CIVIL ACTION NO. 21-CI-005492

JEFFERSON CIRCUIT COURT
DIVISION NINE (9)
JUDGE JESSICA E. GREEN

WAVERLY HILLS HISTORICAL SOCIETY, INC. PLAINTIFF

v. **SECOND AMENDED COMPLAINT**

C.E.M. LAND COMPANY, LLC,
CHARLES E. MATTINGLY, TINA M. MATTINGLY,
JAMES PACK, DENISE PACK,
CHRISTINA MATTINGLY and CHELSEY ROBERTS DEFENDANTS

* * * * * * *

Plaintiff Waverly Hills Historical Society, Inc. ("WHHS") for its Second Amended Complaint ("Complaint") against C.E.M. Land Company, LLC ("CEM"), Charles E. Mattingly ("Charlie"), Tina M. Mattingly ("Tina"), James "Ernie" Pack ("Ernie"), Denise Pack ("Denise"), Christina M. Mattingly ("Christina") and Chelsey Roberts ("Chelsey") (collectively, the "Defendants") states as follows:

NATURE OF THE DISPUTE

1. Tuberculosis, according to the US Centers for Disease Control ("CDC"), is an "airborne infectious disease" that spreads when a person carrying the virus "coughs, speaks, or sings."[1] Though far less prevalent now, tuberculosis was responsible for around a quarter of all deaths in the US and Europe throughout the 1600-1800s. *Id.*
2. To combat one of the leading causes of death among its citizens, the people of Louisville organized in 1905 to build the best-known method of treating the illness at the time – a sanatorium. Waverly Hills Tuberculosis Sanatorium ("Waverly Hills") was a remarkable

[1] *See* CDC History of TB Day, available at https://www.cdc.gov/tb/worldtbday/history.htm

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public health effort that treated thousands of patients from its opening in 1910 to its closure in 1961. Though many of its patients recovered and left the facility, many also perished there.

3. Today Waverly Hills is a valuable community asset. It is architecturally, culturally, and historically significant, and holds lessons on how our community dealt with a catastrophic public health crisis.

4. To that end, WHHS entered into a 99-year lease for possession and care of Waverly Hills and the attendant property ("Leasehold") with the current owner of the Leasehold, CEM. *See* Lease attached as **Exhibit 1.**[2]

5. Unfortunately for WHHS, and our community as a whole, Defendants have actively hampered WHHS from fulfilling its non-profit mission of educating the community at large regarding Waverly Hills. Defendants' outrageous conduct not only harms WHHS but threatens to deprive our community of this vital link to our past.

6. For example, Charlie and CEM have impeded WHHS from utilizing the Leasehold and have damaged both the Leasehold and property WHHS owns that is adjacent to the Leasehold ("WHHS Property").

7. Further, Charlie and CEM have made a habit of misappropriating WHHS assets through various schemes including selling WHHS assets and equipment to which they had no title, converting sums and property that belong to WHHS, and retaining money for trees they unlawfully had cut on WHHS Property.

8. Charlie, Ernie, Denise and Chelsey have also begun a public smear campaign against WHHS to maliciously destroy WHHS's reputation and operations.

[2] All Exhibits attached to the prior version of the Complaint remain unchanged. Thus, they are not duplicated in the record hereto but are instead incorporated from the prior pleading.

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9. WHHS has little choice but to present its claims to this Court so that it may recover its losses from Defendants and return its focus to telling the story of the historic building and the many people who were involved in a difficult chapter of local history.

PARTIES

10. Plaintiff WHHS is a Kentucky not-for-profit corporation with a principal office at 4400 Paralee Drive, Louisville, KY 40272.[3]
11. Defendant CEM is a Kentucky limited liability company in bad standing with the Kentucky Secretary of State which purports to have a principal office at 4400 Paralee Lane, Louisville, KY 40272.
12. Defendant Charlie is an individual residing at [redacted] and, upon information and belief, is the sole member of Defendant CEM.
13. Defendant Tina is an individual residing at [redacted]
14. Defendant Christina is an individual residing at [redacted]
15. Defendant Ernie is an individual residing at [redacted]
16. Defendant Denise is an individual residing at [redacted]
17. Defendant Chelsey is an individual residing at [redacted]

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction under KRS 23A.010 and the damages alleged exceed the jurisdictional limit of Kentucky district court as set forth in KRS 24A.120.
19. Personal jurisdiction over Defendants exists under KRS 454.210 as Charlie, Tina, Ernie, Denise, Christina, and Chelsey are residents of Kentucky and CEM is a Kentucky entity.

[3] Paralee Drive is occasionally referred to as Paralee Lane in some records and maps.

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Further, Defendants caused injury to WHHS in Kentucky and the subject property of the dispute is located in Jefferson County, Kentucky.

20. Venue is appropriate because all of the facts giving rise to this dispute occurred in Jefferson County, Kentucky.

A BRIEF HISTORY OF WAVERLY HILLS SANATORIUM

21. In 1906 Louisvillians organized the Anti-Tuberculosis Association, with Judge Robert Worth Bingham chairing the first meeting.[4] Their goal of combating what was then more often called "consumption" or the "white plague" received government support when the General Assembly created the Board of Tuberculosis Hospital in 1906 and the city General Council instituted a tax to support building the facility in 1908. *Id*. Only a few years later, the Board purchased land from Senator Thomas H. Hays and opened the first facility to accommodate eight patients. *Id*.

22. Fiscal Court Judge Muir Weissinger, Representative J. Swagar Sherley, and other leaders of the community spoke at its grand opening and dedication on October 12, 1910. The President of the Anti-Tuberculosis Association, W. C. Nones, gave a lengthy speech that concluded thusly:

> Louisville leads in many things, and she now has the opportunity to lead in this, the most far reaching and noblest movement ever undertaken by man – to save countless millions of dollars' worth of human lives and to wipe out unutterable misery and woe – in other words, to lift the human race far nearer the ideal than it has ever been before.[5]

23. Over the years, the sanatorium grew to accommodate more patients and implement then state-of-the-art medical treatment. In 1924 the Board engaged Louisville architecture firm D.X.

[4] *See* Waverly Hills Sanatorium, *The Encyclopedia of Louisville*, Kleber (2001).
[5] Dedicated to the Cause of Humanity, Courier-Journal, October 13, 1910.

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Murphy and Bro. to design a primary building for the sanatorium. In 1926 the large, four story brick and stone gothic building that is still standing today was completed. At the time, Waverly Hills housed 400 patients from children to adults.



24. Waverly Hills was not merely a treatment facility, but instead a community of patients and caregivers, all of whom lived on-site. Its grounds included a farm, grocery, and chapel. At least three newsletters were published on its premises, and the community was largely self-sufficient.

25. Additionally, Waverly Hills grew to provide services and care for individuals with severe infections, many of whom died on the premises.

26. A series of public health advances, including antibiotics that effectively treated tuberculosis, rendered Waverly Hills unnecessary by 1961, when it ceased operating as a sanatorium. The Louisville architectural firm Luckett & Farley renovated the main building in 1962. It operated as a nursing home for almost 20 years, and ceased providing services in 1980.

27. Waverly Hills was added to the National Register of Historic Places in 1977. *See* Kentucky Historic Resources Inventory, attached as **Exhibit 2**. In explaining the significance of the property, the inventory notes:

> The Waverly Hills buildings are significant as examples of early twentieth-century Tudor Gothic Revival architecture. They were

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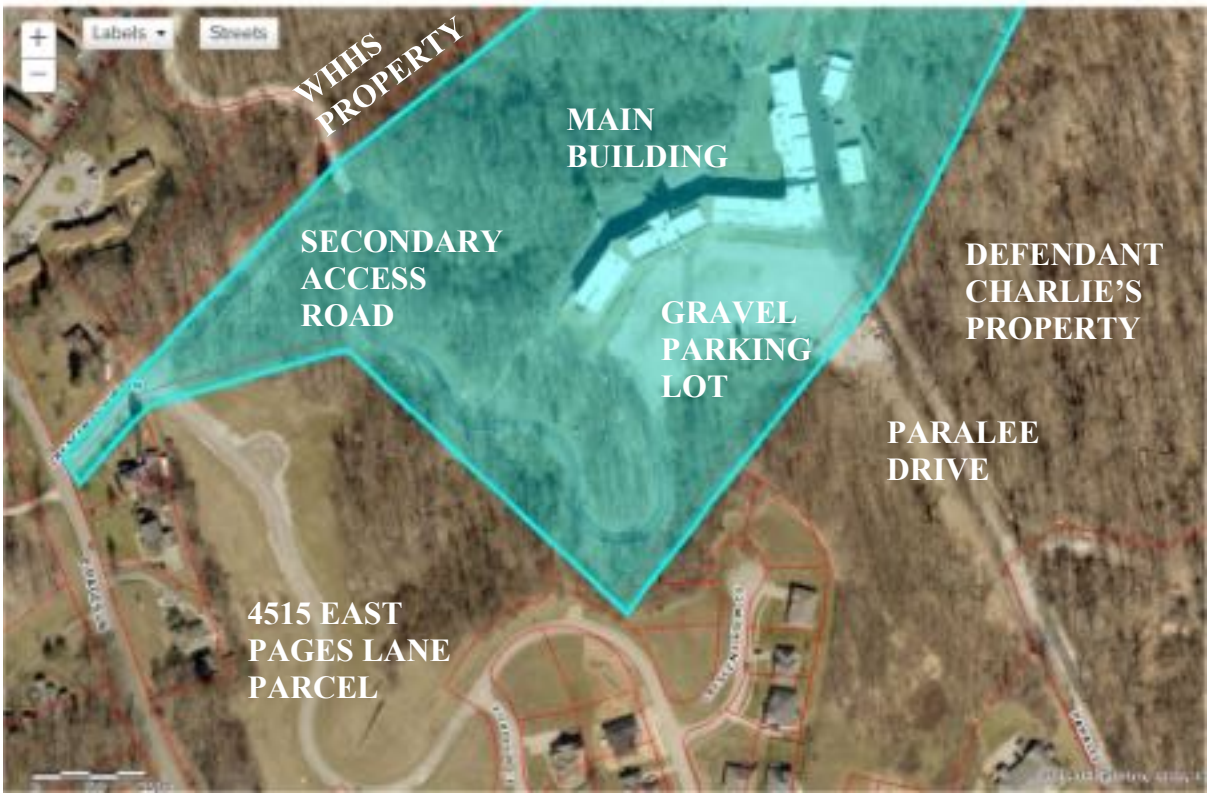
designed by three prominent architects who worked in Louisville and Jefferson County at the turn of the century in Revival styles. The Waverly Hills complex is also significant as a symbol of the outstandingly successful effort by medical science to eradicate tuberculosis – the "White Plague" – as a fatal disease.

28. Title to Waverly Hills and the surrounding property changed hands several times from 1982 to 2001. No real efforts were made to maintain or upkeep the land and buildings, and Waverly Hills deteriorated, being nearly destroyed by time, the elements, and vandals.

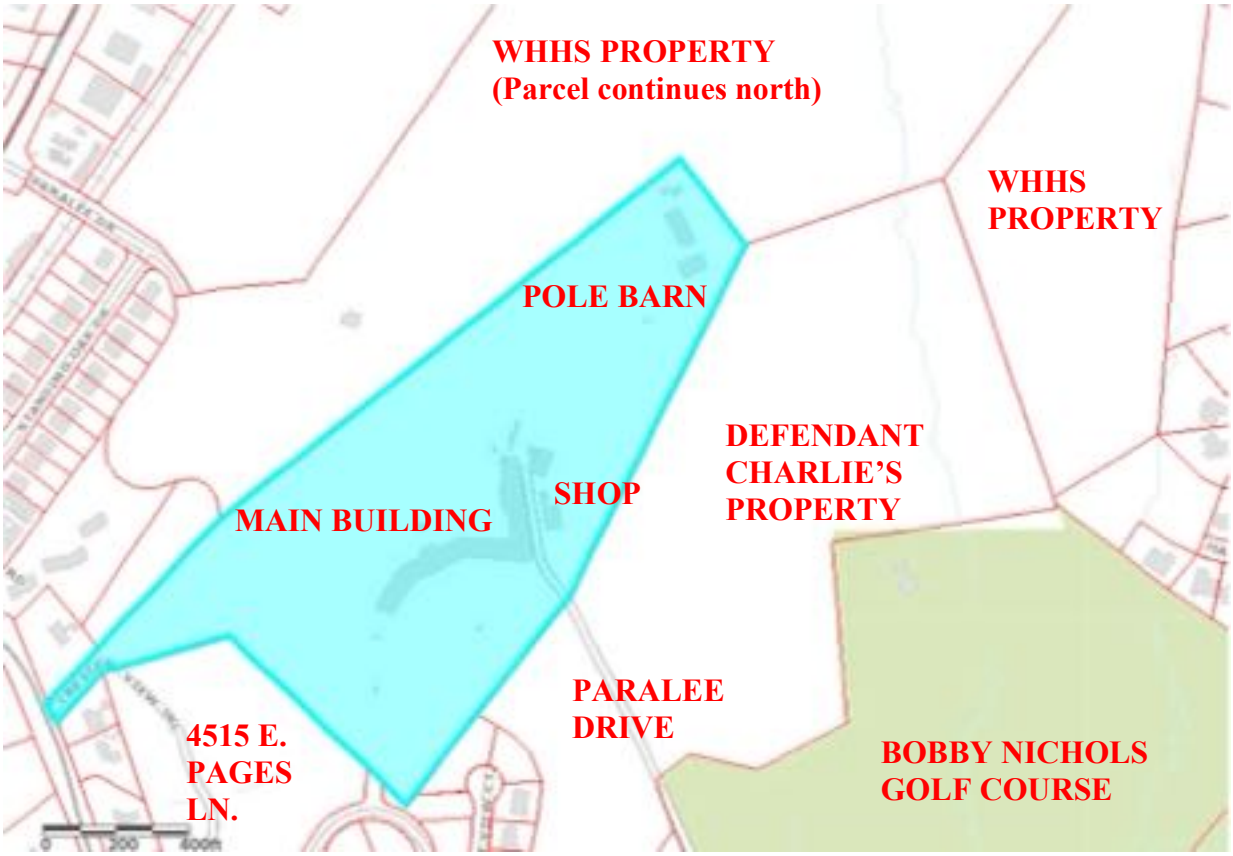
29. CEM acquired title to the Leasehold by deed dated June 20, 2001.

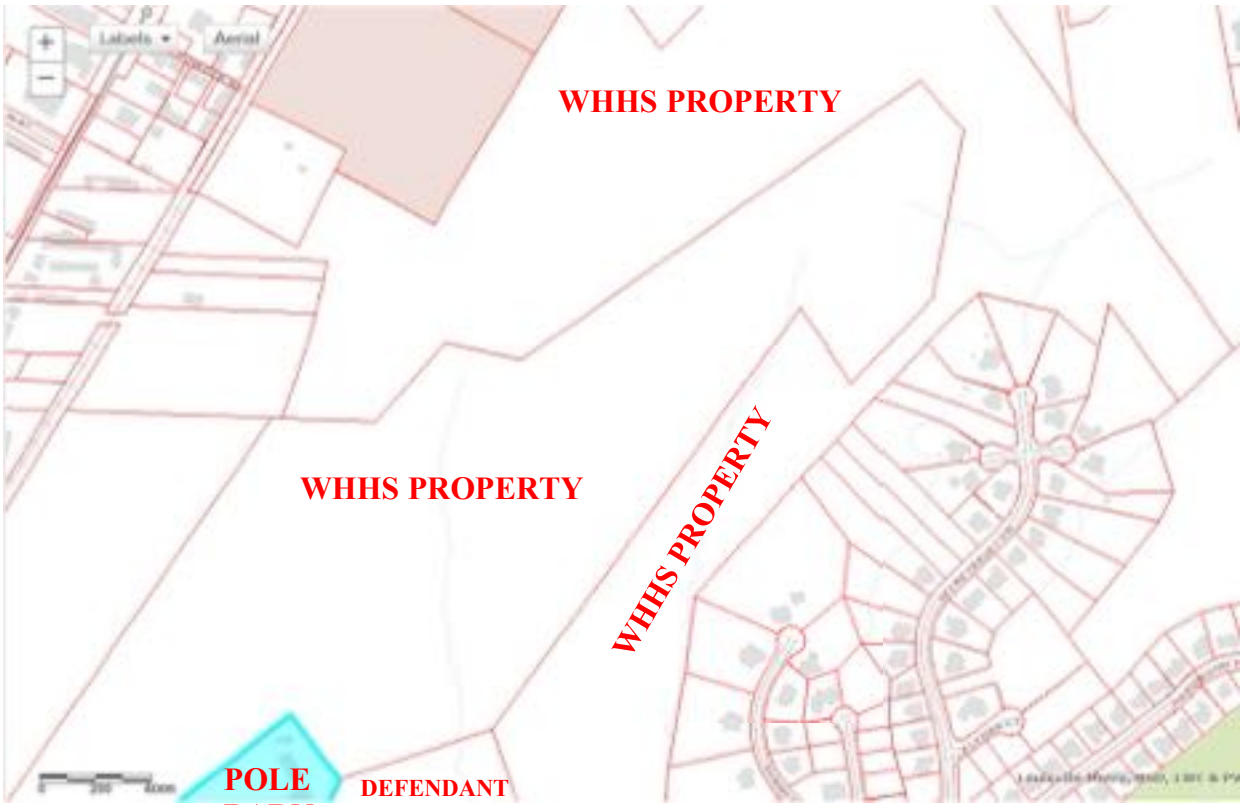
30. WHHS has fee simple title to immediately adjacent property.

31. For context, maps of the area are included below, with the Leasehold being shaded in blue and relevant areas being labeled in white and red, respectively:



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32. The primary access road, *i.e.*, Paralee Drive, to the Waverly Hills Property has been used by the public and by WHHS for many years (well over 15 years) and crosses property owned by Defendant Charlie. Paralee Drive was used for access to Waverly Hills long before Defendant Charlie acquired the parcel.

33. In fact, a recorded survey plat from 1986 of the area by C.B. Moody ("1986 Plat") confirms that there is "easement of ingress and egress" of record by "D.B. 5535 p. 784" along the "18' Wide Conc. Access Road" *i.e.*, Paralee Drive, to benefit the Waverly Hills Sanatorium parcel ("Easement") (as highlighted on 1986 Plat excerpt below):



34. Jefferson County Deed Book 5535, page 784 reflects Land Development and Title meeting minutes from February 14, 1985, at which J. Clifford Todd, then owner of both the Waverly Hills property and Defendant Charlie's property, petitioned for and was granted a 50' wide private access easement for ingress and egress in favor of the Waverly Hills Sanatorium parcel along the 18' concrete access road now known as Paralee Drive so that the Sanatorium could use Paralee Drive to access East Pages Lane. This record, along with the 1986 Plat acknowledging the Easement, are attached hereto as **Exhibit 3.**

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35. The Easement has never been extinguished and remains valid. The Easement is even of record in the Defendants' chains of title to both the Leasehold and the adjacent Defendant Charlie parcel.

36. Defendant CEM's title to the Leasehold is specifically subject to the Easement and is as follows (collectively attached as **Exhibit 4**):

(A) J. Clifford Todd and Elizabeth H. Todd conveyed the property to Waverly Land Developing Corporation on December 31, 1986 in a deed that specifically referenced the 1986 Plat in the boundary description and recognized that the conveyance was subject to the easements and restrictions of record. A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 5650 P. 168.

(B) Waverly Land Developing Corporation conveyed the property to Dixie Development, Inc. on September 14, 1995 in a deed that again specifically referenced the 1986 Plat in the boundary description and recognized that the conveyance was subject to the easements and restrictions of record. A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 06639 P. 0793.

(C) Dixie Development, Inc. conveyed the property to C.E.M. Land Company, LLC on June 20, 2001 in a deed that again specifically referenced the 1986 Plat in the boundary description and recognized that the "conveyance is made subject to restrictions, stipulations and easements of record and applicable zoning laws and regulations." A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 07672 P. 0928.

37. WHHS holds the legal right to the Leasehold pursuant to the Lease.

38. Defendant Charlie's title to his adjacent property is specifically subject to the Easement and is as follows (collectively attached as **Exhibit 5**):

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(A) J. Clifford Todd and Elizabeth H. Todd conveyed the property to USCC Shareholder Representatives in 1998 through a deed that specifically references the deed book and page numbers which reflect the 1986 Plat and is subject of the easements and restrictions of record. The corrected version of the deed is of record in the Jefferson County Clerk's Office as D.B. 7283 P. 46 (correcting an erroneous version of the deed recorded as D.B. 7251 P. 809).

(B) USCC Shareholder Representatives Irrevocable Trust conveyed the property to Landstar Group, LLC on June 23, 1999 in a deed that specifically references the deed book and page numbers which reflect the 1986 Plat and is subject to the easements and restrictions of record. A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 07274 P. 0519.

(C) Landstar Group, LLC conveyed the property to WKB Pinnacle Place, LLC on July 23, 2003 in a deed that specifically references the deed book and page numbers which reflect the 1986 Plat and is subject to the easements, restrictions and stipulations of record. A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 08351 P. 0081.

(D) WKB Pinnacle Place, LLC conveyed the property to Capstone Resdev LLC on March 23, 2015 in a deed "subject to A) Easements, restrictions and stipulations of record" and "B) Any matters which would be disclosed by an accurate survey or inspection of the property … ." A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 10387 P. 0615.

(E) Capstone Resdev LLC conveyed the property to Charles E. Mattingly on June 10, 2015 in a special warranty deed "expressly subject to … (e) all restrictions, covenants, easements and stipulations of record affecting the Property." A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 10421 P. 0928.

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39. WHHS also purchased approximately 10.2 acres on East Pages Lane, known as 4515 East Pages Lane, from Capstone ResDev LLC on January 21, 2016 for $200,000 ("East Pages Lane Parcel").

40. According to the public deed records, CEM purports to be the owner of the East Pages Lane Parcel by virtue of a conveyance for $112,000 in January of 2020. A copy of this deed is of record in the Jefferson County Clerk's Office as D.B. 11620 P. 127.

WHHS OPERATES TO PRESERVE AND RESTORE WAVERLY HILLS

41. WHHS was formed on September 22, 2003 by its incorporator, Christopher L. King, Esq., as a nonprofit corporation under the laws of the Commonwealth of Kentucky. *See* Articles of Incorporation ("Articles"), attached as **Exhibit 6**.

42. The Articles provide that WHHS is "to conduct and carry on its work, not for profit, but exclusively for charitable, scientific, literary, or educational purposes within the meaning of section 501(c)(3)…." Articles at Sec. 2.2(a). In addition, they state, "[N]o part of [WHHS's] income or property shall inure to the private benefit of any donor, director, officer, or individual having a personal or private interest in the activities of [WHHS], except as reasonable compensation for services actually rendered." *Id.* at Sec. 2.2(a)(i).

43. One of the primary purposes of WHHS is to "establish and maintain a memorial to those who lived and worked there, and to support through funding and other methods the restoration and preservation of the Waverly Hills Sanatorium." *Id.* at Sec. 2.2(b). Similarly, WHHS's By-Laws provide that WHHS is to "save from destruction, ruin and restore Waverly Hills Sanatorium, a form[er] Tuberculosis sanatorium, currently on the National Historic Register."

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WHHS By-Laws at Art. 2, Sec. 1. WHHS is also to "conduct … educational …activities." Articles at Sec. 2.2(b).

44. To accomplish these non-profit purposes, WHHS obtained the right to the Leasehold under an unwritten arrangement with CEM soon after its formation in 2003. At that time and for the years that followed, it was understood that WHHS would and did act to accomplish its non-profit purposes concerning Waverly Hills through this arrangement. Under this arrangement, WHHS paid no rent to CEM for the use of the Leasehold, but WHHS was responsible for most of the costs and expenses associated with the building and underlying property, including utilities, insurance and taxes.

45. In the 2010s, the Internal Revenue Service ("IRS") began an investigation into CEM, the Mattingly's, and the non-profit. The IRS raised concerns of private inurement to CEM and/or the Mattinglys and stepped in the enforce the Internal Revenue Code that prohibits the owner from profiting off of the non-profit, WHHS.

46. In 2017, the IRS agreed to retroactively allow WHHS to function as a tax-exempt 501(c) organization, and assurances were given that there was and would be no private inurement to CEM or the Mattinglys.

47. The arrangement between CEM and WHHS was also memorialized in a written lease agreement under which WHHS obtained the Leasehold (the legal description of which is specifically granted to WHHS "as per" the 1986 Plat) for $1 paid annually plus payment of certain costs, including maintenance, utilities, insurance and taxes for a term of 99 years ("Lease") on or about November 11, 2015. *See* **Exhibit 1.**

48. The Lease formally recognizes WHHS's exclusive right to fully use the Leasehold as "a historical and educational center and museum, including guided tours…and for uses and activities related thereto." Lease, Art. II through VII.

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49. In addition to the $1 annual rent, WHHS is responsible for all utilities, insurance, and taxes related to the Leasehold. Lease, Art. III, V, VI, IX.

50. WHHS is also responsible for the extensive costs of maintenance and repairs on the Leasehold. Lease, Art. IX.

51. To fund its preservation and educational efforts, WHHS hosts many events at the Leasehold, including tours, overnight visits, and seasonal events.

52. Importantly, the Lease expressly provides WHHS the right to quiet enjoyment of the Leasehold:

> Upon the payment by Tenant of the rents and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Demised Premises for the Term of this Lease or any extension thereof without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

Lease, Art. XIX.

53. If WHHS receives a judgment for damages against CEM for violation of any of its obligations under the Lease, the judgment will only be satisfied by the sale of the Leasehold:

> If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Demised Premises and neither Landlord nor any other person or

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> interest or entity owning any interest in or affiliated with Landlord shall be liable for any deficiency.

Lease, Art. XX.

CEM ENTERS INTO AND VIOLATES A MEMORANDUM OF UNDERSTANDING WITH WHHS

54. In furtherance of its mission and contemporaneously with entering into the Lease with CEM, WHHS entered into a Memorandum of Understanding ("MOU") with CEM whereby CEM would provide "various construction, restoration, repair and improvement services" ("CEM Services") to WHHS for the purposes of "rehabilitating, restoring, repairing and improving" Waverly Hills. *See* MOU Attached as **Exhibit 7**, Recital C and ¶ 1.

55. The MOU further provides that CEM will not profit from this arrangement (thereby ensuring compliance with the Internal Revenue Code). Specifically, it states:

> CEM Land shall continue to perform the Services for the benefit of WHHS without receiving remuneration from WHHS in excess of amounts that represent reimbursement of CEM Land's reasonable expenses for the supplies, tools, and equipment required to carry out the performance of the Services.

MOU ¶ 3.

56. Thus, the MOU provides that CEM will be reimbursed only for its "reasonable expenses for the supplies, tools, and equipment required to carry out the performance" of the CEM Services. *Id*.

57. Over the course of the MOU's term, CEM requested and received thousands of dollars in reimbursement for the CEM Services.

58. CEM also purchased equipment, including without limitation an excavator and lift, using WHHS proceeds.

59. Not all of the CEM Services, however, were performed in a workmanlike manner and have placed Waverly Hills' historical status at risk.

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60. CEM has, inexplicably, removed walls from throughout Waverly Hills.

61. CEM also added windows throughout Waverly Hills that do not meet the requirements of a historical property.

62. CEM paved a secondary access road off of the gravel parking lot in front of the main building of Waverly Hills (labeled on the satellite aerial map above as "Secondary Access Road"), part of which has washed away due to CEM's poor workmanship.

63. CEM carpeted one room in the main building of Waverly Hills with mildewed carpet. Upon information and belief, the carpet was reclaimed from a flooded building and was unfit for installation when CEM acquired it.

64. CEM also built a gravel parking lot to the south of the main building at the end of the secondary access road (labeled "Gravel Parking Lot" on satellite aerial map above). The gravel parking lot has recently begun to shift and sink, forcing WHHS to discontinue its use.

65. Upon information and belief, CEM built the gravel parking lot by filling the sub-earth with debris (*i.e.*, an illegal dump).

66. On March 16, 2021, WHHS terminated the MOU due to the above violations, among others.

CEM AND CHARLIE TAKE UNLAWFUL ACTION AGAINST WHHS

67. Charlie's spouse, Tina Mattingly ("Tina"), served as the Executive Director for WHHS from its inception until November 2020 when WHHS terminated Tina for cause.

68. Specifically, WHHS engaged a third-party HR company to investigate concerns raised regarding Tina by employees, including without limitation that Tina used racial slurs and culturally insensitive language in the presence of colleagues and visitors, and that she engaged

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in questionable payroll and cash management practices. The HR company determined that the complaints involving Tina were credible and recommended WHHS terminate her.

69. Though Charlie and Tina maintained a residence elsewhere, Tina had been permitted to stay in an apartment on the Leasehold solely as a fringe benefit of her position as Executive Director of WHHS. Charlie stayed in that apartment with Tina.

70. In accordance with Tina's termination, WHHS required Charlie and Tina to leave the apartment located on the Leasehold and remove their personal belongings. WHHS afforded them ample time to do so, and the Mattingly's moved from the apartment without the intervention of the Courts.

71. Immediately after members of the WHHS Board of Directors ("Board") informed Tina of her termination, Charlie said he was "kicking them off the [Leasehold] property," and told the Board members to leave. Days after that event, Charlie warned Board Treasurer Anne-Marie Hogan not to come back on the Leasehold and told her that if any Board members came to the property, Tina would be verbally, and possibly physically, "hostile."

72. Given the threats from Charlie, WHHS Board members feared for their safety and did not schedule events at the Leasehold for fear of Charlie and Tina's interference.

73. Specifically, the annual Christmas laser light and music show did not occur in 2020 because Charlie remained present on the Leasehold and had insisted the Board not return, despite the Lease agreement.

74. Additionally, the Discovery Channel network was originally scheduled to film a show at the Leasehold in December. WHHS had to reschedule the filming to avoid disruption from Charlie and Tina.

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75. The Board's concerns for their safety were well-founded. WHHS learned that Charlie approached a local contractor and asked if he could find someone to harm WHHS Board President Renae Kepfer-Clark.

76. When Charlie and Tina did eventually vacate the apartment, WHHS discovered Charlie and/or CEM had unlawfully removed the cabinetry, countertops, and appliances from the apartment's kitchen. In fact, they took all of the kitchen fixtures from the Leasehold's apartment except the kitchen sink and its surrounding countertop.

77. Defendants continue to improperly interfere with the rights of WHHS.

78. For example, Charlie and CEM utilized a significant amount of tools and machinery in performing the MOU Services.

79. Many of these tools and machinery are WHHS property, including an excavator and a lift, as WHHS either reimbursed CEM for their purchase or CEM and Charlie used WHHS's funds to purchase these items.

80. CEM and Charlie have asserted that some of the tools and machinery, however, are their property, and removed them from the Leasehold. WHHS no longer has access to these tools and machinery.

81. Upon information and belief, Charlie and/or CEM are selling and using tools and machinery owned by WHHS for their benefit, including lasers used by WHHS for its Christmas laser light and music show.

82. While Charlie removed their personal property from the Leasehold when they vacated the apartment, Charlie and CEM have repeatedly claimed that items remaining at the Leasehold are their property, not that of WHHS. Defendants are deliberately sowing confusion as to the ownership of items remaining on the Leasehold.

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83. Additionally, on numerous occasions Charlie and/or CEM represented to visitors that they owned WHHS or had full rights to the Leasehold and would accept payment from visitors. Charlie and/or CEM would then retain that payment for themselves.

84. WHHS has uncovered records indicating that Charlie and/or CEM used WHHS's funds for their personal benefit for years.

85. For example, Charlie caused WHHS to pay for his and Tina's personal tax obligations, as well as expenses for his other ventures.

86. Moreover, Charlie caused WHHS to pay for labor costs and improvements to his and Tina's personal residence on [redacted], as well as for the personal residence of his daughter, Defendant Christina.

87. CEM and Charlie, under the guise of making repairs to a building on the Leasehold known as the "Shop," have taken possession of the entire building, and have refused to permit Board members access to the Shop.

88. Further, CEM and Charlie locked WHHS out of areas of the Leasehold in addition to the Shop. Multiple rooms throughout Waverly Hills were inaccessible to WHHS in direct violation of the Lease. Instead, WHHS was forced to rely upon Charlie's son to unlock Waverly Hills and other areas on the Leasehold while he was an employee of WHHS, and he would not provide WHHS with a key or unlock the Leasehold without Charlie's approval.

89. CEM and Charlie are also exclusively occupying an area known as the "Pole Barn" on the Leasehold in direct violation of the Lease. WHHS had no access to the Pole Barn.

90. CEM and Charlie were also limiting WHHS's access to its own mail. They refused to provide WHHS with a key to the mailbox; instead WHHS had to rely upon Defendants' son to provide it with mail that WHHS received.

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91. WHHS has been forced to re-key the doors on the Leasehold to gain access to them under the Lease.

92. WHHS has also discovered that Charlie was growing marijuana in a portion of the basement of Waverly Hills.

93. WHHS is seeking additional discovery into the purported conveyance of the East Pages Lane Parcel to CEM in 2020 and reserves all rights to amend its Complaint accordingly.

CEM AND CHARLIE BUILD A LOGGING ROAD ON WHHS PROPERTY, REMOVE TREES THEREFROM, AND DUMP WASTE THEREON

94. WHHS owns in fee simple property that is adjacent to the Leasehold (*i.e.*, the WHHS Property).

95. CEM and Charlie unilaterally decided to extensively log timber and re-grade land to cut a road through the WHHS Property, which WHHS neither requested nor authorized.

96. CEM and Charlie hired a team of loggers to remove dozens of trees from WHHS Property.

97. CEM and Charlie sold the lumber from those trees and retained the proceeds.

98. In building the logging road through WHHS Property, CEM and Charlie dumped all sorts of material debris on the land, in violation of Kentucky common law and statutory law, including KRS 224.40-100.

99. CEM and Charlie used debris and dumped material as infill and as an apparent base for the logging road.

100. WHHS's neighbors have complained that the re-grading of the land, logging and/or dumping has altered the area's drainage and caused flooding on their property.

101. WHHS must now incur the expense to uncover and properly dispose of the dumped material and to remediate drainage issues stemming from CEM and Charlie's improper logging road construction. WHHS must also incur the expense of cleaning up the debris and stumps left on its land.

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102. WHHS has repeatedly demanded that CEM and Charlie pay WHHS the proceeds from the trees they had removed from WHHS Property, but they have not done so.

CEM AND CHARLIE ARE CURRENTLY VIOLATING THE EASEMENT

103. Despite the Easement in favor of the Leasehold and WHHS's usage of Paralee Drive for over 18 years, CEM and Charlie threatened that they have the legal right to block Paralee Drive and prohibit WHHS using it to access the Leasehold.

104. Doing so not only obviously violates the rights conveyed in the Lease, it significantly hinders WHHS's operations and fulfillment of its mission of preserving Waverly Hills and impedes the public from visiting this community asset.

105. WHHS filed the initial Complaint on September 27, 2021 and asserted its right under an easement to use Paralee Drive to access the Leasehold.

106. On Friday October 22, 2021, CEM and Charlie closed and locked a gate across Paralee Drive on the Defendant Charlie's property. That gate has remained locked, and access has been denied to WHHS and the public, ever since.

107. CEM and Charlie's locked gate precludes WHHS and the public from using Paralee Drive as an ingress or egress to the Leasehold.

108. CEM and Charlie did so in apparent response to WHHS's Complaint and in an intentional effort to harm WHHS's operations during its most busy public event season.

109. Paralee Drive has been the only recognized route to the Leasehold on numerous mapping services, including Mapquest, Google Maps, and Apple's Map application.

110. Despite WHHS' requests and knowing WHHS had numerous public events scheduled the weekend of October 22nd to 25th, and throughout the remainder of the year, CEM and Charlie have refused to unlock the gate.

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111. WHHS has been forced to attempt to re-direct traffic to use the Secondary Access Road (which remains washed out in places due to CEM and Charlie's poor workmanship).

112. There is no way for WHHS to know how many people grew frustrated or got lost in the course of being re-directed and were unable to enjoy the Leasehold or otherwise attend the events due to Defendants' intentional and ongoing blockage of Paralee Drive.

DEFENDANTS ARE CURRENTLY ENGAGING IN A CAMPAIGN TO DEFAME PLAINTIFF AND DISRUPT ITS OPERATIONS

113. Ernie, Denise and Chelsey are each a former WHHS employee and a friend of Charlie.

114. Since the filing of this lawsuit, Charlie, Ernie, Denise, and Chelsey have engaged in a campaign intended to defame WHHS and its board members and to disrupt its operations.

115. For example, Ernie has been widely distributing a pamphlet alleging that WHHS misused taxpayer dollars and improperly pocketed non-profit funds, including at a national paranormal convention. The pamphlet also claims that WHHS committed extortion and blackmail against Charlie.

116. Defendants also maintain a public Facebook group called "Save Waverly Hills," which was created in December 2021, and an accompanying website, http://savewaverlyhills.com. These pages incorporate many of the allegations set forth in the pamphlet. In fact, a copy of the pamphlet is posted on the page for the Facebook group and much of the pamphlet's text is included as content on the website. There are currently nearly 5,000 members of this Facebook group.

117. Chelsey has started a TikTok account called @Save_Waverly_Hills, which has garnered 30.6 million views. This TikTok account promotes the same false and defamatory narrative about Plaintiff that Charlie, Ernie, and Denise have disseminated through Save Waverly Hills.

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118. Defendants have created and encouraged a narrative that WHHS is attempting to "steal" Waverly Hills from CEM. Defendants have further insinuated that WHHS intends to demolish or destroy Waverly Hills. Such narrative is false.

119. Defendants have actively attempted to dissuade the public from visiting the Waverly Hills Sanatorium and from donating to WHHS. Instead, Defendants are encouraging the public to instead "donate" money to "Save Waverly Hills" which they allege will "help[] preserve the integrity and restore the reputation of one of the most iconic historical buildings in the paranormal world." The money, however, is solely going to fund Charlie's legal defense in the instant lawsuit.

120. Additionally, Charlie, Ernie and Denise have appeared on numerous podcasts and spread the same misinformation as the "Save Waverly Hills" Facebook group and website.

121. Most recently, Defendants have organized protests during WHHS's business hours to interfere with WHHS's operations. Protestors have, in turn, harassed WHHS's customers and donors.

122. Defendants have intentionally engaged in the above actions with improper motive, with malice, and without justification.

COUNT I
BREACH OF CONTRACT – LEASE

123. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

124. The Lease is a valid contract between CEM and WHHS.

125. CEM breached the Lease by violating the obligation to provide quiet enjoyment to WHHS "without hinderance or interruption by Landlord". *See* Lease Art. XIX.

126. WHHS has suffered damages from CEM's breach of contract in amounts to be proven at trial.

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COUNT II
BREACH OF CONTRACT – MOU

127. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

128. The MOU is a valid contract between CEM and WHHS.

129. CEM, by performing its work in an unworkmanlike manner, breached the MOU.

130. WHHS has suffered damages from CEM's breach of contract in amounts to be proven at trial, including reasonable attorneys' fees pursuant to Section 5.4 of the MOU.

COUNT III
DECLARATION OF RIGHTS – SALE OF LEASEHOLD

131. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

132. The Lease requires any judgment secured by WHHS be paid from the sale of the Leasehold. *See* Lease Art. XX.

133. WHHS is entitled to monetary judgment against CEM for Count I of this Complaint.

134. An actual case or controversy exists between WHHS and CEM pursuant to KRS 418.040. Further, the parties are "persons interested under a deed, will or other instrument of writing, *or in a contract*, written or parol…" under KRS 418.045 (emphasis added).

135. Pursuant to KRS 418.040, this Court should enter a Declaratory Judgment that CEM must sell the Leasehold in order to satisfy the money judgment entered in favor of WHHS.

COUNT IV
DECLARATION OF RIGHTS – REAL AND PERSONAL PROPERTY

136. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

137. The Lease provides WHHS the right to quiet enjoyment of the Leasehold "without hinderance or interruption by Landlord". *See* Lease Art. XIX.

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138. CEM and Charlie's physical possession of the Shop violates WHHS's right to quiet enjoyment of the Leasehold.

139. CEM and Charlie's physical possession of the Pole Barn violates WHHS's right to quiet enjoyment of the Leasehold.

140. CEM and Charlie have no right to assert ownership rights to any property and equipment remaining on the Leasehold.

141. CEM and Charlie have no right to restrict WHHS's access to its mailbox.

142. Pursuant to KRS 418.040, this Court should enter a Declaratory Judgment that: (1) WHHS has the exclusive right to physically possess any and all portions of the Leasehold, including the Shop and Pole Barn; and (2) any personal property or equipment located on the Leasehold or paid for by WHHS are owned by WHHS.

COUNT V
DECLARATION OF RIGHTS

143. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

144. The Easement is a valid easement of record that grants the right for ingress and egress to the Leasehold using Paralee Drive across Charlie's property.

145. WHHS has legal right to the Leasehold by virtue of the Lease.

146. Paralee Drive is the primary access road to the Leasehold used by the public and by WHHS for decades.

147. An actual case or controversy exists between WHHS and CEM regarding WHHS's right to use Paralee Drive.

148. Pursuant to KRS 418.040, this Court should enter a Declaratory Judgment that WHHS has a valid easement of record or by prescription to continue its use of Paralee Drive, or alternatively that Paralee Drive is a public road under KRS 178.025.

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COUNT VI
QUIET TITLE UNDER KRS 411.120

149. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

150. WHHS has legal right to the Leasehold by virtue of the Lease.

151. The Easement is a valid easement of record that grants the right for ingress and egress to the Leasehold using Paralee Drive across Defendant Charlie's property.

152. Charlie and CEM are currently precluding WHHS's ability to ingress or egress the Leasehold via Paralee Drive.

153. The validity of the easement should be quieted in WHHS's favor pursuant to KRS 411.120.

COUNT VII
CONVERSION

154. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

155. WHHS has legal title to the sales value of the trees removed from its property.

156. WHHS has legal title to the payments CEM and Charlie received from visitors to the Leasehold and any of WHHS's money CEM and Charlie used to pay for their personal expenses, taxes or other ventures.

157. WHHS has the right to possess these sums of money, which CEM and Charlie have retained and converted for their own use.

158. WHHS has legal title to all personal property and equipment purchased with its funds.

159. CEM and Charlie have taken personal property and equipment owned by WHHS without its permission.

160. CEM and Charlie have sold or otherwise converted WHHS's personal property and equipment for their own use.

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161. CEM and Charlie have willfully exercised unlawful dominion and control of WHHS's personal property and equipment, as well as the sums they received for any sold items, and converted it for their own use and benefit, which constitutes a conversion.

162. WHHS has repeatedly demanded CEM and Charlie account for and return these sums of money as well as WHHS's personal property and equipment, but Defendants have continuously refused.

163. WHHS would have this money, personal property and equipment but for CEM and Charlie's unlawful refusal to provide it.

164. CEM and Charlie have deprived WHHS from its rights to the money, personal property and equipment with full knowledge that Defendants lack any legal right in the same. CEM and Charlie's conduct in doing so was willful, wanton, malicious and oppressive.

165. WHHS has suffered damages from CEM and Charlie's conversion in amounts to be proven at trial, including punitive damages.

COUNT VIII
UNJUST ENRICHMENT

166. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

167. As set forth above, Charlie, CEM, Tina and Christina have each profited off of funds taken or diverted from WHHS.

168. Further, Charlie and CEM have benefited from taking tools, machinery, materials, and supplies from WHHS.

169. As CEM, Charlie, Tina and Christina failed to pay for the value of these benefits, or have failed to pay for the full value of these benefits, they have each wrongfully benefited to the detriment of WHHS.

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170. It is inequitable for CEM, Charlie, Tina and Christina to retain this benefit without payment for its value.

171. WHHS is entitled to restitution and recovery of damages.

COUNT IX
ACCOUNTING

172. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

173. CEM and Charlie have deliberately sought to conceal from WHHS materials, tools, and machinery that WHHS has paid for.

174. WHHS is entitled to an accounting of all items that WHHS owns over which CEM and Charlie are currently exercising dominion and control.

COUNT X
TRESPASS

175. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

176. WHHS has fee simple title and is the legal owner of the WHHS Property.

177. CEM and Charlie entered upon and conducted extensive logging operations on the WHHS Property, which caused harm to the WHHS Property.

178. CEM and Charlie entered upon and conducted dumping activities and re-graded the land to create a logging road on the WHHS Property, which caused harm to the WHHS Property.

179. CEM and Charlie have removed and sold trees from the WHHS Property.

180. WHHS did not give CEM and Charlie permission to enter upon and conduct the logging, re-grading or the dumping activities on the WHHS Property in the manner in which they were conducted.

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181. WHHS did not receive any consideration from CEM and Charlie for the right to enter upon WHHS Property.

182. CEM and Charlie entered upon and conducted extensive logging, dumping and re-grading activities on the WHHS Property with actual knowledge of the fact that they had no right to do so.

183. CEM and Charlie's actions in entering upon WHHS Property to conduct the above activities are an unauthorized entry upon the land of another, and constitute both negligent and intentional trespass to the WHHS Property.

184. CEM and Charlie's trespass upon the WHHS Property was intentional, and conducted with actual malice towards the rights of WHHS.

185. WHHS is entitled to damages as a result of CEM and Charlie's trespass upon the WHHS Property, including punitive damages because such trespass was done with knowledge that CEM and Charlie lacked any legal right, title or interest in the WHHS property to conduct the extensive logging, dumping and re-grading activities, and thus constitutes willful, wanton, malicious, and oppressive conduct toward WHHS.

COUNT XI
NEGLIGENCE AND VIOLATION OF KRS 224.40-100

186. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

187. KRS 224.40-100 prohibits anyone from "dispos[ing] of waste at any site or facility" unless "a permit for waste disposal has been issued by the cabinet."

188. As an owner and lessee of real property that is not a permitted waste disposal site, WHHS is within the class of persons that the regulation is intended to protect from the injury of illegal dumping.

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189. CEM and Charlie have filled the sub-earth with debris and material on portions of both the Leasehold and WHHS Property without a permit in violation of KRS 224.40-100.

190. CEM and Charlie's illegal dumping activities have caused damage to both the Leasehold and WHHS Property, thereby causing injury to WHHS.

191. CEM and Charlie's actions constitute negligence and negligence per se under KRS 446.070.

192. WHHS is entitled to damages, including all reclamation costs, as a result of CEM and Charlie's negligence in dumping items upon the Leasehold and WHHS Property.

COUNT XII
VIOLATION OF KRS 364.130

193. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

194. CEM and Charlie's extensive logging activities on WHHS Property violate KRS 364.130.

195. Under KRS 364.130, WHHS is entitled to treble damages for both the cost of the damages to the WHHS Property and for the stumpage value of the timber, as well as recovery of legal costs incurred.

COUNT XIII
DEFAMATION

196. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

197. Charlie, Ernie, Denise, and Chelsey have published false and defamatory statements concerning WHHS and its board members to members of the general public via social media platforms, podcasts and media platforms, and printed literature.

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198. Charlie, Ernie, Denise, and Chelsey negligently or intentionally communicated those false and defamatory statements to members of the general public without privilege to do so.

199. As a result of these activities, WHHS and its board members has suffered injury to its reputation, loss of visitors, and other actual damages. Defendants' defamatory statements include, without limitation, accusations of criminal conduct by WHHS and its board members. Thus, Defendants' statements constitute defamation *per se*.

200. Defendants' actions described above have caused WHHS to sustain damages including, but not limited to, lost revenue, lost donations, lost customer relationships and future lost customer relationships, lost or diminished competitive advantages, and injury to its goodwill and reputation.

201. WHHS is entitled to damages, including without limitation special damages for its pecuniary losses, consequential damages, compensatory damages, punitive damages, due to Defendants' defamatory statements as Defendants engaged constitute willful, wanton, malicious, and oppressive conduct.

COUNT XIV
TORTIOUS INTERFERENCE

202. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

203. WHHS cultivated, developed and maintained a number of business relationships with customers and donors, both prospective and existing.

204. Each of these relationships represented an actual likelihood and were substantially probable to develop into a pecuniary advantage for WHHS.

205. As set forth above, Charlie, Ernie, Denise, and Chelsey have each intentionally, and with a specific purpose, caused each other and caused themselves, to interfere with WHHS's relationships so as to improperly thwart WHHS's relationships.

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206. Each interference was undertaken with actual knowledge of WHHS's relationship.

207. Charlie, Ernie, Denise, and Chelsey have each taken action and made statements with the express purpose of bringing about the interference.

208. But for any such interference, WHHS would enjoy the relationships and prospective advantages.

209. Charlie, Ernie, Denise and Chelsey's motive is malicious, pecuniary and personal.

210. Charlie, Ernie, Denise and Chelsey's statements and actions have caused damage to WHHS's business reputation and operations.

211. Defendants' actions described above have caused WHHS to sustain damages including, but not limited to, lost revenue, lost donations, lost customer relationships and future lost customer relationships, lost or diminished competitive advantages, and injury to its goodwill and reputation.

212. WHHS is entitled to damages, including without limitation special damages for its pecuniary losses, consequential damages, compensatory damages, punitive damages, due to Defendants' tortious interference.

COUNT XV
UNFAIR COMPETITION

213. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

214. By engaging in the above described conduct, Defendants committed the tort of unfair competition.

215. Defendants' actions described above have caused WHHS to sustain damages including, but not limited to, lost revenue, lost donations, lost customer relationships and future lost

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customer relationships, lost or diminished competitive advantages, and injury to its goodwill and reputation.

216. WHHS is entitled to damages, including without limitation special damages for its pecuniary losses, consequential damages, compensatory damages, punitive damages, due to Defendants unfairly competing.

COUNT XVI
MISTAKE OR FRAUD

217. WHHS incorporates by reference the allegations contained in all prior paragraphs of this Complaint.

218. As set forth above, between January 2016 when WHHS acquired the property for $200,000 and January 2020, WHHS was the fee simple title and legal owner of the 4515 East Pages Lane Parcel.

219. CEM, however, purports to be the owner of the East Pages Lane Parcel by virtue of a conveyance for $112,000 in January of 2020.

220. WHHS did not intend or authorize a conveyance of the 4515 East Pages Lane Parcel to CEM for $112,000.

221. At the time of the purported conveyance, WHHS was acting under a mistaken belief that the land being conveyed was only a portion of the 4515 East Pages Lane Parcel.

222. Specifically, both before and at the time of the purported conveyance, CEM and Charlie represented to WHHS that the conveyance was only as to a portion of the 4515 East Pages Lane Parcel. Further, CEM and Charlie caused the accompanying documentation to be prepared. WHHS was led to believe by CEM and Charlie that the documentation executed was only for a portion of the 4515 East Pages Lane Parcel.

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223. Upon information and belief, at the time of the purported conveyance CEM and Charlie were acting under a mistaken belief that the land being conveyed was a portion of the 4515 East Pages Lane Parcel.

224. Thus, there was no meeting of the minds between WHHS and CEM in entering into the conveyance of the East Pages Lane Parcel, and which prevented the parties from mutually assenting to the conveyance.

225. Further, WHHS did not receive sufficient consideration for the 4515 East Pages Lane Parcel.

226. These mistakes regarding the conveyance relate to a basic assumption upon which the agreement was made, and WHHS would not have entered into the conveyance if it had knowledge of the mistake.

227. These mistakes in the conveyance had a material effect upon the transaction and WHHS would not have entered not the conveyance if it had knowledge of either mistake.

228. WHHS exercised ordinary diligence in entering into the conveyance because it relied upon CEM and Mattingly's representations as to what it was signing.

229. Thus, the purported conveyance of the 4515 East Pages Lane Parcel by WHHS to CEM constitutes a mutual mistake or unilateral mistake. Recission or reformation of the conveyance is required to prevent an unconscionable result to WHHS.

230. In the alternative, if it was not a mistake, WHHS executed the conveyance documents based on the misrepresentations by CEM and Charlie.

231. Specifically, CEM and Charlie's representations to WHHS that the conveyance was only as to a portion of the 4515 East Pages Lane Parcel were false.

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232. CEM and Charlie caused the preparation of the conveyance documents, and they had or should have had actual knowledge that the documentation purports to convey the entirety of the 4515 East Pages Lane Parcel.

233. CEM and Charlie made the misrepresentation with the intent to induce WHHS to execute the conveyance documents.

234. Further, CEM and Charlie had actual knowledge that the consideration was inadequate for the 4515 East Pages Lane Parcel.

235. WHHS relied upon CEM and Charlie's misrepresentation in entering into the conveyance and was induced to execute the documentation associated with the conveyance based on their misrepresentations. This substantially affected WHHS's interest in the agreement to WHHS's detriment.

236. Due to the misrepresentations by CEM and Charlie, the parties did not enter into the conveyance with mutual assent, and recission or reformation of the conveyance is required to prevent an unconscionable result to WHHS.

WHEREFORE, Plaintiff, Waverly Hills Historical Society, Inc., requests the following relief:

1. A Judgment in its favor against Defendants on all causes of action in the Complaint as asserted against each Defendant;
2. An Order rescinding or reforming the conveyance of the 4515 East Pages Lane Parcel;
3. An Order declaring that CEM must sell the Leasehold;
4. An Order declaring that CEM has no legal right to physically possess the Leasehold and has no legal right to any personal property or equipment owned by WHHS;

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5. An Order declaring that an easement exists for WHHS to continue its use of Paralee Drive or alternatively that Paralee Drive is a public road;

6. A bench trial on WHHS's Declaratory Judgment causes of action;

7. An Order awarding WHHS injunctive relief;

8. A jury trial on all other causes of action so triable;

9. An Order awarding WHHS all compensatory, consequential, punitive and other damages as may be proven at trial;

10. An Order awarding WHHS damages for the harm caused by Defendants to the Leasehold and WHHS Property, as well as treble damages under KRS 364.130 for damage to the WHHS Property and the stumpage value of the timber;

11. An accounting of all items that WHHS owns over which CEM and Charlie sold or are currently exercising dominion and control; and

12. An Order awarding WHHS all reasonable attorneys' fees, costs and expenses relating to the subject matter of this dispute, and any other relief as the Court deems just and proper, including but not limited to the right to amend this Complaint as discovery may support.

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Respectfully submitted,

/s/ Lauren R. Nichols

BRENT R. BAUGHMAN (#83469)
DENTONS BINGHAM GREENEBAUM LLP
101 South Fifth Street
3500 PNC Tower
101 South Fifth Street
Louisville, Kentucky 40202
Telephone: (502) 589-4200
Facsimile: (502) 540-2157

AND

LAUREN R. NICHOLS (#94370)
SARAH T. LAREN (#95770)
DENTONS BINGHAM GREENEBAUM LLP
300 West Vine Street
Suite 1200
Lexington, KY 40507
Telephone: (859) 231-8500
Facscimile: (859) 255-2742

COUNSEL FOR PLAINTIFF,
WAVERLY HILLS HISTORICAL
SOCIETY, INC.

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Filed 21-CI-005492 04/14/2022 David L. Nicholson, Jefferson Circuit Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Second Amended Complaint was served upon the following by electronic mail on this the 14th day of April, 2022:

H. Kevin Eddins
Greg Taylor
Eddins Domine Law Group, PLLC
3950 Westport Road
Louisville, KY 40507
KEddins@LouisvilleLawyers.com
GTaylor@LouisvilleLawyers.com

/s/ Lauren R. Nichols
COUNSEL FOR PLAINTIFF

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EXHIBIT 1

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LEASE AGREEMENT

THIS LEASE ("Lease") is entered into on the 11th day of November, 2015, but effective as of the Commencement Date (as defined below), by and between: (i) **C. E. M. LAND COMPANY, LLC**, a Kentucky limited liability company ("Landlord"), whose address is 4400 Paralee Lane, Louisville, KY 40272, and (ii) **WAVERLY HILLS HISTORICAL SOCIETY, INC.**, a Kentucky nonprofit corporation ("Tenant"), whose address is 4400 Paralee Lane, Louisville, KY 40272.

WITNESSETH:

WHEREAS, Landlord owns the real property located at 4400 Paralee Drive in Louisville, Kentucky described on Exhibit A hereto, together with all improvements thereon, including the buildings thereon (the "Buildings"). Said real property and improvements are referred to herein as the "Demised Premises."

WHEREAS, Landlord has leased the Demised Premises to Tenant for use as a historical and educational center and museum since the time of Tenant's formation pursuant to a lease, and the parties desire to execute this document on the date first written above to memorialize such lease.

NOW, THEREFORE, in consideration of the rents paid and to be paid under this Lease and of the promises and agreements contained herein and performed and to be performed pursuant hereto, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
PREMISES AND TERM

1.1 DEMISED PREMISES. Landlord, in consideration of the rent paid and to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Demised Premises.

1.2 TERM. The term ("Term") of this Lease shall be for a term of ninety-nine (99) years, commencing on September 22, 2003 (the "Commencement Date"), and terminating on September 22, 2102, unless earlier terminated pursuant to the terms hereof.

ARTICLE II
RENT

2.1 RENT. The annual fixed rental (the "Annual Fixed Rental") throughout the entire Term of this Lease shall be One Dollar ($1.00) per annum, payable annually in advance, on or before October 1st of each year during the Term.

2.2 ADDITIONAL RENT. Tenant shall pay and all sums of money or charges required to be paid by Tenant as additional rent under this Lease promptly when the same are due, without

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any deduction or set-off whatsoever. All such amounts or charges shall be payable to Landlord at the place where rent is payable.

ARTICLE III
UTILITIES

Tenant agrees during the Term hereof to pay all charges for electricity, water, sewer, gas, heat, air conditioning, Internet, cable TV, telephone and any and all other utility services used and consumed at the Demised Premises.

ARTICLE IV
NET LEASE

It is the purpose and intent of Landlord and Tenant that the rent payable by Tenant hereunder shall be absolutely net to Landlord so that this Lease shall yield, net, to Landlord, the rent specified in Article II hereof, and that all costs, expenses or obligations of every kind and nature whatsoever relating to the Demised Premises shall be paid by Tenant. Tenant hereby agrees to and shall indemnify and save Landlord harmless from and against any such costs, expenses and obligations.

ARTICLE V
INSURANCE

5.1 General Liability and Property Damage Insurance. Tenant agrees that, at its own cost and expense, it shall procure and continue in force, in the names of Landlord and Tenant, general liability insurance against any and all claims for injuries to persons or damage to property occurring in, about or upon the Demised Premises and including all damage to signs, fixtures or other appurtenances, now or hereafter erected upon the Demised Premises, during the Term. Such insurance shall at all times be in an amount not less than One Million Dollars ($1,000,000.00) on account of bodily injury to or death of one (1) person, and One Million Dollars ($1,000,000.00) on account of bodily injuries or death of more than one person as a result of any one accident or disaster, and Five Hundred Thousand Dollars ($500,000.00) for property damage in any one accident. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the Commonwealth of Kentucky, and a certificate of all such policies procured by Tenant in compliance herewith shall be delivered to Landlord at least fifteen (15) days prior to the time such insurance is required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of any such policies. Such insurance shall name Landlord as an additional insured. Such policy shall bear an endorsement stating that the insurer agrees to notify Landlord not less than ten (10) days in advance of the modification or cancellation of any such policy.

5.2 Fire and Extended Coverage - Buildings. Tenant agrees that, at its own cost and expense, it shall procure and continue in force, in the names of Landlord and Tenant, insurance insuring the Buildings, the fixtures and other property located therein, on an all-risk basis, including, but not limited to, the perils of fire, with full extended coverage, vandalism and

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malicious mischief, sprinkler leakage, earthquake, collapse, and falling objects, in an amount not less than One Hundred Percent (100%) of the full insurable replacement value thereof, without credit for depreciation, and in all events sufficient in amount to prevent the insured from being a co-insurer within the terms of the policy or policies in question. Tenant shall further maintain such other insurance in such amounts and against such insurable risks as may from time to time be reasonably required by Landlord. All policies shall provide that loss thereunder shall be payable to Landlord, provided that Landlord shall hold the proceeds of any such policies and make the same available to Tenant to the extent necessary for the repair or restoration of the Demised Premises in accordance with the terms of this Lease. Such insurance shall be written by a company or companies authorized to engage in the business of fire and extended coverage insurance in the Commonwealth of Kentucky, and approved by Landlord, and a certificate of all such policies procured by Tenant in compliance herewith shall be delivered to Landlord at least fifteen (15) days prior to the time such insurance is required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of any such policies. Such policy shall bear an endorsement stating that the insurer agrees to notify Landlord not less than ten (10) days in advance of modification or cancellation thereof.

5.3 FIRE AND EXTENDED COVERAGE - PERSONALTY. Tenant agrees to maintain in full force throughout the Term of this Lease policies of fire insurance, including extended coverage, on all fixtures, equipment and other property of Tenant located in the Demised Premises. Such insurance shall be in amounts at a minimum equal to the replacement value of such fixtures, equipment and other property and a certificate thereof shall be delivered to Landlord at least fifteen (15) days prior to the time such insurance is required to be carried by Tenant, and thereafter, at least fifteen (15) days prior to the expiration of any such policies. Such insurance shall be written by a company or companies authorized to engage in the business of fire and extended coverage insurance in the Commonwealth of Kentucky. Such policy shall bear an endorsement stating that the insurer agrees to notify Landlord not less than ten (10) days in advance of the modification or cancellation of any such policy.

5.4 WAIVER OF SUBROGATION. Landlord and Tenant agree that all policies of insurance to be kept and maintained in force by the respective parties hereto shall, unless prohibited by applicable law or regulation, contain provisions in which the rights or subrogation against Landlord and Tenant are waived by the insurance company or carriers insuring the Demised Premises or property in question.

ARTICLE VI
TAXES AND ASSESSMENTS

Tenant shall pay as additional rent, during the Term of this Lease, on or before the date the same are due and payable without penalty, any and all personal property taxes and real estate taxes and assessments, both general and special, and any other public charges of any nature, ordinary or extraordinary, now or hereafter levied, assessed, charged or imposed upon the Demised Premises during the Term of this Lease, or now or hereafter arising in respect of the occupancy, use or possession of the Demised Premises, or any part thereof, by Tenant. Tenant shall furnish to the Landlord receipts evidencing payment of all such taxes, assessments and

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public charges on or before the date the same are due and payable without penalty, and otherwise upon demand.

ARTICLE VII
USE

7.1 USE OF DEMISED PREMISES. The Demised Premises shall be used by Tenant as a historical and educational center and museum, including guided tours of the Demised Premises, and for uses and activities related thereto. Tenant shall comply with all laws and regulations pertaining to the conduct of such business (including, but not limited to, zoning laws and ordinances applicable to the Demised Premises) and shall obtain and maintain at all times during the Term of this Lease, all licenses, consents or permits required by any governmental or regulatory agency having jurisdiction, and shall hold Landlord harmless from any liability, loss, cost (including reasonable attorneys' fees) or damage which in any respect arises out of the use of the Demised Premises by the Tenant.

7.2 HAZARDOUS SUBSTANCES. Any Hazardous Materials brought onto the Demised Premises by Tenant shall be maintained in full compliance with all applicable laws, rules and regulations. If Hazardous Substances are used, stored, generated or disposed of on or in the Demised Premises or the Buildings, or if the Demised Premises or the Buildings become contaminated in any manner for which Tenant is legally liable, Tenant shall indemnify, defend and hold harmless Landlord from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses arising during or after the Term of this Lease, or at any time prior to the Term of this Lease during which Tenant occupied the Demised Premises or the Buildings, and arising as a result of that contamination by Tenant. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Tenant causes or permits the presence of any Hazardous Substance on or in the Demised Premises or the Buildings that results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Demised Premises and the Buildings to the condition existing prior to the presence of any such Hazardous Substance on or in the Demised Premises or the Buildings. Tenant shall first obtain Landlord's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is regulated by any local government, the Commonwealth of Kentucky, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal or local governmental law. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyls ("PCBs"), petroleum, petroleum products and petroleum wastes. Notwithstanding anything to the contrary contained in this Lease, the provisions of this Section 7.2 shall survive the expiration or termination of this Lease.

7.3 INDEMNITY OF TENANT. Tenant shall indemnify, defend and save harmless Landlord from and against any and all claims, liabilities, losses, damages, injuries, costs, and

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expenses that hereafter may occur or arise from or out of: (a) any failure by Tenant to make any payment (including the payment of rent) to be made by Tenant hereunder or fully to perform or observe any obligation or condition to be performed or observed by Tenant hereunder, (b) any cause whatsoever in, on, about, or relating to the Demised Premises during the Term, however or by whomever caused, including, without limitation, any use, misuse, possession, occupancy, or unoccupancy of the Premises by anyone during the Term, or any failure by Tenant to perform and observe all obligations and conditions to be performed and observed by it under this Lease, and (c) any costs or expenses incurred or paid by Landlord in connection with the foregoing, including reasonable attorneys' fees and other costs and expenses in prosecuting or defending any of the foregoing whether litigated or unlitigated. Unless as a result of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable to Tenant for any losses, damages, injuries, costs, or expenses whatsoever relating to the Demised Premises, including, without limitation, any interruption or cessation of the business of Tenant or any subtenant or loss incurred as a consequence of damage to or destruction of the Demised Premises. Tenant shall defend all lawsuits (including, without limitation, arbitrations and administrative proceedings) with respect to any such claims for losses, costs, expenses, or damages, and shall pay all judgments and settlements relating thereto.

ARTICLE VIII
ALTERATIONS AND SIGNS

8.1 INSTALLATION BY TENANT. Tenant shall not make or cause to be made any alterations, additions or improvements to the mechanical systems, sprinklers, roof or outer walls of the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

8.2 REMOVAL BY TENANT. All alterations, installations, additions and improvements in or to the Demised Premises, whether installed by Landlord or Tenant, shall be deemed to have attached to the Demised Premises and to have become the property of Landlord upon such attachment, and upon expiration of this Lease, Tenant shall not, unless Landlord specifies otherwise, remove any of such alterations, installations, additions and improvements, except trade fixtures installed by Tenant which may be removed if all rents due hereunder shall have been paid in full and Tenant is not otherwise in default hereunder.

8.3 SIGNS. Tenant shall have the right to install, at its sole cost and expense, signage upon the Buildings, provided all such signage is installed with Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant shall maintain any sign in good condition and repair at all times during the Term of this Lease. Tenant shall obtain all applicable governmental permits and approvals for signage installed on the Demised Premises or upon the Buildings at Tenant's expense.

8.4 MECHANICS' LIENS. If a mechanic's lien is filed against the Demised Premises for, or purporting to be for, labor or material alleged to have been furnished, or to be furnished to, or for Tenant or any subtenant or assignee of Tenant at the Demised Premises, Tenant shall cause such lien to be discharged within twenty (20) days after written notice from Landlord, by

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bonding proceedings or otherwise. If Tenant shall fail to take such actions as shall cause such lien to be discharged within said twenty (20) day period, Landlord may, at its option, pay the amount of such lien or may discharge the same by bonding proceedings and, in the event of such bonding proceedings, Landlord may require the lienor to prosecute the appropriate action to enforce the lienor's claim. Any such amount paid or expense incurred by Landlord, or any expense incurred or sum of money paid by Landlord by reason of the failure of Tenant to comply with the foregoing provisions of this paragraph, or in defending any such action, shall become immediately due and payable as rent by Tenant to Landlord. Any such payment by Landlord shall not be deemed to be a waiver of any other rights which Landlord may have under the provisions of this Lease or as provided by law.

ARTICLE IX
MAINTENANCE AND REPAIR

9.1 TENANT'S OBLIGATION FOR MAINTENANCE AND REPAIR. Tenant shall keep and maintain in good order, condition and repair, the Demised Premises and every part thereof and any and all appurtenances thereto wherever located. Said repairs shall include, without limitation, ordinary repairs to keep the Demised Premises and all heating, air condition, plumbing and electrical systems, all fixtures and equipment, all floor coverings, windows, doors, overhead doors, and landscaping in good order and repair, and shall also include maintenance and repair of the foundation, the structural components, the floors, the roof/roof membrane, the exterior walls, the skylights and roof vents and the drains and downspouts of the Buildings. Tenant shall keep and maintain the Demised Premises in a clean, sanitary and safe condition in accordance with the laws of the Commonwealth of Kentucky, and in accordance with all directions, rules and regulations of any health officer, fire marshal, building inspector, or other proper officials of any governmental agencies having jurisdiction, at the sole cost and expense of Tenant, and Tenant shall comply with all requirements of law, ordinance or otherwise affecting the Demised Premises. If Tenant refuses or neglects to commence and complete repairs promptly and adequately, Landlord, following at least fifteen (15) days prior written notice to Tenant shall have the right (but not the obligation) to cause repairs to be made. Any amounts paid by Landlord shall not be deemed to be a waiver of any other rights which Landlord may have under the provisions of this Lease or as provided by law. At the time of the expiration of this Lease and any extension thereof, Tenant shall surrender the Demised Premises in good condition, reasonable wear and tear excepted.

9.2 NEGLIGENCE OF TENANT. Tenant shall make any repairs to the Demised Premises or the Buildings necessitated solely by reason of the negligence, fault or default of Tenant, or Tenant's agents, employees, contractors or invitees.

ARTICLE X
ESTOPPEL, ATTORNMENT AND SUBORDINATION

10.1 ESTOPPEL. Tenant agrees that, within ten (10) days after receipt of written request therefor by Landlord, to execute in recordable form and delivery to Landlord a statement, in writing, certifying: (a) that this Lease is in full force and effect, (b) the date of commencement

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of the Term of this Lease, (c) that rent is paid currently without any offset of defense thereto, (d) the amount of rent, if any, paid in advance, and (e) that there are no uncured defaults by Landlord, or stating those defaults of Landlord claimed by Tenant, provided that, if any such defaults are claimed, such facts are accurate and ascertainable.

10.2 ATTORNMENT. Tenant shall, in the event any proceedings are brought for foreclosure of, or in the event of any exercise of the power of sale under any mortgage made by Landlord covering the Demised Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease, provided that such purchaser has granted Tenant a non-disturbance agreement, and provided that such purchaser has assumed all of the obligations of Landlord hereunder.

10.3 SUBORDINATION. Tenant agrees that this Lease shall, at the request of Landlord, be subordinate to any mortgage that now exists or may hereafter be placed on the Demised Premises and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, provided that the mortgagee named in said mortgages shall agree to recognize this Lease in the event of foreclosure if Tenant is not then in default. Tenant also agrees that any mortgagee may elect to have this Lease a prior lien to its mortgage and, in the event of such election and upon notification by such mortgagee or trustee to Tenant to that effect, this Lease shall be deemed prior in lien to said mortgagee. Tenant agrees that upon the request by Landlord, any mortgagee, it shall execute whatever instruments may be reasonably required to carry out the intent of this Section 10.3.

ARTICLE XI
ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily, involuntarily or by operation of law assign, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Demised Premises without first obtaining Landlord's express written consent.

ARTICLE XII
WASTE OR NUISANCE

Tenant shall not commit or suffer to be committed any waste upon the Demised Premises. Tenant shall not use or permit to be used on the Demised Premises any medium that might constitute a nuisance.

ARTICLE XIII
DESTRUCTION OF DEMISED PREMISES

If the Demised Premises are damaged by fire or any other cause to such extent that the cost of restoration will equal or exceed fifty percent (50%) of the replacement value of the Demised Premises (exclusive of the foundation) just prior to the occurrence of the damage, either party to this Lease may, no later than the thirtieth (30th) day following the damage, give Tenant

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notice of its election to terminate this Lease, and the rent and other charges due hereunder shall be apportioned as of the date of such termination.

In the event of any damage or destruction of all or part of the Demised Premises, Landlord shall be entitled to the entire amount of all insurance proceeds from insurance policies maintained pursuant to Section 5.2 of this Lease, provided that if Landlord elects to restore the Demised Premises as set forth herein, any excess insurance proceeds over the amount required for such restoration shall be paid to Tenant.

In any such case in which use of the Demised Premises is affected by any damage to the Demised Premises, there shall be either an abatement or an equitable reduction in rent, depending on the period for which and the extent to which the use of the Demised Premises by Tenant is affected, which abatement or reduction of rent shall be determined in the commercially reasonable judgment of Landlord.

ARTICLE XIV
EMINENT DOMAIN

14.1 TAKING OF PREMISES. In the event that the whole of the Demised Premises is taken under the power of eminent domain by any public authority, this Lease shall terminate and expire as of the date possession is taken by the public authority and Tenant shall pay rents up to the date of such taking with an appropriate refund by Landlord of such amounts thereof as shall have been paid in advance for a period subsequent to the date of the taking. If less than the whole of the Demised Premises shall be so taken, then Landlord may, at its option and upon notice to Tenant delivered on or before the day of surrendering possession to the public authority, terminate this Lease effective the date of possession shall be so taken by such public authority, and Tenant shall pay rents up to the date of such taking with an appropriate refund by Landlord of such amounts thereof as may have been paid in advance for a period subsequent to the date of the taking. In the event that Landlord does not so terminate this Lease, all of the terms herein provided shall continue in effect and Landlord shall make all necessary repairs or alterations to the Buildings and exterior work so as to constitute the remaining portion of the Demised Premises to a complete architectural unit. In the event Landlord is obligated to restore the Demised Premises to a complete architectural unit, as above provided, Landlord shall not be required to spend for such work an amount in excess of the amount received by Landlord as damages for the part of the Demised Premises so taken, less any amount paid to Landlord's mortgagee from such award.

14.2 COMPENSATION FOR TAKING. In the event the Demised Premises, or any part thereof, shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by competent authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion or fee, shall belong to Landlord without any deductions therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest to any such award. Although all damages in the event of any condemnation are to belong to Landlord, whether such damages are

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awarded as compensation for diminution in value of the leasehold, reversion or fee of the Demised Premises, Tenant shall, in the event this Lease is terminated by reason thereof, have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment, and moving/relocation expenses.

ARTICLE XV
DEFAULT BY TENANT

15.1 EVENTS OF DEFAULT. It is expressly agreed that each of the following shall constitute an event of default hereunder:

(a) The failure, neglect or refusal of Tenant to pay any installment of Annual Fixed Rental or additional rent at the time and in the amount as herein provided, or to pay any other monies agreed by it to be paid promptly when and as the same shall become due and payable under the terms hereof.

(b) The filing of any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy act against Tenant or the institution of any voluntary or involuntary proceeding in any court or tribunal to declare Tenant insolvent or unable to pay its debts, and the same shall not be dismissed or discharged within thirty (30) days after Tenant's receipt of notice thereof in writing by Landlord.

(c) The failure, neglect or refusal of Tenant to keep and perform any of the covenants, conditions or stipulations herein contained and covenanted and agreed to be kept and performed by it and such failure, neglect or refusal shall continue for a period of more than thirty (30) days after Tenant's receipt of notice thereof in writing by Landlord; provided, however, that if the cause for giving such notice involves the making of repairs or other matter reasonably requiring a longer period of time than such thirty (30) day period, Tenant shall be deemed to have complied with such notice within said period of time if Tenant is diligently prosecuting compliance with said notice or has taken the proper steps or proceedings under the circumstances to prevent the seizure, destruction, alteration or other interference with the Demised Premises by reason of non-compliance with the requirements of any law or ordinance or with the rules, regulations or directions of any governmental authority, as the case may be.

(d) The making of any assignment by Tenant of the Demised Premises, or part thereof, for the benefit of creditors, or should the Demised Premises be taken under any levy of execution or attachment in execution against Tenant, and such levy, attachment or assignment is not dismissed and discharged within thirty (30) days after written notice thereof given by Landlord to Tenant.

15.2 TERMINATION OF LEASE. Upon the occurrence of any event of default as set forth in Section 15.1 hereof, then Landlord, in addition to other rights or remedies that Landlord

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may have as provided by law, shall have: (a) the right to declare this Lease terminated and the term ended, and/or (b) the right to enter the Demised Premises and the right to remove all partitions and properties from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost and expense of Tenant without prior notice to Tenant or to resort to legal process and without being deemed guilty of trespass or becoming liable for loss or damage which may be occasioned thereby.

15.3 RIGHT TO RELET. Should Landlord elect to enter the Demised Premises, as provided in Section 15.2 hereof, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease, or it may, from time to time, without terminating this Lease make such alterations and repairs as may be necessary in order to relet the Demised Premises. Landlord will use good faith efforts to relet the Demised Premises, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord, in its commercially reasonable judgment, may deem advisable. Upon each such reletting, all rentals and other sums received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorneys' fees and of costs of such alterations and repairs; third, to the payment of rent and other charges due and unpaid hereunder; and fourth, the remainder, if any, shall be held by Landlord and applied in payment of future fixed and additional rent as the same may become due and payable hereunder. If such rentals and other sums received from such reletting during any month is less than that to be paid during the month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reentry or taking possession of the Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention shall be given by Landlord to Tenant or unless the termination hereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time hereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies that Landlord may possess pursuant to the terms of this Lease or as provided by law, Landlord may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Demised Premises, reasonable attorneys' fees, and the present value at the time of such termination of the amount of fixed and additional rent and other charges equivalent to rent reserved in this Lease for the remainder of the stated term of this Lease, all of which amount shall be immediately due and payable by Tenant to Landlord, less amounts realized by Landlord in connection with reletting of the Demised Premises.

15.4 COSTS AND EXPENSES. In the event that a lawsuit is brought by Landlord for recovery of possession of the Demised Premises, for recovery of rent or any other amount due under the provisions of this Lease or because of the breach of any other covenant herein contained on the part of Tenant to be kept and performed, and a breach shall be established, Tenant shall pay to Landlord reasonable all expenses incurred therefor, including reasonable attorneys' fees.

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ARTICLE XVI
RIGHTS RESERVED TO LANDLORD

Landlord may enter upon the Demised Premises and may exercise any and all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

ARTICLE XVII
TENANT'S PROPERTY

17.1 TAXES ON TENANT'S PROPERTY. Tenant shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes assessed during the Term of this Lease against any leasehold interest or personal property of any kind, owned by or placed in, upon or about the Demised Premises by Tenant.

17.2 LOSS OR DAMAGE. To the extent permitted by law, Tenant releases Landlord and Landlord's agents, servants and employees, from and waives all claims for damage to person or property sustained by Tenant or any occupant of the Demised Premises resulting from the Demised Premises or any part or any equipment or appurtenance becoming out of repair, or resulting from any accident in, on or about the Demised Premises, or resulting directly or indirectly from any act or neglect of any occupant of the Demised Premises or of any other person, unless caused by the sole negligence of Landlord or Landlord's agents, servants and employees. This Section 17.2 shall apply to, but is not limited to, the flooding of subsurface areas and damage caused by refrigerators, sprinkling devices, air conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken fixtures, and shall apply equally whether any such damage results from the act or neglect of Landlord or of any other person, and whether such damage be caused or result from any thing or circumstance above mentioned or referred to, or any other thing or circumstance whether of a like nature or of a wholly different nature. If any such damage, whether to the Demised Premises or any part thereof, or to Landlord, results from any act or neglect of Tenant, Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, reimburse Landlord forthwith for the total cost of such repairs. Tenant shall not be liable for any damages caused by its act or neglect if Landlord has recovered the full amount of the damages from insurance, and the insurance company has waived in writing its rights of subrogation against Tenant. All property belong to Tenant or any occupant of the Demised Premises that is located in the Demised Premises shall be there at the risk of Tenant or other person only, and Landlord shall not be liable for damages thereto or theft or misappropriation thereof..

ARTICLE XVIII
HOLDING OVER

18.1 HOLDING OVER. Any holding over after the expiration of this Lease or any extension thereof, without the consent of Landlord, shall be construed to be a tenancy from month-to-month at a monthly rent equal to one hundred fifty percent (150%) of the monthly

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rental payment payable by Tenant at the expiration of this Lease, or any extension thereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

18.2 SUCCESSORS. All rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the several respective successors and assigns of said parties, and any successor of Landlord shall expressly assume all of Landlord's rights and duties pursuant to this Lease.

ARTICLE XIX
QUIET ENJOYMENT

Upon the payment by Tenant of the rents and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Demised Premises for the Term of this Lease or any extension thereof without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE XX
LIABILITY OF LANDLORD

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Demised Premises and neither Landlord nor any other person or interest or entity owning any interest in or affiliated with Landlord shall be liable for any deficiency.

ARTICLE XXI
MISCELLANEOUS

21.1 WAIVER. One or more waivers of a breach of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or for any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or for any subsequent similar act by Tenant. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing signed by Landlord.

21.2 ENTIRE AGREEMENT. This Lease and any exhibits, addendum or rider attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Premises and there are no promises, agreements, conditions or understandings, either oral or written, between them

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other than are herein set forth. No alternation, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by the parties hereto.

21.3 INTERPRETATION AND USE OF PRONOUNS. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto. It is expressly understood and agreed between the parties hereto that neither the method of computation of rent, nor any of the provisions contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

21.4 DELAYS. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period equivalent to the period of such delay. The provisions of this Section 21.4 shall not operate to excuse Tenant from prompt payment of rent or any other payments required by the terms of this Lease.

21.5 NOTICES. Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be hand delivered and shall be addressed to the parties at the addresses set forth in the preamble hereto or to such other addresses as Landlord or Tenant shall designate by written notice to the other party. Notice shall be effective upon receipt.

21.6 HEADINGS. The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease, nor in any way affect this Lease.

21.7 APPROVAL AND AUTHORIZATION. Tenant represents and warrants to Landlord that the execution and delivery of this Lease by Tenant has been duly authorized and approved by Tenant's board of directors, and the individuals signing this Lease on behalf of Tenant have all requisite power and authority to execute, deliver and perform this Lease without the approval of any other person or entity.

21.8 ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated to be paid by Tenant to Landlord or any endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

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21.9 LAWS OF THE COMMONWEALTH OF KENTUCKY. This Lease shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky. If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law.

21.10 COMMISSIONS. The parties hereby acknowledge represent and warrant that no broker or person is entitled to any leasing commission or compensation as a result of the negotiation or execution of this Lease. Each party shall indemnify the other party and hold it harmless from any and all liability for the breach of any such representation and warranty on its part and shall pay any compensation to any other broker or person who may be deemed or held to be entitled thereto.

IN WITNESS WHEREOF, the parties have entered into this Lease as of the date first written above.

C. E. M. LAND COMPANY, LLC, a Kentucky limited liability company

By: _____
Charles E. Mattingly, Manager

("Landlord")

WAVERLY HILLS HISTORICAL SOCIETY, INC., a Kentucky nonprofit corporation

By: _____
Joseph David Price, President

("Tenant")

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EXHIBIT A

Legal Description

BEING Tract 2, as shown on a Minor Subdivision Plat of the former Waverly Hills Sanitarium or Woodhaven Medical Center property, as per the survey dated December 31, 1986, and certified by C. B. Moody, which Plat was recorded in Deed Book 5646, Page 541, in the Jefferson County Clerk's office, as corrected and rerecorded in Deed Book 5650, Page 168, in the office aforesaid.

BEING the same property acquired by C.E.M. Land Company, LLC, by Deed dated June 20, 2001, of record in Deed Book 7672, Page 928, in the office aforesaid.

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EXHIBIT 2

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1. Historic Name (s) Waverly Hills Tuberculosis Sanatarium
Historic Buildings (see page 3)

22. APP/County Jefferson/Jefferson

Original Owner: Board of Trustees, TB Hospital

23. Zoning Classification
Magisterial District

Present Name: Waverly Hills Geriatrics Center
Woodhaven Medical Services

24. U.S.G. S. Quadrant (15'/75') Louisville West

3. Owner's Name: Commonwealth of Kentucky
(SEE NEXT PAGE)

25. UTM Reference: SEE Attached
Zone Easting Northing

4. Owner's Address

5. Location: 8101 Dixie Highway, Louisville, Ky.

26. Prehistoric Site Object
Historic Site Structure
Building X

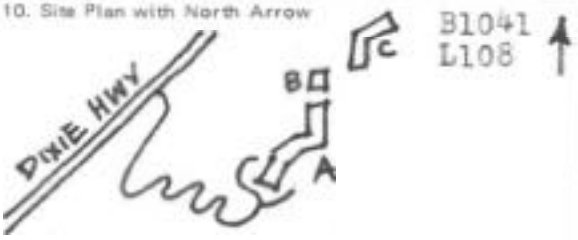
6. Open to Public: Yes X No
7. Visible from road: Yes No X
8. Ownership: Private; Local X; State X; Federal

27. District Yes No X
Name:

9. Local Contact/Organization: Jefferson County Office of Historic Preservation

28. Significance Evaluation

10. Site Plan with North Arrow



11. Architect (SEE NEXT PAGE)

12. Builder Unknown

13. Date ca. 1911-1928

14. Style Tudor Gothic

15. Original Use Tuberculosis Sanatarium

16. Present Use Geriatrics Center/medical ser.

17. Condition
Interior
Exterior Good

See boundary description and attached aerial photo.

29. Status — Date
National Landmark
National Register
Landmark Certificate
Kentucky Survey x 1977
Local Landmark
HABS/HAER

30. Theme
Primary Architecture
Secondary Social/Humanitarian
Other

31. Endangered Yes No

32. ATTACH PHOTO

18. Description
The Waverly Hills complex contains three major buildings. The main structure is a large four-story brick and stone building with a curved plan and a square tower above the entrance. There is a three-bay Gothic-arched entrance porch. Near the main building is a two-story, frame structure with half-timber work. There are two sections now joined (SEE NEXT PAGE)

19. History
The Waverly Hills Tuberculosis Sanatarium was established with the appointment of a board of directors in 1906. A tax levied by the City and County enabled the board to build the first sanatarium about 1909-1911. Much of the land making up the site of the sanatarium was acquired in 1908 from Major Thomas H. Hays from whose country estate, "Waverly (SEE NEXT PAGE)

Roll No.
Picture No.
Direction

20. Significance
The Waverly Hills buildings are significant as examples of early twentieth-century Tudor Gothic Revival architecture. They were designed by three prominent architects who worked in Louisville and Jefferson County at the turn of the century in (SEE NEXT PAGE)

33. Tape No. Negative No.

34. Prepared by:
Mary Jean Kinsman
Researcher

35. Organization Jefferson County Office of Historic Preservation

36. Date 31 August 1979

21. Source of Information
American Architect, XCVI, 21 July 1909, p.8.
(SEE NEXT PAGE)

37. Revision Dates 38. Staff Review

JUL 1 1980

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000002 of 000016

#73,76,77

3 & 4 continued

Department of Finance
Frankfort, Kentucky

11. continued

J.J. Gaffney (1909-11)
D.X. Murphy (1922-28)
Arthur Loomis (1922-28)

18. continued

and this may have been the building erected about 1910-11. Northwest of these buildings is a 2½ story brick building with stone trim. It is a Y-shaped structure, in a Tudor Gothic style. The complex is situated on top of a wooded hill in southwestern Jefferson County.

19. continued

Hill," the sanatarium took its name. The Major's brick country home no longer exists.

The two-story frame and half-timbered building may be one of the structures erected c.1911. A notice in the American Architect, 21 July 1909, stated that bids would be received by the hospital board for construction of buildings at Waverly Hill. It was signed by J.J. Gaffney, architect. Gaffney was a well-known Louisville architect in the late 1800s and early 1900s. He designed churches, commercial buildings, and residence. (See JF 154)

In 1922 the hospital board urged the Louisville General Council and Jefferson County Board of Commissioners to support a bond issue for the construction of new buildings for the sanatarium. Arthur Loomis of Louisville was chosen as architect in 1922 and in 1924 the firm of D.X. Murphy and Bro. was selected to assist in the design and construction of the new buildings. The four-story main building was dedicated in October, 1926 and the 2½ story brick building was evidently completed about 1928. Both Arthur Loomis and D.X. Murphy were outstanding and prolific Louisville architects at the turn of the century.

Control of the Waverly Hills Sanatarium was transferred to Louisville and Jefferson County in 1942 when the Kentucky General Assembly created in each county containing a first-class City a city-county board of health. In 1960 the Commonwealth of Kentucky assumed the care of tuberculosis patients and those at Waverly Hills were transferred to state institutions. The Kentucky Geriatrics Foundation, a private, non-profit corporation, was formed and the buildings at

JUL 1 1980

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000003 of 000016

19. continued

Waverly Hills were leased in 1962 to house a center to care for elderly residents.

20. continued

Revival styles. The Waverly Hills complex is also significant as a symbol of the outstandingly successful effort by medical science to eradicate tuberculosis-the "White Plague"- as a fatal disease.

21. continued

"Fighting for Health at Waverly Hills," The Courier-Journal, 9 January 1921.
"One Million Dollars for Hospital Urged," The Courier-Journal, 1 January 1922.
The Courier-Journal, 22 November 1922, Sec. 1, p.3.
"Loomis Selected to Draw Plans for T.B. Hospital," The Louisville Times, 22 November 1922.
"Architects Named to Assist Loomis," The Courier-Journal, 19 July 1924.
"Waverly Hills Hospital to be Dedicated," The Louisville Times, 7 October 1926.
"Modern New Sanatarium at Waverly Hills," The Herald-Post, 23 July 1928.
Jefferson County (KY) Deed Books
Information from Kentucky Geriatrics Foundation, Inc.

25.

#75	Main Building	16/601540/4220680
76	Staff Building	16/601600/4220770
77	Annex Building	16/601700/4220930

JUL 1 1980

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000004 of 000016

Additional Information Requested by NPS

JF-75,76,77 September 3, 1982
Waverly Hills Tuberculosis Sanitarium
8101 Dixie Highway

Description

In 1962 the Louisville architectural firm of Luckett and Farley performed minor repairs and alterations at Waverly Hills, including painting and other cosmetic repairs for the buildings at a cost of $300,000. A renovation and modernization program in 1968 called for replacement of the original heating system, rewiring; and the addition of half-baths between most of the rooms.

Boundary Description

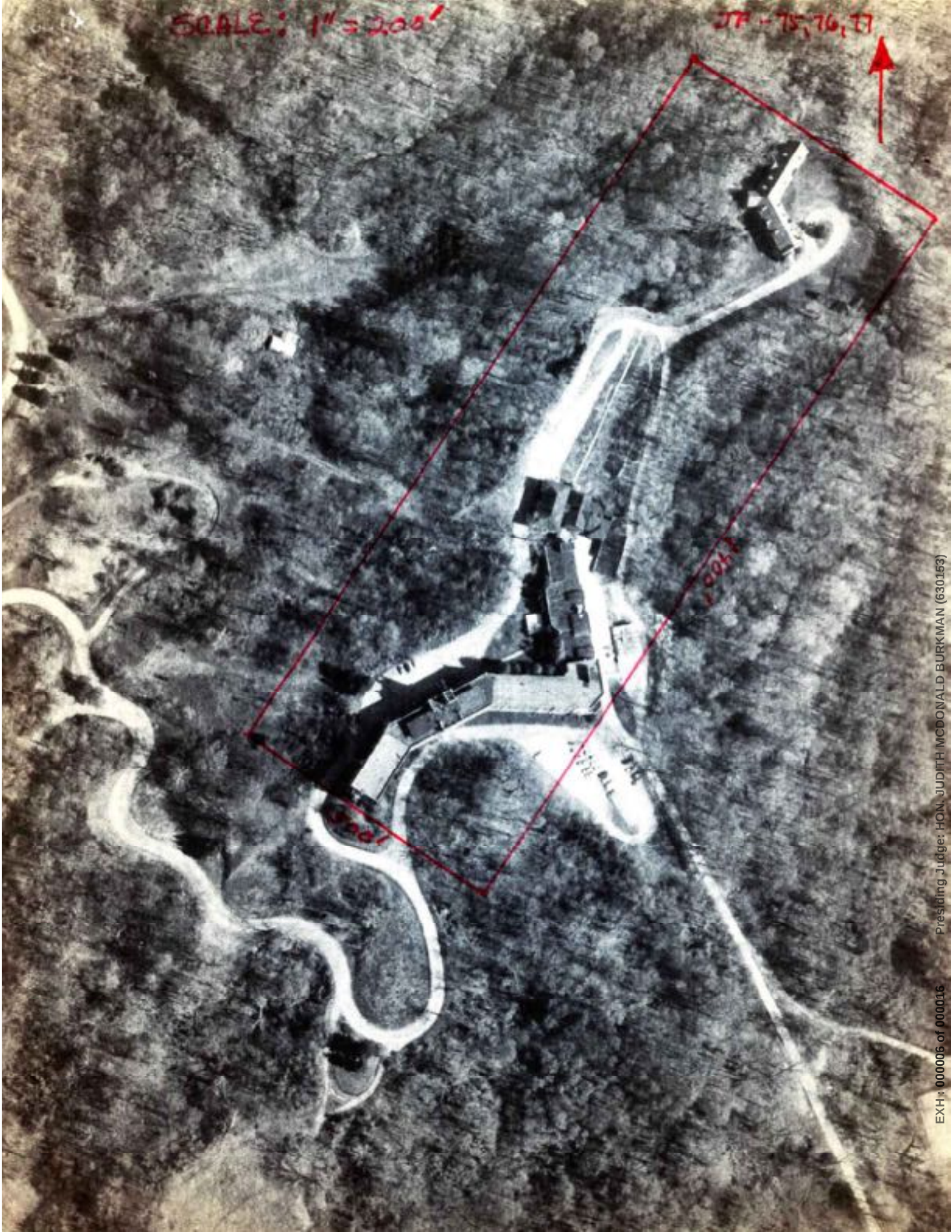
The boundary of the Waverly Hills Sanitarium nomination is shown as a red line on the attached aerial photograph. (SCALE: 1"= 200') The nominated site contains approximately 16 acres and includes three buildings.

UTM Reference

A. 16/601780/4220990
B. 16/601560/4220580
C. 16/601380/4220640
D. 16/601600/4221060

Midpoint = 16/601580/4220780

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000005 of 000016



EXH: 000006 of 000016 Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)

JF - 75, 76, 77

EXH : 000007 of 000016 Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)

NPS Form 10-900-a
(3-82)

OMB No. 1024-0018
Exp. 10-31-84

United States Department of the Interior
National Park Service

National Register of Historic Places Inventory—Nomination Form

For NPS use only
received
date entered

Continuation sheet | Item number | Page 1 of 8

Multiple Resource Area
Thematic Group

dnr-11

Name Jefferson County Multiple Resource Area
State Kentucky

Nomination/Type of Review			Date/Signature
1. Kosmosdale Depot	Substantive Review	Keeper	Carol Shull 4/9/84
		Attest	
2. Farnsley, David, House	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
3. Jones House	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
4. Waverly Hills Tuberculosis Sanatarium Historic Buildings	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
5. Fishpool Plantation	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
6. Bates, John, House	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
7. Pennsylvania Run Presbyterian Church	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
8. Triaero	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
9. Locust Avenue (Clearwater Farm)	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	
10. Seebolt-Wilhoite-Pendergrass House	Substantive Review	Keeper	accept Patrick Andrus 7/12/83
		Attest	

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000008 of 000016

ATIONAL REGISTER OF HISTORIC PLACES — EVALUATION / RETURN SHEET

ited States Department of the Interior
tional Park Service

Substantive Review

Waverly Hills Tuberculosis Sanatarium
Historic Buildings (Jefferson Co. MRA)
Jefferson County
KY

Working No. 7/1/80
Fed. Reg. Date: 2.7.84
Date Due: 7/18/83
Action: ✓ ACCEPT 7/12/83
___ RETURN
___ REJECT
Federal Agency: ___

✓ resubmission
___ nomination by person or local government
___ owner objection
___ appeal
Substantive Review: ___ sample ___ request ___ appeal ___ NR decision

Reviewer's comments:

on resubmission info. on alterations & boundary have been provided

Recom./Criteria accept A&C
Reviewer Patrick Andrus
Discipline Historian
Date 7/12/83
___ see continuation sheet

Nomination returned for: ___ technical corrections cited below
___ substantive reasons discussed below

1. Name

2. Location

3. Classification

Category | Ownership | Status | Present Use
Public Acquisition | Accessible

4. Owner of Property

5. Location of Legal Description

6. Representation in Existing Surveys

Has this property been determined eligible? ___ yes ___ no

7. Description

Condition: ___ excellent ___ good ___ fair ___ deteriorated ___ ruins ___ unexposed
Check one: ___ unaltered ___ altered
Check one: ___ original site ___ moved date ___

Describe the present and original (if known) physical appearance

___ summary paragraph
___ completeness
___ clarity
___ alterations/integrity
___ dates
___ boundary selection

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000009 of 000016

8. Significance

Period Areas of Significance—Check and justify below

Specific dates Builder Architect

Statement of Significance (in one paragraph)

____ summary paragraph
____ completeness
____ clarity
____ applicable criteria
____ justification of areas checked
____ relating significance to the resource
____ context
____ relationship of integrity to significance
____ justification of exception
____ other

9. Major Bibliographical References

10. Geographical Data

Acreage of nominated property _____
Quadrangle name _____
UMT References

Verbal boundary description and justification

11. Form Prepared By

12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

___ national ___ state ___ local

State Historic Preservation Officer signature

title date

13. Other

____ Maps
____ Photographs
____ Other

Questions concerning this nomination may be directed to _____

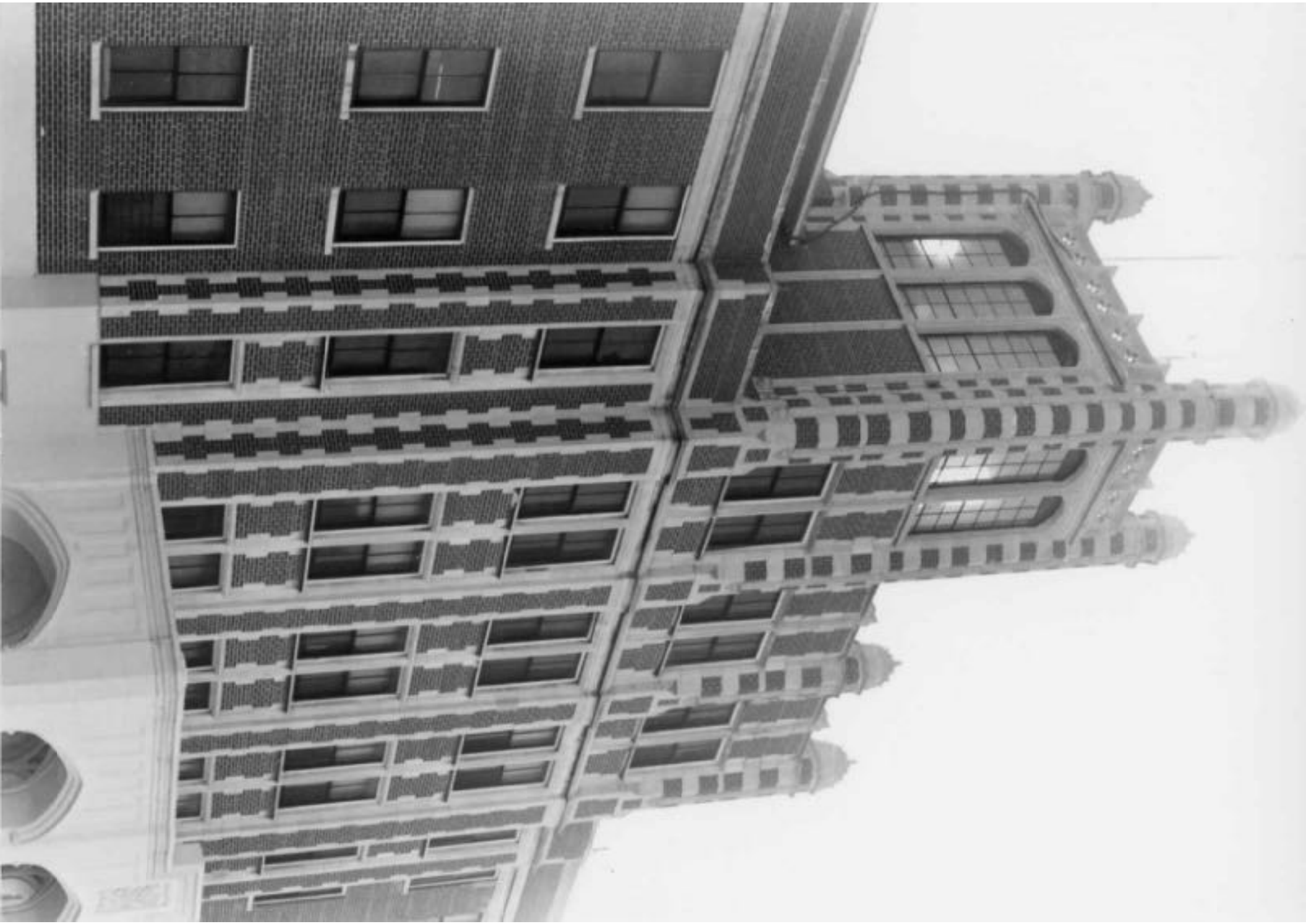
Signed _____ Date _____ Phone: 202 272-3504

Comments for any item may be continued on an attached sheet

Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)
EXH : 000010 of 000016











Please refer to the map in the Multiple Property Cover Sheet for this property

Multiple Property Cover Sheet Reference Number: 64000231

EXH : 000016 of 000016 Presiding Judge: HON. JUDITH MCDONALD BURKMAN (630153)

5650 PG 170

SEE SHEET 2 FOR DEDICATION AND PLAT NOTES

SHEET 1 OF 3

5650 PG 170

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BOOK 5535 PAGE 781

BOOK 5337 PAGE 30

DEED

THIS DEED made and entered into as of this 15th day of FEBRUARY, 1985, by and between the COMMONWEALTH OF KENTUCKY, party of the first part, Grantor, acting by and through Robert L. Warren, Secretary of the Finance and Administration Cabinet of the Commonwealth of Kentucky; and J. Clifford Todd and Elizabeth H. Todd, his wife, Post Office Box 301, Simpsonville, Kentucky, parties of the second part, Grantees;

WITNESSETH: THAT WHEREAS, the hereinafter described real property was declared surplus to the needs of the Commonwealth of Kentucky and ordered to be sold at public auction, all as provided by KRS Chapters 45 and 56; and,

WHEREAS, the Grantees submitted the highest and best bid for the purchase of said property at an auction sale thereof held on December 18, 1985; and,

WHEREAS, the Grantees' bid at said sale has been accepted by the Commonwealth of Kentucky;

NOW, THEREFORE, for and in consideration of the sum of $385,000, cash in hand paid by the Grantees, the receipt and sufficiency of which the Grantor hereby acknowledges, the Grantor has bargained and sold and by these presents does hereby grant, transfer and convey, unto the Grantees, for their joint lives, with remainder in fee simple to the survivor of them, in fee simple, the hereinafter described real property located in Jefferson County, Kentucky, to wit:

A parcel of land in Jefferson County, Kentucky, southeast of the intersection of Pages Lane with Dixie Highway, and known either as the former Waverly Hills Sanitarium or Woodhaven Medical Center property, and being more particularly described as follows:

Beginning at a set iron pin in the east right-of-way of Pages Lane, thirty feet north of its intersection with the entrance to the property described herein and in the line of the property of Cherwick described in Deed Book 3836, Page 439; thence with the property of Cherwick described in Deed Book 3836, Page 439, N 43° 09' 13" E, 194.13 feet to a found iron pipe in the line of property conveyed to the Louisville and Jefferson County Board of Health by deed recorded in Book 3830, Page 328, in the Jefferson County Clerk's Office; Thence with the Jefferson County Board of Health property to set iron pins the following calls: N 43° 09' 11" E, 471.81 feet; N 05° 23, 06" W, 58.19 feet; N 32° 43' 51" W, 38.40 feet; N 65° 32' 12" W, 56.68 feet; and S 71° 41' 28" W, 64.00 feet; thence with a line including the Commonwealth of Kentucky property described in Deed Book 3830, Page 333, to set iron pins the following calls: S 81° 34' 18" W, 47.81 feet; N 76° 37' 30" W, 64.53 feet; N 45° 17' 12" W, 69.18 feet; N 13° 40' 58" W, 64.96 feet; N 14° 09' 38" E, 54.79 feet; N 34° 11' 45" E, 287.66 feet; N 30° 27' 25" E, 41.51 feet; N 11° 47' 18" E, 44.84 feet; N 03° 50' 14" W, 54.00 feet; N 80° 12' 47" E, 108.67 feet; N 83° 18' 33" E, 67.50 feet; and N 84° 37' 33" E, 185.00 feet; Thence with a line including the Commonwealth of Kentucky property described in Deed Book 3830, Page 331, the following

CERTIFIED COPY
OF RECORD
JEFFERSON COUNTY KENTUCKY
JIM "POP" MALONE
Oct 23 85
DATE

EXH : 000002 of 000012

calls: N 34° 10' 47" E, 1712.01 feet to a set iron pin; S 81° 41' 27" E, 58.25 feet to a found stone; S 84° 20' 06" E, 233.88 feet to a found stone; S 82° 28' 42" E, 118.33 feet to a found iron pipe; S 18° 41' 19" E, 2132.97 feet to a found iron pipe; S 81° 35' 11" W, 882.71 feet to a set iron pin; S 03° 17' 37" E, 526.44 feet to a set iron pin; S 83° 02' 31" W, 334.90 feet to a set iron pin; N 71° 24' 55" W, 208.87 feet to a set iron pin; S 37° 31' 20" W, 195.13 feet to a set iron pin; S 24° 04' 30" E, 276.03 feet to a set iron pin; S 22° 50' 31" E, 564.79 feet to a set iron pin; S 62° 11' 27" W, 116.27 feet to a set iron pin; S 36° 44' 20" W, 98.14 feet to a set iron pin; S 57° 43' 33" W, 93.40 feet to a set iron pin; 20 feet north westerly from the center of the entrance road to the Bobby Nichols Golf Course; thence continuing with a line enclosing the Commonwealth of Kentucky property described in Deed Book 3930, Page 331, S 57° 03' 18" W, 335.31 feet to a set iron pin in a fence line; thence with same, N 04° 34' 15" E, 718.38 feet to a set iron pin; thence with same, N 88° 17' 38" W, 850.30 feet to a found iron pipe in a fence line, a corner to Williamson; thence with Williamson's line two (2) calls N 38° 30' 02" W, 190.44 feet to an iron pin; S 54° 11' 32" W, 228.62 feet to a set iron pin in the eastern right-of-way of Pages Lane; thence with said right-of-way, N 27° 14' 16" W, 343.56 feet to a set iron pin corner to property conveyed by the Commonwealth of Kentucky to Hendley described in Deed Book 3949, Page 128; thence with the property described in Deed Book 3949, Page 128 N 74° 23' 07" E, 148.98 feet to a set iron pin; thence N 17° 10' 15" W, 515.20 feet to a set iron pin corner to property conveyed to Meredith by deed recorded in Deed Book 4139, Page 274; thence with same S 43° 33' 38" W, 187.77 feet to a set iron pin in the eastern right-of-way of Pages Lane; thence with said right-of-way N 21° 03' 09" W, 60.10 feet to the point of beginning and containing 130.294 Acres as surveyed by W. H. Brown, P.L.S., No. 221, in May of 1982.

And being all of the property acquired by the Commonwealth of Kentucky by Deed of Correction recorded at page 330, and by Deed recorded at page 332, in Deed Book 3930, and by Deed recorded in Deed Book 5294, page 887, in the office of the Jefferson County Clerk, less subsequent conveyances by the Commonwealth of Kentucky and legal right of way of Pages Lane.

TO HAVE AND TO HOLD the above described property together with all the appurtenances thereunto belonging unto the Grantees, their heirs, successors and assigns, with covenant of Special Warranty of Title.

The Grantor also quitclaims unto the Grantees, their heirs, successors and assigns, all of the Grantor's rights, title, and interest, if any, in those certain easements, and to a waste water treatment plant located on one of them, on the grounds of the Bobby Nichols Golf Course of the Metropolitan Parks Department, described in instruments recorded in Deed Book 4090, page 38, and in Deed Book 5294, page 887, in the office of the Jefferson County Clerk, to which reference may be made for a more particular description of said easements.

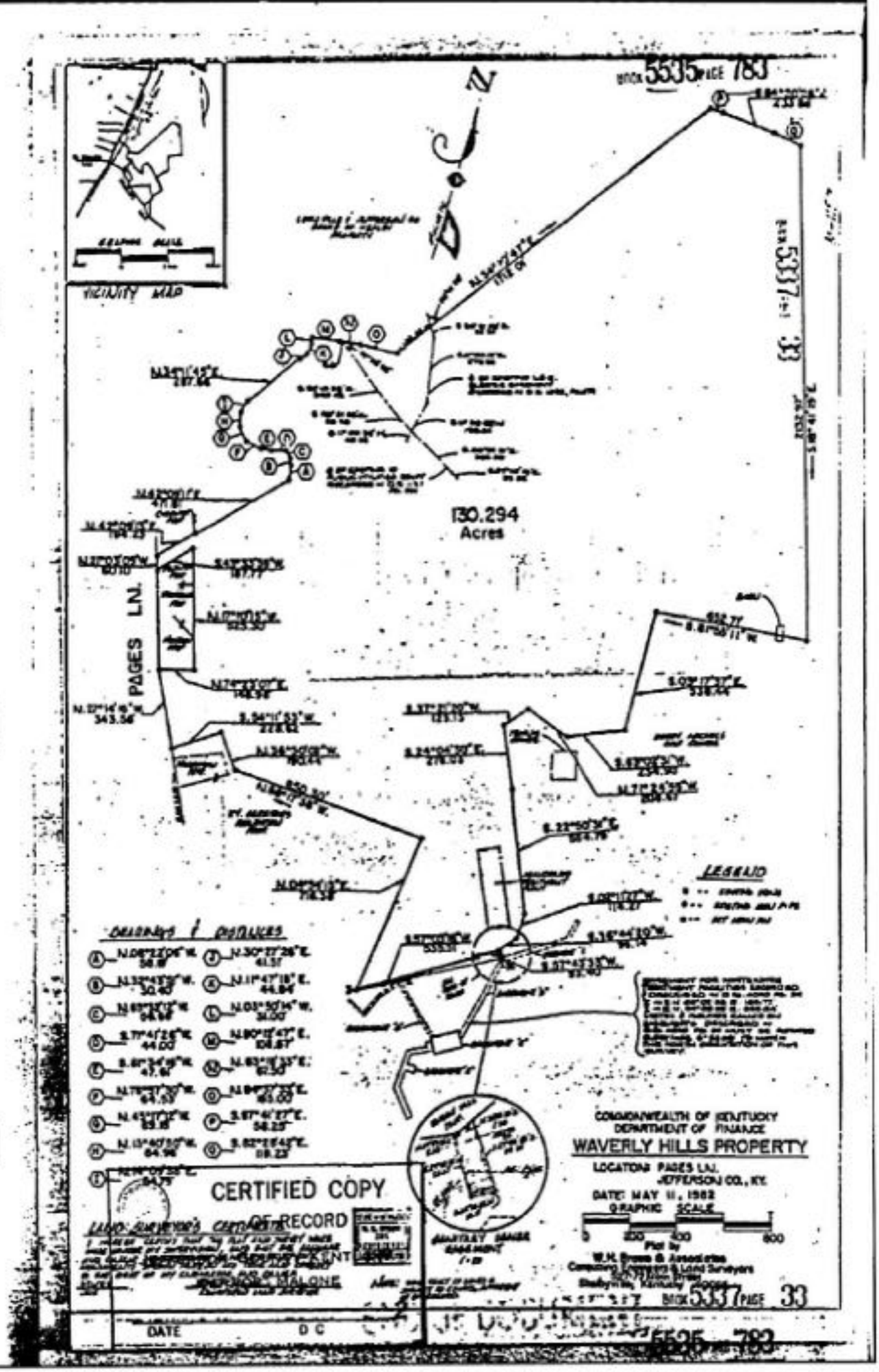
IN TESTIMONY WHEREOF, witness the signature of Robert L. Warren, Secretary of the Finance and Administration Cabinet of the Commonwealth of Kentucky for and on behalf of said Commonwealth, as of the day and date first above written.

COMMONWEALTH OF KENTUCKY

BY Robert L Warren
Robert L. Warren, Secretary
Finance and Administration Cabinet

CERTIFIED COPY
OF RECORD
JEFFERSON COUNTY KENTUCKY
JIM "POP" MALONE
DATE BOOK 5535 PAGE 782 2

EXH : 000003 of 000012



EXH : 000004 of 000012

*D&T MINUTES

FEBRUARY 14, 1985

DOCKET NO. 30-85
Minor Plat for J. Clifford Todd

Phil Bills of the Planning Commission staff informed the Committee that the applicant is requesting waivers under Section 1.90 of the Metropolitan Subdivision Regulations to allow the creation of a private access easement by minor plat; to allow the approval of a minor plat which does not reflect existing structures; and to allow the approval of a minor plat without signatures on the zoning conformance certificate. He is also requesting waivers under Section V. D. of the Zoning District Regulations to allow existing structures to encroach into required yards.

Mr. Bills explained that Jefferson County will purchase part of this tract. The applicant desires access to East Pages Lane to serve his development. He noted that the structures will encroach into required yards.

Upon questioning from the Committee, Commissioner Birch stated that the Jefferson County Public Works and Transportation Cabinet has not been involved in this matter. He asked who would be responsible for upgrading the roadway and paying for the improvements.

The Committee approved the minor plat for J. Clifford Todd and granted a waiver under Section 1.90 of the Metropolitan Subdivision Regulations to allow the creation of a private access easement by minor plat; to allow the approval of a minor plat which does not reflect existing structures; and to allow the approval of a minor plat without signatures on the zoning conformance certificate; the Committee also granted waivers under Section V. D. of the Zoning District Regulations to allow existing structures to encroach into required yards.

Commissioner Birch abstained from this vote.

Milton Thompson was present.

Recorded 7265

EXH : 000005 of 000012

LD&T MINUTES

FEBRUARY 14, 1985

DOCKET NO. SCE 1-81

The Committee was informed that on February 12, 1985, the Board of Aldermen had passed a resolution requesting that the Planning Commission examine a proposed development adjacent to the Hilliard Scenic Easement to determine its possible adverse impact on this easement.

The applicant's representative informed the Committee that the portion of the property which is to be developed was not part of the scenic easement accepted by the City in 1981. He noted that the property subject to the scenic easement is in a disruptable condition, characterized by overflowing sewers and inadequate drainage. He explained that the property is properly zoned for the proposed development, but that the developer has not been able to obtain building permits. He stated that he thinks it inappropriate for the Board of Aldermen to inject itself into the permitting process, and is also inappropriate for the Planning Commission to review this proposal.

The applicant's representative noted that the plans have not yet been approved by Water Management, but that this approval will be forthcoming when minor items are addressed. He noted that the developer proposes to provide basins with diversion ditches and bermed areas to prevent runoff.

Another representative of the developer explained that the previous owner had granted the easement to the City prior to the purchase of the property by the developer. He explained that prior to the transfer the previous owner had shown to the current owner plans for an apartment complex on the remainder of the site. This plan reflected access to Peterson Avenue. He explained that the Landmarks Commission had objected to access to Peterson Avenue, so the developer had decided to provide access via Grinstead Drive instead. After further study, the developer had decided to abandon the idea of providing access via Grinstead Drive, and had decided to provide access via Ewing Avenue.

After further discussion, the Committee determined the only factor of the proposed development which could have an adverse impact on the scenic easement is drainage, and that this issue would be resolved once Water Management approves the development plans.

The Committee recommended to the Board of Aldermen the the developer be allowed to proceed with the proposed development on condition that the requirements of the Water Management Section of the Jefferson County Public Works and Transportation Cabinet are met. Commissioner French abstained from this vote.

Jack Quick, Engineer, Jesse Bollinger, and Robert Klein, Board of Aldermen Representative, were present.

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BOOK 5535 PAGE 788

Certificate of Ownership and Dedication

This is to certify that the undersigned is (are) the owner(s) of the land shown on this plat and hereby acknowledges the same to be the plat of J. Clifford Todd & Elizabeth H. Todd

and does hereby dedicate to public use N. A.

shown thereon.

J. Clifford Todd Elizabeth H. Todd
Owner(s)

Address

Title

ZONING CONFORMANCE CERTIFICATE

I hereby certify all of the lots of this minor subdivision and any existing buildings and improvements thereon and/or any buildings and improvements included in a building permit either applied for or approved thereon, are in compliance with all of the provisions of the Zoning District Regulations. Any such lots or improvements not in compliance with the Zoning District Regulations have been granted all necessary variances by the Board of Zoning Adjustment as described in Docket _____.

Owner

CERTIFICATE OF ACKNOWLEDGEMENT

State of Kentucky)
County of Jefferson) SS

I, Mark K. Dickerson, a notary public in and for the County aforesaid, do hereby certify that the foregoing plat of _____ was this day presented to me by J. Clifford Todd, known to me, who executed the Certificate in my presence and acknowledge it to be _____ free act and deed.

Witness my hand and seal this 16 day of Feb. 1988.
My Commission expires on July 11 day of July 1988.

Mark K. Dickerson
Notary Public

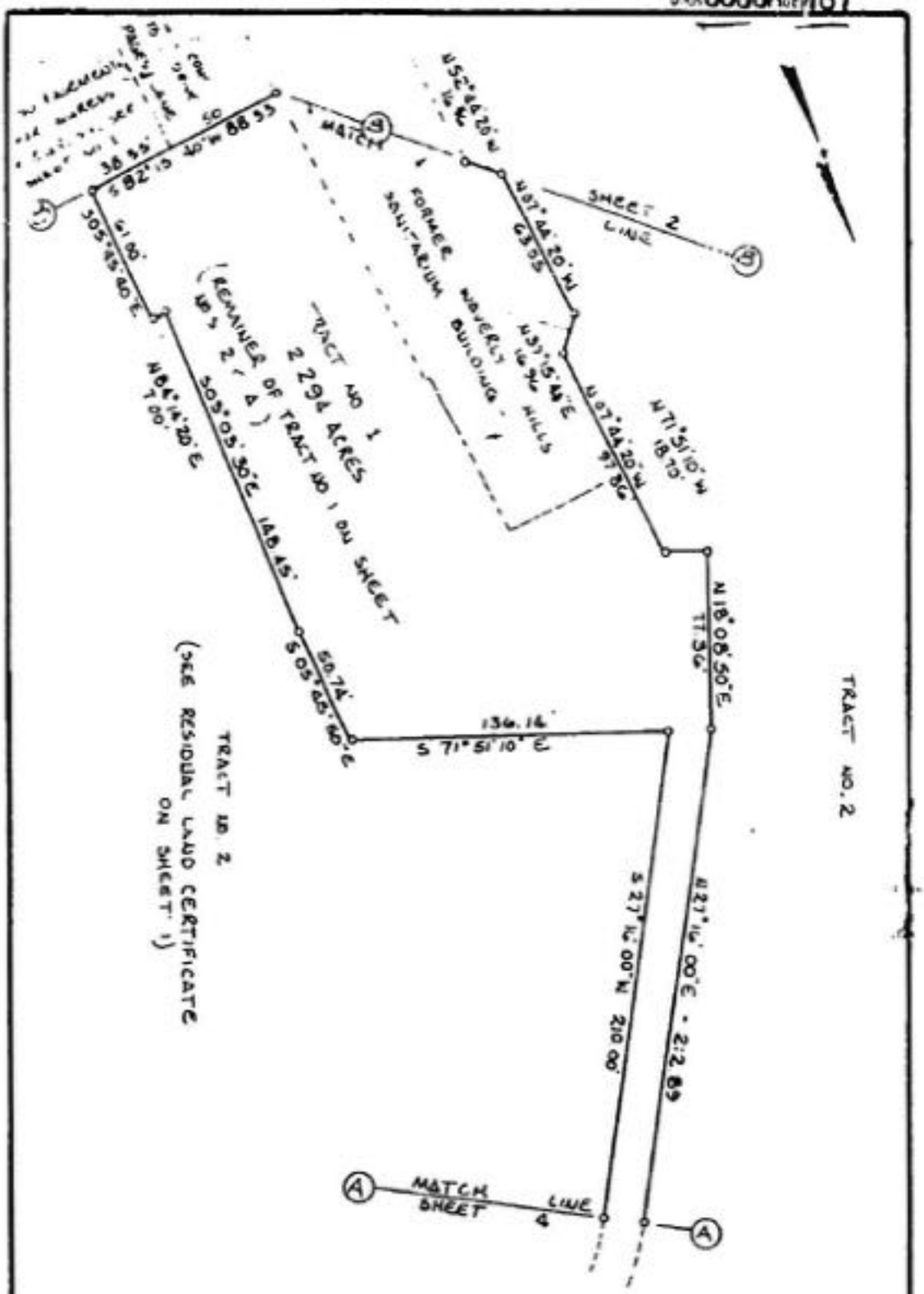
NOTARY PUBLIC STATE AT LARGE

Sheet 5 of 5

BOOK 5535 PAGE 786

30-85 (T)

EXH : 000007 of 000012



STATE OF KENTUCKY
C. E. MOODY
2269
REGISTERED
LAND SURVEYOR

MINOR PLAT

J. CLIFFORD TODD PROPERTY DIVIDED
PAGES LANE & BOBBY NICHOLS SERVICE ROAD JEFFERSON COUNTY KENTUCKY

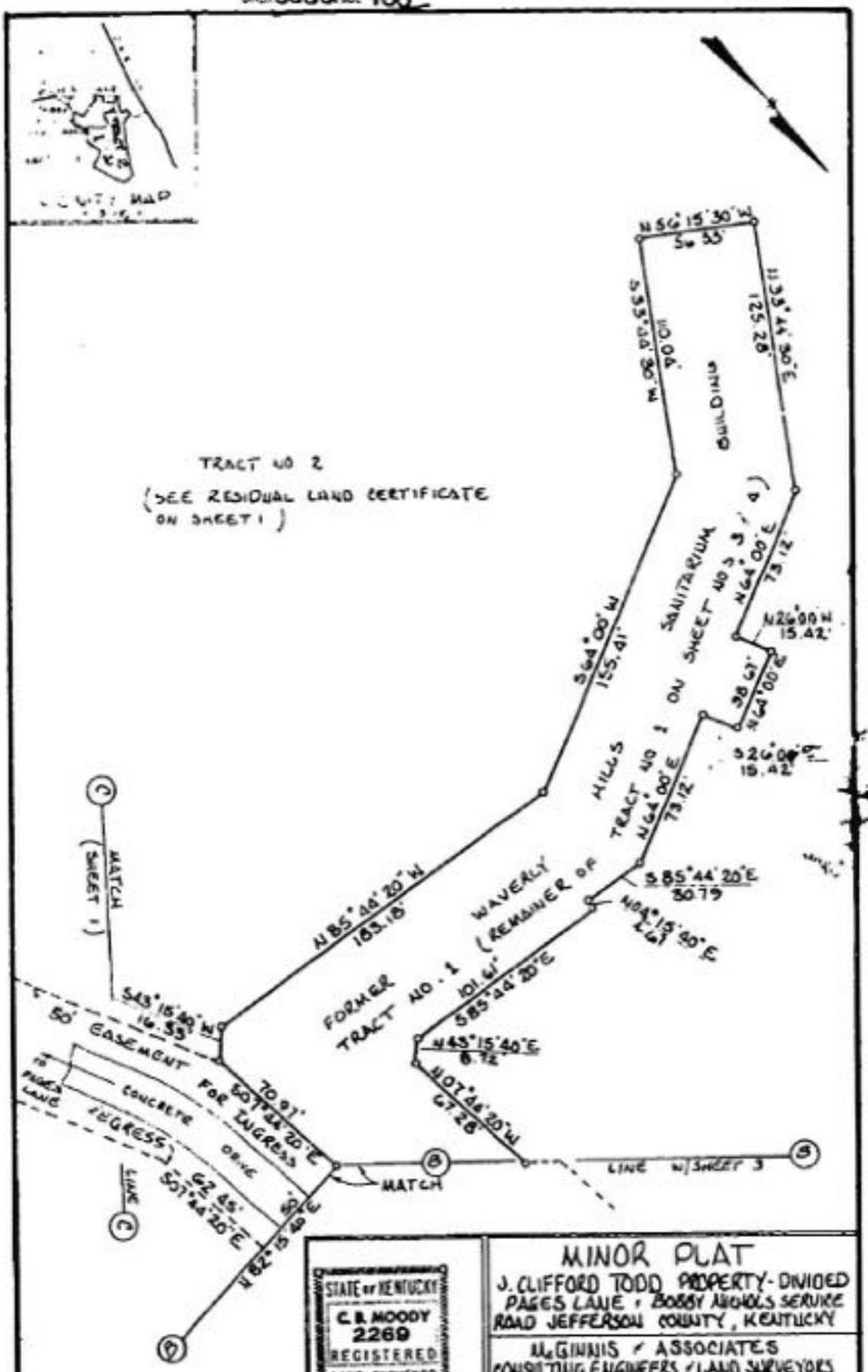
McGINNIS & ASSOCIATES
CONSULTING ENGINEERS & LAND SURVEYORS
SHELBYVILLE, KY.

DATE - FEB. 1985 | SCALE - 1" = 50'

SHEET 3 OF 3

20-85 (3)

EXH : 000008 of 000012



MINOR PLAT

J. CLIFFORD TODD PROPERTY - DIVIDED
PAGES LANE & BOBBY NICHOLS SERVICE ROAD JEFFERSON COUNTY, KENTUCKY

McGINNIS & ASSOCIATES
CONSULTING ENGINEERS & LAND SURVEYORS
SHELBYVILLE KY

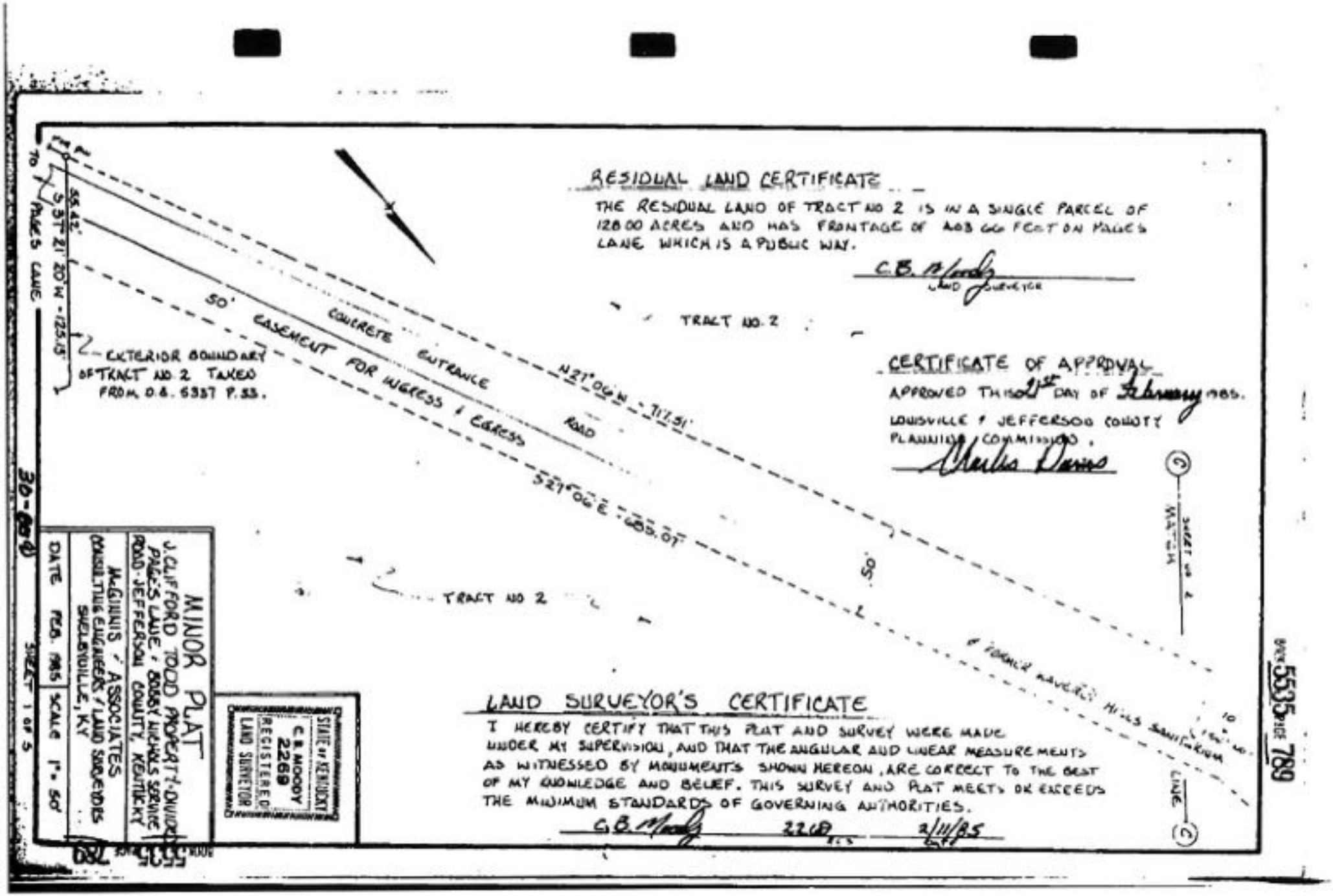
DATE FEB. 1985 | SCALE 1"=50'

SHEET 2 OF 5

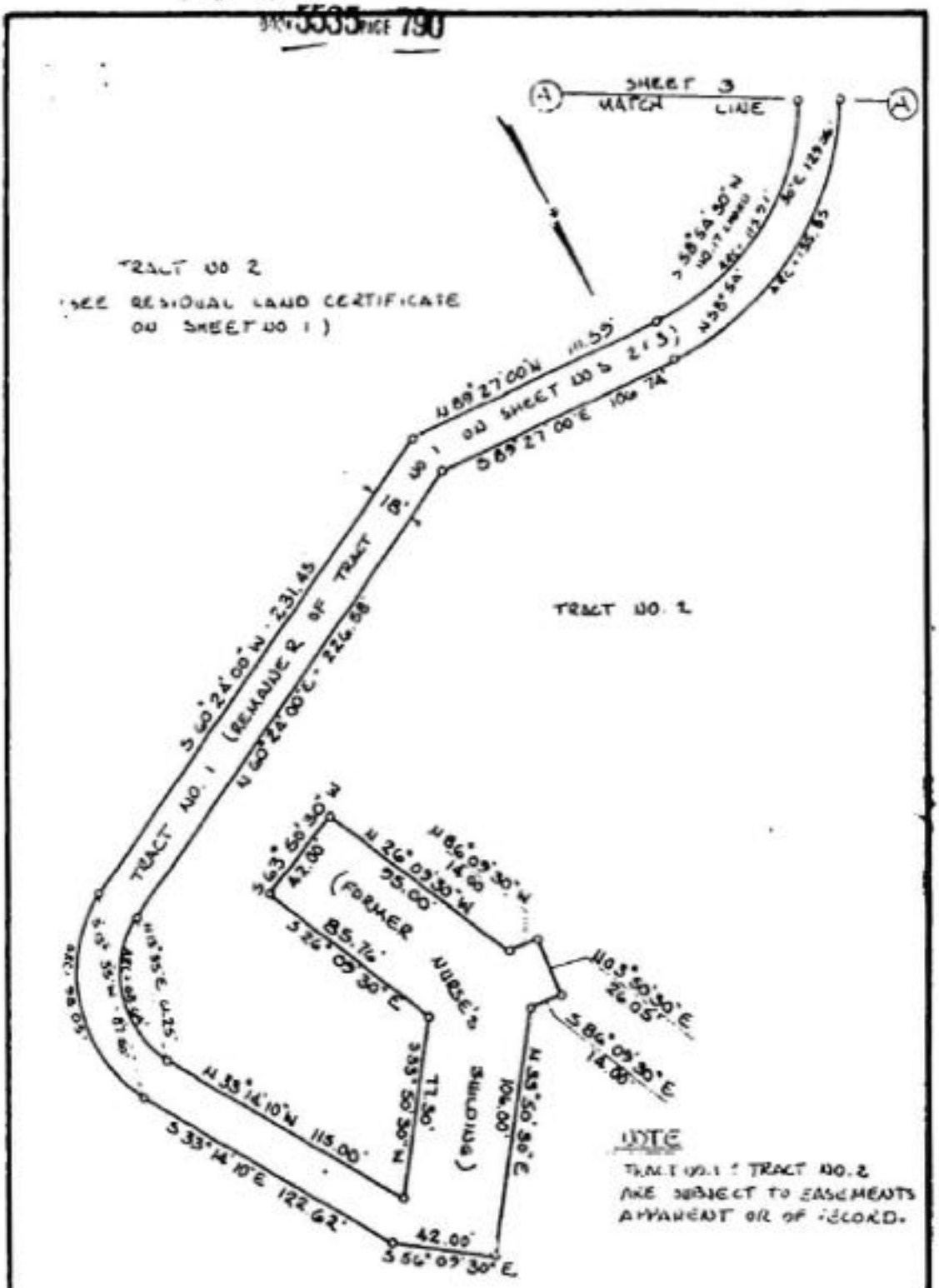
30-85CW

BOOK 5535 PAGE 788

EXH : 000009 of 000012


RESIDUAL LAND CERTIFICATE
THE RESIDUAL LAND OF TRACT NO 2 IS IN A SINGLE PARCEL OF 12800 ACRES AND HAS FRONTAGE OF 408.66 FEET ON PAGES LANE WHICH IS A PUBLIC WAY.
C.B. Moody
LAND SURVEYOR
TRACT NO. 2
CERTIFICATE OF APPROVAL
APPROVED THIS 21st DAY OF February 1985.
LOUISVILLE & JEFFERSON COUNTY PLANNING COMMISSION.
Charles Davis
55.42'
S 37° 21' 20" W - 125.15'
TO PAGES LANE
EXTERIOR BOUNDARY OF TRACT NO 2 TAKEN FROM D.B. 5337 P. 53.
CONCRETE ENTRANCE
50' EASEMENT FOR INGRESS & EGRESS
ROAD
N 21° 04' W - 311.51'
S 21° 06' E - 285.01'
TRACT NO 2
SHEET NO 4 MATCH
LINE C
10' ± FORMER HAVERLY HILLS SUBDIVISION
LAND SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT THIS PLAT AND SURVEY WERE MADE UNDER MY SUPERVISION, AND THAT THE ANGULAR AND LINEAR MEASUREMENTS AS WITNESSED BY MONUMENTS SHOWN HEREON, ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY AND PLAT MEETS OR EXCEEDS THE MINIMUM STANDARDS OF GOVERNING AUTHORITIES.
C.B. Moody 2268 L.S. 2/11/85
STATE OF KENTUCKY
C.B. MOODY
2268
REGISTERED LAND SURVEYOR
MINOR PLAT
J. CLIFFORD TODD PROPERTY-DIVISION
PAGES LANE, BOOBY NICHOLS SERVICE ROAD-JEFFERSON COUNTY, KENTUCKY
McGINNIS & ASSOCIATES
CONSULTING ENGINEERS & LAND SURVEYORS
SHELBYVILLE, KY
DATE FEB. 1985
SCALE 1" = 50'
SHEET 1 OF 5
30-84
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BOOK 5535 PAGE 789

BOOK 5535 PAGE 790



OWNERS

J. CLIFFORD TODD
ELIZABETH H. TODD
P.O. BOX 301
SIMPSONVILLE, KY
40067

STATE OF KENTUCKY
C. B. MOODY
2269
REGISTERED
LAND SURVEYOR

MINOR PLAT

J. CLIFFORD TODD PROPERTY DIVIDED
PAGES LANE & BOBBY NICHOLS SERVICE ROAD JEFFERSON COUNTY KENTUCKY

McGINNIS & ASSOCIATES
CONSULTING ENGINEERS & LAND SURVEYORS
SHELBYVILLE, KY.

DATE - FEB 1985 | SCALE - 1" = 50'

SHEET 4 OF 5

BOOK 5535 PAGE 790

30-80 rd

EXH : 000011 of 000012

7265

Paraconidad

MINOR PLAT
APPROVAL
JEFFERSON COUNTY
DEPT. OF PUBLIC WORKS
BY: [illegible]
DATE: 2-15-95

WATER MANAGEMENT REVIEW

This plat has been reviewed for drainage-related considerations and the Water Management Division of the Jefferson County Department of Public Works has no objection to this plat. However, this review does not constitute any form of construction approval for work on this site.

H. Hong
Reviewed by:

2/15/95
Date

EXH : 000012 of 000012

BOOK 5650 PAGE 168

DEED

THIS DEED made and entered into as of this 31st day of December, 1986, by and between

J. CLIFFORD TODD and ELIZABETH H. TODD, husband and wife, parties of the first part, Grantors,

and

WAVERLY LAND DEVELOPING CORPORATION
party of the second part, Grantee,
5117 Euclid Avenue
Louisville, Kentucky 40272

WITNESSETH:

WHEREAS, the Grantee submitted the highest and best bid for the purchase of said property at an auction sale thereof held on December 1, 1986,

WHEREAS, the Grantee's bid at said sale has been accepted by the Grantors;

NOW, THEREFORE, for and in consideration of the sum of $128,000, cash in hand paid by the Grantee, the receipt and sufficiency of which the Grantors hereby acknowledge, the Grantors have bargained and sold and by these presents do hereby grant, transfer and convey, unto the Grantee in fee simple, the hereinafter described real property located in Jefferson County, Kentucky, to wit:

A parcel of land in Jefferson County, Kentucky, designated as Tract 2, minor subdivision plat, of the former Waverly Hills Sanitarium or Woodhaven Medical Center property, as per the attached survey dated December 31, 1986, and certified by C. B. Moody, which plat was recorded in Deed Book 5646 page 541 in the Office of the County Court Clerk of Jefferson County, Kentucky, which was corrected and re-recorded in Deed Book 5650, Page 162. Being a part of the same property conveyed to parties of the first part by deed dated February 15, 1983, and recorded in Deed Book 5337 page 30 in the Office of the County Court Clerk of Jefferson County, Kentucky, and re-recorded in Deed Book 5535 page 781 in the Office aforesaid.

7-396
1-23-87

TO HAVE AND TO HOLD the above described property together with all the appurtenances thereunto belonging unto the Grantees, their heirs, successors and assigns, with covenant of General Warranty of Title, except easements of record and all restrictions as to use and improvements of the property of record and any restrictions imposed by the Planning and Zoning

EXH : 000001 of 000012

Commission, and 1987 State, County, School and Fire taxes which Grantee assumes and agrees to pay.

IN TESTIMONY WHEREOF, witness the signature of J. CLIFFORD TODD and ELIZABETH H. TODD, grantors as of the day and date first above written.

J. CLIFFORD TODD

ELIZABETH H. TODD

STATE OF KENTUCKY
COUNTY OF JEFFERSON

I, the undersigned Notary Public, do hereby certify that the foregoing Deed was acknowledged before me this 31st day of December, 1986, by J. Clifford Todd and Elizabeth H. Todd.

IN TESTIMONY WHEREOF, witness my hand.

My commission expires: May 17, 1990

NOTARY PUBLIC

No Exam
THIS INSTRUMENT PREPARED BY:

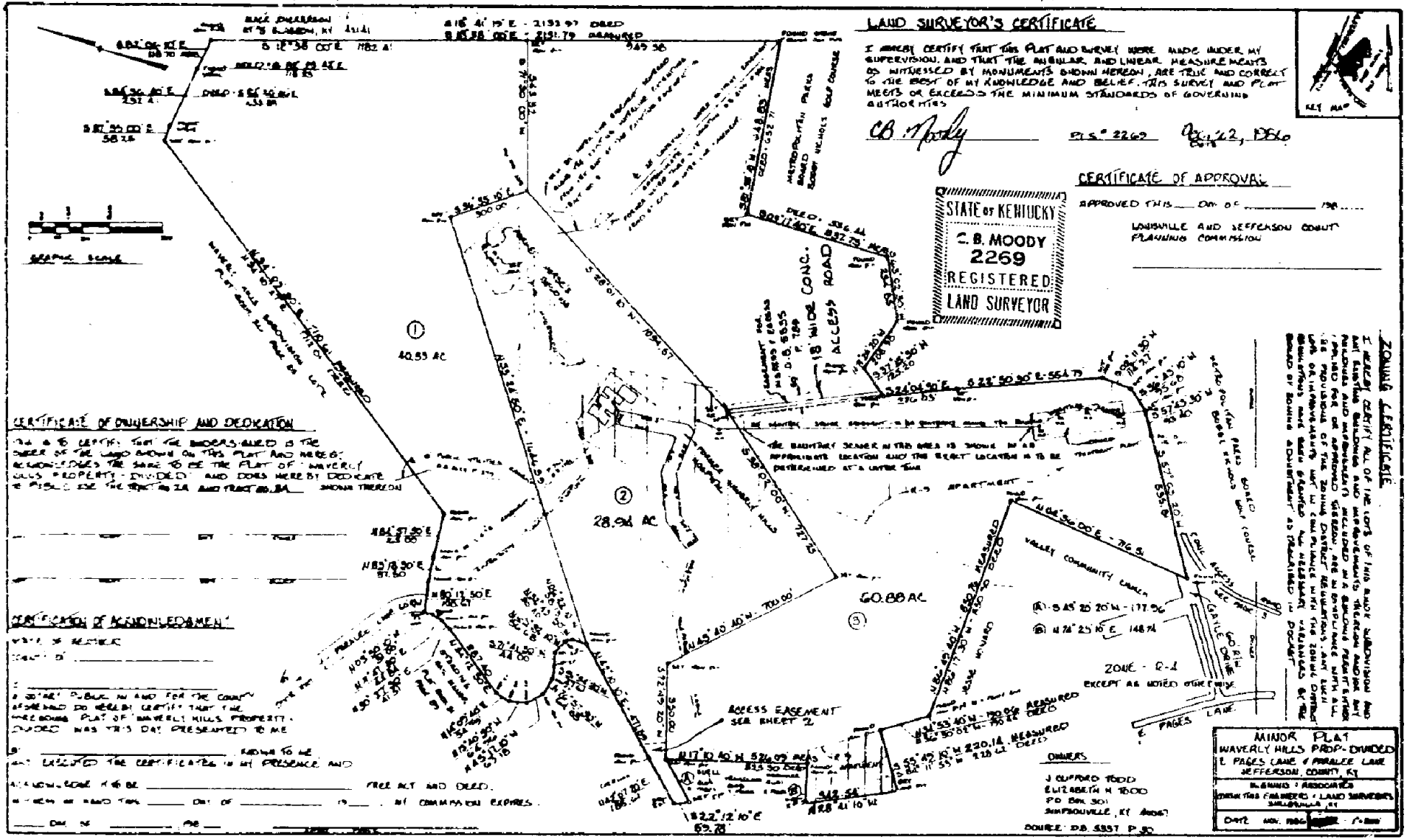
SIMS, SIMS and CONLIFFE

ROBERT E. SIMS, Attorney
216 Speed Building
Louisville, KY 40202
(502) 584-5133

BOOK 5650 PAGE 169

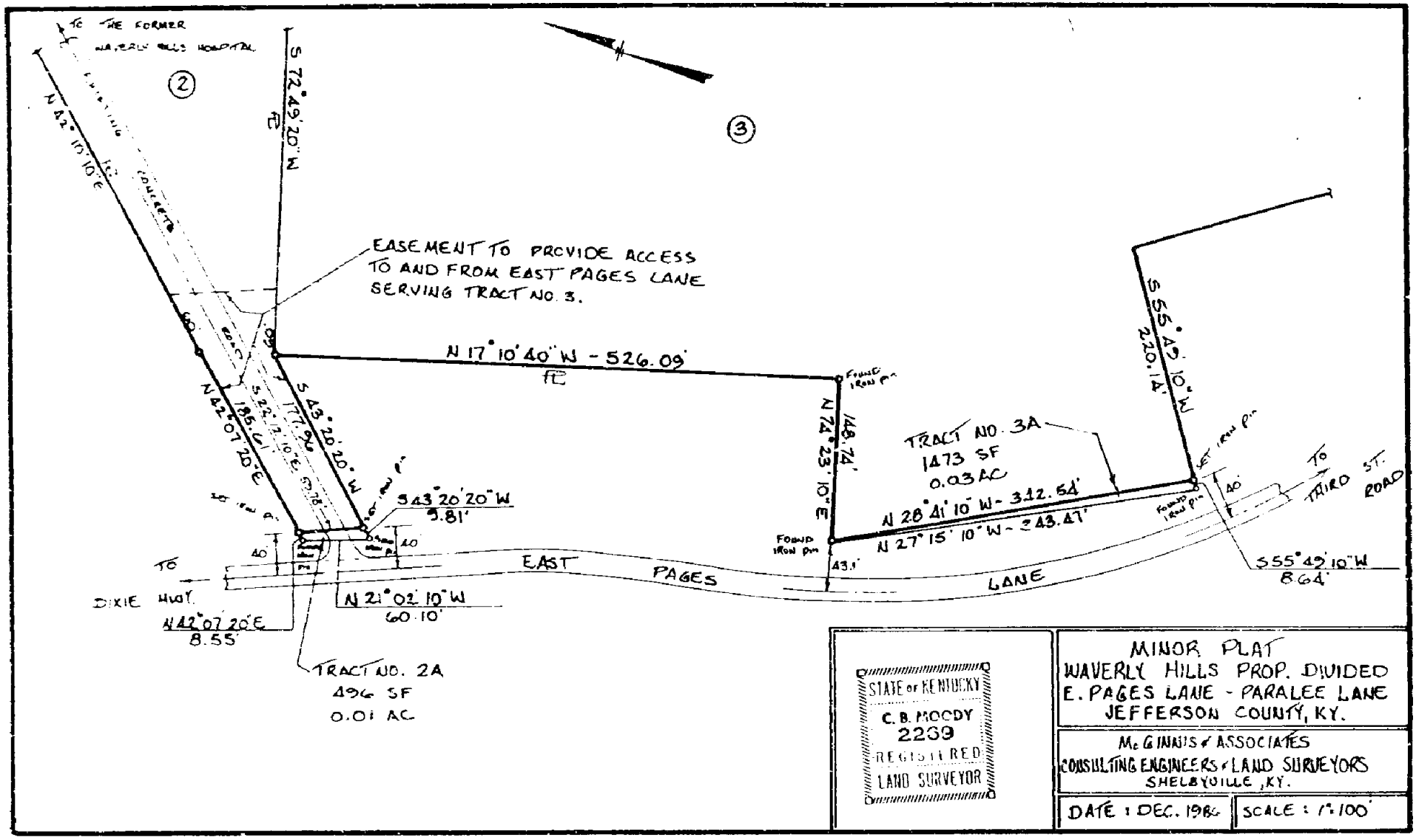
BOOK 5650 PAGE 169

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5650 PAGE 170



MINOR PLAT
WAVERLY HILLS PROP. DIVIDED
E. PAGES LANE - PARALEE LANE
JEFFERSON COUNTY, KY.

McGINNIS & ASSOCIATES
CONSULTING ENGINEERS & LAND SURVEYORS
SHELBYVILLE, KY.

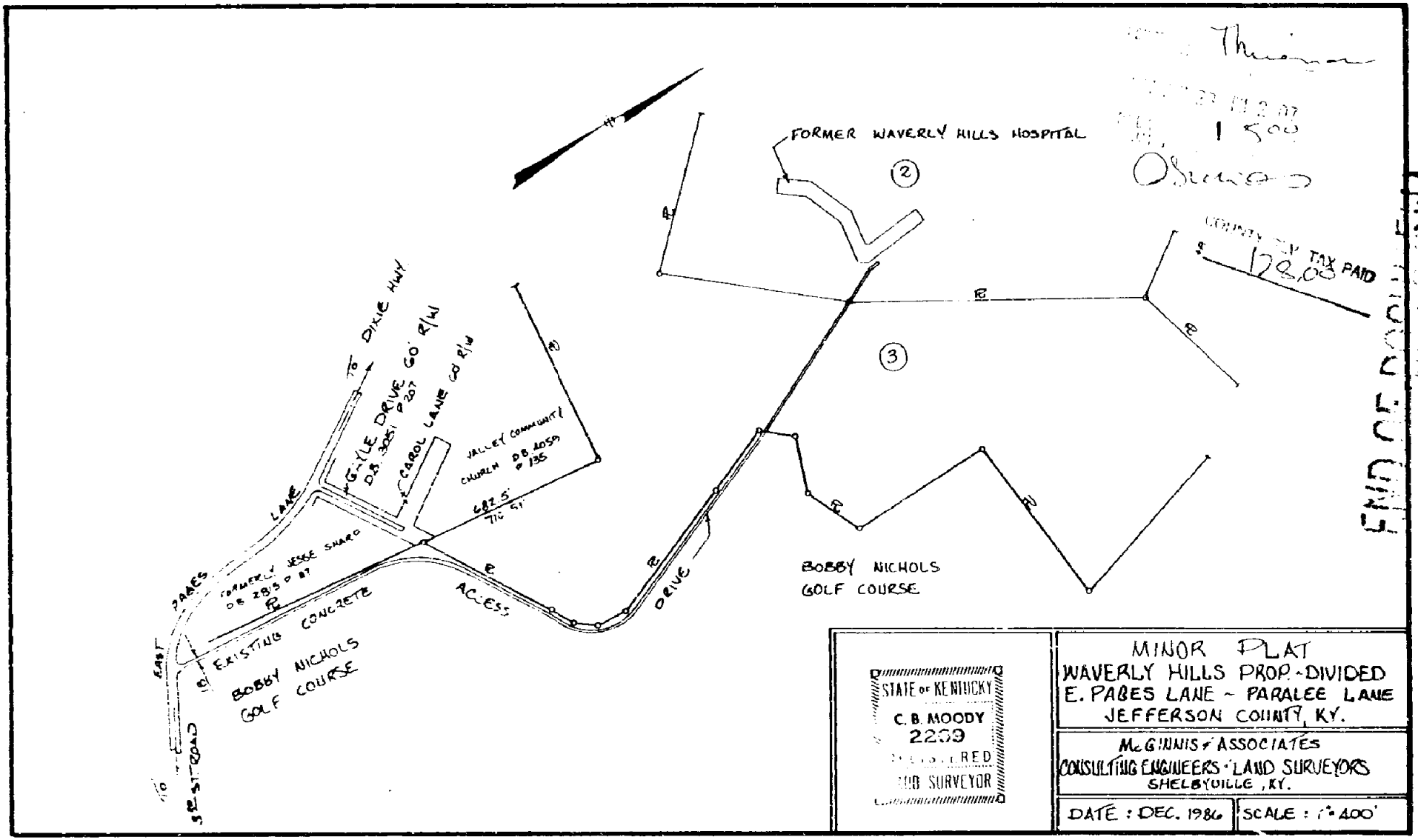
DATE : DEC. 1986 | SCALE : 1" = 100'

SHEET 2 OF 3

BOOK 5650 PAGE 171

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7397



STATE OF KENTUCKY
C. B. MOODY
2209
REGISTERED
LAND SURVEYOR

MINOR PLAT
WAVERLY HILLS PROP. - DIVIDED
E. PABES LANE - PARALEE LANE
JEFFERSON COUNTY, KY.

McGINNIS & ASSOCIATES
CONSULTING ENGINEERS - LAND SURVEYORS
SHELBYVILLE, KY.

DATE : DEC. 1986 | SCALE : 1" = 400'

SHEET 3 OF 3

BOOK 5650 PAGE 172

THIS DEED made this 14th day of September, 1995, by and between:

WAVERLY LAND DEVELOPING CORPORATION, party of the first part, whose mailing address is: 5117 Euclid Avenue, Louisville, Kentucky 40272 and,

DIXIE DEVELOPMENT, INC., party of the second part, whose mailing address is: 3321 So. Seventh Street Road, P.O. Box 16189, Louisville, Kentucky 40256

WITNESSETH: (The Total Sale Price Being $80,000.00)

That for a VALUABLE CONSIDERATION paid, the receipt of which is hereby acknowledged, the party of the first part hereby conveys, unto the party of the second part, in fee simple with covenant of GENERAL WARRANTY, the following described real estate situated in Jefferson County, Kentucky, to-wit:

> A parcel of land in Jefferson County, Kentucky, designated as Tract 2, minor subdivision plat, of the former Waverly Hills Sanitarium or Woodhaven Medical Center property, as per the survey dated December 31, 1986, and certified by C.B. Moody, which plat was recorded in Deed Book 5646, Page 541, in the Office of the County Court Clerk of Jefferson County, Kentucky, which was corrected and rerecorded in Deed Book 5650, Page 168.
>
> BEING the same property conveyed to the party of the first part by Deed dated December 21, 1986, recorded in Deed Book 5650, Page 168, in the Office of the Clerk aforesaid.

The party of the first part further covenants that it is lawfully seized of the estate hereby conveyed, has full right and power to convey the same, and that said estate is free from all encumbrances except City, State and County taxes due and payable during the year 1995, and thereafter, which the party of the second part hereby assumes and agrees to pay.

PROVIDED, HOWEVER, that this conveyance is made subject to easements and restrictions of record, and first party is conveying in an "as is" condition.

PROVIDED, HOWEVER, that this conveyance is made subject to a Lease Agreement with options between Waverly Land Developing Corporation and Louisville Cellular Telephone Company. The terms and conditions of said lease are fully set forth in the Lease Agreement. It is understood and agreed between first and second parties that all current lease rentals go to the first party. In

EXH : 000006 of 000012

the event that the option to renew lease is exercised by Louisville Cellular Telephone Co. for additional five year periods, proceeds are to be divided fifty percent to the first party and fifty percent to the second party. And to secure payment of said rents a lien is hereby retained on the property herein conveyed. The parties to this deed are executing a Release and Indemnification Agreement.

IN TESTIMONY WHEREOF, witness the signature of the party of the first part, the date first herein written.

WAVERLY LAND DEVELOPING CORPORATION

By: Charles B. Severs Pres

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

I, the undersigned Notary Public within and for the State and County aforesaid do hereby certify that the foregoing Deed was produced before me in my office in said State and County by Charles B. Severs as Pres. of **WAVERLY LAND DEVELOPING CORPORATION**, party thereto, and was acknowledged and delivered by him to be the act and deed of said corporation.

WITNESS my hand this 14th day of Sept, 1995.

My commission expires: Dec 19, 1998.

Frank H. [illegible]
Notary Public, Jefferson County, KY

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CONSIDERATION CERTIFICATE

We, the undersigned, hereby certify that the consideration reflected in this Deed is the full consideration paid for the property.

GRANTOR

WAVERLY LAND DEVELOPING CORPORATION

By: Charles B Sevier
Pres.

GRANTEE

DIXIE DEVELOPMENT, INC.

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing Consideration Certificate was acknowledged and sworn to before me this 14th day of Sept, 1995, by Charles B Sevier as Pres of **WAVERLY LAND DEVELOPING CORPORATION**, Grantor.

WITNESS my hand this 14th day of Sept, 1995.

My commission expires: 1/19/98.

Notary Public, Jefferson County, KY

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing Consideration Certificate was acknowledged and sworn to before me this 14th day of Sept, 1995, by Robert L Oberkamp as Pres of DIXIE DEVELOPMENT, INC., Grantee.

WITNESS my hand this 14th day of Sept, 1995.

My commission expires: March 19, 1998.

Notary Public, Jefferson County, KY

EXH : 000008 of 000012

DEED ONLY TITLE NOT EXAMINED

THIS INSTRUMENT PREPARED BY:

THIEMANN & THIEMANN
Attorneys at Law
304 W. Liberty Street
Suite Two -- Mezzanine
Louisville, Kentucky 40202
(502) 583-3667

1116/2

Document No: 1995111612
Lodged By: thiemann
Recorded On: Sep 14, 1995 02:16:19 P.M.
Total Fees: $14.00
Transfer Tax: $80.00
County Clerk: Rebecca Jackson
Deputy Clerk: GLORIA

END OF DOCUMENT

EXH : 000009 of 000012

DB07672PG0928

D E E D

01-363

THIS DEED is made by and between Dixie Development, Inc., a Kentucky Corporation, a registered assumed name for Dixie Demolition, Inc., of P.O. Box 16189, Louisville, KY 40256, FIRST PARTY, and C.E.M. Land Company, LLC, a Limited Liability Company, of 4611 S. Sixth Street, Louisville, KY 40214-1405, SECOND PARTY.

The full actual consideration paid or to be paid for this conveyance is $225,000.00

WITNESSETH: That for a valuable consideration, the receipt of which is hereby acknowledged, the First Party does hereby convey unto the Second Party, in fee simple, with covenant of General Warranty, the following described property together with any and all improvements thereon, located in Jefferson County, Kentucky, to wit:

A parcel of land in Jefferson County, Kentucky, designated as Tract 2, minor subdivision plat, of the former Waverly Hills Sanitarium or Woodhaven Medical Center property, as per the survey dated December 31, 1986, and certified by C.B. Moody, which plat was recorded in Deed Book 5646, Page 541, in the Office of the County Court Clerk of Jefferson County, Kentucky, which was corrected and rerecorded in Deed Book 5650, Page 168.

BEING the same property conveyed to Dixie Development, Inc., by Deed dated September 14, 1995, of record in Deed Book 6639, Page 793, in the Office of the County Clerk aforesaid.

The First Party covenants that it is lawfully seized of the estate hereby conveyed, that it has full power and right to convey the same and that said property is free from any and all encumbrances, except the 2001 State, County School and Fire District real estate ad valorem taxes, all of which the Second Party assumes and agrees to pay.

PROVIDED, however, this conveyance is made subject to restrictions, stipulations and easements of record and applicable zoning laws and regulations.

EXH : 000010 of 000012

IN TESTIMONY WHEREOF, witness the signature of the First Party this 20th day of June, 2001.

FIRST PARTY:

Dixie Development, Inc., a Kentucky Corporation *

By: _____
Robert L. Alberhasky, President

COMMONWEALTH OF KENTUCKY)
) ss.
COUNTY OF JEFFERSON)

I hereby certify the foregoing instrument was subscribed, sworn to and acknowledged before me by Robert L. Alberhasky as President of Dixie Development, Inc., a Kentucky Corporation, a registered assumed name for Dixie Demolition, Inc., First Party, to be its free act deed this 20th day of June, 2001.

My commission expires: 9-20-2002

_____
Notary Public

CERTIFICATE

We, Dixie Development, Inc., a Kentucky Corporation, a registered assumed name for Dixie Demolition, Inc., First Party and C.E.M. Land Company, LLC, Second Party, do hereby certify, pursuant to KRS Chapter 382, that the above stated consideration in the amount of $225,000.00 is the true, correct, and full consideration paid for the property herein conveyed. We further certify our understanding that falsification of the stated consideration or sales price of the property is a Class D felony, subject to one to five years imprisonment and fines up to $10,000.

FIRST PARTY

Dixie Development, Inc., a Kentucky Corporation *

By: _____
Robert L. Alberhasky, President

SECOND PARTY

C.E.M. Land Company, LLC, a Limited Liability Company

By: _____
Charles E. Mattingly, Member

Charles E Mattingly, Member

* a registered assumed name for Dixie Demolition, Inc.

EXH : 000011 of 000012

COMMONWEALTH OF KENTUCKY)
) ss.
COUNTY OF JEFFERSON)

I hereby certify the foregoing instrument was subscribed, sworn to and acknowledged before me by Robert L. Alberhasky as President of Dixie Development, Inc., a Kentucky Corporation, a registered assumed name for Dixie Demolition, Inc., First Party, to be its free act deed this 20th day of June, 2001.

My commission expires: 9-20-2002

Notary Public

COMMONWEALTH OF KENTUCKY)
) ss.
COUNTY OF JEFFERSON)

I hereby certify the foregoing instrument was subscribed, sworn to and acknowledged before me by Charles E. Mattingly as Member of C.E.M. Land Company, LLC, a Limited Liability Company, Second Party, to be its free act deed this 20th day of June, 2001.

My commission expires: 9-20-2002

Notary Public

This instrument prepared by:

THOMAS, DODSON & WOLFORD
9200 Shelbyville Road, Suite 611
Louisville, Kentucky 40222
(502) 426-1700

Document No.: DN2001102800
Lodged By: thomas dodson wolford
Recorded On: 06/25/2001 12:52:26
Total Fees: 237.00
Transfer Tax: 225.00
County Clerk: Bobbie Holsclaw-JEFF CO KY
Deputy Clerk: CARHAR

END OF DOCUMENT

EXH : 000012 of 000012

QUITCLAIM DEED

TITLE NOT EXAMINED

THIS DEED, made and entered into this 29th day of October, 1998, by and between J. Clifford Todd, and Elizabeth H. Todd, his wife, whose address is 7023 Shelbyville Road, Simpsonville, KY 40067, Party of the First Part; and James R. Matthews, John M.B. O'Connor and Doug A. Vetter, as the former Shareholder Representives of U.S. Corrections Corporation, whose address is c/o 2020 Fairway Vista Drive, Louisville, Kentukcy 40245, Party of the Second Part.

W I T N E S S E T H:

That for valuable consideration for this conveyance in the amount of Three Hundred Fifty Thousand ($350,000.00) the receipt of which is hereby acknowledged, and all parties hereto do hereby certify that this amount is the consideration paid for the property, the Party of the First Part does hereby remise, release and forever quitclaim unto the Party of the Second Part, all of his right, title, interest and claim, if any, in and to the following described real estate, to-wit:

> BEING Tract 3, as shown on the approved Minor Subdivision Plat (Docket No. 1-87), attached to and made a part of corrected "Easement, Restrictions and Maintenance Requirements for 2 lots on a Minor Plat" of record in Deed Book 5650, Page 162, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.
>
> BEING the same property vested in the Party of the First Part by Deed dated February 15, 1983, and of record in Deed Book 5337, Page 30, in the office of the clerk aforesaid, and re-recorded in Deed Book 5535, Page 781, and being a part of the same property acquired by Quitclaim Deed dated June 26, 1986 of record in Deed Book 5522, Page 441, in the office aforesaid.

EXH : 000001 of 000026

Together with all rights, privileges, appurtenances or franchises incident thereto or connected therewith. To have and to hold, the same unto the Party of the Second Part, its heirs and assigns forever.

This conveyance is made subject to any existing mortgages, liens, taxes, easements and restrictions of record affecting said property.

The Party of the Second Part executes this Deed for the purpose of certifying the consideration pursuant to KRS 382.

PARTY OF THE FIRST PART

J. Clifford Todd

Elizabeth H. Todd

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of OCTOBER, 1998, by J. Clifford Todd and Elizabeth Todd, Party of the First Part.

My commission expires: 16-April-1999

NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

EXH : 000002 of 000026

PARTY OF THE SECOND PART

Douglas A. Vetter, on behalf of Party of the Second Part

STATE OF Kentucky)
)SS
COUNTY OF Jefferson)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of ~~May~~ Oct, 1998, by Doug A. Vetter, on behalf of Party of the Second Part.

My commission expires: 9/22/2001

Paula S. Smith
NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

THIS INSTRUMENT PREPARED BY:

Steven A. Goodman
GOLDBERG & SIMPSON, P.S.C.
3000 National City Tower
Louisville, Kentucky 40202
(502) 589-4440

Document No.: DN1999088769
Lodged By: GOLDBERG & SIMPSON
Recorded On: 05/26/1999 02:46:25
Total Fees: 362.00
Transfer Tax: 350.00
County Clerk: Bobbie Holsclaw
Deputy Clerk: DENKIN

END OF DOCUMENT

EXH : 000003 of 000026

DB07283PG0046 DB07274PG0522

DEED OF CORRECTION

THIS DEED OF CORRECTION by and between J. Clifford Todd and Elizabeth H. Todd, his wife ("Party of the First Part") and James R. Matthews, John M.B. O'Connor and Doug A. Vetter, who have been mistakenly identified as the Shareholder Representatives of U.S. Corrections Corporation (collectively "Party of the Second Part"), and the USCC Shareholder Representatives Irrevocable Trust dated October 28, 1998 ("Party of the Third Part").

W I T N E S S E T H:

WHEREAS, by deed dated October 29, 1998 (the "Deed"), of record in Deed Book 7251, Page 809, in the office of the Clerk of the County Court of Jefferson County, Kentucky, the Party of the First Part attempted to convey, but did not convey, to the Party of the Second Part certain property as described on Exhibit A attached hereto; and

WHEREAS, through inadvertence and error the parties identified as the Party of the Second Part were incorrectly and mistakenly named;

WHEREAS, James R. Matthews and John M.B. O'Connor had no knowledge of, and did not deliver, the Deed at the time such Deed was entered into and filed in the office of the Clerk of the County Court of Jefferson County, and upon learning of the existence of the Deed promptly filed this Deed of Correction;

WHEREAS, the Party of the Second Part does not have, and never has had, any right, title or interest in the subject property, either in their capacity as shareholder representatives of the former shareholders of U.S. Corrections Corporation or individually; and

EXH : 000004 of 000026

WHEREAS, the parties hereto desire to correct said error to clarify that the subject property was never conveyed to the Party of the Second Part and that none of James R. Matthews, John M.B. O'Connor or Doug Vetter, individually or as shareholder representatives, (i) have, or ever had, any right, title or interest in the subject property, (ii) are, or ever were, part of the chain of title of the subject property and (iii) have not assumed, and did not assume, any liabilities or obligations of the Party of the First Part of whatever nature (whether fixed or contingent, matured or unmatured, arising by law or by contract otherwise) with respect to the subject property.

NOW THEREFORE, in consideration of the premises and in order to correct the above-referenced error, the parties agree as follows:

1. Party of the First Part hereby conveys unto Party of the Third Part that certain property as described on Exhibit A hereto;

2. Each individual set forth as a Party of the Second Part executes this instrument for the purpose only of acknowledging this correction and hereby disclaims any and all right, title and interest in the subject property that it may have had by reason of the Deed and confirms that it has never had any right, title or interest in the subject property for any purpose and is not, and never was, part of the chain of title with respect to the subject property.

3. Party of the Third Part executes this instrument for the purposes of certifying the consideration pursuant to KRS 382 in the amount of Three Hundred Fifty Thousand Dollars ($350,000,000).

EXH : 000005 of 000026

4. Jennifer P. Matthews (spouse of James R. Matthews), Anastasie OConnor (spouse of John M.B. O'Connor), and Rachel Vetter (spouse of Douglas Vetter), execute this instrument solely for the purposes of acknowledging the correction and confirming that such spouses do not have, and never had, any dower interest in the subject property.

5. All other terms, conditions, agreements and reservations in the Deed are hereby re-affirmed and ratified by Party of the First Part and Part of the Third Part this the 29th day of June, 1999.

PARTY OF THE FIRST PART:

J. Clifford Todd

J. CLIFFORD TODD

Elizabeth H. Todd

ELIZABETH H. TODD

COMMONWEALTH OF KENTUCKY)
COUNTY OF JEFFERSON)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed of Correction was acknowledged, subscribed and sworn to before me in said state and county this 29th day of JUNE, 1999, by J. Clifford Todd and Elizabeth H. Todd, Party of the First Part.

My commission expires: 18-MAY-2003

Robert P. Dayan

NOTARY PUBLIC, STATE-AT-LARGE, KY

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DB07283PG0049

DB07274PG0525

PART/OF THE SECOND PART:

James R. Matthews
JAMES R. MATTHEWS

JOHN M.B. O'CONNOR

DOUGLAS A. VETTER

Jennifer P. Matthews
Jennifer P. MATTHEWS, spouse of James R. Matthews

Anastasie Christianson O'Connor
ANASTASIE O'CONNOR, spouse of John M.B. O'Connor

RACHEL VETTER, spouse of Douglas A. Vetter

STATE OF Conn.)
COUNTY OF)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed was acknowledged, subscribed and sworn to before me in said state and county this 14th day of June, 1999, by James R. Matthews and Jennifer P. Matthews.

My commission expires: _____

Joan Mullins
NOTARY PUBLIC, STATE-AT-LARGE

JOAN MULLINS
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31, 2002

EXH : 000007 of 000026

DB07283PG0050

DB07274PG0526

STATE OF New York)
COUNTY OF New York)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed was acknowledged, subscribed and sworn to before me in said state and county this 15th day of June, 1999, by John M.B. O'Connor and Anastasie O'Connor.

My commission expires: 5/1/2001

Delmarie C. Vester
NOTARY PUBLIC, STATE-AT-LARGE
REG. # 4950480

COMMONWEALTH OF KENTUCKY)
COUNTY OF JEFFERSON)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed was acknowledged, subscribed and sworn to before me in said state and county this ____ day of _____, 1999, by Douglas A. Vetter and Rachel Vetter.

My commission expires: _____

_____
NOTARY PUBLIC, STATE-AT-LARGE

PARTY OF THE THIRD PART

The USCC Shareholder Representatives Irrevocable Trust dated October 28, 1998

By: _____
Title: _____

EXH : 000008 of 000026

PARTY OF THE SECOND PART:

James R. Matthews
JAMES R. MATTHEWS

JOHN M.B. O'CONNOR

DOUGLAS A. VETTER, Individually and as Co-Trustee of the USCC Shareholder Representatives Irrevocable Trust dated October 28, 1998.

Jennifer P. Matthews
Jennifer MATTHEWS, spouse of James R. Matthews

ANASTASIE O'CONNOR, spouse of John M.B. O'Connor

Rachel Vetter
RACHEL VETTER, spouse of Douglas A. Vetter

STATE OF)
COUNTY OF)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed was acknowledged, subscribed and sworn to before me in said state and county this 14th day of June, 1999, by James R. Matthews and Jennifer P. Matthews.

My commission expires: _____

Joan Mullins
NOTARY PUBLIC, STATE-AT-LARGE

JOAN MULLINS
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31, 2002

COMMONWEALTH OF KENTUCKY)
COUNTY OF JEFFERSON)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed was acknowledged, subscribed and sworn to before me in said state and county this 23 day of June, 1999, by Douglas A. Vetter, Co-Trustee of the USCC Shareholder Representatives Irrevocable Trust dated October 28, 1998.

My commission expires: 5/15/2002

NOTARY PUBLIC, STATE-AT-LARGE

THIS INSTRUMENT PREPARED BY:

Steven A. Goodman
Sherry P. Porter
GOLDBERG & SIMPSON, P.S.C.
3000 National City Tower
Louisville, Kentucky 40202
(502) 589-4440

COMMONWEALTH OF KENTUCKY)
COUNTY OF JEFFERSON)

I, a Notary Public, in and for the state and county aforesaid, do hereby certify that the foregoing Deed was acknowledged, subscribed and sworn to before me in said state and county this 23rd day of June, 1999 by Douglas A. Vetter and Rachel Vetter, husband and wife.

My commission expires: 5/15/2002

Notary Public - State at Large

EXH : 000011 of 000026

EXHIBIT A

BEING Tract 3, as shown on the approved Minor Subdivision Plat (Docket No. 1-87), attached to and made a part of corrected "Easement, Restrictions and Maintenance Requirements for 2 lots on a Minor Plat" of record in Deed Book 5650, Page 162, in the Office of the Clerk of the County of Jefferson County, Kentucky.

BEING the same property vested in the Party of the First Party by Deed dated February 15, 1983, and of record in Deed Book 5337, Page 30, in the office of the clerk aforesaid, and re-recorded in Deed Book 5535, Page 781, and being a part of the same property acquired by Quitclaim Deed dated June 26, 1986 of record in Deed Book 5522, Page 441, int the office aforesaid.

Document No.: DN1999118054
Lodged By: SALYERS
Recorded On: 07/19/1999 10:16:38
Total Fees: 21.00
Transfer Tax: .00
County Clerk: Bobbie Holsclaw
Deputy Clerk: DONREI

Document No.: DN1999109847
Lodged By: SALYERS
Recorded On: 07/01/1999 12:20:24
Total Fees: 19.00
Transfer Tax: .00
County Clerk: Bobbie Holsclaw
Deputy Clerk: DONREI
** TOTAL PAGE.08 **

Doc#:DS3:344535.1

END OF DOCUMENT

Rec'd Wed Jul-13-88 10:08am From-212 373 2145 To- Page 08

EXH : 000012 of 000026

QUITCLAIM DEED

TITLE NOT EXAMINED

THIS DEED, made and entered into this 29th day of October, 1998, by and between J. Clifford Todd, and Elizabeth H. Todd, his wife, whose address is 7023 Shelbyville Road, Simpsonville, KY 40067, Party of the First Part; and James R. Matthews, John M.B. O'Connor and Doug A. Vetter, as the former Shareholder Representives of U.S. Corrections Corporation, whose address is c/o 2020 Fairway Vista Drive, Louisville, Kentukcy 40245, Party of the Second Part.

W I T N E S S E T H:

That for valuable consideration for this conveyance in the amount of Three Hundred Fifty Thousand ($350,000.00) the receipt of which is hereby acknowledged, and all parties hereto do hereby certify that this amount is the consideration paid for the property, the Party of the First Part does hereby remise, release and forever quitclaim unto the Party of the Second Part, all of his right, title, interest and claim, if any, in and to the following described real estate, to-wit:

> BEING Tract 3, as shown on the approved Minor Subdivision Plat (Docket No. 1-87), attached to and made a part of corrected "Easement, Restrictions and Maintenance Requirements for 2 lots on a Minor Plat" of record in Deed Book 5650, Page 162, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.
>
> BEING the same property vested in the Party of the First Part by Deed dated February 15, 1983, and of record in Deed Book 5337, Page 30, in the office of the clerk aforesaid, and re-recorded in Deed Book 5535, Page 781, and being a part of the same property acquired by Quitclaim Deed dated June 26, 1986 of record in Deed Book 5522, Page 441, in the office aforesaid.

EXH : 000013 of 000026

Together with all rights, privileges, appurtenances or franchises incident thereto or connected therewith. To have and to hold, the same unto the Party of the Second Part, its heirs and assigns forever.

This conveyance is made subject to any existing mortgages, liens, taxes, easements and restrictions of record affecting said property.

The Party of the Second Part executes this Deed for the purpose of certifying the consideration pursuant to KRS 382.

PARTY OF THE FIRST PART

J. Clifford Todd

Elizabeth H. Todd

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of October, 1998, by J. Clifford Todd and Elizabeth Todd, Party of the First Part.

My commission expires: 16-April-1999

NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

EXH : 000014 of 000026

PARTY OF THE SECOND PART

Douglas A. Vetter, on behalf of Party of the Second Part

STATE OF Kentucky)
)SS
COUNTY OF Jefferson)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of Oct, 1998, by Doug A. Vetter, on behalf of Party of the Second Part.

My commission expires: 9/22/2001

Paula S. Smith
NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

THIS INSTRUMENT PREPARED BY:

Steven A. Goodman
GOLDBERG & SIMPSON, P.S.C.
3000 National City Tower
Louisville, Kentucky 40202
(502) 589-4440

Document No.: DN1999088769
Lodged By: GOLDBERG & SIMPSON
Recorded On: 05/26/1999 02:46:25
Total Fees: 362.00
Transfer Tax: 350.00
County Clerk: Bobbie Holsclaw
Deputy Clerk: DENKIN

END OF DOCUMENT

EXH : 000015 of 000026

QUITCLAIM DEED

TITLE NOT EXAMINED

THIS DEED, made and entered into this 29th day of October, 1998, by and between J. Clifford Todd, and Elizabeth H. Todd, his wife, whose address is 7023 Shelbyville Road, Simpsonville, KY 40067, Party of the First Part; and James R. Matthews, John M.B. O'Connor and Doug A. Vetter, as the former Shareholder Representives of U.S. Corrections Corporation, whose address is c/o 2020 Fairway Vista Drive, Louisville, Kentukcy 40245, Party of the Second Part.

W I T N E S S E T H:

That for valuable consideration for this conveyance in the amount of Three Hundred Fifty Thousand ($350,000.00) the receipt of which is hereby acknowledged, and all parties hereto do hereby certify that this amount is the consideration paid for the property, the Party of the First Part does hereby remise, release and forever quitclaim unto the Party of the Second Part, all of his right, title, interest and claim, if any, in and to the following described real estate, to-wit:

> BEING Tract 3, as shown on the approved Minor Subdivision Plat (Docket No. 1-87), attached to and made a part of corrected "Easement, Restrictions and Maintenance Requirements for 2 lots on a Minor Plat" of record in Deed Book 5650, Page 162, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.
>
> BEING the same property vested in the Party of the First Part by Deed dated February 15, 1983, and of record in Deed Book 5337, Page 30, in the office of the clerk aforesaid, and re-recorded in Deed Book 5535, Page 781, and being a part of the same property acquired by Quitclaim Deed dated June 26, 1986 of record in Deed Book 5522, Page 441, in the office aforesaid.

EXH : 000016 of 000026

Together with all rights, privileges, appurtenances or franchises incident thereto or connected therewith. To have and to hold, the same unto the Party of the Second Part, its heirs and assigns forever.

This conveyance is made subject to any existing mortgages, liens, taxes, easements and restrictions of record affecting said property.

The Party of the Second Part executes this Deed for the purpose of certifying the consideration pursuant to KRS 382.

PARTY OF THE FIRST PART

J. Clifford Todd

Elizabeth H. Todd

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of October, 1998, by J. Clifford Todd and Elizabeth Todd, Party of the First Part.

My commission expires: 16-April-1999

NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

EXH : 000017 of 000026

PARTY OF THE SECOND PART

Douglas A. Vetter, on behalf of Party of the Second Part

STATE OF Kentucky)
)SS
COUNTY OF Jefferson)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of Oct, 1998, by Doug A. Vetter, on behalf of Party of the Second Part.

My commission expires: 9/22/2001

Paula S. Smith
NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

THIS INSTRUMENT PREPARED BY:

Steven A. Goodman
GOLDBERG & SIMPSON, P.S.C.
3000 National City Tower
Louisville, Kentucky 40202
(502) 589-4440

Document No.: DN1999088769
Lodged By: GOLDBERG & SIMPSON
Recorded On: 05/26/1999 02:46:25
Total Fees: 362.00
Transfer Tax: 350.00
County Clerk: Bobbie Holsclaw
Deputy Clerk: DENKIN

END OF DOCUMENT

EXH : 000018 of 000026

QUITCLAIM DEED

TITLE NOT EXAMINED

THIS DEED, made and entered into this 29th day of October, 1998, by and between J. Clifford Todd, and Elizabeth H. Todd, his wife, whose address is 7023 Shelbyville Road, Simpsonville, KY 40067, Party of the First Part; and James R. Matthews, John M.B. O'Connor and Doug A. Vetter, as the former Shareholder Representives of U.S. Corrections Corporation, whose address is c/o 2020 Fairway Vista Drive, Louisville, Kentukcy 40245, Party of the Second Part.

W I T N E S S E T H:

That for valuable consideration for this conveyance in the amount of Three Hundred Fifty Thousand ($350,000.00) the receipt of which is hereby acknowledged, and all parties hereto do hereby certify that this amount is the consideration paid for the property, the Party of the First Part does hereby remise, release and forever quitclaim unto the Party of the Second Part, all of his right, title, interest and claim, if any, in and to the following described real estate, to-wit:

> BEING Tract 3, as shown on the approved Minor Subdivision Plat (Docket No. 1-87), attached to and made a part of corrected "Easement, Restrictions and Maintenance Requirements for 2 lots on a Minor Plat" of record in Deed Book 5650, Page 162, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.
>
> BEING the same property vested in the Party of the First Part by Deed dated February 15, 1983, and of record in Deed Book 5337, Page 30, in the office of the clerk aforesaid, and re-recorded in Deed Book 5535, Page 781, and being a part of the same property acquired by Quitclaim Deed dated June 26, 1986 of record in Deed Book 5522, Page 441, in the office aforesaid.

EXH : 000019 of 000026

Together with all rights, privileges, appurtenances or franchises incident thereto or connected therewith. To have and to hold, the same unto the Party of the Second Part, its heirs and assigns forever.

This conveyance is made subject to any existing mortgages, liens, taxes, easements and restrictions of record affecting said property.

The Party of the Second Part executes this Deed for the purpose of certifying the consideration pursuant to KRS 382.

PARTY OF THE FIRST PART

J. Clifford Todd

Elizabeth H. Todd

STATE OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of October, 1998, by J. Clifford Todd and Elizabeth Todd, Party of the First Part.

My commission expires: 16-April-1999

NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

EXH : 000020 of 000026

PARTY OF THE SECOND PART

Douglas A. Vetter, on behalf of Party of the Second Part

STATE OF Kentucky)
)SS
COUNTY OF Jefferson)

The foregoing instrument was acknowledged, subscribed and sworn to before me, a Notary Public, in and for the state and county aforesaid, this 29th day of Oct, 1998, by Doug A. Vetter, on behalf of Party of the Second Part.

My commission expires: 9/22/2001

Paula S. Smith
NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY

THIS INSTRUMENT PREPARED BY:

Steven A. Goodman
GOLDBERG & SIMPSON, P.S.C.
3000 National City Tower
Louisville, Kentucky 40202
(502) 589-4440

Document No.: DN1999088769
Lodged By: GOLDBERG & SIMPSON
Recorded On: 05/26/1999 02:46:25
Total Fees: 362.00
Transfer Tax: 350.00
County Clerk: Bobbie Holsclaw
Deputy Clerk: DENKIN

END OF DOCUMENT

EXH : 000021 of 000026

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SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and entered into as of the 10th day of June, 2015, by and between: (i) **CAPSTONE RESDEV, LLC**, a Delaware limited liability company having an address at Two PNC Plaza, 19th Floor, 620 Liberty Avenue, Pittsburgh, Pennsylvania 15222, ("Grantor"), and (ii) **CHARLES E. MATTINGLY**, an individual whose address is 4611 South Sixth Street, Louisville, Kentucky 40214 ("Grantee").

W I T N E S S E T H:

For the consideration of ONE HUNDRED SEVENTY THOUSAND DOLLARS ($170,000.00) received from Grantee, the receipt of which is hereby acknowledged, Grantor does hereby bargain, sell, grant and convey unto Grantee, its successors and assigns, forever, in fee simple, certain real property, together with all improvements located thereon and all appurtenances thereunto belonging, situated in Jefferson County, Kentucky (the "Property"), more fully described as follows:

Tract 2 (Residual) as shown on minor plat of record in Deed Book 8560, Page 391, containing 55.36 acres, more or less, (**LESS** portions thereof platted as Pinnacle Place Sections 1A and 1B, in Plat and Subdivision Book 51, Page 14, and so much of said property as comprises the condominium regime of The Villas Pinnacle Place, according to Master Deed and Declaration of Condominium Property Regime dated June 19, 2006, recorded in Deed Book 8852, Page 438, as amended), and more particularly described as:

BEGINNING at a set 1/2" by 18" iron pin with cap stamped "WINK 3492" along the north right-of-way line of Pinnacle Place Drive, said point being a common corner with the southeast corner of Lot 46 of Pinnacle Place Subdivision, Section 1A & 1B of record in Plat and Subdivision Book 51, Page 14, in the Office of the Clerk of Jefferson County, Kentucky; thence leaving said north right-of-way line **N09°05'48"E, 138.39'** to a set x-cut on catch basin, said point being a common corner with the northeast corner of said Lot 46; thence **N11°33'15"E, 204.63'** to a set 1/2" by 18" iron pin with cap stamped "WINK 3492"; thence **N07°15'58"E, 95.67'** to an existing iron pin with cap #2852, said point being a common corner with the northeast corner of Lot 39 of said Pinnacle Place Subdivision, Section 1A & 1B; thence **N21°49'05"W, 90.89'** to an existing iron pin with cap #2852; thence **N46°58'20"W, 69.05'** to an existing iron pin with cap #2852; thence **N58°43'07"W, 116.31'** to an existing iron pin with cap #2852, said point being a common corner with the most northerly corner of Lot 37 of said Pinnacle Place Subdivision, Section 1A & 1B; thence **N38°02'36"E, 411.31'** to an existing railroad spike in concrete pavement; thence **N28°00'33"E, 1,093.76'** to an existing 2" pipe, said point being a common corner with the southerly corner of the property conveyed to CEM Land Company, LLC by Deed of record in Deed Book 9761, Page 475 in the aforesaid Clerks Office; thence **N71°28'48"E, 543.30'** to an existing 1/2" iron pin, said point being a common corner with the westerly corner of the property conveyed to Three D's Development, LLC by Deed of record in Deed Book 9891, Page 5 in the aforesaid Clerks Office; thence **S18°36'35"E, 949.10'** to an existing 4" by 4" stone with a x-cut; thence **S81°29'14"W, 654.78'** to an existing 3/8" iron pin; thence **S03°58'40"E, 532.48'** to a set 1/2" by 18" iron pin with cap stamped "WINK 3492"; thence **S63°03'49"W, 234.74'** to an existing iron pin with a busted cap; thence **N71°23'37"W,**

EXH : 000022 of 000026

208.67' to a set 1/2" by 18" iron pin with cap stamped "WINK 3492"; thence **S37°22'38"W, 125.13'** to an existing bent iron pin with cap; thence **S24°03'12"E, 119.99'** to a set 1/2" by 18" iron pin with cap stamped "WINK 3492", said point being a common corner with the most northerly corner of the property conveyed to WKB Ivy Ridge, LLC by deed of record in Deed Book 8351, Page 81 in the aforesaid Clerks Office; thence **S34°36'38"W, 190.62'** to a set 1/2" by 18" iron pin with cap stamped "WINK 3492"; thence **S17°14'16"W, 135.78'** to a set 1/2" by 18" iron pin with cap stamped "WINK 3492"; thence **N77°34'10"W, 173.67'** to an existing 1/2" iron pin along the aforementioned north right-of-way line of Pinnacle Place Drive; thence with said north right-of-way line with the arc of a curve to the right having a radius of **75.00'** and chord being **S48°07'48"W, 87.53'** to a set 1/2" by 18" iron pin with cap stamped "WINK 3492"; thence with the arc of a curve to the right having a radius of **375.00'** and chord being **S87°32'15"W, 48.50'** to the point of **BEGINNING**, containing **32.38 acres**.

BEING a part of the same property acquired by WKB Pinnacle Place, LLC, a Kentucky limited liability company, by deed dated July 23, 2003, recorded in Deed Book 8351, Page 81, and by deed dated August 16, 2004, recorded in deed Book 8469, Page 22, both in the office of the clerk aforesaid.

BEING a part of the same property conveyed to Capstone ResDev, LLC, a Delaware limited liability company, its successor and assigns, by Commissioner's Deed dated March 23, 2015 and recorded in Deed Book 10387, Page 615, in the office of the clerk aforesaid.

TO HAVE AND TO HOLD, with covenant of SPECIAL WARRANTY, all of the Property, in fee simple, together with all the rights, privileges, appurtenances and improvements thereunto belonging, unto the Grantee, its successors and assigns, forever.

Grantor hereby specially covenants with Grantee, its successors and assigns, that Grantor is lawfully seized of the Property, has full right, power and authority to convey the Property, and that Grantor will forever warrant and defend all of the Property so granted to Grantee, its successors and assigns, against every person lawfully claiming the same or any part thereof by, through or under Grantor, but not otherwise.

This Deed is hereby made expressly subject to (a) zoning laws, rules and regulations affecting the Property, if any, (b) the lien of current ad valorem taxes not yet due and payable, which taxes shall be prorated as of the date of this Deed and are hereby assumed by Grantee, and the lien of all future ad valorem taxes, which taxes Grantee hereby assumes and agrees to pay, and (c) unfiled municipal claims, (d) rights, public and private, in and to any portion of the Premises that lies within the right of way of any public street or alley abutting the Property and, (e) all restrictions, covenants, easements and stipulations of record affecting the Property.

The total aggregate fair market value of the Property is $170,000.00.

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IN TESTIMONY WHEREOF, witness the signature of Grantor on the day, month and year first above written.

CAPSTONE RESDEV, LLC

BY: _____
WENDY E. POLLARINE-MATHENY
VICE PRESIDENT

("Grantor")

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 10th day of June, 2015, by Wendy E. Pollarine-Matheny, as Vice President of Capstone ResDev, LLC on behalf of the limited liability company.

My commission expires:

SHELLEY A. MUSS
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires Nov. 12, 2018

_____
NOTARY PUBLIC

SEAL

EXH : 000024 of 000026

CONSIDERATION CERTIFICATE

For purposes of KRS 382.135, Grantor and Grantee certify that the consideration reflected in this Deed is the full consideration paid for the Property. Grantee joins in this Deed for the sole purpose of certifying said consideration.

CAPSTONE RESDEV, LLC

BY: _____
WENDY E. ~~POLLARINE~~-MATHENY
VICE PRESIDENT

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 10th day of June, 2015, by Wendy E. Pollarine-Matheny, as Vice President of Capstone ResDev, LLC on behalf of the limited liability company.

SHELLEY R. MUSS
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires Nov. 12, 2016

My Commission expires: _____

_____
NOTARY PUBLIC

_____
CHARLES E. MATTINGLEY

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 12th day of June, 2015, by Charles E. Mattingley, an individual.

My Commission expires: 02-10-2017

_____
NOTARY PUBLIC

SEAL

This instrument was prepared by:

John S. Green by yes
PNC Bank, National Association
1600 Market Street, 28th Floor
Philadelphia, PA 19103

END OF DOCUMENT

Document No.: DN2015076912
Lodged By: thomas dodson
Recorded On: 06/18/2015 10:23:39
Total Fees: 193.00
Transfer Tax: 170.00
County Clerk: BOBBIE HOLSCLAW-JEFF CO KY
Deputy Clerk: JOLCAR

0568595.09 Pcraine NAOI

John Y. Brown III
Secretary of State
Received and Filed
09/22/2003 3:20:53 PM
Fee Receipt: $8.00

ARTICLES OF INCORPORATION

OF

WAVERLY HILLS HISTORICAL SOCIETY, INC.

The undersigned incorporator hereby forms a nonprofit corporation (the "Corporation") in accordance with the laws of the Commonwealth of Kentucky, under the provisions of KRS 273.161 to KRS 273.390, and hereby adopts the following Articles of Incorporation:

ARTICLE 1

The name of the Corporation is Waverly Hills Historical Society, Inc.

ARTICLE 2

2.1 Any provisions of these Articles of Incorporation to the contrary notwithstanding, the Corporation shall not have capital stock or shareholders and shall not have any purpose or object, nor have or exercise any power, nor engage in any activity, which in any way contravenes, or is in conflict with, the other provisions of Article 2 of these Articles of Incorporation.

2.2 The objects and purposes of the Corporation, and the powers it shall have and may exercise are as follows:

(a) As general and controlling purposes, to conduct and carry on its work, not for profit, but exclusively for charitable, scientific, literary, or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), (or corresponding provisions of any subsequent Federal tax laws), in such manner

(i) that no part of its income or property shall inure to the private benefit of any donor, director, officer, or individual having a personal or private interest in the activities of the Corporation, except as reasonable compensation for services actually rendered,

(ii) that it shall not directly or indirectly participate in or intervene in any political campaign on behalf of any candidate for public office and

(iii) that no substantial part of its activities shall be carrying on propaganda or otherwise attempting to influence legislation.

(b) As particular purposes in furtherance of, consistent with, and subject to, the general purposes set forth in Section (2)(a) of this Article 2:

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(i) To establish and maintain a repository of research and information on the Waverly Hills Sanatorium and to establish and maintain a memorial to those who lived and worked there, and to support through funding and other methods the restoration and preservation of the Waverly Hills Sanatorium. The corporation shall not discriminate among donors, authors or institutions on the basis of race, color, nationality or ethnic origin; and

(ii) To organize, promote, foster, assist (whether financially or otherwise), and conduct such charitable, scientific, literary and educational enterprises, activities and institutions, as from time to time may be determined or selected by the Corporation's Board of Directors

(c) In furtherance of, and at all times subject to, the aforesaid purposes, enterprises, activities, and projects:

(i) To solicit and acquire by gift, exchange, or otherwise, property of any and all kinds, and to sell, transfer, and otherwise dispose of any property it so acquires;

(ii) To invest and reinvest any such property and the increments in, and avails or proceeds of, any such property in such investments as may be deemed advisable from time to time by the Corporation's Board of Directors, including, but not limited to, stocks, bonds, secured and unsecured obligations, undivided interests, leases, commercial paper, financial and governmental instruments, savings and other depository accounts, and other securities and properties;

(iii) To give, donate, and contribute to any of the activities the Corporation may elect to sponsor, or in furtherance of any of the aforesaid purposes for which the Corporation is organized, such money or property, or both, as the Corporation's Board of Directors may from time to time determine;

(iv) To take title to, and hold in its own name, such real or personal property, or both, and such interests in either such type of property as the Corporation may acquire, for the purposes herein set out, and to sell, transfer, and dispose of any such property or reinvest the proceeds thereof as herein permitted;

(v) To accept gifts, bequests, or devises of property of any kind which any person, firm, or corporation may make to the Corporation, upon the terms, trusts, and conditions set forth in the deed of gift, will, or other instrument of writing, executed by any such donor or testator, but only for the purposes and upon the terms and conditions and with the powers set forth in these Articles of Incorporation;

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(iv) To borrow money and give security therefore by pledging, mortgaging, or otherwise hypothecating any property it may own, or any interest it may have in such property;

(vii) To become a member of any other non-stock or nonprofit corporation organized under the laws of any state, or to become affiliated with any other organization of like character existing under the laws of any state; provided, however, that such corporation or organization is an exempt organization under section 501(c)(3) of the Code (or corresponding provisions of any subsequent Federal tax laws);

(viii) To the extent permitted bylaw, to enter into contracts with any corporate trust company for the purpose of delegating to it the power, or employing it, to make investments on behalf of the Corporation, and to do such other things permitted by these Articles of Incorporation as the parties may agree upon, and without limiting the generality of the foregoing, but in furtherance thereof, to enter into trust agreements, irrevocable or otherwise, with any such corporate trustee, and therein to authorize any such corporate trustee to employ agents, attorneys, accountants, and others in connection with the performance of any duty or trust arising under such agreement; and

(ix) To do any and all things which the corporation's Board of Directors may determine, consistent with the provisions hereof, to be necessary or appropriate to effectuate the purposes of which the Corporation is organized as herein set forth, to the extent that the doing of such act or thing is not inconsistent with the provisions of Chapter 273 of Kentucky revised Statutes, or any other applicable law or statute of the Commonwealth of Kentucky, or section 501 (c)(3) of the Code (or corresponding provisions of any subsequent Federal tax laws).

2.3 Notwithstanding any provision heretofore or hereafter stated herein, if at any time the Corporation is determined to be a private foundation or private operating foundation as defined in section 509 or section 4942 of the Code (or corresponding provisions of any subsequent Federal tax laws), then:

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Code (or corresponding provisions of any subsequent Federal tax laws).

(b) The Corporation shall not engage in any act of self-dealing as defined in section 4941(d) of the Code (or corresponding provisions of any subsequent Federal tax laws)

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(c) The Corporation shall not purchase nor retain any excess business holdings as defined in section 4943(c) of the Code (or corresponding provisions of any subsequent Federal tax laws).

(d) The Corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Code (or corresponding provisions of any subsequent Federal tax laws).

(e) The Corporation shall not make any taxable expenditures as defined in section 4945(d) of the Code (or corresponding provisions of any subsequent Federal tax laws).

ARTICLE 3

The Corporation may admit members from time to time in accordance with the Bylaws.

ARTICLE 4

If, at any time, this Corporation dissolves, the assets of this Corporation shall be applied and distributed as follows:

(a) All liabilities and obligations of this Corporation shall be paid and discharged, or adequate provision shall be made therefor;

(b) Assets held by this Corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;

(c) Assets that have been received and are held by this Corporation subject to limitations permitting their use only for charitable, scientific, literary, educational, and/or similar purposes, and that are not held upon a condition requiring return, transfer, or conveyance by reason of dissolution, shall be transferred or conveyed to one or more corporations, societies, or organizations, organized under the laws of any state, that are exempt under section 501(c)(3) of the Code (or corresponding provisions of any subsequent Federal tax laws), or to the Federal government, or to a state or local government, for a public purpose, pursuant to a plan of distribution adopted as provided by Law; and

(d) Other assets, if any, shall be transferred or conveyed to one or more corporations, societies, or organizations, organized under the laws of any state, that are exempt under section 501(cX3) of the Code (or corresponding provisions of any subsequent Federal tax laws), or to the Federal government, or to a state or local government, for a public purpose, pursuant to a plan of distribution adopted as provided by law.

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(e) Any assets not otherwise disposed of pursuant to the provisions of this Article 4 shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located to such organizations, as the court shall determine, which are organized and operated exclusively for charitable purposes and are exempt under section 501 (c)(3) of the Code (or corresponding provisions of any subsequent Federal tax laws).

ARTICLE 5

5.1 The Corporation's Articles of Incorporation may be amended in the manner provided by law.

5.2 The Board of Directors shall adopt Bylaws for the Corporation and may change or revise such Bylaws at any time and from time to time.

ARTICLE 6

6.1 (a) The affairs of the Corporation shall be conducted by the Board of Directors and by such committees and officers as shall be provided in the Bylaws.

(b) The Board of Directors shall consist of not less than three (3) persons, and until otherwise fixed by the Bylaws, shall consist of three (3) persons. The election of Directors shall take place at the annual meeting of the Board of Directors, or as otherwise provided in the Bylaws.

(c) The term of office of each director shall be as provided by the Corporation's Bylaws. Each Director so elected shall hold office until removed or until his or her respective successor shall have been duly elected and shall have accepted office.

(d) At a meeting of the Board of Directors called expressly for that purpose, any Director or the entire Board may be removed, with or without cause, by a vote of a majority of Directors.

6.2 The annual meetings of the corporation's Board of Directors shall be held at such time and place as may be fixed by the Corporation's Bylaws.

6.3 The duties and powers of the Board of Directors, committees and officers of the Corporation shall, except as herein otherwise specifically provided, be such as are usually incident to similar Boards of Directors, similar committees and similar officers, and in addition, shall be such as may be conferred upon said Board of Directors, upon such committees, or upon such officers by law, or by amendment to the Articles of Incorporation of Bylaws, or by appropriate corporation resolution.

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ARTICLE 7

7.1 The private property of the incorporator and of the directors shall not be subject to any of the Corporation's debts and liabilities.

7.2 Indemnification of directors, officers, employees and agents of the Corporation may be as provided for in the Bylaws; provided, however, such indemnification is not otherwise in conflict with the provisions of Article 2 of these Articles of Incorporation.

ARTICLE 8

A Director of the Corporation shall not be personally liable to the Corporation for monetary damages for breach of such Director's duties as a Director; provided, however, this provision shall not eliminate or limit the liability of a Director for:

(a) any transaction in which the Director's personal financial interest is in conflict with the financial interests of the Corporation;

(b) acts or omissions not in good faith or which involve intentional misconduct or are known to the Director to be a violation of law; or

(c) any transaction from which the Director derived an improper personal benefit.

ARTICLE 9

The name and mailing address of each of the initial Directors of the Corporation who are to serve until the first annual meeting of its Board of Directors, or until the first meeting called to elect the Board of Directors, are:

Tina Ann Mattingly
4811 S. 6th St.
Louisville, KY 40214

Anthony Humphrey
9025 Wanlou Dr.
Louisville, KY 40272

Ron Parkhurst
9805 Seville Dr.
Louisville, KY 40272

ARTICLE 10

Until otherwise changed, the registered office of the Corporation shall be located at 4811 S. 6th St., Louisville, KY 40214, and the name and address of its agent for service of process at such address is Tina Ann Mattingly.

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ARTICLE 11

The address of the principal office of the Corporation is 4611 S. 6th St., Louisville, KY 40214.

ARTICLE 12

The Corporation shall have perpetual duration.

ARTICLE 13

The name and address of the incorporator of the Corporation are Christopher L. King, P.O. Box 14161, Louisville, KY 40214.

IN WITNESS WHEREOF, the undersigned incorporator hereby execute the foregoing Articles of Incorporation and acknowledges this to be the incorporator's act and deed this 16th day of September 2003.

Christopher L. King, Incorporator

CONSENT OF REGISTERED AGENT

The undersigned, having been named in these Articles of Incorporation as the registered agent of the Corporation, hereby consents to serve in that capacity.

Tina Ann Mattingly

This instrument prepared by:

Christopher L. King
P.O. Box 14161
Louisville, KY 40214
(502) 558-0097

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King Law Office

Christopher L. King
Attorney at Law

September 18, 2003

John Y. Brown,
Secretary of State
P. O. Box 718
Frankfort, KY 40602-0718

RE: Filing of Articles of Incorporation – Non-Profit Corporation

Dear Sir,

Please accept the enclosed Articles of Incorporation of the Waverly Hills Historical Society, Inc. I have enclosed the original and two copies of the executed copies of the Articles along with a check for the $8.00 filing fee. Once these Articles have been accepted for filing, please return the stamped copies to my attention at the address below.

Thank you for your attention to this matter. Should you need further information, please do not hesitate to contact me at the number below.

Sincerely,

Christopher L. King
Attorney at Law

Enc. (4)

P.O. Box 14161, Louisville, KY 40214
E-Mail: attorneyking@msn.com

Serving Indiana and Kentucky

Phone: (502) 558-0097
In IN: (812) 941-9109

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into on the 11th day of November, 2015, by and between (i) **C.E.M. LAND COMPANY, LLC**, a Kentucky limited liability company ("CEM Land"), and (ii) **WAVERLY HILLS HISTORICAL SOCIETY, INC.**, a Kentucky nonprofit corporation ("WHHS"), for the purpose of documenting the prior and prospective agreement between the parties hereto regarding CEM Land's provision of general contracting and construction services with respect to certain real property, which has been and is currently being used by WHHS in connection with its exempt purposes.

RECITALS:

A. WHHS was formed for the purposes of (1) establishing and maintaining research and information on certain real property known as the Waverly Hills Sanitarium (the "Premises"), (2) establishing and maintaining a memorial to those who lived and worked on the Premises, and (3) supporting the restoration and preservation of the Premises.

B. Since its formation, WHHS has been the lessee of the Premises under a long-term lease agreement.

C. CEM Land has provided, and herein agrees to continue to provide, WHHS with various construction, restoration, repair and improvement services ("Services") with respect to the Premises.

D. CEM Land has performed, and intends to continue to perform the Services without receiving remuneration from WHHS, except for the reimbursement of CEM Land's reasonable expenses for the supplies, tools, and equipment required to carry out the performance of the Services.

E. The parties desire to reduce to writing the terms of the arrangement between them with respect to the Services provided by CEM Land to WHHS with respect to the Premises.

UNDERSTANDING:

1. DESCRIPTION OF PROJECT. As part of WHHS's exempt purpose, WHHS has undertaken the task of rehabilitating, restoring, repairing and improving the Premises (the "Project").

2. SERVICES. In connection with the completion of the Project, CEM Land agrees to continue to provide the Services to WHHS.

3. REIMBURSEMENT OF EXPENSES ONLY. CEM Land shall continue to perform the Services for the benefit of WHHS without receiving remuneration from WHHS in excess of amounts that represent reimbursement of CEM Land's reasonable expenses for the supplies, tools, and equipment required to carry out the performance of the Services.

4. TERM AND TERMINATION. The term of this MOU shall commence on the date hereof and shall expire the earlier of (1) the date on which the Project has been completed or (2) the date

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that is 30 days from the date of receipt of written notice from either party of its desire to terminate this MOU.

5. MISCELLANEOUS.

5.1 Notice. Any notice or consent authorized or required by this MOU shall be in writing and either delivered personally or sent postage prepaid by certified mail or registered mail, return receipt requested, directed to the other party at its principal office address or such other parties or addressees as may be designated by either party by notice given from time to time in accordance with this Section 5.1. Any notice or consent given in accordance with this Section 5.1 shall be deemed received upon delivery in person or three days after depositing it in an office of the United States Postal Service.

5.2 Assignment. The parties shall not transfer or assign all or any part of their rights or obligations hereunder without the express written consent of the other party. No assignment shall relieve, release or discharge the assigning party of its obligations, except as provided therein.

5.3 No Legal Entity Created. The parties acknowledge that this MOU does not create a legal entity, partnership, joint venture or any association taxable as a corporation. The parties shall not have the authority to legally bind one another.

5.4 Compliance with Laws. The parties shall comply with all applicable laws in the performance of their activities under this MOU. In addition, all rights and obligations of the parties under this MOU shall be subject to all applicable laws, rules, regulations, applicable orders and decrees of any court having jurisdiction over the party in question, and nothing in this MOU shall be construed to require either party to take any action which would cause such party to violate such laws, rules, regulations, applicable orders or decrees or to violate any contract or agreement to which such party is party. Neither of the parties, nor their employees, agents or other representatives shall take any action, tortious or otherwise, that would subject the other party (or its employees, agents or other representatives) to liability or penalty under any laws, rules, regulations, orders or decrees of any government entity. Either party breaching this Section 5.4 shall indemnify the other party and its respective employees, agents and other representatives from and against all claims, losses, damages, liabilities, expenses (including reasonable attorneys' fees and disbursements), penalties, fines or costs of whatever nature arising out of or in connection with such noncompliance. Each party will give the other party prompt notice of any allegation or suggestion (whatever the source) of which it becomes aware of a violation of the terms of this MOU or of any laws, rules, regulations, ethical requirements, orders or decrees of any governmental agency, which relate to the transactions contemplated by this MOU.

5.5 Benefit. This MOU shall inure to the benefit of the parties hereto, their respective successors and assigns.

5.6 Governing Law. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to its conflict of laws rules

5.7 Amendment. This MOU may be amended only by written agreement signed by both the parties hereto.

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5.8 Headings. The section headings used herein are for convenience purposes only and do not constitute matters to be construed in interpreting this MOU.

5.9 Time of Essence. Time is of the essence for this MOU.

5.10 Invalid, Illegal or Unenforceable Provision. If any term, covenant or condition contained in this MOU is deemed to be invalid, illegal or unenforceable, then the rights and obligations of the parties hereto shall be construed as if this MOU did not contain that particular term, covenant or condition.

5.11 Counterparts. This MOU may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement, binding upon the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.

[Signature Page Follows]

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