**TRAIL EASEMENT**

This DEED OF EASEMENT (this “Easement”) is made this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_,

2008, by and between Carter County Fiscal Court (“Grantor”) and the Carter County Judge Executive (“Grantee”).

**WITNESSETH:**

**WHEREAS,** Grantor is the owner in fee simple of real property located in Carter County, Kentucky (hereinafter “Grantor’s Property”);

**WHEREAS**, in accord with the Kentucky Trails System Act, the Grantee desires to acquire a

trail easement across Grantor’s Property in furtherance of its “Rails to Trails” program, which

seeks to establish public multi-use nonmotorized recreation trails along abandoned Kentucky

railroad lines, demonstrating the historic, scenic, and natural beauty of the area and promoting

the public health by creating recreational opportunities; and

**WHEREAS**, Grantor is willing to grant a permanent and perpetual trail easement to the Grantee,

without any charge or other remuneration, for the installation of a trail (hereinafter the “Trail”)

solely for recreational purposes.

**NOW THEREFORE,** in consideration of the mutual covenants by and between the parties

hereto and of the public benefit to be derived by the grant of the hereinafter described 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 said multi-use public trail easement and all appurtenances

thereto, along and upon Grantors’ land hereinafter described (hereinafter the “Trail Easement

Area”):

[All that part of the Grantor’s land described on Exhibit A][and identified

as \_\_\_\_ on the Plat attached hereto as Exhibit B]

Being a part of the same property conveyed to the Grantor by deed dated

April 28, 1987 and recorded in Deed Book 197, Page 150 in the office of the County Court Clerk of Carter County, Kentucky

(the “Property”).

1. Easement restrictions. The easement grant herein, the Trail Easement Area and the Trail

shall be subject to the following restrictions:

(a) Grantee shall have the right but not the obligation, at Grantee’s expense, to

construct, maintain, use, repair and maintain 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. Prior to initial Trail installation, Trail

relocation, or major maintenance activity, Grantee shall give at least two (2) weeks prior written

notice to Grantor by certified mail, return receipt requested. Grantee may relocate the Trail

within the Trail Easement Area at the Grantee’s discretion after giving notice to Owners as

provided in this Section 1(a).

(b) Said Trail Easement Area shall not to exceed 20 feet in width and the Trail

located therein shall not exceed 17 feet in width.

(c) Said easement shall be solely for public recreational purpose.

(d) No advertising of any kind shall be located on, upon, or within said Trail

Easement Area.

(e) Any structures or improvements of any kind located within the Trail Easement

Area shall be only that are conducive to a trail facility, as may be necessary for the safety of trail

users. Such structures may include but not be limited to signage, stairways, steps, bridges,

paving or surfacing material, culverts, benches and trash receptacles. 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.

Grantee shall have the right to erect reasonable signs or other markings within the Trail

Easement Area to inform the public of the Trail location or other Trail features. Grantor shall not

erect fences, barriers or signs that impede access to or use of the Trail.

(f) 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 Trail Easement Area as shown on the attached

Exhibit B, which is incorporated by reference and made a part hereof.

(g) Activities within the Trail Easement Area shall be limited to non-motorized

passive recreation and designated for foot and horse travel, rollerskating, skateboarding, and

bicycle use and the like.

(h) Use of any motorized vehicle or similar mechanical means of locomotion,

including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles shall be

prohibited, except that Grantee may utilize reasonable motorized vehicle and equipment in the

Trail Easement Area emergencies and for construction or maintenance purposes as appropriate.

Grantee may permit motor-driven wheelchairs or all terrain vehicles for the use of handicapped

persons within the Trail Easement Area if consistent with the Purposes of this Easement.

(i) Overnight camping and campfires shall not be permitted in the Trail Easement

Area. Grantee shall have the right, in its sole discretion, to restrict or limit public use of and

access to the Trail Easement Area.

(j) Grantee may clear brush as required to maintain the Trail Easement Area, and

may remove dead, dying or diseased vegetation within the Trail Easement Area which poses a

safety risk to Trail users after the Trail has been constructed; otherwise Grantee may cut or

remove additional vegetation only with the prior written consent of Grantor. Grantee shall not

employ herbicides, pesticides, growth inhibitors or other chemicals within the Trail Easement

Area without the prior written consent of Grantor. Grantor shall not harvest 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 Grantee, provided that Grantor has

given Grantee notice of the proposed activity so that Grantee can divert public use of the Trail if

necessary.

(k) Except as specifically permitted under this Easement, no rights-of-way, easements

of ingress or egress, driveways, roads, utility lines or easements or other servitudes shall be

granted, constructed, developed or maintained into, on, over, under, or across the Trail Easement

Area without the prior written permission of the Grantee. [Suggested additions: for unimpaired

wilderness areas, insert “Holder may grant, condition or deny permission in its sole discretion.”

For suburban areas, insert “Holder shall not unreasonably withhold or condition permission,

provided that granting permission would not materially impair recreational use of the Trail

Easement Area and is not otherwise inconsistent with the purpose of this Easement.”]

(l) Except for Trail construction, maintenance or relocation, neither Grantor nor

Grantee shall permit or cause any disturbance of the surface of the Trail Easement Area,

including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or

minerals, or change of the topography of the Trail Easement Area in any manner. In no case shall

surface mining of subsurface oil, gas, or other minerals be permitted. 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 located in the Trail Easement Area pursuant to Section 1(e) above.

2. 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 statutes that may form time to time be

enacted. [Grantor may, in Grantor’s discretion and upon advice of counsel, close the Trail to

public use in the event that the landowner liability protection afforded by the aforementioned

statutes is repealed or altered in a manner which materially increases, in Grantor’s reasonable

opinion, Grantor’s potential liability to Trail users and if (a) no other statute or law affords

Grantor liability protection which is substantially similar to what is afforded under the

aforementioned statutes and (b) Grantee, its successor(s) or assign(s) does not provide reasonable

insurance coverage or otherwise agree to hold Grantee harmless against liability of public Trail

users.]

3. Manager. Grantee may assign its rights and obligations under this instrument with regard

to construction, relocation, maintenance, and management of the Trail and Trail Easement Area

to a person, persons, entity, or agency (hereinafter, the “Manager”) and shall notify Grantor if

such assignment is made and shall provide Grantor the name, address, and other contact

information of the Manager.

4. Miscellaneous Provisions.

(a) [In the event this Easement is extinguished by eminent domain or other legal

proceedings, Grantee shall be entitled to any proceeds which pertain to the extinguishment of

Grantee’s rights and interests hereunder.]

(b) In any deed conveying an interest in all or part of Grantor’s Property subject to

the terms of this Easement, 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.

Owner shall notify the Grantee of the names and addresses Grantor’s successor(s) in interest.

(c) The term “Grantor” shall include heirs, successors, and assigns of the original

Grantor, [insert name here]. The term Grantee shall include successors and assigns of Kentucky

Rails to Trails Council, Inc., a Kentucky nonprofit corporation.

**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 the day and

year first above written.

GRANTOR(S)

GRANTEE

Carter County Judge Executive

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

Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COMMONWEALTH OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 2003,

by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

My commission expires:

\_\_\_

NOTARY PUBLIC, STATE AT LARGE, KY

COMMONWEALTH OF KENTUCKY )

)

COUNTY OF FAYETTE )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_,

2003, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Carter County Judge Executive

My commission expires:

\_\_\_

NOTARY PUBLIC, STATE AT LARGE, KY

THIS INSTRUMENT PREPARED BY:

STITES & HARBISON

250 West Main Street, Suite 2300

Lexington, KY 40507-1758

Telephone: (859) 226-2300

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**Exhibit A**

**Legal Description**

**Exhibit B**

**Plat showing**

**Trail Easement Area and**

**Planned location/width of Trail**