

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT AGREEMENT (hereinafter "Conservation Easement") between **Katharine B. Sutphin, as Trustee of the Katharine B. Sutphin Revocable Trust** ("Trust"), u/a/d July 28, 2014, amended and restated on August 18, 2014, on behalf of the Trust with a mailing address of 303 Stoney Point Road, Paris, Kentucky 40361 (who with its successors in title to all or any portion of the Property, as hereinafter defined, are collectively referred to as "Grantor"), and **Bluegrass Conservancy, Inc.**, mailing address, Dudley Square, 380 South Mill Street, Suite 205, Lexington, Kentucky 40508, a nonprofit charitable corporation incorporated, in good standing, and qualified to do business under the laws of the Commonwealth of Kentucky (hereinafter referred to as "Grantee"). The in-care of tax mailing address for the current tax year is c/o Katharine Sutphin, 303 Stoney Point Road, Paris, Kentucky 40361.

WHEREAS:

- A. Grantor is the record owner in fee simple of unencumbered real property (the "Property") consisting of approximately two hundred forty-four and two hundred seventy-five thousandths (244.275) acres, more or less, comprised of one (1) parcel, located in Winchester, Clark County, Kentucky, more particularly described in Exhibit A and shown on Exhibit B, both of which are attached hereto and incorporated herein by this reference.
- B. The Property possesses open space, scenic, and agricultural values (collectively the "Conservation Values") of great importance to Grantor and the people of Clark County, the Commonwealth of Kentucky, and the nation; the preservation of which will provide a significant public benefit. The Conservation Values are further described below:
 - (1) Open Space. Protection of the Property is for the scenic enjoyment of the general public, is supported by several clearly delineated governmental conservation policies, and will yield a significant public benefit:
 - i. Scenic enjoyment. Development of the Property would impair the scenic character of the local rural landscape and would interfere with a scenic panorama that can be enjoyed from roads, a creek, and an historic land area, and such area and transportation ways are open to, and utilized by, the public. Protection of the Property is for the scenic enjoyment of the general public and will meet the requirements of Section 170(h)(4)(A)(iii)(I) of the Internal Revenue Code of 1986, as amended, and the regulations, thereunder (the "Code"), as detailed below.
 - a. The Property contains approximately three thousand one hundred sixty-four (3,164) feet of frontage along Grimes Mill Road, a well-traveled public road, and approximately one thousand two hundred fifty-six (1,256) feet of frontage along

Hunter's Rest Lane, and is visible from Athens-Boonesboro Road, a Kentucky-designated scenic byway;

- b. The Property contains approximately two thousand eighty-six (2,086) feet of frontage along Boone Creek, which was named for frontiersman Daniel Boone and which is one of the few year-round flowing streams in the Bluegrass region as well as one of only eight major tributaries of the Kentucky River, and the public traveling along the waters of Boone Creek are afforded scenic views of waterfalls, palisades, and approximately thirty-three (33) acres of an old growth forest stand along Boone Creek;
 - c. The Property is used similarly to other lands in the vicinity along Boone Creek and Grimes Mill Road, containing areas within relatively natural ecosystems in substantially undisturbed states, harboring a diversity of plants and animals in a broad range of habitats, including palisades, significant old growth wooded areas, waterfalls, and natural springs, creating a visual contrast and variety but also contributing to the cohesive visual scene that comprises the Boone Creek Rural Historic District;
 - d. The scenic views and cultural significance of this historically important rural land area to the public are clearly delineated in the Boone Creek Rural Historic District¹ nomination form which is included in full in the Baseline Documentation Report (further described in Section 2.5) and incorporated herein by reference, which specifically notes the "distinctive blend of natural and human-made landscapes which reflects a different development pattern from that found in other sections of Fayette County. The district includes a density of historic farmsteads and early-to-late nineteenth century features whose spatial organization is very influenced by the desiccated landforms around it;" and
 - e. The Property is located on the Clark and Fayette County boundary line, which is Boone Creek. Fayette County is a large community, home to more than 300,000 people, and has strict zoning regulations in its agricultural zone, but its surrounding counties, including Clark County, are at risk of over-development due to the less restrictive zoning laws protecting their open lands, therefore the protection with a Conservation Easement of this Property serves as a buffer to the communities within Fayette County and is critical to the protection of the scenic views along the Boone Creek Scenic Byway and Boone Creek itself.
- ii. Clearly delineated conservation governmental policies. Several state and local programs and laws have been implemented to recognize and encourage the protection of lands, like the subject Property, which contain significant open, scenic, agricultural,

¹ National Register listing of the Boone Creek Rural Historic District did not, and of the date of the Conservation Easement, does not impose any restrictions or require preservation or protection of historic resources under any local historic preservation ordinance.

historic, and natural lands. Protection of the Property will preserve open space pursuant to clearly delineated federal, state, and local governmental policies as follows and will therefore meet the requirements of Section 170(h)(4)(A)(iii)(II) of the Code, as detailed below.

- a. The grant of this Easement will serve the clearly delineated governmental policies of the Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. § 4201 et seq., which purpose is “to minimize the extent to which the federal programs contribute to the irreversible conversion of farmland to nonagricultural purposes;”
- b. The Commonwealth of Kentucky, by Kentucky Revised Statutes (“KRS”) §§ 382.800 to 382.860, effective July 15, 1988, 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 conservation easements;
- c. It is the adopted policy of the Commonwealth of Kentucky, as stated in KRS §§ 262.900 to 262.920, effective July 15, 1994, “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;”
- d. It is the declared policy of the Commonwealth of Kentucky, as stated in KRS § 262.850, effective July 14, 2000, “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;”
- e. The Governor’s Office of Agricultural Policy created Kentucky’s Long-Term Plan for Agricultural Development (the “Plan”) in 2000 in order to sustain rural prosperity in Kentucky. The Plan sets forth three principles of sustainable development: “1) Adding value to local agricultural products, exploiting market niches for pure and wholesome foods and promoting the rural landscape of Kentucky. 2) Retaining the present scale and individual ownership of Kentucky agriculture by preserving working farms on Commonwealth farmland maintains our rural towns and communities. 3) Minimizing the burdens on natural resources

and rewarding good land stewards with a decent living will enhance the Kentucky environment;”

- f. The 2010-2014 Kentucky State Historic Preservation Plan created by the Kentucky Heritage Council-State Historic Preservation Office recognizes the importance of preserving rural lands to preserve Kentucky’s cultural identity in their vision statement, stating, “Kentucky’s cultural places are irreplaceable resources essential to the economic, environmental, social, and cultural sustainability of our communities;”
- g. The Clark County Comprehensive Plan adopted January 3, 2012, sets forth general community goals, which include the following: “promote the county’s agricultural economy and diversity,” “support new and innovative means to encourage tourism,” “promote and preserve the natural resources of Clark County and ensure that development is planned so as not to have an adverse environmental impact,” and “support the preservation and adaptive reuse of Clark County’s and Winchester’s historic places;”
- h. The Clark County Comprehensive Plan adopted in March 1998 and amended through January 3, 2012, sets forth general community objectives, which include the following: “promote the diversification of the agricultural economy by encouraging the production and marketing of new agricultural products and industry,” “develop a strategy for protecting and promoting scenic corridors as a means of maintaining the community’s rural character and supporting tourism and rural resource-related economic activity,” “support the development of a tourism plan that would facilitate the promotion of tourism throughout the county. Agri-tourism and heritage tourism should be an integral part of that endeavor,” “encourage the development of the Boonesborough area in a manner oriented toward tourism. Ensure all development is compatible with the rural and historic nature of the area,” “identify and protect sensitive natural resource sites and unique special areas from the effects of incompatible development,” “protect surface water (i.e. lakes and streams) and groundwater aquifers,” “support education programs and conservation efforts that will promote unique natural areas,” and “encourage the preservation of all privately owned cemeteries;” and
- i. The Property is located within the Agricultural District (A-1) in Clark County, which was created to encourage agricultural activities such as “farming, dairying, stock-raising, horticulture, forestry, and related activities” such as “animal husbandry services, including veterinarians and animal hospitals.” The Property is not specifically restricted to limit its development under the foregoing comprehensive plans or referenced zoning ordinance, except as to permitted residential density in the event of subdivision. The enumerated goals and objectives are met by virtue of the restrictions set forth in this Easement by voluntary private act of the Grantor instead of by legislative act or restrictions made by the Clark County Government and without public expenditure.

- iii. Significant public benefit. The protection of the Property meets the significant public benefit requirement of Section 170(h)(4)(A)(iii) of the Code. Significant public benefit is more clearly described in the U.S. Treasury Regulations at Section 1.170A-14(d)(4)(iv), and the Property's unique scenic and agricultural characteristics relative to significant public benefit are described below.
- a. There is a foreseeable trend of intense development in the vicinity of the Property in the near future. The Property is situated proximate to major growth corridors such as Richmond Road (US Highway 25/US Highway 421), and Athens-Boonesboro Road (KY-418), and increasing development pressures in the area have resulted in an influx of new homes situated on smaller lots, and a concomitant disruption and diminishment of existing farming practices and irrigation patterns, coupled with the division of prime, irrigated farmland into non-productive, non-agricultural uses as subdivisions. There is a strong likelihood that, if the Property were to be developed instead of preserved, it would contribute to the degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values;
 - c. The Property is visible from Athens-Boonesboro Road (Ky-418), a Kentucky-designated scenic byway, Grimes Mill Road and Hunter's Rest Lane, and preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values;
 - d. The Property is located in the Kentucky Division of Water designated Groundwater Sensitivity Region 5. Region 5 is the highest rating of sensitivity, and has groundwater, which is highly susceptible to pollution. Kentucky groundwater recharges water for streams, lakes, ponds, rivers, and wetlands, and the public uses these water resources for recreation, fishing, and drinking water sources, and the groundwater quality will be protected from higher levels of pollution by this Conservation Easement;
 - e. The permanent protection of the Property complements and enhances a larger open space protection effort in the area by the Grantee. The Property is part of a "Conservation Block" that is comprised of seventeen (17) other properties permanently protected with private conservation easements that are in close proximity, four (4) of which are held by Grantee and thirteen (13) of which are under conservation easement with the Lexington-Fayette Urban County Rural Land Management Board, within two (2) miles of the Property, totaling approximately one thousand two hundred eighty-three (1,283) acres;
 - f. The Property is located within Iroquois Hunt Country, the Iroquois Hunt Club's longtime geographic area in which fox-hunting continues to take place, and its preservation will protect the diminishing number of contiguous parcels of

undeveloped land over which the Iroquois Hunt Club may travel uninterrupted. Founded in 1880, the Iroquois Hunt is the third oldest hunt club in the United States;

- g. The Property is a contributing property within the Boone Creek Rural Historic District, which was placed on the National Register of Historic Places by the United States Department of Interior's National Park Service on August 19th, 1994, and keeping the farm intact will protect this historically important rural land area, creating a significant benefit for the public. The nomination references the agricultural contributions, early exploration, and settlement history of the area. Specifically, noting one of the greatest concentrations of stone fence left in Fayette and Clark Counties is within the Boone Creek Rural Historic District, the present forest appears to have retained a species composition, namely wildflowers, much like that of the original, and is recovering from the past disturbances, and Boone Creek is one of the few streams in the Bluegrass that flows year-round, making it the hub of early settlement and development which still contains remnants of the many early mills and settlements in the area;
- h. The Property is located within the Inner Bluegrass Region, part of an ecological system of gently rolling hills, caves, streams, and extremely fertile soils underlain mostly by the Lexington Limestone Formation and "encompassing approximately 2,400 square miles, occurring in portions of fourteen counties (Davis 1927). Its occurrence is determined by the outcrop of Middle Ordovician limestones deposited about 400 million years ago, the oldest in the state."² Most importantly, Kentucky's world famous bluegrass pastures exist because of the underlain limestone, and although "these formations in Kentucky are similar to others laid down in Middle Ordovician seas, ... one significant difference is a much higher phosphate content, a feature that makes this area outstandingly adapted for livestock production."³ This limestone, contributing to the Karst topography of the region, is also highly susceptible to sinkholes and groundwater pollution should the Property be improvidently developed;
- i. The World Monument Fund's independent panel of international experts noted that "the Bluegrass Region is one of America's most distinctive landscapes... named for the color of its calcium- and phosphate-enriched grass" and placed the Bluegrass Cultural Landscape of Kentucky on its 2006 Watch List as one of the world's 100 most endangered sites due to its increasing number of acreage lost to development yearly;

² Mary E. Wharton & Roger W. Barbour, *Bluegrass Land & Life, Land Character Plants & Animals of the Inner Bluegrass Region of Kentucky* 5 (The University Press of Kentucky, 1991).

³ See *id.* at 12.

- j. There is a strong likelihood that, if the Property were to be developed instead of preserved, it would contribute to the degradation of the prime and statewide important soils present on the Property; and
 - k. By limiting development of the Property to levels that will not adversely impact the Conservation Values, this Conservation Easement will provide a more extensive and permanent buffer to the Property's fields, old growth wooded areas, Boone Creek, and encroaching development.
- (2) Prime Farmland. Protection of the Property will ensure that the natural features of the Property which make it ideal for farming, most significantly its soils, will remain intact and protected from development which would be inconsistent with the continuation of farming on the Property. Approximately 24.4% [or 59.57 acres] of the Property contains "prime soils" and 37.1% [or 90.64 acres] contains "soils of statewide importance" as determined by the United States Department of Agriculture and Natural Resources Conservation Service (NRCS).
- C. An area of particular significance has been identified and mapped as shown on Exhibit B, attached to this Conservation Easement, as the Viewshed Protection Area ("VPA"), within which development is very restricted, including a prohibition of new Structures (as hereinafter defined), unless otherwise specified below. The VPA consists of any area on the Property within five hundred (500) linear feet from any point along Grimes Mill Road, five hundred (500) linear feet of Hunter's Rest Lane, and five hundred (500) linear feet from any point along Boone Creek. This area will remain largely intact and be subject to minimal impacts thereby preserving, in general, the Property's scenic viewshed, open space, function, and integrity;
- D. Maintaining the Property's scenic beauty and its agricultural uses, and, in particular, maintaining the Property free from new residential and commercial structures that would substantially interfere with its scenic, open rural character, woodlands, watersheds, creek, and farmland and permitting only appropriate uses and limited development compatible with the agricultural use and scenic beauty of the Property, are critical to the protection of this working farm, as well as the protection of the open and scenic character of the general area. The conservation of the Property, subject to the terms of this Conservation Easement, will yield significant benefits to the public by protecting the scenic beauty, agricultural resources, and watersheds of the Property in addition to buffering nearby farms from incompatible development;
- E. The Conservation Values are more fully described in the Baseline Documentation Report (as hereinafter defined and described in Sections 2.5). By its execution of this Conservation Easement, Grantee acknowledges that Grantor's present uses of the Property are compatible with the Purpose (as hereinafter defined) of this Conservation Easement. In order to evidence the present condition of the Property (including both natural and man-made features) and to facilitate future monitoring and enforcement of this Conservation Easement, a Baseline Documentation Report describing such condition as of August 2014, has been prepared and

subscribed to by both parties, is incorporated herein by this reference, and a copy thereof has been delivered to Grantor and an original copy is in the custody of the Grantee;

- F. The parties have a mutual desire and goal to foster landscape-scale conservation, reduce land fragmentation, establish potential habitat corridors, and provide blocks of protected land that may allow for agriculture in perpetuity;
- G. Pursuant to the Purpose (as hereinafter defined) and the preservation of the Conservation Values, the parties desire to conserve the Property by entering into this Conservation Easement pursuant to the provisions of KRS §§ 382.800 to 382.860 of the Commonwealth of Kentucky; and Section 170(h) of the Code; and
- H. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor represents and warrants that it has the full authority to enter into this Conservation Easement and that it freely and voluntarily conveys this Conservation Easement to Grantee in order to accomplish the Purpose and preserve the Conservation Values as set forth herein.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants, promises, and restrictions set forth herein, the sufficiency of which is hereby acknowledged, the parties state as follows:

1. General Provisions.

- 1.1. Grantee's Representation. Grantee represents and warrants that Grantee has received a determination letter dated February 23, 2001, from the Internal Revenue Service, on file at the offices of Grantee and a copy of which has been provided to Grantor, to the effect that Grantee is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1), and 170(b)(1)(A)(vi) of the Code, and Grantee meets the requirements of a "qualified organization" to accept, purchase, and hold Conservation Easements under Section 170(h) of the Code. In furtherance of, consistent with, and subject to the foregoing, Grantee's particular purpose is to act as a nonprofit land trust to protect the agricultural viability, natural habitat, rural heritage, and scenic open space of the counties in and adjacent to the Inner Bluegrass Region of Kentucky, including, but not limited to, Anderson, Clark, Boyle, Clark, Fayette, Franklin, Jessamine, Mercer, Scott, and Woodford, through land conservation for the public benefit. Grantee represents that it has the commitment and the resources to enforce, and will enforce, this Conservation Easement in perpetuity.
- 1.2. Grant of Conservation Easement. Grantor voluntarily, unconditionally, and absolutely grants and conveys to Grantee and its successors and permitted assigns, and Grantee voluntarily accepts, this Conservation Easement to run with the land in perpetuity as defined by Section 170(h) of the Code and KRS §§ 382.800 to 382.860 for the Purpose outlined below.

- 1.3. Purpose. Grantor and Grantee acknowledge that the primary and secondary purposes of this Conservation Easement are as follows (hereinafter, collectively the "Purpose"):

1.3.(a) The primary purpose of this Conservation Easement is to preserve the Property's open space characteristics, by preserving the Property's scenic and open viewshed for the enjoyment of the general public, as well as to assure that the Property will remain available as farmland for agricultural use by preserving and protecting its agricultural soils, agricultural viability, and productivity, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property and, in consideration of the contribution agricultural production and farming make to the economy and communities of the region and the Commonwealth, to encourage the long-term, professional management of those resources, and to facilitate the economically sustainable protection of agricultural resources of the Property. Any use or activity not reserved herein which is inconsistent with the Purpose of this Conservation Easement or which significantly impairs the Conservation Values of this Conservation Easement is prohibited.

1.3.(b) The secondary purposes of this Conservation Easement are to conserve natural resources, to protect the cultural landscape that is our community symbol internationally recognized as rolling hills, landscapes, and contributions to horse racing throughout the world, to protect the natural habitat of fish, wildlife, plants, and similar ecosystems, and to protect Kentucky's significant watersheds; provided, however, that the secondary purposes stated herein shall be consistent with the primary purpose stated above and, to the extent that any activity on or use of the Property in furtherance of the secondary purposes is inconsistent with said primary purpose, said activity or use is prohibited.

- 1.4. Implementation. This Conservation Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with the provisions described herein.

2. Definitions. When used in this Conservation Easement, the following terms shall be defined as follows:

- 2.1. Accessory Structures. A Structure (as defined herein), the use of which is customarily incidental and subordinate to the Residential Structures (as defined herein) or necessary for permitted Home Occupations and Rural Enterprises (as defined herein). Accessory Structures include, but are not limited to, detached garages, tool sheds, storage sheds, cabanas, swimming pools, tennis courts, decks, and detached pool houses and guest quarters no larger than 500 square feet, one of which is permitted per Residential Structure, and other structures customarily incidental to a residence.

- 2.2. Agricultural Activities. Agricultural Activities include conducting farm operations for personal, non-commercial purposes and/or for commercial “agricultural production” purposes as defined in KRS § 262.900, as amended or any successor law to the extent such amendment or successor law is not more restrictive, which includes, but is not limited to, producing crops, crop products, livestock, and livestock products; raising, pasturing, and grazing of livestock; establishing, reestablishing, maintaining, and using cultivated fields, orchards, and pastures; animal husbandry; equestrian activities, including, but not limited to the stabling, breeding, boarding, training, raising, pasturing, and grazing of horses; planting, raising, harvesting, and producing tobacco, row crops, hay and pasture crops, floral and greenhouse products, bees and apiary products, agricultural, silvicultural, vinicultural, aquacultural, horticultural, and forestry crops and products of every nature and description, and the primary processing, storage, and sale, including direct retail sale to the public of crops and products harvested and produced principally on the Property.
- 2.3. Agricultural Structures. A Structure (as defined herein) used for Agricultural Activities, farm operations and on-farm production, preparation, and storage for personal, non-commercial purposes or for “agricultural production” purposes as defined in KRS § 262.900, as amended, or any successor law. Agricultural Structures include, but are not limited to, barns, farm offices, garden sheds, greenhouses, unenclosed feed storage areas, bunker silos, grain drying facilities, pole barns, riding rings, equestrian facilities, equipment sheds, and other similar agricultural facilities.
- 2.4. Agroforestry. Agroforestry intentionally combines agriculture and forestry to create integrated and sustainable land use systems, taking advantage of the interactive benefits from combining trees and shrubs with crops and/or livestock. Agroforestry practices include such options as alley cropping (the cultivation of food, forage, or specialty crops between rows of trees or shrubs), growing gourmet mushrooms, combining forest management with livestock grazing, and selling specialty wood items. For purposes of this Conservation Easement, timber harvest is not included in this definition; see “Conservation Forestry,” below.
- 2.5. Baseline Documentation Report. The document entitled “Baseline Documentation Report,” incorporated by reference herein, a copy of which has been provided to Grantor and the original of which is in the custody of Grantee, includes photographs, maps, and supporting text, as well as describes the condition of the Property, including Structures and Improvements, driveways, and VPA, located on the Property as of the effective date of this Conservation Easement, as agreed upon by both the Grantor and Grantee.
- 2.6. Commercial. Any use or activity for which a financial benefit is sought or for which money is charged, whether or not the activity or use is profitable.

- 2.7. Conservation Forestry. The removal of forest products (such as, but not limited to, trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pine straw, stumps, shrubs, and lesser vegetation) for Commercial purposes that perpetuate the forest resources on the Property as a sustainable working forest, encourage long-term, professional management of the forest resources, and facilitate the biologically and economically sustainable production of forest resources, while minimizing the impacts on soil productivity, water quality, wetlands, riparian zones, and the scenic character of the Property.
- 2.8. Grantee. The term "Grantee" includes the original Grantee and its successors and assigns.
- 2.9. Grantor. The term "Grantor" includes the original Grantor, Grantor's heirs, successors, and assigns, and all future owners of all or any portion of the Grantor's Property.
- 2.10. Habitat Management Structures. A Structure (as defined herein) used for enhancing or viewing wildlife and habitat. Habitat Management Structures may include, but are not limited to, observation towers, deer stands, and bird blinds. Such Habitat Management Structures shall not include nor be served by any permanent utilities and/or septic systems and shall not be suitable for human habitation.
- 2.11. Hazardous Substances. For purposes of this Conservation Easement, Hazardous Substances shall be defined as: (a) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.) as amended; (b) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (15 USC § 9601 et seq.) as amended; (c) any substance regulated by the Toxic Substances Control Act (TSCA) (15 USC § 2601 et seq.) as amended; (d) any substance regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC § 136 et seq.) as amended; (e) any pollutant as defined by the Water Pollution Control Act (33 USC § 1251 et seq.) as amended; (f) any air pollutant as defined by the Clean Air Act (42 USC § 7401 et seq.) as amended; (g) any hazardous waste as defined by KRS §§ 224.01-010 et seq. and regulations promulgated thereunder; (h) friable asbestos or asbestos-containing material of any kind or character; (i) polychlorinated biphenyls; (j) any substances regulated under the provisions of Subtitle I of RCRA relating to underground storage tanks; or (k) any other substance, pollutant or contaminant subject to any form of environmental law or regulation by any Federal, state, or local governmental authority.
- 2.12. Home Occupations and Rural Enterprises. Home Occupations and Rural Enterprises may include, but are not limited to, farm stands, lawful home occupations, professional home offices, bed and breakfasts, restaurants, antique shops,

campgrounds, schooling, day care, and other educational programs that shall only take place within permitted or existing Structures.

- 2.13. Improvements. Improvements shall include anything that is constructed, installed, or placed in or upon the ground that is not a Structure (as defined herein), and includes but is not limited to, driveways, farm roads, parking areas, gardens, ponds, wells, septic systems, drainage ways, utility lines, solar panels, fences, stone walls, and signs.
- 2.14. Incidental Agricultural Structures. A Structure (as defined herein) used for, and subordinate to, farm operations including, but not limited to, pump houses, irrigation equipment, associated pumps and pipes, “run-in” sheds, bridges, and stream crossings.
- 2.15. Incidental Landscape and Garden Structures. A Structure (as defined herein), used for landscaping and gardening purposes including, but not limited to, customary farm and directional signage, farm entrances, arbors, benches, bridges, boardwalks, footpaths, pergolas, lighting, and sculptures. Such Structures, customarily incidental and subordinate to the residences, may not be served by any permanent utilities, with the exception of landscape lighting.
- 2.16. Recreational Structures. A Structure (as defined herein) used for non-commercial recreational activities that does not include and is not served by any permanent utilities, and/or septic systems. Recreational Structures shall include, but are not limited to, gazebos, studios, tree houses, and hunting cabins.
- 2.17. Residential Structure. A single-family detached Structure that contains at a minimum, permanently installed cooking facilities, indoor sanitation facilities, and a sleeping area. Residential Structures include, but are not limited to, main residences, and tenant houses, but does not include trailers or mobile homes, which are not permitted for residential purposes on the Property.
- 2.18. Residential Unit. A living area within a Structure typically not used for living space which is designed for single-family dwelling (including associated electricity, well or water source, and septic system) with, at a minimum, permanently installed cooking and indoor sanitation facilities. Residential Units may include garage apartments or an apartment within an Agricultural Structure.
- 2.19. Structures. A building or object constructed, installed or placed upon the ground, whether temporary or permanent. Structures shall include, but are not limited to, existing and future Agricultural Structures, Residential Structures, Residential Units, garages, sheds, pool houses, cabanas, greenhouses, barns, animal “run-in” shelters, farm markets/stands, silos, grain drying facilities, equestrian facilities, observation towers, deer stands, studios, tree houses, hunting cabins, moveable buildings such as trailers and mobile homes, and garden features such as arbors, pergolas, and gazebos.

- 2.20. Subdivision. The division, subdivision, or partitioning of the Property into two or more parcels, by any legal or physical means, including, but not limited to, recording of a subdivision plat, division, or partition of the parcel that comprises the Property into more than one parcel, any other attempt to divide any of said parcels into two or more parcels, or the conveyance of a portion, parcel, or tract of the Property separate from the others. (See Section 4.2, below, "Subdivision").
- 2.21. Substantially Modified or Expanded. Substantially Modified or Expanded as it relates to an existing or permitted Structure shall mean an increase in the footprint of the Structure by more than 15% or an increase in the height of the Structure by more than 15%.
- 2.22. Viewshed Protection Area (VPA). The area, as delineated and described in Exhibit B, in which new Structures (as defined herein), may not be placed to the extent provided below in Section 4.3. The VPA is any area within five hundred (500) linear feet of any point along Grimes Mill Road, five hundred (500) linear feet of any point along Hunter's Rest Lane, and five hundred (500) linear feet from any point along Boone Creek. Any existing Structure located within the VPA as of the effective date of the Conservation Easement is documented in the Baseline Documentation Report and as such, may be replaced within the VPA.
3. Reserved Rights of Grantor. Grantor reserves for Grantor and Grantor's successors in interest with respect to the Property, all rights with respect to the Property, including those rights in Sections 3.1 and 3.2, and Section 4, but subject to the restrictions provided in Section 4 below.
- 3.1. Use. Grantor reserves for Grantor and Grantor's successors in interest with respect to the Property, the right of exclusive use, possession, and quiet enjoyment of the Property, and the right to sell, transfer, lease, mortgage, or otherwise encumber the Property, subject to the restrictions and covenants set forth in this Conservation Easement.
- 3.2. No Public Access. Nothing contained in Section 1.2 or elsewhere in this Conservation Easement shall be construed as a grant to the general public or to any other person or entity of any right to enter upon any part of the Property, except with respect to Grantees right of access for inspection as provided for in Section 5.1(b) of this Conservation Easement.
4. Restrictions Applicable to the Property. In order to accomplish, safeguard, and promote the Purpose of this Conservation Easement and preserve the Conservation Values, the following restrictions apply to the Property:
- 4.1. Use. The Property shall not be used for residential, industrial, or Commercial purposes except as permitted herein. Home Occupations, Rural Enterprises, and educational uses are permitted as specified below, but only to the extent such permitted uses are consistent with protection of the Conservation Values of the Property and Purpose of

this Conservation Easement. Agricultural Activities are permitted on the Property, as are Conservation Forestry, Agroforestry, environmental management, educational programs, and outdoor, non-commercial recreational activities, including, without limitation, hiking, horseback riding, hunting, fishing, canine field trials, equestrian field trials, and horse shows, which are permitted so long as they are not inconsistent with the Purpose, terms, and intent of this Conservation Easement and do not negatively impact the Conservation Values protected by this Conservation Easement. Commercial recreational activities are prohibited. For purposes of clarification, golf courses are not permitted under the terms of this Conservation Easement.

- 4.2. Subdivision. The Property is currently comprised of one (1) parcel, all of which is owned by Grantor. The legal or de facto division, Subdivision, or partitioning of the Property is prohibited and the Grantor shall maintain the parcel comprising the Property, and all interests therein, under common ownership, as though it is a single parcel.
- 4.3. Structures. No permanent or temporary Structures shall hereafter be constructed on the Property, except as specifically provided for below in this Section 4.3 and the construction, location, removal, and Substantial Modification or Expansion of a permitted Structure as set forth and enumerated below is subject to the notice and approval requirements of Section 6 herein impervious surface limitations of Section 4.16 herein.
 - 4.3.1. Existing Structures. The existing Structures on the Property as shown in the Baseline Documentation Report (all collectively referred to as "Existing Structures") include one (1) existing Residential Structure and its existing Accessory Structures, including the shed, one (1) mobile home or trailer that may not be replaced once it is removed, the existing Agricultural Structures, including two (2) barns, and Incidental Agricultural Structures, including three (3) run-in sheds, two (2) sheds, and one (1) hay shed, and are permitted. The Existing Structures may be removed, replaced, or Substantially Modified or Expanded, subject to the notice and approval requirements set forth in Section 6 herein. As of the effective date of the Conservation Easement, there are no existing structures located within the VPA.
 - 4.3.2. New Residential Structures. No more than three (3) new Residential Structures along with Accessory Structures may be constructed on the Property, all three of which must be located completely outside the VPA and are subject to the impervious surface limitations set forth in Section 4.16 herein.
 - 4.3.3. New Residential Unit. No more than one (1) new Residential Unit, within an existing or permitted Structure, such as a garage or Agricultural Structure, may be constructed on the Property, all of which must be located completely outside

the VPA and are subject to the impervious surface limitations set forth in Section 4.16 herein.

- 4.3.4. New Agricultural Structures. New Agricultural Structures are permitted so long as they are located completely outside the VPA and are subject to the impervious surface limitations set forth in Section 4.16 herein.
- 4.3.5. Recreational Structures, Habitat Management Structures, and Accessory Structures. Recreational Structures, Habitat Structures, and Accessory Structures are permitted so long as they are located completely outside the VPA and are subject to the impervious surface limitations set forth in Section 4.16 herein.
- 4.3.6. Incidental Agricultural Structures and Incidental Landscape and Garden Structures. Incidental Agricultural Structures and Incidental Landscape and Garden Structures are permitted, however all incidental Agricultural Structures and Incidental Landscape and Garden Structures, including farm entrances and lighting should be normal, customary, and typical of other similar properties.
- 4.4. Improvements. No new Improvements may be located or constructed on the Property, except those that are reasonably necessary to service the Property and its permitted uses and Structures, such as permitted Agricultural Activities and permitted Agricultural and Residential Structures, including, but not limited to, farm roads, utility lines, and solar panels to service the Property, provided they are not inconsistent with the Purpose, terms, and intent of this Conservation Easement, are subject to the impervious surface limitations set forth in Section 4.16, and the notice and approval requirements of Section 6 herein. All permitted Improvements must be located, constructed, and maintained so as to minimize their potential negative impacts on the Property's Conservation Values. Notwithstanding any other provisions in this Conservation Easement that may be construed to the contrary, transmission lines and interstate pipelines are prohibited on the Property, unless the Property is already subject to an easement for the foregoing or unless approved by Grantee, in its sole discretion.

No new driveways or roads, including farm roads, may be constructed to access or service other lands or properties, except with Grantee's prior approval as provided in Section 6. Grantee shall give such approval only if Grantee finds that use of such driveways and roads on the Property is consistent with the Purpose of this Conservation Easement and that such use will not enable development of the other lands for purposes other than scenic, open space, agricultural, historic, or non-commercial recreational uses beyond what would have been possible without such access.

- 4.5. Home Occupations and Rural Enterprises. Home Occupations and Rural Enterprises as defined herein and as permitted by local laws, are permitted, so long as Home

Occupations and Rural Enterprises are conducted within existing or permitted Structures as described in this Conservation Easement and in no event shall any Structure be constructed whose primary purpose is not related to permitted residential, agricultural, or non-commercial, seasonal, recreational activities and not supportive of and subordinate to activities that are consistent with the Purpose of this Conservation Easement. A Structure may not be constructed for the primary purpose of Home Occupation or Rural Enterprises. Enterprises which market petroleum, such as a gas or fuel station, are prohibited. The construction of golf courses and other activities that significantly alter the terrain and soil profile and that adversely affect the open space and natural qualities of the Property are expressly prohibited on the Property.

- 4.6. Fences and Signs. Existing fences and stone walls may be repaired, relocated, and replaced anywhere on the Property. New fences, gates, stone walls, and signs as are normal and customary for the uses permitted in this Conservation Easement may be erected anywhere on the Property, provided that any fences or stone walls are constructed, insofar as practicable, to blend with the natural landscape and do not impinge materially on views of the Property from public roads which is consistent with the Purpose, terms, and intent of this Conservation Easement.
- 4.7. Planting, Cutting, and Clearing of Trees; Removal of Invasive Plant Species. Without prior notice to Grantee, trees may be removed anywhere on the Property that endanger public safety and animal welfare, are diseased, damaged, or fallen, or need to be removed to ensure the health or productivity of other trees or ecological attributes of the Property, or in connection with the construction of permitted Structures. Trees may also be removed to maintain existing views, as shown in the Baseline Documentation Report, paths, utility lines, roads, trails, driveways, or open space, and for cutting firewood for use on the Property. New clearing is permitted in connection with landscaping and permitted uses as established herein and as defined as Conservation Forestry in Section 2.7 herein. Trees may not be planted or permitted to grow up along Grimes Mill Road that would materially block existing scenic, open views of the Property from public roads or adversely affect the VPA of the Property, but otherwise may be planted and cultivated on the Property.
- 4.8. Mineral Extraction. There shall be no exploration, development, production, extraction, or transportation of oil, gas, or other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) on, from, or across the Property ("Mineral Activities") except in accordance with this Section 4.8 and the Standards for Exploration and Extraction attached hereto as Exhibit C subject to the notice and approval provisions in Section 6 herein.
 - 4.8.1. No Surface Mining. Mineral Activities shall not be conducted by any surface mining methods including, without limitation, the removal of gravel and sand. Surface mining is strictly prohibited.

4.8.2. Oil & Gas Mineral Extraction. Further, there shall be no Mineral Activities on the Property, except for oil and gas exploration and extraction (together with such other liquid or gaseous hydrocarbons, sulphur, and substances as are necessarily produced through the wellbore with and incidental to the production of oil or gas from wells producing from the Property) ("Oil & Gas Mineral Activities"): provided, however, that such Oil & Gas Mineral Activities above shall not include the installation or operation of any amine or other hydrogen sulfide or sulphur treatment or removal facilities, gas processing facilities, refining facilities, or cathodic protection facilities, all of which facilities are strictly prohibited on the Property. All Oil & Gas Mineral Activities shall be subject to the following:

4.8.2(a). Oil & Gas Mineral Activity may be accomplished only by methods that will have a limited and localized impact on, and not significantly impair or interfere with, the Conservation Values and the Purpose of this Conservation Easement. The person or party conducting any Oil & Gas Mineral Activities shall at all times use best efforts and practices to prevent damage or impairment of natural values and shall restore any area damaged to its original condition. All facilities relating to any Oil & Gas Mineral Activities must be concealed or otherwise located so as to be compatible with existing topography and landscape to the greatest extent practical, and must be located completely outside the VPA.

4.8.2(b). Grantee must be given written notice of any actual or proposed Oil & Gas Mineral Activities at least sixty (60) days prior to entering into any contract or lease, and, if no such contract or lease, prior to beginning any work. Grantor shall, prior to entering into any contract or lease (or prior to beginning any work if there is not contract or lease), consult with Grantee and incorporate conditions or restrictions as Grantee may reasonably determine are required in order to prevent a significant impairment or interference with the Conservation Values (such as limiting the number and location of wells, facilities, roads, pipelines, etc.) but in no event shall the improvements related to Mineral Activities (including new roads) cover more than 1% of the total surface area of the whole two hundred forty-four and two hundred seventy-five thousandths (244.275) acre Property.

4.8.2(c). Any and all subsequent mineral contracts, mineral conveyances, and mineral leases shall be bound by the provisions hereof.

4.9. Limitation on Agricultural Activities. In connection with any agricultural activity on the Property, including but not limited to noxious weed control, the use of chemical fertilizers, herbicides, pesticides, fungicides, and natural controls will be permitted only if such use is in compliance with all applicable federal, state, and local statutes

and regulations and only to the extent such use does not have a demonstrable detrimental effect on the Conservation Values.

- 4.10. Dumping, Waste, Vehicles, Equipment and Storage. No dumping, burying, storing, applying, or releasing of waste, sewage, garbage, construction debris, vehicles, or appliances, or any toxic, hazardous, or offensive materials shall be allowed on the Property, except: (i) appropriate routine storage of garbage and wastes from permitted uses of the Property pending transport for proper disposal; (ii) temporary storage of garbage and wastes which flow into a septic or other appropriate waste disposal systems that comply with applicable local, state, and federal laws and regulations; (iii) temporary storage of materials, such as gasoline and diesel fuel, for use in vehicles which serve the permitted uses of the Property and are properly stored (in accordance with applicable local, state, and federal laws and regulations) pending such use; (iv) vehicles and farm equipment as necessary for permitted uses on the Property; (v) pesticides, such as herbicides and insecticides, that are stored and disposed of in accordance with applicable local, state, and federal laws and regulations; (vi) biodegradable materials generated, utilized, and/or processed on the Property to further the permitted uses of the Property while maintaining the Purpose described herein; and (vii) temporary storage of vegetative debris deposited by storm damage or other such similar event. Notwithstanding the foregoing, and with the exception of (vii) of this section, the above activities are not permitted within the VPA, unless existing on the date of this Conservation Easement, and so identified in the Baseline Documentation Report.
- 4.11. Waterways and Wetlands. No waterways, waterbodies, or wetlands located on the Property shall be in any way diverted, dammed, or otherwise materially altered by Grantor, except with Grantee's prior approval as provided in Section 6. Grantee shall grant such approval so long as Grantee determines that the waterway, waterbody, and/or wetland alteration proposed by Grantor will enhance the conservation goals of this Conservation Easement by, for example, increasing the size of the wetlands or waterway, increasing habitat diversity, or assisting in the removal of exotic species. Grantee shall also grant approval if the purpose of the proposed waterway and/or wetland alteration is to restore or remediate the natural course of the waterway due to a naturally occurring alteration (such as those caused by beaver, floods, or other similar natural events). Any such approvals given by Grantee shall not relieve Grantor from complying with any and all applicable federal, state, and local laws and regulations relating to the alteration of waterways or wetlands.

Notwithstanding the foregoing, naturally occurring alterations (such as those caused by beaver, floods, or other similar natural causes) or alterations caused by third parties that enhance the conservation goals and Purpose of this Conservation Easement are permitted without approval from Grantee, subject to applicable local, state, and federal laws and regulations.

- 4.12. Health and Safety Measures. Notwithstanding any other restriction contained in this Conservation Easement, Grantor may take such actions with respect to the Property as are necessary to protect the health and safety of the public and the persons using the Property; provided, however, that if any such action is contrary to a restriction contained herein, the action shall be limited to the minimum variation necessary to afford the required protection. If notice to Grantee would be required under this Conservation Easement to undertake such action, or if the action would otherwise violate any restriction contained herein, notice of the action shall be given to Grantee as soon as practicable, but the required action may be taken whether or not such notice has been given.
- 4.13. Extinguishment of Development Rights. Except as specifically reserved in this Conservation Easement (including, without limitation, the right to construct certain additional Structures heretofore set forth in Section 4.3.), Grantor grants to Grantee all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property, and the parties hereby agree that, subject to such reservations, such development rights are terminated and extinguished by this Conservation Easement, and may not be used or transferred to any portion of the Property as it is now or hereafter may be described, or to any other property, whether adjacent or otherwise, or used for the purpose of calculating permissible lot yield or building density of the Property or any other property.
- 4.14. Excavation. Except as permitted in connection with an activity or construction permitted herein, and then only to the minimum extent necessary to carry out the permitted activity, no excavating, quarrying, dredging, or removing from the Property of soil, loam, peat, gravel, sand, or rocks is permitted.
- 4.15. Commercial Feedlots. No commercial feedlots are permitted on the Property except with Grantee's prior approval as provided in Section 6 herein. A commercial feedlot, which is defined for purposes of this Conservation Easement as a confined area or facility within which land is not grazed or cropped at least annually and which is used to receive livestock that has been raised on or off the Property for feeding and fattening for market.

Grantor and Grantee agree that the establishment or maintenance of any Animal Feeding Operation (AFO) or Concentrated Feeding Operation (CAFO) is prohibited. As used herein, AFO means an area where livestock are confined for at least forty-five (45) days in a twelve-month period and where no grass or other vegetation is grown in the confinement area during a normal growing season (whether in the form of a feedlot or pen, or in an enclosed facility). A CAFO is defined as an AFO that meets the criteria of the U.S. Environmental Protection Agency for Large, Medium, or Small Concentrated Animal Feeding Operation, or is so designated by regulations of the Commonwealth of Kentucky's Environmental Protection Agency Division of Water.

- 4.16. Impervious Surface Limitations. Impervious surfaces, which include Improvements, Structures, roads, and paved areas, shall not exceed two (2) percent of the total Conservation Easement acreage.

5. Rights and Remedies of Grantee; Grantee's Obligations.

- 5.1. Affirmative Rights of Grantee. Grantor hereby grants the following rights to Grantee, which rights shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee:

5.1.(a) To prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from using or permitting any use of the Property that violates this Conservation Easement, and to require of Grantor or third persons the restoration to the Property's condition immediately prior to such use of such areas or features of the Property that may be damaged by any such use;

5.1.(b) To enter the Property (but not within building interiors) in order to monitor Grantor's compliance with the terms of this Conservation Easement, with notice of such inspection to be delivered to Grantor, Grantor's designees, or agents at least forty-eight (48) hours prior to such inspection, to be performed at such reasonable times and in such reasonable manner as Grantor and Grantee shall reasonably agree, and without unreasonably interfering with Grantor's use and quiet enjoyment of the Property, provided that in any event in the absence of evidence which gives Grantee a reasonable basis to believe there has been a violation of this Conservation Easement (which evidence shall be made available to Grantor, in advance and in writing, followed by an opportunity for Grantor to reply thereto prior to Grantee's further action), such monitoring events may at Grantee's discretion occur twice in any twelve-month period but shall not occur more often than twice in any twelve-month period, and provided further that if Grantee is in receipt of evidence which gives Grantee a reasonable basis to believe there has been a violation of this Conservation Easement, Grantee may enter upon the Property for the purpose of monitoring Grantor's compliance with this Conservation Easement and investigating the suspected violation, without regard to the frequency and prior notice limitations set forth above, but conditioned upon Grantee concurrently making such evidence available to Grantor for review and comment;

5.1.(c) To seek injunctive and other equitable relief against any violation of this Conservation Easement, including without limitation relief requiring removal of offending structures, encroachments, and vegetation, and other restoration of the Property to a condition substantially similar to that which existed immediately prior to any such violation (it being agreed that Grantee will have no adequate remedy at law); and

5.1.(d) After providing Grantor with written notice pursuant to the provisions of

Section 6.4 below, and after a reasonable opportunity to Cure, as set forth in Section 5.2.(a) below, to enforce this Conservation Easement in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings.

5.2. Cure; Grantee's Remedies.

5.2.(a) In the event that Grantee becomes aware of a material violation of the terms of this Conservation Easement, Grantee shall give notice to Grantor pursuant to Section 6.4 and request corrective action sufficient to abate such violation (a "Cure") and restore the Property to a condition substantially similar to that which existed immediately prior to such violation. Grantor shall have the right to Cure as provided herein.

5.2.(b) Failure by Grantor within 30 days after receipt of such notice to Cure (i) to begin good faith efforts to Cure where completion of such action cannot be reasonably accomplished within 30 days, (ii) to initiate such other corrective action to such violation as appropriate in the circumstances and as may be reasonably requested by Grantee, or (iii) failure by Grantor to diligently pursue a Cure once commenced, shall entitle Grantee to: (I) bring an action at law or in equity in a court of competent jurisdiction to enforce this Conservation Easement; (II) require actions to be taken in order to effect the restoration of the Property to a condition substantially similar to that which existed immediately prior to such violation; (III) seek to enjoin any violation by temporary or permanent injunction; and (IV) recover reasonable damages, including attorney's fees, arising from such violation.

5.2.(c) If Grantee, in its sole discretion reasonably exercised, determines that emergency circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 5.2 with concurrent oral and written notice to Grantor and without waiting for the period for Cure to expire, provided, however, that any such remedy pursued shall be a remedy solely and directly related to the damage which has occurred. Grantee shall give concurrent oral and written notice for all such actions and shall provide Grantor with written notice of all actions taken by it pursuant to this Section 5.2(c) immediately (or as soon as possible) thereafter.

5.3. Forbearance Not a Waiver. Any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any violation of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such violation or another violation of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

- 5.4. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers or the unauthorized, negligent, or wrongful acts of third persons, fire, flood, storm, earth movement, and major tree or plant disease, or from any prudent action taken by Grantor intended to mitigate injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other violation of this Conservation Easement. Grantor and Grantee agree that in the event of damage to the Property from acts beyond Grantor's control, if Grantor and Grantee agree that it is desirable that the Property be restored, Grantor and Grantee will cooperate in attempting to restore the Property if feasible.
- 5.5. Grantee's Obligations. To the extent that Grantee by action or inaction does not perform or fulfill any affirmative, non-discretionary obligation required of Grantee pursuant to the terms of this Conservation Easement, then Grantor shall give notice pursuant to Section 6.4 of such obligation to Grantee and the parties shall cooperate and act in good faith to reach a resolution with respect to such obligation.
- 5.6. Costs. Grantor and Grantee shall each be responsible for their respective costs of enforcement and costs of suit, including, without limitation, reasonable attorney's fees, incurred in the enforcement of this Easement, unless (i) either Grantor or Grantee admits fault, or (ii) a court of competent jurisdiction determines that one of the parties is at fault, in which case the party at fault agrees to reimburse the other party for all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with the contested matter.

6. Approval by Grantee; Notice; Breach.

- 6.1. Grantee's Approval or Withholding of Approval. When Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given. Failure of Grantee to respond in writing within such sixty (60) days shall be deemed to constitute denial by Grantee of any request submitted for approval.
- 6.2. Approval by Grantee of Structures, Improvements, Oil & Gas Mineral Extraction, and Alteration of Waterways and Wetlands. To exercise of any of the following reserved rights Grantor must submit to Grantee a request for approval for such proposed activity and its proposed location on the Property: to construct, locate, and/or Substantially Modify or Expand a permitted Structure in accordance with Section 4.3

herein, with the exception of Incidental Agricultural Structures and Incidental Garden and Landscape Structures which do not require approval; to construct, locate, or place an Improvement upon the Property as defined in Section 2.13 and in accordance with Section 4.4 herein, with the exception of fencing and signs which do not require approval; to extract oil & gas in accordance with Section 4.8 herein; and to alter or create waterways and wetlands in accordance with Section 4.11 herein. Grantor shall request such approval in writing and shall include therewith information identifying the nature of the proposed reserved right and requested location with reasonable specificity, evidencing conformity with the requirements of the applicable sections under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. Grantee's approval, which shall not be unreasonably withheld, shall take into account the following criteria:

- (a) the extent to which use of the site for the proposed activity would impair the scenic qualities of the Property that are visible from public roads and/or public waterways;
- (b) the extent to which use of the site for the proposed activity would destroy an important habitat or would have a material adverse effect on the movement of wildlife;
- (c) the extent to which use of the site for the proposed activity would impair water quality;
- (d) in the case of any proposal to build new Structures or roads, the extent to which the scenic quality of the Property may be adversely impacted;
- (e) in the case of siting of Improvements, specifically energy generation facilities permitted under the provisions of Section 4.4, the feasibility of other locations that might have a lesser impact on the Conservation Values; and
- (f) the extent to which the proposed activity or use of the site for the proposed activity would otherwise significantly impair the Conservation Values.

Grantor and Grantee shall cooperate and shall act in good faith to arrive at an agreement on suitable sites and activities in connection with any determinations that are necessary to be made by them (either separately or jointly) under this Section 6.2. Notwithstanding the foregoing, Grantee's approval of a proposed site or activity shall be withheld if the site for the proposed activity or the proposed activity itself would interfere with the Conservation Values and/or essential scenic quality of the Property.

- 6.3. Notice to Grantee. Following the receipt of Grantee's approval when required under Section 6.2, and not less than thirty (30) days prior to the commencement of any use or activity approved under Section 6.2, and upon removal of a Structure referenced in Section 4.3 or Improvement referenced in Section 4.4, Grantor agrees to notify Grantee in writing of the intention to exercise such right. The notice shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to monitor such activity. When such information was not provided to Grantee under the requirements of Section 6.2, the

notice shall also include information evidencing the conformity of such activity with the requirements of the applicable sections under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. At Grantee's sole discretion, Grantee may permit commencement of the activity less than thirty (30) days after receiving Grantor's written notice. See also Section 7.3, with respect to Grantor's written notice to Grantee concerning a transfer of any interest in all or a portion of the Property.

- 6.4. Notice and Approval Requests, Responses, in Writing. Any written notice or approval request required or desired to be given under this Conservation Easement by Grantor, except as required in Section 5.2(c) of this Conservation Easement, and any subsequent response from Grantee, shall be in writing and shall be deemed given when received, or three (3) days after mailing by certified mail, or by Federal Express, or a similar public or private courier service which provides receipt of delivery, except as mutually agreed upon by both parties, and properly addressed as follows: (a) if to Grantee, at the address set forth above; (b) if to Grantor, at the address set forth above, and (c) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her, or it by giving notice pursuant to this Section 6.4
- 6.5. Breach. Failure to secure such approval or give such notice as may be required by this Section 6 shall be a material breach of this Conservation Easement notwithstanding any other provision of this Conservation Easement and shall entitle Grantee to such rights or remedies as may be available under Section 5.
- 6.6. Compliance Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document that may be requested by Grantor, including an estoppel certificate or compliance certificate, to certify to the best of Grantee's knowledge Grantor's compliance with any obligation of Grantor contained in this Conservation Easement or otherwise to evidence the status of this Conservation Easement.

7. Additional Covenants and Provisions.

- 7.1. Representations and Warranties. The Grantor represents and warrants that, after reasonable investigation or inquiry, and to the best of Grantor's knowledge:

7.1.(a) No substance 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, other than licensed agricultural chemicals, exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property, except as

necessary for disposal purposes in accordance with applicable rules, regulations, or laws;

7.1.(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

7.1.(c) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

7.1.(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;

7.1.(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that the Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders;

7.1.(f) There are no outstanding surface or subsurface mineral rights associated with the Property; and

7.1.(g) That as the owner of the Property in fee simple, Grantor has access to the Property and has good right to convey to Grantee this Conservation Easement, and Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation at Grantor's expense, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefore.

Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an owner or operator

with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), and KRS §§ 224.01-010 et seq.

- 7.2. Amendment. This Conservation Easement may be amended only upon the written consent of Grantee and by a recorded instrument signed by the then current Grantor (owner) of the Property (or of the parcel of the Property affected by such amendment) and Grantee. Any amendment of this Conservation Easement shall be at the discretion of the Grantee (which may establish such requirements for the submission of plans and other documentation as it deems necessary to make the determination required or permitted of it hereunder) and only if such amendment: a) results in a neutral or positive effect on the Conservation Values that are protected by this Conservation Easement; b) is consistent with the overall Purpose of this Conservation Easement and with the Grantee's then current Conservation Easement Amendment Policy; c) does not affect the perpetual nature of this Conservation Easement; d) does not permit any private inurement or private benefit to any person or entity; e) does not allow any more Residential Structures than permitted by the Conservation Easement on its effective date; f) does not affect the perpetual protection of the Conservation Values that are protected by this Conservation Easement; and g) complies with KRS §§ 382.800 to 382.860, Section 170(h) of the Code. Grantee shall have no right or power to agree to any amendment that would result in this Conservation Easement failing to qualify as a valid conservation easement under Kentucky law or Section 170(h) of the Code. Any such amendment shall be recorded in the Clerk's Office of Clark County, Kentucky, after all signatures required by law have been affixed thereto. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment. Grantor shall reimburse Grantee for all expenses, including staff time and reasonable attorneys' fees, incurred in evaluating, preparing, and executing any amendment. The Conservation Easement may be amended and made more restrictive to comply with the provisions of Section 2031(c) of the Code.
- 7.3. Notices of Property Conveyance, Lease, or Transfer. Grantor shall give Grantee notice and pay Grantee a \$150 notice fee for any subsequent conveyance, including, without limitation, transfer, lease, or mortgage of the Property, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land in perpetuity and which was granted to Bluegrass Conservancy, Inc., by instrument dated _____, 2014, and recorded in the office of the Clark County Clerk's Office at Deed Book ___ Page ____." The failure to include such language in any deed or instrument shall not affect the validity of this Conservation Easement or its applicability to such Property. Said notice fee shall be waived by Grantee if Grantor gives notice to Grantee within 30 days prior to the conveyance, transfer, mortgage, or easement.

- 7.4. Taxes and Assessments. Grantor shall pay all taxes, levies, and assessments and other governmental or municipal charges, which may become a lien on the Property, including any taxes or levies imposed to make those payments. If Grantor fails to make such payments, Grantee is authorized to make such payments (but shall have no obligation to do so) upon ten (10) days prior notice to Grantor, according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy thereof. The payment, if made by Grantee, shall become a lien on the Property of the same priority as the item if not paid would have become, and shall bear interest until paid by Grantor at two percentage points over the prime rate of interest from time to time charged by Citibank, N.A. or its corporate successor.
- 7.5. Severability; Liberal Construction. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement and consistent with the perpetual protection of the Conservation Values shall be favored over any interpretation that would be inconsistent with the purpose of this Conservation Easement and/or with the perpetual protection of the Conservation Values. This Conservation Easement shall be construed and interpreted with the intention of conforming to the requirements of Section 170(h) of the Code. Neither this Conservation Easement nor any uncertainty or ambiguity herein shall be presumptively construed against Grantee, whether under any rule of construction or otherwise.
- 7.6. Binding Effect. The provisions of this Conservation Easement shall run with the Property in perpetuity and shall bind and be enforceable against Grantor, Grantor's heirs, successors, and assigns, all future owners, and any party entitled to possession or use of the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred, cease being a Grantor or owner with respect to such Property for purposes of this Conservation Easement and shall, with respect to the Property transferred, have no further responsibility, rights or liability hereunder for acts or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions occurring during the period of its ownership or conduct.
- 7.7. Indemnification. Grantee has no obligations relating to the maintenance of the Property. Grantee shall not be responsible for injuries or damage to persons or property in connection with Grantee's administration and/or enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, provided that the foregoing shall not absolve Grantee of any liabilities it might otherwise have, for wrongfully and directly, without the participation or consent of the Grantor, causing any dangerous condition to come into existence on the Property. Except in the last-described

instance, Grantor, Grantor's heirs, successors, and assigns, and each subsequent owner of the Property, hereby agrees to indemnify, defend and hold harmless the Grantee and its trustees/directors, officers, members, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against 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 (collectively, "Losses"), whether past, present, or future, arising from or in any way connected with, unless due solely to the gross negligence of any of the Indemnified Parties: (1) injury to or the death of any person, or damage to any property or property interest, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause; (2) tax benefits or consequences of any kind which result or do not result from entering into this Conservation Easement; (3) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, or requirement, including, without limitation, CERCLA and Chapter 224 of the Kentucky Revised Statutes by any third person in any way affecting, involving, or relating to the Property; (4) the presence or release, discharge, remediation, or removal of Hazardous Substances (as defined herein) on, under, from or about the Property; and (5) any other obligation, requirement, or liability related to or arising from the presence of Hazardous Substances on the Property. Notwithstanding anything to the contrary, nothing shall be construed as classifying Grantee as an owner for CERCLA, or Chapter 224 of the Kentucky Revised Statutes, or any other regulatory authority.

Grantor hereby releases and waives any rights, and covenants not to sue Grantee with respect to any Losses identified in this Section 7.7. Grantor's obligations to hold harmless, indemnify, and defend Grantee as specified in this Conservation Easement shall survive indefinitely and shall not be abrogated if Grantee transfers this Conservation Easement to another party. Grantee shall have no liability to Grantor, its heir, successor, and/or assigns, or any other owner for Grantee's acts, taken in good faith, in connection with the administration of this Conservation Easement.

- 7.8. Further Acts. Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably necessary to (a) carry out the provisions of this Conservation Easement, (b) qualify this instrument as a conservation easement under KRS §§ 382.800 to 382.860 or any regulations promulgated pursuant thereto, and, if applicable, (c) carry out the Grantor's intent that as of the date hereof this Conservation Easement shall be deemed a transfer of a qualified real property interest that is a qualified conservation contribution for conservation purposes as defined by Section 170(h) of the Code.
- 7.9. Successors. All the covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall

continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

- 7.10. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 7.11. Captions. The captions and/or headings 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.
- 7.12. Compliance with Laws. Nothing contained herein shall be interpreted to authorize or permit the Grantor to violate any law, regulation, ordinance, code, or requirement relating to building materials, construction method, or use of the Property. In the event of any conflict between any such ordinance, code, or regulation and the terms hereof, the Grantor shall promptly notify the Grantee of such conflict and shall cooperate with the Grantee and the applicable governmental entity to accommodate both the Purpose of this Conservation Easement and the purposes of such law, ordinance, code, or regulation.
- 7.13. Enforceability. This Conservation Easement is made pursuant to KRS §§ 382.800 to 382.860, but the invalidity of such statute or any part thereof shall not affect the validity and enforceability of this Conservation Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their respective successors, heirs, and assigns in perpetuity to each term of this Conservation Easement whether this Conservation Easement is enforceable by reason of any statute, common law, or private agreement either in existence now or any item subsequent hereto. This Conservation Easement may be re-recorded at any time by any person if the effect of such rerecording is to make more certain the enforcement of this Conservation Easement or any part thereof.
- 7.14. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the Commonwealth of Kentucky.

8. Qualified Conservation Contribution Covenants.

- 8.1. Assignment and Continuity. Grantee agrees that it will assign or transfer this Conservation Easement only to an assignee that (a) is a Qualified Organization as defined in Section 170(h) of the Code, (b) has the commitment and resources to enforce, and agrees to enforce, the terms of the Conservation Easement in perpetuity, and which (c) agrees to continue to carry out the Purpose of this Conservation Easement as defined

under Section 170(h) of the Code and the regulations thereunder. No assignment shall be made which adversely affects the status of the transactions herein contemplated under Section 170(h) of the Code. Any assignee must be an entity able to enforce this Conservation Easement, having purposes similar to those of Grantee that encompass those of this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the Code or applicable state law, it will assign this Conservation Easement to a Qualified Organization in accordance with this Section 8.1. If it fails to do so, a court with jurisdiction may transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility, in accordance with this Section 8.1.

- 8.2. Extinguishment. Grantor and Grantee hereby recognize that circumstances may arise in the future that may make the Purpose of this Conservation Easement impossible to accomplish and therefore necessitate the extinguishment of this Conservation Easement pursuant to the provisions of the Code. In accordance therewith, Grantor agrees that the grant of this Conservation Easement gives rise to a property right, immediately vested in Grantee that entitles Grantee to compensation upon extinguishment of the Conservation Easement pursuant to the provisions of this Section 8.2. The fair market value of the property right is to be determined in accordance with the U.S. Treasury Regulations Section 1.170A-14(g)(6); i.e. it is at least equal to the proportionate value that the Conservation Easement as of the date of recording bears to the value of the Property as a whole as of the date of recording (the "Proportionate Value"). This Conservation Easement can only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction and in accordance with state law. Unless otherwise required by applicable law at the time, upon the subsequent sale, exchange, or involuntary conversion of the Property after such termination or extinguishment, Grantee shall receive the Proportionate Value to which it is entitled pursuant to this paragraph. Grantor shall bear responsibility for the satisfaction of any claims or liens against the Property. If Grantee does not receive the entirety of its Proportionate Value from the proceeds of such post-extinguishment sale, exchange, or involuntary conversion, then Grantee may recover such deficiency (including the right to record a lien to secure its recovery of such deficiency) from the owner of the Property in whom the Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Purpose of this Conservation Easement. In the event of extinguishment, the provisions of this paragraph shall survive extinguishment.
- 8.3. No Extinguishment Through Merger. No deed, transfer, or assignment of any fee title interest in the Property to Bluegrass Conservancy or any successor Grantee of this Conservation Easement shall be effective if it will result in the merger of this Conservation Easement with the fee title interest in the Property. The provisions of this paragraph 8.3 are intended to prevent such merger. The provisions of this paragraph 8.3 shall apply, and shall be construed to apply, to Bluegrass Conservancy, as Grantee, and to any successor Grantee of this Easement.

8.3.(a) In the event that Grantee becomes aware of any transaction under consideration, whether such transaction is by contract, operation of law, or otherwise, pursuant to which Grantee would acquire all or a portion of the fee interest in the Property, then prior to such acquisition and as a condition precedent thereto, (i) Grantee must before such acquisition assign all of its interests in this Conservation Easement to another Holder (as hereinafter defined) in conformity with the requirements of this paragraph 8.3, and 8.1, above, and (ii) such instrument of assignment of Grantee's interests hereunder shall be recorded in the Clark County Clerk's Office of Kentucky and shall refer to the provisions of this paragraph 8.3, and shall state that this Conservation Easement continues in full force and effect. For purposes of this paragraph 8.3, "Holder" means any organization that would be an eligible donee of this Conservation Easement under the provisions of paragraph 8.1, above.

8.3.(b) If for any reason Grantee fails to comply with the provisions of paragraph 8.3(a) prior to acquiring a fee title interest in all or any portion of the Property, then (i) in view of the public interest in its continued effectiveness and enforcement, this Conservation Easement shall not be extinguished, in whole or in part, through the doctrine of merger, and Grantee shall be prohibited from asserting any claim or cause of action to the contrary in any administrative or judicial proceeding of any kind, nature, or description, (ii) Grantee as promptly as practicable shall assign all of its interests under this Conservation Easement to a Holder in conformity with the requirements of this paragraph 8.3 and paragraph 8.1, above, and (iii) at any time that Grantee, as successor in title to Grantor, holds all or a portion of the fee title interest in the Property, Grantee shall comply with, and be bound by, the obligations of Grantor and the restrictions imposed upon the Property by this Conservation Easement.

8.3.(c) This Conservation Easement shall remain in full force and effect in perpetuity notwithstanding Grantee's failure to comply with the provisions of this paragraph 8.3.

- 8.4. Legal, Tax, and Other Advice. Pursuant to the provisions of Section 170(f)(8) of the Code, Grantee represents that Grantor has received no goods or services in exchange for this Conservation Easement and will provide Grantor with a separate letter to that effect. Grantor warrants, represents, and agrees that it has not received and is not relying on tax advice, legal advice, or other advice from Grantee, and that it has and will continue to consult its own advisors. Grantee makes no warranty or representation relating to (a) the value of the Property or methodology or techniques used or useful in ascertaining or appraising the value of the Property (either before or after the granting of this Conservation Easement), (b) any entitlement to tax benefits by Grantor or the amount of any such benefits, or (c) whether the conveyance by Grantor of this Conservation Easement constitutes a "Qualified Conservation Contribution," as such term is defined in Section 170(h) of the Code.

- 8.5. Liens Subordinated. Grantor represents and warrants that as of the date of this grant, there are no liens or mortgages outstanding against the Property. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to all of Grantee's rights under this Conservation Easement. Under no circumstances may Grantee's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Property; and provided further that, in the unlikely event this Conservation Easement is terminated under the circumstances described in Section 8.2. above, Grantee shall be entitled to compensation in accordance with the terms of Section 8.2.
- 8.6. Interpretation. This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in KRS §§ 382.800 to 382.860 and Section 170(h) of the Code, and shall be interpreted in a manner consistent with such intention, consistent with the preservation of Conservation Values defined herein. In the event any provision has been omitted from this instrument necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes," such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified. If any provision of this Conservation Easement is deemed contrary to or inconsistent with the provisions of Section 170(h) of the Code, such provisions shall be modified or excluded to the extent necessary to cause the interest hereby granted to be so qualified.
- 8.7. Perpetuation of Easement. The fact that any use of the Property that is expressly prohibited by the terms of this Conservation Easement may become greatly more economically valuable than uses permitted by the terms of the Conservation Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by this Conservation Easement, has been considered by Grantor in granting this Conservation Easement and by Grantee in accepting it. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement. In addition, the inability of Grantor, Grantor's successors and assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.
- 8.8. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 7.2.

- 8.9. Recording; Effective Date. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this **CONSERVATION EASEMENT** is delivered for recording to the aforesaid Clerk's Office of Clark County, Kentucky, after all required signatures have been affixed hereto. Grantee may re-record this instrument or record any other instrument at any time as may be required to preserve its rights in this Conservation Easement. The burdens of this Conservation Easement will run with the Property and will be enforceable in perpetuity.

TO HAVE AND TO HOLD unto the Grantee, its successors, and assigns forever.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed and delivered this instrument on the date or dates set forth below their respective names.

Grantor:

Katharine B. Sutphin Revocable Trust u/a/d July 28, 2014, amended and restated on August 18, 2014

By: Katharine B. Sutphin
Katharine B. Sutphin, as Trustee of the Katharine B. Sutphin Revocable Trust u/a/d July 28, 2014, amended and restated on August 18, 2014

STATE OF Indiana)
COUNTY OF Marion) SS
)

The foregoing instrument was acknowledged before me this 20th day of August, 2014, by Katharine B. Sutphin, Trustee of the Katharine B. Sutphin Revocable Trust u/a/d July 28, 2014, amended and restated on August 18, 2014, on behalf of the Trust, party hereto.

My commission expires:

November 8, 2020
Kristin M. Dion
NOTARY PUBLIC

Notary ID #:

639738



ACKNOWLEDGED AND ACCEPTED:

CLARK COUNTY
D498 PG830

Grantee:

BLUEGRASS CONSERVANCY, INC.

Elizabeth Lloyd Jones
By: Elizabeth Lloyd Jones, Vice-Chairwoman of Board
of Directors

Date: September 3, 2014

COMMONWEALTH OF KENTUCKY)
COUNTY OF Woodford) SS
)

The foregoing instrument was acknowledged before me this 3rd day of September, 2014, by Elizabeth Lloyd Jones, as Vice-Chairwoman of the Board of Directors of Bluegrass Conservancy, Inc., a Kentucky non-profit corporation, on behalf of the corporation, party hereto.

My commission expires:

October 18, 2017
Ashley Noel Greathouse
NOTARY PUBLIC

Notary ID #:

499281

THIS INSTRUMENT PREPARED BY AND UPON RECORDATION RETURN TO:

Ashley Noel Greathouse
Ashley Noel Greathouse, Esq.
Bluegrass Conservancy
Dudley Square
380 South Mill Street, Suite 205
Lexington, Kentucky 40508
Telephone: (859) 255-4552

DOCUMENT NO: 208218
RECORDED: September 08, 2014 04:46:00 PM
TOTAL FEES: \$128.00
COUNTY CLERK: ANITA JONES
DEPUTY CLERK: LADONNA
COUNTY: CLARK CO CLERK W35
BOOK: D498 PAGES: 796 - 835

EXHIBIT A

All that certain tract or parcel of land, lying and being in Clark County, Kentucky and situated on the west side of Grimes Mill Road approximately 0.5 mile south of Athens-Boonesboro Road, more particularly described as follows:

Beginning at a set Mag Nail (152) in the center of Grimes Mill Road and the north property line of Hunter's Rest Lane (Hunter's Rest, LLC)(Deed Book 373, page 171), thence with said lane five calls as follows: (1) S.62°55'36"W. 89.70 feet to a found #5 rebar (204) with cap bearing PLS 2014, (2) S.27°12'36"W. 26.68 feet to a found #5 rebar (205) with cap bearing PLS 2014, (3) S.40°14'00"W. 66.67 feet to a found #5 rebar (206) with cap bearing PLS 2014, S.48°08'04"W. 71.05 feet to a found #5 rebar (207) with no cap, (5) S.43°01'44"W. 31.33 feet to an iron pin (39), a corner common with Robert L. Houtz and Pamela K. Houtz (Deed Book 435, page 261)(Slide 1647B); thence with said Houtz three calls as follows: (1) N.26°14'18"W. 368.97 feet to an iron pin (42), (2) S.80°30'13"W. 218.79 feet to an iron pin (41), (3) S.00°00'21" W. 408.95 feet to an iron pin (40) in the north property line of Hunter's Rest Lane; thence with said lane three calls as follows: (1) S.89°22'00"W. 58.88 feet to a found #5 (214) with an unidentified cap, (2) S.89°57'37"W. 189.79 feet to an iron pin (156), (3) S.89°22'57"W. 798.09 feet to a Mag Nail (44) found in concrete, a corner common with Hunter's Rest, LLC (Deed Book 373, page 171); thence with said LLC six calls as follows: (1) N.01°36'44"E. 1,632.51 feet to a found #4 (50) with no cap, (2) N.86°59'22"W. 1,134.03 feet to an iron pin (129) set by an old fence post, (3) S.00°50'20"E. 411.49 feet to a Mag Nail (133) set in an 18" Cedar with wire, (4) S.20°35'57"E. 111.00 feet to an iron pin (134) set by a 24" Oak, (5) S.31°18'24"W. 45.86 feet to an iron pin (135) set by an 18" Walnut, (6) S.31°18'24"W. 15.61 feet to a point (149) in the center of Boone Creek; thence meandering with the center of said creek nine calls as follows: (1) N.80°20'44"W. 149.61 feet, (2) S.79°42'48"W. 152.71 feet, (3) S.87°12'19"W.301.21 feet, (4)N.67°53'18"W. 170.03 feet, (5) N.04°52'03"W.94.56 feet, (6) N.18°34'43"E. 497.88 feet, (7) N.08°02'52"E. 461.11 feet, (8) N.30°07'49"W. 249.55 feet, (9) N.69°32'35"W. 88.80 feet to a corner common with Kevin Ausbrook and Preston Madden Ausbrook (Deed Book 357, page 602)(Slide 1221); thence with said Ausbrook three calls as follows: (1) N.09°37'08"E. 30.00 feet to a found #4 (150) with cap bearing Fuller, (2) N.09°37'08"E. 329.12 feet to a found #4 (146) with no cap, (3) N.05°46'28"E. 114.32 feet to a found #4 (147) with no cap, a corner common with Lot 13 of Fox Run Farms (fka James B. Allen Property)(Slide 112A); thence with said Farms six calls as follows: (1) N.70°52'40"E.747.18 feet to found #4 (181) with unidentified cap, (2) N.55°09'03"E. 845.36 feet to a found #4 (183) with no cap, (3) N.58°05'22"E. 194.89 feet to a found #4 (185) with no cap, (4) N.86°11'46"E. 44.93 feet to a found #4 (165) with cap bearing Fuller, (5) N.86°12'17"E. 994.21 feet to an iron pin (208), (6) N.89°41'18"E. 604.13 feet to a found #4 (187) with a cap bearing LS 3008, a corner common with Robert M. Thompson (Deed Book

401, page 874)(Slide 1512B); thence with said Thompson two calls as follows:
(1) S.03°29'27"W. 525.73 feet to a found #4 (188) with a cap bearing LS 3008,
(2) N.89°39'43"E. 998.46 feet to a Mag Nail (191) set over found metal in the
center of Grimes Mill Road; thence with the center of said road eleven calls as
follows: (1) S.03°10'35"W. 245.02 feet to a set Mag Nail (194), (2)
S.03°30'18"W. 275.89 feet to a Mag Nail (195) set over found metal, (3)
S.02°43'09"W. 275.95 feet to a set Mag Nail (196), (4) S.02°42'31"W. 377.48 feet
to a set Mag Nail (197), (5) S.07°21'51"W. 54.42 feet to a set Mag Nail (198), (6)
S.18°12'20"W. 62.15 feet to a set Mag Nail (199), (7) S.22°27'01"W. 739.31 feet
to a Mag Nail (200) set over found metal, (8) S.22°16'01"W. 287.11 feet to a set
Mag Nail (209), (9) S.22°06'01"W. 293.10 feet to a set Mag Nail (210), (10)
S.22°58'01"W. 307.43 feet to a set Mag Nail (211), (11) S.21°41'50"W. 208.32
feet to the beginning, containing an area of 244.275 acres, more or less according
to a survey conducted by Robert L. Baldwin PE, PLS, Baldwin Engineering
Corporation, P.O. Box 4315, Winchester, KY 40392-4315 dated July 18, 2006.
All references to iron pin indicated a #4 rebar with cap bearing "Baldwin 1366"
set by Baldwin Engineering Corporation.

Being the same property conveyed to Katharine B. Sutphin, as Trustee of the
Katharine B. Sutphin Revocable Trust u/a/d July 28, 2014, by Deed dated
August 4, 2014 and of record in Deed Book 498, page 530 in the Clark
County Clerk's office.

Exhibit B Viewshed Protection Area

CLARK COUNTY
D498 PG833

Sutphin 2014 (Clark)
Clark County, Kentucky
Map produced by BGC



Legend

Viewshed Protection Area (500ft)
Farm Boundary



Scale
1:7,200
1 inch = 600 feet



Legend

Easement Property
BGC Conserved Land

Data Sources:
Aerial Image - NAIP (2012)

The depicted property boundary is an approximation and does not represent a legal survey, legal description, or subdivision plat. The depicted property boundary is intended solely for use by the grantee for purposes of conservation easement administration and interpretation. Created on 8/19/2014 for Bluegrass Conservancy, Inc.

EXHIBIT C

**STANDARDS FOR EXPLORATION AND EXTRACTION
Best Management Practices**

To meet the high standards of land stewardship established by Grantor, any lease and/or other form of development of any of the Property's oil, gas, and subsurface mineral ("OGM") resources will require adherence to industry's best management practices, as such standards are set forth below, and in addition, as to oil and gas development, as such standards are as documented in the Bureau of Land Management's Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, Fourth Edition—Revised 2007 (the "Gold Book"), as may be revised from time to time (all, collectively, the "BMPs"). Such BMPs shall govern all activities from exploration to abandonment and restoration, and for purposes of this Conservation Easement are the minimum acceptable standards of practice, to be certain that the Conservation Values are protected. Grantor may also adopt such future technological, operational, and legal changes in OGM operations that provide a level of protection for the Conservation Values (as defined in the Conservation Easement) at least equal to the protection provided by the BMPs as of the effective date of the Conservation Easement.

To the extent not covered by the Gold Book, any lease and/or other form of exploration and/or development shall, to the fullest extent allowed by law (and to the extent applicable, as the case may be), also require any operator to:

- **Sensitive Features** – Identify and avoid sensitive environmental features such as riparian areas, meadows, wetlands, unique habitats, etc.
- **Surface Disturbance** – Limit development to gentle terrain and minimize the amount and extent of surface disturbing activities, and remove only the minimum amount of vegetation necessary for the construction of roads and facilities permitted on the Property.
- **Visibility** – Avoid areas in view of sensitive viewpoints and minimize visibility of project features.
- **Extent of Development** – Limit the size and impact of the development.
- **Centralized Facilities** – Consolidate the generation, compression, separation/dehydration, and all other such facilities.
- **Water Disposal** – Utilize produced water for restoration, wildlife, fire suppression, and other beneficial purposes, or, if the foregoing is not possible, pursuant to discharge permits.
- **Protection of Resources** – Take all reasonable steps to prevent operations from (i) polluting wetlands, waters of reservoirs, springs, ditches, streams, or existing wells located on or near the Property, (ii) damaging crops, timber, or pastures, (iii) harming or injuring wildlife or livestock, and (iv) emitting noise or light considered harmful or intrusive to surrounding human or wildlife habitats.

- **Access and Safety** – Limit the number of contractor employees and vehicles, establish and enforce strict safety rules, and take steps to prevent fire and promptly to extinguish fire.
- **Monitoring** – Establish and maintain a comprehensive monitoring program to identify and address any adverse effects.
- **Multi-Well Pads** – Where economically feasible, drill multiple wells from a single pad via horizontal or other drilling techniques.
- **Compliance with Laws** – Comply with all applicable laws and regulations of the Commonwealth of Kentucky and the Kentucky Department for Natural Resources, Division of Oil and Gas.
- **Roads** - Have not more than one (1) road serving any well pad or pit; limit the width of any new road; and construct new roads in a manner to permit drainage and prevent erosion to the extent practicable.
- **Plans** – Prior to commencement of any new plan of work, have in place the following plans approved by Grantor in writing: preliminary schedule of operations, water management plan, fire plan, landscaping/reclamation plan, gas and water leak detection and remediation plan, road location and construction standards plan, wildlife protection plan, weed management plan, noise mitigation plan, and dust control plan.
- **Remediation** – Restore (or have the party responsible restore) any altered surface physical features of the Property, including drill sites and roadways, to a condition substantially similar to that which existed immediately prior to such activity and reclaim the restored topography with appropriate vegetation.