

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is made and entered into as of the ____ day of January, 2016, by and between the **WARWICK FOUNDATION, INC.**, a Kentucky non-profit corporation with its principal office located at 308 Madison Place, Lexington, Kentucky 40508 (hereinafter “Foundation”) and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter “Lexington”).

W I T N E S S E T H:

WHEREAS, the Foundation is the primary fiscal sponsor for the relocation of the Peoples Bank currently located at 343 South Broadway, Lexington, Kentucky (the “Structure”) into a Peoples Portal to the Rupp District in Downtown Lexington, including the relocation of the Structure to the lot situated at the corner of West High and Patterson Streets located per either of the site plans depicted in Exhibit A attached hereto (the “Relocation”), and the restoration of the Structure to permit public operations therein by the Foundation (collectively, the “Improvements” or the “Work”); and

WHEREAS, Lexington finds that the Improvements fulfill a public purpose and is desirous of providing funding in the amount of \$150,000.00 to be utilized in connection therewith; and

WHEREAS, the Foundation is agreeable to accepting the funding and ensuring that any requirements connected to the funding are followed.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. That in exchange for Lexington providing the Foundation with One Hundred Fifty Thousand Dollars (\$150,000.00) in funding on or before the date the Foundation proposes to sign a contract for the Work, on seven (7) days prior notice thereof to Lexington the Foundation agrees as follows: (1) that all funds must be expended for the purposes of the Improvements; (2) that it will take sufficient and appropriate steps to ensure that the Work is completed; (3) that Lexington will in no way be responsible for the Work other than the financial contribution further described herein; (4) that if there is formal recognition of contributors to improvements to the Improvements, the Lexington-Fayette Urban County Government will be recognized in like manner to similar contributors; and (5) that it will provide to Lexington, upon request, sufficient documentation of the appropriate expenditure of the funds, which shall include, at a minimum a written summary report of all of the expenditures made towards the Work as well as a final report.

2. This MOA shall remain in effect until the Foundation has fully complied with the requirements of this MOA and the Improvements are completed, unless terminated by Lexington in writing for nonperformance at an earlier time.

3. That in the event of any of the following, Foundation shall immediately return all of the funding provided by Lexington pursuant to this Agreement: (a) the Structure is damaged or destroyed prior to commencement of the Relocation, such that the Relocation is not able to take place (b) the Structure is demolished, (c) the Foundation fails to raise funds sufficient to complete the Improvements; or (d) a ground lease for the receiver site is not secured. If the Structure is damaged or destroyed *after* non-refundable expenses for the Relocation work have been incurred, such that the Work cannot be completed, then Lexington will receive its proportionate share of: (a) monies remaining in the Foundation's project account *plus* (b) any insurance and/or bonding proceeds received by the Foundation and designated for Lexington. Foundation will cause Lexington to be

named as an additional insured under such insurance and sureties pertaining to the Work, and will submit all such policies and bonds for Lexington's approval prior to the commencement of the Relocation work.

4. Foundation shall perform (or ensure that) all duties and services included in the Work faithfully and satisfactorily at the time, place and for the duration prescribed herein. Foundation shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this MOA, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify Lexington, its officers, agents and employees against any claim or liability arising from and based on Foundation's violation of any such laws, ordinances or regulations.

5. Foundation shall be solely responsible for any claims or damages that are based upon its performance of this MOA, the Work or the Improvements, or that are based upon the actions or inactions of its employees or agents. Foundation agrees to indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from the above.

6. The Foundation shall keep and make available to Lexington any records related to this MOA such as are necessary to support its performance of this MOA. Books of accounts shall be kept by the Foundation and entries shall be made therein of all money, goods, effects, debts, sales,

purchases, receipts, payments and any other transactions of the Foundation related to this MOA and shall be made available to Lexington upon request.

7. The Foundation shall allow Lexington the necessary access to perform the services herein and to monitor Foundation's performance under this MOA.

8. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

9. The Foundation shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause any agency receiving funds provided pursuant to this MOA to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices

10. Neither party may assign any of its rights and duties under this MOA without the prior written consent of the other party. Notwithstanding the foregoing, Lexington understands that the Work will ultimately be performed by persons or entities other than the Foundation.

11. This MOA does not create a contractual relationship with or right of action in favor of a third party against either the Foundation or Lexington.

12. If any term or provision of this MOA shall be found to be illegal or unenforceable, this MOA shall remain in full force and such term or provision shall be deemed stricken.

13. This MOA shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

14. By mutual agreement, the parties to this MOA may, from time to time, make written changes to any provision hereof. Foundation acknowledges that Lexington may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

15. This MOA shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This MOA shall replace any previous agreement between the parties on the same subject matter.

16. The waiver by either party of any breach of any provision of this MOA shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this MOA.

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Memorandum of Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
JIM GRAY, MAYOR

ATTEST:

URBAN COUNTY COUNCIL CLERK

WARWICK FOUNDATION, INC.

BY: _____
PAUL EVANS HOLBROOK, PRESIDENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Memorandum of Agreement was subscribed, sworn to and acknowledged before me by Paul Evan Holbrook, as President of the Warwick Foundation, Inc., on this the _____ day of January, 2016.

My commission expires: _____

NOTARY PUBLIC, STATE AT LARGE, KY

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