

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “Agreement”) is made and entered into on this ____ day of _____ 2023, by and between Lexington-Fayette Urban County Government, an urban county government pursuant to KRS 67A (hereinafter “LFUCG”) and Main Street Baptist Church, a religious organization with the main Church located at 582 West Main Street , The Sovereign Grace Chapel at 600 West Main Street, and the Braxton Building at 608 and 610 West Main Street, Lexington, Kentucky 40507 (“MSBC”) (collectively, “the parties”).

W I T N E S S E T H

WHEREAS, in the 1980s MSBC did not previously pursue options to purchase property adjacent to its property for parking (Van Deren Hardware Building and abandoned railroad tracks) because the LFUCG/LCC wanted to acquire it for use by the LCC for parking, and a commitment was made by the then Mayor that MSBC would have free of charge access as needed to the nearly 700 parking spaces that were constructed; and

WHEREAS, MSBC would have been able to acquire land for its parking if it was able to proceed with purchasing the above property; and

WHEREAS, MSBC had until the recent renovation and expansion of LCC’s facilities use of these spaces on a regular basis and at no charge for more than 30 years; and

WHEREAS, the parking provided to MSBC by LFUCG through this Agreement should alleviate some of the effects on MSBC as recognized in the October 23, 2020, report to Mayor Linda Gorton from the Mayor’s Commission for Racial Justice & Equity (Housing and Gentrification); and

WHEREAS, the aforesaid parking area will no longer be available due to the previous construction of a parking garage by LCC on part of the property, and the

remaining land is being leased for use as a park (Town Branch Park), and will no longer be available for parking by MSBC once that park commences construction; and

WHEREAS, MSBC requires parking spaces to remain a viable church in its current location; and

WHEREAS, LFUCG owns the remainder of the Jefferson Street Viaduct, which is located between the Church's Property, known as the Main Church Building and the Sovereign Grace Chapel & Braxton Building located at 582, 600 608, and 610 West Main Street, respectively; and

WHEREAS, the parties previously entered into a Memorandum of Understanding related to MSBC using the viaduct for temporary parking purposes; and

WHEREAS, MSBC has requested that LFUCG assist it in maximizing the number of parking spaces that could be available for it to use on a permanent basis including conveyance of ownership of the Jefferson Street Viaduct remnant property to MSBC; and

WHEREAS, the location of the temporary parking lot on the viaduct is in close proximity to the proposed Town Branch Park; and

WHEREAS, the current condition of that temporary parking lot needs improvement in order to be used permanently for parking; and

WHEREAS, the parties are desirous of entering an agreement under which additional permanent parking will be available to MSBC when needed, but will otherwise normally be available for use by the general public in accordance with hours to be posted and at the discretion of MSBC, subject to management consideration, church activities, maintenance issues, weather and environmental considerations; and

WHEREAS, LFUCG recognizes the important role that MSBC has in the community, the impact of the Town Branch Park project, and the vital role of parking for

the MSBC congregation, which has been at the current location for over 160 years, and for the general public in this area of the community; and

WHEREAS, LFUCG is willing to undertake making improvements to the viaduct remnant and surrounding area in an amount not to exceed \$1.5 million in order to maximize the available parking, alleviate traffic flow issues related to parking in that area and bring the temporary parking lot on the viaduct up to applicable standards; and

WHEREAS, once these improvements are substantially completed the parties agree that it would be mutually beneficial to permanently close the remainder of the viaduct as a public street and transfer the property to MSBC with a right of entry in favor of LFUCG (during construction) and subject to the requirement that MSBC maintain the parking lot and keep it open to the general public for the majority of the time when not it is not in use by MSBC; and

WHEREAS, the parties are in agreement that the transfer of ownership and maintenance of the property with a requirement that it be available for use by the general public for parking (subject to the discretion and management of MSBC) when not in use by MSBC is in the public interest and will benefit the citizens of Lexington-Fayette County, Kentucky; and

WHEREAS, the parties agree that a ten (10) year period of time is reasonable to keep restrictions in place as that is the estimated useful life of the improvements to the property being constructed by LFUCG, after which time they shall not apply; and

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, LFUCG and MSBC hereby covenant and agree as follows:

1. The above recitals are incorporated herein as if fully stated.
2. It is the parties' intent that within a reasonable time following LFUCG substantially completing the "Improvements" as further described in paragraph 7 of this Agreement, LFUCG shall permanently close a portion of Jefferson Street (pursuant to KRS 82.405) and transfer ownership through a quit claim deed the unused rights-of-way of certain real property situated at 582 West Main Street and 584 West Main Street (also known as the Jefferson Street Viaduct Remnant), which abuts to the remaining portion of the street, to the adjacent owner, MSBC, subject to (a) The American Rescue Act Funding provision (par. 11), (b) the restrictions, conditions, and reservations provided in this Agreement (par. 12) for a period of ten (10) years following the transfer of the property to MSBC and (c) any easements or encumbrances of record. A legal description of the property (0.6315 acres) is provided in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Property").
3. It is the parties' intent that LFUCG perform the "Improvements" as further described in paragraph 4 of this Agreement to the Property as well as to certain limited portions of MSBC's property and the surrounding streets or rights-of-way with the understanding and agreement of MSBC that LFUCG shall not be obligated or required to expend more than a total of \$1.5 million on such improvements. The work is primarily being performed on the viaduct remnant and a portion of MSBC's properties located at 582, 600, 608 and 610 West Main Street. For purposes of identifying the location of the property, a preliminary, non-final conceptual plan and general map of this area is provided in Exhibit "B", which is attached hereto and incorporated herein by reference (the "Improved Property"). To the extent any additional governmental approvals are necessary LFUCG will obtain such approvals before transferring the property to MSBC.
4. LFUCG will undertake to substantially perform and complete the improvements to the Improved Property as further described in the scope of work document which is attached hereto and incorporated herein by reference as Exhibit "C" (the "Improvements"). MSBC understands and agrees that LFUCG is not obligated or required to expend more than the amount currently budgeted for this project, which is \$1.5 million and that the scope of work may be modified to meet this budget if necessary. Such work will be let as soon as feasible following the execution of this Agreement, and LFUCG will strive to complete the work on a timely basis so as to minimize the disruption to MSBC.
5. MSBC will fully cooperate with LFUCG in ensuring that the Improvements to the Improved Property are timely performed and completed. This includes, but is not necessarily limited to, providing any necessary easements and access to the Improved Property.
6. LFUCG will work in good faith with the Lexington Center Corporation ("LCC") and MSBC to ensure that MSBC is allowed to continue to utilize LCC parking for overflow purposes on a basis similar to the arrangement that currently exists today. However, MSBC understands and agrees that LCC is a separate legal entity from LFUCG that owns and controls those parking spaces and that any permanent parking agreement would need to be reached by and between those two parties.

7. MSBC understands and agrees that upon completion of performance of the requirements contained in this Agreement and the transfer of the Property to MSBC, LFUCG shall be under no obligation, whatsoever, to provide any funding for the maintenance or operation of the Improved Property, or to provide MSBC with any additional funding related to this matter.

8. The Closing of this transaction (the "Closing") shall take place within One Hundred Twenty (120) days of the substantial completion of the improvements to the Improved Property at such time and place to which the parties may agree (the "Closing Date"). LFUCG shall deliver possession of the Property to MSBC at the Closing.

a. Except as otherwise expressly provided in this Agreement, the transfer of the Property hereunder is and will be made on an "**AS IS, WHERE IS**" basis and LFUCG has not made, does not make, and specifically negates and disclaims any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future of, as to, concerning or with respect to the Property or any other matter whatsoever, except LFUCG warrants that it is not aware of any environmental hazards, concerns, or conditions that have existed, or currently exist, on said Properties, nor is LFUCG aware of any latent defects in the Property.

b. MSBC is a sophisticated party who is familiar with the ownership and operation of real estate projects similar to the Property and has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of such examinations and any title insurance protection afforded by the Owner's Policy and not on any information provided or to be provided by LFUCG, except with respect to LFUCG's specific limited representations, warranties and indemnities herein contained.

9. The parties agree that this Agreement will be recorded as an exhibit to the Quit Claim Deed. The parties agree that MSBC shall manage and maintain the parking lot including establishing and posting hours of operation and signage for the safe management of the Improved Property based on the discretion of MSBC and consistent with the terms of this Agreement.

10. MSBC understands and agrees that in order to justify the expenditure of public funds on the improvements described herein, the Improved Property must be made reasonably available for access and use by the general public the majority of the time as further described in paragraph 12 of this Agreement.

11. Given the federal funding source (American Rescue Act) of the majority of the funding, MSBC agrees that it shall not sell or otherwise dispose of or repurpose any portion of the Improved Property prior to December 31, 2026. If MSBC breaches this provision, it will be liable to LFUCG for that breach in an amount that shall not exceed the amount of \$1.5 Million or the final cost of the Improvements, whichever is greater. LFUCG further reserves the right to enforce this provision through any remedy available at law, equity, or in bankruptcy for the aforesaid duration.

12. The parties agree to the following restrictions, conditions, and reservations on the Improved Property for a period of ten (10) years after the transfer of the Property to MSBC, a period both parties have determined is reasonable, and will act consistent with them for such duration:

- a. The Improved Property shall be open and accessible for use by the general public for parking or pedestrian access for at least fifty percent (50%) of the time which will include the consideration of the factors in 12.b., below;
- b. MSBC shall establish reasonable operating hours Monday through Friday for public use that take into consideration the investment of public funds and church-related activities including meetings, funerals, choir rehearsals and weddings. MSBC will not lease parking spots (as distinguished from charging attendees on an hourly or daily basis for the right to park) during the hours it is normally open to the generally public without the written permission of LFUCG;
- c. The Improved Property shall be used by MSBC or its invitees exclusively for church-related during the hours it is normally open to the general public. Should MSBC need to use the Improved Property for church-related purposes during the posted public parking hours it will not be prohibited from doing so;
- d. Public Use of the Improved Property is generally understood to mean use by patrons of the Town Branch Park, once the park is opened, and patrons and staff of the Mary Todd Lincoln Museum. Appropriate signage will be installed by MSBC indicating that the use of the Improved Property is limited to MSBC or Town Branch Park Patrons during the posted public parking hours;
- e. MSBC shall not be prohibited from charging for parking during events at Rupp Arena, the Civic Center, Town Branch Park, or other downtown events;
- f. MSBC is not prohibited from entering into a parking agreement with Town Branch Park or its affiliates for use of the Improved Property as long as it does not result in a violation of this Agreement;
- g. MSBC shall not sell or transfer its property at 582 West Main Street or the Improved Property without the express written permission of LFUCG. In the event that a sale or transfer takes place during this time period absent such permission, MSBC agrees to pay LFUCG for the depreciated final cost of the Improvements unless waived by LFUCG or otherwise agreed to by the parties;
- h. MSBC agrees to obtain and maintain reasonable insurance coverage related to owning, operating and managing the Improved Property; and
- i. MSBC agrees to maintain the Improved Property at no cost to LFUCG.

13. The restrictions in paragraph 12, above, related to public use and land transfer shall automatically expire ten (10) years after the transfer of the Property to MSBC.

14. The parties agree that the obligations imposed upon the parties are for the benefit of the parties and that the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by the date established by this Agreement shall constitute a breach of this Agreement unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

15. LFUCG will transfer or assign any applicable warranties related to the construction on the Improved Property to MSBC at closing.

16. This Agreement shall be effective upon execution of the parties hereto.

17. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in three or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

18. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement, which assignment shall be prohibited except with the prior written consent of all parties hereto.

19. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

20. Time is of the essence in the performance of each of the terms and conditions of this Agreement.

21. If either party defaults hereunder, the other party shall be entitled to pursue any available legal remedy, including without limitation, the right to seek specific performance. The exercise of one or more rights or remedies by a party shall not impair that party's right to exercise any other right or remedy provided for in this Agreement or at law or in equity.

22. The parties agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Fayette County, Kentucky.

23. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer or give to any person other than the parties hereto any right, remedy, or claim under or by reason of such Agreement or such covenant, condition, or stipulation herein contained. Nothing expressed or mentioned in or to be implied from the Agreement is intended to or shall be construed to give any person other than the

parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement.

24. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to MSBC:

Main Street Baptist Church
Attention: Ralph Hill, Pastor
Victor Sholar, Elder R.W.
Cornelius, and Leander
Ridgeway
582 West Main Street
Lexington, Kentucky, 40507

If to LFUCG:

Office of the Mayor
Attention: Brandi Peacher
Government Center
200 East Main Street
Lexington, Kentucky 40507

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement on the date first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: _____
LINDA GORTON MAYOR

ATTEST:

Abigail Allan
Clerk of the Urban County Council

MAIN STREET BAPTIST CHURCH

LEANDER RIDGEWAY, TRUSTEE/CHAIRMAN

RORGER W. CORNELIUS,
TRUSTEE

CALVIN DOTY, TRUSTEE

DONALD, LYONS

DARYL LOVE, TRUSTEE

RALPH E. HILL, ESQ.

ALBERT JOHNSON, TRUSTEE

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed, sworn to and acknowledged before me this the ____ day of _____
2023, by Leander Ridgeway, Trustee/Chairman of the Main Street Baptist Church;
Calvin Doty Trustee; Daryl Love Trustee; Rorger W. Cornelius (Elder Cornelius) Trustee;
Donald Lyons, Trustee; Ralph E. Hill, Esq, Trustee; and Albert Johnson, Trustee.

NOTARY PUBLIC, KY, STATE AT LARGE

My commission Expires: ____/____/____

Notary ID # _____

PREPARED BY:

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