

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is made and entered into as of the 20th day of September, 2013, by and between the **BLUE GRASS COMMUNITY FOUNDATION**, a Kentucky non-profit corporation located at 499 East High Street, Suite 112, Lexington, Kentucky 40507 (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, that the Foundation, working with Friends of Kentucky Theatre, is the fiscal sponsor for the improvements to the Kentucky Theatre, as further described in the August 6, 2013 letter from Friends of Kentucky Theatre, which is attached hereto as Exhibit "A"; and

WHEREAS, Lexington finds that the improvements to the Theater fulfill a public purpose and is desirous of providing funding in the amount of \$250,000.00 to be utilized in connection with these improvements; 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 Two Hundred Fifty Thousand Dollars (\$250,000.00) in funding (the payment schedule for which shall be mutually agreed upon between the parties), the Foundation agrees as follows: (1) that all funds must be expended for the purposes of the improvements to the Kentucky Theatre (the "Theater"), as further generally described in the August 6, 2013 letter, which is attached hereto as Exhibit "A", and which is incorporated herein by reference as if fully stated (the improvements described in the letter may be hereinafter referred to as the "Work"); (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 Theater, 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.

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

3. 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. In the event of termination of this MOA by Lexington, Foundation shall be entitled to that portion of total compensation due under this MOA as the Work or services rendered bears to that required hereunder.

4. Each party agrees that it shall be responsible for any claims or damages that are based upon its respective performance of this MOA, or that are based upon the actions or inactions of its respective employees or agents.

5. 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.

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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

