

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Instrument") is hereby made this ___ day of _____, 2023, by Waste Management of Kentucky, L.L.C., a Delaware limited liability company, whose address is 2673 Outer Loop, Louisville, KY 40219 ("Grantor"), in favor of LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a consolidated local government, having an address at 527 W. Jefferson Street, Louisville, Kentucky 40202, by and through the LOUISVILLE/JEFFERSON COUNTY ENVIRONMENTAL TRUST having an address at 444 South 5th Street, 6th Floor, Louisville, Kentucky 40202 ("Grantee").

PREMISES

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Jefferson County Kentucky, as described in Deed Book 7035, Page 54, in the Office of the Jefferson County Clerk, and more particularly described in the legal description attached hereto as Exhibit "A" and shown on that certain ALTA/NSPS Land Title Survey, dated July 27, 2021, prepared by Land Design & Development, Inc. attached hereto as Exhibit "B" (the "Survey"), both of which are incorporated herein by reference (the "Property"); and

WHEREAS, Grantor was issued a permit by the Louisville District of the U.S. Army Corps of Engineers ("Corps") pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344), Permit Number 200301197 (the "Section 404 Permit"), authorizing certain discharges of dredged and/or fill materials into waters of the United States, including wetlands and streams; and

WHEREAS, the Section 404 permit is attached hereto as Exhibit "C" and by this reference is made a part hereof; and

WHEREAS, Grantor was issued a Water Quality Certification by the Kentucky Energy and Environment Cabinet, Department for Environmental Protection, Division of Water (the "Cabinet"), in accordance with Section 401 of the Clean Water Act (33 U.S.C § 1341) and Section 224.16-050 of the Kentucky Revised Statutes, pursuant to a Natural Resource Mitigation Agreed Order entered on October 19, 2007, and amended and restated on July 25, 2011 (the "Section 401 WQC"); and

WHEREAS, the Section 401 WQC is attached hereto as Exhibit "D" and by this reference is made a part hereof; and

WHEREAS, the discharge of dredged and/or fill material into jurisdictional waters of the United States, including wetlands and streams, pursuant to Sections 401 and 404 of the Clean Water Act, requires compensatory mitigation; and

WHEREAS, Grantor has agreed to preserve, restore, and/or enhance wetlands and streams, as well as upland buffer areas, on the Property as partial compensatory mitigation for the impacts to jurisdictional waters of the United States authorized by the Section 404 Permit and Section 401 WQC; and

WHEREAS, Grantor is constructing wetlands mitigation areas on the Property in phases, as described in the consolidated wetlands mitigation plan of the Section 404 Permit and Section 401 WQC, which is attached hereto as Exhibit "E" and by this reference are made a part hereof. Each phase of mitigation construction and monitoring is to be completed by Grantor and accepted by the Corps and the Cabinet prior to the occurrence of the corresponding phase of wetlands impacts authorized by the Section 404 Permit and Section 401 WQC; and .

WHEREAS, as a condition of the Section 404 Permit and the Section 401 WQC, Grantor has agreed to grant a Conservation Easement (defined below) to Grantee, along with certain rights granted herein to the Corps and the Cabinet as third party beneficiaries to this Instrument, to protect the wetlands and streams, as well as upland buffer areas, on the portion of the Property described in the metes and bounds survey attached hereto as Exhibit "G", which is incorporated herein by reference (hereinafter, the "Conservation Easement Area"); and

WHEREAS, Grantor has agreed to grant a non-exclusive access easement to Grantee, the Corps, and the Cabinet for the purpose of ingress and egress to and from the Conservation Easement Area over that portion of the Property designated as the "Gravel Drive" running from KY 1065 southeast onto the Property as depicted on the Survey (the "Access Easement Area"), all upon the terms and conditions more fully described herein (the "Access Easement"); and

WHEREAS, the purpose of the Conservation Easement is to protect the functions and values of the existing and established wetlands and streams, as well as upland buffer areas, in the Conservation Easement Area. The conservation functions and values of the Property, including the Conservation Easement Area, are summarized and described in the consolidated wetlands mitigation plan of the Section 404 Permit and Section 401 WQC (Exhibit "E" hereto); and

WHEREAS, the Conservation Easement Area shall be set aside for conservation use and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential mixed use subdivision or a subdivided commercial development, or for recreational, residential, commercial, industrial or agricultural purposes, but rather the Conservation Easement Area shall be held, maintained and managed by the Grantor, its successors, assigns, and each and every subsequent owner and occupant as an open, common and undeveloped conservation area; and

WHEREAS, Grantor and its successors or assigns shall implement the applicable portions of the mitigation plan incorporated in the Section 404 Permit and Section 401 WQC (attached hereto as Exhibit "E") in order to protect the conservation functions and values of the Conservation Easement Area; and

WHEREAS, Grantee is a political subdivision of the Commonwealth of Kentucky; and

WHEREAS, Grantee is authorized to accept conservation easements to retain and protect natural, scenic, forest or open-space use, to protect natural resources, and to preserve the historical, architectural, archaeological, or cultural aspects of real property in Kentucky; and

WHEREAS, the grant of the Conservation Easement herein from Grantor to Grantee will preserve and maintain the Conservation Easement Area and protect its conservation values by processing, restoring and/or enhancing the wetlands, streams and upland buffer areas within the Conservation Easement Area and to protect the functions and values thereof; and

WHEREAS, the preservation of the conservation values of the Conservation Easement Area will assist in the accomplishment of Plan 2040, the Louisville Metro Government Comprehensive Plan, adopted and approved by Louisville and Jefferson County Planning Commission and Louisville Metro Council, effective January 1, 2019 , all of which are of great importance to Grantor, Grantee, and the people of Jefferson County, Kentucky and the people of the Commonwealth of Kentucky in that it will assist in the following goals, objectives and policies of Plan 2040:

Community Form 4.1

Goal 3. Enhance neighborhoods by protecting and integrating open space, watersheds, and other natural areas.

Objective b. Environmentally sensitive areas are preserved and/or enhanced.

Policy 8. Conserve, restore and protect vital natural resource systems such as mature trees, steep slopes, streams, and wetlands. Open spaces should be integrated with other design decisions to shape the pattern of development. Encourage the use of greenways as a way to connect neighborhoods. Encourage use of conservation subdivisions, conservation easements, transfer of development rights and other innovative methods to permanently protect open space.

Livability 4.5

Goal 1. Protect and enhance the natural environment and integrate it with the built environment as development occurs.

Objective b. Existing waterways are conserved, protected, or improved to enhance water quality.

Policy 3. Investigate the use of conservation easements to protect critical forest areas, wildlife habitat, water quality, agricultural land, scenic views, historic sites, and recreational land.

Policy 6. Encourage the natural process of landscape succession by adding to and connecting a system of natural corridors that can provide habitat areas and allow for migration.

Policy 8. Enhance the quality of both water and streambanks to protect and preserve drinking water.

Policy 11. Protect solid blue-line streams, defined by the current floodplain management ordinance, from channelization, stripping, relocation, or other alterations. Ensure a vegetative buffer on the banks of blue-line streams to protect the functional integrity of the channel.

Policy 12. Minimize impervious surface area and take advantage of soil saturation capacities.

Policy 14. Include greenways as integral components of a comprehensive water quality program (consistent with the Multi-Objective Stream Corridor/Greenways Plan).

Policy 19. Establish buffer areas around lakes and streams to protect the riparian zone as a critical wildlife habitat and/or as a filter to catch waterborne pollutants from site construction activities, on-lot sewage disposal and stormwater runoff.

Goal 4. Integrate sustainability and resilience in community planning processes.

Objective b. Clean air, water and soil promote a healthy environment.

Policy f. The community's existing tree canopy is maintained, and the tree canopy in the areas of greatest need is improved and increased;

WHEREAS, the specific conservation values of the Conservation Easement Area are documented in an inventory of relevant features of the Conservation Easement Area, of even date herewith, a complete copy of which is on file at the offices of Louisville Forward and a duplicate copy is located in the Louisville Metro Office of Historic Preservation and Archives, consisting of reports, maps, photographs, and other documentation (the "Baseline Documentation") that the parties agree provide, collectively, an accurate representation of the Conservation Easement Area at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant, all of which is incorporated herein by this reference; and

WHEREAS, Grantor intends the conservation values of the Conservation Easement Area to be preserved and maintained by the Conservation Easement in perpetuity, and that the continuation of land use patterns, existing at the time of this Instrument and so identified in the Baseline Documentation, shall not be permitted to impair or interfere with those values; and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, the Conservation Easement on the Conservation Easement Area pursuant to the Kentucky Revised Statutes Sections 382.800 through 382.860 and the terms of this Instrument; and

WHEREAS, Grantee agrees by accepting the Conservation Easement that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the conservation values of the Conservation Easement Area; and

WHEREAS, Grantor further intends as owner of the Property to convey to Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity; and

WHEREAS, Grantor and Grantee intend, and the Corps and the Cabinet agree, that the Corps and the Cabinet shall be third party beneficiaries to this Instrument, as more specifically provided herein, with a grant of certain rights hereunder for the further preservation and protection of the conservation values of the Conservation Easement Area;

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Grantor, its successors, assigns, and each and every subsequent owner and occupant of the Conservation Easement Area, and as required mitigation for the discharge of dredged and/or fill material into waters of the United States as authorized by the Section 404 Permit and Section 401 WQC, and in further consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Kentucky, and in particular KRS 382.800 through 382.990, Grantor hereby voluntarily (1) grants and conveys to Grantee a conservation easement in perpetuity over the Conservation Easement Area described herein, granting hereby a real property interest immediately vested in Grantee, together with all unreserved development rights associated with the Conservation Easement Area, of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"); (2) grants and conveys to Grantee, the Corps and the Cabinet the Access Easement; and (3) agrees that the Corps and the Cabinet shall be third party beneficiaries to this Instrument, all upon the terms and conditions set forth herein.

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The Grantor hereby declares that the Conservation Easement Area and Access Easement Area hereinafter shall be bound by, held, transferred, sold, conveyed, used, improved, leased, hypothecated, and/or occupied subject to the terms and conditions of this Instrument, all of which shall be perpetual and run with the land and shall be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Conservation Easement Area and/or Access Easement Area, or any part thereof, as well as their respective heirs, executors, administrators, successors and assigns. The terms and conditions of this Instrument shall be both implicitly and explicitly included, in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Conservation Easement Area and/or Access Easement Area. Any such transfer, conveyance, or encumbrance shall set forth the terms and conditions of this document either by reference to this document, its recorded location, and the Section 404 Permit and the Section 401 WQC or by attachment and incorporation by reference. This Instrument shall not be amended or extinguished except by written approval of the Grantor and the Grantee, or their respective successors or assigns, and of the Corps and the Cabinet, or their respective successors in the administration of the Clean Water Act, consistent with the requirements of Sections 401 and 404 of the Clean Water Act and KRS 382.800 through 382.990.

Grantor, its successors and assigns, including each and every subsequent owner and occupant, retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, and upkeep of the Conservation Easement Area, including the maintenance of adequate liability insurance coverage. Grantor, its successors and assigns remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Instrument, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal state, and local laws, regulations, and requirements. Grantor, its successors and assigns shall keep the Conservation Easement Area free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor, its successors and assigns.

Grantor or its successors or assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Area by competent authority

(collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Instrument, and shall furnish Grantee with satisfactory evidence of payment upon request.

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Grantor or its successors or assigns shall notify the Grantee, the Corps, and the Cabinet at least sixty (60) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Conservation Easement Area. Notice shall include the name, address and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Conservation Easement Area being transferred.

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Except as necessary (1) to carry out wetland, stream, and/or buffer restoration, enhancement or establishment in keeping with the mitigation plan of the Section 404 Permit and Section 401 WQC, or to comply with any subsequent regulatory or permitting action taken by the Corps and the Cabinet pursuant to Sections 401 and 404 of the Clean Water Act, (2) to fence the property to keep out livestock, domestic animals, trespassers, or for protection or enhancement of the Conservation Easement Area, or (3) to carry out management and maintenance of the Conservation Easement Area as approved in writing by the Corps and the Cabinet, Grantor, its successors and assigns shall not take, or allow to be taken, any of the following actions on the Conservation Easement Area:

- A. Clearing, cutting or mowing;
- B. Earthmoving, digging, grading, quarrying, mining, drilling, removal of topsoil or natural minerals, cultivation, burning, filling or changes in the topography of the land in any manner;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Conservation Easement Area;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, or excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of, the Conservation Easement Area;
- F. Exploration, searching for, development, production, or transportation of coal, oil, gas, or any other mineral substances, whether part of the mineral estate or the surface estate, on, from, under, within, or across the Conservation Easement Area;
- G. Severance of any rights or interests in the Conservation Easement Area, whether by conveyance, grant, lease, encumbrance, adverse possession, or other method of severance, including but not limited to coal, mineral, oil, gas, quarry, mining, and timber rights or interests, and any purported severance of rights or interests in the Conservation Easement Area shall be null and void and have no effect;
- H. Burning, systematically removing, or cutting timber, or otherwise destroying any vegetation. Upon approval from the Corps and the Cabinet, unsafe trees, diseased vegetation, or exotic non-native vegetation may be selectively pruned or removed in accordance with current scientific best management practices, as set out by the U.S. Forest Service or the Kentucky Division of Forestry;
- I. Spraying with biocides or use of herbicides or pollutants, provided that EPA-approved herbicides may be used to control invasive species subject to prior written approval by the Corps and the Cabinet;
- J. Introducing exotic, non-native or invasive species on the Conservation Easement Area, altering the natural state of the wetlands or streams, or causing erosion or sedimentation;
- K. Grazing or use by domesticated animals;

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L. Construction of any kind in the wetlands, streams, buffer or upland, whether temporary or permanent, including but not limited to structures, buildings, roads, rights of way, and utilities. As permitted or approved in writing by the Corps the property may have: (1) a pedestrian walking trail, not wider than three (3) feet, in the uplands or upland buffer using pervious materials, and (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology;

M. Display of billboards, signs, or advertisements on or over the Conservation Easement Area, except for the posting of no trespassing signs, temporary signs indicating the Conservation Easement Area is for sale, signs identifying the trees, vegetation, wetlands or conservation values of the Conservation Easement Area and/or signs identifying the owner of the Conservation Easement Area and the Grantee;

N. Any further legal or de facto division, subdivision or portioning of the Conservation Easement Area;

O. The use, exercise, or transfer of development rights on or to the Conservation Easement Area. For the purpose of this subparagraph, "development rights" include, without limitation, any and all rights, however designated, now or hereafter associated with the Conservation Easement Area 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 Conservation Easement Area or any other property;

P. The installation of underground storage tanks, or the processing, storage, dumping, or the disposal of wastes, trash, rubbish, vehicle bodies or parts, refuse, and debris on the Conservation Easement Area, with the exception of water purification systems and drywells;

Q. Agricultural, silvicultural, commercial, or industrial activity, including but not limited to grazing and mining. There shall be no use of horseback riding, off-road vehicles, 4-wheel drive vehicles, all-terrain vehicles, snowmobiles, or other types of motorized or non-motorized vehicles;

R. Construction or placement of utilities or related facilities without prior written approval by the Corps and the Cabinet; and

S. Any unanticipated activity or use of the Conservation Easement Area which is inconsistent with the conservation purposes of this Instrument and which would impair the significant conservation values is prohibited unless such use or activity is necessary for the protection of the conservation values that are the subject of this Instrument.

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Should an easement on the Conservation Easement Area, not listed in paragraph (5)(A), or not meeting the criteria of paragraph (5)(A) and prior in time and recording to this Instrument, be exercised in such a manner that it conflicts with the prohibited uses of the Conservation Easement Area set out in this Instrument, then the owners of the Conservation Easement Area, whether the Grantor of the Conservation Easement or any heirs, executors, administrators, successors or assigns, shall provide alternative conservation mitigation in such amounts and of such value and function as the Corps and the Cabinet shall determine in accordance with Sections 401 and 404 of the Clean Water Act and their implementing regulations.

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Grantor hereby represents and warrants that:

A. The Grantor is the sole owner of the Conservation Easement Area and holds fee simple title which is free and clear of any and all liens, loans, claims, restrictions, easements, and encumbrances, except as otherwise identified in Exhibit "H" hereto;

B. The Grantor is the sole owner of all oil, gas, mineral, quarry, mining, and timber interest associated with the surface estate of the Conservation Easement Area;

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C. The Grantor has identified all other parties that hold any interest (e.g., . encumbrance) in the Conservation Easement Area and has notified such parties of the Grantor's intent to grant the Conservation Easement;

D. This Instrument will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor is a party, or by which Grantor may be bound or affected;

E. This Instrument will not materially violate or contravene any zoning law or other law regulating use of the Conservation Easement Area; and

F. This Instrument does not authorize a use of the Conservation Easement Area that is otherwise prohibited by a recorded instrument that has priority over this Instrument.

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Grantor represents and warrants that, to the best of its knowledge and based on a diligent inquiry:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law or regulation as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Conservation Easement Area;

B. There are no underground storage tanks located on the Conservation Easement Area, whether presently in service or closed, abandoned; or decommissioned;

C. The Conservation Easement Area is in compliance with all federal, state and local laws, regulations and permits and there is no pending or threatened litigation in any way affecting, involving or relating to the Conservation Easement Area and its use;

D. No civil or criminal proceedings or investigations have been commenced at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Conservation Easement Area or its 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

E. The Conservation Easement Area is not land-locked and there is access to the Conservation Easement Area by way of the Access Easement over and across the Access Easement Area .

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To accomplish the purposes of the Conservation Easement, the following rights are conveyed to Grantee:

A. Grantee and its authorized employees and agents may enter upon the Conservation Easement Area at reasonable times and with fourteen days' advance notice in writing to Grantor, to determine whether the Conservation Easement Area is being maintained in compliance with the terms of this Instrument, and for purposes of taking corrective actions for failure to comply. If Grantee is entering the Conservation Easement Area for purposes of taking corrective actions, Grantee shall notify Grantor, the Corps, and the Cabinet and provide Grantor an opportunity to cure the failure to comply in accordance with paragraphs 7.E and 7.F below. In exercising its right of access hereunder, Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area.

B. In cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Instrument, such entry shall be upon 24 hours' prior written notice to Grantor, the Corps, and the

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Cabinet, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property or Conservation Easement Area.

C. Grantee shall be authorized to prevent any activity on or use of the Conservation Easement Area that is inconsistent with this Instrument and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use; provided that Grantor shall not be required to restore the Conservation Easement Area due to alterations resulting from natural disasters such as unintentional fires, floods, storms, or natural earth movement so long as the compensatory mitigation is completed and determined by the Corps and the Cabinet to be successful in accordance with the Section 404 Permit, Section 401 WQC, and Mitigation Plan.

D. Grantee may enforce this Instrument by action at law or in equity, and this Instrument shall be enforceable against any person claiming an interest in the Conservation Easement Area despite a lack of privity of estate or contract.

E. Subject to the limitations in paragraph 7.C., above, if Grantee determines that a violation of the terms of this Instrument has occurred or is threatened, Grantee shall give written notice to Grantor, the Corps, and the Cabinet of such violation and demand the Grantor take corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the purpose of the Conservation Easement, to restore the portion of the Conservation Easement Area so injured to its prior condition in accordance with a plan approved by Grantee.

F. If Grantor fails to cure the violation within 45 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 45-day period, fails to begin curing such violation within the 45-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Instrument, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Conservation Easement Area to the condition that existed prior to any such injury.

G. Grantee shall be entitled to recover damages for violation of the terms of this Instrument or injury to any conservation values protected by this Instrument, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Easement Area.

H. Subject to paragraph 7.B above, if Grantee, in good faith, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Conservation Easement Area, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

I. Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Instrument. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Instrument are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 7, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Instrument, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

J. All reasonable costs incurred by Grantee in enforcing the terms of this Instrument against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Instrument, shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

If a dispute arises between the Grantor or its successors or assigns and the Grantee concerning the consistency of any proposed use or activity with the purpose of the Conservation Easement, and Grantors agree not to proceed

with the use or activity pending resolution of the dispute, either party may refer the dispute to non-binding mediation by request made in writing to the other party. Within 30 days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within 45 days of the initial request, jointly apply to a court of competent jurisdiction for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(a) The purpose of this mediation is to promote discussion between the parties, assist the parties to develop and exchange pertinent information concerning the issues in dispute, and assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions or restrictions of this Instrument.

(b) The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation session(s) as requested by the mediator.

(c) All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their representative counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) Neither party shall be obligated to continue the mediation process beyond a period of 180 days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing medication will result in a mutually agreeable resolution of the dispute.

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To accomplish the purposes of the Conservation Easement, the following rights are conveyed to the Corps and the Cabinet:

A. The Corps, the Cabinet, and their authorized agents may enter in, upon, over and across the Access Easement Area and the Conservation Easement Area at reasonable times to inspect and monitor the Conservation Easement Area, to determine whether the Conservation Easement Area is being maintained in compliance with the terms of this Instrument, for purposes of taking corrective actions for failure to comply, and to take any actions necessary to implement the Mitigation Plan or otherwise maintain or restore the Conservation Easement Area in accordance with the Mitigation Plan. In exercising its right of access hereunder, the Corps and the Cabinet shall not be authorized to unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area.

B. As third-party beneficiaries, the Corps and the Cabinet may enforce this Instrument in a judicial action against any person or other entity violating or attempting to violate the Conservation Easement. This Instrument shall be enforceable against any person claiming an interest in the Conservation Easement Area despite a lack of privity of estate or contract.

(a) In any enforcement action for violations of the Conservation Easement, the Corps and the Cabinet shall be entitled to complete restoration of the Conservation Easement Area for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties.

(b) Nothing herein shall be construed to authorize the Corps or Cabinet to institute proceedings against the Grantor or its successors for unauthorized acts of third parties outside the control of the Grantor or its successors, so long as the compensatory mitigation is completed and determined by the Corps and Cabinet to be successful in accordance with the Mitigation Plan and the Grantor or its successors seek restoration from the third party.

(c) No omission or delay in acting by the Corps and/or Cabinet shall bar subsequent enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit,

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enforcement rights available under other provisions of law or equity, or under any applicable authorization or certification.

C. The Corps and the Cabinet may prevent any activity on or use of the Conservation Easement Area that is inconsistent with the Conservation Easement and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use; provided that Grantor shall not be required to restore the Conservation Easement Area due to alterations resulting from natural disasters such as unintentional fires, floods, storms, or natural earth movement.

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Grantor, its personal representatives heirs, executors, administrators, successors and assigns, reserve all other rights accruing from its ownership of the Conservation Easement Area including but not limited to the exclusive possession of the Conservation Easement Area; the right to transfer or assign their interest in the same; the right to take action necessary to prevent erosion on the Conservation Easement Area, to protect the Conservation Easement Area from losing its conservation values and functions, or to protect public health or safety; and the right to use the Conservation Easement Area in any manner not prohibited by this Instrument and which would not defeat or diminish the conservation purpose of the Conservation Easement.

It is expressly understood and agreed that this Instrument does not necessarily grant or convey to members of the general public any rights of ownership, interest in, or use of the Conservation Easement Area unless so designated by the owner for such purpose in writing. Nonetheless, the Conservation Easement Area has significant aesthetic and conservation value in its present or restored state as a predominantly natural area which has not been subject to extensive development or exploitation. The protection of jurisdictional waters of the United States, their buffers and uplands, floodplains, vegetation, open space, aquatic and wildlife habitat are considered of great importance to the well-being of the general public and to all citizens of Kentucky and are worthy of preservation and conservation.

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Grantee, the Corps, the Cabinet, and their assigned agents and contractors, shall at reasonable times and upon reasonable notice to the owner, have the right of ingress and egress to inspect the Conservation Easement Area through use of the Access Easement upon and across the Access Easement Area in order to monitor and to ascertain whether there has been compliance with the Section 404 Permit and the Section 401 WQC. Anything herein to the contrary notwithstanding, Grantor retains the right to use the Access Easement Area for any purpose that does not materially and unreasonably interfere with Grantee's, the Corps', and/or the Cabinet's ingress and egress to the Conservation Easement Area through the Access Easement Area, including, but not limited to, the right to modify, maintain, repair, replace, pave over, and/or reconfigure the areas within the Access Easement Area, or to temporarily close any areas within the Access Easement Area to the extent reasonably necessary to perform the foregoing or as is required by applicable law.

The easement rights granted with respect to the Access Easement Area shall not create a public dedication or any access rights in the general public. Further, the Access Easement Area is already subject to a recorded easement pursuant to that certain Deed of Easement, dated June 13, 2019 (the "LG&E Access Easement"), recorded at Deed Book 11436, Page 242, as Instrument Number 2019140542, with the Jefferson County Clerk's Office in favor of the Louisville Gas & Electric Company ("LG&E"), and as a result, in exercising their rights hereunder, Grantee, the Corps and the Cabinet are not, and shall not be, authorized to use the Access Easement Area in any manner that materially and unreasonably interferes with LG&E's use of the Access Easement Area pursuant to the LG&E Access Easement. Further, Grantor maintains a security gate at the entrance to the Access Easement Area to prevent access to Grantor's Property by any unauthorized persons, and all access to and from the property by Grantee, the Corps and the Cabinet pursuant to the Access Easement shall be provided by Grantor through such security gate. Grantor retains the right to grant parties other than LG&E, Grantee, the Corps and the Cabinet non-exclusive access to the Property over and across the Access Easement Area in Grantor's sole discretion as long as such non-exclusive access does not conflict with the terms of the Conservation Easement granted elsewhere in this Instrument. In the event that any action of Grantor or LG&E obstructs the right of Grantee, the Corps, and/or the Cabinet to access the Conservation Easement

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Area through and across the Access Easement Area, such party seeking access shall notify Grantor of such obstruction, and Grantor shall ensure the prompt removal of such obstruction to access.

12

This Instrument shall not terminate upon some fixed amount of time but shall run with the land in perpetuity both as to benefit and as to burden and shall be enforceable against Grantor and all present and future owners, tenants and other holders of any interest in the Conservation Easement Area. The Conservation Easement is established for the purpose of preserving, enhancing and conserving wetlands and streams, buffers, uplands, open areas and the associated conservation values and functions. Furthermore, the Conservation Easement carries out the statutory requirements of Sections 401 and 404 of the Clean Water Act and their implementing regulations.

13

The intent of this document is that the Conservation Easement Area be perpetually protected as conservation lands. Any amendments to this Instrument shall require the written approval of the Grantee, the Corps and the Cabinet and shall be considered following the policy and procedures of the Corps, the Cabinet and Grantee. All amendments shall be in writing, shall be recorded by the Grantee in the official records of the Office of the Jefferson County Clerk within forty-five (45) days of execution, and a copy of all recorded amendments shall be provided by the Grantee to the Corps and Cabinet within thirty (30) days of recording.

14

The intent of Sections 401 and 404 of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. Grantor, or its respective successors or assigns, shall provide the District Commander of the Corps' Louisville District, the Director of the Cabinet's Division of Water, and Grantee, or their respective successors or assigns, written notice of any legal action affecting this Instrument, the Conservation Easement, or the Conservation Easement Area. This Instrument is intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, the doctrine of merger, abandonment, condemnation and similar doctrines or judgments affecting the Conservation Easement Area.

15

If any part of the Conservation Easement Area is taken by exercise of the power of eminent domain so as to terminate the Conservation Easement, in whole or in part, the Corps, the Cabinet, and Grantee shall be given notification of such termination by Grantor. Grantor and Grantee shall act jointly to recover the full value of their interests in the Conservation Easement Area subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in-lieu purchase shall be paid out of the amount recovered.

The doctrine of merger will not operate to extinguish this Instrument if the Conservation Easement and Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish this Conservation Easement, then a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Property unless the Grantor or its successors, the Grantee, the Corps, and the Cabinet otherwise agree in writing.

16

Grantor shall record this instrument in the official records of the Office of the Jefferson County Clerk within forty-five (45) days of execution of this Instrument by the Grantor and Grantee, and shall, within thirty (30) days of recording, provide the Corps, the Cabinet, and Grantee with a copy of the recorded Instrument and exhibits. Grantor may re-record this instrument at any time as may be required to preserve its rights.

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All references to the Corps and the Cabinet shall include successor governmental agencies, departments, or divisions, or any other successor entities prescribed by law.

18

Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, to the extent arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any willful misconduct or negligent act, omission, condition, or other matter related to or occurring on or about the Conservation Easement Area, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS 224.01-010 et seq., by the Grantor, its directors, officers, employees, representatives, subcontractors or subcontractors' employees, in any way affecting, involving, or relating to the Conservation Easement Area, at any time, or 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, unless caused solely by any of the Indemnified Parties; and, (3) the violations or alleged violations of the obligations, covenants, representations and warranties of paragraphs 5 and 6.

19

If circumstances arise under which an amendment to or modification of this Instrument would be appropriate, Grantor and Grantee may jointly amend this Instrument in writing, with the prior written approval of the Corps and the Cabinet; provided that no amendment shall be allowed that will affect the qualification of the Conservation Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of the Conservation Easement and shall not affect its perpetual duration. Amendments shall not permit any private inurement to any person or entity, and shall not adversely affect the overall scenic, environmental and conservation values protected by the Conservation Easement. Any such amendment shall be signed by the Grantor and the Grantee and recorded in the Office of the Clerk of Jefferson County, Kentucky. Nothing in this paragraph shall require any party to agree to any amendment or to consult or negotiate regarding any amendment. Amendments to this Instrument shall be approved only if consistent with and in furtherance of the conservation values outlined herein, and only to strengthen the protections offered by the Conservation Easement or to further preserve other purposes of the Conservation Easement and to meet changing conditions that may require an amendment or amendments consistent with this Instrument.

20

This Instrument is transferable, but Grantee may assign all or any portion of its rights and obligations under this Instrument only to an organization that is a political subdivision of the Commonwealth of Kentucky affiliated with Louisville/Jefferson County Metro Government and that is authorized to acquire and hold conservation easements under all applicable laws of the Commonwealth of Kentucky and the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor, to the Corps, and to the Cabinet of a proposed assignment at least 60 days prior to the date of such assignment. The Grantee must obtain the prior written approval of the Corps and the Cabinet to any such assignment, which approval shall be granted or withheld in the reasonable discretion of the Corps and the Cabinet. The assignee shall record the assignment instrument in the official property records of Jefferson County, Kentucky, within 30 days of execution and shall provide a copy of the recorded assignment instrument to the Corps and the Cabinet within 30 days of recording.

21

The interpretation, performance and enforcement of this Instrument shall be governed by the laws of the Commonwealth of Kentucky.

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Any general rule of construction to the contrary notwithstanding, this Instrument shall be liberally construed in favor of the grant to effect the purpose of the Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of the Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of this Instrument.

If any provision of this Instrument, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Instrument, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the record counterpart shall be controlling.

All notices required to be given pursuant to this Instrument shall be sent to the following addresses, by certified mail, or to such other address as may be subsequently designated in writing by the respective party:

If to Waste Management of Kentucky, LLC:

District Engineer
Waste Management of Kentucky, LLC
2673 Outer Loop
Louisville, KY 40219

With a copy to:

Timothy J. Hagerty, Esq.
Frost Brown Todd LLP
400 West Market Street, Floor 32
Louisville, KY 40202-3363

If to Louisville/Jefferson County Metro Government:

Louisville/Jefferson County Environmental Trust
444 South 5th Street, 6th Floor
Louisville, KY 40202

If to the U.S. Army Corps of Engineers:

U.S. Army Corps of Engineers
CELRL-RD, Room 183
P.O. Box 59
Louisville, KY 40202

If to the Kentucky Energy and Environment Cabinet, Dept. for Environmental Protection, Division of Water:

Director
Division of Water
300 Sower Blvd., 3rd Floor
Frankfort, KY 40601

IN WITNESS WHEREOF Grantor and Grantee have duly executed this Deed of Conservation Easement effective as of the date first written above, but actually on the dates set forth below.

GRANTOR: Waste Management of Kentucky, LLC

James Wilson
Vice President of Real Estate

Date

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____, 2023, by James Wilson, Vice President of Real Estate, for Waste Management of Kentucky, L.L.C., a Delaware limited liability company, on behalf of the company.

Signature of Notary: _____
Notary Public

Serial Number, if any: _____

[Signature and Acknowledgement of Grantee on Following Page]

GRANTEE: Louisville/Jefferson County Metro Government

Name: Craig Greenberg

Title: Mayor

Date

State of Kentucky
County of Jefferson

The foregoing instrument was acknowledged before me this _____, 2023, by Craig Greenberg, Mayor of Louisville/Jefferson County Metro Government, a political instrumentality, on behalf of such political instrumentality.

Notary Signature: _____
Notary Public

Serial Number, if any: _____

MICHAEL J. O'CONNELL
Jefferson County Attorney
By: _____
Assistant Jefferson County Attorney

This instrument prepared by:

Timothy J. Hagerty, Esq.
Frost Brown Todd LLP
400 West Market Street, Floor 32
Louisville, KY 40202-3363

Exhibits:

- A. Legal Description of the Property
- B. Platted Survey of the Property
- C. Section 404 Permit
- D. Section 401 WQC
- E. Wetland Mitigation Plan – consolidated wetlands mitigation plan of the Section 404 Permit and Section 401 WQC
- F. Intentionally Omitted
- G. Metes and Bounds Survey of the Conservation Easement Area
- H. Summary of Conservation Easement Values from the Baseline Documentation Report
- I. Depiction of Access Easement

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