

## DECLARATION OF EASEMENT

**14** THIS DECLARATION OF EASEMENT ("Agreement") is made and executed as of April 14, 2022, by and between PEGASUS STUD, LLC, a Kentucky limited liability company, with an address of 3415 Pegasus Lane, Lexington, Kentucky 40511 ("Grantor"), and PNC BANK, NATIONAL ASSOCIATION SOLELY IN ITS CAPACITY AS TRUSTEE OF THE ROBERT H. SCOBEE TRUST with an address of 101 South Fifth Street, Louisville, KY 40202 ("Grantee").

### RECITALS

A. Grantor is the owner of certain real property located in Clark County, Kentucky, legally described on Exhibit A and as being Parcel 1, as shown on and depicted on the Record Plat dated April 1, 2022, prepared by Baldwin Engineering and approved on April 7, 2022, by Clark County Planning Commission, recorded on April 7, 2022 in Plat Slide 2387 in the Office of the County Clerk of Clark County, Kentucky and attached to that certain Special Warranty Deed dated April \_\_, 2022 and recorded on \_\_, 2022 in Deed Book \_\_ Page \_\_ in the Office of the Clerk of Clark County, Kentucky ("Plat") on Exhibit B both of which are attached hereto and incorporated herein by this reference ("Parcel 1").

B. Grantee is the fee owner of Parcel 2 as shown on the Plat ("Parcel 2").

C. Pursuant to that certain Farm Offer to Purchase (Contract) with the Effective Date of October 27, 2021, as amended, by and between Grantor and Grantee ("Contract"), as a condition of the sale of Parcel 1, Grantor agreed to grant certain easements described herein to Grantee.

D. Grantee has requested, and Grantor has agreed to grant, a sixty (60) foot permanent, nonexclusive, ingress/egress easement ("Driveway Easement") across a portion of Parcel 1 to Parcel 2, as shown on the Plat, pursuant to the terms and conditions provided herein.

E. Grantee has requested, and Grantor has agreed to grant a permanent, nonexclusive, ingress/egress easement across Parcel 1 to connect Parcel 2 ("Bypass Easement") to any future Major Roadway (as hereinafter defined) as constructed, pursuant to the terms and conditions provided herein.

**NOW THEREFORE**, in consideration of the recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby declare and agree as follows:

**Article 1. Incorporation of Recitals and Exhibits.** The recitals set forth in this Agreement are incorporated herein and made a part of this Agreement by this reference. All Exhibits attached to this Agreement are incorporated herein and made a part thereof this Agreement by this reference as though fully set forth herein.

**Article 2. Additional Definitions.** As used herein, the following terms shall have the meanings indicated:

"**Permittees**" shall mean all managers, officers, employees, agents, members, contractors, subcontractors, consultants, subconsultants, engineers, materialmen, suppliers, workers, tenants, licensees, and invitees of Grantee, companies under common ownership or management with Grantee.

**Article 3. Grant of Rights.** Subject to the terms and conditions set forth in this Agreement:

3.1 Grantor hereby grants and conveys to Grantee, Grantee's Permittees, and its successors and assigns the Driveway Easement in, to, over, above, and across that portion of Parcel 1 as depicted on the Plat for: (i) vehicular and pedestrian ingress, egress, and access to Parcel 2; (ii) the right to allow public utilities to be located in the Driveway Easement that would benefit Parcel 2; (iii) temporary storage of construction materials and equipment, and rights of construction and development (including, without limitation, rights to clear and remove trees and other vegetation and to change grade and/or elevation); (iv) the right to improve and maintain the existing driveway or construct a new driveway; and (v) the rights to use Driveway Easement as if Grantee were the fee-title owner of the Driveway Easement to the maximum extent necessary or reasonably desirable for any future use of Parcel 2. The maintenance of the current driveway located in the Driveway Easement shall be shared by Grantor and Grantee on a 50/50 basis. If Grantee determines that the driveway located in the Driveway Easement is in need of major repair or needs to be reconstructed, Grantor and Grantee shall use a good faith effort to enter into a separate agreement regarding the repair or reconstruction of the driveway and sharing of costs. Grantor acknowledges and agrees to cooperate with Grantee should Grantee desire to dedicate any roadway or driveway located in the Driveway Easement for public use. The Driveway Easement shall run with the land and shall inure to the benefit, and shall be binding upon Grantee, and its respective successors, assigns, transferees, employees, tenants, subtenants, licensees and invitees.

3.2 Grantor hereby grants and conveys to Grantee, Grantee's Permittees, and its successors and assigns the Bypass Easement in, to, over, above, and across that portion of Parcel 1 at a location to be mutually determined by Grantor and Grantee. The Bypass Easement, to the extent practical and possible, shall be located to minimize interference with Grantor's use of Parcel 1. The Bypass Easement shall be for (i) vehicular and pedestrian ingress, egress, and access across Parcel 1 to provide Parcel 2 access to any future bypass or other publicly dedicated roadway ("Major Roadway") that is built on Parcel 1; (ii) the right to allow public utilities to be located in the Bypass Easement that would benefit the Parcel 2; (iii) temporary storage of construction materials and equipment, and rights of construction and development (including, without limitation, rights to clear and remove trees and other vegetation and to change grade and/or elevation); and (iv) the rights to use the Bypass Easement as if Grantee were the fee-title owner of the Bypass Easement to the maximum extent necessary or reasonably desirable for any future use of Parcel 2. Grantor and Grantee agree that Grantee shall be responsible for the cost and expenses to construct the roadway in the Bypass Easement to connect Parcel 2 to the Major Roadway. Grantor and Grantee acknowledge the exact location of the Major Roadway is yet to be determined. The minimum and maximum width of the Bypass Easement shall be determined by the current standards and laws adopted by the appropriate governmental authorities, at the time of construction to build within the Bypass Easement, for Grantee's reasonable intended use of Parcel 2. Grantor acknowledges and agrees to cooperate with Grantee should Grantee desire to dedicate any roadway located in the Bypass Easement for public use. In addition, Grantor and Grantee agree to consult each other in any conversations, correspondence, or negotiations with the applicable governmental authorities or related parties regarding the Major Roadway and any agreement concerning the Major Roadway with such applicable governmental authorities or related parties shall be mutually acceptable to Grantor and Grantee.

3.3 Grantor shall reasonably cooperate and participate in Grantee's granting, executing and delivery of utility easements in, under, above, across and through Driveway Easement and Bypass Easement for the installation, operation, use, maintenance, connection, repair, relocation, removal, disconnection or replacement of any utility line serving Parcel 2.

3.4 Without limiting any language in this Agreement, Grantee and its successors may assign any or all of its easements and rights hereunder to one or more of Grantee's Permittees.

**3.5** Grantor acknowledges and agrees that any improvement or access road over the Driveway Easement or Bypass Easement may be constructed in stages and the exact location of the Bypass Easement may vary based on the location of the Major Roadway.

**3.6** Grantor reserves the right to use, or grant any other party the right to use, the Driveway Easement and Bypass Easement for any purpose whatsoever, provided the same does not materially interfere with or prohibit Grantee's use of the Driveway Easement and Bypass Easement for the purposes herein granted.

**Article 4. Limitations.**

**4.1** Exercise of the easements and rights granted by this Agreement shall not unreasonably interfere with access, ingress, and egress and use of Parcel 1.

**4.2** Grantee shall use commercially reasonable efforts to inform Grantor of planned construction related activities to the Driveway Easement and the Bypass Easement.

**Article 5. Character of Easements Granted.** All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of the successors and assigns of the owners of Parcel 1 and Parcel 2, respectively.

**Article 6. Choice of Law/Forum.** Parcel 1 and Parcel 2 are located in Clark County, Kentucky, and this Agreement is entered into in the Commonwealth of Kentucky. All easements, rights, remedies, and obligations provided for in this Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky without regard to the conflicts principles thereof. The courts located in the Commonwealth of Kentucky shall have exclusive jurisdiction with regard to any litigation relating to this Agreement, and the parties expressly waive any objection to jurisdiction or venue and waive their right, if any, to trial by jury.

**Article 7. Default.** If either party fails to perform as required hereunder and is given written notice of default, and if the defaulting party fails to correct the default within thirty (30) days after such notice, or if in the case of a default involving potential danger to personal health or safety, the defaulting party fails to correct the default within three (3) days after that notice, then the non-defaulting party, at its election and in its sole discretion, may cure the default for and on behalf of the non-defaulting party, and any amounts which the non-defaulting party may expend for that purpose or which otherwise may be due by the defaulting party to the non-defaulting party shall be due on demand together with interest thereon at a rate which is the greater of 8% per annum or the maximum rate permissible by law, from the date of expenditure to the date when full payment is made by the defaulting party

**Article 8. Remedies.** In the event of a breach or threatened breach of any term, covenant or condition of this Agreement, the non-breaching party shall have, in addition to all other legal and equitable remedies available, the right to enforce the provisions hereof by injunctive relief or otherwise, without the necessity of proof of actual damage or inadequacy of any legal remedy. If any legal action or other proceeding is brought to enforce this Agreement, or because of an alleged dispute, breach, or default in connection with any of the provisions of this Agreement, the successful or prevailing party will be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled. The exercise of any remedy available hereunder, or at law or in equity, shall not constitute an election of remedies, and shall not prejudice the right of any such party to pursue any other remedy

**Article 9. Notice.** Notices or other communications hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested or by delivery confirmation overnight carrier, by personal delivery or by electronic delivery (email or fax with delivery confirmation) to the address above.

**Article 10. Indemnification.** Grantee shall indemnify, defend, and save harmless Grantor, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been judicially determined) (collectively, "**Claims**") to the extent arising out of the negligent or willful act or omission of Grantee (or any officer, director, employee, agent, or contractor of Grantee) in connection with its use of the Driveway Easement or Bypass Easement pursuant to the terms hereof; provided, however, to the extent any Claims arise out of the negligent or willful act of Grantor (or any officer, director, employee, agent, or contractor of Grantor), then Grantee's indemnification, defense, and save harmless obligations pursuant to this Article with respect to such Claims shall not be applicable. The provisions of this Article shall survive the expiration or termination of this Agreement.

**Article 10. Cumulative Rights.** The easements and rights created in this Agreement are in addition to, and not in lieu of, all other rights of Grantee.

**Article 11. Modification and Waiver.** This Agreement and its terms may not be amended, modified, or waived except in a writing signed by Grantor and Grantee. Failure by any party to insist upon the strict performance by another party of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement.

**Article 12. Binding Effect.** This Agreement shall be binding upon and inure to the benefit and detriment of Grantor and Grantee and their respective successors and assigns.

**Article 13. Counterparts.** Signatures on this Agreement provided by facsimile or electronic transmission shall stand as and for the original, and the parties shall be bound thereby. Copies, electronic copies, and facsimile copies of signature pages shall be deemed to be originals for any and all purposes.

**Article 14. Headings.** The headings in this Agreement are used for organizational and reference purposes only and shall not be used to interpret or construe the terms and conditions of this Agreement.

**Article 15. Other Provisions.**

**12.1** Any party may record this Agreement at any time after the execution hereof.

**12.2** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by, any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision and covenant shall be valid and enforceable to the fullest extent permitted by law.

**12.3** In this Agreement, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and plural include one another.

**12.4** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**12.5** The rights and obligations of Grantor and Grantee hereunder will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns.

**12.6** This Agreement will not be subject to the doctrine of merger, even though the underlying fee ownerships of Parcel 1 or Parcel 2, or any parts thereof, may be vested in one party or entity.

**12.7** This Agreement is entered into by PNC Bank, National Association solely in its fiduciary capacity as Trustee of the Robert Hammett Trust, and it shall not be liable individually for any indemnity or any breach or failure of any of the covenants, warranties, and/or representations made herein. The liability, if any, of PNC Bank, National Association solely in its fiduciary capacity as Trustee of the Robert Hammett Trust, in the event of any such breach or failure, shall be limited to the value of the assets in their hands as such fiduciary on the date they receive notice thereof.

[Signature appears on the next page.]



IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be signed by a duly authorized manager on the dates set forth below, but as of the date set forth in the introductory paragraph of this Agreement.

GRANTEE:

PEGASUS STUD, LLC,  
a Kentucky limited liability company

BY: [Signature]

NAME: Melinda A. Smith

TITLE: Member

COMMONWEALTH OF KENTUCKY )  
COUNTY OF Fayette )

The foregoing instrument was acknowledged and sworn to before me on April <sup>14</sup> \_\_, 2022 by  
Melinda Smith as Member of Pegasus Stud, LLC, a Kentucky limited liability  
company, on behalf of said company.

[Signature] - John Eric Coffman  
Notary Public

JOHN ERIC COFFMAN  
NOTARY PUBLIC  
COMMONWEALTH OF KENTUCKY  
MY COMMISSION EXPIRES JUNE 25, 2025  
ID# KYNP31125

My Commission Expires: 6-25-25

Notary ID: KYNP 31125