

BLUE GREENWAY AREA EASEMENT AGREEMENT

THIS BLUE GREENWAY AREA EASEMENT AGREEMENT (“this Agreement”) dated as of _____, 2007, (the “Agreement Date”) is by and between OLDHAM-LAGRANGE DEVELOPMENT AUTHORITY (“OLDA,” also “Holder”) and _____ (the “Owner or Owners”).

Article I. Background; Grant of Easement

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the property described below (the “Property”):

Street Address: _____
Municipality: LaGrange
County: Oldham State: Kentucky 40031
Parcel Identifier: Acreage:

1.02 Blue Greenway Area

A certain portion of the Property (the “Blue Greenway Area”) is the subject of this Agreement. The Blue Greenway Area is of variable width and is located on the Property as shown on the attached Exhibit “A”. The Blue Greenway Area consists of (1) preserved areas located along both sides of streams, and (2) certain adjacent areas and pathways used to connect the preserved areas to create a continuous trail.

The *Preservation Area* is a subset of the Blue Greenway Area that is the protected area required per the following permits: Section 404 Individual Permit from the U.S. Army Corps of Engineers and Section 401 Water Quality Certification from the Kentucky Division of Water.

1.03 Purpose

The intent and purpose of the Blue Greenway Area is to establish a green space that connects with all road rights-of-way resulting in an unbroken public transportation network, such that any person, on any tract or lot within Oldham Reserve, may walk or bike to any other tract or lot safely, either along a roadway or along a defined course meandering through a natural setting. This natural setting will consist generally of wooded draws or streams.

The Blue Greenway Area also comprises the Oldham Reserve Campus storm water management network of blue-line, intermittent and ephemeral streams along with several ponds and detention basins. It is the expressed purpose of this Agreement (1) to assure that the protected areas within the Blue Greenway Area will forever remain in a natural condition, providing natural landscape buffers, preserving habitat and corridors for wildlife and contributing other functional and aesthetic benefits including the preservation of cultural resources, and (2) to prevent any use of the Blue Greenway Area that will negatively impact the Blue Greenway Area, its streams and wetlands, or its ability to accommodate storm water flows.

1.04 Grant of Easement and Right-of-Way

By signing this Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder an exclusive easement and right-of-way over, under, and across the Blue Greenway Area in perpetuity, for the purposes stated in Article I and subject to the limitations set forth in Article II and the reserved rights of Owners set forth in Article III.

By accepting this Agreement, the Owner or Owners shall endeavor to honor the intentions of the Holder stated herein and endeavor to preserve and protect in perpetuity the Blue Greenway Area and its streams and wetlands for the benefit of this generation and future generations.

1.05 Value of Easement As Part of Purchase Price

The undersigned Owner or Owners acknowledge notice of the existence of this easement at the time Owner entered into negotiations and a contract for the real estate parcel, and that the granting of said easement to Holder under this Agreement is done so without receipt of additional consideration.

1.06 Liens and Subordination

The undersigned Owner or Owners warrant to Holder that the Blue Greenway Area is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Agreement as an exhibit the legally binding subordination of any mortgage, lien, or other encumbrance, with the exception of existing road, sewer and utility easements, affecting the Blue Greenway Area as of the Agreement Date.

1.07 Existing Agreements

The undersigned Owner or Owners warrant to Holder that except for existing road, sewer and utility easements, there are no easements or other encumbrances affecting the Blue Greenway Area prior to the Agreement Date and running to the benefit of Persons that constitute legally binding encumbrances prior in right to this Agreement.

Article II. Limitations

The grant of easement under this Agreement is subject to the limitations set forth in this Article.

2.01 Limitation on Activities and Uses

(a) Purpose

The Blue Greenway Area may be used only for non-commercial recreational, educational and open-space purposes.

(b) Permitted Uses

Access to the Blue Greenway Area by the general public is subject to the following limitations:

- (i) The Blue Greenway Area pathway/trail may be used for walking, jogging/running, hiking, leashed-dog walking, bicycling, and cross-country skiing. The Holder may limit these uses to specific locations based on trail construction and condition.
- (ii) Use is limited to the hours between dawn and dusk.
- (iii) Holder may impose additional reasonable limitations upon the time, place and manner of use.
- (iv) No fee may be charged for use of the Blue Greenway Area.
- (v) The Blue Greenway Area may be utilized for storm water detention and conveyance systems, underground utility cables, sewer and water lines, whether through use of existing easements or future expansion of services as determined by Holder.

(c) Prohibited Activities

Any activity on or use of the Blue Greenway Area inconsistent with the purpose of this Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited unless permitted elsewhere in this Agreement:

- (i) Any agricultural, residential, commercial or industrial use or activity.
- (ii) The placement, construction or maintenance of any buildings, structures or other improvements of any kind, above or below the ground, except as expressly permitted in this Agreement.
- (iii) Any alteration of the surface of the land, including, without limitation, filling, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as expressly permitted in this Agreement, and except stream and wetland restoration, creation, enhancement, and buffering activities required by the Kentucky Division of Water and the U.S. Army Corps of Engineers.
- (iv) Any use or activity that causes or is likely to cause significant soil degradation, erosion or significant depletion or pollution of any surface or subsurface waters, except for the discharge of storm water directly or through a conveyance from an adjacent property pursuant to any permit, license or approval issued by an appropriate local, state or federal governmental agency or in conformance with a stream and wetland restoration, creation and enhancement plan approved by the Kentucky Division of Water and the U.S. Army Corps of Engineers.
- (v) The draining, filling, dredging, or diking of wetland areas, including any enlargement thereof, or the cultivation or other disturbance of the soil, except in conformance with a stream and wetland restoration, creation and enhancement plan approved by the Kentucky Division of Water and the U.S. Army Corps of Engineers.

- (vi) The alteration or manipulation of ponds, water courses, and wells, or the creation of new water impoundments, water courses or wells, for any purpose, except in conformance with a stream and wetland restoration, creation and enhancement plan approved by the Kentucky Division of Water and the U.S. Army Corps of Engineers.
- (vii) The harvesting, destruction, spraying or removal of trees and other vegetation except as specifically permitted in this Agreement.
- (viii) Motorized vehicles, except in the case of emergency or in connection with the inspection, construction, maintenance, or patrol of the Blue Greenway Area or by persons confined to motor-driven wheelchairs.
- (ix) Smoking or lighting of fires.
- (x) Consumption of alcoholic beverages.
- (xi) Trapping or hunting.
- (xii) Swimming.
- (xii) Any unanticipated activity or use which is inconsistent with the preservation purposes of this Agreement and which would negatively impact the quality and carrying capacity of the wetlands and streams, unless such use or activity is necessary for the protection of the wetlands and streams, in which case such use or activity shall be subject to the prior approval of the Holder as provided herein.

(d) Disturbance

In accordance with Section 2.01 (c)(iii) above, soil, rock, and vegetative resources may only be removed, cut or otherwise disturbed to the extent reasonably necessary to accommodate inspection, construction, maintenance and patrol of the Blue Greenway Area, maintenance of access to the Blue Greenway Area, and construction or maintenance of underground utility cables, sewer and water lines. When vegetative cover is removed, it must be restored as soon as reasonably feasible by replanting with grasses or native species of trees, shrubs, and plant materials in accordance with the U.S. Army Corps of Engineers approved mitigation plan.

(e) Construction

Prior to commencing initial construction of the Blue Greenway Area, or improvement of more than 200 square feet within the Blue Greenway Area, Holder must:

- (i) Provide Owner or Owners with at least 30 days notice.
- (ii) Obtain legally binding waivers of mechanics liens from all Persons furnishing labor or materials in connection with construction.
- (iii) Obtain certificates evidencing liability insurance coverage with respect to Holder and all Persons entering the Property for the purpose of construction.
- (iv) Obtain, at Holder's cost and expense, all permits and approvals required for the construction.
- (v) Utilize Best Management Practices in all phases of construction.

2.02 Limitation on Improvements

Improvements within the Blue Greenway Area are limited to the following:

(a) Sidewalks or Walking Trails

- (i) The sidewalks or walking trails include steps and railings and other walking surface structures as well as bridges and culverts for traversing wet areas within the Blue Greenway Area.
- (ii) The sidewalks or walking trails may not exceed eight (8) feet in width.
- (iii) The walking trails may be covered, if at all, by wood chips, gravel, or other porous surface, or paved or covered with other material as may be required to maintain a stable surface, or as required by Applicable Law.

(b) Accessory Facilities

- (i) A reasonable number of benches, picnic tables, wastebaskets and bicycle racks.
- (ii) Signs to mark trails and other features and to provide information regarding applicable time, place, and manner restrictions.
- (iii) Signs for interpretive purposes.
- (iv) Fencing, gates and barriers to control access.

2.03 Site Design Guidelines

In addition to the requirements contained herein, use of the Blue Greenway Area is restricted according to the Oldham Reserve Site and Building Design Guidelines and Procedures, part of which is attached as Exhibit "B."

2.04 Expense to Owner or Owners

- (i) Subject to subsection (ii) below, Owner or Owners are not responsible for costs associated with construction and maintenance of improvements in the Blue Greenway Area except for improvements resulting from Owners exercising a reserved right as set forth in Article III. Holder must promptly pay as and when due all costs and expenses incurred in connection with construction and maintenance.
- (ii) Subject to determination by the Property Owners Association, Owner or Owners may be responsible for all or a portion of maintenance of improvements in the Blue Greenway Area and any future construction of the Blue Greenway Area's improvements.

Article III. Reserved Rights of Owner or Owners

The easement granted to Holder under this Agreement is exclusive. This means that Owner or Owners have no rights to enter or use the Blue Greenway Area except to exercise rights accorded to the general public and except as provided in this Article. Owner or Owners reserve the following rights:

3.01 Owner or Owners Access

Owner or Owners may enter the Blue Greenway Area at any time except when construction and maintenance activities could present a danger.

3.02 Mitigating Risk

Owner or Owners may cut trees or otherwise disturb resources only to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Blue Greenway Area; however, Owner or Owners do not assume any responsibility or liability to the general public for failing to do so.

3.03 Fencing

If permitted by Holder, Owner or Owners may install fencing and/or gates, at Owner or Owners' expense, along the perimeter of the Blue Greenway Area, of type, height and color complying with the Campus Design Guidelines and in accordance with any site-specific conditions that warrant special consideration. Owner or Owners must not impede access to or discourage use of the Blue Greenway Area.

3.04 Existing Structures

Owner or Owners may maintain, renovate, and replace any structure permitted herein in its originally approved location, and may install, maintain, renovate, and replace structures that support the purposes of this Agreement.

3.05 Other Actions

Owner or Owners may take or allow any action, including maintenance, repair, renovation, or replacement of any structure or other facility, authorized pursuant to any existing easement, restriction or stipulation of record within the Blue Greenway Area, and to grant utility, drainage or transportation-related easements, as approved by the Holder and the Kentucky Division of Water or the U.S. Army Corps of Engineers, provided that no such easements shall materially impair the preservation purposes of the Agreement.

Article IV. Rights of Holder

To accomplish the purpose of this Agreement the following rights are conveyed to the Holder by this Agreement:

4.01 Preserve and Protect

The Holder has the right, duty and responsibility to preserve and protect the streams and wetlands, natural habitats and cultural resources contained in the Blue Greenway Area; to prevent any activity on or use of the Blue Greenway Area that is inconsistent with the purpose of this Agreement; and to require the restoration of such areas or features of the Blue Greenway Area that may be damaged by any inconsistent activity or use.

4.02 Holder Access

The Holder may enter the Blue Greenway Area at reasonable times to inspect, place, construct or maintain facilities consistent with the permitted uses or purpose of the Blue Greenway Area; to monitor compliance with and otherwise enforce the terms of this Agreement; or to accomplish any of its duties as described in this Agreement.

4.03 Infrastructure Improvements

The Holder may place, construct or maintain any infrastructure improvement, above or below the ground, that is consistent with the purpose and permitted uses of the Blue Greenway Area, including roads, utilities, and storm water management structures, provided that these improvements are permitted activities under all local, state and federal governmental permits and plans affecting the Blue Greenway Area.

Article V. Federal Tax Items

5.01 Easement not a Contribution

The undersigned Owner or Owners and Holder confirm that the grant to the Holder of the easement under this Agreement is not intended to be a qualified conservation contribution under the Internal Revenue Code of 1986, as amended, through the applicable date of reference.

Article VI. Miscellaneous

6.01 Indemnity

Holder must indemnify and defend Owner or Owners against all Losses and Litigation Expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Blue Greenway Area, except to the extent caused by the negligent or wrongful acts or omissions of Owner or Owners. The word "Losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages, diminution in value, fines, fees, and penalties or other charge(s) other than Litigation Expense(s). The term "Litigation Expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

This Agreement is intended to be interpreted so as to convey to Owner or Owners and Holder all of the protections from liability provided by the Kentucky Recreation Use Statute, KRS 411.190, as amended through the applicable date of reference, or any other Applicable Law and or Regulation that provides immunity or limitation of liability for owners or possessors who make property available to the public for recreational purposes.

6.02 Amendment

Any amendment of this Agreement must be in writing, signed by Owners and Holder, and recorded in the Office of the Clerk of Oldham County, Kentucky.

6.03 Governing Law

The laws of the Commonwealth of Kentucky govern this Agreement.

6.04 Assignment and Transfer

Neither Owner or Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Agreement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.

(a) By Holder

Holder may assign its rights and duties under this Agreement, either in whole or in part, but only to a Property Owners Association or a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Agreement. Holder must notify Owners within 30 days prior to the assignment of the identity and address for notices of the Property Owners

Association or Qualified Organization who has agreed to assume the obligations of the Holder under this Agreement.

(b) By Owner or Owners

This Agreement is a covenant running with the land binding upon the undersigned Owner or Owners; upon recordation in the Public Records, all subsequent Owner or Owners of the Blue Greenway Area or any portion of the Blue Greenway Area are bound by its terms whether or not the Owner or Owners had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement.

(c) Expiration

This Agreement binds and benefits Owner or Owners and Holder and their respective personal representatives, successors and assigns in perpetuity.

6.05 Severability

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.

6.06 Entire Agreement

This is the entire agreement of Owner or Owners and Holder pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between Owner or Owners, Holder, and others pertaining to the transaction set forth in this Agreement.

6.07 Definitions of Capitalized Terms

This section contains definitions of capitalized terms used but not defined elsewhere in the Agreement.

- (i) "Applicable Law" means any federal, state, or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Blue Greenway Area, or this Agreement, as amended through the applicable date of reference.
- (ii) "Owner or Owners" means the undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Blue Greenway Area.
- (iii) "Person" means an individual, organization, trust, or other entity.
- (iv) "Public Records" means the public records of the Office for the Recording of Deeds in and for the county in which the Blue Greenway Area is located.
- (v) "Qualified Organization" means a governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified organization under C.F.R. §1.170A-14(c)(1) as amended through the applicable date of reference; and (d) is duly authorized to acquire and hold greenway easements under Applicable Law.

6.08 Incorporation by Reference

The following items are incorporated into this Agreement by means of this reference:

- Plat of the Property showing the Blue Greenway Area attached as Exhibit "A"
- Oldham Reserve Site & Building Design Guidelines and Procedures attached as Exhibit "B"
- A Mortgage Subordination Agreement, if applicable, attached as Exhibit "C"

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

Witness/Attest:

Owner's Name: _____

Owner's or Owners' Name(s): _____

By: _____

Name of Holder: _____

Name of signatory: _____

Title of signatory: _____

COMMONWEALTH OF KENTUCKY)

) SS:

COUNTY OF OLDHAM)

ON THIS DAY _____, before me, the undersigned Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained, with full authority to sign said instrument and bind said Owner or Owners to the terms contained herein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name: _____

My Commission expires: _____

COMMONWEALTH OF KENTUCKY)

) SS

COUNTY OF OLDHAM)

ON THIS DAY _____ before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of Oldham-LaGrange Development Authority, a Kentucky Development Authority, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name: _____

My Commission expires: _____