

THIS AGREEMENT, made and entered into this 27 day of March, 2018, by and between the OHIO FISCAL COURT, by and through its Judge Executive, David Johnston, (with approval from said Court), with a mailing address of 130 E. Washington Street, Hartford, Kentucky 42347, hereinafter identified as "Owner" and the OHIO COUNTY TOURISM COMMISSION, by and through its Chairman, Dan Leigh, (with approval of the Board of Directors) with a mailing address of P.O. Box 22, Hartford, Kentucky 42347, hereinafter identified as "Manager".

### **1. MANAGER'S AUTHORITY**

Manager has been retained by Owner, as evidenced by its execution of this Agreement for the management and leasing of the property herein below described. **IT IS UNDERSTOOD THOUGH THAT OWNER HAS THE RIGHT TO CANCEL, VOID AND/OR TERMINATE THIS AGREEMENT AT ANY TIME FOR ANY REASON WHATSOEVER. IT IS FURTHER UNDERSTOOD THAT OWNER SHALL HAVE THE RIGHT TO AMEND AND/OR ALTER THIS AGREEMENT IN ANY WAY THAT IT SEES FIT. ANY TERMINATION, AMENDMENT OR ALTERATION SHALL BE CONSIDERED EFFECTIVE UPON APPROVAL OF A MAJORITY OF THE OHIO COUNTY FISCAL COURT.**

### **2. OWNERSHIP GOALS**

To provide for and maximize the public's benefit consistent with maintaining the Property in a good and prudent manner.

### **3. AGREEMENT TO APPOINT MANAGER**

In consideration of the terms, conditions and covenants hereinafter set forth, the parties hereto mutually agree as follows:

(a) Owner hereby appoints Manager, and Manager hereby accepts appointment, on the terms and conditions hereinafter provided, as a managing/leasing Manager of the building or buildings located upon the real property described in Exhibit A attached hereto (hereinafter known as the "Bluegrass Building"), to manage the Bluegrass Building which shall include, but not be limited to, operating the Bluegrass Building's facilities, protecting, caring for and maintaining said building on behalf of the Owner in the manner required by this Agreement.

(b) The term of this Agreement commences as of the date of execution and shall continue until revoked and/or terminated by Owner. As noted herein Owner may terminate this agreement for any reason whatsoever and at any time whatsoever by majority approval of the Ohio County Fiscal Court.

(c) Manager agrees to confer fully, freely, and solely with Owner or any other person or entity so designated by Owner, regarding the performance of Manager's duties as herein set forth.

(d) In order to facilitate efficient operation of the Bluegrass Building, Manager will inform itself with respect to the layout, construction, location, character, plan, and operation of the lighting, heating, plumbing, air conditioning and ventilating systems, and other mechanical equipment in the Bluegrass Building. However, any costs for improvements associated with the Bluegrass Building that the Manager wishes to install and/or repair shall be brought before the Fiscal Court for approval of a majority of the Fiscal Court. Should the

Fiscal Court, approve by majority, then the costs of the improvements shall be borne by the Ohio County Fiscal Court unless otherwise agreed.

(e) Owner will have a line item budgeted (identified as "Bluegrass Building") in an amount approved by majority vote of the Ohio County Fiscal Court which shall be paid to Manager for costs associated with Manager's duties in the following priority:

- (a) Property and liability insurance including the contents of the building in a sum no less than that which is required by the Ohio County Judge Executive;
- (b) necessary utilities, including heat/air, water, electricity, gas, internet and/or cable; and
- (c) Normal costs of cleaning the building.

After payment of the aforementioned then Manager may use said funds consistent with Section 4 of this Agreement.

#### **4. DUTIES OF MANAGER**

Manager accepts this agency and agrees to perform its duties for the Owner in a faithful, diligent and efficient manner as set forth below:

(a) Manager shall investigate, hire, train, instruct, supervise, discharge, and pay the personnel and independent contractors necessary to be employed in order to lease, maintain and operate properly the Bluegrass Building, all of which personnel shall be employees of Manager. Prior to any hire of any person, Manager shall obtain the consent of a majority of the Fiscal Court. The aforementioned shall not be applicable to any volunteers that may assist manager and do not receive any funds from the Owner whatsoever.

(b) Manager shall inspect the exterior, vacant areas and all common elements of the interior of the Building as well as the grounds at least once each month and furnish a written report of same to Owner on a quarterly basis.

(c) Manager shall maintain businesslike relations with customers, patrons and the public at large, whose service requests shall be received, considered and recorded in systematic fashion in order to show the action taken with respect to each. Complaints of a serious or ongoing nature shall, after thorough investigation, be reported to Owner with appropriate recommendations.

(d) Manager shall request, demand, collect, receive, and receipt for any and all charges or rents or other sums from any person and/or entity that uses the Bluegrass Building and that become due to Owner. Manager shall allow Owner to inspect any and all records maintained by Manager so as to permit Owner to determine whether Manager is abiding by the terms of this agreement in any respect. This shall include Owner's authority to inspect any records with respect to any donations made to or for the benefit of Manager.

(e) Owner shall maintain Bluegrass Building and all appurtenant equipment, landscaping, and parking facilities. Manager shall be responsible for interior cleaning and janitorial services.



(f) It is understood and agreed that Manager shall obtain Owner's consent for any major expense, defined as expenses for which the cost exceeds Three Hundred Dollars (\$300.00). Manager shall not, without first obtaining the written or oral (if oral, confirmed in writing subsequent thereto) approval of Owner, incur contractual (oral or written) liabilities (direct or contingent except for expenses, over which Manager has no control) which consent may be withheld or delayed by Owner for any reason whatsoever.

(g) Manager shall take such action as may be necessary to comply promptly with any and all laws, ordinances, orders or other requirements of any federal, state, county, municipal, or other governmental authority having jurisdiction over the Bluegrass Building and affecting the Bluegrass Building. Manager, however, shall not take any action under this subparagraph (4)(g) if Manager has knowledge that Owner is contesting, or has affirmed its intention to contest, any such law, ordinance, order, or requirement. The Manager shall inform Owner within twenty-four (24) hours if any Federal or State entity has alleged any violation and/or noncompliance of any law and/or regulation.

(h) Manager shall, subject to approval by Owner, make contracts for water, gas, electricity, telephone, furnace, and air conditioning repair, janitorial service, and other necessary utilities and services, or such of them as Manager shall deem advisable. All such contracts and orders shall be made in the name of Owner and subject to approval of Owner. Further, no bond or security will be established without Owner's prior written approval.

When taking bids or issuing purchase orders, Manager shall secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchases. Manager shall, at all times, make purchases and (where necessary or desirable) let bids for necessary labor and materials at the lowest possible cost as in his judgment is consistent with good quality workmanship and service standards. Any request for services or purchases over the sum of Twenty Thousand Dollars (\$20,000.00) shall be brought to the Owner for proper public bidding of same.

(i) Manager shall counsel and assist Owner in the placement by Owner of insurance with such coverages and in such amounts as Owner believes as may be appropriate for the Bluegrass Building or as may be required by law. Manager shall promptly investigate and make a full and reasonable written report to Owner concerning all accidents or claims for damage relating to the ownership, operation, and maintenance of the Bluegrass Building, including any damage or destruction to or of the Bluegrass Building. Manager shall cooperate with any insurance company in making any and all reports required in connection therewith. In the event repairs to the Bluegrass Building shall be required, Manager shall diligently perform such services, including, but not limited to, securing bids (unless over Twenty Thousand Dollars (\$20,000.00)), attending hearings, and supervising repairs, as shall be required to effectuate restoration of the Bluegrass Building.

(j) Manager shall establish in name and for the account of Owner, a separate custodial bank account or accounts, in a bank or banks approved by Owner whose deposits are fully insured by the Federal Deposit Insurance Corporation or FSLIC. Manager shall promptly deposit all monies collected from Bluegrass Building operations and/or donations received (and any amounts received by the Ohio County Fiscal Court), hereinafter the "Working Account," into the custodial bank account each week. Manager may withdraw from the Working Account funds for all disbursements which under this Agreement are to be made at the expense of Owner. Manager shall pay the expenses and debt service for the Bluegrass Building in the following order:



(1) Expenses of operating the Bluegrass Building, including management fees set forth in paragraph below. For purposes in this paragraph, "expenses" shall be deemed to include setting aside, on a monthly basis, a prorated amount of any expenses which accrue other than on a monthly basis, such as any taxes, if any, and yearly assessed utilities; and

(2) Principal and interest payments due to any company as a result of any promissory note and mortgage on the Bluegrass Building.

Manager shall maintain records of receipts and disbursements in accordance with subparagraph 4(j) hereof, such records to be subject to examination by Owner, and/or authorized agents, attorneys, or accountants at all reasonable hours and said records shall at all times be the property of Owner.

No later than the first Friday of each month, Manager shall render to Owner statements of receipts and disbursements, together with copies of deposit slips, checks, and reconciled bank statements as of the last day of the preceding month's accounting period.

(k) Manager shall prepare, execute, and timely file all forms, reports, and returns and shall make all payments required by all federal, state, and local laws in connection with unemployment insurance, worker's compensation insurance, disability benefits, Social Security, federal and state income taxes and other similar taxes, now in effect or hereafter imposed, in connection with Manager's employees who work on the Bluegrass Building and also shall comply with any other governmental requirements relating to the employment of personnel in connection with the Bluegrass Building. Manager shall also prepare, execute, and timely file all forms, reports, and returns and shall note all payments required by all federal, state, and local sales and/or use tax laws.

(l) Manager shall exhibit good faith and cooperation in reviewing anticipated operating expenses, leasing, budgets, and marketing plans with the designated representatives of Owner.

(m) Manager shall use its best efforts at all times during the term of this Agreement to operate and maintain the Building in a first-class and businesslike manner comparable to the condition in which the Building existed at the execution hereof and similar properties in the same geographic area. To the extent practicable, full compliance by any tenants, if any, with the terms and conditions of his/her/their/its respective lease agreements shall be secured, and to this end Manager shall see that all tenants are informed with respect to such rules, regulations, and notices as may be promulgated by Owner, or by Manager that are not inconsistent with leases. Manager shall be expected, for the account and at the expense of Owner, to recommend such other acts and deeds as are reasonable, necessary and proper in the discharge of his duties under this Agreement.

(n) Manager shall prepare an advertising program tailored to the marketplace and use its best efforts to promote the image of the Bluegrass Building and its availability throughout various marketing media.

(o) Manager shall negotiate, execute, renew, and amend leases for the Bluegrass Building in compliance with standards and rent schedules established by Owner, provided that Manager shall obtain the approval of Owner for all leases or renewals thereof for the Bluegrass Building prior to Agent's execution thereof. In the event Owner shall fail to approve or deny approval of any lease presented by Manager within fourteen (14) business days of Owner's receipt of the complete lease, said lease shall be deemed approved.

(p) Manager shall keep a set of records on a cash basis (except that reports shall also be prepared each month showing accounts payable and accounts receivable as of the last day of the month) pertaining to the management of the Bluegrass Building in accordance with generally accepted accounting principles; i.e., monthly operating report will recognize income when received rather than when obligations are incurred, provided that Manager shall still set aside sums for other-than-monthly expenses and shall indicate in such monthly report the sums so set aside. Such records shall be the property of Owner at all times. Said records shall be available for inspecting by the Owner, or its authorized agents, attorneys, or accountants, subject to reasonable notice, and upon termination of this Agreement shall be delivered over to Owner. Owner reserves the right to have the Manager place any of said original records in a public storage house provided Owner pays such cost.

(q) Advise Owner promptly, with confirmation in writing, of the service upon Manager of any open records request, summons, subpoena, or other like legal document including notices, letters, or other communications setting out or claiming an alleged potential liability of Owner or the Bluegrass Building.

## **5. TERMINATION**

This Agreement shall be terminated at any time by either party for any reason whatsoever by providing written notice. Termination may occur immediately at the discretion of either party. After any such termination of this Agreement, Manager and Owner shall account to each other with respect to all matters outstanding as of the date of termination, including accounts receivable and payable, and Manager shall pay over all funds to Owner in the Working Account or belonging to Owner.

## **6. LICENSES AND PERMITS**

Manager represents and warrants to Owner that it will obtain and keep in effect during the term hereof, any licenses, permits, or other governmental consents required in order for Manager to perform its duties and obligations hereunder. Operating expenses of the Bluegrass Building for any licenses, permits, or other governmental consents necessary in order for the Bluegrass Building to operate in the manner contemplated hereby will be the costs of the Owner and licenses and permits are obtained in Owner's name.

## **7. DONATED FUNDS**

It is anticipated that Manager is intending to try to procure funds from the general public for the purpose of seeking donations to the Bluegrass Building and/or Bluegrass events associated with the Bluegrass Building. The donated items might include cash donations and/or personal property. Manager agrees to keep an accurate accounting and log of the donated items, including the date of the donation, the person/entity donating, the address and phone number of the donating person/entity and the amount of the donation or the item donated as the case may be. Manager understands that any and all items donated are to be the property of Owner to be used by Manager as Manager sees fit prior to the termination of this agreement. At no time shall Manager accept any donated cash or property regarding any Bluegrass issue believing said cash or property to be the property of Manager. Any cash donated shall be placed in the Working Account as noted hereinabove. Upon termination of this agreement any donated property shall be turned over and placed in the hands of Owner within seven (7) days of termination.



## **8. GIFT SHOP**

The Bluegrass Building may have located therein a Gift Shop and said Gift Shop shall be operated by the Manager. Inventory and sales shall be the responsibility of the Manager. Revenue via profit or loss shall be the liability of the Manager and placed in the Working Account described herein.

Insurance shall be covered under the building policy.

## **9. ASSIGNMENT**

Manager shall have no right to assign this Agreement without the prior written consent of Owner. Owner shall retain the right to assign this Agreement without consent of Manager.

## **10. DISCRIMINATION**

In the performance of its management and/or leasing obligations under this Agreement, Manager will comply with the provision of any federal, state, or local laws, orders or regulations applicable to the Bluegrass Building prohibiting discrimination on the grounds of race, color, sex, age, creed, or national origin.

## **11. PARTIES BOUND**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the prohibition against assignment on the part of Manager without the prior written consent of Owner.

## **12. COMPLETE AGREEMENT**

This Agreement, together with the agreements and Exhibits referred to herein, constitutes the entire agreement between the parties relative to the management and operation of the Bluegrass Building, and it may not be modified, supplemented, discharged, or rescinded except by an instrument in writing executed by both parties to the Agreement.

## **13. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky. In the event of litigation or other legal proceedings commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all its costs incurred, including a reasonable attorney's fee including those incident to post-judgment collection efforts and appeal.

## **14. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

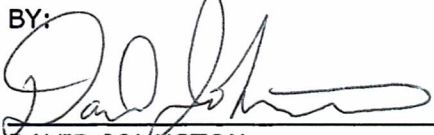
## **15. SIGNING OF AGREEMENT**

The entry into and the signing of this Agreement has been approved by the parties hereto by their respective entities.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written in their respective names as their proper officers.

OHIO FISCAL COURT

BY:



DAVID JOHNSTON  
OHIO JUDGE EXECUTIVE

OHIO COUNTY TOURISM

BY:



DAN LEIGH  
CHAIRMAN, OHIO COUNTY TOURISM

Approved by the Ohio County Fiscal Court on March 27, 2018.

COMMONWEALTH OF KENTUCKY

COUNTY OF OHIO

Subscribed, acknowledged and sworn to before me by David Johnston, Ohio Judge Executive, on this the 2 day of April, 2018.



NOTARY PUBLIC

My Commission Expires: 11-17-18

Notary ID: 523232

COMMONWEALTH OF KENTUCKY

COUNTY OF OHIO

Subscribed, acknowledged and sworn to before me by Dan Leigh, Chairman, Ohio County Tourism, on this the 6 day of April, 2018



NOTARY PUBLIC

My Commission Expires: 11-17-18

Notary ID: 523232