

MANAGEMENT AGREEMENT

THIS AGREEMENT, entered into this _____ day of November, 2012, by and between LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an Urban County Government pursuant to KRS 67A, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter called "LFUCG"), and LEXINGTON AND FAYETTE COUNTY PARKING AUTHORITY, a parking authority pursuant to KRS 67A.910, et seq., and Chapter 2, Article XIII, of the Code of Ordinances, Lexington-Fayette Urban County Government, 101 East Vine Street (First Floor), Lexington, Kentucky 40507 (hereinafter called "LFCPA").

WITNESSETH

WHEREAS, the LFCPA was created pursuant to KRS 67A.910, et seq., and has been empowered by this state law and Chapter 2, Article XIII of the Code of Ordinances, Lexington-Fayette Urban County Government, to, among other things, acquire, own, maintain, operate, repair and manage new and existing parking facilities;

WHEREAS, Section 18 of Lexington-Fayette Urban County Government Ordinance No. 329-2005, which also created the LFCPA, specified that there was to be a transfer of management of certain LFUCG parking garages to LFCPA.

WHEREAS, the parties entered into a Memorandum of Agreement dated February 23, 2012, and a Transfer Agreement dated April 26, 2012, related to the LFUCG's parking garage properties, under which they mutually agreed to the management and control of the District Courthouse Parking Facility.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein expressed, the LFUCG and the LFCPA agree as follows:

1. Pursuant to the terms of this Agreement the LFPCA is retained to manage and operate the District Courthouse Parking Garage at a portion of 150 North Limestone a/ka/ 110 Barr Street, Lexington, Kentucky 40507 on behalf of the LFUCG. A further description of the premises is contained in Exhibit "A", which is attached hereto and incorporated herein by reference (hereinafter the "Premises").

2. The Premises are to be operated solely as a commercial parking garage, and the LFCPA shall not operate or manage the facility for any other purpose without the written permission of the LFUCG.

3. This Agreement shall have a term length which coincides with the full payment of all existing debt service on the Premises, at which time it is the intent of the parties that the Premises will be transferred in fee simple with any appropriate restrictions and covenants to the LFCPA.

4. The LFCPA shall receive all revenue generated from the parking of vehicles in the garage, as well as income from vending machines, pay telephone commissions, and other income approved by LFUCG in return for providing the services hereunder. The LFCPA shall keep sufficient records of the amounts generated from the operations of the Premises and shall provide such information to LFUCG annually and as otherwise requested and in a manner so as to satisfy any standard audit.

5. The LFCPA agrees to honor any and all existing leases or other agreements pertaining to the use of the Premises, including but not limited to those pertaining to the use of any parking space(s) and will set aside the necessary space to protect any commitments made to the existing tenants of, or in connection with, the operation of the Premises, and LFCPA agrees to honor all allocations of space that LFUCG deems necessary; and LFCPA agrees to operate the Premises in a manner consistent with satisfying as efficiently as possible the parking demands generated by the LFUCG.

6. This Agreement shall not be assigned, nor the Premises subcontracted in whole or in part without the written consent of the LFUCG. LFCPA shall have the authority to enter into agreements for the lease or use of parking spaces in the Premises.

7. The LFCPA shall comply with the following:

- a. All applicable federal, state, and local laws and regulations including any: (1) local ordinances governing licensing of business; (2) those related to the hiring practices and payment of employees, suppliers, and other withholding and/or payment of taxes and insurance.
- b. All applicable safety regulations of the Lexington-Fayette Urban County Government and all applicable federal, state, and local laws, ordinances, rules and regulations.
- c. All solicitations or advertisements shall state applicants will receive equal consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, age, and national origin or disability. The LFCPA shall not discriminate against any employees because of race, color, religion, sex, sexual orientation, gender identity, age and national origin or disability.

8. The LFCPA will cover all of the ordinary direct expenses of operating the Premises, including but not necessarily limited to the following: telephone expenses, promotion costs, utilities, sundry items such as tickets and janitorial supplies, voluntary settlement of patron's claims for vehicle damage or loss of contents, normal maintenance of the Premises including snow removal, repainting and stall markings, replacement or repair of signs and minor equipment and replacement of light bulbs, security, and any administrative (i.e., audit) or legal cost directly attributable to the operation of the Premises.

9. The LFCPA will cover all costs associated with the maintenance, repairs, staffing, and operation of the Premises. Prior to making any changes to the Premises of a permanent nature, the LFCPA shall obtain the written permission of the LFUCG.

10. The LFCPA will provide validation services at no cost to persons providing board membership or like volunteer services to LFUCG.

11. To the extent allowable by law, LFCPA shall 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 (hereinafter "LFUCG") 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 or by LFCPA's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the LFCPA; and (b) not caused the active negligence or willful misconduct of LFUCG. Each party shall carry the appropriate amount and types of insurance coverage. The LFCPA shall at all times carry insurance coverage for itself and its employees and for the Premises of the types and in the amounts agreed to be sufficient by LFUCG with property damage in the minimum amount of the estimated fair market value of the garage and with general liability coverage in a minimum amount comparable to other similarly situated insured facilities. Minimum Insurance Required - Comprehensive General Liability Insurance \$1 million per occurrence, \$2 million aggregate (Insurance Services Office Form CG 00 01) or \$2 million combined single limit.

12. The LFCPA will abide by any and all purchasing rules and regulations applicable to a public entity of its type. In any instance in which the LFCPA is acquiring goods or services in excess of \$20,000 it shall use a competitive selection process.

13. The LFCPA will keep the Premises at all times in a clean, presentable and sanitary condition and not permit anything thereon which would vitiate any insurance carried by the LFUCG on said premises or adjoining property.

14. The LFCPA will provide regular reports to the LFUCG concerning the management, operation, maintenance, repair, and promotion of the Premises. The LFPCA will also provide LFUCG with professional advice related to the Premises or its operation or maintenance upon request.

15. In no event shall LFUCG be construed to be a partner or associate of LFCPA in the operations of the Premises or the conduct of the LFCPA's business thereon, nor shall LFUCG be liable for any debts incurred by the LFCPA. LFCPA understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. LFCPA is an independent contractor at all times during the performance of the services specified.

16. In the event of a breach of the material terms of this Agreement, either party shall have the opportunity to cure after being provided at least thirty (30) days written notice after which this Agreement may be terminated for cause in the event of a non-cure. This Agreement may also be terminated at any time by mutual consent of the parties, or by the LFUCG by providing LFCPA with at least ninety (90) days advance written notice. In the event of an early termination by the LFUCG other than for cause it shall be obligated to reimburse the LFCPA for the reasonable value of any improvements made to the Premises on a pro rata basis.

17. No failure or delay by either party in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof.

18. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement the parties agree that the jurisdiction and venue shall be the Fayette County Circuit Court.

19. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

IN WITNESS THEREOF, the undersigned have executed this agreement on the dates set forth.

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY: _____
JIM GRAY, MAYOR

**LEXINGTON AND FAYETTE COUNTY PARKING
AUTHORITY**

BY: _____
JAMES H. FRAZIER, III, CHAIRMAN

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed, sworn to and acknowledged before me this the ____ day of _____ 2012, by Jim Gray, Mayor of the Lexington-Fayette Urban County Government.

My commission Expires: _____

NOTARY PUBLIC, STATE OF KY AT LARGE

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed, sworn to and acknowledged before me this the ____ day of _____, 2012, by James H. Frazier, III, Chairman of the Lexington and Fayette County Parking Authority.

My commission expires: _____

NOTARY PUBLIC, STATE OF KY AT LARGE

EXHIBIT A

DISTRICT COURTHOUSE

PARKING FACILITY

Being all of Parcel 1 (after consolidation), as shown by the Public Acquisition and Consolidation Minor Subdivision Plat of the GTE South, Incorporated Property, Lexington, Fayette County, Kentucky, of record in Plat Cabinet K, Slide 754, in the office of the County Clerk of Fayette County, Kentucky, and being known and designated as 150 North Limestone Street and 110 Barr Street, Lexington, Fayette County, Kentucky.

Being the same property conveyed to the Lexington-Fayette Urban County Government Public Facilities Corporation, a Kentucky non-profit corporation, and an agency and instrumentality of the Lexington-Fayette Urban County Government, by Deed dated December 29, 1998 and recorded in Deed Book 2025, Page 726 and by Deed of Correction, dated February 4, 1999, recorded in Deed Book 2033, Page 424, both referenced in the Fayette County Clerk's Office, and being known and designated as a portion of 150 N. Limestone Street, Lexington, Fayette County, Kentucky.