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September 19, 2019

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PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Gwen R. Pinson  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

**RE: Bernheim Arboretum and Research Forest v. Louisville Gas and Electric Company**  
**Case No. 2019-00274**

Dear Ms. Pinson:

Please find enclosed and accept for filing the original unbound and ten additional copies of the *Brief of Louisville Gas and Electric Company Regarding Standing Issues*. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our office courier.

Should you have any questions please contact me at your convenience.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kendrick R. Riggs".

Kendrick R. Riggs

KRR:mew

Enclosures as mentioned

cc: Allyson K. Sturgeon, Managing Sr. Counsel, Regulatory & Transactions, LG&E and KU Energy LLC  
Kent A. Chandler, Rebecca W. Goodman, Justin M. McNeil, and Lawrence W. Cook, Office of the Kentucky Attorney General  
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**PUBLIC SERVICE  
COMMISSION**

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**BERNHEIM ARBORETUM AND RESEARCH  
FOREST**

**v.**

**LOUISVILLE GAS AND ELECTRIC  
COMPANY**

**CASE NO. 2019-00274**

**BRIEF OF**

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**REGARDING STANDING ISSUES**

**FILED: September 19, 2019**



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## **I. INTRODUCTION**

Louisville Gas and Electric Company (“LG&E”) received a Certificate of Public Convenience and Necessity (“CPCN”) for the construction of a natural gas pipeline in Bullitt County in LG&E’s 2016 rate case, Case No. 2016-00371. More than two years after the Public Service Commission (“Commission”) issued its final order in Case No. 2016-00371 (“Final Order”), the Bernheim Arboretum and Research Forest (“Bernheim”) filed a complaint asking the Commission to void a portion of the Final Order because Bernheim claims it was entitled to receive notice. Bernheim makes this argument despite the fact that (1) no statute or regulation requires LG&E to provide any notice of a request for a CPCN for a natural gas pipeline; (2) Bernheim was not a party to Case No. 2016-00371; and (3) Bernheim did not own the subject property in 2016 or 2017 when it alleges notice should have been provided. At bottom, Bernheim is asking the Commission to void portions of a lawful order issued two years ago based on an erroneous notice argument concerning a pipeline that will cross property that Bernheim did not own at the time it claims notice should have been provided. For many reasons, Bernheim does not have standing to bring this complaint.

The Commission directed Bernheim and LG&E to brief two threshold issues related to standing in its order dated August 20, 2019. The Commission asked the parties to brief the legal issues of (1) “whether Bernheim Arboretum has standing to claim that notice is required upon the filing of a CPCN application for a natural gas pipeline and that it would be entitled to receive notice of a CPCN application by LG&E for construction of the Bullitt County natural gas pipeline”<sup>1</sup>; and (2) “whether Bernheim Arboretum had a protected property interest (or any other legally recognized interest) that was allegedly violated by the June 22, 2017 Order in Case No.

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<sup>1</sup> Order at 3.

2016-00371, and which now creates standing to challenge and seek review of the findings of fact and conclusions of law regarding the Bullitt County pipeline as set forth in the June 22, 2017 Order in Case No. 2016-00371.”<sup>2</sup>

The answer to both of the Commission’s questions is no. First, Bernheim does not have standing to claim that it would be entitled to receive notice of a CPCN application for construction of a natural gas pipeline because no such notice is required and even if such notice were required, Bernheim was not entitled to receive notice because it did not own the property the pipeline will cross until more than a year after the Commission issued its Final Order. Bernheim thus fails to show it has suffered an injury connected to LG&E’s action that is redressable by the Commission. Second, Bernheim fails to show any protected property interest or other legally recognized interest that was allegedly violated by the Final Order. No such interest exists. Instead, Bernheim’s brief fails to directly address the issues posed by the Commission and attempts to cover its omission with distracting with emotional appeals regarding issues irrelevant to the standing inquiry.

Bernheim’s brief also contains a number of inaccuracies, which LG&E will clarify:

- The Commission did not grant the CPCN *sua sponte*.<sup>3</sup> LG&E requested a CPCN in Case No. 2016-00371.<sup>4</sup>

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> Brief at 3, 8, 18.

<sup>4</sup> LG&E first mentioned the Bullitt County pipeline project in LG&E’s first substantive filing with the Commission. Direct Testimony of Lonnie E. Bellar at 3-4. LG&E provided all information required to grant a CPCN throughout the proceeding. LG&E asserted that a CPCN was not required, but asked the Commission to grant it a CPCN if it determined one was necessary in its Post-Hearing Brief. LG&E Post-Hearing Brief at 37. At the hearing, Mr. Bellar explained that LG&E had provided through discovery all the information the Commission would need should it determine a CPCN was necessary. Hearing Transcript at 11-12.

- Bernheim did not own the subject property in 2017.<sup>5</sup> Bernheim did not purchase the property until October 2018,<sup>6</sup> long after the Commission issued its Final Order.
- Bernheim claims a “large portion” of the pipeline “will be located on Bernheim property where guests will likely be present.”<sup>7</sup> This is not accurate. This assertion is directly refuted by express language in the Deed of Conservation Easement, recorded in the Bullitt County Clerk’s Office, which states: “There shall be no public visitor activities at the Property except as specifically authorized and described in the then current resource management plan, and except for scientific research approved by Grantor and Grantee.”<sup>8</sup>
- Bernheim claims the pipeline “will cross a substantial portion of the Bernheim property.”<sup>9</sup> The permanent easement Bernheim seeks for the pipeline represents only approximately one percent of the subject property Bernheim acquired in 2018. The easement represents a much smaller portion of Bernheim’s total property. A map, attached as Exhibit 3, shows the minimal crossing of the pipeline on Bernheim’s property, as well as the existing electric transmission line owned by another utility that runs parallel to the proposed easement. A “large

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<sup>5</sup> Brief at 3, n.1.

<sup>6</sup> The transfer of the subject property to Bernheim is recorded in Deed Book 956, Page 600, and Deed Book 956, Page 606, both in the Bullitt County Clerk’s Office. The deeds are attached as Exhibit 1. The deeds only allow the transfer of any portion of the property to conservation organizations. Notwithstanding this restriction, LG&E’s proposed easement is proper; KRS 382.850(2) specifically allows for eminent domain to be utilized on a property encumbered by a conservation easement: “A conservation easement [...] shall not operate to impair or restrict any right or power of eminent domain created by statute, and all such rights and powers shall be exercisable as if the conservation easement did not exist.”

<sup>7</sup> Brief at 5.

<sup>8</sup> The Deed of Conservation Easement related to the subject property is recorded in Deed Book 956, Page 615 in the Bullitt County Clerk’s Office. The Deed of Conservation Easement is attached as Exhibit 2.

<sup>9</sup> Brief at 3. The subject property that Bernheim acquired in 2018 is approximately 445 acres. LG&E is seeking a 4.46 acre permanent easement and a 2.64 acre temporary easement that will revert to Bernheim once construction is complete.

portion” of the pipeline will also not be located on Bernheim’s property.<sup>10</sup> The portion of the pipeline crossing Bernheim’s property represents approximately 6.1 percent of the total pipeline length.<sup>11</sup>

- LG&E did not try to hide the pipeline from public view by including it in Case No. 2016-00371, as Bernheim’s brief suggests.<sup>12</sup> Quite to the contrary, LG&E expressly identified and explained the project in its application and supporting testimony in the plain view of the Attorney General (“AG”) and 12 other intervenors representing various consumer interests. And in fact, Commission Staff and the AG asked several questions about the pipeline project in discovery and at the hearing.<sup>13</sup> The complete filing was also available on the Commission’s website, LG&E’s website, and in LG&E’s Broadway Office. As the Commission’s August 20, 2019 Order noted,<sup>14</sup> LG&E’s increase in gas rates was partially based on the proposed capital expenditures for the project. Inclusion of testimony about the project within the 2016 rate case was therefore entirely appropriate. None of the intervening parties expressed any objection to the pipeline. And LG&E provided all supporting evidence necessary for the Commission to issue a CPCN without objection by any of the parties. The Commission recently recognized that the findings in the Final Order “were based

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<sup>10</sup> Brief at 5.

<sup>11</sup> The Bernheim portion of the pipeline is approximately 3,886 feet in length. The total Pipeline is approximately 11.84 miles, or 62,515.2 feet, in length. Therefore, the Bernheim portion represents approximately 6.2 percent of the total Pipeline length.

<sup>12</sup> Brief at 9 (“LG&E’s clandestine attempt to unlawfully request a CPCN should have never been condoned by the Commission.”).

<sup>13</sup> See, e.g., Response to PSC 2-64; Response to AG 1-256; Response to AG 1-432; Response to PSC 3-24, Response to PSC 3-25; Response to PSC 3-26; Hearing Transcript at 8-12.

<sup>14</sup> Order at 2 (“The requested increase in natural gas rates was due, in part, to the capital investment needed to construct a new 10-12 mile natural gas pipeline in Bullitt County.”).

on a voluminous record of evidence, compiled in a case that included multiple intervenors including the Attorney General[.]”<sup>15</sup>

Bernheim’s complaint now attempts to obtain retroactive relief from a Commission order in a case that was closed almost two years ago. Bernheim has no standing to bring such a complaint. Accordingly, the Commission should dismiss the complaint.

## **II. ARGUMENT**

LG&E explained the need to build the Bullitt County pipeline project (the “Pipeline”) in its first substantive filing with the Commission in its 2016 rate case, Case No. 2016-00371. Pages 3-4 of the Direct Testimony of Lonnie Bellar, which was filed with LG&E’s Application, contain a detailed description of the Pipeline.<sup>16</sup> LG&E initially believed no CPCN was required for the Pipeline because it considered the Pipeline to be an ordinary extension of LG&E’s existing gas system in the usual course of business.<sup>17</sup> In discovery, LG&E responded to requests from the AG and Commission Staff about the Pipeline<sup>18</sup> and considered that the Commission might disagree with LG&E’s interpretation of the CPCN statute and require LG&E to obtain a CPCN for the Pipeline. In response to a request for information from Commission Staff, LG&E provided all information required to grant a CPCN that was not otherwise already in the record of the proceeding.<sup>19</sup> In its Post-Hearing Brief, LG&E requested that the Commission grant it a CPCN for the Pipeline if the Commission determined one was required.<sup>20</sup> The Commission did so in its Final Order. Contrary to Bernheim’s assertion, the Commission has authority under

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<sup>15</sup> *Kimberly Brown v. Louisville Gas and Electric Company*, Case No. 2019-00296, Order at 2-3 (Ky. PSC Sept. 11, 2019).

<sup>16</sup> Direct Testimony of Lonnie E. Bellar at 3-4.

<sup>17</sup> Response to PSC 2-64.

<sup>18</sup> *See, e.g.*, Response to PSC 2-64; Response to AG 1-256; Response to AG 1-432; Response to PSC 3-24, Response to PSC 3-25; Response to PSC 3-26.

<sup>19</sup> Response to PSC 3-26.

<sup>20</sup> LG&E Post-Hearing Brief at 37; Hearing Transcript at 12.

KRS 278.020(1)(b) to award a CPCN that was not explicitly requested in the application and has done so in other cases.<sup>21</sup>

Importantly, no party (including the AG) objected at any time to the granting of the CPCN or the process by which it occurred. The Pipeline was never hidden from the public as Bernheim erroneously claims; LG&E specifically highlighted the Pipeline in written evidence, and in fact, the AG asked questions during discovery specifically citing to Mr. Bellar's testimony about the proposed Pipeline.<sup>22</sup> While LG&E requested and obtained confidential treatment for certain information related to the route for good reason, which included critical energy infrastructure information and preliminary studies, Bernheim's assertion the Pipeline was somehow "hidden" is completely refuted by the public record of evidence.<sup>23</sup> Moreover, parties to the case, such as the AG, obtained copies of the confidential information, reviewed it, and expressed no concern or objection.

Given the foregoing, the Commission should dismiss Bernheim's complaint because, as demonstrated below, (A) Bernheim fails to meet the elements of standing or KRS 278.260 necessary to bring a complaint; (B) the complaint is simply a request for retroactive relief; and (C) Bernheim's complaint fails to acknowledge the lawful deference given to the Commission's interpretation of statutes it is charged with implementing.

#### **A. Bernheim Fails to Meet the Elements of Standing.**

The United States Supreme Court and Kentucky Supreme Court have set forth the specific requirements of standing. The Supreme Court established in *Lujan v. Defenders of Wildlife* that, to have standing, a plaintiff must (1) have suffered an actual, concrete, and

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<sup>21</sup> See, e.g., *Application of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity and Surcharge for Same*, Case No. 2014-00255, Order (Ky. PSC Dec. 23, 2014).

<sup>22</sup> Response to AG 1-256; Response to AG 1-432.

<sup>23</sup> Case No. 2016-00371, Order (Ky. PSC Dec. 10, 2018).

particularized “injury in fact” that (2) has a causal connection with Defendant’s action and (3) is redressable in court.<sup>24</sup> In 2018, the Kentucky Supreme Court formally adopted the *Lujan* standing test in *Cabinet for Health & Family Services v. Sexton*,<sup>25</sup> and further explained: “[A] litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent . . . . The injury must be . . . ‘distinct and palpable,’ and not ‘abstract’ or ‘conjectural’ or ‘hypothetical.’”<sup>26</sup> Regarding the second and third factors, the Kentucky Supreme Court explained: “The injury must be ‘fairly’ traceable to the challenged action, and relief from the injury must be ‘likely’ to follow from a favorable decision.”<sup>27</sup> While the *Sexton* court does not directly address standing before an administrative agency, at a minimum, the constitutional requirements of standing should apply to an adversarial complaint proceeding before the Commission.

The General Assembly has set forth additional statutory requirements for a plaintiff to have standing to file a complaint with the Commission. KRS 278.260(1) provides, in relevant part:

The Commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.

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<sup>24</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

<sup>25</sup> *Cabinet for Health & Family Servs. v. Sexton*, 566 S.W.3d 185 (Ky. 2018).

<sup>26</sup> *Id.* (internal citations omitted).

<sup>27</sup> *Id.* (internal citations omitted).



Bernheim's complaint omits any allegation regarding LG&E's rates or service, thus failing to meet these express statutory requirements.<sup>28</sup> Its complaint simply does not allege an actual injury connected to LG&E's action that is redressable before the Commission (or in court). Accordingly, Bernheim lacks standing to file this complaint.

**1. Bernheim Has Not Suffered an Actual Injury.**

Bernheim's alleged "injury" is not sufficiently actual, concrete, and particularized to satisfy the first prong of the *Lujan* standing inquiry. Bernheim states: "Bernheim has suffered a denial of due process of law, as guaranteed by the Kentucky Constitution Section 2, through the failure of the Commission to abide by its own regulations and to require application by LG&E for a CPCN for the Bullitt County Pipeline, which would have allowed for public notice and an opportunity to be heard regarding the necessity for and routing of such Pipeline."<sup>29</sup> Bernheim pleads its injury arises from its failure to receive notice. But LG&E complied with all notice requirements in Case No. 2016-00371 and Bernheim cannot cite any authority to support its position that it (or any other party) would have been entitled to individualized notice—of any kind—had LG&E filed for a CPCN for the Pipeline in a standalone case.

**a. LG&E Complied With All Notice Requirements.**

First, and most importantly, LG&E complied with all notice requirements in its 2016 rate case. In fact, as a gas customer, Bernheim received *more notice* of the application than if the Pipeline had been the subject of a standalone proceeding. No statute or regulation requires any type of customer notice for construction of a natural gas pipeline. Particularly, the CPCN statute, KRS 278.020, does not require any type of notice be given when an application concerning

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<sup>28</sup> While Bernheim's brief makes general, unsupported assertions about the increased costs of the Pipeline, *see supra* at page 15-16, Bernheim's complaint makes no allegation regarding LG&E's rates or service.

<sup>29</sup> Complaint at 6-7.

construction of a natural gas pipeline is filed—not general notice to customers or individual notice to potentially affected landowners. LG&E complied with all statutory and regulatory requirements; and Bernheim was not injured by LG&E’s lawful conduct.

The Commission’s August 20, 2019 order recognizes that Bernheim’s complaint “fails to cite any Commission statute or regulation that would require notice be given to the public in general or to potentially affected property owners in connection with an application for a CPCN to construct a natural gas pipeline.” Conceding that no such statute or regulation exists, Bernheim now attempts to argue in its brief that the phrase “for all interested parties” in KRS 278.020(1)(b) “suggests that there are more parties than merely the applicant, and presumes some form of public notice to parties who might be interested or affected.”<sup>30</sup> Bernheim thus contends that “[b]y awarding LG&E a CPCN without requiring LG&E to apply for the CPCN pursuant to KRS 278.020, LG&E and the Commission failed to afford any notice or public hearing ‘for all interested parties’ including Bernheim.”<sup>31</sup>

Bernheim’s argument fails because it ignores the preceding language in KRS 278.020 in its attempt to selectively rewrite a statute that provides the Commission with *discretion* to hold a *hearing* into a *non-discretionary notice* requirement. KRS 278.020(1)(b) states: “Upon the filing of an application for a certificate, *and after any public hearing which the commission may in its discretion conduct for all interested parties*, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part.”<sup>32</sup> The Commission *may* conduct a hearing for interested parties, but it is not required to do so. The statute never so much as alludes to a notice requirement. As Bernheim concedes in its brief, other statutes require utilities to give notice of

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<sup>30</sup> Brief at 9.

<sup>31</sup> *Id.*

<sup>32</sup> (emphasis added).

an application for a CPCN for certain projects.<sup>33</sup> For these projects, statutes and regulations explicitly specify the type of notice that should be given.<sup>34</sup> If the General Assembly desired to impose a notice requirement for CPCNs for gas pipelines, it could have done so. It did not. The Commission should decline Bernheim's invitation to not just create, but create retroactively, such a requirement out of whole cloth.

**b. Even if Notice to Property Owners Was Required, Bernheim Would Not Have Received Notice Because It Was Not a Property Owner Until October 2018.**

Second, Bernheim did not own the property that the Pipeline will cross until October 2018.<sup>35</sup> Thus, even if notice were required for construction of a natural gas pipeline, Bernheim would not have been entitled to receive notice because it was not a property owner at the time LG&E requested a CPCN. In fact, Bernheim did not own the property until over a year after the Commission issued its Final Order.

Bernheim nevertheless argues that it has standing even though it did not own the property when the case was pending, asserting "There is no authority stating Bernheim must have owned property or had a property interest at the time LG&E was granted a CPCN for the BC Pipeline"<sup>36</sup> and "807 KAR 5:001 Section 20 has no restriction on when those harms are suffered."<sup>37</sup> While no statute or regulation specifically requires a challenger of a CPCN to have an interest in the property when the CPCN was issued, Bernheim must have standing to bring this complaint. Any harm that allegedly accrues to Bernheim because it now owns the property does not change the

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<sup>33</sup> KRS 278.027. In Bernheim's brief, it notes that LG&E's "application for a CPCN does not require the same public notice as an electric transmission line or [sic] a cellular tower[.]" Brief at 8.

<sup>34</sup> See, e.g., KRS 278.027; 807 KAR 5:120.

<sup>35</sup> See Exhibit 1; see also Amy Landon, *Bernheim to protect another 494 acres*, Bernheim Arboretum and Research Forest (Oct. 18, 2018), <https://bernheim.org/bernheim-to-protect-another-494-acres/>. Bernheim's brief incorrectly states that it purchased the property in October 2017. Brief at 3, n.1.

<sup>36</sup> Brief at 4.

<sup>37</sup> *Id.* at 3.

fact that Bernheim would not have received the notice it seeks to require. Compliance with the notice standard Bernheim requests the Commission create would require some level of regulatory clairvoyance to identify persons who might buy affected properties in the future and become potentially aggrieved by the Commission's decision. To allow such a complaint to proceed would undermine the finality of all the Commission's orders and open the door to endless future challenges of any past order by any person—years later—opposing the order.

**c. The Commission Should Reject the Hypothetical “Harm” Bernheim Now Alleges.**

Bernheim's brief attempts to allege additional hypothetical injuries beyond those set forth in its complaint. These “injuries” are purely hypothetical and are not sufficient to establish Bernheim's standing.

Bernheim suggests that had LG&E requested a CPCN in a standalone proceeding, Bernheim would have been made aware of the proceeding and then would have been able to protest the CPCN.<sup>38</sup> As explained, because the Pipeline was part of Case No. 2016-00371, and notice of the rate case was published in *The Pioneer News*, customers in Bullitt County, including Bernheim, residents received *more* notice than if LG&E had filed a standalone CPCN proceeding. Bernheim's suggestion that it would have been aware of a CPCN request for a proposed pipeline that might cross property it did not own at the time is purely hypothetical and mere conjecture. It falls woefully short of an actual, concrete, and particularized “injury in fact” necessary to meet the first prong of the *Lujan* test.

And furthermore, such an argument is factually inaccurate. If Bernheim claims that it would have been aware of a standalone Commission proceeding regarding the Pipeline, it was aware or should have been aware of the plans for the Pipeline before it purchased the subject

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<sup>38</sup> *Id.* at 12.

property. In addition to the Commission's final order in Case No. 2016-00371, articles discussing the Pipeline were published in Bullitt County's Pioneer News<sup>39</sup> and Louisville's Courier Journal<sup>40</sup> prior to Bernheim's purchase of the property. The prior property owners also received letters in March 2017 about the Pipeline, some four months after LG&E first disclosed the Pipeline in Case No. 2016-00371 and before the CPCN was awarded.

Additionally, Bernheim seems to allege an injury because it was denied *the opportunity* to intervene in Case No. 2016-00371. Bernheim argues that it "would have standing to intervene in LG&E's 2016 rate case, Case No. 2016-00371, if it knew LG&E was requesting a CPCN that could harm its legitimate property and legal interests."<sup>41</sup> Bernheim then embarks on a tedious analysis of the Commission's standard for intervention. To intervene, a party must have a "special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."<sup>42</sup> While Bernheim alleges it would have sought to intervene in Case No. 2016-00371, it had no special interest and was not likely to present issues or develop facts to assist the Commission. Bernheim alleges that its status as a long-time customer and interest in just and reasonable rates grants it a "special interest," but the Commission has held on numerous occasions that an individual customer's interest as a ratepayer is not a special interest, and that customers generally are "already adequately represented by the AG" and that the AG is "sufficiently knowledgeable

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<sup>39</sup> Thomas Barr, *Landowners want voice on new gas line*, The Pioneer News (July 3, 2017, 4:00 AM), <https://www.pioneernews.net/content/landowners-want-voice-new-gas-line>.

<sup>40</sup> Sheldon S. Shafer, *Your monthly LG&E will go up, but not as high as requested*, The Courier-Journal (June 23, 2017).

<sup>41</sup> Brief at 7.

<sup>42</sup> 807 KAR 5:001, Section 4(11)(b).

about issues of rate-making and rate structure.”<sup>43</sup> Further, Bernheim has been an LG&E gas customer for more than twenty years and has never sought intervention in any proceeding. The Commission has recently held that environmental interests such as those Bernheim claims would not assist it in fully considering the matter without unduly complicating the proceeding.<sup>44</sup> In short, Bernheim’s argument about intervention is an irrelevant red herring.<sup>45</sup> The question the Commission has asked is whether Bernheim has standing to file this complaint; not the conjecture of whether Bernheim had standing to intervene in LG&E’s 2016 rate case regarding a CPCN for a pipeline crossing property it did not own. Considering whether Bernheim’s present interest would have entitled Bernheim to intervention in a past case is an unnecessary hypothetical and is the exact type of abstract question standing is designed to prevent the Commission from having to consider.<sup>46</sup>

## **2. Bernheim’s Alleged “Injury” Was Not Caused by LG&E’s Conduct.**

To meet the second prong of the *Lujan* standing analysis, the injury must have a causal connection to the defendant’s conduct. Bernheim complains of lack of notice, but this alleged “injury” is not connected to LG&E’s conduct, as LG&E complied with all notice requirements. In its complaint, Bernheim does not even allege that LG&E’s conduct caused its alleged injury, instead faulting the Commission for failing to require LG&E to file a standalone CPCN

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<sup>43</sup> See, e.g., *Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, Order on Young Intervention at 5 (Ky. PSC Dec. 5, 2008).

<sup>44</sup> *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric Base Rates*, Case No. 2018-00295, Order (Ky. PSC Nov. 9, 2018).

<sup>45</sup> Bernheim also alleges general safety, cost, and environmental concerns with the proposed Pipeline. It cites arguments and relies on allegations from the AG’s Motion to Expand, which the Company has not yet had the opportunity to address before the Commission. The Commission has not yet ruled on the Motion to Expand and these issues are irrelevant to the standing inquiry the Commission has asked the parties to brief.

<sup>46</sup> See, e.g., *Bailey v. Preserve Rural Roads of Madison County, Inc.*, 394 S.W.3d 350, 362 (Ky. 2011) (“Furthermore, the requirement of standing prevents courts from being presented with hypothetical or abstract questions.”).

application.<sup>47</sup> The Commission recently recognized that a similar complaint regarding the CPCN for the Bullitt County Pipeline granted in Case No. 2016-00371 “is not simply challenging the actions or omissions of a utility, it is challenging the findings of a Commission Order[.]”<sup>48</sup>

### 3. Bernheim’s Alleged “Injury” Is Not Redressable.

Bernheim fails to meet the third prong of the *Lujan* standing test; the injury Bernheim alleges is not redressable because it requests retroactive relief, which the Commission cannot grant as a matter of law.<sup>49</sup> Thus, relief from the “harm” Bernheim alleges is not likely to follow because the Commission is unable to provide Bernheim its requested relief.

Under Kentucky law as set forth in *National-Southwire Co. v. Big Rivers Electric Corp.*, a Commission rate order can be set aside only upon a showing by tangible evidence that the case was “tainted by malice, fraud or corruption.”<sup>50</sup> Further, KRS 278.390 provides that “[e]very order entered by the commission shall continue in force” until either the Commission or a court of competent jurisdiction modifies or revokes the order. While the Commission may modify an earlier order as the result of a complaint, it may not do so retroactively. KRS 278.270 provides:

Whenever the commission, upon its own motion or **upon complaint as provided in KRS 278.260**, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission **shall by**

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<sup>47</sup> Bernheim’s Complaint states that “Bernheim has suffered a denial of due process of law, as guaranteed by the Kentucky Constitution Section 2, **through the failure of the Commission to abide by its own regulations and to require application by LG&E for a CPCN for the Bullitt County pipeline**, which would have allowed for public notice and an opportunity to be heard regarding the necessity for and routing of such pipeline.” (emphasis added). Complaint at 6-7.

<sup>48</sup> *Kimberly Brown v. Louisville Gas and Electric Company*, Case No. 2019-00296, Order at 2 (Ky. PSC Sept. 11, 2019).

<sup>49</sup> KRS 278.290.

<sup>50</sup> *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503 (Ky. App. 1990).

**order prescribe a just and reasonable rate to be followed in the future. (emphasis added).**<sup>51</sup>

The Kentucky Court of Appeals and Commission have consistently held that rate orders may only be altered prospectively.<sup>52</sup> Similarly, the Commission did not allow a belated challenge to a CPCN in Case No. 2009-00426.<sup>53</sup> Because Bernheim requests retroactive relief that the Commission cannot give and the Commission's order was not "tainted by malice, fraud or corruption," Bernheim's alleged harm is not redressable.

#### **4. Bernheim Has Not Met the Complaint Requirements in KRS 278.260.**

In addition to failing to meet the *Lujan* test for standing, Bernheim lacks standing to file this complaint because it fails to meet the requirements for a complaint in KRS 278.260. In its complaint, Bernheim makes no claim that LG&E's rates are unreasonable or discriminatory. In its brief, Bernheim argues for the first time that the increased cost of the Pipeline results in unreasonable rates.<sup>54</sup> The Commission is charged with determining whether the allegations in the *complaint* establish a *prima facie* case,<sup>55</sup> and Bernheim's complaint does not. But even if the Commission were to consider the new allegations in Bernheim's brief, Bernheim's arguments are still without merit because Bernheim fails to offer any support showing which of LG&E's rates are unreasonable. Bernheim's brief contains general assertions about unreasonable rates and insufficient use of customer funds, but fails to make any showing that any changes in costs

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<sup>51</sup> KRS 446.080 also provides a general prohibition on retroactive relief, except in very limited cases in which its intent to allow for such extraordinary relief is clearly stated.

<sup>52</sup> *Cincinnati Bell Telephone Co. v. Kentucky Public Service Commission*, 223 S.W.3d 829 (Ky. App. 2007) ("In light of the General Assembly's comprehensive ratemaking scheme, including only a narrowly defined circumstance under which refunds can be ordered, the filed rate can only be lawfully altered prospectively."); *Kentucky Cable Telecommunications Association v. Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00025, Order (Ky. PSC Mar. 27, 2015) ("The right to challenge a rate that is in effect, however, is limited to prospective review of that rate only.").

<sup>53</sup> *Dr. John Patterson, Fr. John Rausch, Wendell Berry, Sierra Club, Kentucky Environmental Foundation and Kentuckians for the Commonwealth v. East Kentucky Power Cooperative, Inc.*, Case No. 2009-00426, Order (Ky. PSC June 22, 2010).

<sup>54</sup> Brief at 6.

<sup>55</sup> 807 KAR 5:001, Section 20(4)(a).



are unreasonable. Bernheim seeks to void the Commission's past order based solely on a disagreement with the interpretation of the CPCN statute. Such a complaint has nothing to do with the rates and service of LG&E and thus fails to meet the requirements of KRS 278.260.

**B. The Commission Should Reject Bernheim's Attempt to Use the Complaint Procedure to Circumvent the Appeal Process to Obtain Retroactive Relief.**

The Commission should recognize the Bernheim complaint for what it is—a request for retroactive relief in a case it was not a part of. In requesting that the Commission now void the CPCN lawfully granted to LG&E over two years ago, Bernheim essentially asks for rehearing, as a non-party, of the Commission's Final Order. The General Assembly established KRS 278.400 and KRS 278.410 as the mechanisms for an aggrieved party to appeal a Commission order. The appeal period under those statutes for the Commission's June 22, 2017 Order has long passed. Not even a party to a case may seek reconsideration of an order more than two years after the order was issued. Bernheim cannot use the Commission's customer complaint procedure to circumvent the statutory deadline in KRS 278.410 to collaterally attack an order in a case to which it was never a party.

The Commission has previously rejected a non-party's attempt to use the complaint procedure to obtain retroactive relief from a previous order.<sup>56</sup> In Case No. 2014-00025, Kentucky Cable Telecommunications Association ("KCTA") filed a formal complaint against LG&E and Kentucky Utilities Company ("KU") (collectively the "Companies") alleging that the Companies' pole attachment rates approved in the Companies' 2012 rate cases were not fair, just, and reasonable. KCTA had not intervened or otherwise participated in the 2012 rate cases. In its complaint, KCTA particularly requested that if the Commission were to determine the pole

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<sup>56</sup> *Kentucky Cable Telecommunications Association v. Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00025, Order (Ky. PSC Mar. 27, 2015).

attachment rates were unreasonable, KCTA's members would be entitled to relief dating back to the filing of KCTA's complaint. The Commission dismissed KCTA's complaint for retroactive relief, explaining that "[t]he right to challenge a rate that is in effect [] is limited to prospective review of that rate only"<sup>57</sup> and KCTA was seeking "retroactive relief that the Commission is prohibited from granting."<sup>58</sup> Bernheim's complaint seeks only retroactive relief and fails for the same reason.

**C. The Commission Is Afforded Deference in the Interpretation of Statutes It Is Charged with Implementing.**

As a final matter, the Commission is entitled to deference in interpreting the statutes the General Assembly has charged it with implementing. The Kentucky Supreme Court has recognized the "deference afforded an administrative agency's construction of a statute that it is charged with implementing," so long as the "agency interpretation is in the form of an adopted regulation or formal adjudication."<sup>59</sup> The Kentucky Court of Appeals has specifically recognized that the Commission requires such deference, stating that "[g]reat deference is always given to an administrative agency in the interpretation of a statute which is within its specific province."<sup>60</sup>

Bernheim ignores this deference and argues for a different interpretation of KRS 278.020, a statute the Commission is charged with implementing. First, in its complaint and brief, Bernheim argues that KRS 278.020(1)(b) requires an explicit request for a CPCN in an application and challenges the Commission's decision to grant a CPCN for the Pipeline even

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<sup>57</sup> *Id.* at 7.

<sup>58</sup> *Id.* at 10.

<sup>59</sup> *Board of Trustees of Judicial Form Retirement System v. Attorney General of the Commonwealth*, 132 S.W.3d 770, 786-87 (Ky. 2003) (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

<sup>60</sup> *Commonwealth ex rel. Beshear v. Kentucky Utilities Co.*, 648 S.W.2d 535, 537 (Ky. App. 1982); *see also Commonwealth, ex rel. Stumbo v. Kentucky Public Service Comm'n*, 243 S.W.3d 374, 380 (Ky. App. 2007) ("[W]e afford deference to an administrative agency's interpretation of the statutes and regulations it is charged with implementing.").

when LG&E provided all of the information necessary to grant the CPCN in the course of the case.<sup>61</sup> Second, in Bernheim’s brief, it also argues that KRS 278.020(1)(b) “presumes some form of public notice to parties who might be interested or affected.”<sup>62</sup>

These arguments ignore the Commission’s interpretation of statutes it is charged with implementing. First, the Commission has interpreted KRS 278.020(1)(b) as allowing a request for a CPCN in the context of a case and not only in the application. In addition to Case No. 2016-00371, the Commission has granted CPCNs in other cases when an application did not formally request a CPCN.<sup>63</sup> Second, with regard to Bernheim’s attempt to read a notice requirement into KRS 278.020(1)(b), the Commission has not interpreted KRS 278.020(1)(b) as requiring such notice in the hundreds of cases in which it has considered CPCN requests.

The Commission is charged with implementing KRS 278.020. In arguing for a different interpretation of KRS 278.020(1)(b), Bernheim attempts to elevate form over substance<sup>64</sup> and ignores the administrative deference the Commission is entitled to receive.

### III. CONCLUSION

Bernheim asks the Commission to abandon statutory requirements and Commission precedent to grant it standing to proceed in this case for the purpose of obtaining unlawful retroactive relief. Bernheim lacks standing to bring this complaint because it has not suffered an actual, concrete, and particularized “injury in fact” that has a causal connection with LG&E’s action and is redressable, and it otherwise fails to meet the requirements to file a complaint in

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<sup>61</sup> Complaint at 6; Brief at 8-9.

<sup>62</sup> Brief at 9.

<sup>63</sup> See, e.g., *Application of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity and Surcharge for Same*, Case No. 2014-00255, Order (Ky. PSC Dec. 23, 2014).

<sup>64</sup> The Commission has dismissed arguments favoring form over substance. See, e.g., *The Application and Notice of Campbell County Kentucky Water District to Adjust Rates Effective May 1, 1991*, Case No. 91-039, Order (“Denial of Newport’s motion on the basis of an improperly cited regulation, furthermore, would elevate form over substance[.]”).

KRS 278.260. LG&E respectfully requests that the Commission deny Bernheim's request for retroactive relief and dismiss Bernheim's complaint.

Dated: September 19, 2019

Respectfully submitted,



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*Counsel for Louisville Gas and Electric  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the above and foregoing Brief of Louisville Gas and Electric Company has been served upon the following persons by 1<sup>st</sup> class U.S. mail, postage prepaid, on September 19, 2019.

Kent A. Chandler  
Rebecca W. Goodman  
Justin M. McNeil  
Lawrence W. Cook  
Assistant Attorneys General  
Kentucky Office of the Attorney General  
700 Capitol Avenue, Suite 20  
Frankfort, KY 40601-8204

Randal A. Strobo  
Clay A. Barkley  
Strobo Barkley PLLC  
239 South 5th Street, Suite 917  
Louisville, KY 40202

  
\_\_\_\_\_  
*Counsel for Louisville Gas and Electric  
Company*

*Pickup*

**GENERAL WARRANTY DEED**

**THIS GENERAL WARRANTY DEED** is made and entered into as of Oct. 18, 2018, from

**SIMON REAL ESTATE HOLDINGS, LLC,**  
a Kentucky limited liability company  
6009 Brownsboro Park Blvd., Suite H  
Louisville, Kentucky 40207

("Grantor")

to

**ISAAC W. BERNHEIM FOUNDATION,**  
a Kentucky corporation  
2499 Clermont Road  
Clermont, Kentucky 40110

("Grantee").

**WITNESSETH**

For a total consideration of SIX HUNDRED SEVENTY THOUSAND NINE HUNDRED SIXTY-TWO AND 00/100 DOLLARS (\$670,962.00), the receipt and sufficiency of which are acknowledged, Grantor grants and conveys to Grantee in fee simple with covenant of General Warranty the real property located in Bullitt County, Kentucky, and more particularly described on EXHIBIT A and EXHIBIT B attached hereto and made a part hereof (the "Property").

Grantor covenants (a) lawful seisin of the Property, (b) full right and power to convey same, and (c) that the Property is free and clear of all liens and encumbrances, except liens for real property taxes and assessments due and payable in 2018 and thereafter, which Grantee assumes and agrees to pay. This conveyance is made subject to all (i) easements, restrictions and stipulations of record, and (ii) governmental laws, ordinances and regulations affecting the Property.

For purposes of KRS 382.135, Grantor and Grantee, by execution of this Deed, certify that the consideration reflected in this Deed is the full consideration paid for the Property.

For purposes of KRS 382.135, the in-care-of address to which the property tax bill for 2018 may be sent to is: 2499 Clermont Road, Clermont, Kentucky 40110.

This Property was partly acquired with funds provided to Grantee by the Imperiled Bat Conservation Fund and is intended to provide and conserve habitat in perpetuity for the Indiana bat and/or northern long-eared bat. The Property will be managed for this purpose, in accordance with applicable federal and state law. The Property may not be encumbered or disposed of in any manner, or used for purposes inconsistent with this purpose, without the prior written approval of the U.S. Fish and Wildlife Service's Kentucky Field Office.

If the sale or transfer of the Property, or any portion thereof, is considered by Grantee, such sale or transfer will only be to another "qualified conservation organization" as currently defined under the regulations of the U.S. Treasury Department and Internal Revenue Service. Grantee will notify the U.S. Fish and Wildlife Service's Kentucky Field Office of the proposed sale or transfer of the Property, or any portion thereof, at least 30 calendar days in advance of such sale or transfer.

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this General Warranty Deed as of the date first set forth above, but actually on the dates set forth below.

**GRANTOR:**

**SIMON REAL ESTATE HOLDINGS, LLC,**  
a Kentucky limited liability company

By Elizabeth S. Montgomery  
Elizabeth S. Montgomery, Manager

Date: Oct 15, 2018

**ISAAC W. BERNHEIM FOUNDATION,**  
a Kentucky corporation

**Mark K. Wourms, Executive Director**

By Thomas Block  
Thomas Block, President of Board of Trustees

15 October 2018

The foregoing General Warranty Deed, including the consideration certificate contained therein, was sworn to and acknowledged before me on Oct. 15, 2018 by Elizabeth S. Montgomery in her capacity as Manager of Simon Real Estate Holdings, LLC, a Kentucky limited liability company, on behalf of the company.



**My Commission Expires:**





This Deed Prepared By:

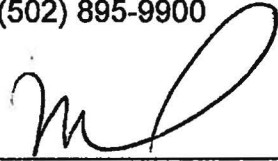
Matthew D. Bearden

PITT, FRANK, DISTLER & BEARDEN, P.S.C.

6450 Dutchmans Parkway

Louisville, Kentucky 40205

(502) 895-9900

A handwritten signature in black ink, appearing to be 'M. Bearden', is written over a horizontal line.

DOCUMENT NO: 605987  
RECORDED: October 16, 2018 11:12:00 AM  
TOTAL FEES: \$26.00 TRANSFER TAX: \$671.00  
COUNTY CLERK: KEVIN MOONEY  
DEPUTY CLERK: RITA  
COUNTY: BULLITT CO CLERK  
BOOK: D956 PAGES: 600 - 605

### **EXHIBIT A**

Being the survey description PARCEL TWO of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 288, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the southerly line of the aforementioned subdivision North 88°10'52" East, 575.08 feet to an existing 1/2" iron pin w/ identifier cap "CLEMONS"; thence South 01°04'43" East, 87.31 feet to an existing 1/2" iron pin with identifier cap "CLEMONS"; thence South 82°58'36" East, 1288.10 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417", and being a common corner with the property of Simon Real Estate Holdings, LLC Parcel 1 as recorded in Deed Book 725, Page, 280 in the aforementioned clerk's office; thence with said line South 63°29'49" East, 1466.00 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417", being the Northwest Corner of the property of Lewis Kerberg as recorded in Deed Book 877, Page 330, in the aforementioned clerk's office; thence with the East line of Kerberg, South 05°50'25" West, 2917.77 feet to an existing stone; thence South 74°07'09" West, 71.65 feet to a set 1/2" iron pin with identifier cap "SHUFF 3417" in the North line of an unnamed 60 foot road as recorded in Hubert Cox Estates in Plat Cabinet 1, Slide 583; thence with said north line and the north line of the property of Carla Leigh & Deborah Lynn Cox, as recorded in Deed Book 255, Page 486, in the aforementioned clerk's office, North 85°51'19" West, 2127.42 feet to an existing 1/2" iron pin in a mound of stones and being the Northeast corner of the property of the Isaac W. Bernheim Foundation as recorded in Deed Book 914, Page 767, in the aforementioned clerk's office; thence with the North line of said property North 86°34'39" West, 947.95 feet to an existing 1/2" iron pin in a mound of stones, and also being the Southeast corner of Licksillet Farms, Section 24, as recorded in Plat Cabinet 1, Slide 591, in the aforementioned clerk's office; thence with the East line of Licksillet Farms North 04°15'08" East, 3602.53 feet to the point of beginning and containing 250.15 acres, more or less, as per field survey of Matthew S. Shufflebarger, PLS # 3417, dated June 18, 2018 and being recorded at Plat Cabinet 4 Slide 143 in the Office of Clerk of the Bullitt County court.

### **EXHIBIT B**

BEGINNING at a stone near the head of a hollow, division corner to Bolton and running thence with the division line S 5 deg. 36' 34" W 2,931.65 ft. (formerly S 4 W 176 poles) to a wood fence post (formerly stone) in Lutes line; thence S 83 deg. 36' 34" W 90.75 ft. (formerly S 82 W 5-1/2 poles) to a stake (formerly a stone); thence N 86 deg. 11' 03" W 3,053.93 ft. (formerly S 88-1/2 W 180 poles) to a pile of stones; thence N 4 deg. 02' 29" E 3,602.49 ft. (formerly N 3-1/2 E 220 poles) to a pile of stones corner to Bolton; thence N 87 deg. 56'- 20" E 575.53 ft. (formerly N 86-1/4 E 35-1/5 poles) to a 10" oak; thence S 0 deg. 23' 29" E 85.95 ft. (formerly S 3-1/2 W 5-2/5 poles) to a 24" red oak; thence S 83 deg. 09' 22" E 1,286.87 ft. (formerly S 84-1/2 E 78 poles) to a stake for a white oak on north side of drain; thence S 63 deg. 42' 28" E 1,468.50 ft. (for. S 65 E 89 poles) to the point of beginning, containing approximately 250.717 acres.

*pickup*

**GENERAL WARRANTY DEED**

THIS GENERAL WARRANTY DEED is made and entered into as of  
October 15, 2018, from

**SIMON REAL ESTATE HOLDINGS II, LLC,**  
a Kentucky limited liability company  
6009 Brownsboro Park Blvd., Suite H  
Louisville, Kentucky 40207

("Grantor")

to

**ISAAC W. BERNHEIM FOUNDATION,**  
a Kentucky corporation  
2499 Clermont Road  
Clermont, Kentucky 40110

("Grantee").

**WITNESSETH**

For a total consideration of SIX HUNDRED EIGHTY NINE THOUSAND THIRTY EIGHT AND 00/100 DOLLARS (\$689,038.00), the receipt and sufficiency of which are acknowledged, Grantor grants and conveys to Grantee in fee simple with covenant of General Warranty the real property located in Bullitt County, Kentucky, and more particularly described on **EXHIBIT A** and **EXHIBIT B** attached hereto and made a part hereof (the "Property").

Grantor covenants (a) lawful seisin of the Property, (b) full right and power to convey same, and (c) that the Property is free and clear of all liens and encumbrances, except liens for real property taxes and assessments due and payable in 2018 and thereafter, which Grantee assumes and agrees to pay. This conveyance is made subject to all (i) easements, restrictions and stipulations of record, and (ii) governmental laws, ordinances and regulations affecting the Property.

For purposes of KRS 382.135, Grantor and Grantee, by execution of this Deed, certify that the consideration reflected in this Deed is the full consideration paid for the Property.

For purposes of KRS 382.135, the in-care-of address to which the property tax bill for 2018 may be sent to is: 2499 Clermont Road, Clermont, Kentucky 40110.

This Property was partly acquired with funds provided to Grantee by the Imperiled Bat Conservation Fund and is intended to provide and conserve habitat in perpetuity for the Indiana bat and/or northern long-eared bat. The Property will be managed for this purpose, in accordance with applicable federal and state law. The Property may not be encumbered or disposed of in any manner, or used for purposes inconsistent with this purpose, without the prior written approval of the U.S. Fish and Wildlife Service's Kentucky Field Office.

If the sale or transfer of the Property, or any portion thereof, is considered by Grantee, such sale or transfer will only be to another "qualified conservation organization" as currently defined under the regulations of the U.S. Treasury Department and Internal Revenue Service. Grantee will notify the U.S. Fish and Wildlife Service's Kentucky Field Office of the proposed sale or transfer of the Property, or any portion thereof, at least 30 calendar days in advance of such sale or transfer.

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this General Warranty Deed as of the date first set forth above, but actually on the dates set forth below.

**GRANTOR:**

**SIMON REAL ESTATE HOLDINGS II, LLC,**  
a Kentucky limited liability company

By Elizabeth S. Montgomery  
Elizabeth S. Montgomery, Manager

Date: Oct 15, 2018, 2018

**GRANTEE:**

**ISAAC W. BERNHEIM FOUNDATION,**  
a Kentucky corporation

By Mark K. Wourms  
Mark K. Wourms, Executive Director

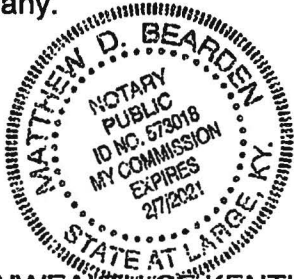
Date: 15 October, 2018

By Thomas Block  
Thomas Block, President of Board of Trustees

Date: 15 October, 2018

COMMONWEALTH OF KENTUCKY )  
 ) SS  
COUNTY OF BULLITT )

The foregoing General Warranty Deed, including the consideration certificate contained therein, was sworn to and acknowledged before me on Oct. 15, 2018 by Elizabeth S. Montgomery in her capacity as Manager of Simon Real Estate Holdings II, LLC, a Kentucky limited liability company, on behalf of the company.



[Signature]  
Notary Public

My Commission Expires: 2/7/21

COMMONWEALTH OF KENTUCKY )  
 ) SS  
COUNTY OF BULLITT )

The foregoing consideration certificate was sworn to and acknowledged before me on Oct. 15, 2018 by Mark K. Wourms as Executive Director of Isaac W. Bernheim Foundation, a Kentucky corporation, on behalf of the corporation.



[Signature]  
Notary Public

My Commission Expires: 2/7/21

COMMONWEALTH OF KENTUCKY )  
 ) SS  
COUNTY OF BULLITT )

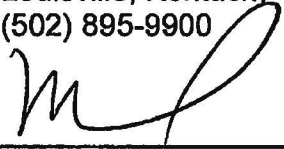
The foregoing consideration certificate was sworn to and acknowledged before me on Oct 15, 2018 by Thomas Block as President of Board of Trustees of Isaac W. Bernheim Foundation, a Kentucky corporation, on behalf of the corporation.



[Signature]  
Notary Public

My Commission Expires: 2/7/21

this Deed Prepared By:  
Matthew D. Bearden  
PITT, FRANK, DISTLER & BEARDEN, P.S.C.  
6450 Dutchmans Parkway  
Louisville, Kentucky 40205  
(502) 895-9900



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## **EXHIBIT A**

### **PARCEL ONE AND TWO (Cedar Grove Road, Cox's Acres Lots, and Cooney):**

Being the survey description PARCEL ONE and PARCEL TWO of Simon Real Estate Holdings II, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing  $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being a corner of Lot 26 Winding Creek Subdivision as recorded in Plat Cabinet 2, Slide 728 in the aforementioned clerk's office; thence with the line of said lot South  $89^{\circ}15'51''$  East, 157.88 feet to an existing  $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being the Southwest corner of the property conveyed to Barry E. & Lois Woods in Deed Book 290, PG 490 in the aforementioned clerk's office; thence with the South line of Woods South  $85^{\circ}17'28''$  East, 1471.21 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" being in the South line of Cedar Grove Road; thence with said line South  $80^{\circ}36'00''$  East, 201.19 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being the Northwest corner of the Travis R. Minks property as recorded in Deed Book 911, Page 521 in the aforementioned clerk's office; thence leaving Cedar Grove Road with the West line of Minks South  $04^{\circ}18'06''$  West, 1309.79 feet to an existing  $\frac{3}{4}$ " iron pin with T-Post and being the Southwest corner of the Douglas Ray & Ladonne Cooney property as recorded in Deed Book, 278, Page 162 in the aforementioned clerk's office; thence with the line of Cooney South  $87^{\circ}12'20''$  East, 645.40 feet to an existing  $\frac{1}{2}$ " iron pin with identifier cap "LEIGH 1776" in the West line of Lot 33 of Cox's Acres as recorded in Plat Cabinet 1, Slide 278, in the aforementioned clerk's office; thence with the West line of said subdivision South  $04^{\circ}19'51''$  West, 585.40 feet to an existing  $\frac{1}{2}$ " iron pin and being the Southwest corner of Lot 28 Cox's Acres; thence with the South line of Lot 28, South  $85^{\circ}53'36''$  East, 506.52 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the West line of Sharon Drive; thence with the line of Sharon Drive South  $04^{\circ}29'24''$  West, 416.20 feet to an existing  $\frac{3}{4}$ " iron pin; thence South  $85^{\circ}42'46''$  East, 60.00 feet to an existing  $\frac{3}{4}$ " iron pin in the East line of Sharon Drive; thence with the line of Sharon Drive North  $04^{\circ}29'24''$  East, 568.03 feet to the Southwest corner of Lot 20 Cox's Acres; thence leaving Sharon Drive and with the common line of lots 20 and 21 in Cox's Acres, South  $85^{\circ}53'36''$  East, 540.36 feet to set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the East line of Cox's Acres and also being in the line of David and Jolynne Clark as recorded in Deed Book 620, Page 627; thence with the East line of Cox's Acres South  $04^{\circ}24'45''$  West, 569.73 feet to an existing stone and being the Southeast corner of Cox's Acres and also being in the line of Roger D. & Patsy Brown as recorded in Deed Book 216, Page 582 in the aforementioned clerk's office; thence with the line of Brown South  $04^{\circ}31'29''$  West, 376.62 feet to an existing stone and being the common corner with John Edgar Sivori III as recorded in Deed Book 569, Page 14 in the aforementioned clerk's office; thence with the line of Sivori South  $50^{\circ}40'11''$  East, 727.15 feet to an existing pile of stones and being a common corner to Othen T. & Juanita Colyer as recorded in Deed Book 500, Page 660 in the aforementioned clerk's office; thence with the line of Colyer South  $68^{\circ}11'31''$  West, 860.73 feet to an existing  $\frac{1}{2}$ " iron pin; thence South  $21^{\circ}03'15''$  East, 598.49 feet to an existing  $\frac{1}{2}$ " iron pin in the North line of Lewis Kerberg as recorded in Deed Book 877, Page 330 in the aforementioned clerk's office; thence with Kerberg's line South  $69^{\circ}59'25''$  West, 745.75 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being a common corner with Simon Real Estate Holdings, LLC, Parcel 2 as recorded in Deed Book 725, Page 288 in the aforementioned clerk's office; thence with the Simon line North  $63^{\circ}29'49''$  West, 1466.00 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417"; thence North  $82^{\circ}58'36''$  West, 157.32 feet to an

existing ½" iron pin with identifier cap "CLEMONS" and being the Southeast corner of Winding Creek Subdivision as recorded in Plat Cabinet 2, Slides 727 & 728 in the aforementioned clerk's office; thence with the line of winding Creek Subdivision North 20°23'04" West, 1593.87 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 17°39'37" West, 886.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 52°23'55" East, 98.40 feet to an existing 1/2" iron pin with identifier cap "SPURRIER 3695"; thence North 10°02'54" West, 247.64 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 36°56'13" West, 113.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 46°20'05" West, 183.09 feet to an existing ½" iron pin; thence North 17°39'37" West, 721.38 feet to an existing ½" iron pin; thence North 05°41'29" East, 323.97 feet to the point of beginning and containing 205.71 acres, more or less, as per field survey of Matthew S. Shufflebarger, PLS # 3417, dated June 18, 2018 and being recorded at Plat Cabinet 4 Slide 144 in the Office of Clerk of the Bullitt County court.

**PARCEL THREE (Lickskillet Farms):**

Being the survey description of PARCEL THREE of Simon Real Estate Holdings II, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 Lickskillet Farms, Section 23 as recorded in Plat Cabinet 1, Slide 588 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the easterly line of Lickskillet Farms Section 23, South 04°15'41" West, 999.29 feet to an existing ½" iron pin and being the Northeast corner of Lot 450 Lickskillet Farms Section 23; thence with the North line of Lot 450, North 88°12'12" West, 319.59 feet to an existing 1/2" iron pin and being the southeast corner of lot 449 Lickskillet Farms Section 23; thence with the East line of Lot 449, North 17°16'36" West, 228.12 feet to an existing 1/2" iron pin; thence with the North line of Lot 449, South 73°19'38" West, 381.91 feet to a set 1/2" iron pin with cap "SHUFF 3417" in the centerline of Lickskillet Farms Road, a 50' right of way; thence with said centerline North 30°23'29" West, 77.54 feet; thence North 44°14'20" West, 29.03 feet; thence South 88°44'28" West, 33.05 feet; thence South 84°24'47" West 197.96 feet; thence South 78°57'04" West, 78.11 feet; thence South 71°51'41", 94.60 feet; thence South 62°24'39", 83.26 feet; thence South 16°37'12" West, 129.78 feet; thence South 07°30'05" West, 51.45 feet; thence North 19°54'24" West, 124.57 feet; thence South 57°58'53" West, 94.63 feet; thence South 78°21'52" West, 76.64 feet; thence South 73°05'17" West, 97.26 feet; thence North 89°39'04" West, 80.01 feet; thence North 80°48'58" West, 151.12 feet to a set 1/2" iron pin with cap "SHUFF 3417", also being the Southwest corner of Lot 444 Lickskillet Farms Section 22 as recorded in Plat Cabinet 1, Slide 587 in the aforementioned clerk's office; thence with the west line of Lot 444 North 00°56'49" West, 959.27 feet, to the North line of Lickskillet Farms Section 22; thence with the north line of Lickskillet Farms Sections 22, North 77°08'42" East 302.05 feet, to an existing 2" iron pipe; thence North 76°56'25" East, 1188.28 feet to an existing 1 ¾" iron pipe in a mound of stones; thence South 85°19'17" East, 486.45 feet to the point of beginning and containing 38.47 acres, more or less, as per field survey of Matthew S. Shufflebarger, PLS # 3417, dated June 18, 2018 and being recorded at Plat Cabinet 4 Slide 145 in the Office of Clerk of the Bullitt County court.

## **EXHIBIT B**

### **PARCEL ONE: (Cedar Grove Road and Cox's Acres Lots)**

**TRACT NO. I:** BEGINNING at a stone in the line of D. N. Crenshaw and corner to Raymond Cox; thence with line of Cox and continuing with line of Bolton Heirs, South 86° East 1933 feet to an iron rod corner to remaining land of Colyer; thence with remaining land of Colyer, South 22-1/2 East 1870 feet to an iron rod in line of Francke; thence with line of Francke, South 69-3/4 West 710 feet to a stone at the head of a small hollow; thence continuing with line of Francke, North 63-1/2° West 1441 feet to a post; thence continuing with line of Francke, North 83° West 165 feet to a steel stake corner to remaining land of Colyer (to be conveyed to D. N. Crenshaw); thence North 18-1/2° West 925 feet to a stake on beech corner to D. N. Crenshaw; thence with line of Crenshaw, North 18-1/2° West 578 feet to the point of beginning, containing 80 acres as shown by survey of Urban E. Shaffner dated July 27, 1971.

There is also conveyed herewith a 60 foot permanent easement across the 31.4 acres of land previously retained by Colyer. Said easement beginning in line of the County Road and Colyer line; thence in a westerly direction through the land retained by Colyer to the tract conveyed to Givhan and Porter.

**TRACT NO. II:** A certain tract of land located in Bullitt County, Kentucky, lying 4.8 miles East of Salt River, Kentucky, and being about 3000 ft. south of the Cedar Grove Church (Junction of Ky. Highway 1640 with #480) and described as follows:

BEGINNING in a steel stake corner with J. Chester Porter in the line of Bolton Heirs; thence with the heirs South 86 East 787 feet to a stone 10 feet North of a marked pine, South 4-1/2 West 386 feet to a rock pile, and South 51-1/4 East 726 feet to a rock pile in the remains of an ancient fence 3.8 feet North of an "X" painted beech; thence in a division of Othen Colyer South 68-1/4 West 868-1/2 feet to an iron rod 15 feet East of the top of a ridge; thence with J. Chester Porter N 22-1/2 West 1271 feet to the beginning, containing 20.0 acres as shown by survey of Urban E. Shaffner dated December 16, 1971.

**TRACT NO. III:** LOTS NOS. 21, 22, 23, 24, 25, 26 and 27 of COX'S ACRES, as shown on amended plat recorded in Plat Book 5, Page 70, in the Bullitt County Clerk's Office.

**TRACT NO. IV:** Beginning at a nail in a 14° walnut in line of Greenwell corner to Crenshaw; thence with line of Greenwell, South 85° 50' East 408.0 feet to a post; thence South 86° 10' East 231.4 feet to a post; thence South 86° 00' East 116.8 feet to a post; thence crossing a branch, South 85° 30' East 107.0 feet to a post; thence South 87° 10' East 215.0 feet to a post at water gap; thence crossing a branch, South 85° 45' East 210.0 feet to a post; thence South 79° 30' East 112.0 feet to a post in right-of-way of Cedar Grove Road (Highway 480); thence with South line of Cedar Grove Road (Highway 480), South 82° 45' East 74.4 feet to a steel post; thence South 80° 00' East 324.6 feet to a post corner to remaining land of Raymond Cox; thence with remaining land of Cox, South 5° 03' West 2311.0 feet to line of Porter; thence with line of Porter, North 85° 20' West 1639.21 feet to a stone in line of D. H. Crenshaw; thence with line of Crenshaw, North 16° 34' West 2171.1 feet to a stake; thence North 5° 50' East 409.1 feet to the point of beginning and containing 80.0 acres as shown by survey of Curtis Ochs, Jr., dated October 5, 1972.

**PARCEL TWO: (Cooney)**

BEGINNING at an iron pin in the East line of the balance of Simon's 79.348 acre tract, said pin being South 4-06-32 West 271.65 feet from the Southeast corner of lot #6 Cedar Woods Subdivision Sec. #1; thence with a new division line with Cooney South 86-17-31 East 645.72 feet to an iron pin in the West line of lot #33 Cox's Acres Subdivision; thence with said Subdivision South 4-07-35 West 1,000.00 feet to an existing iron pipe in the North line of Frank Simon's 101.704 acre tract; thence with Simon North 86-1732 West 645.42 feet to an existing iron pipe, a corner to the balance of Simon's 79.348 acre tract; thence with Simon North 4-06-32 East 1,000.00 feet to the point of beginning containing 14.820 acres as per survey by Raymond E. Leigh, Jr., dated June 29, 1987.

**PARCEL THREE: (Lickskillet Farms)**

Being Lots 444, 445, and 446, of Lickskillet Farms Subdivision, Section 22, plat of which is recorded in Plat Cabinet 1, Slide 587, in the Bullitt County Clerk's Office and Lots 447 and 448, of Lickskillet Farms Subdivision, Section 23, plat of which is recorded in Plat Cabinet 1, Slide 588, in the Bullitt County Clerk's Office.

Being PARCEL ONE (TRACTS I, II, III and IV), PARCEL TWO and PARCEL THREE conveyed to Grantor by General Warranty Deed dated July 31, 2008, of record in Deed Book 725, Page 280, in the Bullitt County Clerk's Office.

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DOCUMENT NO: 605988  
RECORDED: October 16, 2018 11:14:00 AM  
TOTAL FEES: \$35.00 TRANSFER TAX: \$689.50  
COUNTY CLERK: KEVIN MOONEY  
DEPUTY CLERK: RITA  
COUNTY: BULLITT CO CLERK  
BOOK: D956 PAGES: 606 - 614

*gibby*

## DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is entered into by and between the Isaac W. Bernheim Foundation, a Kentucky corporation, P. O. Box 130, Clermont, Kentucky 40110 (hereinafter "**GRANTOR**"), and the Commonwealth of Kentucky, by and through the Finance and Administration Cabinet, for the use and benefit of the Kentucky Heritage Land Conservation Fund Board (hereinafter "**GRANTEE**"), c/o Executive Director, Office of Kentucky Nature Preserves, 300 Sower Blvd, Frankfort, Kentucky 40601.

### WITNESS THAT:

WHEREAS, **GRANTOR** is the owner in fee simple of certain real property located in Bullitt County, Kentucky (hereinafter the "Property"), more particularly described as follows:

Please see the attached Exhibit "A" and Exhibit "B" for a detailed description of the property.

Said tract being the same property conveyed to the **GRANTOR** by deeds dated October 15, 2018, and recorded in Deed Book 956, Page 606 and Deed Book 956, Page 600 in the Bullitt County Clerk's Office at Shepherdsville, Kentucky; and

WHEREAS, pursuant to KRS 382.850(1), **GRANTOR** states that it is not aware of any outstanding subsurface rights in the Property and will provide **GRANTEE** with a title insurance policy not containing any exceptions for such outstanding subsurface rights in the Property; and

WHEREAS, the Property's natural characteristics, ecological and aesthetic features, physical condition and conservation values are described and documented in a series of reports, drawings, and photographs hereinafter collectively referred to as "Baseline Documentation," consisting of the application package dated March 2017 and the project review committee's assessment of such package and located in the Office of Kentucky Nature Preserves, which the parties agree provides an accurate representation of the Property as of the date of this Easement; and

WHEREAS, the parties further agree that said Baseline Documentation is contained in the Application filed by **GRANTOR** in connection with this project, the preliminary resource management plan that **GRANTOR** has submitted, and the final resource management plan that **GRANTOR** will submit, as required; and

WHEREAS, while the Baseline Documentation may be used by **GRANTEE** to establish that a change in the use or character of the Property has occurred, its existence shall not preclude **GRANTEE** from using other evidence to establish the condition of the Property as of the date of this Easement; and

WHEREAS, pursuant to KRS 146.550 through 146.570, the Property was acquired in part with Kentucky Heritage Land Conservation Fund ("KHLCF") money; and

WHEREAS, KRS 146.570 mandates that lands acquired with KHLCF money be maintained in perpetuity for the purposes set out in KRS 146.560; and

WHEREAS, **GRANTOR** stated in its KHLCF application and preliminary resource management plan that the Property meets one or more of the priorities for acquisition contained in KRS 146.560(2), namely (a) natural areas that possess unique features such as habitat for rare and endangered species; (b) areas important to migratory

birds; (c) areas that perform important natural functions that are subject to alteration or loss; or (d) areas to be preserved in their natural state for public use, outdoor recreation and education, consistent with the purposes of KRS 146.550 through 146.570; and

WHEREAS, **GRANTEE** acknowledges that **GRANTOR** is a private, nonprofit land trust organization as defined in 418 KAR 1:010 Section 1 (17); and

WHEREAS, 418 KAR 1:050 Section 6(1)(a) requires land trust organizations to convey to the Commonwealth of Kentucky, simultaneously with the disbursement of KHLCF money, a conservation easement over all land acquired either in whole or in part with KHLCF money; and

WHEREAS, **GRANTEE** is a governmental body empowered to hold an interest in real property under the laws of the Commonwealth of Kentucky and the United States, and therefore qualifies as a holder pursuant to KRS 382.800; and

WHEREAS, both **GRANTOR** and **GRANTEE** desire the Property to be maintained in perpetuity for one or more of the purposes set out in KRS 146.560; and

WHEREAS, **GRANTOR** desires to grant to **GRANTEE**, and **GRANTEE** desires to accept, a conservation easement in gross in perpetuity on the Property;

NOW, THEREFORE, in consideration of SEVEN HUNDRED SIX THOUSAND FIVE HUNDRED DOLLARS (\$706,500), which is the amount of the KHLCF grant to **GRANTOR** used in part to acquire the Property, including administrative expenses authorized by 418 KAR 1:010 Section 1(2), and FURTHER pursuant to KRS 382.800 through 382.860, **GRANTOR** does hereby convey to **GRANTEE**, its successors and assigns forever, in consideration of the benefit to the people of the Commonwealth of Kentucky, with special warranty of title, a Conservation Easement (hereinafter



"Easement") in perpetuity over the Property, subject to the following conditions, limitations, and affirmative obligations. **GRANTOR** covenants that it is lawfully seized of the interest hereby conveyed and that it has full right and power to convey same.

**I. PURPOSES OF THE EASEMENT**

A. **GRANTOR** shall use and manage the Property in strict accordance with:

- (1) The requirements of KRS Chapter 146.550 through 146.570;
- (2) 418 KAR Chapter 1;
- (3) KRS 382.800 through 382.860;
- (4) The 2017 grant application submitted to **GRANTEE** by **GRANTOR** and approved by the Kentucky Heritage Land Conservation Fund Board ("KHLCFB") at its regularly scheduled meeting in May, 2017;
- (5) The most current resource management plan pertaining to the Property which have been and will be submitted to and approved by **GRANTEE**.

B. **GRANTEE** has the right to view the Property in its natural, scenic, open and undisturbed condition.

C. **GRANTEE** has the right to enter the Property, after advance notice to **GRANTOR**, in a reasonable manner and at reasonable times, for the purpose of inspecting same to determine compliance with this Easement and the Baseline Documentation, to determine if **GRANTOR** is in compliance with the terms of this Easement, to obtain evidence for the purpose of seeking enforcement of this Easement, or with **GRANTOR**'s approval, to perform ecological monitoring and/or, upon **GRANTOR**'s default in performance under the then current resource management plan, actively manage the Property to effectuate the purposes of this Easement.



D. It is the purpose of this Easement to conserve and help ensure the continuation of the conservation values of the Property. **GRANTOR** and **GRANTEE** recognize the conservation values of the Property, and share the common vision and purpose of conserving these values by conveying conservation restrictions and of preventing the use or development of the Property for any purpose or in any manner that conflicts with these conservation values. **GRANTEE** accepts such conservation restrictions and development rights in order to conserve these values for present and future generations.

## **II. RESTRICTED USES OF PROPERTY**

Any activity on or use of the Property that is or may become inconsistent with the purposes of this Easement, the Baseline Documentation, or KRS 146.550 through 146.570 is prohibited. Without limiting the generality of the foregoing, the following restrictions are imposed upon the Property, and the following obligations are imposed on **GRANTOR**:

A. Public Visitor Activity. There shall be no public visitor activities at the Property except as specifically authorized and described in the then current resource management plan, and except for scientific research approved by **GRANTOR** and **GRANTEE**, as referred to in subparagraph K of this Section. These activities shall be monitored by **GRANTOR** in order to prevent disturbance of the Property beyond what it can tolerate without deterioration and impairment of natural conditions. Activities and uses that are unrelated to purposes articulated in the application and the most recent resource management plan are prohibited except as may be expressly permitted by **GRANTOR** in order to carry out the primary purposes of this Easement.

Prohibited public visitor activities include: games and sports, use of motorized vehicles (except for vehicles driven to and from designated parking areas on the Property and approved to manage the property), mountain bikes, camping, the removal, disturbance or defacement of minerals, archeological features or other natural features, and any disturbance or gathering of plants or animals, or plant or animal products. Hunting (except as permitted in paragraph H below), trapping, or collecting anything from the Property is prohibited.

Except for trained service animals to assist an individual with a disability, no animals shall be brought onto the Property without the prior written permission of **GRANTOR** and **GRANTEE**.

There shall be no fires, except as expressly provided in Subsection B below or expressly permitted in writing by **GRANTOR**.

B. Fire. Prescribed fire may be utilized by **GRANTOR** as a management tool in such areas or situations where fire is needed to maintain or protect biological communities on the Property that can be demonstrated to be fire-maintained communities.

C. Water Level Control. The Property shall be managed by **GRANTOR** in accordance with the purposes set out in the then current resource management plan, or otherwise to maintain its natural water regime. Water levels that previously have been altered by human activity may be changed by **GRANTOR**.

D. Disturbance of Natural Features. Any disturbance or alteration of the Property and its natural conditions through the removal of vegetation, flora, fauna, soil, rocks, or other components is prohibited unless it is consistent with this Easement and expressly permitted in writing by **GRANTOR** and **GRANTEE**.

E. Erosion Control and Pollution Control. Erosion and soil deposition or other pollution caused by human activity or natural conditions originating within or outside the Property may be controlled by **GRANTOR** as necessary.

F. Control of Succession. Control of natural succession may be undertaken in a manner approved by **GRANTOR** if necessary to maintain or restore ecosystems naturally occurring on the Property or to preserve threatened, rare, endangered, or uncommon native species.

G. Control of Exotic Species. Control of exotic species, if they exist on the Property, may be undertaken in a manner approved by **GRANTOR** and **GRANTEE**. **GRANTOR** should use its best efforts to eradicate exotic species from the Property if it can be done without undue disturbance of natural conditions that may otherwise exist. No invasive non-native plant or animal species may be introduced into the Property. **GRANTOR** and **GRANTEE** shall determine whether a non-native species is invasive or whether it would have adverse effects on the Property.

H. Control of Populations. **GRANTOR** shall use its best efforts to control wildlife populations on the Property in order to correct those situations where wildlife populations have been documented as significantly affecting natural conditions. Any measures taken for population control, including regulated hunting by **GRANTOR** or its designees, shall be submitted to **GRANTEE** in the form of a written plan, and no control measures may be undertaken without the written approval of **GRANTOR** and **GRANTEE**.

I. Restoration and Management of Threatened or Endangered Species. **GRANTOR** may actively manage the Property for the preservation and protection of

threatened, rare, endangered, or uncommon native species, if they exist on the Property. Active management may include, but need not be limited to, such activities as mechanical thinning of woody species, the use of herbicides, and prescribed burning. Restoration of native species shall be performed with caution and based on scientific evidence documenting the species' historical occurrence on the Property. Because the Property was acquired in part with funds from the Indiana Bat Conservation Fund for enhancing habitat for the Indiana bat, *Myotis sodalis*, and Northern long-eared bat, *Myotis septentrionalis*, any forests existing or subsequently established on the Property shall remain in a forested condition.

J. Use Tolerance. **GRANTOR** shall from time to time determine the proper use-tolerance or durability of all or any portion of the Property and specify the corrective steps to be taken if overuse occurs that may, in **GRANTOR's** opinion, impair natural conditions.

K. Research and Collecting Permits. Anyone wishing to engage in scientific research on the Property shall first submit to **GRANTOR** a written research proposal, and then secure, at **GRANTOR's** discretion, a written permit. Collecting anything on the Property is prohibited without first obtaining at **GRANTOR's** discretion, a written permit from **GRANTOR**, and **GRANTOR** should develop guidelines for research and collection of living and non-living things. These guidelines may include written proposals, collecting permits, and field experiments.

L. Boundary Markers. Boundaries on the Property shall be made clearly evident by **GRANTOR** by placing markers or boundary signs in a conspicuous manner at corners and/or other strategic locations.

M. Fences. Fences and barriers may be installed by **GRANTOR** as necessary to further the purposes of this Easement. Fences and barriers shall not be in a form that will have a detrimental effect on the movement of wildlife or other natural objects.

N. Trails. **GRANTOR** and **GRANTEE** shall determine the location and specification of any trails other than natural wildlife paths. Such trails shall be adequate to provide for permitted use of the Property, but otherwise shall be kept to a minimum. The use of paving materials, footbridges, and elevated walks may be provided for in the then current research management plan.

O. Other Structures and Improvements. Structures or facilities shall not be erected on the Property unless deemed necessary to provide Environmental Education Programs or to mitigate safety concerns, and unless **GRANTOR** and **GRANTEE** first agree in writing to the structures.

P. Subdivision. Subdividing or partitioning the Property, using any process, is strictly prohibited.

Q. Rights of Way. The granting of rights-of-way through the Property for the installation, transporting, or use of lines, towers and equipment, for water, sewage, electricity, telephone, telecommunications, gas, natural gas liquids, oil or oil products is strictly prohibited, except as necessary for **GRANTOR** to provide running water and electricity for public restrooms on the Property, with the prior written consent of **GRANTEE**.

R. Grantor's Retained Rights. **GRANTOR** and its successors in interest retain the right to perform any act not specifically prohibited or limited by this Section, provided it does not violate the purpose of this Easement. These ownership rights include but are

not limited to the right to exclude any member of the public from entering the Property and the right to sell or otherwise transfer the Property to anyone of **GRANTOR's** choice, with **GRANTEE's** prior approval.

S. Exceptions: Notwithstanding Sections O, P, and Q, other structures or development may be approved by **GRANTOR** and **GRANTEE** on the 38.47 acres identified as Parcel 3 in DB 725, pg 280 to conform to restrictions found on said deed. In that event, **GRANTOR** will reimburse **GRANTEE** the then current appraised amount for those 38.47 acres.

### **III. INDEMNIFICATION; TAXES**

**Indemnification.** **GRANTOR** does hereby agree to pay, protect, indemnify, hold harmless and defend at its own cost and expense, **GRANTEE** and its agents, employees and representatives, from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising from, of, or in connection with injury to or death of any persons caused by **GRANTOR**; physical damage to the Property caused by **GRANTOR**; the presence or release in, on or about the Property at any time, of any substance brought onto the Property by **GRANTOR** now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting substance; or other injury or other damage occurring on or about the Property caused by **GRANTOR**.

**Taxes.** **GRANTOR** shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless **GRANTOR** objects timely to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof,

in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action.

#### **IV. ADMINISTRATION AND ENFORCEMENT**

**Written Notice.** Any notice that either **GRANTOR** or **GRANTEE** may want or need to give to the other shall be in writing and shall be delivered by either first-class postage or hand-delivery; if to **GRANTOR**, then to its Executive Director and the President of its Board of Trustees, P. O. Box 130, Clermont, Kentucky 40110; and if to **GRANTEE**, then to Kentucky Heritage Land Conservation Fund Board, c/o Office of Kentucky Nature Preserves, 300 Sower Blvd, Frankfort, KY 40601. Either party may change its mailing address by written notice to the other party.

**Grantee's Remedies.** In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, **GRANTEE** may immediately enforce any of the remedies set forth in 418 KAR 1:070 or any other remedies available by law. Any failure by **GRANTEE** to avail itself of these remedies shall not be deemed a waiver or forfeiture of the right to enforce any term, condition, covenant or purpose of this Easement. **GRANTEE** may, following reasonable-notice to **GRANTOR**, institute suit to enjoin any violation of the terms of this Easement, including injunctive relief. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Property, **GRANTEE** shall give **GRANTOR** notice of the violation and sixty (60) days to correct it before taking legal action. **GRANTEE** shall also have available all legal and equitable remedies to enforce **GRANTOR**'s obligations under this Easement. If **GRANTOR** is found in violation of any of its obligations, **GRANTOR** shall bear all costs

associated with correcting the violation, including costs of work required and materials used to correct the violation and restore the restricted land to its condition prior to the violation; administrative costs incurred by **GRANTEE**, and court costs and reasonable attorneys' fees incurred by **GRANTEE** in enforcing the Easement.; provided, however, **GRANTOR**, in lieu of paying any of the costs set forth in this sentence, may elect to forfeit and transfer the Property to **GRANTEE** or an appropriate land management entity designated by **GRANTEE** as described in the Remedies section of 418 KAR 1:070 Section 2(1) and (2).

The rights herein granted shall be in addition to, and not in limitation of, any other rights and remedies available to **GRANTEE** for protection of the Property. Exercise by **GRANTEE** of one remedy hereunder shall not have the effect of waiving the use of any other remedy at any other time.

**Notice from Government Authorities.** **GRANTOR** shall deliver to **GRANTEE** copies of any notice of violation or lien relating to the Property received by **GRANTOR** from any state or federal authority within five (5) days of receipt by **GRANTOR**.

**Notice of Proposed Sale.** In addition to the requirements set forth in the Baseline Documentation, Memorandum of Agreement, and 418 KAR Chapter 1, **GRANTOR** shall promptly notify **GRANTEE** in writing of any proposed sale of the Property and provide the opportunity for **GRANTEE** to explain the terms of the Easement to potential new owners. Additionally, **GRANTOR** agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by **GRANTOR** in any subsequent deed or other legal instrument by which **GRANTOR** divests itself of any interest in the Property.



## **V. BINDING EFFECT; ASSIGNMENT**

**Runs with the Land.** The obligations imposed herein shall be a burden upon and shall run with the Property and shall bind **GRANTOR**, its successors and assigns in perpetuity. This Easement shall extend to and be binding upon **GRANTOR** and **GRANTEE**, their respective successors in interest and all persons hereafter claiming under or through **GRANTOR** and **GRANTEE**. Any right, title or interest herein granted to **GRANTEE** also shall be deemed granted to each successor in interest of **GRANTEE** and the word "**GRANTEE**" shall include all such successors and assigns.

**Assignment.** With the written approval of **GRANTOR**, **GRANTEE** may convey, assign, or transfer this Easement to a unit of federal, state or local government or similar local, state, or national entity that is a "qualified holder" under KRS 382.850(1) and whose purposes include promoting the preservation or conservation of natural resources; provided, however, that any such conveyance, assignment or transfer requires that the purposes for which this Easement was granted will continue to be carried out.

**Extinguishment.** **GRANTOR** agrees that this conveyance of a perpetual Easement gives rise to a property right, immediately vested in **GRANTEE**, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Property as a whole at that time. The proportionate value of **GRANTEE**'s property rights shall remain constant.

**Recording and Effective Date.** **GRANTEE** shall ensure that all acts necessary for the prompt recording of this Easement in the land records of Bullitt County, Kentucky, shall be accomplished. **GRANTOR** and **GRANTEE** intend that this Easement and the

restrictions arising hereunder shall take effect on the day of execution by **GRANTOR** and **GRANTEE**.

## **VI. INTERPRETATION**

**Interpretation.** This Easement shall be interpreted under the laws of the Commonwealth of Kentucky. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject thereof.

Any legal action brought to enforce the terms of this Easement shall be filed in the Franklin Circuit Court, Frankfort, Kentucky.

## **VII. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement is appropriate or necessary, **GRANTOR** and **GRANTEE** may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of **GRANTEE** under any applicable federal or state laws. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the purposes of this Easement, shall not affect its perpetual duration, shall not permit any private inurement to any person or entity, and shall not provide any less protection to the conservation values protected by this Easement. Any such amendment shall be recorded in the land records of Bullitt County, Kentucky. Nothing in this paragraph shall require **GRANTOR** or **GRANTEE** to agree to any amendment or to consult or negotiate regarding any amendment.

**THIS EASEMENT** reflects the entire agreement of **GRANTOR** and **GRANTEE** regarding the terms of any conservation easement pertaining to the Property. Any prior or simultaneous correspondence, understandings, agreements and representations are null and void upon execution hereof, unless set out in this Easement.

**TO HAVE AND TO HOLD** this Conservation Easement, together with all appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, for the use and benefit of **GRANTEE**, its successors and assigns, forever.

IN WITNESS WHEREOF, Isaac W. Bernheim Foundation, **GRANTOR**, has executed this Deed of Conservation Easement this the 15<sup>th</sup> day of Oct, 2018.

**GRANTOR:**

ISAAC W. BERNHEIM FOUNDATION,  
a Kentucky corporation.

By: Mark K. Worms

Title: Executive Director

**CERTIFICATE OF CONSIDERATION**

I, Mark K. Worms, acting for and on behalf of the Isaac W. Bernheim Foundation, **GRANTOR**, do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration is the true, correct and full consideration paid for the property herein conveyed.

**GRANTOR:**

ISAAC W. BERNHEIM FOUNDATION,  
a Kentucky corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGMENT**

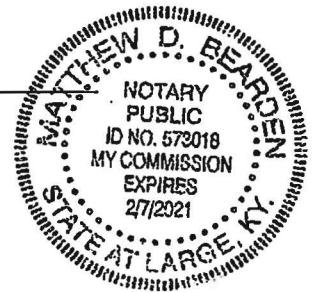
STATE OF KENTUCKY  
COUNTY OF BULLITT

I, the undersigned, a notary public duly authorized in the county and state aforesaid, do hereby certify that on this day Mark K. Worrms personally appeared before me and executed the foregoing instrument as Executive Director of Isaac W. Bernheim Foundation, a Kentucky corporation, and acknowledged before me that Mark K. Worrms executed the same as such officer in the name of and for and on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this the 15<sup>th</sup> day of Oct., 2018.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 2/7/21



IN WITNESS WHEREOF, the Commonwealth of Kentucky, **GRANTEE**, hereby accepts this Deed of Conservation Easement this the 2<sup>nd</sup> day of October, 2018.

**GRANTEE:**

FINANCE AND ADMINISTRATION  
CABINET

By: William M. Landrum III  
William M. Landrum III, Secretary

**CERTIFICATE OF CONSIDERATION**

I, William H. Landrum, acting on behalf of the Commonwealth of Kentucky, **GRANTEE**, do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration is the true, correct and full consideration paid for the property herein conveyed.

**GRANTEE:**

FINANCE AND ADMINISTRATION  
CABINET

By: William M. Landrum III  
William M. Landrum III, Secretary

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF KENTUCKY  
COUNTY OF FRANKLIN

I, the undersigned, a notary public duly authorized in the county and state aforesaid, do hereby certify that on this day William M. Landrum III personally appeared before me and executed the foregoing instrument as Secretary of the Commonwealth of Kentucky, Finance and Administration Cabinet, and acknowledged before me that he executed the same as such officer in the name of and for and on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this the 2 day of October, 2018.

*Wanda Wilk-Cauch*  
NOTARY PUBLIC

My Commission Expires: 10-5-2019

#543341



**APPROVED BY:**

*Jason L. Weese*  
\_\_\_\_\_  
Jason L. Weese  
Chairman  
KENTUCKY HERITAGE LAND  
CONSERVATION FUND BOARD

**THIS INSTRUMENT PREPARED BY:**

*Timothy J. Mayer*  
\_\_\_\_\_  
Timothy J. Mayer, Attorney  
Office of Legal Services  
Energy and Environment Cabinet  
300 Sower Blvd  
Frankfort, Kentucky 40601

**APPROVED TO FORM AND LEGALITY:**

*Patrick M. Dineen*  
\_\_\_\_\_  
Attorney  
Finance and Administration Cabinet

THE SURVEYING INSTRUMENT FOR THIS JOB IS  
ONE BEING USED ON THE PROJECT SCALE.  
THE SCALE PLANS COMING FROM THE  
DESIGNER FROM APRIL 13, 2018.

SCALE 1" = 200'

200' 100' 0 200' 400'

GRAPHIC SCALE



JOB NO.		10057
Contractor	SP4	6/15/78
Inspector	SP7	6/15/78
Client	SP4	6/15/78

FILE NAME: 10057-FLAT 1-00

PRINT DATE: 6/15/2008

**Bus de Larraz, Inc.**  
 is a Land Services  
 company. Specialty: 222  
 00000000000000000000

PREPARED BY:

CLIENT: BERNHEIM ARBORETUM AND  
RESEARCH FOREST  
P.O. BOX 130  
CLERMONT, KENTUCKY 40110  
(502) 215-7124

[illegible]

**BOUNDARY SURVEY**  
IN COMPLIANCE WITH 301 KAR 14.130

**SIMON REAL ESTATE HOLDINGS II LLS**  
**DEED BOOK 726, PAGE 280**  
**PARCEL NUMBER 065-000-00-005**  
**CEDAR GROVE ROAD**  
**SHEPHERDSVILLE, BULLITT COUNTY, KENTUCKY**

Sheet	1 of 1
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**BULLITT COUNTY**  
**D956 PG633**


[illegible][illegible]

**LEGEND**

● SET 1/2" x 1/2" STAG. PWS  
12/CAP. 12000T 2017

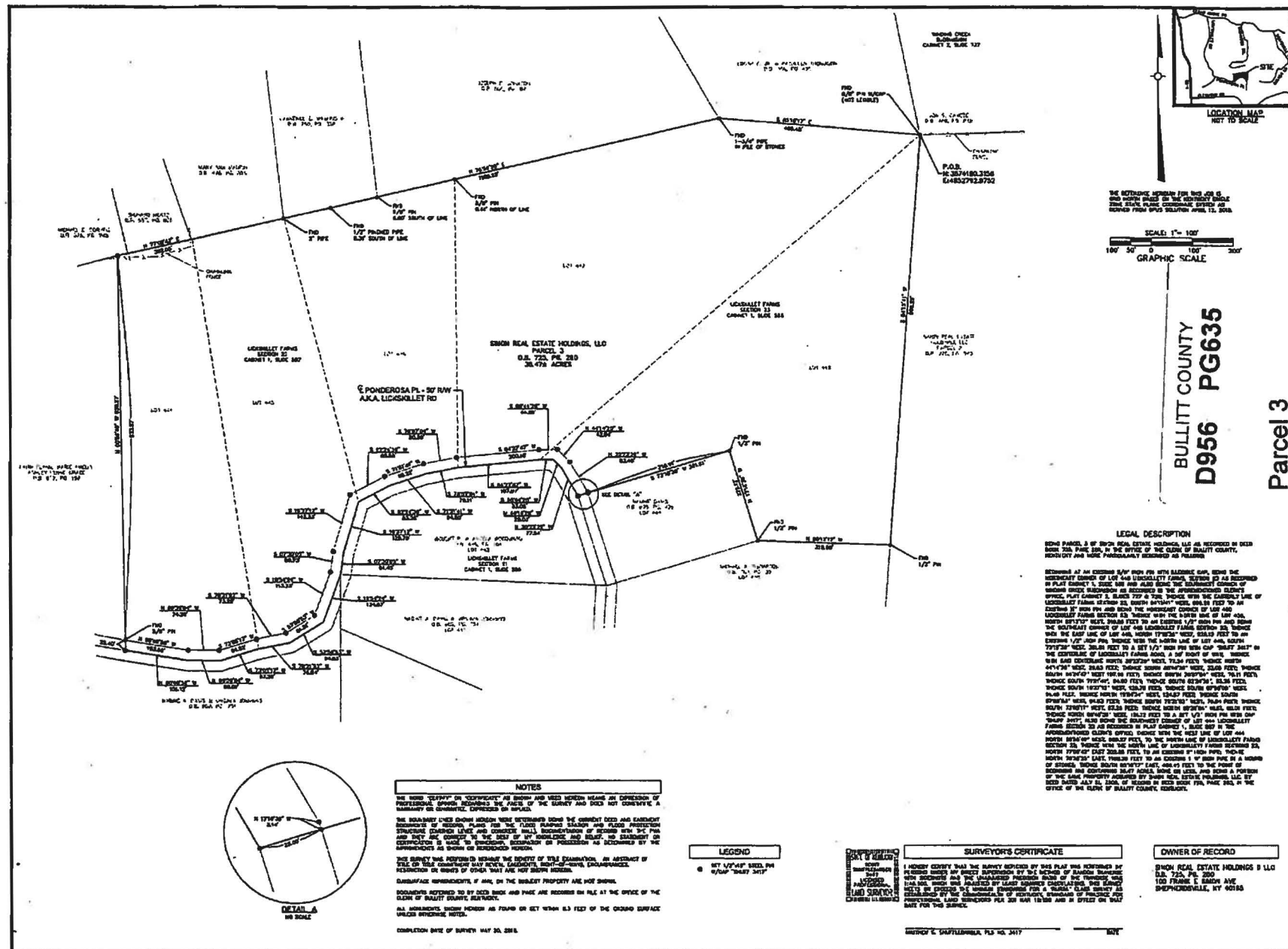
**OWNER OF RECORD**  
SIMON REAL ESTATE HOLDINGS 3 LLC  
D.B. 723, PG. 280  
100 FRANK E SIMON AVE  
SHEPHERDSVILLE, KY 40363

1  
SHEET 1 OF 1

<b>BOUNDARY SURVEY</b> IN COMPLIANCE WITH 201 KAR 18.000		<b>CLIENT:</b> BERNHEIM ARBORETUM AND RESEARCH FOREST P.O. BOX 130 CLERMONT, KENTUCKY 40310 (502) 215-7124	
SHOWN REAL ESTATE HOLDINGS ILLS DEED BOOK 725, PAGE 288 PARCEL NUMBER 065-000-010-030A LICKSKILLET OR SHEPHERDSVILLE, BULLITT COUNTY, KENTUCKY		<b>PREPARED BY:</b>  Joseph, Turrentius & Lucas, Inc. 10000 Highway 100, Suite 100 Louisville, KY 40241 Phone: 502-261-1000 Fax: 502-261-1001	
SHEET 1 OF 1		PLOT DATE: 0000-PL13 3-00-00	



# Exhibit "A"




<b>BOUNDARY SURVEY</b> <small>IN COMPLIANCE WITH 16 CSR 16.020</small>		<b>PARCEL NUMBERS:</b> 006-000-00-005 006-000-00-006 006-000-00-007 006-000-00-008 006-000-00-009	
<b>SIRON REAL ESTATE HOLDINGS II LLS</b> DEED BOOK 725, PAGE 280 LICKSKILLET DR SHEPHERDSTOWN BULLITT COUNTY, KENTUCKY		<b>CLIENT:</b> BERNHEIM ARBORETUM AND RESEARCH FOREST P.O. BOX 130 CLEMONT, KENTUCKY 40110 (502) 215-7124	
<b>PREPARED BY:</b>  Jacoby, Twombles & Lantz, Inc. Consulting Engineers & Land Surveyors 1000 N. 10th St., Suite 100 Louisville, KY 40203 Phone: (502) 455-1234		<b>DATE:</b> 05/05/05	
<b>DATE:</b> 05/05/05		<b>DATE:</b> 05/05/05	

EXHIBIT "B"

**NORTH BLOCK**

Being Parcel 1 and 2 of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing  $\frac{1}{2}$ " iron pin with Identifier cap "CLEMONS" and being a corner of Lot 26 Winding Creek Subdivision as recorded in Plat Cabinet 2, Slide 728 in the aforementioned clerk's office; thence with the line of said lot South  $89^{\circ}15'51''$  East, 157.88 feet to an existing  $\frac{1}{2}$ " iron pin with identifier cap "CLEMONS" and being the Southwest corner of the property conveyed to Barry E. & Lois Woods in Deed Book 290, PG 490 in the aforementioned clerk's office; thence with the South line of Woods South  $85^{\circ}17'28''$  East, 1471.21 feet to a set  $\frac{1}{2}$ " iron pin with Identifier cap "SHUFF 3417" being in the South line of Cedar Grove Road; thence with said line South  $80^{\circ}36'00''$  East, 201.19 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being the Northwest corner of the Travis R. Minks property as recorded in Deed Book 911, Page 521 in the aforementioned clerk's office; thence leaving Cedar Grove Road with the West line of Minks South  $04^{\circ}18'06''$  West, 1309.79 feet to an existing  $\frac{3}{4}$ " iron pin with T-Post and being the Southwest corner of the Douglas Ray & Ladonne Cooney property as recorded in Deed Book, 278, Page 162 in the aforementioned clerk's office; thence with the line of Cooney South  $87^{\circ}12'20''$  East, 645.40 feet to an existing  $\frac{1}{2}$ " iron pin with identifier cap "LEIGH 1776" in the West line of Lot 33 of Cox's Acres as recorded in Plat Cabinet 1, Slide 278, in the aforementioned clerk's office; thence with the West line of said subdivision South  $04^{\circ}19'51''$  West, 585.40 feet to an existing  $\frac{1}{2}$ " iron pin and being the Southwest corner of Lot 28 Cox's Acres; thence with the South line of Lot 28, South  $85^{\circ}53'36''$  East, 506.52 feet to a set  $\frac{1}{2}$ " iron pin with Identifier cap "SHUFF 3417" in the West line of Sharon Drive; thence with the line of Sharon Drive South  $04^{\circ}29'24''$  West, 416.20 feet to an existing  $\frac{3}{4}$ " iron pin; thence South  $85^{\circ}42'46''$  East, 60.00 feet to an existing  $\frac{3}{4}$ " iron pin in the East line of Sharon Drive; thence with the line of Sharon Drive North  $04^{\circ}29'24''$  East, 568.03 feet to the Southwest corner of Lot 20 Cox's Acres; thence leaving Sharon Drive and with the common line of lots 20 and 21 in Cox's Acres, South  $85^{\circ}53'36''$  East, 540.36 feet to set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" in the East line of Cox's Acres and also being in the line of David and Jolynne Clark as recorded in Deed Book 620, Page 627; thence with the East line of Cox's Acres South  $04^{\circ}24'45''$  West, 569.73 feet to an existing stone and being the Southeast corner of Cox's Acres and also being in the line of Roger D. & Patsy Brown as recorded in Deed Book 216, Page 582 in the aforementioned clerk's office; thence with the line of Brown South  $04^{\circ}31'29''$  West, 376.62 feet to an existing stone and being the common corner with John Edgar Sivori III as recorded in Deed Book 569, Page 14 in the aforementioned clerk's office; thence with the line of Sivori South  $50^{\circ}40'11''$  East, 727.15 feet to an existing pile of stones and being a common corner to Othen T. & Juanita Colyer as recorded in Deed Book 500, Page 660 in the aforementioned clerk's office; thence with the line of Colyer South  $68^{\circ}11'31''$  West, 860.73 feet to an existing  $\frac{1}{2}$ " iron pin; thence South  $21^{\circ}03'15''$  East, 598.49 feet to an existing  $\frac{1}{2}$ " iron pin in the North line of Lewis Kerberg as recorded in Deed Book 877, Page 330 in the aforementioned clerk's office; thence with Kerberg's line South  $69^{\circ}59'25''$  West, 745.75 feet to a set  $\frac{1}{2}$ " iron pin with identifier cap "SHUFF 3417" and being a common corner with Simon Real Estate Holdings, LLC, Parcel 2 as recorded in Deed Book 725, Page 288 in the aforementioned clerk's office; thence with the Simon line North  $63^{\circ}29'49''$  West, 1466.00 feet to a set  $\frac{1}{2}$ " iron pin with Identifier cap "SHUFF 3417"; thence North  $82^{\circ}58'36''$  West, 157.32 feet to an

existing ½" iron pin with identifier cap "CLEMONS" and being the Southeast corner of Winding Creek Subdivision as recorded in Plat Cabinet 2, Slides 727 & 728 in the aforementioned clerk's office; thence with the line of winding Creek Subdivision North 20°23'04" West, 1593.87 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 17°39'37" West, 886.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 52°23'55" East, 98.40 feet to an existing 1/2" iron pin with identifier cap "SPURRIER 3695"; thence North 10°02'54" West, 247.64 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 36°56'13" West, 113.44 feet to an existing ½" iron pin with identifier cap "SPURRIER 3695"; thence North 46°20'05" West, 183.09 feet to an existing ½" iron pin; thence North 17°39'37" West, 721.38 feet to an existing ½" iron pin; thence North 05°41'29 East, 323.97 feet to the point of beginning and containing 205.71 acres, more or less, and being a portion of the same property acquired by Simon Real Estate Holdings, LLC, by Deed dated July 31, 2008, of record in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky.

**EXHIBIT "B"**

Being PARCEL TWO of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 288, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the southerly line of the aforementioned subdivision North 88°10'52" East, 575.08 feet to an existing ½" iron pin w/ identifier cap "CLEMONS"; thence South 01°04'43" East, 87.31 feet to an existing ½" iron pin with identifier cap "CLEMONS"; thence South 82°58'36" East, 1288.10 feet to a set ½" iron pin with identifier cap "SHUFF 3417", and being a common corner with the property of Simon Real Estate Holdings, LLC Parcel 1 as recorded in Deed Book 725, Page, 280 in the aforementioned clerk's office; thence with said line South 63°29'49" East, 1466.00 feet to a set ½" iron pin with identifier cap "SHUFF 3417", being the Northwest Corner of the property of Lewis Kerberg as recorded in Deed Book 877, Page 330, in the aforementioned clerk's office; thence with the East line of Kerberg, South 05°50'25" West, 2917.77 feet to an existing stone; thence South 74°07'09" West, 71.65 feet to a set ½" iron pin with identifier cap "SHUFF 3417" in the North line of an unnamed 60 foot road as recorded in Hubert Cox Estates in Plat Cabinet 1, Slide 583; thence with said north line and the north line of the property of Carla Leigh & Deborah Lynn Cox, as recorded in Deed Book 255, Page 486, in the aforementioned clerk's office, North 85°51'19" West, 2127.42 feet to an existing ½" iron pin in a mound of stones and being the Northeast corner of the property of the Isaac W. Bernheim Foundation as recorded in Deed Book 914, Page 767, in the aforementioned clerk's office; thence with the North line of said property North 86°34'39" West, 947.95 feet to an existing ½" iron pin in a mound of stones, and also being the Southeast corner of Lickskillet Farms, Section 24, as recorded in Plat Cabinet 1, Slide 591, in the aforementioned clerk's office; thence with the East line of Lickskillet Farms North 04°15'08" East, 3602.53 feet to the point of beginning and containing 250.15 acres, more or less, and being a portion of the same property acquired by Simon Real Estate Holdings, LLC, by Deed dated July 31, 2008, of record in Deed Book 725, Page 288, in the Office of the Clerk of Bullitt County, Kentucky.

BULLITT COUNTY  
D956 PG638

**EXHIBIT "B"**

**PARCEL THREE:**

Being PARCEL THREE of Simon Real Estate Holdings, LLC as recorded in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky and more particularly described as follows:

BEGINNING at an existing 5/8" iron pin with illegible cap, being the northeast corner of lot 448 Lickskillet Farms, Section 23 as recorded in Plat Cabinet 1, Slide 588 and also being the southwest corner of Winding Creek Subdivision as recorded in the aforementioned clerk's office, Plat Cabinet 2, Slides 727 & 728; thence with the easterly line of Lickskillet Farms Section 23, South 04°15'41" West, 999.29 feet to an existing 1/2" iron pin and being the Northeast corner of Lot 450 Lickskillet Farms Section 23; thence with the North line of Lot 450, North 88°12'12" West, 319.59 feet to an existing 1/2" iron pin and being the southeast corner of lot 449 Lickskillet Farms Section 23; thence with the East line of Lot 449, North 17°16'36" West, 228.12 feet to an existing 1/2" iron pin; thence with the North line of Lot 449, South 73°19'38" West, 381.91 feet to a set 1/2" iron pin with cap "SHUFF 3417" in the centerline of Lickskillet Farms Road, a 50' right of way; thence with said centerline North 30°23'29" West, 77.54 feet; thence North 44°14'20" West, 29.03 feet; thence South 88°44'28" West, 33.05 feet; thence South 84°24'47" West 197.96 feet; thence South 78°57'04" West, 78.11 feet; thence South 71°51'41", 94.60 feet; thence South 62°24'39", 83.26 feet; thence South 16°37'12" West, 129.78 feet; thence South 07°30'05" West, 51.45 feet; thence North 19°54'24" West, 124.57 feet; thence South 57°58'53" West, 94.63 feet; thence South 78°21'52" West, 76.64 feet; thence South 73°05'17" West, 97.26 feet; thence North 89°39'04" West, 80.01 feet; thence North 80°48'58" West, 151.12 feet to a set 1/2" iron pin with cap "SHUFF 3417", also being the Southwest corner of Lot 444 Lickskillet Farms Section 22 as recorded in Plat Cabinet 1, Slide 587 in the aforementioned clerk's office; thence with the west line of Lot 444 North 00°56'49" West, 959.27 feet, to the North line of Lickskillet Farms Section 22; thence with the north line of Lickskillet Farms Sections 22, North 77°08'42" East 302.05 feet, to an existing 2" iron pipe; thence North 76°56'25" East, 1188.28 feet to an existing 1 3/4" iron pipe in a mound of stones; thence South 85°19'17" East, 486.45 feet to the point of beginning and containing 38.47 acres, more or less, and being a portion of the same property acquired by Simon Real Estate Holdings, LLC, by Deed dated July 31, 2008, of record in Deed Book 725, Page 280, in the Office of the Clerk of Bullitt County, Kentucky.

DOCUMENT NO: 605989  
RECORDED: October 16, 2018 11:47:00 AM  
TOTAL FEES: \$83.00  
COUNTY CLERK: KEVIN MOONEY  
DEPUTY CLERK: RITA  
COUNTY: BULLITT CO CLERK  
BOOK: D956 PAGES: 615 - 639

BULLITT COUNTY  
D956 PG639



Existing Non-LG&E Easement

# Bernheim Property

(After pipeline approval)

Bernheim Property  
(Not open to public;  
purchased after CPCN approval)

Bernheim Property  
(Not open to public)

Park Entrance

# Bernheim Arboretum

(Open to public)



245



245

245

