

**AGREEMENT TO PERMIT ATTACHMENT
OF BANNERS**

THIS AGREEMENT, made this _____ day of _____, 2016, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an Urban County Government formed pursuant to KRS 67A.010, whose address is 200 East Main Street, Lexington, Kentucky 40507, (“Lexington”), party of the first part, and **GREATER LEXINGTON CONVENTION and VISITORS BUREAU**, 250 West Main Street, Suite 2100, Lexington, Kentucky 40503 (“VisitLex”), and **Keeneland Association Inc.**, a Kentucky Corporation, 4201 Versailles Road, Lexington, Kentucky 40510 (“Keeneland”), parties of the second part,

WITNESSETH:

WHEREAS, Lexington has an Agreement with Kentucky Utilities (“KU”) for the installation of banners on the poles of KU in the Urban County, and

WHEREAS, VisitLex and Keeneland have a desire to install banners in the area described in Exhibit 1.

WHEREAS, Lexington with Kentucky Utilities’ written consent, desires to partner with VisitLex and Keeneland for said banner installation.

WHEREAS, Lexington, VisitLex and Keeneland understand the banners must be installed within the guidelines of the agreement (attached as exhibit 2) between Lexington and Kentucky Utilities.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. PERMITTED ATTACHMENTS.

Lexington agrees to allow VisitLex and Keeneland to attach the banners in the area described in the Exhibit 1 to KU's poles, in the manner set out and pursuant to the provisions of this agreement. All banners must be approved by the Corridors Commission.

2. INSTALLATION OF BANNERS AND MAINTENANCE REQUIREMENTS AND SPECIFICATIONS.

VisitLex and Keeneland shall be responsible for production, installation and removal of the banners. VisitLex and Keeneland shall coordinate the installation and removal of the banners with Lexington. Lexington shall manage the permitting for lane closures required for installation and removal of the banners. Lexington shall be responsible for repairs to the banner equipment beyond what Keeneland has incurred. (banner or brackets repair?)

3. BANNER DISPLAY SCHEDULE

VisitLex and Keeneland agree the banners will be displayed as follows:

January – March VisitLex

April – Keeneland

May – July VisitLex

September – November Keeneland

December – VisitLex

4. INDEMNITIES.

VisitLex and Keeneland agree to protect, defend, indemnify, and save harmless Lexington from all damage, loss, claim, demand, suite, liability, penalty, or forfeiture of every kind and nature, including but not limited to costs and expenses of

defending against the same, payment of any settlement or judgment therefore, and reasonable attorney's fees, by reason of (a) injuries or deaths to persons, (b) damages to or destructions of properties, (c) pollution, contaminations of, or other adverse effects on the environment, or (d) violations of governmental laws, regulations, or orders whether suffered directly by Lexington itself or indirectly by reason of claims, demands, or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of VisitLex and Keeneland, its employees, agents, or other representatives or from their presence on the premises of KU or otherwise from performance of this Agreement, or from or in connection with the construction, installation, operations, maintenance, presence, replacement, enlargement, use or removal of any facilities attached or in the process of being attached or removed from any poles of KU.

5. NONCOMPLIANCE.

If VisitLex or Keeneland fails to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement and fails to correct such default or noncompliance within thirty (30) days after written notice from Lexington, Lexington may, at its option, forthwith terminate this Agreement by giving written notice to VisitLex or Keeneland of said termination.

6. WAIVERS.

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

7. **ASSIGNMENT.**

VisitLex and Keeneland shall not assign, transfer, or sublet the privileges hereby granted by Lexington.

8. **PROPERTY RIGHTS.**

No use, however extended, of KU poles or other facilities under this Agreement shall create or vest in VisitLex or Keeneland any ownership or property rights in said poles; rights herein contained shall be and remain a mere permission. Nothing herein contained shall be construed to compel KU to maintain any of said poles for a period longer than demanded by its own service requirements.

9. **TERM.**

This Agreement shall become effective upon its execution and shall continue year to year unless terminated by any party with 30 days written notice to the other parties. This agreement shall also terminate on the termination or non-renewal of the agreement between Lexington Fayette Urban County Government and Kentucky Utilities, attached as Exhibit 2. Upon termination of this Agreement, VisitLex and Keeneland shall immediately remove its banners attached to KU's poles or other facilities pursuant to this Agreement. All costs of such removal will be borne by VisitLex and Keeneland. VisitLex and Keeneland shall exercise precautions to avoid damage to facilities of KU in so removing and assumes all responsibility for any and all such damage. If VisitLex or Keeneland's facilities attached to KU's pole and other facilities pursuant to this contract are not promptly removed, Lexington shall have the right to remove them to the cost and expense of VisitLex and Keeneland and without any liability therefore.

10. NOTICES.

Any notice or request required by this Agreement shall be deemed properly given if mailed, postage prepaid, to:

Lexington-Fayette Urban County Government
200 E. Main Street
Lexington, Kentucky 40507

Attention: _____

Greater Lexington Convention and Visitor's Bureau
250 West Main Street
Lexington, Kentucky 40507

Attention: Mary Quinn Ramer

Keeneland Association, Inc.
4201 Versailles Road
Lexington, Kentucky 40510

Attention: _____

The designation of the person to be notified, and/or his address, may be changed by any party at any time, or from time to time, by similar notice.

11. INSURANCE.

Unless otherwise specified in the attached Exhibit 3, VisitLex and Keeneland shall maintain in force during the term of this Agreement at its expense public liability insurance, with deductible provisions and in a minimum amount satisfactory as provided in Exhibit 3. Upon request, VisitLex and Keeneland shall provide Lexington with certificates or other evidence of any insurance coverage required herein. Every contract of insurance providing the coverages required herein shall contain the following or equivalent clause: "No reduction, cancellation, or expiration of the policy shall become

effective until ten (10) days from the date written notice thereof is actually received by VisitLex and Keeneland and Lexington as appropriate.”

12. ENTIRE AGREEMENT.

This Agreement and the attached Exhibits constitute the entire Agreement and all previous representations relative thereto, either written or oral, are hereby annulled and superseded. No modification shall be binding unless it shall be in writing and signed by all parties. Nothing contained in this Agreement or attached Exhibits shall be construed as having any effect in any future agreement or contemplated future agreement between the parties.

13. HEADINGS.

Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

VisitLex and Keeneland hereby represents and warrants that they will attach its banners to KU’s facilities pursuant to this Agreement in order to promote civic and cultural events as well as to promote civic/non-profit organizations, in accordance with applicable laws and regulations.

WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

Lexington-Fayette Urban County Government

By: _____

Name: _____

Title: _____

Greater Lexington Convention and Visitors Bureau

By: *Mary Quinn K. Ramer*

Name: Mary Quinn K. Ramer

Title: 05/13/2016

Keeneland Association, Inc.

By: _____

Name: _____

Title: _____

SCHEDULE A – AREA COVERED BY AGREEMENT

EXHIBIT 3 – INSURANCE

Permittee shall provide and maintain, and shall require subcontractor(s) to provide and maintain, the following insurance or equivalent self-insurance:

- (a) Workers' Compensation and Employer's Liability Policy: Prior to the start of work, Permittee shall submit evidence of Permittee's Workers' Compensation and Employer's Liability Insurance Policy, and each such policy shall include:
 - (1) Workers' Compensation and Workers' Occupational Disease Insurance in accordance with the laws of the state where the work is performed;
 - (2) Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000) each loss with respect to each accident;
 - (3) Thirty (30) Day Cancellation Clause;
 - (4) Broad Form All States Endorsement;
 - (5) United States Longshoremen and Harbor Workers Act Endorsement;
 - (6) Maritime Endorsement; and
 - (7) Jones Act Endorsement

- (b) Commercial General Liability Policy: Prior to the start of work, Permittee shall provide evidence of Permittee's Policy providing Commercial General Liability Insurance, with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate and the following:
 - (1) Coverage for premises, operations, elevators, and work let or sublet;
 - (2) Thirty (30) Day Cancellation Clause;
 - (3) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Contract;
 - (4) Broad Form Property Damage;
 - (5) Insurance for liability arising out of blasting, collapse, and underground damage (deletion of X, C, U Exclusions)
 - (6) Products Liability and Completed Operations, including coverage for occurrences within two (2) years from the acceptance of work;
 - (7) Personal Injury Liability Hazards A, B, & C with Employee and Contractual exclusions eliminated;
 - (8) Said policy shall name Lexington as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 14 – Indemnity by Contractor;

- (9) Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against the Company and Company's insurance carrier(s)

- (c) Commercial Automobile Liability Insurance: Prior to the start of work, Permittee shall provide evidence of Contractor's Commercial Automobile Liability Insurance covering the use of all owned, non-owned, and hired automobiles, with bodily injury and death with combined single minimum limit for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence/aggregate with respect to Permittee's vehicles assigned to or used in the performance of work under this Contract. Said policy shall name Kentucky Utilities Company as an additional insured to the extent necessary to fulfill Permittee's indemnity obligations under Article 14 – Indemnity by Contractor. Said policy shall include an endorsement providing that the underwriter(s) have waived their rights of subrogation against the Company and the Company's insurance carrier(s).

Unless provided under a self-insurance arrangement, the above policies to be provided by Permittee shall be written by Insurance Company(s) authorized to do business in the Commonwealth of Kentucky and satisfactory to Company or having a Best Rating of not less than A+. These policies shall not be materially changed or canceled except within thirty (30) days written notice to Company from the Permittee and the Insurance Carrier. Evidence of coverage, notification of cancellation, or other changes shall be mailed to:

Lexington Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507

Attention: _____

Company shall not be obligated to review any of Permittee's Certificates of Insurance, insurance policies, or endorsements, or to advise Permittee of any deficiencies in such documents. Any receipts of such documents or their review by Company shall not relieve Permittee from or be deemed a waiver of Company's rights to insist upon strict fulfillment of Permittee's obligations under the Contract. Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements. Contractor shall provide notice of any accidents or claims at the work site to Company's Manager Risk Management at the above address, Manager Employee Relations at the above address, and Company's site authorized representative.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an Urban County Government formed pursuant to KRS 67A.010, who address is 200 E. Main Street, Lexington, Kentucky 40507.