

## DECLARATION OF EASEMENT AGREEMENT

This Declaration of Easement Agreement (this "**Agreement**") is made as of the 9th day of May, 1996, by **THE FRANK FOUNDATION**, a Kentucky limited partnership ("**Owner**").

## WITNESSETH

**WHEREAS**, Owner is the owner of Tract 1A, Tract 1B, Tract 2 and Tract 3 shown on the plot plan which is Exhibit "A" attached hereto, said tracts being located in Jefferson County, Kentucky and more particularly described in Exhibit "B" attached hereto;

**WHEREAS**, Tract 1A and Tract 1B are currently a single parcel that Owner intends to subdivide into said Tract 1A and Tract 1B;

**WHEREAS**, Tract 1A and Tract 1B are each substantially occupied by a building, which buildings abut each other generally along the line dividing Tract 1A and Tract 1B;

**WHEREAS**, the occupant of Tract 1A uses Tract 2 and Tract 3 for ingress and egress, and the occupants of Tract 1A and Tract 1B each use the western brick wall of the building on Tract 1B (the "**Common Wall**"); and

**WHEREAS**, in contemplation of the pending subdivision of Tract 1A and Tract 1B, and possible conveyance of some or all of the tracts described herein, Owner intends by this Agreement to establish rights in and to Tract 2, Tract 3 and the Common Wall for the benefit of the owner of Tract 1A;

**NOW THEREFORE**, for and in consideration of the premises, and the easements and agreements contained herein, the sufficiency of which are hereby acknowledged, Owner does hereby agree as follows:

1. **Easements.** Owner hereby grants the owner of Tract 1A, and to the agents, customers, invitees, licensees, tenants and employees of the owner of Tract 1A, the non-exclusive right to use (a) Tract 2 for (i) ingress/egress between Tract 1A and Swan Street, and between Tract 1A and Tract 3, and (ii) temporary parking for loading and unloading of commercial and other vehicles, and (b) Tract 3 for (i) ingress/egress between Tract 1A and St. Catherine Street, and (ii) temporary parking for loading and unloading of commercial and other vehicles. Neither the owner of Tract 2 nor the owner of Tract 3 shall at any time block or obstruct access over Tract 2 or Tract 3 to the loading dock(s) on Tract 1A in any manner that would prevent or interfere with two tractor trailer trucks from accessing and utilizing said docks at the same time, and no improvement, fence, gate, or other barrier may be erected that interferes with such access. Except as provided herein, no parking shall be permitted on either Tract 2 or Tract 3 by the owner of Tract 1A, Tract 2 or Tract 3 or their agents, customers, invitees, licensees, tenants, or employees; provided, however, that the owner of Tract 1A agrees that it will permit the owner of Tract 3 to use portions of Tract 3 for parking in the event

that said owner of Tract 1A determines, in the exercise of its reasonable judgment, that such portions are no longer needed for access to the loading dock(s) on Tract 1A.

2. Common Wall.

(a) The Common Wall shall at all times be kept in good condition and state of repair. The cost of any necessary repairs to any part of the Common Wall shall be paid for and borne by the then owner of Tract 1B so long as the owner of Tract 1B continues to utilize such Common Wall. The owner of Tract 1B may not demolish or remove the Common Wall without the prior written consent of the owner of Tract 1A. If the owner of Tract 1B shall cease to utilize the Common Wall, then so long as the Common Wall continues to be utilized by the owner of Tract 1A any repairs or rebuilding required during such period shall be borne solely by the owner of Tract 1A. The owner utilizing the Common Wall need not rebuild such Common Wall if it does not desire to thereafter utilize it; provided that in the event of demolition, destruction, or removal of the Common Wall, the owner of Tract 1A and/or the owner of Tract 1B may rebuild the Common Wall, and further provided that if such Common Wall is rebuilt by one owner and the other owner thereafter desires to resume utilization of the Common Wall, then at such time the other owner shall pay one-half of the prior cost of rebuilding or repairing same, without interest and without allowance for depreciation.

(b) The owner of Tract 1A and the owner of Tract 1B may each add to the height, depth, or thickness of the Common Wall. Any addition to the thickness of any part of the Common Wall shall be made only on the side of the owner making such addition, unless such addition is to be utilized by both owners. The other owner need not contribute to the cost of any addition unless and until such time as its use of such Common Wall is such as to benefit from the utilization of any such addition, at which time such owner shall pay to the other one-half the cost thereof, without interest or allowance for depreciation, and if such addition was to the thickness of such wall, the Common Wall easement shall upon such utilization be extend for an equal distance into the tract of each owner.

(c) All work, repair, rebuilding, and addition to the Common Wall shall be done in good and workmanlike manner and conform with all applicable building laws and codes and the building materials shall be, except as otherwise agreed in writing between the owners of the same type as those used for the original Common Wall. The owner causing any such work to be done shall take all due measures to cause the least possible inconvenience to the other owner, and shall do whatever work may be necessary to leave the improvements of the owner in as good condition as before.

(d) Owner hereby grants for the benefit of the owner of Tract 1A, an easement over Tract 1B to the extent of any encroachment of (i) the eastern wall of the building on Tract 1A, and/or (ii) the Common Wall, or any permitted replacement thereof, while utilized by said owner of Tract 1A.

3. **Maintenance.** The owner(s) of Tract 2 and Tract 3 shall each maintain said tracts in good condition and repair, and in no worse condition than the condition existing at the date of this Agreement. The maintenance is to include, without limitation, the following:

(a) Maintaining the surfaces in a level, smooth and evenly-coated condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability; and

(b) Removing all papers, ice and snow, mud and sand, debris, and filth to the extent reasonably necessary to keep the area in a clean and orderly condition.

4. **Indemnification.** The owners of Tract 1A, Tract 1B, Tract 2, and Tract 3 each hereby indemnifies and saves the other owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death, or property damage occurring on Tract 2 and/or Tract 3 and caused by the act or omission of such indemnifying owner, or its agent, customer, invitee, licensee, tenant or employee.

5. **Eminent Domain.** In the event of any exercise of eminent domain or transfer in lieu thereof of any part of Tract 1A, Tract 1B, Tract 2, and/or Tract 3, the award attributable to such tract(s) shall be payable only to the owner thereof, and no claim thereto shall be made by the owner of the other tract(s).

6. **Breach.** In the event of breach or threatened breach of this Agreement, only the holder of any first mortgage on a tract, or the record fee owner of a tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

7. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of Owner, and its respective successors and assigns of the land described in this Agreement. The singular number includes the plural and the masculine gender includes the feminine and neuter.

8. **Modification and Cancellation.** This agreement (including exhibits) may be modified or canceled only by the mutual agreement of the holder of any first mortgage on each tract and the fee owner of each tract.

9. **Duration.** Unless otherwise canceled or terminated, this Agreement and all the easements, rights and obligations hereof shall be perpetual.

10. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent

of this Agreement, nor in any way affect the terms and provisions hereof.

11. **No Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of Tract 1A, Tract 1B, Tract 2, or Tract 3 to the general public or for any public purpose whatsoever, it being the intention of Owner that this Agreement shall be strictly limited to and for the purposes herein expressed.

12. **Severability.** If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

**IN WITNESS WHEREOF,** Owner has executed this Agreement as of the day and year first written above.

**OWNER:**

**THE FRANK FOUNDATION,  
a Kentucky limited partnership**

By: Henry S. Frank Trust U/A dated  
December 6, 1988 as Restated February  
6, 1995, General Partner

By: 

Henry S. Frank, Trustee

By: 

Werner W. Frank, General Partner

COMMONWEALTH OF KENTUCKY )

)SS

COUNTY OF JEFFERSON )

The foregoing instrument was acknowledged before me on May 2<sup>nd</sup>, 1996, by Henry S. Frank, Trustee of the Henry S. Frank Trust U/A dated December 6, 1988 as Restated February 6, 1995, which trust is General Partner of The Frank Foundation, a Kentucky limited partnership, on behalf of the partnership.

  
Notary Public, State-at-Large, KY

Commission expires: \_\_\_\_\_

Notary Public, State-at-Large, KY

**Commission expires:**

**This Instrument Prepared By:**

David B. Marshall  
David B. Marshall  
LYNCH, COX, GILMAN & MAHAN, P.S.C.  
500 Meidinger Tower  
Louisville, Kentucky 40202

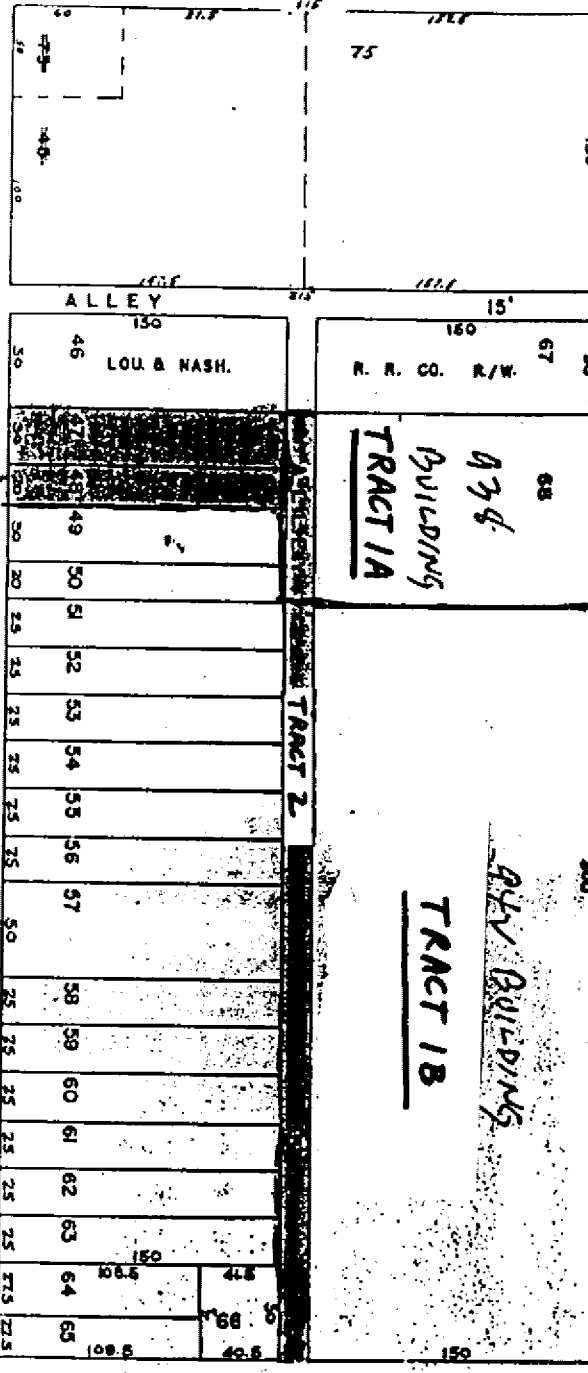
-5-

KENTUCKY

THOS. F. BURKE  
JEFFERSON COUNTY TAX COMMR  
R. L. LITTON - CHIEF CLERK  
BOWLING GREEN, KY

SWAN ST.

ST. 60'



Tract 3  
ST CATHERINE ST. 60'

SWAN

ST. 60'

242

BUTLER'S SUBDIVISION 0817 X 320 (2008)  
LOCAL'S B.M. IN CAMPBELL'S ADD. (87)  
LOU & NASH R.R. CO. RIGHT OF WAY MAP (08/18)  
RECORDS OF SUB. OF LOTS 2-3-4-5 BRAND & WIFE VS. CAMPBELL. (186-1841)  
186

616608

Document No: 1996061668  
Lodged By: DARLING  
Recorded On: May 10, 1996 11:12:16 A.M.  
Total Fees: \$17.00  
County Clerk: Rebecca Jackson  
Deputy Clerk: CARRIED

EXHIBIT A

**EXHIBIT B  
(Legal Description)****TRACT 1A:**

BEGINNING at a point on the South side of Kentucky Street, 400 feet West of the Southwest corner of Kentucky and Swan Streets; thence running Westwardly along the South side of Kentucky Street, 100 feet; thence Southwardly in a line parallel with the West line of Swan Street, 150 feet to an alley; thence Eastwardly along the North line of said alley, being a line parallel with the South line of Kentucky Street, 100 feet; thence Northwardly in a line parallel with the West line of Swan Street, 150 feet to the beginning.

**TRACT 1B:**

BEGINNING on a point on the Southwest corner of Kentucky and Swan Streets; thence running Westwardly along the South side of Kentucky Street, 400 feet; thence Southwardly in a line parallel with the West line of Swan Street, 150 feet to an alley; thence Eastwardly along the North side of said alley, being a line parallel with the South line of Kentucky Street, 400 feet to the West side of Swan Street; thence Northwardly along the West line of Swan Street, 150 feet to the beginning.

**TRACT 2:**

BEGINNING at the Southwest corner of the above described Tract 1A; thence Southwardly in a line parallel with the West line of Swan Street, ten (10) feet; thence Eastwardly in a line parallel with the South line of Kentucky Street, Five Hundred (500) feet to the West line of Swan Street; thence Northwardly along the West line of Swan Street, ten (10) feet; thence Westwardly along the South line of the above described Tract 1A and Tract 1B, Five Hundred (500) feet to the beginning.

**TRACT 3:**

BEGINNING on the North side of St. Catherine Street 450 feet West of Swan Street; thence Westwardly with said line of St. Catherine Street 50 feet, and extending back Northwardly of that width throughout between lines parallel with Swan Street, 150 feet to an alley.

The foregoing Tracts 1A, 1B, 2, and 3 being the same property acquired by Owner by Deed dated December 28, 1981 of record in Deed Book 5268, Page 27, in the office of the Jefferson County, Kentucky clerk, and modified by Deed of Correction of record in Deed Book 6565, Page 545 in the office aforesaid, and by Deed of Correction dated May 9, 1996 of record in Deed Book 6136, Page 210, in the office aforesaid.

**END OF DOCUMENT**

61665  
5-10-96