

## **SANITARY SEWER LINE EASEMENT**

This **SANITARY SEWER LINE EASEMENT** (the “Agreement”) is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**, with an address of 200 East Main Street, Lexington, Kentucky 40507 (“Grantor”), and **PEMBERTON PROPERTIES, LLC**, a Kentucky limited liability company, with an address of 555 Keller Court, Lexington, Kentucky 40511 (“Grantee”).

### **RECITALS**

WHEREAS, Grantee is the fee simple owner of that certain property commonly known as 555 Keller Court, Lexington, Kentucky 40511, which is more particularly defined and described on **Exhibit A**, attached hereto and incorporated herein by reference (the “Pemberton’s Property”);

WHEREAS, Grantor is the fee simple owner of that certain property commonly known as 711 Scoop Brown Way, Lexington, Kentucky 40511, which is more particularly defined and described on **Exhibit B**, attached hereto and incorporated herein by reference (the “Douglas Park Property”);

WHEREAS, pursuant to that certain unrecorded Memorandum of Understanding dated as of November 21, 1983, by and between Barth Pemberton and Fred Hynson, Director of the Lexington-Fayette Urban County Division of Parks and Recreation, Grantee, as successor owner of the Pemberton’s Property, leases a certain parcel of Douglas Park which is more particularly referenced and labeled on **Exhibit C** as the “LFUCG Leased Parcel”, which is attached hereto and incorporated herein by reference (the “Leased Parcel”; together with the Douglas Park Property and the Pemberton’s Property, collectively, the “Properties” and each a “Property”);

WHEREAS, for the benefit of the Pemberton’s Property, Grantee desires to construct, install, lay, and operate a sanitary sewer line connecting certain improvements on the Pemberton’s Property to a sanitary sewer line located on the Douglas Park Property (the new sewer line from Pemberton’s Property to Douglas Park Property, as illustrated in Exhibit C, shall be referred to as “New Sanitary Sewer Line”);

WHEREAS, Grantor has agreed to grant Grantee a temporary easement for the construction and installation of the New Sanitary Sewer Line burdening the Leased Parcel and the Douglas Park Property, in accordance with the terms herein;

WHEREAS, Grantor has agreed to grant Grantee a permanent easement for the use, operation, maintenance and repair of the New Sanitary Sewer Line burdening the Leased Parcel, which is more particularly defined and described on **Exhibit D**, attached hereto and incorporated herein by reference (the “Leased Area Easement”);

WHEREAS, Grantor has agreed to grant Grantee a permanent easement for the use, operation, maintenance and repair of the New Sanitary Sewer Line burdening the Douglas Park Property, which is more particularly defined and described on **Exhibit E**, attached hereto and incorporated herein by reference (the “Douglas Park Easement”);

WHEREAS, Grantor and Grantee desire to enter this Agreement, to establish the perpetual sanitary sewage line easement on the Leased Area Easement and the Douglas Park Easement that shall benefit the Pemberton’s Property and burden both the Leased Parcel and Douglas Park Property, as applicable, with such easement more particularly depicted on **Exhibit C** (the “Easement Area”); and

WHEREAS, the Lexington-Fayette Urban County Council authorized and approved of the easements contemplated by the foregoing recitals and the terms of this Agreement by Resolution \_\_\_\_\_, passed by on \_\_\_\_\_, 2025.

**WITNESSETH:**

NOW, THEREFORE, in consideration of the sum of **FIVE HUNDRED AND 00/100 DOLLARS (\$500.00)**, the covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor and Grantee hereby agree as follows

1. **Recitals.** The foregoing recitals are material to this Agreement and are incorporated herein by reference.

2. **Covenants Running with the Land.** The rights and obligations created hereunder shall be deemed covenants running with the land, shall be binding upon, burden, and inure to the benefit of Grantee, as the owner of the Pemberton’s Property, and each of its respective successors or assigns. The rights and obligations created hereunder shall be deemed covenants running with the land, shall be binding upon, burden, and inure to the Grantor, as the owner of the Douglas Park Property, and each of its successors or assigns. By acquiring title to any portion of any of the foregoing Properties, any owner thereof shall be subject to this Agreement and shall be deemed a party hereto who has agreed to all of the terms, covenants, easements and restrictions set forth herein to the extent the same benefit or burden any portion of such Property owned by such owner, as set forth in this Agreement. For the sake of clarity, and without limiting the responsibilities of Grantee or its

successors or assigns under this Agreement, any owner of Pemberton's Property shall be subject to the maintenance and repair requirements contained in Section 4, as well as the indemnification and insurance requirements contained in Section 6.

3. Grant of Temporary Construction Easement by and through Leased Parcel and Douglas Park Property.

- a. Grantor does hereby grant, declare and convey unto Grantee, as owner of the Pemberton Property, its successors and assigns, a temporary, non-exclusive and irrevocable easement for the construction, erection, installation and laying of the New Sanitary Sewer Line on the land of Easement Area, plus approximately ten (10) additional feet on each side of the Easement Area (the "Construction Easement").
- b. The foregoing Construction Easement shall run with the land until the installation and construction of the New Sanitary Sewer Line is complete and is binding upon the successors and assigns of the Grantor. The Construction Easement shall take effect upon the commencement of construction of the Sanitary Sewer Line and will expire upon completion of the construction and installation of the fully functional New Sanitary Sewer Line by Grantee, at which time, then the perpetual easement on the Easement Area shall remain in full force and effect as set forth in Section 4.
- c. Following the installation and construction of the New Sanitary Sewer Line within the Easement Area, Grantee shall restore the disturbed surface of the Easement Area to the satisfaction of Grantor's Division of Parks and Recreation Director or their designee. Furthermore, construction thereon shall not disrupt any programs located at the Douglas Park Property and the construction site shall be properly secured during the construction phase.
- d. Grantee shall be solely responsible for all costs and expenses arising out of or in connection with the construction and installation of the New Sanitary Sewer Line.
- e. Construction, maintenance, and repair of the New Sanitary Sewer Line shall comply with all Grantor requirements, including, without limitation, those deemed necessary by the Division of Parks and Recreation, the Department of Environmental Quality and Public Works, and the Division of Water Quality.

4. Grant of Permanent Easement by and through Leased Parcel and Douglas Park.

- a. Grantor does hereby grant, declare and convey unto Grantee, as the owner of the Pemberton's Property, its successors and assigns, a perpetual, non-exclusive and irrevocable easement for the use, operation, maintenance, and repair of the New Sanitary Sewer Line on the Easement Area, with the necessary and convenient appurtenances for the transportation of water and sewage through and underneath the Easement Area owned by Grantor.

- b. Grantee shall have the right to inspect, maintain, repair, replace, and operate the New Sanitary Sewer Line within the permanent easement at any time upon reasonable notice to Grantor, except in cases of emergency. Grantee shall be solely responsible for all costs and expenses arising out of the use, operation, maintenance, and repair of the New Sanitary Sewer Line. When conducting maintenance or repairs, Grantee shall restore the disturbed surface of the Easement Area to the satisfaction of Grantor's Division of Parks and Recreation Director or their designee.
- c. Construction, maintenance, and repair of the New Sanitary Sewer Line shall comply with all Grantor requirements, including, without limitation, those deemed necessary by the Division of Parks and Recreation, the Department of Environmental Quality and Public Works, and the Division of Water Quality.

5. Use of Easement Property.

- a. Any use of the Easement Area by Grantee shall not materially interfere with or hinder the use of the Easement Area by Grantor.
- b. Any use of the Easement Area by Grantee shall be in compliance in all material respects with all applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements.
- c. Grantor shall not build or cause to be permitted to be built any building or other structure upon the Easement Area without the written consent of the Grantee hereto.

6. INDEMNITY.

- a. At all times during construction, maintenance, or repair of the New Sanitary Sewer Line, Grantee shall maintain insurance coverages in at least the following amounts, which shall be properly filed and approved by the Kentucky Department of Insurance. Evidence of such coverage shall be made available to LFUCG upon request. General Liability (\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit); Commercial Automobile Liability (combined single, \$1 million per occurrence); (if applicable) Professional Liability (\$1 million per occurrence, \$2 million aggregate); Worker's Compensation (Statutory); and Employer's Liability (\$1 million). Grantor shall be included as an additional insured on any policy required by this section.
- b. Grantee shall indemnify, defend and hold harmless Grantor and its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses,

interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Grantor's performance of, or breach of this Agreement and/or the erection, installation, laying construction, operation, maintenance, repair, or use of the New Sanitary Sewer Line, provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Grantee or its officials, employees, or agents; and (b) not caused solely by willful misconduct of Grantor.

- c. Grantee understands and agrees that its obligation to defend Grantor includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Grantee's expense, using attorneys approved in writing by the Grantor, which approval shall not be unreasonably withheld.
- d. Grantee further understands and agrees that its obligation to indemnify includes, but is not limited to: attorney fees and expenses, costs of litigation, court and administrative costs, expert witness fees and expenses, judgments, fines, penalties, interest, all environmental cleanups and remediation costs of whatever kind, and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Grantee and Grantor, and damage to, or destruction of, any property, including the property of Grantor.
- e. This provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

7. Notices. Except for legal process which may also be served pursuant to applicable law, all notices required or desired to be given with respect to this Agreement shall be in writing and shall be deemed to have been "received" by the receiving party when hand delivered and/or, if sent by certified mail return receipt requested or by same day or overnight receipted courier service, when actually received or refused, and shall be sent to the addresses hereinabove.

8. Recording. This Agreement will be recorded in the Office of the Fayette County Clerk in Fayette County, Kentucky.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the Commonwealth of Kentucky, without regard to conflict of law principles.

10. Amendment. This Agreement may not be changed orally or in any matter other than by an agreement in writing signed by the party against whom enforcement of the change is sought.

11. Severability. If any term or provision of this Agreement, or application thereof to any person or circumstances, shall be held invalid, the remainder of this Agreement shall not be

affected thereby.

12. Party Reference. Any reference to a party or the parties hereto shall include their successors in interest and assigns.

13. No Dedication. None of the easements or rights granted herein shall be deemed to constitute a dedication to the public or any governmental authority of any easements or rights.

14. Waiver. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver hereof or of any other provision set forth herein.

15. No Association. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship among the parties hereto or any invitee, occupant, tenant or licensee of the parties hereto.

16. Entire Agreement. This document contains the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no other terms, conditions, promises, undertakings, statements or representations, express or implied, concerning the matters contemplated by this document.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Grantor and Grantee, as owners of the Properties, and all parties having or hereafter acquiring any right, title or interest in the Properties or any part thereof, including, but not limited to, their successors and assigns.

18. Counterpart. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

CONSIDERATION. To the extent required by and solely for the purpose of satisfying KRS 382.132, the parties hereto certify that the consideration reflected herein is the actual consideration for any real estate or interest therein conveyed by this instrument. The estimated fair cash value of such real estate or interest therein is \$10.00. The in-care-of tax mailing address for such real estate or interest therein is Pemberton Properties, LLC a Kentucky limited liability company, with an address of 555 Keller Court, Lexington, Kentucky 40511.

[Signature Pages Follow]



**GRANTEE**

**PEMBERTON PROPERTIES, LLC**

\_\_\_\_\_  
Janna Pemberton Schmidt  
Member

COMMONWEALTH OF KENTUCKY            )  
  )  
COUNTY OF FAYETTE                    )

This foregoing instrument and consideration certificate was acknowledged, subscribed and sworn to before me by Janna Pemberton Schmidt, in her capacity as Member of Pemberton Properties, LLC, a Kentucky limited liability company, on this the \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public, Kentucky, State at Large

My Commission Expires: \_\_\_\_/\_\_\_\_/\_\_\_\_\_

PREPARED BY:

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Dan M. Rose, Esq.  
Rose Camenisch Stewart Mains  
326 South Broadway  
Lexington, Kentucky 40508  
(859) 721-2271

**Exhibit A**  
Pemberton's Property

That certain lot located on the East side of the Georgetown Rd., just North of the property owned and occupied by the Julius Marks Sanatorium on said pike, beginning at a point in the North property line of said Julius Marks Sanatorium with the property line of James P. Keller, 274.5 feet east of a point in the center of the Georgetown Pike on said line; thence in an easterly direction along the North line of said Sanatorium 519.5 feet more or less to Stilz's line' thence in a northerly direction along Stilz's line 330 feet to a corner to Allen's then with Allen's line in a westerly direction 333 feet; thence again with Allen's line in a southerly direction 220 feet; thence again with Allen's line in a westerly direction 137 feet to an iron pin, a new corner to Keller; thence with a new line to Keller in a southerly direction 119.5 feet to the point in the North property line of the Julius Marks Sanatorium property with Keller.

Also a perpetual easement which is a covenant running with the land to be used as a passway of ingress and egress for the owners of the foregoing property, from the Georgetown Pike over the following described property, to wit:

Beginning at a point in the center of the Georgetown Pike, said point being corner to James P. Keller and Julius Marks Sanatorium property; thence in an easterly direction to the North line of said Sanatorium 274.5 feet, more or less, to a point in said line, being the point of beginning of the description in the property hereinbefore described; thence in a northerly direction along said new Keller-Pemberton line hereinabove described 19 feet; thence in a westerly direction parallel with the easterly line, hereinabove mentioned and described 274.5 feet; thence in a southerly direction to the center of the Georgetown Pike to the point of beginning, a distance of 19 feet.

There is excepted from the foregoing description that certain tract of land and right to use the aforesaid easement conveyed by Pryor Allen Pemberton et al to Clarence I. McGaughey and Gladys P. McGaughey, his wife, by deed dated March 28, 1959, and of record in Deed Book 665, Page 577 in said Clerk's Office.

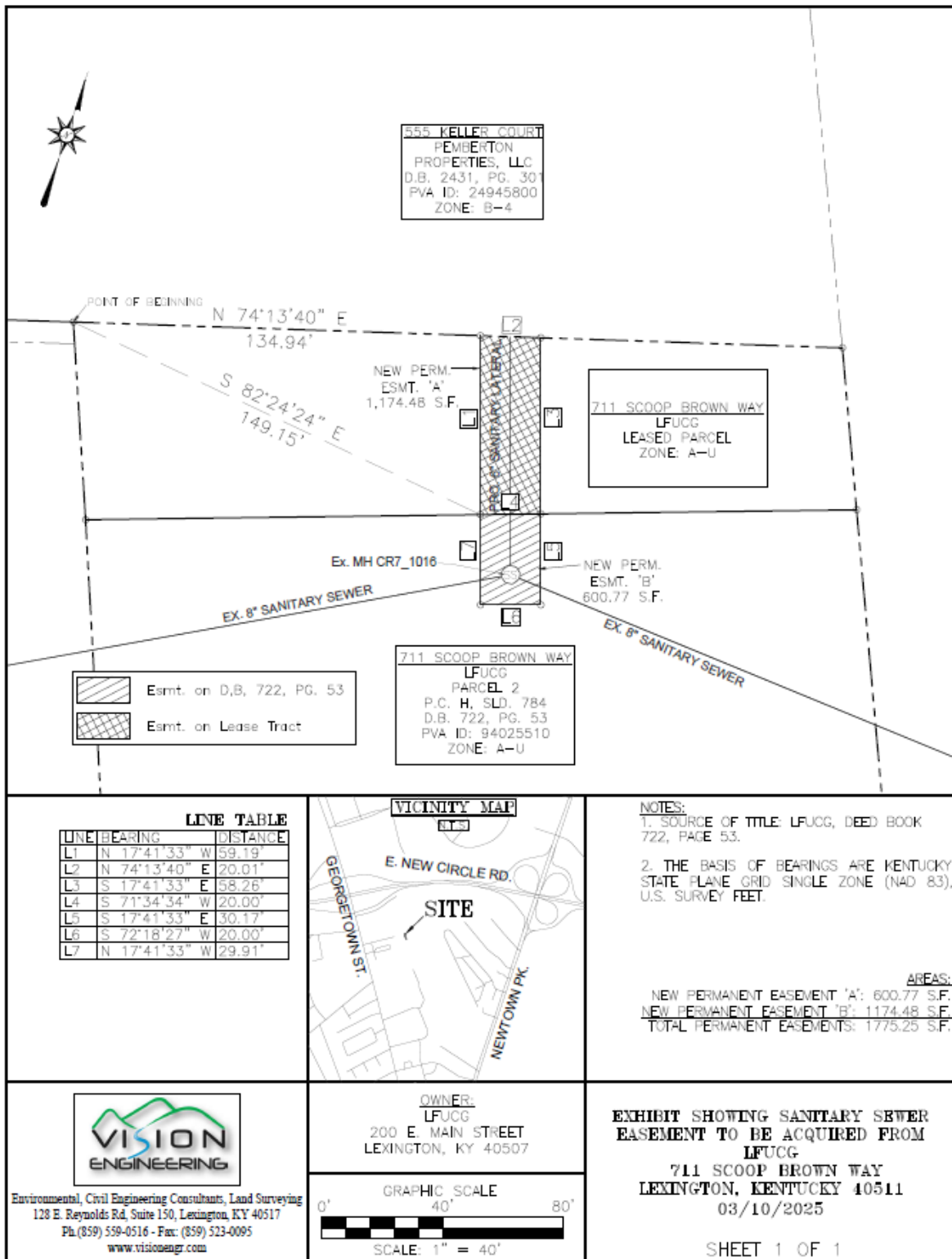
Being the same property conveyed to Pemberton Properties, LLC, a Kentucky limited liability company from Barth H. Pemberton and Judith A. Pemberton by Deed dated as of January 29, 2004, of record at Deed Book 2432, Page 301 in the office of the Fayette County Clerk.

**Exhibit B**  
Douglas Park Property

All of that real estate formerly Julius Marks Sanitorium described in three deeds of record in the Fayette County Court Clerk's Office in Deed Book 179, page 26, and Deed Book 180, page 353, and Deed Book 189, page 16.

Being the same property conveyed to Fayette County, Kentucky, by and through its agent, Fayette County Fiscal Court from the District Board of Tuberculosis Sanitorium for Fayette County, Kentucky, a Kentucky corporation, by Deed dated as of August 7, 1961, of record in Deed Book 722, Page 53 in the office of the Fayette County Clerk.

**Exhibit C**  
Easement Area



**Exhibit D**  
Leased Parcel Easement

aMarch 12, 2025

**LFUCG LEASE TRACT PARCEL  
711 SCOOP BROWN WAY  
LEXINGTON, KY**

**BOUNDARY DESCRIPTION  
20' SEWER LINE EASEMENT**

A CERTAIN PARCEL OF LAND NEAR KELLER COURT, WITHIN THE CITY OF LEXINGTON, COUNTY OF FAYETTE, COMMONWEALTH OF KENTUCKY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERNMOST CORNER OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT PARCEL 2 OF RECORD AT PLAT CABINET H, SLIDE 784 OF THE FAYETTE COUNTY CLERK'S RECORDS, AS CONVEYED TO LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT IN DEED BOOK 722, PAGE 53 A CORNER COMMON TO PEMBERTON PROPERTIES, LLC OF RECORD IN DEED BOOK 2432, PAGE 301; THENCE WITH THE LINE OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT FOR ONE (1) CALL:

1. N 74°13'40" E A DISTANCE OF 134.94' TO THE TRUE POINT OF BEGINNING; THENCE THE LINE OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT FOR ONE (1) CALL:
2. N 74°13'40" E A DISTANCE OF 20.01'; THENCE WITH A NEW EASEMENT LINE AND BEING THROUGH THE LANDS OF THE LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT PROPERTY (TRACT BEING LEASED BY PEMBERTON PROPERTIES, LLC) FOR THREE (3) CALLS:
3. S 17°41'33" E A DISTANCE OF 58.26';
4. S 71°34'34" W A DISTANCE OF 20.00';
5. N 17°41'33" W A DISTANCE OF 59.19' TO THE BEGINNING CONTAINING 1,174.48 S.F.

THIS BEING A PORTION OF THE PARCEL CONVEYED TO LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT IN DEED BOOK 722, PAGE 53 AND DEPICTED AS PARCEL 2 OF CONSOLIDATION RECORD PLAT OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT OF RECORD AT PLAT CABINET H, SLIDE 784 OF THE FAYETTE COUNTY CLERK'S RECORDS.

**Exhibit E**  
Douglas Park Easement

March 12, 2025

**LFUCG PARCEL  
711 SCOOP BROWN WAY  
LEXINGTON, KY**

**BOUNDARY DESCRIPTION  
20' SEWER LINE EASEMENT**

A CERTAIN PARCEL OF LAND NEAR KELLER COURT, WITHIN THE CITY OF LEXINGTON, COUNTY OF FAYETTE, COMMONWEALTH OF KENTUCKY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERNMOST CORNER OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT PARCEL 2 OF RECORD IN PLAT CABINET H, SLIDE 784 OF THE FAYETTE COUNTY CLERK'S RECORDS, AS CONVEYED TO LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT IN DEED BOOK 722, PAGE 53 A CORNER COMMON TO PEMBERTON PROPERTIES, LLC OF RECORD IN DEED BOOK 2432, PAGE 301; THENCE A NEW LINE THROUGH THE LANDS OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT (LEASED BY THE PEMBERTON PROPERTIES, LLC) FOR ONE (1) CALL:

1. S 82°24'24" E A DISTANCE OF 149.15' TO THE TRUE POINT OF BEGINNING OF THE 20' SANITARY SEWER EASEMENT; THENCE WITH A NEW EASEMENT LINE FOR FOUR (4) CALLS:
2. N 71°34'34" E A DISTANCE OF 20.00';
3. S 17°41'33" E A DISTANCE OF 30.17';
4. S 72°18'27" W A DISTANCE OF 20.00';
5. N 17°41'33" W A DISTANCE OF 29.91' TO THE BEGINNING CONTAINING 600.77 S.F.

THIS BEING A PORTION OF THE PARCEL CONVEYED TO LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT IN DEED BOOK 722, PAGE 53 AND DEPICTED AS PARCEL 2 OF CONSOLIDATION RECORD PLAT OF LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT OF RECORD AT PLAT CABINET H, SLIDE 784 OF THE FAYETTE COUNTY CLERK'S RECORDS.