

PRESERVATION AND CONSERVATION EASEMENT

THIS PRESERVATION AND CONSERVATION EASEMENT (this "Easement"), made this ____ day of _____, 20____, by and among _____, whose mailing address is _____ (hereinafter referred to as "Grantor"), and THE COMMONWEALTH OF KENTUCKY, for the use and benefit of the **KENTUCKY HERITAGE COUNCIL**, a political subdivision of the Commonwealth of Kentucky created by Kentucky Revised Statutes § 171.381, with its principal office and mailing address at 410 High Street, Frankfort, Kentucky 40601, (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, the Commonwealth of Kentucky, pursuant to Kentucky Revised Statutes §382.800 through §382.860 (hereinafter, the "Act"), effective July 15, 1988, has authorized the use of conservation easements "the purpose 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";

WHEREAS, the Grantee is a qualifying recipient of qualified conservation contributions under Sections 170 (b), (f) and (h) of the Internal Revenue Code of 1986 as amended (hereinafter the "Code");

WHEREAS, Grantee is authorized by Kentucky Revised Statutes §171.381 to accept conservation easements as required to preserve the historical, architectural, archaeological or cultural aspects of real property in Kentucky, under the provisions of the Act;

WHEREAS, the Grantor is the owner in fee simple of certain real property as recorded in Deed Book ____, Page ____ in the office of the Boyle County Clerk which is part of a tract of land in Boyle County, Kentucky, which currently has certain permanent improvement consisting of a dwelling house (hereinafter referred to as the "House"); and 0.2971 acres of surrounding land, all as more particularly described and shown on **Exhibit A** attached hereto, and identified as Parcel A, Lot 1, and made a part hereof (hereinafter called the "Property"); and,

WHEREAS, the property was listed in the National Register of Historic Places on the 1st day of January, 1976, and is a certified historic structure and land area;

WHEREAS, the Property contains approximately 130 feet of frontage on U.S. 68 (Harrodsburg Road) and the public traveling along said Road is afforded scenic views of the House, and open space whose beauty and open character will be protected by this Easement;

WHEREAS, the Property possesses natural, scenic, cultural, and historic, and open space, values (collectively, "Preservation and Conservation Values") of great importance to Grantor, Grantee, the people of Boyle County and the citizens of the Commonwealth of Kentucky;

WHEREAS, the Grantor and Grantee recognize the historical, cultural, and aesthetic value and significance of the Property, and have the common purpose of conserving and preserving the aforesaid value and significance of the Property;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the real property referred to herein will assist in preserving and maintaining the Property and its architectural, historical and cultural features;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Property and its acceptance by Grantee under the provisions of this instrument will assist in preserving and maintaining the aforesaid value and significance of the Property;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept a preservation and conservation easement on the Property, pursuant to the Act.

NOW, THEREFORE, in consideration of the above recitals and 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 the Act and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Grantee a preservation and conservation easement in gross, in perpetuity (which easement is more particularly described below and is hereinafter called this "Easement") in and to the Property identified in Exhibit A and as recorded in Deed Book ____, Page ____ in the office of the Boyle County Clerk, along with the exterior surfaces of the Building located thereon.

This Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon said Property of the Grantor, and to that end Grantor covenants on behalf of herself, her heirs, estate, successors and assigns, with Grantee, its respective successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Property each of the following covenants and stipulations, which contribute to the public purpose in that they aid significantly in the preservation of the Building and surrounding land area, and which help maintain and assure the present and future historic integrity of the Building:

1. Description of Facades and Baseline Documentation. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Property (including the Building), and in order to document the external nature of the Building as of the date hereof, and the other characteristics of the Property, its current use and state of improvement, Grantor has prepared its "Baseline Documentation Reports" (collectively, the "Report"). Copies of the Report shall be in the possession of both the Grantee and the Grantor as of the date hereof. The Report includes reports, maps, photographs, and other documentation, including the Qualified Appraisal (as defined in **Section 27**), that the parties agree to provide collectively, an accurate representation of the Property at the time of this Easement and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of the preservation and conservation easement reserved hereby. The set of photographs in the Report depict the exterior surfaces of the Building and the surrounding property and its landscape features, together with written descriptions of the Building and the landscape features

of the Property. It is stipulated by and between Grantor and Grantee that the external nature of the Building as shown in the Report is deemed to be the external nature of the Building as of the date hereof and as of the date this instrument is first recorded in the land records of Boyle County, Kentucky. The external nature of the Building as shown in the Report is hereinafter referred to as the "Facades." With the exception of the photographs and the Qualified Appraisal, the portion of the Report compiled by Grantee is attached hereto as **Exhibit B** and incorporated herein by this reference. Grantor and Grantee have each received a set of photographs, and an index of the labeled photographs included in the portion of the Report compiled by Grantee has been included in **Exhibit B**. The portion of the Report compiled by ____, including photographs and the photographic index, are on file with _____. In the event of any disparity between the photographic counterparts held by Grantors and Grantee, the counterpart held by Grantee of the photographs included in its respective portion of the Report shall govern.

2. Purpose. The purpose of this Easement is to assure that, subject to the Reserved Rights, the Property will be rehabilitated or restored to the Secretary of the Interiors Standards for the Treatment of Historic Structures within a 24 (twenty-four) month period. The associated Baseline Document Reports shall be updated by the Grantor at the conclusion of the rehabilitation or restoration project, with the finished condition being the perpetual standard for Preservation and Conservation described herein. The Property will also be retained substantially in its historic, open-space, natural, scenic, architectural and cultural condition and Grantee will prevent any use of the Property that will significantly impair or interfere with the Preservation and Conservation Values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving use and maintenance of the House, as are not inconsistent with the purpose of this Easement.

3. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are granted to Grantee by this Easement:

a. To preserve and protect the Preservation and 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 13**; 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 in any case 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 pursuant to the remedies set forth in **Section 13**.

4. Grantor's Covenants. In furtherance of the Easement herein granted, Grantor, its successors and assigns, undertake to do (and to refrain from doing as the case may be) upon the Property each of the following covenants, which contribute to the public purpose of significantly protecting and preserving the Property:

a. Grantor must submit a plan in writing to the Grantee to rehabilitate or restore the Property to the Secretary of the Interiors Standards for the Treatment of Historic Structures, and the Grantee must review and approve or disapprove in writing prior to the Grantor beginning rehabilitation or restoration efforts. Grantor shall not demolish, remove, deface or raze the Building or the Facades except as provided in this Section and Sections 7, through 9. If a portion of the Building is determined not historically significant, the Grantor shall submit a request in writing to the Grantee to remove that portion of the Building, including details of how the removal will be conducted. The Grantee shall determine if the proposed portion of the building is not historically significant and if the Grantor's process of removal is acceptable. This approval shall be at the Grantee's sole discretion, and the Grantor must receive the approval in writing from the Grantee prior to removal.

b. Grantor shall not use the Property for any commercial or industrial activity.

c. Without the prior express written permission of Grantee, signed by a duly authorized representative thereof, Grantor shall not undertake any of the following actions:

- i. increase or decrease the height of the Facades or the Building;
- ii. adversely affect the structural soundness of the Facades;
- iii. make any changes, additions, improvements, alterations to, or cause removal, construction, or remodeling of, or effect other physical or structural changes in construction materials to, the Facades (including fenestration) and roofs of the Building (this **Subsection 4(c)(iii)** shall not preclude ordinary maintenance pursuant to **Section 4(d)** below or as otherwise provided in this Easement);
- iv. erect anything on the Property or on the Facades which would prohibit them from being visible from street level, except for a temporary structure during any period of approved alteration or restoration;
- v. permit any significant reconstruction, repair, repainting or refinishing of the Facades that alters their state from the existing condition. This **Subsection 4(c)(v)** shall not include ordinary maintenance pursuant to **Section 4(d)** below; or
- vi. erect, construct, or move anything on the Property (except only temporarily) which would encroach on the open and area surrounding the Building and interfere with a view of the Facades or be incompatible with the historic or architectural character of the Building or the Facades.

Notwithstanding any other provision of this Easement, Grantor may make any interior renovations to the House not inconsistent with the purposes of this Easement without notice or approval of Grantee and that will not affect the structural integrity of the exterior of the House.

d. Grantor agrees at all times to maintain the Facades and the structural soundness and safety of the Building so as to prevent deterioration of the Facades. Subject to the casualty provisions of **Sections 7 through 9**, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction whenever necessary to have the external nature of the Building at all times appear to be and actually be the same as the Facades and/or in

accordance with the Secretary of Interior's Standards for Treatment of Historic Properties with Guidelines for Rehabilitating Historic Buildings (36 CFR §67), as the same may be amended from time to time (the "Secretary's Standards"). In the event the Secretary's Standards are abandoned, Grantee may apply reasonable alternative standards agreed to in writing by Grantor, provided, however, that any alternative standards shall be subject to any requirements imposed by the Internal Revenue Service or the National Park Service in connection with preservation and conservation easements and/or properties listed on the National Register of Historic Places.

e. No buildings or structures, including satellite receiving dishes, camping accommodations or mobile homes not presently on the Property shall be erected or placed on the Property hereafter, except for (i) temporary structures required for the maintenance or rehabilitation of the property, such as construction trailers, (ii) tents or similar temporary structures erected for social or other similar purposes, and (iii) comparable satellite receiving dishes replacing the one presently on the Property.

f. No signs, billboards, or other advertisements shall be displayed or placed on the Property or Building; provided, however, Grantor may, without the prior express written approval of Grantee, (i) erect such signs as are appropriate to identify the historic nature of the Property; (ii) erect or display a sign stating solely the address, occupants, or name of the Property; (iii) display temporary signs to advertise the Property for sale or rent, and (iv) advertise an activity permitted by this Easement, or (v) 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.

g. No material topographical changes, including but not limited to excavation, shall occur on the Property; provided, however, that Grantor may, with prior written approval from and in the sole discretion of Grantee, make such topographical changes as are consistent with and reasonably necessary to promote the preservation and conservation purposes of this Easement.

h. Grantor shall not permit the constructing, placing, or maintaining of any building, transmission or receiving tower for public or private utilities or energy facility, or other temporary or permanent structure related thereto, including but not limited to cellular phone towers, above, or below the Property.

i. Grantor shall not undertake or permit mining or extraction from the Property of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method of surface or subsurface mining.

j. Grantor shall maintain tree, shrubs and lawns on the Property in good condition and appearance. Grantee specifically agrees that Grantor may from time to time, without approval of Grantee, (i) build vegetable and flower gardens on the Property; (ii) undertake such landscaping of the Property as is compatible with the improvements located on the Property which may involve removal or alteration of the present landscaping, including trees, shrubs, or other vegetation; and (iii) Grantor may cut trees on the Property to control insects and disease and to prevent personal injury and property damage. Notwithstanding any of the foregoing to the contrary, Grantor shall not remove any trees from the Allee unless necessary due

to disease, insect infestation, or total or partial destruction due to storm or wind damage, in which event, Grantor shall replace such removed tree(s) in kind or with other suitable and compatible species of tree.

k. Grantor shall not undertake or permit on the Property the installation of underground storage tanks or the placing, filling, storing, processing, dumping, or other disposal of ashes, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such substance, whether or not generated on the Property; provided, however, this shall not prevent the storage of agricultural products and byproducts, or gardening and landscaping materials or supplies, on the Property, sanitary sewage effluent from the improvements, or ordinary household waste from the improvements, so long as it is done in accordance with all applicable governmental laws and regulations, and to the extent applicable, periodically removed from the Property in accordance with such laws and regulations.

l. The Property shall be used only for purposes consistent with preservation and conservation purposes of this Easement.

m. Grantor shall not undertake or permit the legal or de facto division, subdivision or partitioning of the Property into more than one parcel and the Property shall not be devised or conveyed except as a single parcel or unit.

n. Grantor shall not undertake or permit the creation or installation of utility transmission lines, except for those reasonably necessary for the existing Building on the Property, subject to utility easements already recorded.

o. Grantor agrees not to obstruct the substantial and regular opportunity of the public to view the exterior architectural features of any building, structure or improvements of the Property from publicly accessible areas such as public streets. Private viewing shall be only by appointment with Grantor.

5. Reserved Rights. Grantor, her personal representative, heirs, successors, and assigns, shall have all rights accruing from 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** hereof, the Grantor shall have the right to perform any act not expressly prohibited or limited by this Easement. [These ownership rights include, but are not limited to, the following: (insert specific rights to be addressed, if any).]

6. Standards for Review. In exercising any authority created by the Easement to inspect the Property, the Building, or the Facades; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Secretary's Standards. Grantor agrees to abide by the Secretary's Standards in performing all ordinary repair and maintenance work. In the event the Secretary's Standards are abandoned or materially altered or otherwise become, in the judgment of the Grantor and Grantee, inappropriate for the purposes set forth

above, Grantee may apply the reasonable alternative standards as described in Section 4(d) above.

7. Casualty Damage or Destruction. In the event that the Property or any part thereof shall be damaged or destroyed by casualty, Grantor shall notify Grantee in writing within twenty-one (21) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. For purposes of this Easement, the term “casualty” is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165 (c)(3) of the Code (construed without regard to the legal status, trade or business of Grantor or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without express prior written consent of Grantee. Within three ninety (90) days of the date of damage or destruction, Grantor shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer, if required, acceptable to Grantor and Grantee which shall include the following:

- a. an assessment of the nature and extent of the damage;
- b. a determination of the feasibility of the restoration of the Facades and/or reconstruction of damaged or destroyed portions of the Property; and
- c. a report of such restoration/reconstruction work necessary to return Property substantially to the condition existing immediately prior to the casualty.

If in the opinion of the Grantee, after reviewing such report, the purpose and intent of the Easement will be served by such restoration/reconstruction, Grantor shall within eighteen (18) months after the date of such damage or destruction complete the restoration/reconstruction of the Property in accordance with plans and specifications consented to by Grantee, at a cost not to exceed the total of the casualty insurance proceeds.

8. Grantee’s Remedies Following Casualty Damage. The foregoing notwithstanding, in the event of damage resulting from casualty, as defined at **Section 7**, which is of such magnitude and extent as to render repairs or reconstruction of the Building impossible using all applicable insurance proceeds, as determined by Grantee by reference to bona fide cost estimates, then

- a. Grantor may elect to reconstruct the Building using insurance proceeds, donations or other funds received or contributed by Grantor on account of such casualty; or
- b. Grantee, in consultation with _____, may elect to modify or amend this Easement to partially extinguish it pursuant to **Section 28**, and Grantee shall execute and deliver to Grantor acknowledged evidence of such fact suitable for recording in the Office of the Clerk of _____ County, Kentucky.

9. Review After Casualty Loss. If in the opinion of Grantor and Grantee, restoration/reconstruction would not serve the purpose and intent of the Easement, then the Grantor shall continue to comply with the provisions of the Easement, but, with the prior written consent of Grantee, which shall not be unreasonably withheld, Grantor may alter, demolish,

remove or raze such Building(s) affected by the casualty (in which event the provisions of **Section 8(b)** with respect to Grantee shall become applicable), and/or may construct a building on the Property in the same location as demolished Building to serve the same purpose as the demolished Building; provided, however, the placement, elevation, and square footage of any new residential dwelling built to replace the House shall be subject to the prior written approval of ____.

10. Notice and Approval. The purpose of requiring Grantor to secure Grantee's approval or to notify Grantee prior to undertaking certain permitted activities, as provided in this **Section 10**, is to afford Grantee an adequate opportunity to review and/or monitor the activities in question (as the case may be) to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement.

a. Grantee's Approval or Withholding of Approval. Whenever the consent, approval or permission of Grantee is required hereunder, Grantor shall give written notice by certified and regular mail of any request to Grantee, which notice shall contain precise details of the action that Grantor proposes. Grantee shall respond to any such request within thirty (30) days from receipt of the request from Grantor. The failure of Grantee to respond within said period shall constitute the grant of permission by Grantee with respect to that request; provided, however, if Grantee responds in writing to Grantor within the 30 day period and such response is a denial of Grantor's request, then Grantee shall be deemed to have denied such request. Grantee shall be guided by the purposes of this Easement, as specified herein, in rendering their decision. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons therefor, and the conditions, if any, on which approval might otherwise be given.

b. Breach. Failure to secure such approval or give such notice as may be required under this **Section 10** shall be a material breach of this Easement notwithstanding any other provision of this Easement and shall entitle Grantee to such rights and remedies as may be available under **Section 13**.

11. Grantee's Covenants.

a. Grantee's Qualifications. Grantee is a qualified organization for purposes of Section 170(h) of the Code. In the event that Grantee's status as a qualified organization is successfully challenged by the Internal Revenue Service, or if for any other valid reason it shall cease to be a qualified organization, then it shall promptly select another qualified organization approved by Grantor, which approval shall not be unreasonably withheld, and transfer all of its rights and obligations under the Easement to it.

b. Merger. In the event that Grantee shall at any time in the future become the fee simple owner of the Property, such Grantee for itself, its successors and assigns, covenants and agrees that Grantee will abide by the terms of the Easement, and in the event of a subsequent conveyance of the Property to another entity, to create a new preservation and conservation easement containing the same restrictions and provisions as are contained herein, and either to retain such easement in itself or to convey such easement to a similar unit of federal, state or local government or local, state or national organization whose purposes, inter

alia, are to promote preservation or conservation of historical, cultural, or architectural resources, and which is a qualified organization under Section 170(h)(3) of the Internal Revenue Code.

c. Reasonable Care. Grantee shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of this Easement.

12. Inspection. Grantor hereby agrees that Grantee shall be permitted at all reasonable times to inspect the Property, including the Facades and the Building. Grantor agrees that representatives of Grantee shall be permitted to enter and inspect the interior of the Building to assess maintenance of structural soundness and safety and any specific restriction set forth in **Section 4**. Inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually, and may involve reasonable testing of interior structural condition. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee, and Grantor covenants not to withhold unreasonably its consent in determining a date and time for such inspection.

13. Grantee's Remedies. Grantee has the following legal remedies to correct any material violation of any covenant, stipulation or restriction herein, in addition to any remedies now or hereafter provided by law:

a. Notice of Violation; Corrective Action. If Grantee determines that a material violation of the terms of this Easement has occurred or is threatened, such 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 the plan approved by Grantee.

b. Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee or, under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, or threatened violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

c. Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Preservation and Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, historic, cultural, architectural or environmental values and Costs of Enforcement as set forth in 13(f.) below. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

d. Emergency Enforcement. If Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Preservation and Conservation Values of the Property, such Grantee may pursue

its remedies under this **Section 13** without prior notice to Grantor or without waiting for the period provided for cure to expire.

e. Scope of Relief. Grantee's rights under this **Section 13** 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 13(b)**, 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 13** shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

f. 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; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Grantor and Grantee agree that annual stewardship and monitoring expenses incurred by Grantee are not included in the costs of enforcing the terms of this Easement as described in this **Section 13(f)**.

g. Forbearance. Forbearance by Grantee to exercise 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.

h. Waiver of Certain Defenses. Grantor acknowledges that she 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. 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. Any rule of strict construction designed to limit the breath of restrictions on alienation or use of the Property shall not apply in the construction and interpretation of this Easement, and this instrument shall be interpreted broadly to effect its purpose and the transfer of rights and the restrictions on use herein contained.

i. 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 action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

14. Notice from Government Authorities. Grantor shall deliver by certified and regular mail to Grantee copies of any notice of default or demand letters which if not complied with could result in a lien on the Property, received by Grantor from any duly authorized government authority, within fourteen (14) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish to Grantee evidence of Grantor's compliance with such notice or demand letter where compliance is required by law.

15. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing by certified and regular mail of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

16. Runs with the Land. The obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, its respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest in the Property by reason of a bona fide transfer. Restrictions, stipulations and covenants contained in this instrument shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which she divests herself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of space.

17. Recording. Grantee shall do and perform at its own cost all acts necessary for the prompt recording of this instrument in the office of the Clerk of Boyle County, Kentucky. Grantor and Grantee intend the restrictions arising under this Easement to take effect on the date this instrument is executed by the Grantee.

18. Existing Liens. Grantor warrants that there are no liens on the Property, except for the lien for ad valorem property taxes which may have accrued but which are not yet due and payable. Grantor shall pay all ad valorem property taxes when they become due, and shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee; provided, however, Grantor may contest in good faith the assertion of any tax lien, mechanics' lien or other lien on the Property through any administrative or judicial remedies available to Grantor, but Grantor shall promptly satisfy any such lien finally adjudged to be valid.

19. Subordination of Mortgages. Grantor warrants that, at the time of the conveyance of this Easement, the Property is not subject to or otherwise encumbered by any mortgage, lien, condition, option, lease, easement or other interest of any other party that may give rise to any right of defeasance, foreclosure, or extinguishment affecting Grantee's rights under this Easements. Grantor and Grantee agree that Grantor, her successors and assigns, have the right to use all or any part of the Property as collateral to secure repayment of debt, subject to the terms of this **Section 19**. Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees shall be subject and subordinate at all times to the rights of Grantee to enforce the

purposes of this Easement. The following provisions apply to all mortgagees hereafter holding a mortgage on the Property:

a. If a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the Property, the mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the Easement.

b. If a mortgagee has received an assignment of the leases, rents and profits of the Property as security or additional security for a loan, then the mortgagee shall have a prior claim to the leases, rents and profits of the Property and shall be entitled to receive same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the Easement.

c. Until a mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under the Easement.

d. Before exercising any right or remedy due to breach of the Easement except the right to enjoin a violation hereof, Grantee shall give all mortgagees of record written notice describing the default, and the mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

e. Nothing contained in the above paragraphs or in the Easement shall be construed to give any mortgagee the right to extinguish this Easement by taking title to the Property by foreclosure or otherwise.

20. Plaques. Grantee may provide and maintain plaque(s) on the Facades of the Building, with the prior approval of Grantor as to the appearance and historical accuracy of each plaque, which plaque(s) shall not exceed 12 by 12 inches in size, giving notice of the significance of the Building or the Property and the existence of this perpetual preservation and conservation Easement.

21. Insurance. 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 and Building. Grantor shall keep the Property insured by an insurance company or companies licensed to transact business in Kentucky rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a property such as the Property protected by a preservation and conservation easement. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace the damaged Property without cost or expense to Grantor or contribution or coinsurance from

Grantor. Such insurance shall include Grantee's interest and name Grantee as additional insureds and shall provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, Grantor shall deliver to Grantee copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant, copies or certificates of new or renewed policies prior to the expiration of such policy. Grantee shall have the right, but not the obligation, to provide insurance at Grantor's cost and expense, in an amount of coverage identical to the amount of coverage placed on the property by Grantor, should Grantor fail to obtain same. In the event Grantee obtains such insurance, the cost of such insurance shall be a lien on the Property until repaid by Grantor. Whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this **Section 21** shall affect the prior claim, if any, of the mortgagee to insurance proceeds available from policies required hereunder.

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

a. Costs, Legal Requirements, and Liabilities. Grantor shall have 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 adequate liability insurance coverage as provided in **Section 21**. 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.

b. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property. Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor in the place of Grantor, any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition or lien asserted against the Property and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale or forfeiture. Such payment if made by Grantee, shall become a lien on the Property of the same priority as the item if not paid would have had and shall bear interest until paid by Grantor at the prime rate of interest from time to time charged by _____ Bank, Street, _____ address.

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

i. 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;

ii. there are not 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;

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

iv. there is no pending or threatened litigation in any way affecting, involving, or relating to the Property;

v. 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

vi. there are no outstanding surface or subsurface mineral rights associated with the Property.

d. 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, in which case the Grantee causing such release shall be responsible therefor.

e. 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 Kentucky Revised Statutes §224.01-010 et seq.

f. Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and the Commonwealth of Kentucky, and their respective members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns (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 Kentucky Revised Statutes §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 in any way harmful or threatening to human health or the environment unless caused by the gross negligence of one or more of the Indemnified Parties; or (4) the obligations, covenants, representations, and warranties of **Sections 22(a) through 22(d)**. Nothing contained in this Paragraph or any other portion of this Easement shall be construed as a waiver of sovereign immunity by the Grantee.

23. Liens. Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien.

24. Written Notice. Any notice, which Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by U.S. mail and registered or certified mail with return receipt requested, or hand delivered to the following addresses:

To Grantor:

To Grantee:

Attn: Executive Director

Kentucky Heritage Council
300 Washington Street
Frankfort, Kentucky 40601
Attn: Executive Director

Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of Grantee under the Easement may be given by any duly authorized officer or representative of the Grantee. If delivery is by nationwide commercial courier, service of notice shall be deemed given one business day after the date of delivery thereof to said courier.

25. Estoppel Certificates. Grantor and Grantee agree that at any time, within thirty (30) days after the request of one of them to the other, to execute, acknowledge and deliver to the other party a written instrument stating that the party to which the request is made is in full compliance with the terms and conditions of the Easement, or if such party is not in compliance with its terms stating the nature of such noncompliance and the steps necessary to correct such noncompliance. Such certification from the Grantee 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 therefor.

26. Stipulated Value of Grantee's Interest. Grantor acknowledges that upon execution and recording of the Easement, Grantee shall be immediately vested with a real property interest in the Property and that such interest of Grantee shall have a stipulated fair market value, for purposes of allocating net proceeds in an extinguishment pursuant to **Section 28**, equal to the ratio between the fair market value of the Easement and the fair market value of the Property prior to considering the impact of the Easement (hereinafter the "Easement Percentage") as determined in the Qualified Appraisal provided to the Grantee pursuant to **Section 27**. The Easement Percentage is _____. (If the foregoing blank is not filled in upon recordation of this Easement, then upon submission of the Qualified Appraisal, the Grantor and Grantee shall sign an affidavit verifying the Easement Percentage and record it as an amendment to the Easement).

27. Qualified Appraisal. In the event Grantor claims a federal income tax deduction for donation of a "qualified real property interest" as that term is defined in Section 170(h) of the Code, Grantor shall provide Grantee with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in P.L. 98-369, §155(a), 98 Stat. 691 (1984), and by reference therein Section 170(a) (1) of the Code) of the fair market value of the Easement. Upon receipt of the Qualified Appraisal, this fully executed Easement, Grantee shall sign any appraisal summary form prepared by the Internal Revenue Service and submitted to the Grantee by Grantor.

28. Extinguishment and Condemnation.

a. Grantor and Grantee hereby recognize that an unexpected change in the conditions at the Property may make impossible the continued ownership or use of the Property for preservation and conservation purposes and necessitate extinguishment of the Easement. Such a change in conditions includes, but is not limited to, partial or total destruction of the Building or the Facades resulting from a casualty of such magnitude that Grantee approves demolition as explained in **Sections 8 and 9**, or condemnation or loss of title to all or a portion of the Property, the Building, or the Facades. Such an extinguishment must comply with the following requirements:

i. The extinguishment must be the result of a final judicial proceeding;

ii. Grantee shall be entitled to share in the net proceeds resulting from the extinguishment in an amount equal to the Easement Percentage multiplied by the net proceeds; and

111. Grantee shall use any proceeds received under the circumstances described in this **Section 28** in a manner consistent with its conservation or statutory purposes, as the case may be, which are exemplified by this Easement.

b. 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 respective 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 the taking or in lieu purchase shall be paid out of the respective amount recovered by each. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the Easement Percentage. Nothing contained herein shall preclude the parties from negotiating a transfer of less than fee interest in the property in lieu of condemnation, if in the reasonable discretion of Grantor and Grantee, such negotiation shall be in the best interest of the parties and not jeopardize the Preservation and Conservation Values sought to be protected under this Easement.

c. Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Property after the extinguishment, but shall specifically exclude any preferential claim of a Mortgagee under **Section 19**.

d. In the event of extinguishment, the Grantee's right to any portion of net proceeds shall survive extinguishment until paid and shall constitute a lien on the Property with same effect and priority as a mechanic's lien, except that such lien shall not have priority over the lien of a mortgage or deed of trust given in connection to the Property and recorded prior to the subject extinguishment.

29. 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 Kentucky Revised Statutes §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 preservation and conservation purpose that this Easement is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least twenty (20) 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.

30. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which Grantor divest herself of any interest in all or any part 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 twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this **Section 30** shall not impair the validity of this Easement or limit its enforceability in any way.

31. Interpretation and Enforcement. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.

a. Construction. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of rights and the restrictions on use herein contained as provided in the Act.

b. Successors and Assigns. This instrument shall extend to and be binding upon Grantor and all persons hereafter claiming under or through Grantor, and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this instrument or have an interest in the Property on the date hereof. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest (present, partial, contingent, collateral or future) in the Property by reason of a bona fide transfer for full value. Any right, title or interest herein granted to Grantee also shall be deemed granted to the successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

c. Public Access. Nothing contained in this instrument grants, nor shall be interpreted to grant, to the public any right to enter on the Property or into the Building.

d. Future Development Rights. To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk or other objective criteria regulated by such ordinances) than the Property are devoted 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 preservation and conservation purposes of the Easement.

e. Amendment. For purposes of furthering the preservation of the Property and Building and of furthering the other purposes of this Easement, and to meet changing conditions, Grantor and Grantee may agree to amend jointly the terms of this instrument in writing without notice to any party; provided, however, that no such amendment shall: (i) limit the perpetual duration or interfere with the preservation and conservation purposes of this Easement; (ii) adversely affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the Commonwealth of Kentucky; or (iii) permit any private inurement or private benefit to any person or entity. Such amendment shall become effective upon recording among the office of the Clerk of Boyle County, Kentucky.

f. Severability. This instrument is made pursuant to the Act, but the invalidity of such statute or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument

NOTARY PUBLIC, STATE-AT-LARGE, KY

GRANTEE:

COMMONWEALTH OF KENTUCKY, FOR
THE USE AND BENEFIT OF THE KENTUCKY
HERITAGE COUNCIL

By: _____

Craig Potts_____, Executive Director

COMMONWEALTH OF KENTUCKY)

COUNTY OF FRANKLIN_____)

The foregoing instrument was subscribed, sworn, and acknowledged before me this ____ day of _____, 2023, Craig Potts, as Executive Director of the Kentucky Heritage Council, on behalf of the Commonwealth of Kentucky, for the use and benefit of the Kentucky Heritage Council, a political subdivision of the Commonwealth of Kentucky and created by Kentucky Revised Statutes § 171.381.

NOTARY PUBLIC

My Commission Expires:_____

APPROVED AS TO FORM AND LEGALITY:

BY: _____

NAME: _____

TITLE: _____

Commonwealth of Kentucky Finance and
Administration Cabinet

EASEMENT ACCEPTED AND APPROVED:

BY: _____

NAME: _____

TITLE: _____

Commonwealth of Kentucky Finance and
Administration Cabinet

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF _FRANKLIN_)

The foregoing instrument was subscribed, sworn, and acknowledged before me this ____ day of _____, 2023, Holly M. Johnson, Secretary, Finance and Administration Cabinet, on behalf of the Commonwealth of Kentucky, for the use and benefit of the Kentucky Heritage Council, a political subdivision of the Commonwealth of Kentucky and created by Kentucky Revised Statutes § 171.381.

NOTARY PUBLIC

My Commission Expires: _____

THIS INSTRUMENT PREPARED BY:
