

LFUGG +  
ALCS Council  
Res. 39-88

R391-88

DEED #5216

9

SUBLEASE

BOOK 1491 PAGE 201

This sublease made and entered into at Lexington, Kentucky, this 27<sup>th</sup> day of September, 1988, by and between the Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "sublessor"), and the Lexington Council of the Arts, Inc., 161 North Mill Street, Lexington, Kentucky 40507 (hereinafter referred to as "sublessee"), witnesseth:

1. Premises. For the term, at the rent and otherwise upon the terms, conditions and provisions hereinafter contained, and as a material inducement to the sale by sublessee of the below described property for a consideration substantially less than the fair market value of the below described property, sublessor does hereby let and sublease unto sublessee the following described premises, to wit:

All that lot of ground with the improvements thereon situated on the northwest corner of Church and Mill Streets, in the City of Lexington, County of Fayette and State of Kentucky, beginning at the northwest corner of Church and Mill Streets; thence along the westerly line of Mill Street in a northeasterly direction sixty-six (66) feet to the line of W. B. Emmal (now Kinkead Wilson Motor Company); thence with the W. B. Emmal line in a westerly direction at right angles to Mill Street one hundred eleven and one-half (111-1/2) feet to Wilson's line; thence in a southerly direction parallel with Mill Street with Wilson's line sixty-six (66) feet to Church Street; thence in an easterly direction with Church Street one hundred eleven and one-half (111-1/2) feet to the place of beginning; and

Being more particularly described according to the survey made by Oscar Norman Drury, date September 9, 1988, as follows, to-wit:

All that lot of ground with the improvements thereon situated on the Northwest corner of Church and N. Mill Streets, in the City of Lexington, County of Fayette and State of Kentucky, beginning at the Northeast corner of Church and N. Mill Streets; thence along the Northwest line of N. Mill Street in a Northeasterly direction sixty-six (66) feet to the line of 169 N. Mill St. thence in a Northwesterly direction and at right angles to Mill Street one hundred and eleven and one-half (111.5) feet to the line of 331 Church Street; thence in a Southwesterly direction sixty-six (66) feet to Church Street; thence in a Southeasterly direction with Church Street one hundred eleven and one-half (111.5) to the beginning. The existing structure (now known as "Arts Place") has as its base dimensions, sixty-six (66) feet by one hundred and eleven and one-half (111.5) feet; and

Being the same property conveyed to Lexington-Fayette Urban County Government Public Facilities Corporation by Lexington Council of the Arts, Inc., by deed dated September 17, 1988, and of record in Deed Book 1491, Page 168, in the Fayette County Clerk's Office; and being the same property leased to Lexington-Fayette Urban County Government by lease dated September 27, 1988, and of record in Deed Book 1491, Page 186, in the Fayette County Clerk' Office.

2. Use. Said premises shall in part be used and occupied by sublessee as its headquarters in performing its function of advocating for the cultural development of the Central and Eastern Kentucky communities, the provision of service and technical assistance to arts organizations and artists and the provision of a center for community arts activities. Without in any manner limiting the foregoing, sublessor acknowledges that sublessee's use of the premises shall include the subleasing of space to various arts organizations for use as office space, rehearsal space and performance space, on such terms and conditions as sublessee shall determine from time to time and for other activities which may not directly advance the primary functions of sublessee but which assist sublessee in the areas of fund raising, publicity and such other incidental activities as sublessee may reasonably deem appropriate. In conjunction with all of the foregoing activities, and consistent with past activities on the premises, it is expressly agreed by sublessor that alcohol may be consumed upon the premises, but only in conjunction with uses which are otherwise proper under this section. For so long as sublessee occupies the premises pursuant to this sublease, the improvement on the premises shall be known as "ArtsPlace". Provided, however, upon the vacation of the premises by sublessee for any reason, sublessor shall retain no right to the use of the name ArtsPlace and sublessee may use that name at other premises of its choosing.

3. Subordination to prime lease. This sublease shall be subordinate in all respects to the prime lease between the Lexington-Fayette Urban County Government Public Facilities Corporation and sublessor. Notwithstanding any other provision

hereof, this sublease shall continue only so long as the prime lease shall be in effect.

4. Term. The term of the sublease shall be twenty (20) years, commencing on the 15th day of September, 1988, and ending on the 14th day of September, 2008, together with any extensions thereof as hereinafter provided.

5. Rent. Sublessee hereby covenants and agrees to pay sublessor as rent for the above-described premises the sum of one dollar (\$1.00) per annum payable on the 1st day of July of each year.

6. Extension. Sublessee shall have the right and option to extend the term of this sublease for two (2) successive periods of five (5) years each, at the same rental and subject to all the terms, covenants and provisions of this sublease. Said option shall be exercised by giving sublessor written notice of sublessee's intention to exercise said option not less than thirty (30) days prior to the date of expiration of the term or extension thereof, provided there then exists no defaults in the covenants, agreements, terms and conditions on the part of sublessee to be kept and performed.

7. Improvements by sublessor. Sublessor shall have the right to make such additions, alterations and improvements in and to the building on the demised premises as it deems necessary or desirable; provided, however, that in constructing such additions, alterations or improvements, sublessor does not unreasonably interfere with the operation of sublessee's activities.

8. Improvements by sublessee. Sublessee agrees to make no structural changes, physical improvements, or alterations in the premises or the improvements thereof, including painting, without first obtaining sublessor's written consent which consent shall not be unreasonably withheld; and any permission given by sublessor to make structural changes, physical improvements, or alterations shall be on condition that the work shall be at sublessee's expense, unless otherwise agreed in writing, and

20 yrs  
Exp: 9/14/2008

1-5yr Expires  
9-14-2013

2-5yr 9-14-2018

Lease Ends  
9-14-2018



shall be in accordance with the building code and zoning laws of the Commonwealth of Kentucky and Lexington-Fayette Urban County Government, and shall be such as not to weaken any structure or building.

All additions, fixtures, improvements and repairs made upon said premises by sublessee hereinafter shall be the property of sublessor, unless the same may be removed and the property nonetheless returned in accordance with section 20 hereof.

9. Sublessor's rules and regulations. Sublessee will comply and cause its employees, tenants and agents to comply with all rules and regulations adopted by sublessor in connection with any asbestos on the premises, and with all supplements thereto and amendments thereof which sublessor may hereafter adopt. All such rules and regulations shall pertain to the safety, care and use of the premises as a result of the asbestos thereon and no rules or regulations now in effect or hereafter adopted shall be inconsistent with any provision of this sublease or unreasonably interfere with sublessee's use and enjoyment of the premises. All rules and regulations and supplements thereto and amendments thereof which sublessor may adopt shall be in writing, and a copy thereof shall be delivered to sublessee.

10. Mechanics' liens. In the event that sublessee erects any alterations or improvements to the premises as hereinabove provided, sublessee hereby agrees to and does indemnify sublessor against any mechanics' liens that may be filed against the within demised premises for labor or material furnished, or both, and, in the event any such lien is filed, it will immediately pay off or bond the same and cause it to be satisfied and discharged of record.

11. Taxes. Sublessor shall, during the term of this sublease and any extension thereof, pay all real estate taxes and assessments of every nature levied and assessed against the demised premises including all buildings and improvements presently thereon and all additions, fixtures, improvements and repairs made upon the premises by sublessee, pursuant to section

7 of the sublease, becoming the property of sublessor. Sublessee shall pay all taxes and assessments upon its leasehold interest as well as upon any personal property belonging to sublessee taxed at the demised premises.

12. Utilities. Sublessee all during the term hereof and any extension thereof pay all charges for gas, electricity, telephone, sewer use and water used or supplied to the demised premises, but any capitol utility construction costs levied against the premises shall be the responsibility of sublessor.

13. Insurance.

a. Sublessor shall at its sole cost and expense keep insured during the term hereof and any extension thereof, the buildings, structures and improvements on the aforesaid premises, including boilers and machinery, against loss or damage.

b. Sublessee shall at its sole cost and expense keep insured during the term hereof and any extension thereof, its personal property on the aforesaid premises. Sublessee shall also be responsible for the cost and expense of any umbrella officers liability insurance maintained by it.

14. Indemnification.

a. Sublessee agrees to indemnify and save sublessor harmless from all loss, cost and expense by reason of injury to any person or personal property on or about the demised premises, which injury results from the careless, negligent or improper conduct on the part of lessee's agent, tenants, invitees or employees. Sublessee further agrees to carry public liability insurance covering its use of said premises in the amount of one million dollars (\$1,000,000.00) and to require each of its tenants to carry the same in the amount of five hundred thousand dollars (\$500,000.00) from the date first above written until June 30, 1989, and one million dollars (\$1,000,000.00) from July 1, 1989 until termination of this sublease.

b. Sublessor agrees to indemnify and save sublessee harmless from all loss, cost and expense by reason of injury to any person or personal property including sublessee, its

employees, invitees and tenants, and their personal property on or about said premises, which results from the careless, negligent or improper conduct of sublessor, its agents, invitees or any independent contractors who may be on said premises in connection with this sublease, including for the improvement, alteration or construction of any building or other improvement situated on said premises. Sublessor agrees to carry public liability insurance in connection therewith to protect against said loss, cost or expense in the amount of one million dollars (\$1,000,000.00).

c. Nothing in this section shall be construed as waiving any cause of action, defense, or claim, either party may have against the other.

15. Damage to premises. It is understood and agreed by and between the parties hereto, that in case any structure now on said premises shall, without any fault or neglect on the part of sublessee be destroyed or damaged by the elements or other cause, or be taken by eminent domain, so as to render the premises substantially unfit for occupancy, or in case of termination of sublessor's leasehold interest in the demised premises under the prime lease for any reason (such as through foreclosure against the property owner), sublessor shall furnish like or similar facilities to sublessee, on the same terms as this sublease. As used herein, "like or similar facilities" shall mean facilities located in the central downtown Lexington area, containing approximately the same square footage as the existing improvements on the premises. Those improvements shall at sublessor's expense, be improved so as to permit the operation of the new facilities in a like manner and for such purposes as the existing premises are being operated at the time the event occurs which gives rise to the requirement to furnish like or similar facilities. The quality of the improvements on the premises shall be substantially the same as those which exist in the existing premises at that time.



16. Maintenance.

(a) Except as provided in subparagraph (b) below, sublessor shall, at its cost, maintain in good and tenantable condition (i) the structural parts of the building and other improvements that are a part of the premises, which structural parts include the foundations, bearing and exterior walls, including glass and doors, subflooring and roof; (ii) the unexposed electrical, plumbing and sewage systems; (iii) window frames, gutters, and downspouts on the building and other improvements that are a part of the premises; and (iv) the heating, ventilating, plumbing and air conditioning system servicing the premises, except for such routine maintenance as it is referred to in subparagraph (b) below. Provided, however, sublessor shall not be responsible for any of the above to the extent that such maintenance is occasioned by the wrongful act of sublessee, its agents, tenants and servants, unless the damage caused by such wrongful act or acts is covered by a policy of fire and extended coverage insurance. In any event, sublessor shall be responsible for all repair and maintenance caused by (i) causes inside or outside the premises over which sublessee has no control; (ii) acts or omissions of sublessor, or its authorized representatives; or (iii) sublessor's failure to perform its obligations under this paragraph.

\* (b) Except as may be set forth in subparagraph (a) above, sublessee shall, at its expense, maintain and keep the interior of the improvements on the premises in good and tenantable condition during the term of this sublease. Sublessee's obligation hereunder shall include routine and ordinary maintenance of, and repairs to the exposed portions of the heating, ventilating, plumbing and air conditioning systems. In no event, however, shall sublessee be responsible or liable for replacement of any such systems or any major components of such systems. As used herein, a major component shall mean any component whose cost is in excess of five thousand dollars (\$5,000.00).

17. Waste. Sublessee shall not commit or suffer any waste to or intentionally damage any building or improvements on the demised premises.

18. Right of entry. Sublessee agrees that sublessor's representatives shall have the right at all reasonable times to enter upon and to inspect the demised premises to ascertain that sublessee is carrying out the terms, conditions and provisions hereof, and to make the necessary repairs, improvements and alterations as hereinabove provided.

19. Reporting. Sublessee shall by January 10 of each year submit to sublessor: (a) a report describing, on such forms as sublessor shall provide, the services provided by sublessee during its preceding fiscal year, and (b) a copy of sublessee's audit for its preceding fiscal year.

20. Surrender of possession. Sublessee shall upon termination of this sublease by lapse of time or otherwise, surrender up and deliver the premises together with all improvements made thereon by sublessee in as good order and repair as when first received or constructed by it, reasonable wear and use thereof and damage by fire and the elements excepted.

21. Subletting. It is recognized and understood that the sublessee shall sublet portions of the demised premises as set forth in section 3 hereof during the term of this sublease and any extension thereof. However, it is understood and agreed that this sublease may not be assigned, transferred, or the premises or any part thereof underlet or underleased or underrented for a term greater than one (1) year (other than space within the property to various art groups) without the previous written consent of sublessor, which consent shall not be unreasonably withheld. Any assignment, transfer or sublease shall be consistent with the provisions of this sublease and shall serve to directly or indirectly promote the arts or other cultural activities in Fayette County, Kentucky. Any attempted assignment or transfer hereof or subletting or underrenting not in



conformity with the conditions of this sublease shall be wholly null and void. It is further understood that this section shall not prohibit the assignment of this sublease to a non-profit corporation pursuant to an agreement of merger or consolidation between the sublessee and such non-profit corporation so long as the demised premises continue to be used for arts and other cultural activities, as described in section 2.

22. Default. If default be made in the observance or performance of any of the terms, conditions or agreements herein contained, sublessor shall have the following remedies:

(a) If sublessee at any time during the term of this sublease shall default in the payment of any installment of rent or any other sum specifically to be paid by sublessee hereunder and such default shall not have been cured within thirty (30) days after sublessor shall have given written notice to sublessee specifying such default, then, in any such event, sublessor may, without further notice to sublessee, terminate this sublease and re-enter said premises.

(b) If sublessee at any time during the term of this sublease shall default in the observance or performance of sublessee's covenants or obligations under section 9 hereof, and rules and regulations adopted thereunder, and such default shall not have been cured within seventy-two (72) hours after sublessor shall have given written notice to sublessee specifying such default, then, in any such event, sublessor may, without further notice to sublessee, terminate this sublease and re-enter said premises.

(c) If sublessee at any time during the term of this sublease shall default in the observance or performance of sublessee's covenants or obligations hereunder, on a non-recurring basis, except a default under subparagraphs (a) and (b) of this section, then, in any such event, sublessor may sue to seek injunctive relief to prevent similar, future defaults and to recover damages.

(d) If sublessee at any time during the term of this sublease shall default in the observance or performance of sublessee's covenants or obligations hereunder, on a continuing basis, except a default under subparagraphs (a) and (b) of this section, and such default shall not have been cured within thirty (30) days after sublessee shall have given written notice to sublessee specifying such default, or in the case of a default or contingency which cannot with due diligence be cured within a period of thirty (30) days, if the sublessee fails to proceed promptly after the service of such notice and with all due diligence to cure the same and thereafter to prosecute the curing of such default with all due diligence, then, in any such event, sublessor may, without further notice to sublessee, terminate this sublease and re-enter said premises.

23. Covenants to run with the land. All the covenants, agreements, stipulations, provisions, conditions, options and obligations herein expressed and set forth shall be considered as running with the land and shall extend to, bind and inure to the benefit of, as the case may require, the heirs, executors, administrators, successors and assigns of sublessor and sublessee, respectively, or their successors in interest, as fully as if such words were written whenever reference to sublessor and sublessee occurs in this sublease.

24. Separability. If any term or provision of this sublease or the application thereof to any person and circumstance shall to any extent be invalid or unenforceable, the remainder of this sublease, or the application of such term or provision to persons and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this sublease shall be valid and shall be enforceable to the fullest extent permitted by law.

25. Entire agreement. It is distinctly understood between the parties hereto that all agreements and understandings of any character heretofore had between them are embodied in this

instrument, and no changes shall be made herein unless the same shall be in writing and duly signed by the parties hereto in the same manner and form as this sublease has been executed.

26. Notices. All notices, demands and requests which may or are required to be given to, either party to the other shall be in writing. All such notices, demands and requests by sublessor to sublessee shall be sent to sublessee at the demised premises or at such other place that sublessee may from time to time designate in writing.

All such demands, notices and requests by sublessee to sublessor shall be sent to sublessor at the aforesaid address or such other place as sublessor may from time to time designate in writing.

27. Quiet enjoyment and possession. Sublessor hereby covenants and agrees with sublessee that if sublessee shall perform all of the covenants and agreements herein agreed to be performed on its part, said sublessee shall, at all times during the term hereof or of any renewal term, have the peaceable and quiet enjoyment and possession of the subleased premises without any manner of let or hindrance from sublessor or any person or persons lawfully claiming said premises.

28. Parties bound. The terms, conditions and provisions of this sublease shall inure to and be binding upon sublessor and sublessee and their respective heirs, executors, administrators, successors and assigns.

In witness thereof, sublessor and sublessee have executed this sublease the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT.

By: Scotty Baedler  
Scotty Baedler, Mayor

ATTEST:

John Clatter  
Clerk of Urban County Council

LEXINGTON COUNCIL OF THE ARTS, INC.

By: W. T. T. [Signature]



BOOK 1491 PAGE 212

STATE OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of September, 1988, by Scotty Baesler, Mayor, and Ann Sallee, Council Clerk, of the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky, on behalf of the Government.

My Commission expires: November 19, 1990

Mary Ann Sallee  
NOTARY PUBLIC

STATE OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 27 day of September, 1988, by Deirdre to, Executive Director of the Lexington Council of the Arts, Inc., a Kentucky non-profit corporation, on behalf of the corporation.

My Commission expires: 3/17/11

Jurist Anne K. Kett  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Mary Ann Sallee  
Lexington-Fayette Urban  
County Government  
Department of Law  
200 East Main Street  
Lexington, Kentucky 40507

143/346

STATE OF KENTUCKY SCT.  
COUNTY OF FAYETTE

I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN DEED BOOK 1491 PAGE 207. IN MY SAID OFFICE.

DONALD W. BLEVINS, CLERK  
BY D. J. Nunn D.C.

BY A. K. Kett

SEP 27 11 56 AM '88



**COMMONWEALTH LAND**  
**TITLE INSURANCE COMPANY**  
 A Reliance Group Holdings Company

POLICY NUMBER  
**107-322159**

**OWNER'S POLICY OF TITLE INSURANCE**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and cost, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land; or
4. Unmarketability of such title.

IN WITNESS WHEREOF, the Commonwealth Land Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.



COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest:

*James J. Lynch Jr.*  
 Secretary

By

*Joyce A. Burke*  
 President

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy:

1. (a) Governmental police power.  
 (b) Any law, ordinance or governmental regulation relating to environmental protection.  
 (c) Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part.  
 (d) The effect of any violation of the matters excluded under (a), (b) or (c) above, unless notice of a defect, lien or encumbrance resulting from a violation has been recorded at Date of Policy in those records in which under state statutes deeds, mortgages, lis pendens, liens or other title encumbrances must be recorded in order to impart constructive notice to purchasers of the land for value and without knowledge; provided, however, that without limitation, such records shall not be construed to include records in any of the offices of federal, state or local environmental protection, zoning, building, health or public safety authorities.
2. Rights of eminent domain unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; (e) resulting in loss or damage which would not have been sustained if the insured claimant had value for the estate or interest insured by this policy.



## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company may have had against the named insured, those who succeed to the interest of such insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage hereunder.

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) "land": the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": those records which by law impart constructive notice of matters relating to said land.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured so long as such insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

### 3. DEFENSE AND PROSECUTION OF ACTIONS — NOTICE OF CLAIM TO BE GIVEN BY AN INSURED CLAIMANT

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or a defense interposed against an insured in an action to enforce a contract for a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

(b) The insured shall notify the Company promptly in writing (i) in case any action or proceeding is begun or defense is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

(d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

### 4. NOTICE OF LOSS — LIMITATION OF ACTION

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

### 5. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment, by the insured claimant and authorized by the Company.

### 6. DETERMINATION AND PAYMENT OF LOSS

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

Conditions and Stipulations Continued Inside Cover



OWNERS POLICY OF TITLE INSURANCE  
Issued by  
LOUISVILLE TITLE DIVISION  
COMMONWEALTH LAND TITLE INSURANCE COMPANY

Schedule A

Amount of Insurance: \$1,428,000.00

Policy No: 107-322159

Premium: \$3130.05

County: Fayette

(\$149.05)

Date of Policy: September 27, 1988 at 11:51 A.M.

1. Name of Insured:

Lexington-Fayette Urban County  
Government Public Facilities, in fee simple  
Corporation

2. The estate or interest in the land described herein and which is covered by this policy is fee simple, and is at Date of Policy vested in the Insured by deed from Lexington Council of the Arts, Inc., dated September 27, 1988, and recorded in Deed Book 1491, Page 182, in the office of the Clerk of Fayette County, Kentucky, on September 27, 1988, at 11:51 A.M.

3. The land referred to in this policy described in the said instrument, is situated in Lexington, Fayette County, Kentucky, and is identified as follows:

All that lot of ground with the improvements thereon situated on the northwest corner of Church and Mill Streets, in the City of Lexington, County of Fayette and State of Kentucky beginning at the northwest corner of Church and Mill Streets; thence along the westerly line of Mill Street in a northeasterly direction sixty-six (66) feet to the line of W. B. Emmal (now Kinkead Wilson Motor Company); thence with the W. B. Emmal line in a westerly direction at right angles to Mill Street one hundred eleven and One-half (111-1/2) feet to Wilson's line; thence in a southerly direction parallel with Mill Street with Wilson's line sixty-six (66) feet to Church Street; thence in an easterly direction with Church Street one hundred eleven and one-half (111-1/2) feet to the place of beginning.

Kincaid, Wilson, Schaeffer & Hembree, P.S.C.

Countersigned: 

Authorized Officer or Agent

American Land Title Association Owner's Policy (Rev. 10-17-70 & 10-17-84)  
Schedule A

SCHEDULE B

This policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties other than insured in actual possession of any or all of the property.
2. Unrecorded easements, discrepancies or conflicts in boundary lines, shortage in area and encroachments which an accurate and complete survey would disclose.
3. Lien of 1988-89 Lexington Fayette Urban County, State, City, County, and School District ad valorem taxes which are not due and payable.
4. Mortgage in favor of Central Bank and Trust Company dated the 1st day of May, 1987, of record in Mortgage Book 1422, Page 759, in the original principal amount of \$720,000.00, in the Office of the Fayette County Clerk; which mortgage as modified has been assumed by Insured.
5. Building dimensions and lot dimensions are the very same, therefore cornices, gutters, sills, wiring, which are on the face of the building are over the property lines, provided however, this policy insures against loss or damage as a result of a court of competent jurisdiction ordering an abatement of said violation.

## CONDITIONS AND STIPULATIONS

(Continued)

### 7. LIMITATION OF LIABILITY

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

### 8. REDUCTION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

### 9. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

### 10. APPORTIONMENT

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy,

unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

### 11. SUBROGATION UPON PAYMENT OR SETTLEMENT

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

### 12. LIABILITY LIMITED TO THIS POLICY

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### 13. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to Commonwealth Land Title Insurance Company, Eight Penn Center, Philadelphia, Pennsylvania 19103.