

DEED OF AGRICULTURAL LAND EASEMENT

NOTICE: This Agricultural Land Easement has been acquired in part with funds from the Commodity Credit Corporation, through the Agricultural Conservation Easements Program (ACEP), which is administered by the United States Department of Agriculture, Natural Resources Conservation Service and by virtue of its funding has an interest, including rights of enforcement. A copy of the Program Agreement is kept on file at the Natural Resources Conservation Service office and at the Fayette County Rural Land Management Board, Inc., office set forth below. The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 *et. seq.* and 7 CFR 1468 *et. seq.*, facilitates the purchase of Agricultural Land Easements for the purposes of protecting agricultural use and future viability and related conservation value of eligible land, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property ("Purpose of the ALE").

THIS DEED OF AGRICULTURAL LAND EASEMENT ("Easement" or "ALE") is made and entered into this ____ day of _____, 20____, by _____, a single person, having an address at _____ ("Grantor") in favor of the **Fayette County Rural Land Management Board, Inc.**, a Kentucky non-profit corporation, having a mailing address at the Lexington-Fayette Urban County Government Center, 200 E. Main St., Lexington, Kentucky 40507 ("Grantee"). The Grantor and Grantee are collectively referred to as "Parties." The **United States of America ("USA"), acting by and through the United States Department of Agriculture ("USDA"), Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation ("CCC"),** 771 Corporate Drive, Suite 300, Lexington, Kentucky 40503 ("United States") is acquiring a right of enforcement and those other rights and assurances specifically set forth in this Easement.

WITNESSETH

WHEREAS, Grantor is the record title owner in fee simple of certain real property located in Fayette County, Kentucky, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Protected Property") containing _____ (____) acres of land, more or less, of which, as classified by the USDA - NRCS, ____ percent is prime and ____ percent is statewide important soils; and commonly known and designated as _____, _____; and

WHEREAS, it is Grantor's desire to restrict and protect the Protected Property in part by limiting nonagricultural uses; and

WHEREAS, the Protected Property possesses natural, scenic, open space, historic and agricultural values, including attributes listed in Section 4.(c) (collectively the "Conservation Values") worthy of conservation and protection and of great importance to Grantor, the people of

Fayette County and the people of the Commonwealth of Kentucky; and

WHEREAS, Grantor and Grantee have the common purpose of conserving and preserving the aforementioned Conservation Values of the Protected Property; and

WHEREAS, the specific Conservation Values of the Protected Property are documented in a baseline documentation report of the Protected Property, dated _____, on file at the office of Grantee and incorporated herein by reference (the "Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that Grantor and Grantee agree provide, collectively, an accurate representation of the Protected Property at the time of this grant and which are intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, the Protected Property contains approximately ____ **feet** of frontage along _____, and the public traveling these roads is afforded scenic views of the rolling pastures and fields whose beauty and open space character will be protected by this Easement; and

WHEREAS, this Agricultural Land Easement ("Easement" or "ALE") is acquired with funds provided, in part, under the Agricultural Conservation Easement Program ("ACEP"), 16 U.S.C. Section 3865 *et. seq.* and 7 FR Part 1468 *et. seq.*, for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (the "Purpose of the ALE"); and.

WHEREAS, the Commonwealth of Kentucky, by KRS 382.800 through 382.860, has authorized the use of conservation easements "the purposes of which include retaining or protecting natural, scenic or open space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical architectural, archaeological, or cultural aspects of real property" and has authorized Grantee, as a charitable corporation, to hold such agricultural land easements; and

WHEREAS, it is the adopted policy of the Commonwealth of Kentucky, as stated in KRS 262.900 to 262.920, "to retain agriculture and enhance the contribution that agriculture makes to its economy," and to that end "[a] program to retain and enhance agriculture is in the economic best interest of the Commonwealth and consequently, constitutes a public benefit that contributes to the health, safety, and general welfare of the residents of the Commonwealth and the nation"; and

WHEREAS, it is the declared policy of the Commonwealth of Kentucky, as stated in KRS 262.850, "to conserve, protect and encourage development and improvement of its agricultural lands for the production of food and other agricultural products," "to conserve and protect its agricultural land base as a valuable natural resource which is both fragile and finite," and "to provide a means by which agricultural land may be protected and enhanced as a viable segment of the State's economy and as an important resource"; and

WHEREAS, the Lexington-Fayette Urban County Government has by adoption of Chapter 26 of its Code of Ordinances established a program for the preservation and management of agricultural, rural and natural lands in Fayette County, and has authorized Grantee to acquire conservation easements and other interests in land for that purpose; and

WHEREAS, Chapter 26 of the Code of Ordinances of the Lexington-Fayette Urban County Government implements the Rural Service Area Land Management Plan (the "Plan") which recommended that a program be established to preserve and manage agricultural, rural and natural lands in Fayette County; and

WHEREAS, implementation of the Plan will protect the health, safety and well-being of present and future residents of Fayette County by striving to preserve and manage a minimum of fifty thousand (50,000) acres of eligible agricultural, rural and natural lands in the rural service area as a viable sector of the County's economy and as an environmental resource of major importance; and

WHEREAS, the grant of an ALE by Grantor to Grantee on the Protected Property and the acceptance by Grantee will assist in preserving and maintaining the aforementioned Conservation Values of the Protected Property; and

WHEREAS, Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by this Easement, in perpetuity, by permitting only those land uses on the Protected Property that do not significantly impair or interfere with those values, including, without limitation, those land uses existing at the time of this Easement; and

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve the Conservation Values of the Protected Property in perpetuity; intending the grant of such right to qualify as a "qualified conservation contribution" as that term is defined under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations there under (the "Code"); and

WHEREAS, Grantor desires to grant to Grantee and Grantee desires to accept from Grantor an Agricultural Land Easement pursuant to the terms of this Easement; and

WHEREAS, Grantee agrees by accepting this 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 Protected Property for the benefit of this generation and future generations.

NOW, THEREFORE, in consideration of the sum of ~~XXXXX~~ cash in hand paid, of the above, and of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Kentucky, in particular KRS Sections 382.800 through 382.860, Grantor hereby voluntarily, unconditionally, and absolutely grants and conveys to Grantee its successors and permitted assigns, an agricultural land

easement (the "Easement" or "Agricultural Land Easement") in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth and to that end, Grantor covenants on behalf of itself, and its, successors and assigns, to Grantee and its successors and permitted assigns, that the Protected Property shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall constitute restrictive covenants and shall be deemed to run with the land in perpetuity and to burden the Protected Property in perpetuity. The United States is granted a right of enforcement under this Easement as set forth in section __ herein. The Grantee shall act as primary steward of this Easement.

1. **Purpose.** It is the purpose (the "Purpose") of this Easement to retain and enhance the agricultural use of the Protected Property by preserving and protecting its agricultural soils and agricultural viability and productivity; to preserve the natural, scenic or open space values of the Protected Property; to preserve areas or structures of architectural or historical interest; to restrict or prevent the development, improvement or use of the Protected Property for purposes other than agricultural; and to protect and preserve the attributes listed in Section 4.(c) hereof; to prevent any use of the Protected Property that is inconsistent with this Purpose or will impair or interfere with the Conservation Values of the Protected Property and to further the Purpose of the ALE recorded in the NOTICE on the first page hereof. For purposes of clarification the term "Agricultural Production" as used herein is defined to include the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator and the raising and stabling of horses for commercial purposes, and shall also include any of the following: dairying, pasturage, growing crops, bee keeping, horticulture, floriculture, orchards, plant nurseries, viticulture, silviculture, aquaculture and animal and plant husbandry; the breeding, raising, training and general care of livestock for uses other than food, such as sport or show purposes; the use of farm machinery, the primary processing of agricultural products and the sale of agricultural products produced on the land where the sales are made.

2. **Rights of Grantee.** To accomplish the Purpose of this Easement the following rights are hereby conveyed to Grantee by this Easement:

- (a) to preserve and protect the Conservation Values of the Protected Property;
- (b) to enter upon the Protected Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate an imminent violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property; and
- (c) to prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Easement, whether such activity or use is

conducted by Grantor or a third party, and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

3. **Conservation Plan.** If the Protected Property contains highly erodible land as determined by NRCS, then a conservation plan shall be required which complies with 7 CFR Part 12 pertaining to all highly erodible cropland on the Protected Property. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this Easement based on an Act of Congress, NRCS will work cooperatively with the Grantor and Grantee to develop and implement a revised conservation plan.

4. **Grantor's Affirmative Obligations.** Grantor agrees at all times to maintain or do the following as a condition of this easement:

- (a) Grantor shall deliver to Grantee within five (5) days of receipt copies of any notice of default or demand letter received by Grantor from any duly authorized governmental authority which if not complied with could result in a lien on the Protected Property. Upon receipt of written request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or demand letter where compliance is required by law.
- (b) Impervious Surfaces on the Protected Property will not exceed % of the total Protected Property area, excluding NRCS-approved conservation practices. Impervious Surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including but not limited to, buildings with or without flooring, paved areas and any other surfaces as covered by asphalt, concrete or roofs, provided that public roads or other roads owned or controlled by persons with rights superior to those rights conveyed to Grantee by this Easement shall not be considered Impervious Surfaces. **[Include the following if limited subdivision is allowed in paragraph 5(f).** In the event the Protected Property is subdivided as provided for in Paragraph (5)(f), the total cumulative impervious surface of the subdivided parcels must not exceed the impervious surface limitation referenced above. The Grantor, with Grantee approval, will allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.]
- (c) Grantor shall protect and preserve the following: [LIST OF SPECIFIC FEATURES OF PROTECTED PROPERTY, as evidenced in Grantor's application for which Grantor received points, pursuant to Section 12 of Chapter 26 of the Code of Ordinances, *e.g.* . . .]

- Historic and Archeological Features
- Large trees and tree stands throughout the Protected Property
- Focus Area and Rural Greenway
- Environmentally sensitive areas
- Five natural springs
- Stone fence
- Natural areas
- Scenic Road Frontage

- (d) Grantor shall install signage, if provided by Grantee, which confirms that the Protected Property is a PDR Protected Farm.

5. **Prohibited Uses.** In order to accomplish, safeguard and promote the Purpose of this Easement, Grantor hereby declares and covenants that the following restrictions are hereby imposed and shall apply forever to the use and enjoyment of the Protected Property. Any activity on or use of the Protected Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited on, over, or under the Protected Property, except as permitted in Section 6:

- (a) mining, excavating, quarrying, dredging, or removing from the Protected Property of soil, loam, peat, gravel, sand, hydrocarbons, rocks, coal, oil, natural gas, fuel or other mineral substance or natural deposit owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface quarrying or surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited; provided, however, that limited mining activities for soil, sand, and gravel used to facilitate the agricultural operations on the Protected Property are allowed where the extraction is conducted in a manner consistent with the conservation purposes of this Easement, minimal in scope and impact and does not harm the Purposes of the ALE. Extraction of materials for agricultural operations must be limited to a small, defined area or acreage as identified in Exhibit D and must not harm the conservation values or the agricultural uses of the Protected Property.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this Easement is executed, and their interests have not been subordinated to this Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (a). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference this Easement.

- (b) except as permitted in Section 6 herein, commercial or industrial

uses of the Protected Property

- (c) constructing, placing or maintaining of any building, mobile home, or other temporary or permanent structure or facility on, above, or below the Protected Property except as provided in Section 6 herein;
- (d) cutting, removing, pruning, or otherwise destroying shrubbery or trees, except as permitted in Section 6;
- (e) the installation of underground storage tanks or the placing, filling, storing, processing, dumping or other disposal on the Protected Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such substance, whether or not generated on the Protected Property except as both (i) reasonably required for the use of the Protected Property for normal Agricultural Production or permitted residential use and (ii) in accordance with applicable local, state and federal laws and regulations. For purposes of clarification, the storage of agricultural products, byproducts and agricultural equipment on the Protected Property, so long as such storage is done in accordance with all applicable governmental laws and regulations, is permitted;
- (f) **[If no subdivision is allowed:** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited]

[If limited subdivision is allowed: The Protected Property must not be divided or subdivided into, or separately conveyed as more than ___ separate parcels (___divisions allowed). To protect the Purpose of the ALE, the boundaries of such divisions, , each of which are forty (40) acres or more in size, must be approved in writing by Grantee and the Chief of NRCS or the Chief's authorized designee (Chief of NRCS) before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable farm or ranch parcels when—

- (i) The Grantee requests the Chief of NRCS approval to subdivide the Protected Property into separate farm or ranch parcels, after receiving a request from the Grantor;
- (ii) The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agricultural use and that any new owners of the subdivided Protected Property farm or ranch parcels intend to use such parcels for agricultural operations; and
- (iii) The Chief of NRCS determines that the—

a. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and

b. The resulting parcel will not be below the median size of farms in the county or parish as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS). The current median farm size in Fayette County is _____ acres.]

(g) mining or removal of groundwater from the Protected Property except as may be required for Agricultural Production and residential uses permitted herein and as permitted in Section 6(e);

(h) diking, draining, filling or alteration of the springs or streams on the Protected Property that is inconsistent with the rules and regulations of the Commonwealth of Kentucky, Division of Water and the technical guidelines of the United States Natural Resources Conservation Service;

(i) dumping, depositing, abandoning, discharging, or release of any gaseous, liquid, solid or hazardous wastes, substances, materials, or debris of whatever nature on, in, over, or under the ground or into the surface or ground water of the Protected Property, except as permitted by law and only for sanitary sewage purposes or biological and chemical substances and waste by-products used and produced by Agricultural Production. For purposes of clarification, , the use of chemical fertilizers, herbicides, pesticides, fungicides and natural controls in connection with any agricultural or landscaping activity on the Protected Property is permitted provided such use is in compliance with all applicable federal, state, and local statutes and regulations;

(j) the placing, construction or maintenance of signs, billboards or outdoor advertising structures other than a reasonable number of signs needed to state the name of the Protected Property, the names and addresses of the occupants, to advertise the sale or lease of the Protected Property, to advertise an activity permitted by this Easement, to identify horses on the Protected Property or to post the Protected Property against trespassers provided that the placement, number and design of such signs shall not significantly diminish the scenic character of the Protected Property. This prohibition shall not limit the right of Grantee to display such signs as it may customarily use to identify lands under Agricultural Land Easement; however such signs posted by Grantee will be posted with the reasonable approval of Grantor as to location, size and appearance. Signs are limited to a total of 32 square feet.

(k) the establishment or maintenance of any large-scale commercial feed lot, which is defined for purposes of this Section as a confined area or facility within which land is not grazed or cropped at least annually and which is used to receive greater than one hundred (100) head of cattle or hogs that have been raised off the Protected Property for feeding and fattening for market;

(l) any unanticipated activity or use of the Protected Property which would impair significant conservation interests protected by this Easement unless such use or activity is necessary for the protection of the Conservation Values that are the subject of this Easement, in which case such use or activity shall be subject to the prior approval of Grantee as provided in Section 6 below.

(m) motorized vehicle use-except to support agricultural use, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property.

(n) granting of easements or rights-of-way for power lines, gas lines, sewer lines, telecommunication towers, and wind farms. Notwithstanding this prohibition, subject to prior approval of Grantee as provided in Section 6 below, Grantor may install utilities for permitted uses of the Protected Property that are not inconsistent with the Purpose of the Easement;

(o) recreational and educational activities that require infrastructure (impervious surfaces) are prohibited. Under no circumstances will athletic fields, golf courses or driving ranges, commercial airstrips or helicopter pads, motocross biking, or any other improvement or activity inconsistent with current or future Agricultural Production be permitted on the Protected Property. Recreational and educational activities that do not require infrastructure (impervious surfaces) are permitted as long as such activities are consistent with the Purpose of the Easement and do not adversely impact the soils and/or agricultural operations of the Protected Property.

(p) the establishment, maintenance or operation of a vineyard or winery which produces beverages made from grapes not grown on the Protected Property, if the beverages produced contain more than 50% of grapes not grown on the Protected Property as measured on a three (3) year moving average;

(q) Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as permitted paragraph 6(s) herein.

6. **Reserved Rights.** Grantor reserves to itself, and its successors, and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein, are consistent with the long term viability of the Protected Property and are not inconsistent with or adversely impact the Purpose of this Easement. No uses will be allowed which violate Federal laws, including Federal drug laws, or decrease the ALE's protection for the Purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Sections 4 and 18.12, the following rights are expressly reserved:

- (a) the right to Agricultural Production, meaning production, processing and marketing of crops and livestock to the extent that such Agricultural Production is conducted in a manner consistent with terms and conditions of this Easement. . The provisions of this Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Purpose of this Easement;
- (b) The existing primary residence and the _____ (_____) existing tenant house(s), also known as dwelling unit(s) for farm employees/family members, on the Protected Property are located within the Building Envelope identified and described in Exhibit C to this Easement (the "Existing Building Envelope"). Tenant house(s), also known as dwelling unit(s) for farm employees/family members, shall be single-family dwellings occupied by person(s) who are employed on the Protected Property or are the Grantor's immediate family. [Insert number of additional building envelopes] _____ Additional Building Envelope(s), containing no more than _____ acres, is permitted subject to receipt by Grantor of prior written approval of the location and boundaries of the Additional Building Envelope(s) from the Grantee and the Chief of NRCS, following which, the Grantor and Grantee shall amend this ALE to add an exhibit that describes the approved boundaries and locations of the Additional Building Envelope(s). The Existing Building Envelope and Additional Building Envelope(s) are sometimes referred to as the "Building Envelope(s)" and, except as otherwise provided herein, all structures and improvements shall be located within Building Envelope(s).

The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Purpose of the ALE. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee

shall amend this ALE to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Utilities to serve approved buildings or structures, including on-farm energy structures as are permitted herein and that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be built outside of the Building Envelopes with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Except as permitted in Section 6(k) of this Deed, all new structures and improvements must be located within the Building Envelope. Within the Building Envelope(s), and subject to the Impervious Surface limitation in Section 4(b), Grantor reserves the right to repair, replace and maintain one existing primary single-family detached dwelling with reasonable appurtenances (including but not limited to garages, sheds, swimming pools, tennis courts and other accessory structures), and the _____ (___) existing tenant house(s), also known as dwelling unit(s) for farm employees/family members. In addition, within the Building Envelope and subject to the Impervious Surface limitation in Section 4(b), Grantor may construct additional tenant houses as necessary. Prior to beginning construction of any permitted new residences ("New Residence(s)", Grantor shall obtain the approval of Grantee for New Residence(s) provided that Grantee's approval shall not be arbitrarily withheld, but shall be based on factors, including but not limited to, preservation of prime soils and the overall agricultural value of the Protected Property. Grantee's United States Department of Agriculture-Natural Resource Conservation Service District Conservationist Ex-Officio member shall review all such requests in advance of Grantee review and shall make a recommendation for Grantee action. Grantor thereafter shall be permitted to maintain, repair and reasonably expand any permitted New Residence(s). In the event that a permitted New Residence is destroyed or substantially damaged, Grantor may construct a replacement single-family detached dwelling at the location of the original dwelling after notice to and approval by Grantee.

- (c) Subject to the terms and conditions of this Easement, the right to all manner of residential use and enjoyment of the existing residences ("Existing Residences"), any permitted New Residence(s), and the grounds surrounding

such residences within the Building Envelopes including, but not limited to the maintenance, repair, restoration of fences, driveways, and paths, the right to cut and remove grass or other vegetation, and the right to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement. This shall include the right to remove and rebuild existing residences within the Building Envelope, subject to prior approval of Grantee and as permitted in paragraph 6(b) above and pursuant to the building and zoning ordinances. However, structures which are considered historic or archeological resources as documented in the Baseline Documentation shall not be removed, but shall be maintained consistent with 36 CFR Part 68, as amended.

(d) Forest management and timber harvesting is allowed, provided it is carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property in accordance with a written forestry plan under the supervision of the Commonwealth of Kentucky Division of Forestry. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with Grantee as noted in the Baseline Documentation. A forest management plan will not be required for the following allowed noncommercial activities to the extent Grantor did not receive any ranking points for trees, tree stands or tree lines; (i) cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(e) the right to drill for water on the Protected Property and to make available water wells and septic systems for any new or existing structures on the Protected Property, or if reasonably necessary in connection with the uses of the Protected Property permitted by this Easement;

(f) the right to compost, burn with the appropriate permit from Grantee's Fire Marshall, or store vegetative waste generated by permitted activities and uses and the right to store for removal at reasonable intervals normal and customary waste generated on the Protected Property by permitted activities and uses;

(g) the right to engage in any non-developed and non-consumptive outdoor recreational activities for personal, noncommercial purposes, including hunting and fishing, that are in compliance with all applicable

federal, state and local statutes and regulations;

(h) the right to post all or a portion of the Protected Property against trespassing and hunting;

(i) Subject to the limit on Impervious Surfaces in Section 4(b) and except as limited by Section 4(c), the right to construct, repair, maintain or remove pens, corrals, paddocks, fences, barns, and buildings necessary for the agricultural uses of the Protected Property within the Building Envelope. These agricultural structures may be built outside of the Building Envelope, with the prior written consent of the Grantee, to the extent that they are consistent with the Purpose of this Easement and neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property.

(j) the right to lease or grant less than fee interests in all or a portion of the Protected Property for any use permitted to Grantor under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement;

(k) the right to construct, repair and maintain new ponds or reservoirs in accordance with a plan reasonably necessary to carry-out the agricultural purposes subject to the prior approval of Grantee which approval shall not be unreasonably withheld provided that such pond or reservoir is located in a manner consistent with the Purpose of this Easement and the proposed pond or reservoir does not substantially diminish or impair the agricultural productivity or Conservation Values of the Protected Property.

(l) the right to operate the existing farm office on the Protected Property within the permitted structure for that purpose.

(m) the right to construct underground cisterns, water storage tanks or septic systems for permitted residential use or Agricultural Production on the Protected Property.

(n) existing fences can be maintained and replaced and new fences may be built on the Protected Property as necessary for agricultural operations on the Protected Property, including customary management of livestock and to delineate the boundary of the Protected Property, provided that any feature referenced in Section 4(c) shall be replaced with the same materials.

(o) renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected

Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Protected Property and consistent with the Purpose of the ALE.

- (p) Grantor is allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire presuppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions of this Easement and the Purpose of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantor must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantee or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to Grantor, or set forth within the Baseline Documentation report for the Protected Property.
- (q) The following industrial and commercial uses:
 - (i) agricultural production and related uses in accordance with the terms and conditions of this Easement;
 - (ii) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and
 - (iii) Commercial enterprises related to agriculture or forestry including agritourism, farm wineries, and farm shops.
- (r) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Grantee in consultation with the Chief of NRCS.
- (s) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except for the following:
 - (i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;
 - (ii) Erosion and sediment control pursuant to a plan approved by the Grantee; and

- (iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of the ALE.
- (iv) Agricultural activities and related conservation activities in accordance with the terms and conditions of this Easement.

7. **Notice and Approval.**

7.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 6, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Purpose of this Easement. 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 Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

7.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 6, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefore. In the case where approval is sought for construction of a residence, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purpose of this Easement.

8. **Grantee's Remedies.**

8.1 **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

8.2 **Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) 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 Easement, to enjoin the violation, *ex parte* as necessary, by restraining order or temporary or permanent injunction, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. In the event that Grantee seeks injunctive or other equitable relief, Grantee shall not be required to post a bond and shall not be required to

demonstrate irreparable harm or injury.

8.3 **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, historic, agricultural, open space, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

8.4 **Emergency Enforcement.** If Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under Paragraphs 8.1 through 8.10 without prior notice to Grantor or without waiting for the period provided for cure to expire.

8.5 **Scope of Relief.** Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 8.2, 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 Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8.6 **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement 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 Easement shall be borne by Grantor without setoff, deduction, defense, abatement, suspension, deferment or reduction; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Grantor expressly agrees that Grantee shall have, is hereby granted, and shall be entitled to record a lien against the Protected Property for any unpaid damages or costs of enforcement.

8.7 **Forbearance.** Forbearance by Grantee to exercise any of its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

8.8 **Waiver of Certain Defenses.** Grantor acknowledges that Grantor has read this Easement, its terms and requirements, and Grantor, in full knowledge of its provisions, hereby waives any defense of laches, estoppel, or prescription with respect to any enforcement action

instituted by Grantee.

8.9 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

8.10 Failure of Grantee to Enforce. If at any time Grantee shall fail to enforce the restrictions of this Easement, the Lexington-Fayette Urban County Government shall have the right to bring suit against Grantee or Grantor for specific performance or to otherwise enforce any or all of the provisions of this Easement. This provision shall in no way impact the US Right of Enforcement as set forth herein.

9. Access. No right of access by the general public to any portion of the Protected Property is conveyed by this Easement.

10. Costs, Liabilities, Taxes, and Environmental Compliance.

10.1 Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of reasonable liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, 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 shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

10.2 Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

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

- (a) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;
- (b) there is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property;

(c) no civil or criminal proceedings or investigations have been initiated 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 Protected Property 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

(d) there are no outstanding surface or subsurface mineral rights associated with the Protected Property.

10.4 **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or the United States to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and KRS Section 224.01-010 et seq.

10.5 **General Indemnification.** Grantor shall indemnify and hold harmless the United States, Grantee, and their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States or Grantee may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement, or violations of any Federal, State, or local laws, including all Environmental Laws, as defined in Section 11.3.

11. PROTECTION OF THE UNITED STATES' INTERESTS

11.1 **United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by Grantee. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right

of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the Easement against Grantor, up to the amount of the United States' contribution to the purchase the ALE.

Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that Grantee and Grantor are in compliance with the ALE. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of this ALE and the United States Program Agreement with Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection..

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor at the earliest practicable time.

11.2 General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE, or violations of any Federal, State, or local laws, including all Environmental Laws, as defined in Section 11.3, including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

11.3 Environmental Warranty. As used herein, "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

As used herein, "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture,

solution, or substance that may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws, as defined below. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged non-compliance with, or any liability under, any Environmental Law, as defined below, relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

11.4 Extinguishment, Termination, and Condemnation. The interests and rights under this Easement may only be extinguished or terminated with written approval of Grantee and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, Grantor, Grantee and the United States stipulate that the fair market value of the ALE is ___percent (___%), hereinafter the "Proportionate Share," of the fair market value of the Protected Property unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the Protected Property unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by Grantee and the United States.

The allocation of the Proportionate Share between Grantee and the United States will be as follows: (a) to Grantee or its designee, _____ percent of the Proportionate Share; and (b) to the United States _____ percent of the Proportionate Share. Until such time as Grantee and the United States receive the Proportionate Share from Grantor or Grantor's successor or assign, Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States. Proceeds received by Grantee which are not reimbursed to the United States shall be used by Grantee in a manner consistent with the purposes of this Easement as of the date hereof.

12. **Mortgages.** Grantor represents and warrants that as of the date hereof, there are no liens, mortgages or encumbrances outstanding against the Protected Property, except any listed in Exhibit B, attached hereto and made a part hereof, which are subordinated to this Easement.

13. **Assignment and Backup Grantee.**

13.1 **Assignment.** With the advance written permission of the United States, Grantee may assign its interest in this Easement, but only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under KRS Sections 382.800 through 382.860 (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the Purpose that this Easement is intended to advance continue to be carried out.

13.2 **Backup Grantee.** In the event Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable) its rights and duties hereunder shall become vested in and fall upon the Lexington-Fayette Urban County Government or such other qualified organization as may then be determined, to the extent such entity shall evidence acceptance of and agree to fully enforce the terms herein.

14. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

15. **Estoppel Certificates.** Upon written request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with all obligations of Grantor contained in this Easement or which otherwise evidences the status of this Easement. Such certification shall be limited to the condition

purpose of this Easement and the policy and purpose of KRS 382.800 through 382.860. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Easement.

18.3 **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, 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 and shall be enforced to the greatest extent permitted by law.

18.4 **Entire Agreement.** This instrument sets forth the entire agreement of the Grantor, Grantee and United States with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

18.5 **Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the Purposes of the ALE and complies with all applicable laws and regulations. Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

18.6 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

18.7 **Joint and Several Obligations.** The obligations imposed by this Easement upon Grantor shall be joint and several.

18.8 **Successors.** All of the covenants, terms, conditions, restrictions, easements, representations, warranties and provisions of this Easement shall be binding upon, and inure to the benefit of, the Grantor, Grantee and the United States and their respective, successors, and permitted assigns and shall continue as a servitude running in perpetuity with the Protected Property. The terms "Grantor", "Grantee," and United States wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors, and permitted assigns, the above-named Grantee and its successors and permitted assigns, and the above named United States and its assigns.

18.9 **Termination of Rights and Obligations.** A Party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer. In the event a termination occurs under this paragraph, notice shall be given to the United States.

18.10 **Captions.** 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.

18.11 **Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all 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 recorded counterpart shall be controlling.

18.12 **Compliance with Laws.** 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 method, or use of the Protected Property. In the event of any conflict between any such ordinance, code 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 purposes of this Easement and such law, ordinance, code or regulation.

18.13 **Development Rights.** To the extent that Grantor owns or is entitled to development rights which may exist now or at sometime hereafter by reason of the fact that under any applicable zoning or similar ordinance the Protected Property may be developed to more intensive uses than the Protected Property is devoted to as of the date hereof, such development rights shall not be exercisable on, above or below the Protected Property during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Easement.

18.14 **Statement of Consideration.** The undersigned, Grantor and Grantee certify that the consideration reflected in this Deed of Agricultural Land Easement is the full consideration paid for this Easement and that if any portion of the Agricultural Land Easement was donated, the total estimated fair cash value is \$_____, the sum of the amount paid and the donated value.

18.15 **Merger.** Grantor and Grantee explicitly agree that it is their express intent, forming an part of the consideration hereunder, that the provisions of the Agricultural Land Easement deed set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Protected Property by or to Grantee, the United States, or any successor or assignee will be deemed to eliminate these Agricultural Land Easement terms, or any portion thereof, pursuant to the doctrine of “merger” or any other legal doctrine.

18.16 **Boundary Line Adjustment.** Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two (2) acres for the entire Protected Property. Any boundary line adjustment pursuant to this section must be approved by the United States as an amendment to the Easement pursuant to Paragraph 18.5 herein.

[ONLY IF ELIGIBILITY IS BASED ON THE PRESENCE OF HISTORICAL OR ARCHAEOLOGICAL RESOURCES OR PROJECT RANKING POINTS ARE BASED ON SUCH FEATURES.]

18.17 **Historic or Archaeological Resources.** Existing archaeologically, culturally, or historically significant features on the Protected Property including, but not limited to, such features as documented in the Baseline Documentation Report, must be maintained consistent with the guidelines provided in The Secretary of Department of the Interior's Standards for the Treatment of Historic Properties pursuant to 36 CFR Part 68, as amended. The up-to-date version of such guidelines must be maintained by Grantee in the Baseline Documentation and made available to Grantor upon request. The archaeologically, culturally, or historically significant features may not be altered or removed without Grantee's prior written approval, which approval will not be given except where the proposed activity is accomplished in accordance with the guidelines provided in The Secretary of The Department of the Interior's Standards for the Treatment of Historic Properties.

SIGNATURES APPEAR ON FOLLOWING PAGES

TO HAVE AND TO HOLD unto Grantee and the United States, and their successors, and assigns forever.

GRANTOR:

By: _____

XXXX

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

IN WITNESS WHEREOF the foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day of _____, 20__, by _____, the _____, of _____ on behalf of the _____.

My commission expires: _____

NOTARY PUBLIC

GRANTOR:

By: _____

XXXX

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

IN WITNESS WHEREOF the foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day of _____, 20____, by _____, the _____, of _____ on behalf of the _____..

My commission expires: _____

NOTARY PUBLIC

GRANTEE:

**THE FAYETTE COUNTY RURAL LAND
MANAGEMENT BOARD, INC.**

By: _____
Gloria Martin, Chairman

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

IN WITNESS WHERE OF the foregoing instrument was subscribed, sworn to and acknowledged this ____ day of _____, 20____, by Gloria Martin, as Chair of the Fayette County Rural Land Management Board, Inc., a Kentucky non-profit corporation, on behalf of the corporation.

My commission expires: _____

NOTARY PUBLIC

PREPARED BY:

JOHN P. WATZ
HENRY WATZ RAINE & MARINO, PLLC
The Square, Suite 314
401 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 253-1320

EXHIBIT A
TO
DEED OF AGRICULTURAL LAND EASEMENT
FROM
XXXX
TO
Fayette County Rural Land Management Board, Incorporated

[Protected Property Description]

INCLUDING PUBLIC ACCESS IDENTIFIED ON EXHIBIT D.

EXHIBIT B
TO
DEED OF AGRICULTURAL LAND EASEMENT
FROM
XXXX
TO
Fayette County Rural Land Management Board, Incorporated

(List any outstanding liens, mortgages or encumbrances against the protected property)

EXHIBIT C
TO
DEED OF AGRICULTURAL LAND EASEMENT
FROM
XXXX
TO
Fayette County Rural Land Management Board, Incorporated

[Building Envelope]

EXHIBIT D
TO
DEED OF AGRICULTURAL LAND EASEMENT
FROM
XXXX
TO
FAYETTE COUNTY RURAL LAND MANAGEMENT BOARD, INC.

[Extraction of Materials Clause]

EXHIBIT E
TO
DEED OF AGRICULTURAL LAND EASEMENT
FROM
XXXX
TO
FAYETTE COUNTY RURAL LAND MANAGEMENT BOARD, INC.

[Public Road or Recorded Easement Providing Access]