

Environmental Covenant Newtown Pike Extension Project

The Commonwealth of Kentucky, by and through the Kentucky Transportation Cabinet, Department of Highways located at 200 Mero Street, Frankfort, Kentucky, 40622; and the Lexington-Fayette Urban County Government located at 200 E. Main Street, Lexington, Kentucky 40502 (hereinafter "Grantors") grants an Environmental Covenant (hereinafter "Covenant") this the ____ day of _____, 2021 to the following Holders pursuant to KRS Chapter 224 Subchapter 80: the Lexington-Fayette Urban County Government and the Commonwealth of Kentucky, by and through the Transportation Cabinet (hereinafter "Grantees").

WHEREAS, the Grantors are the Owners of certain real property located along Oliver Lewis Way in Lexington, Fayette County, Kentucky, and which was acquired by the following deeds and plat dedications.

Being all of the property conveyed: by the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky, to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet, Department of Highways by deed dated July 7, 2015 and lodged of record in Deed Book 3342, Page 693; By J. O Hughson, a single person to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet by deed dated May 2nd, 2011 and lodged of record in Deed Book 3014, page 665; By James H. Fraizer, III, Master Commissioner of the Fayette Circuit Court to the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways by Master Commissioner's Deed dated February 27, 2012 and lodged of record in Deed Book 3061, page 511; By Regina Cowan and Rosselle L. Cowan, Estate of Clarence Lee Jones, Karen R. Jones, a single person, Kedra Jones, a single person, and Keith Jones and Casondra Jones, husband and wife to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet by Deed dated December 27th, 2010 and lodged of record in Deed Book 2985, page 542;

Also being a portion of the property conveyed: by the Commonwealth of Kentucky, Holly M. Johnson, Secretary of the Finance and Administration Cabinet, on behalf of the Transportation Cabinet to the Lexington-Fayette Urban County Government, an urban county government pursuant to KRS Chapter 67A by deed dated July 7, 2020 and recorded in Deed Book 3768, page 64; by the Commonwealth of Kentucky, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, on behalf of the Transportation Cabinet, Department of Highways, to the Lexington-Fayette Urban County Government, an urban county government pursuant to KRS 67A by deed dated February 21, 2014, and lodged of record in Deed Book 3218, page 41; by the Commonwealth of Kentucky, John P. McCarty, Secretary of the Finance and Administration Cabinet to the Lexington-Fayette Urban County Government by Quitclaim Deed dated April 9th, 1998 and lodged of record in Deed Book 2128, page 693; By the Board of Trustees of the Cincinnati Southern Railway, a Board of Trustees organized under the laws of the State of Ohio, c/o Norfolk Southern Corporation and the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet, Department of Highways by Quitclaim Deed dated August 6, 2013 and lodged of record in Deed Book 3117, Page 557; and by James H. Frazier, III, Master Commissioner of the Fayette Circuit Court, on behalf of defendants in Fayette Circuit Court, Civil Action No. 16-CI-2520 styled: Commonwealth of Kentucky, Transportation Cabinet, Department

of Highways, Plaintiff, vs. Unknown Defendants, et. al., Defendants, dated February 27, 2017 and recorded in Deed Book 3470, Page 663.

Also being those public streets within the boundary set forth in the description below including portions of properties conveyed and properties dedicated to public right of way by plat which may include part or all of the properties identified: **[for De Roode, f/k/a/ Brisbon/Brisbin and Merino Streets and former Nig Alley]** in a deed from Richard Higgins to the City of Lexington, dated July 24, 1840, lodged of record at Deed Book 18, page 39 which consisted of a conveyance of 228 square poles for a "public street"; in a deed from Richard Higgins and Jane W. Higgins, his wife, and James S. Butler and Lucy Butler, his wife, to Willard Davis dated July 8, 1865, and lodged of record in Deed Book 40, page 478 referencing a plat prepared by John Seitz, City Surveyor which is lodged of record in Deed Book 22, page 474 (part of an area that was described as the Col. Robt. Patterson Settlement); in a deed from R. deRoode (a/k/a Rudolph DeRoode) and Jane deRoode, his wife, to Laura Kiger, dated April 1867, recorded in Deed Book 43, page 526, which conveyed a lot or parcel of land bordering a new street created with description by R. deRoode; by plat by W. A. Purvis (sic), City Surveyor recorded in Deed Book 44, page 58 including dedicated right of way; in Ordinance No. 5-2001, An Ordinance Closing a Portion of an Alley Located between Patterson Street and DeRoode Street published January 17, 2001 and lodged of record in Deed Book 2179, page 281; **[for McKinley, f/k/a Blackburn, f/k/a Noble Street]** in a deed from David Knoble and Charlotte Knoble, his wife, to James K. P. Moore dated September 3, 1870 and lodged of record in Deed Book 49, page 42; by plat dated May 13, 1865 prepared for Philip Gormley and lodged of record in Deed Book 42, page 146. This plat lays out 16 lots bounded by Merino Street, Cedar Street, Railroad property and possibly Lower Street; **[for Neville Street]** in plats created as part of the Estate of Zelina Neville who acquired the property by deed from the Master Commissioner of the Fayette Circuit Court to Mary Neville and Zelinda Neville, dated November 1, 1887, and lodged of record in Deed Book 80, page 390 with said plats being identified as Plat B, Slide 61, the Neville Industrial Subdivision Unit 1 lodged of record on September 30, 1966; Plat C, Slide 238, approved by the Fayette City-County planning commission on July 7, 1959; Plat C, Slide 472 – the Neville Industrial Subdivision 1 originally created on July 13, 1962; in a deed from the Commonwealth of Kentucky, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, on behalf of the Transportation Cabinet, Department of Highways, to the Lexington-Fayette Urban County Government, an urban county government pursuant to KRS 67A dated February 21, 2014, and lodged of record in Deed Book 3218, page 41; in a deed from the Commonwealth of Kentucky, John P. McCarty, Secretary of the Finance and Administration Cabinet to the Lexington-Fayette Urban County Government by Quitclaim Deed dated April 9th, 1998 and lodged of record in Deed Book 2128, page 693. More specifically said rights of way are identified in Ordinance No. 117-2020 with its accompanying exhibits, passed by the Urban County Council on December 3, 2020, executed by Mayor Linda Gorton and published on December 10, 2020. Title to said rights of way previously vested in the Lexington Fayette Urban County Government pursuant to KRS § 178.025.

All deeds and plats referenced above are lodged of record at the Fayette County Clerk's office, Lexington, Kentucky.

WHEREAS this property will now be restricted and subject to this environmental covenant and is inclusive of the following described boundary:

A tract of land located in Lexington, Fayette County, Kentucky and situated on the south side of West High Street (US 60) and the west side of Pine Street is the subject of and being more particularly described as follows:

Beginning at the northwest corner of the boundary, said point being South 15° 35' 06" East, 107.39 feet from the intersection of the centerline of US 60 and the east end of the bridge over the railroad; thence with the existing south right of way of US 60 for three calls, North 82° 25' 48" East, 206.71 feet to a point; thence North 85° 24' 40" East, 206.19 feet to a point; thence 55.84 feet along a curve to the right, having radius of 45.00 feet and a chord which bears South 59° 03' 23" East, 52.33 feet, to a point; thence with the existing west right of way of Pine Street South 23° 29' 53" East, 237.43 feet to a point; thence with the proposed centerline of Oliver Lewis Way for three calls South 1° 52' 54" West, 328.72 feet to a point; thence 388.39 feet along a curve to the left, having radius of 1000.00 feet and a chord which bears South 9° 14' 42" East, 385.96 feet, to a point; thence South 20° 22' 18" East, 751.15 feet to a point; thence with the existing north right of way of Patterson Street South 48° 00' 02" West, 413.10 feet to a point; thence with the west boundary line for nine calls North 33° 46' 10" West, 75.53 feet to a point; thence 122.40 feet along a curve to the right, having radius of 526.00 feet and a chord which bears North 38° 56' 40" East, 122.12 feet, to a point; thence North 35° 09' 04" West, 762.47 feet to a point; thence South 83° 38' 01" East, 158.26 feet to a point; thence North 0° 04' 16" East, 32.36 feet to a point; thence South 80° 55' 33" East, 143.54 feet to a point; thence North 22° 50' 13" West, 170.34 feet to a point; thence North 26° 13' 05" West, 322.64 feet to a point; thence North 19° 49' 11" West, 713.45 feet to the POINT OF BEGINNING and containing 664,534 square or 15.255 acres GROSS.

There is EXCEPTED from the above described boundary the following area:

Beginning at the northwest corner of the boundary, said point being South 49° 13' 46" East 333.93 from the intersection of the centerline of US 60 and the east end of the bridge over the railroad; thence with the north boundary North 80° 05' 03" East, 239.76 feet to a point, thence with the east boundary South 4° 09' 49" West, 170.77 feet to a point; thence with the south boundary South 63° 28' 52" West, 206.14 feet to a point; thence with the west boundary North 10° 05' 08" West, 224.54 feet to the POINT OF BEGINNING and containing 42,055 square or 0.965 acres gross and net.

The restricted area described above is 622,479 square feet or 14.290 acres NET and is depicted in the attached Exhibit A.

WHEREAS, this instrument is an environmental covenant developed and executed pursuant to KRS 224.80-100 to KRS 224.80-210;

WHEREAS, the Property is the subject of remedial action pursuant to KRS 224.1-400 and KRS 224.1-405;

WHEREAS, a release occurred on the Property over an undetermined period of time. Estimated concentrations of: Benzo(a)Anthracene (Range from 0.627 to 1.73 mg/kg; Screening level of 0.15 mg/kg); Benzo(b)Fluoranthene (Range from 0.767 to 1.85 mg/kg; Screening level of 0.15 mg/kg); Benzo(a)Pyrene. (Range from 0.342 to 1.52 mg/kg; Screening level of 0.015 mg/kg); Indeno(1,2,3-cd)Pyrene (Range from 0.801 to 1.06 mg/kg; Screening level of 0.62 mg/kg); Dibenzo(a,h)Anthracene (Range from 0.278 to 0.54 mg/kg; Screening level of 0.062 mg/kg); and Lead (Range from 418 to 1,470 mg/kg; Screening level of 400mg/kg) remain in the soils on the property;

WHEREAS, the Commonwealth of Kentucky, through the Transportation Cabinet proposed a Corrective Action Plan pursuant to KRS 224.1-400 and 224.1-405, in relation to the Newtown Pike Extension for the Property in the following documents: Linebach – Funkhouser, Inc. Consulting report prepared for Entran, PLC, dated November 14, 2007 and a Site Management Plan, Lexington Community Land Trust Property of the Newtown Pike Extension Project, Lexington, Kentucky, dated November 14, 2013. The plan and its addenda proposed to correct the effects of the release, which included controlling exposure to the hazardous waste, hazardous constituents, hazardous materials and pollutants, or contaminants by restricting the use of the Property and the activities on the Property;

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property to reduce the risk to human health to below the target risk levels for those hazardous wastes, hazardous constituents, substances, pollutants, or contaminants, that remain on the Property; and

WHEREAS, further information concerning the release and activities to correct the effects of the release may be obtained by contacting the Custodian of Records of the Kentucky Division of Waste Management at 300 Sower Boulevard, Frankfort, Kentucky 40601. Records concerning this property may be found under #A177234 and #A121245.

NOW THEREFORE, Grantors hereby grant this Environmental Covenant to Holders, and declares that the Property shall hereinafter be bound by, held, sold, used, improved, occupied, leased, encumbered, and/or conveyed subject to the following requirements set forth in the paragraphs below:

1. DEFINITIONS

- A. **Owner.** "Owner" means Lexington-Fayette Urban County Government, its successors and assigns in interest.

2. USE RESTRICTIONS

A. Prohibited Activities

- i. Except as necessary to protect human health, safety, or the environment, no action shall be taken, allowed, suffered or omitted on the Property if such action or omission is reasonable likely to:
 - a. Create a risk of migration of hazardous substances, pollutants or contaminants or a potential hazard to human health or the environment; or

- b. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain hazardous substances, pollutants or contaminants or limit human exposure to hazardous substances pollutants or contaminants;
- ii. **Disturbance of the cap.** Prior to any disturbance of any approved cap placed on the Property, the Owner shall submit to the Director, Kentucky Division of Waste Management a written rationale for disturbance and detailed plans of the proposed construction for their review and written approval. No such disturbance is permitted without this prior written approval.
- iii. **Soil Disturbance.** Soil at the Property shall not be disturbed in any manner inconsistent with the approved Plan without the Owner obtaining prior written approval of the Director, Kentucky Division of Waste Management.
- iv. **Construction.** No construction on the Property shall occur except in accordance with the approved Plan and prior written approval is obtained from the Director, Kentucky Division of Waste Management.

3. **GENERAL PROVISIONS**

- A. **Restrictions to Run With the Land.** This Environmental Covenant runs with the land pursuant to KRS 224.80-140; is perpetual unless modified by an amendment or terminated pursuant to the terms of this Covenant; is imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property; and binds the Owner, the Holders, all persons using the land, all persons, their heirs, successors and assigns having any right, title or interest in the Property, or any part thereof who have subordinated those interests to the Environmental Covenant, and all persons, their heirs, successors and assigns who obtain any right, title or interest in the Property, or any part thereof after the recordation of the Environmental Covenant.
- B. **Conveyances of the Property.** Owner shall notify the Director of the Kentucky Division of Waste Management at least thirty (30) days in advance of any proposed grant, transfer, or conveyance of any interest in any or all of the Property. Notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Property being transferred.
- C. **Incorporation into Deeds and Leases.** Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and provide the recorded location of this Environmental Covenant. This notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____ 2020 RECORDED IN THE OFFICIAL RECORDS OF THE FAYETTE COUNTY CLERK'S OFFICE IN DEED BOOK ____, PAGE _____.

- D. **Zoning Changes.** Owner shall notify the Director, Kentucky Division of Waste Management simultaneously when any application is submitted to a local government for a building permit for the Property. Owner shall notify the Kentucky Division of Waste Management of any proposed changes in the land use for the Property.
- E. **Compliance Certification.** Owner shall submit a report annually to the Director of the Kentucky Division of Waste Management, on the anniversary of the date this Covenant was signed by the Grantor detailing the Owner's compliance, and any lack of compliance with the terms of the Covenant.
- F. **Right of Access.** Owner hereby grants the Kentucky Energy and Environment Cabinet, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.
- G. **Representations and Warranties.** Grantor hereby represents and warrants to other signatories hereto:
- i. that the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
 - ii. that the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
 - iii. no other parties in interest exist as to the restricted areas of the Property, therefore none were notified or were required to subordinate their interests;
 - iv. that the Grantor has complied with all public notice requirements in KRS 224.80-110;
 - v. that this Environmental Covenant will not materially violate or contravene or instrument to which Grantor is a party, by which Grantor may be bound or affected;
 - vi. that this Environmental Covenant will not materially violate or contravene any zoning law regulating use of the Property;
 - vii. that this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.
- H. **Compliance Enforcement.** The terms of the Environmental Covenant may be enforced by the Kentucky Energy and Environment Cabinet or any person identified in KRS 224.80-200 in accordance with applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in the Environmental Covenant shall restrict the Energy and Environment Cabinet from exercising any authority under the applicable law.
- I. **Modifications/Termination.** The Environmental Covenant runs with the land and is perpetual, unless modified by an amendment or terminated in

accordance with KRS 224.80-180 or KRS 224.80-190. The term "Amendment" as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term "Termination" as used in the Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all obligations under this Environmental Covenant.

- J. **Notices.** Any documentation or communication required to be sent to the Kentucky Energy and Environment Cabinet under this Covenant shall be sent to:

Director, Division of Waste Management
Department of Environmental Protection
300 Sower Boulevard
Frankfort, KY 40601

- K. **Severability.** If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- L. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the law of the Commonwealth of Kentucky.
- M. **Recordation.** Within (10) business days after the date of the final required signature upon this Environmental Covenant, Grantor shall file this Environmental Covenant in the Fayette County Clerk's Office.
- N. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed for the Property with the Fayette County Clerk's office.
- O. **Distribution.** The Grantor will, within 30 days of filing this Environmental Covenant in the Fayette County Clerk's Office, distribute a file and date stamped copy of the recorded Environmental Covenant, every Holder of this Environmental Covenant, each person who is in possession of the Property, each person who holds a recorded interest in the Property, and each person who signed this Environmental Covenant.
- P. **Cabinet and Division References.** All references to the Kentucky Energy and Environment Cabinet and the Division of Waste Management shall include successor agencies/departments/divisions or other such entities.

Property owners have caused this Environmental Covenant to be executed pursuant to KRS Chapter 224.80-200 to KRS 224.80-210 on this the 1 day of March 2021.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the 1 day and year first written above.

DocuSigned by:
Holly McLoy Johnson
81C993F6FA23433

3/1/2021

Holly M. Johnson, Secretary
Finance and Administration Cabinet
Grantor/Grantee

Date

COMMONWEALTH OF KENTUCKY)
COUNTY OF FRANKLIN)

The foregoing Environmental Covenant was acknowledged before me by Holly McLoy Johnson Secretary of the Finance and Administration Cabinet this the 19 day of February, 2021.

Meagan Chea Coloma Kelley

Notary Public

My commission expires: 10-16-2024

Approved as to Form and Legality

DocuSigned by:
Patrick McFee
003E2DC41697428

2/8/2021

Office of Legal Services
Finance and Administration Cabinet

Date

Linda Gorton

Linda Gorton, Mayor
Lexington -Fayette Urban County Government
Grantor/Grantee

4/9/2021

Date

COMMONWEALTH OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing Environmental Covenant was acknowledged before me by Linda Gorton Mayor, Lexington- Fayette County Urban Government this the 9th day of April, 2021.

Abigail Allan, 609014

Notary Public

My commission expires: 9-18-2022

KENTUCKY ENERGY AND ENVIRONMENT CABINET

This Environmental Covenant is hereby approved by the Energy and Environment Cabinet this ____ day of _____, 2021.

By: _____
Anthony Hatton, Director
Division of Waste Management

Date

The foregoing Environmental Covenant was acknowledged before me by _____ Director Division of Waste Water Management this the ____ day of _____, 2021.

Notary Public

My commission expires: _____

CERTIFICATION OF FAYETTE COUNTY CLERK

I, _____, Clerk of Fayette County, do certify that the foregoing Environmental Covenant was lodged in my office for record, and that I have recorded it, and the certificate thereon, this the ____ day of _____, 2021.

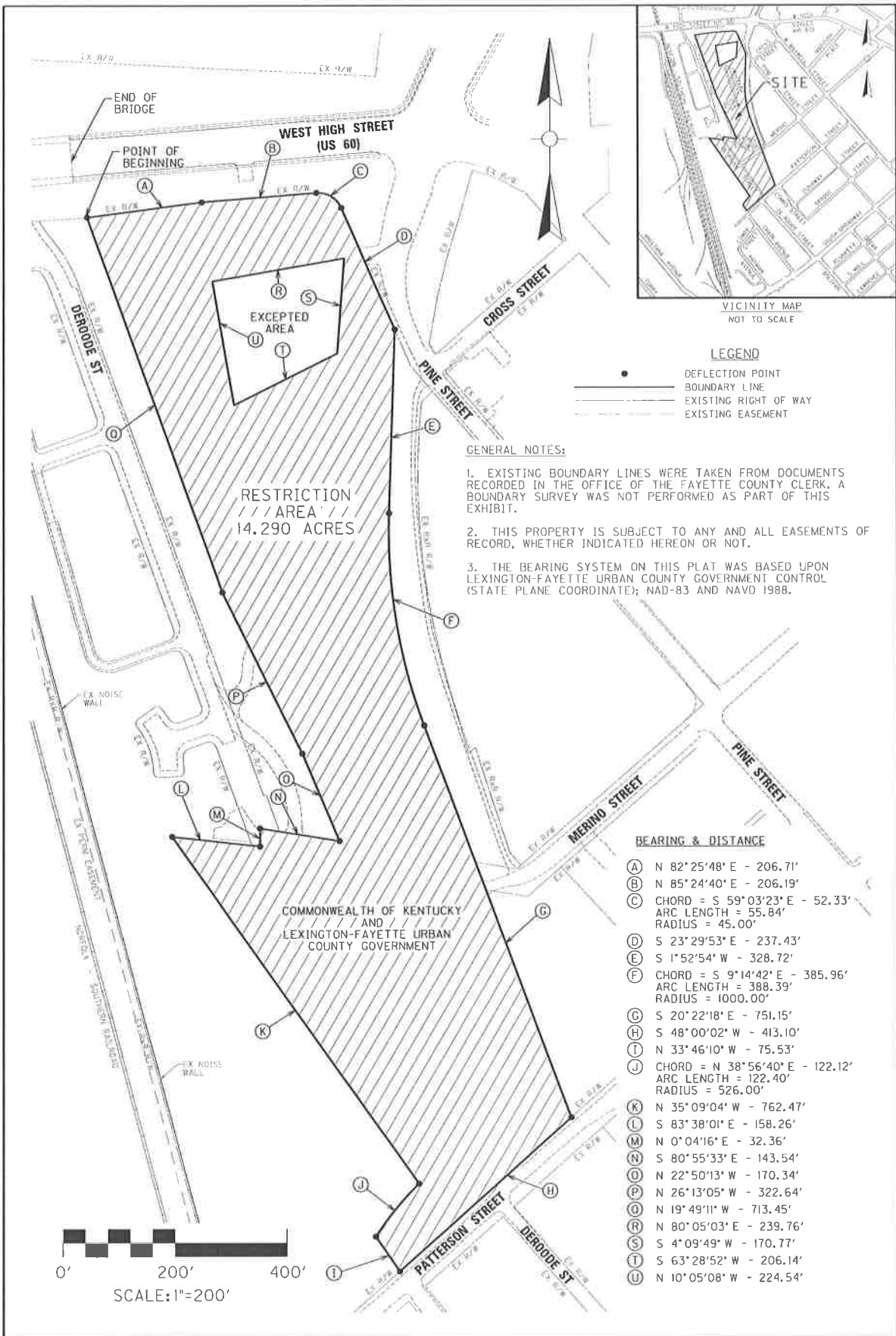
Fayette County Clerk

This Instrument prepared by:

DocuSigned by:
Wanda Repasky
-0F93D94AF25A488...

Wanda Ballard Repasky
Attorney-at-Law, LLC
Counsel to Transportation Cabinet
P.O. Box 281
Prospect, KY 40059
(502) 777-1837

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HHE HALL-HARMON ENGINEERS, INC.
1081 DOVE RUN ROAD
SUITE 203
LEXINGTON, KENTUCKY 40502
(859) 269-3150
(859) 269-3079 FAX

EXHIBIT
DEED RESTRICTION AREA
KENTUCKY TRANSPORTATION CABINET
FAYETTE COUNTY
LEXINGTON, KENTUCKY
MAY 25, 2016