capitol Ave., Jefferson City, Missouri 65102 (“Grantor”). \_\_\_\_\_

\_\_\_\_\_ having an address of \_\_\_\_\_

\_\_\_\_\_ (“Grantee”) is the purchaser of the Property described herein and acquires said Property subject to this conservation easement and all rights reserved by Grantor. As used herein, the term “Grantor” shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined), and the term “Grantee” shall include any successor or assignee of Grantee.

### WITNESSETH:

**WHEREAS**, Grantor is the sole owner in fee simple title of certain lands situated in Macon County, MISSOURI, more particularly described in Exhibit(s) ,

All that part of Grantor’s land in the North Half of the Southwest Quarter and in the South Half of the Northwest Quarter all in Section 9, Township 57 North, Range 15 West, Macon County, Missouri, which lies on the Northerly or left side of the following described median centerline of a highway, now known as Route 36 and containing 8.191 hectares (20.24 acres) of land and described by metes and bounds as follows:

Beginning at a point on Grantor’s West property line and the existing Northerly right of way line 46.110 meters (151.28 feet) Northerly of and at right angle to the following-described median centerline at Station 22+852.236; thence Northerly along Grantor’s said West property line to a point 262.573 meters (861.459 feet) Northerly of and at right angle to the said median centerline at Station 22+893.464; thence Easterly on a straight line to a point 172.679 meters (556.53 feet) Northerly of and at right angle to the said median centerline at Station 23+371.873; thence Southeasterly on a straight line to a point on the said existing Northerly right of way line 59.844 meters (196.34 feet) Northerly of and at right angle to the said median centerline at Station 23+380; thence Southwesterly along the said existing Northerly right of way line to the point of beginning.

It is expressly understood that this conveyance is for fee simple title and not merely an easement for right of way.

The Surveyed Median Centerline of Route 36 is described as follows:

Commencing at the Center Quarter Corner of Section 9, Township 57 North, Range 15 West; thence South 5°46'46.540" East for a distance of 101.315 meters (332.40 feet) to a point on the median centerline at Station 23+700; thence Westerly on the arc of a curve to the left, having a radius of 3,355 meters (11,007.22 feet) and an interior angle of 11°17', for a distance of 52.848 meters (173.39 feet) to P.C. Station 23+647.152, said curve having a back tangent of North 87°45' West; thence South 80°58' West for a distance of 947.152 meters (3,107.45 feet) to Station 22+700.

As recorded in general warranty deed dated December 28, 2001 and recorded at book 774, page 92-95 at the Macon County Recorder of Deeds on January 24, 2002.

**WHEREAS**, Department Permit No. 199602009 of the U.S. Army Corps of Engineers ("Corps") (hereinafter referred to as the "Permit") authorizes certain activities which affect waters of the United States; and

**WHEREAS**, the permits require that Grantor preserve, enhance, restore, or mitigate wetlands or uplands located on the Property and under the jurisdiction of the Corps; and

**NOW THEREFORE**, Grantor reserves unto itself, an easement in all Property described herein, conveying only those rights, title and interest expressly enumerated. It is the intention of Grantor to retain and reserve any and all other property rights not so conveyed. This easement shall constitute a servitude upon the land so encumbered, shall run with the land in perpetuity, and shall bind Grantee, his/her/their/its heirs, successors, assigns, lessees, and any other party claiming under them.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Purpose:** The purpose of this Conservation Easement is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, or created pursuant to the Permit shall be retained and maintained in the restored, enhanced, or created condition required by the Permit.

2. **Rights of Grantor:** The following rights are retained by Grantor and the Corps by this easement:

a. The right to take action to preserve and protect the environmental value of the Property; and

b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantee is complying with the covenants and prohibitions contained in this Conservation Easement; and

d. The right to proceed at law or in equity to enforce the provisions of this Conservation Easement, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

3. **Prohibited Uses:** Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, which are permitted or required by the Permit, the following activities are prohibited on the Property:

a. Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboards etc.) without written approval from the Corps of Engineers prior to construction;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permit, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantor;

d. Planting of nuisance, exotic, or non-native plants as listed by the State of MISSOURI;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance, except as may be permitted or required by the Permit;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep, or as otherwise may be permitted or required by the Permit;

g. Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing, except as permitted or required by the Permit;

h. The extraction of water from the Property or adjacent properties owned by Grantee, or the impoundment of water on the Property or on adjacent properties owned by Grantee, so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. **Reserved Rights:** Grantee reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Corps rule, criteria, permit, or the intent and purposes of this Conservation Easement.

5. **Taxes:** Grantee shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Grantee shall, at Grantee's sole expense, operate, maintain and keep up the Property consistent with the purpose of this Conservation Easement. Grantee shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of MISSOURI and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit.

7. **Hazardous Waste:** Grantee covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Grantee shall be responsible for any and all necessary costs of remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement, and Grantee further covenants not to hold any portion of the Property open to general use by the public except with the written permission of the Corps[ and Grantor].

9. **Liability:** Grantee shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from ownership of the Property. Neither Grantee, nor any person claiming by or through Grantee, shall hold Grantor or the Corps liable for any damage or injury that may occur on the Property.

10. **Recording Requirements:** Grantee shall record this Conservation Easement in the official records of Linn County, MISSOURI, and shall re-record it at any time Grantor or the Corps may require to preserve their rights. Grantee shall pay all recording costs, fees and taxes necessary at any time to record this Conservation Easement in the public records. Grantee shall thereafter insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantee divests himself/herself/itself of any interest in the Property, and shall provide a photocopy of the recorded Conservation Easement to the new owner(s).

11. **Enforcement:** The terms and conditions of this Conservation Easement may be enforced in an action at law or equity by the Grantor or the Corps against the Grantee or any other party violating or attempting to violate these Restrictions. Venue for any such action shall be in Linn County, MISSOURI. Enforcement of this Conservation Easement shall be at the

reasonable discretion of the Grantor or the Corps, and any forbearance on behalf of Grantor or the Corps to exercise its or their rights hereunder in the event of any breach by Grantee shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of this Conservation Easement, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Grantor or the Corps shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Permits.

**12. Assignment of Rights:** Grantor shall hold this Conservation Easement exclusively for conservation purposes. Grantor will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantor shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantor at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantor shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantor or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantor shall transfer this Conservation Easement to a qualified and willing grantor. Upon failure of the Grantor or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantor to be identified by the Court.

**13. Successors:** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

**14. Notices:** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

**15. Severability:** If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

**16. Alteration or Revocation:** This Conservation Easement may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of Linn County, MISSOURI. No action shall be taken, however, without advance written approval

thereof by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Conservation Easement, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Linn County, MISSOURI, within 30 days thereafter.

17. **Controlling Law:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of MISSOURI.

**TO HAVE AND TO HOLD** unto Grantor forever. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantee, and shall continue as a servitude running in perpetuity with the property.

STATE OF MISSOURI  
COUNTY OF \_\_\_\_\_

The foregoing Conservation Easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ who is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC