

Contract #266-2014

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on or as of the 23rd of September 2014, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, 200 East Main Street, Lexington, Kentucky 40507 (the "Government"), Party of the First Part, and the LEXINGTON ART LEAGUE, INC., a Kentucky non-profit Corporation, 209 Castlewood Drive, Lexington, Kentucky (the "Organization"), Party of the Second Part:

WITNESSETH:

WHEREAS, the Organization desires to use the facility known as the "Loudoun House" in Castlewood Park on Castlewood Drive, located in Fayette County, Commonwealth of Kentucky, for its activities as further described herein; and

WHEREAS, the Government desires for the Organization to occupy the Loudoun House; and

WHEREAS, the parties have previously entered into lease agreements pertaining to the Loudoun House; and

WHEREAS, the parties intend for this lease agreement (the "Lease") to replace the terms of the lease agreement entered into by the parties pursuant to Resolution No. 733-2009 .

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. PREMISES. The Organization shall have the right to use that facility known as the "Loudoun House" in Castlewood Park at 209 Castlewood Drive, located in Lexington, Fayette County, Kentucky, together with the improvements and fixtures presently located therein and attached thereto, and the courtyard and grounds immediate thereto; together with such parking area as is necessary for parking incidental thereto and such right-of-way as is necessary for ingress thereto and egress therefrom (said areas combined being hereinafter referred to as the "Premises"), for the purpose of the Organization's activities as provided in paragraph 2.

2. USE: The Organization shall use the Premises for the purposes of its general operations as a non-profit visual arts organization, including but not limited to the following: exhibiting in its discretion two and three dimensional works of art in various media forms for public viewing, art galleries, exhibits and exhibit openings, artist studios, meetings, workshops, classes, seminars, lectures, fund raising events, staff offices, private meetings and functions, public and private tours, storage, and other related activities. No part of the Premises shall be used for any other purpose without the prior written consent of the Government's Commissioner of General Services or his/her designee which consent will not be unreasonably withheld. In no case, shall the Premises be sublet for living quarters or used for living quarters. The Organization shall use the Premises for the foregoing purposes in a safe and proper manner, and shall not permit the Premises to be used for any unlawful purpose, or in any way that will injure the reputation of the building included in the Premises. The Government and the Organization acknowledge that they are both parties to a Deed of Preservation and Conservation Easement dated January 11, 2002 and recorded in Deed Book 2296, Page 408 in the Fayette County

Clerk's Office, and that pursuant to section 31 of said Deed, the Lease is subordinated to the Deed of Preservation and Conservation Easement. The parties further acknowledge and agree that they will not take any action that violates any provision of the Deed.

3. TERM: The Lease shall be effective for a period of five years from July 1, 2013 to June 30, 2018. The Government has the right to extend the Lease on June 30, 2018, for a further term of five years. Any notice of termination of the lease shall be provided by the Government in writing to the Organization ninety (90) days prior to the termination date.

4. RENT: The Organization shall pay to the Government the sum of Six Thousand Dollars (\$6,000.00) per annum for the Lease, payable in monthly installments due on the first day of each month in the amount of \$500.00. Rent was determined based upon the fair market rental value of the Premises reduced by the additional consideration provided by the Organization as described in paragraph 6 herein

5. TAXES AND FEES: The Organization agrees to pay all applicable taxes and assessments against its personal property, and any applicable permit and/or license fees. The Organization is not responsible for any applicable real property taxes.

6. ADDITIONAL CONSIDERATION PROVIDED BY ORGANIZATION: In addition to monthly rent payment, the Organization further agrees to provide the Government with the following during the terms of the Lease:

(a) The Government shall be allowed to hold meetings, conferences, or other events on the Premises so long as such events(s) do not interfere with the Organization's existing schedule of exhibits or other events being held by the Organization at the same time. The

Government shall coordinate its use of the Premises with the Organization in advance, and all such uses shall be at no cost to the Government unless otherwise agreed to by the parties. It is anticipated that the Government may seek to use the Premises approximately six times each year.

(b) The Organization shall provide innovative programming that promotes the visual arts in Fayette County and related public interests as may be agreed by the parties, including but not limited to art education, public relations and community art events. The parties will meet on at least an annual basis during the term of this lease agreement to determine the level and type of programming that is to be offered each year.

7. ALCOHOL: It is expressly agreed by the Government and the Organization that alcohol may be consumed upon the Premises, but only in conjunction with fundraisers, receptions, exhibit openings, or other events approved by the Government in accordance with applicable ordinances. The Organization agrees to comply with any applicable laws, rules and regulations pertaining to the consumption and/or sale of alcoholic beverages.

8. UTILITIES: The Organization shall pay before delinquency all charges for gas heat, electricity, telephone service, and other similar charges incurred by the Organization with respect to and during its occupancy of the Premises, with the exception of water and sewer service which shall be paid by Government.

9. COMPLIANCE WITH ORDINANCES, STATUTES AND FEDERAL LAWS:
The Organization shall comply and cause its employees and agents to comply with ordinances, statutes and federal laws in connection with the use of the Premises. If the Organization shall fail within seventy-two (72) hours after receipt of written notice of any

violation by the Organization or its employees or agents of any ordinances, statutes or federal laws, to cure such violation, such failure shall constitute a breach of the Lease.

10. INSPECTIONS: The Government's Commissioner of General Services or his/her designee shall have the right to inspect the Premises at any time during the Organization's normal hours of operation. The Government shall have free access to the Premises at all reasonable times for the purpose of examining the same, or to make any alterations or repairs to the Premises that the Government deems necessary for its safety or preservation.

11. ALTERATIONS TO THE PREMISES: Any physical improvements or change in the status of the Premises, including painting, is to be done with the express prior written approval of the Government's Commissioner of General Services or her designee which shall not be unreasonably withheld. Any and all improvements once installed, affixed or located in or on the Premises shall be and remain on the Premises and belong to the Government as further consideration of this Lease, provided however that all inventory, furnishings, fixtures and other equipment installed and paid for by the Organization may be removed by the Organization upon termination of the Lease if such removal does not damage the Premises.

12. MAINTENANCE OF THE PREMISES:

a. The Government shall maintain the exterior of the Premises, including the roof, foundation, and structural portion of the Premises, and the exterior doors and window frames, and shall replace all broken and cracked glass except where such replacement is required by reason of the acts of the Organization, in which event Organization shall make such replacements. The Government shall make all necessary repairs to the parking areas, service

driveways and sidewalks, and shall provide at its expense, general yard maintenance of the Premises (according to its normal park mowing schedule), snow and ice removal, and the removal of trash and garbage (but not the placement of such trash and garbage in the appropriate container and location). The Government shall further be responsible for making all major repairs to the interior structures of the Premises as necessary to preserve and keep it in a good and safe condition, and shall keep the heating, ventilation, air conditioning, plumbing, electrical and like systems in good working order.

b. The Organization shall make any minor repairs as may be necessary for keeping and maintaining the interior of the Premises in good order, condition and repair, and shall further provide at its expense, general custodial care for the interior of the Premises. Excepted from this are repairs made necessary by reason of damage due to fire or other casualty covered by standard fire and extended coverage insurance.

13. INDEMNIFICATION AND INSURANCE:

a. Indemnification – The Organization agrees to indemnify, defend and hold harmless the Government and its agents, officials and employees, from any and all claims, liabilities, loss, damage or expense resulting from the Organization's or its invitees' use of the Premises. The Government shall not be liable for any loss or damage to persons or property of the Organization or others by theft or otherwise located on the Premises or the loss of or the damage to any property of the Organization or others from the Premises, except to the extent such injury or damage results from a negligent or willful act or failure to act of the Government. The Government shall not be liable for any injury or damage to persons or property resulting

from fire, explosion, falling material, steam, gas, electricity, water, rain, snow, leaks from any part of the Premises, pipes, appliances or plumbing works, or any other cause of any nature, except to the extent such injury or damage results from a negligent or willful act or failure to act of the Government. Any property of the Organization kept for storage at the Premises shall be so kept at or stored at the risk of the Organization only.

b. Insurance – The Organization shall procure and maintain, at its cost, throughout the term of the Lease, and annually for any extension thereof, Commercial General Liability Insurance, including Premises and Operations Liability and Fire Legal Liability for said premises, and any other appropriate insurance, deemed proper and necessary for its use and occupation of the facility. Liability limits should be in an amount not less than \$1,000,000 per occurrence with an aggregate of not less than \$2,000,000. Said insurance company shall be authorized to do business in the Commonwealth of Kentucky, with a Best's Key Rating of no less than Excellent (A or A-) and a financial size category of no less than VIII, and must include the provision that, "it is agreed and understood that the Lexington-Fayette Urban County Government, its agents, employees, officers and elected officials, as their interests may appear, are additional insureds, under the provisions of this lease agreement." The Organization shall furnish to the Government's Division of Risk Management a certificate of insurance and make available for inspection a copy of the policy.

14. TERMINATION: Either party may terminate the Lease at any time, for any reason, upon ninety (90) days written notice.

15. SIGNS: The Organization shall not allow its name or any advertisement to be applied on any part of the Premises. However, the Organization will be allowed to place at its expense its name or sign on the grounds outside of the building, provided such sign complies with the applicable ordinances and rules and regulations of the Government and advance written approval of the Government is obtained. Such approval shall not be unreasonably withheld. The Organization is also allowed to display banners, signs, or other temporary items during public events held on the Premises, so long as any such items comply with all applicable ordinances, rules and regulations and are removed immediately after the end of the event.

16. LEASE NOT ASSIGNABLE: This Lease is not assignable.

17. PROPERTY ON PREMISES IS RESPONSIBILITY OF ORGANIZATION: All personal property which may be kept upon the Premises shall be at the sole risk and responsibility of the Organization.

18. DESTRUCTION OF PREMISES: If the Premises should be destroyed or damaged by fire or other casualty covered by Government's policy of fire and extended coverage insurance, Government shall, with due diligence, make repairs or restoration at its expense; provided, however, that should damage to the extent of fifty percent (50%) or more of the value thereof occur, then Government may at its option cancel this Lease instead of making the necessary repairs or restoration; and, provided further, that if the Premises are damaged to such an extent that repairs or restoration cannot be effected within one hundred twenty (120) days, either party shall have the right to cancel this Lease by giving the other party notice in writing within thirty (30) days from the date such damage occurred. In the event no such notice is given,

or if notice is to be waived in writing by the parties, Government shall proceed with due diligence to complete the restoration of the Premises. In the event of partial destruction or damage whereby Organization shall be deprived of the use or occupancy of only a portion of said Premises, then minimum rent shall be equitably apportioned according to the area of the Premises which is usable by Organization until such time as the Premises shall be repaired or restored. Government shall commence the repair and reconstruction of the Premises promptly after it receives the proceeds of insurance in connection with such partial loss. If the destruction or damage be of such extent that the Premises are entirely untenable, then the rent shall cease until the Premises are restored or repaired.

19. QUIET ENJOYMENT: Government hereby covenants and agrees that if Organization shall perform all the covenants and agreements herein stipulated to be performed on Organization's part, Organization shall at all times during the Lease term and any extensions or renewals thereof have the peaceable and quiet enjoyment and possession of the Premises without any manner of, or hindrance from Government or any person or persons lawfully claiming the Premises.

20. VACATION OF PREMISES: The Organization shall deliver up and surrender to the Government possession of the Premises upon the expiration or termination of the Lease in as good a condition and repair as the Premises shall be at the commencement of said terms (the elements and ordinary wear and deterioration excepted) and deliver the keys to the Government.

21. MEMORANDUM OF LEASE: The Lease, or a memorandum describing the property herein demised, stating the term of the Lease, and referring to this Lease, may be recorded by either party, but is not required.

22. NOTICES: Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by hand delivering or mailing such notice or consent. If mailed, such notice shall be mailed by registered or certified mail addressed to the other party at the address herein above specified or the Premises, or both, or at such other addresses as may be specified from time to time in writing delivered to the other party.

23. WAIVER: No waiver of any condition of legal right or remedy shall be implied by the failure of either party to declare a forfeiture, or for any other reason, and no waiver of condition or covenant shall be valid unless it be in writing signed by party so waiving. The waiver of a breach by either party of any condition shall not excuse, or be claimed to excuse, a future breach of the same condition or covenant or any other condition or covenant.

24. EMINENT DOMAIN: In the event that the Premises or any part thereof shall at any time after the execution of the Lease be taken for public or quasi-public use, or condemned under eminent domain, the Organization shall not be entitled to claim or have paid to it any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest or estate of the Organization, and the Organization hereby relinquishes to the Government any rights to any such damages. Should all of the Premises be taken by eminent

domain, then this Lease shall be deemed terminated, and the Organization shall be entitled to no damages or any consideration by reason of such taking.

25. **DEFAULT REMEDIES/LATE FEE.** If any installment of rent or any portion thereof, shall remain unpaid for a period of ten (10) days after due, the Government shall be entitled to a late fee of five percent (5%) of the overdue rent. If either party shall default in the observance or performance of any of the terms or covenants herein contained, and shall have failed to pursue diligently the correction of such default after thirty (30) days written notice has been provided specifying such default, then the non-defaulting party may cancel the Lease and have all of the remedies at law or in equity to which it may be entitled.

26. **INTERPRETATION:** If any clause, sentence, paragraph or part of the Lease shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Lease, but be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered, and in all other respects said Lease shall continue in full force and effect. This Lease having been negotiated in good faith between the parties with advise of their respective counsel, shall not be construed against one party or the other.

27. **INTERPRETATION AS PARTNERSHIP PROHIBITED:** It is understood and agreed that nothing herein contained shall be construed in any way to constitute a partnership between the parties.

28. **NON-DISCRIMINATION:** The Organization will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin

or handicap and will state in all solicitations or advertisements for employees placed by or on behalf of the Organization that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin or handicap.

29. ENTIRE AGREEMENT: This Lease Agreement contains the entire agreement of the parties with respect to the Organization's occupancy and lease of the Premises, and there are no other promises or conditions in any other agreement either oral or written. The Lease Agreement may be amended only in writing and only if such writing is signed by the party obligated under the amendment. The parties acknowledge that any amendment to the Lease must be approved by the Lexington-Fayette Urban County Council.

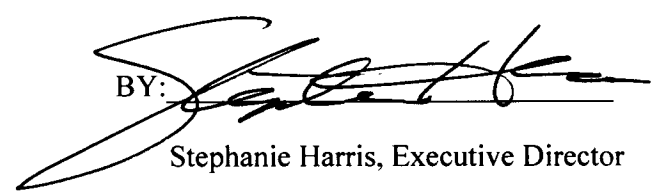
PROVIDED, that nothing herein contained shall be deemed to be against the laws of the Constitution of Kentucky, United States of America, or any local Ordinance.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date first above written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: 
Jim Gray, MAYOR

LEXINGTON ART LEAGUE, INC.

BY: 
Stephanie Harris, Executive Director