Local Version

992-067 **DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT is made this 31 day of Month, 2006, by **William O. Howard and Marietta Howard, husband and wife** having an address at 2096 Iron Works Road, Lexington, KY 40511 ("Grantor") in favor of **Fayette County Rural Land Management Board, Inc.** ("Grantee"), a nonprofit Kentucky corporation, having a mailing address at the Lexington-Fayette Government Center, 3rd Floor, 200 E. Main St., Lexington, Kentucky 40507.

WITNESSETH:

WHEREAS, Grantor is the record title owner in fee simple of certain real property located in Fayette County, Kentucky, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property") containing **twenty one and forty four hundredths (21.44)** acres of land, more or less, and commonly known and designated as **3201 Russell Cave Road, Lexington, KY 40511** and

WHEREAS, it is Grantor's desire to restrict and protect the Property; and

WHEREAS, the Property possesses natural, scenic, open space and agricultural values (collectively the "Conservation Values") worthy of conservation and protection and of great importance to Grantor, the people of Fayette County and the people of the Commonwealth of Kentucky; and

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

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated July 30, 2002, on file at the office of the Grantee and incorporated herein by reference (the "Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the Grantor and Grantee agree provide, collectively, an accurate representation of the Property at the time of this grant and which are intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement, and

WHEREAS, the Property contains the following:

- Large trees and tree stands
- Environmentally sensitive areas
- Scenic Road Frontage and Viewshed-Iron Works Road and Russell Cave Road and

mail to attorney

WHEREAS, the Property contains approximately 1,694 feet of frontage along Iron Works Road and contains approximately 322 feet of frontage along Russell Cave Road and the public traveling these roads are afforded scenic views of the rolling pastures and fields whose beauty and open space character will be protected by this Easement; and

WHEREAS, the grant of this Easement will serve the clearly delineated governmental policies of the Farmland Policy Act, P.L. 97-98, 7 U.S.C. 420 et seq. whose purpose is "to minimize the extent to which the federal programs contribute to the irreversible conversion of farmland to nonagricultural purposes;" and

WHEREAS, the Commonwealth of Kentucky, by Kentucky Revised Statutes ("KRS") Sections 382.800 through 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; and

WHEREAS, it is the adopted policy of the Commonwealth of Kentucky, as stated in KRS 262.900 to 262.920, effective July 14, 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"; and

WHEREAS, it is the declared policy of the Commonwealth of Kentucky, as stated in KRS 262.850, effective July 15, 1994, "to conserve, protect and encourage development and improvement of its agricultural lands for the production of food and other agricultural products," "to conserve and protect its agricultural land base as a valuable natural resource which is both fragile and finite," and "to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an important resource"; and

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

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

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

WHEREAS, the grant of a conservation easement by Grantor to Grantee on the Property and the acceptance by Grantee will assist in preserving and maintaining the aforementioned Conservation Values of the Property; and

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

WHEREAS Grantor desires to grant to Grantee and Grantee desires to accept from Grantor a conservation easement pursuant to the terms of this Easement; and

WHEREAS, Grantee agrees by accepting this Easement that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and future generations; and

NOW, THEREFORE, in consideration of the sum of **$59,000.09** cash in hand paid, of the above, and of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Kentucky, in particular KRS Sections 382.800 through 382.860, Grantor hereby voluntarily, unconditionally, and absolutely grants and conveys to Grantee and its successors and permitted assigns a conservation easement (the "Easement" or "Conservation Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth and to that end, Grantor covenants on behalf of itself, and its heirs, successors and assigns, to Grantee and its successors and permitted assigns, that the Property shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall constitute restrictive covenants and shall be deemed to run with the land in perpetuity and to burden the Property in perpetuity.

1. **Purpose.** It is the purpose (the "Purpose") of this Easement to retain and enhance the agricultural use of the Property by preserving and protecting its agricultural soils and agricultural viability and productivity; to preserve the natural, scenic or open space values of the Property; to preserve areas or structures of architectural or historical interest; to restrict or prevent the development or improvement of the Property for purposes other than agricultural production; and to protect and preserve the following within the Property:

- Large trees and tree stands
- Environmentally sensitive areas
- Scenic Road Frontage and Viewshed-Iron Works Road and Russell Cave Road and

to prevent any use of the Property that is inconsistent with this Purpose or will impair or interfere with the Conservation Values of the Property. For purposes of clarification the term "Agricultural Production" as used herein is defined to include the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator and the raising and stabling of horses for commercial purposes, and shall also include any of the following: dairying, pasturage, growing crops, bee keeping, horticulture, floriculture, orchards, plant nurseries, viticulture, silviculture, aquaculture and animal and plant husbandry; the breeding, raising, training and general care of livestock for uses other than food, such as sport or show purposes; and construction and maintenance of barns, silos and other similar structures, the use of farm machinery, the primary processing of agricultural products and the sale of agricultural products produced on the land where the sales are made.

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

(a) to preserve and protect the Conservation Values of the Property;

(b) to enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 7; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) to prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, by exercise of the remedies set forth in Section 7.

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

a. Grantor shall deliver to Grantee within five (5) days of receipt copies of any notice of default or demand letter received by Grantor from any duly authorized governmental authority which if not complied with could result in a lien on the property. Upon receipt of written request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or demand letter where compliance is required by law.

b. Grantor shall maintain the property in accordance with an approved NRCS conservation plan.

c. Grantor shall protect and preserve the following within the Property:

- Large trees and tree stands
- Environmentally sensitive areas
- Scenic Road Frontage and Viewshed-Iron Works Road and Russell Cave Road

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

(a) mining, excavating, quarrying, dredging, or removing from the Property of soil, loam, peat, gravel, sand, hydrocarbons, rocks, or other mineral resource or natural deposit except in connection with an activity or construction permitted in Section 5;

(b) commercial or industrial uses of the Property with the exception of agricultural production as defined in Section 1 or as permitted in Section 5;

(c) constructing, placing or maintaining of any building, mobile home, or other temporary or permanent structure or facility on, above, or below the Property except as permitted in Section 5;

(d) cutting, removing, pruning, or otherwise destroying shrubbery or trees except as permitted in Section 5;

(e) the installation of underground storage tanks or the placing, filling, storing, processing, dumping or other disposal on the Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such substance, whether or not generated on the Property except as both (i) reasonably required for the use of the Property for normal agricultural production or permitted residential use and (ii) in accordance with applicable local, state and federal laws and regulations. For purposes of clarification, the storage of agricultural products, byproducts and agricultural equipment on the Property, so long as such storage is done in accordance with all applicable governmental laws and regulations, is permitted;

(f)

(i) any legal or de facto division, subdivision or partioning of the Property whatsoever;

or

(ii) any sale, transfer or conveyance of any portion constituting less than one hundred percent (100%) of the property;

(g) mining or removal of groundwater from the Property except as may be required for agricultural production and residential uses permitted herein;

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

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

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

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

(l) the establishment, maintenance or operation of any large scale commercial hog or poultry farm, which is defined for purposes of this Conservation Easement, as a confined facility exceeding two thousand five hundred (2500) square feet for raising hogs or poultry for commercial resale. For purposes of clarification, this prohibition is not intended to prohibit Grantor from raising hogs or poultry for its own personal consumption or limited sale; and

(m) the paving or otherwise covering with concrete, asphalt, gravel or any other paving material of any portion of the Property or the construction, maintenance and use of any road for reasons not relating to agricultural production or permitted residential use without the advance written permission of the Grantee except in the event of temporary emergency conditions resulting from an Act of God; and

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

5. **Reserved Rights**. The provisions of Section 4 notwithstanding, Grantor reserves to itself, and its heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 4, the following rights are expressly reserved, subject to section 17.12;

(a) the right to conduct Agricultural Production for domestic or commercial purposes;

(b) the right to construct single-family detached dwelling(s) ("New Residences") with reasonable appurtenances (including but not limited to garages, sheds, swimming pools, tennis courts and other accessory structures), subject to prior approval of the Grantee and permitted pursuant to the building & zoning ordinances, which shall be utilized by members of the owner or operator's family or person(s) employed on the Property. Prior to beginning construction of any permitted New Residence(s), Grantor shall obtain the approval of Grantee for the New Residence(s) provided that Grantee's approval shall not be arbitrarily withheld. Grantor thereafter shall be permitted to maintain, repair and reasonably expand any permitted New Residence(s). In the event that a permitted New Residence(s) is destroyed or substantially damaged, Grantor may construct a replacement single-family detached dwelling at the location of the original dwelling after notice to and approval by the Grantee.

(c) the right to all manner of residential use and enjoyment of the existing residences ("Existing Residences"), any permitted New Residence(s), and the grounds surrounding such residences including, but not limited to the maintenance, repair, restoration of fences, driveways, and paths, the right to cut and remove grass or other vegetation, and the right to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement. This shall include the right to remove and rebuild existing residences, subject to prior approval of the Grantee and as permitted pursuant to the building and zoning ordinances. However, structures which are considered historic resources shall not be removed.

(d) the right selectively to cut or clear trees or vegetation in accordance with a forestry plan under the supervision of the Commonwealth of Kentucky Forestry Service where the farm is involved in timber production or as reasonably necessary for agricultural purposes;

and mow or clear existing fields for timber, lumber or habitat enhancement and protection, fire protection, unpaved trail and road maintenance, tick and insect control, creation or preservation of vistas, or otherwise to preserve the present condition of the Property;

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

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

(g) the right to extract fill solely in connection with uses of the Property permitted by this Easement after notice and approval of Grantee;

(h) the right to create new trails or footpaths using permeable materials (such as sand, gravel, or crushed stone);

(i) the right to engage in any outdoor recreational activities for personal, noncommercial purposes, including hunting and fishing, that are in compliance with all applicable federal, state and local statutes and regulations;

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

(k) the right to construct, repair, maintain or remove pens, corrals, paddocks, fences, barns, and related buildings with access roads reasonably necessary in connection with agricultural production except as provided in Section 3;

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

(m) the right to construct, repair and maintain new ponds or reservoirs subject to the prior approval of the Grantee which approval shall not be unreasonably withheld provided that such pond or reservoir is located in a manner consistent with the Purpose of this

Easement and the proposed pond or reservoir does not substantially diminish or impair the agricultural productivity or Conservation Values of the Property.

(n) the right to operate a farm office on the Property.

(o) the right to establish or maintain a small-scale commercial feed lot, which is defined for purposes of this Section as a confined area or facility within which land is not grazed or cropped at least annually and which is used to receive not more than one (100) hundred head of cattle or hogs that have been raised off the Property for feeding and fattening for market; provided, that the farm is at least one hundred (100) acres in size.

(p) The right to construct underground cisterns, water storage tanks or septic systems for permitted residential use or agricultural production.

6. **Notice and Approval.**

6.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 5, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

6.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 5, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefore. Failure of Grantee to deliver a written response to Grantor within such thirty (30) days shall be deemed to constitute approval by Grantee of such request unless such act is contrary to any express restriction included herein. In the case where approval is sought for construction of a residence, the Grantee shall grant or withhold its approval within sixty (60) days of receipt of Grantor's written request therefore. Failure of Grantee to deliver a written response to Grantor within such sixty (60) days shall be deemed to constitute approval by Grantor unless such act is contrary to any express restriction included herein. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purpose of this Easement.

7. **Grantee's Remedies.**

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

7.2 **Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation with the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by restraining order or temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. In the event that Grantee seeks injunctive or other equitable relief, Grantee shall not be required to post a bond and shall not be required to demonstrate irreparable harm or injury.

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

7.4 **Emergency Enforcement.** If Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under Paragraphs 7.1 through 7.10 without prior notice to Grantors or without waiting for the period provided for cure to expire.

7.5 **Scope of Relief.** Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 7.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

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

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

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

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

7.10 **Failure of Grantee to Enforce.** If at any time Grantee shall fail to enforce the restrictions of this Easement, the Lexington-Fayette Urban County Government shall have the right to bring suit against Grantee or Grantor for specific performance or to otherwise enforce any or all of the provisions of this Easement.

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

9. **Costs, Liabilities, Taxes, and Environmental Compliance.**

9.1 **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of reasonable liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

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

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

(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 exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

(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;

(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;

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

(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 Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and

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

9.4 **Remediation**. 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, including any cleanup that may be required, unless the release was caused by Grantee or Grantee's agents, in which case Grantee shall be responsible therefore.

9.5 **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee 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 operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and KRS Section 224.01-010 et seq.

9.6 **Hold Harmless.** Grantor for and on behalf of itself and its heirs, successors and assigns, and each subsequent owner of the Property hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the gross negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS Sections 224.01-010 et seq. by any person in any way affecting, involving, or relating to the Property; (3) the

presence or release in, on, from, or about the Property, at any time, 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 any way harmful or threatening to human health or the environment; and (4) the obligations, covenants, representations, and warranties of Sections 9.1 through 9.5.

10. **Extinguishment and Condemnation.**

10.1 **Change in Economic Conditions.** The fact that any use of the Property that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Section 10.2. In addition, the inability of Grantor, its successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 10.2.

10.2 **Extinguishment.** At any time fifteen (15) years or more after the date first above written, the Grantor may file a written request with Grantee for release of the Easement as to any part of the Property which has been included within the urban service area boundary, as determined by the then most recent Comprehensive Plan. At any time twenty-five (25) years or more after the date first above written, the Grantor may file a written request with Grantee for release of the Easement as to any part of the Property. Requests for release of the Easement shall be addressed by Grantee according to the terms and conditions of Section 26-18 of Ordinance No. 4-2000 of the Lexington-Fayette Urban County Government. For purposes of clarification the term "Comprehensive Plan" as used herein is defined to mean the land use plan, and amendments, adopted by the Lexington-Fayette Urban County Government pursuant to KRS 100.197.

10.3 **Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with an effort to

prevent a taking or in an effort to recover the full value of their interest subject to a taking or in-lieu purchase shall be paid out of the amount recovered.

10.4 **Proceeds of Condemnation Payment.** The Grantee's share of the division of the net amount recovered between the Grantor and the Grantee shall be determined by multiplying the net amount recovered pursuant to the condemnation action, less the value of any improvements, by the ratio of the consideration paid for the Deed of Conservation Easement divided by the fair market value of the property unencumbered by the conservation easement at the time of execution of the Deed of Conservation Easement.

10.5 **Application of Proceeds**. Grantee shall use any proceeds received under the circumstances described in this Section 10 in a manner consistent with its conservation purposes, which are exemplified by this Easement.

11. **Mortgages.** Grantor represents and warrants that as of the date hereof, there are no liens, mortgages or encumbrances outstanding against the Property, [except any listed in Exhibit B, attached hereto and made a part hereof, which are subordinated to Grantee's right to enforce the restrictions of this Easement.] Upon request, Grantee agrees to subordinate its rights under this Easement to the valid claims of any future mortgage holders or beneficiaries of deeds of trust to the proceeds of any sale, condemnation proceedings, or insurance involving the Property, or to the leases, rents, and profits thereof; provided that any such mortgage or deed of trust shall remain subordinated and junior to the Easement to the extent necessary to permit Grantee to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by exercise of any rights of such mortgage holder or trust deed beneficiary; and provided further that, in the unlikely event this Easement is terminated under circumstances described in Section 10, Grantee shall be entitled to compensation in accordance with the terms of Section 10. Grantee agrees to execute any documents required to effect a subordination pursuant to this paragraph.

12. **Assignment and Backup Grantee.**

12.1 **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under KRS Sections 382.800 through 382.860 (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the Purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this

Easement or limit its enforceability in any way.

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

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

14. **Estoppel Certificates.** Upon written request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or which otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefore.

15. **Notices.** All notices or communication that either party desires or is required to give to the other hereunder shall be in writing and shall be deemed properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

If to Grantor: William O. Howard and Marietta Howard
2096 Iron Works Road
Lexington, KY 40511

If to Grantee: Fayette County Rural Land Management Board, Inc.
Attn.: PDR Program Manager
Lexington-Fayette Center, 3rd Floor
200 E. Main St.
Lexington, KY 40507

or to such other address as either party from time to time shall designate by written notice to the other. Any party by notice to the other party may designate additional or different addresses for subsequent notices or communications.

16. **Recordation.** Grantee shall record this instrument in timely fashion in the office of the County Clerk of Fayette County, Kentucky, and in the office of the Division of Building Inspection of the Lexington-Fayette Urban County Government, and may re-record it at any time as may be required to preserve the rights in this Easement.

17. **General Provisions.**

17.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the law of the Commonwealth of Kentucky.

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

17.3 **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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

17.5 **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement by a mutually acceptable written agreement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) and 501(c)(3) of the Internal Revenue Code and the laws of the Commonwealth of Kentucky, and any amendment shall be consistent with the Purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the office of the County Clerk of Fayette County, Kentucky and in the office of the Division of Building Inspection of the Lexington-Fayette Urban County Government. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate any amendment.

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

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

17.8 **Successors.** All of the covenants, terms, conditions, restrictions, easements, representations, warranties and provisions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and permitted 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 permitted assigns, and the above-named Grantee and its successors and permitted assigns.

17.9 **Termination of Rights and Obligations**. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

17.10 **Captions**. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

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

17.12 **Compliance with Laws.** Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any law, regulation, ordinance, code or requirement relating to building materials, construction method, or use of the Property. In the event of any conflict between any such ordinance, code or regulation and the terms hereof, Grantor shall promptly notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such law, ordinance, code or regulation.

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

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

IN WITNESS WHEREOF, the parties have hereto signed this deed this the day and year first above written.

GRANTORS:

William O. Howard

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

IN WITNESS WHERE OF the foregoing instrument was subscribed, sworn to and acknowledged before me this 31 day of March, 2006, by William O. Howard.

My commission expires: 1. 7. 2007

NOTARY PUBLIC

Marietta Howard

Marietta Howard

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

IN WITNESS WHERE OF the foregoing instrument was subscribed, sworn to and acknowledged before me this 31 day of March, 2006, by Marietta Howard.

My commission expires: 1. 7. 2007

NOTARY PUBLIC

GRANTEE:

Fayette County Rural Land Management Board, Inc.

Margaret Graves

Margaret Graves, Chair
Fayette County Rural Land Management Board, Inc.

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 31 day of March, 2006, by Margaret Graves, Chair, Fayette County Rural Land Management Board, Inc.

My commission expires: 1. 7. 2007

NOTARY PUBLIC

CONSIDERATION CERTIFICATE

We, the undersigned, hereby certify that the consideration reflected in the deed is the full consideration paid for the conservation easement. This transaction is exempt from transfer tax pursuant to KRS 142.050 (1) (a).

GRANTOR:

William O. Howard

Marietta Howard

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing CONSIDERATION CERTIFICATE was subscribed and sworn to before me by William O. Howard and Marietta Howard, husband and wife, the GRANTORS, this 31st day of March, 2006.

NOTARY PUBLIC,
KENTUCKY, STATE AT LARGE

MY COM. EXP. 1-7-2007

GRANTEE:

The Fayette County Rural Land Management Board Inc.

Margaret Graves

By: Margaret Graves, Chair
The Fayette County Rural Land Management Board, Inc.

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing CONSIDERATION CERTIFICATE was subscribed and sworn to before me by Margaret Graves, Chair of The Fayette County Rural Land Management Board, Inc., a nonprofit Kentucky corporation, GRANTEE, this 31 day of March, 2006.

NOTARY PUBLIC
KENTUCKY, STATE AT LARGE

MY COM. EXP. 1.7.2007

PREPARED BY:

Hon. Thomas M. Todd
Walther Roark Gay & Todd, PLC
163 E. Main Street, Suite 200
Lexington, Kentucky 40507
859-225-4714

EXHIBIT A
TO
DEED OF CONSERVATION EASEMENT
FROM
William O. Howard and Marietta Howard
TO
Fayette County Rural Land Management Board, Inc.

All that tract or parcel of land situated on the westerly side of Russell Cave Pike and the southerly side of Iron Works Pike about 5.5 miles northwest of the Court House in Lexington, Fayette County, Kentucky, and more fully described and bounded as follows, to-wit:

BEGINNING at a steel pin set in the center of Russell Cave Pike, said steel pin being the northwest corner of a 10 acre tract of Russell Cave Road Baptist Church, said steel pin also being approximately 320 feet south of the L.C. Terrell property (Jot'em Down Store) when measured along the center of Russell Cave Pike; thence with the property of Russell Cave Road Baptist Church for the follow six (6) calls: N 55° 26' 33" W 584.30 feet to a steel rod, S 37°46' 47" W 722.48 feet to a steel rod set 50 feet north of the line of Hatch, S 55° 00' 37" E 569.53 feet to a steel rod set in a plank fence 50 feet north of the line of Hatch, N 75° 06' 52" E 47.99 feet to a steel rod set at a post in a plank fence, N 34° 33' 27" E 22.40 feet to a steel rod set at a post in a plank fence, and S 55° 26' 33" E 24.20 feet to another steel pin set at a post in the center line of Russell Cave Pike; thence with the center of Russell Cave Pike in a southerly direction along the center of Russell Cave Pike approximately 144.28 feet to a corner to the property of Hatch; thence with Hatch for the following twenty nine (29) calls: N 55° 11' 59" W 36.97.00 feet to a post; N 07° 22' 15" W 47.32 feet to a post; N 55° 00' 39" W 587.00 feet to a post; N 66° 09' 04" W 15.28 feet to a post; N 75° 03' 46" W 15.04 feet to a post; N 86° 02' 16" W 15.60 feet to a post; S 87° 31' 21" Feet W 15.39 feet to a post; S 83° 08' 13" W 15.09 feet to a post; S 80° 00' 42" W 15.46 feet to a post; S 82° 46' 10" W 15.38 feet to a post; S 86° 14' 43" W 15.57 feet to a post; N 89° 58' 44" W 15.12 feet to a post N 84° 02' 58" W 15.73 feet to a post N 75° 28' 02" W 15.30 feet to a post; N 64° 51' 35" W 15.71 feet to a post; N 58° 34' 38" W 38.53 feet to a post; N 57° 21' 16" W 38.93 feet to a post; N 56° 21' 16" W 38.93 feet to a post; N 56° 54' 51" W 129.66 feet to a post; N 40° 43' 37" W 39.90 feet to a post; N 37° 02' 33" W 70.27 feet to a post; N 44° 48' 55" W 15.72 feet to a post; N 58° 27' 52" W 230.07 feet to a post; N 58° 33' 14" W 99.56 feet to a post N 58° 08' 01" W 61.78 feet to a post; N 47° 41' 40" W

176.61 feet to a post; N 58° 28' 38" W 15.14 feet to a post; S 85° 27' 17" W 14.28 feet to a post; and S 65° 40' 48" W 21.35 feet to a post in the line of Richard C. McBride (Crown Colony Farm); N 30° 35' 37" E 1056.20 feet to a steel pin set in the center of Iron Works Pike; thence with center of Iron Works Pike for three (3) calls: S 63° 11' 13" E 449.54 feet; S 63°11' 15" E 405.27 feet and S 63° 41' 03" E 814.40 feet to a steel pin found at the corner of the L.C. Terrell property (Jot'em Down Store) for two (2) calls: S 31° 51' 31" W 130.60 feet; and S 61° 50' 33" E 20.95 feet to a point in the center of Russell Cave Pike; thence with the center of Russell Cave Pike in a southerly direction approximately 320 feet to the beginning and containing 37.47 acres, more or less; the improvements thereon being known and designated as 3201 Russell Cave Pike.

EXCLUDED THEREFROM: Those certain conveyances of record in Deed Book 1612, Page 268, Deed Book 1659, Page 560, and Deed Book 1697, Page 631, all in the Fayette County Clerk's Office.

Being a part of the same property conveyed to William O. Howard and Marietta Howard, husband and wife, by deed dated February 8, 2006, of record in Deed Book 2622, Page 236, in the Fayette County Clerk's Office.

EXHIBIT B
TO
DEED OF CONSERVATION EASEMENT
FROM
William O. Howard and Marietta Howard
TO
Fayette County Rural Land Management Board, Inc.

NONE

DEED BOOK 2635 PAGE 481

I, Donald W Blevins, County Court Clerk of Fayette County, Kentucky, hereby certify that the foregoing instrument has been duly recorded in my office.

Donald W Blevins

By: DOUG BRADLEY , dc

200604110356

April 11, 2006 14:51:02 PM

Fees $58.00 Tax $.00

Total Paid $58.00

THIS IS THE LAST PAGE OF THE DOCUMENT

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