

**CULTURAL FACILITY
MEMORANDUM OF UNDERSTANDING**

This Cultural Facility Memorandum of Understanding (the "Memorandum") is entered into this ____ day of _____, 2009, by and between the Lincoln Theatre Association (the "Project Sponsor"), and the State of Ohio (the "State"), acting by and through the Ohio Cultural Facilities Commission (the "Commission"), a state agency organized and operating under Ohio Revised Code (the "O.R.C.") Chapter 3383 (the "Act").

RECITALS

1. Pursuant to Ohio Revised Code Chapter 154 and the Treasurer of State of the State of Ohio (the "Treasurer") general bond order, as supplemented from time to time pursuant to supplemental orders, the Treasurer has issued Cultural and Sports Capital Facilities Bonds (the "Bonds") for the purpose of providing moneys to pay the costs of acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping and furnishing capital facilities, which are Ohio cultural facilities or Ohio sports facilities, each as defined in the Act.
2. Pursuant to Ohio Revised Code Chapter 152, The Ohio Public Facilities Commission (the "OPFC") entered into a lease agreement, dated August 1, 2005 (the "OPFC Lease"), as supplemented and renewed from time to time, with the Commission pursuant to which the Commission will make lease rental payments, which will be assigned by OPFC to the Treasurer, in connection with the Ohio cultural facilities.
3. The Commission is a body corporate and politic, an agency of State government and an instrumentality of the State, performing essential government functions of the State, duly created, existing and operating under and by virtue of the Act.
4. In accordance with the Act, the Commission (a) shall engage in and provide for the development, performance and presentation or making available of culture and professional sports and athletics in this State by the exercise of its powers under the Act, (b) may construct, or provide for the construction of, lease, equip, furnish, administer and manage, or provide for the operation and management of Ohio cultural facilities or Ohio sports facilities, and (c) may make and enter into all contracts, commitments and agreements necessary or incidental to the performance of its duties.
5. In accordance with the Act and the OPFC Lease the Commission shall enter into a Cooperative Use Agreement (the "CU Agreement") with any cultural organization, as defined in the Act, including the Project Sponsor, for the cooperative use of an Ohio cultural facility or Ohio sports facility, the terms and conditions of which are described in the OPFC Lease.

6. In accordance with the Act, the Commission may determine that construction services for a cultural project be provided by such cultural organization, including the Project Sponsor, in accordance with a CU Agreement.
7. Pursuant to Am Sub H.B 699 of the 126th Ohio General Assembly, the project was appropriated \$350,000 for the purpose of the renovation of the facility (the "Cultural Project") of the Lincoln Theatre (the "Facility").
8. On July 23, 2007 the Project Sponsor, as Lessee, entered into the Lease Agreement (the "Facility Lease Agreement") with the City of Columbus, the fee simple owner of the premises (the "Fee Simple Owner") on which the Facility is located, as Lessor, for a term commencing on July 23, 2007 and terminating on July 22, 2106.
9. Pursuant to Resolution No. R-09-14 of the Commission adopted on February 5, 2009, attached hereto and incorporated herein as Exhibit A, the Commission withheld making any of its statutorily required determinations and authorized execution of this Memorandum setting forth certain actions and materials required to be provided by the Project Sponsor prior to the Commission making its statutory determinations and any other documents or actions necessary to carry out the intent of the Resolution.
10. Pursuant to the Resolution, the Commission must make certain determinations, authorizations and approvals, by formal action, before bond funds are made available to the Project Sponsor.
11. The Commission has identified various actions and/or conditions that must be fulfilled by the Project Sponsor. It is the intent of the Commission and the Project Sponsor that this Memorandum outlines those actions and/or conditions.

In consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

ARTICLE I TERM

Section 1. Term. The term of this Memorandum shall commence on the date first above written and shall expire upon the execution of the CU Agreement between the Commission and the Project Sponsor.

Section 2. Purpose. Prior to the Commission approving the expenditure of bond funds on a Cultural Project, the Commission is required to make certain statutory determinations, including, but not limited to the following determinations:

- A. The need for the Cultural Project;
- B. The regional support for the Cultural Project;

- C. Whom shall act as the construction administrator for the Cultural Project; and
- D. Who shall provide general building services for the Cultural Project.

In addition to any of the other requirements set forth in this MOU, the Project Sponsor shall be required to provide the Commission with any and all information and documentation reasonably required for the Commission to make the foregoing determinations.

ARTICLE II PROPERTY MATTERS

Section 1. Premises. The Project Sponsor acknowledges that the Commission and the OPFC must have sufficient rights in the Facility for proceeds of the Bonds to be used to finance the costs of the Cultural Project and for the Commission to enter into a CU Agreement with the Project Sponsor. Pursuant to the terms of the OPFC Lease, the term of such CU Agreement shall be the greater of (a) fifteen 15 years from the date of execution thereof, or (b) the time at which all Bonds issued to finance or refinance such Cultural Project, and all obligations of the Treasurer to financial institutions related to such Bonds, have been paid in full. To determine if such rights exist, the Commission must evaluate the legal authority pursuant to which the Project Sponsor operates the Facility and has a real property interest in the site on which the Facility is located (the "Premises"). To facilitate this determination, the Project Sponsor agrees to identify the specific Premises, whether by a metes and bounds description, the provision of a map identifying specific property parcel numbers or a graphic display, as soon as reasonably possible. The Premises must be owned or leased by the Project Sponsor and must be described, as provided above, to the satisfaction of the Commission.

Section 2. Title Issues. The Commission, the Fee Simple Owner and the Project Sponsor shall enter into a non-disturbance and estoppel agreement dated on or before the date of the CU Agreement and in a form satisfactory to the executive director of the Commission (the "Estoppel"). The Estoppel shall identify all restrictions or encumbrances affecting the Premises and shall provide, upon the default of the Lessee under the Facility Lease Agreement, the opportunity for the Commission to continue the operation of the Cultural Project on the Premises for the term of the CU Agreement. The Project Sponsor acknowledges that an executed Estoppel is necessary for the Commission to determine that the Cultural Project can be constructed on the Premises and operated for the term of the CU Agreement.

Section 3. Limitations on Encumbrances. The Project Sponsor agrees that the CU Agreement, when executed, will identify only those encumbrances identified in the Estoppel. If any additional encumbrances exist on the Premises beyond that so

identified, the Project Sponsor shall give immediate notice to the Commission prior to execution of the CU Agreement. The Project Sponsor further acknowledges that it shall not permit any mechanic's liens to be filed against the Premises, the Facility or the Cultural Project, and it shall take all steps necessary to ensure that all construction contractors and/or subcontractors shall agree to file any liens against only the Cultural Project's retainage.

Section 4. Ownership of Improvements. Notwithstanding the terms of the Facility Lease Agreement, the Project Sponsor and the Commission acknowledge that the Project Sponsor shall own any improvements paid for with proceeds of the Bonds (the "Commission Improvements"). Notwithstanding anything in the foregoing to the contrary, the Project Sponsor acknowledges the rights of the OPFC and the Commission as described in Section 1 of this Article II.

ARTICLE III CULTURAL PROJECT

Section 1. Description of Cultural Project. The Project Sponsor will be required to provide the Commission with a complete description of the Cultural Project, including but not limited to, the Plans and Specifications describing the Cultural Project, where available, as well as bid tabs and construction contracts, when available. Additional information concerning a breakdown of the total projected costs of construction of the Cultural Project and the Commission Improvements shall be provided to the Commission. The Project Sponsor agrees to provide immediate notice to the Commission of any change in the scope, nature or costs of the Cultural Project or Commission Improvements, including planning revisions, design changes, construction schedule revisions and management or consultant team modifications.

Section 2. Start Dates; Completion Dates. The Project Sponsor will provide the Commission with a schedule of construction of the Cultural Project with approximate commencement and completion dates. As soon as the Project Sponsor becomes aware of any event which will change either the commencement or completion dates, it will notify the Commission immediately.

Section 3. Commission Action. The Project Sponsor acknowledges that the Commission has only taken action as detailed in Exhibit A and that, prior to the disbursement of state funds, determinations, authorizations and approvals are necessary.

ARTICLE IV PROJECT APPROVAL AND FUNDING

Section 1. Commission Determinations. The Commission is mandated by statute to affirmatively determine the need for the Cultural Project and whether the Cultural Project is fully funded, the general financial health of the Project Sponsor and the Project Sponsor's ability to complete and operate the Cultural Project on an ongoing

basis. Further, the Commission must make a determination that there is substantial regional support for the Cultural Project.

Section 2. Project and Sponsor Organization Information. To evaluate whether the Cultural Project is fully funded, the general financial health of the Project Sponsor and the Project Sponsor's ability to complete and operate the Cultural Project on an ongoing basis, the Project Sponsor will provide the following information to the Commission, for a detailed explanation of the below material, please refer to the Project Sponsor Resource Guide ("PSRG"):

- i. Complete all sections of the online Registration Form; and
- ii. Complete all sections of the online Detail Form;

Project Sponsor Information:

- iii. Annual report (if available);
- iv. Promotional materials (if available);
- v. Authorizing resolution from your board approving the execution of legal agreement(s);
- vi. State Recognition Plan;
- vii. Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization form;
- viii. IRS Determination letter showing 501(c)(3) status;
- ix. Board Roster;

Financial Information:

- x. Audited Financials for the last two years. If audited financials are unavailable, submit the last two years of IRS 990s with internal financial reports;
- xi. Year-to-Date Financials for the current year;
- xii. Five-Year Pro forma which forecasts revenues and expenses for your organization;
- xiii. Full Funding and Local Matching Resources substantiation for the same funding sources submitted with the project funding model and local match sections in the Registration and Detail Form;

Fundraising Information:

- xiv. Fundraising Plan if this project's funding model relies on completion of a fundraising campaign or an already completed fundraising campaign;
- xv. Proof of Pledges documentation for confirmed pledges, such as written pledge letters, pledge cards signed by donors, and/or check copies; and
- xvi. Cash Flow Schedule of anticipated pledge collection dates.

Facility Information:

- xvii. Photographs of the Facility;
- xviii. Facility Lease Agreement if the property is not owned by your organization, or a draft lease if one is not yet signed;
- xix. Title insurance commitment letter, title insurance policy, or title opinion letter;
- xx. Deed & Legal Description of the Property and site survey map if available;
- xxi. Insurance Accord certificates or other documentation outlining coverage amounts for Special Form Property Insurance, Employer's Liability Insurance , Commercial General Liability Insurance and any other organizational insurance.
- xxii. Loan Or Mortgage Documents and/or Liens Against the Property identifying any bond documents, letters of credit or security/collateral agreements and a loan pay-down plan;
- xxiii. Environmental Site Assessment Form completed by a facility manager or architect/engineer;
- xxiv. Farmland Use Report if your project includes new construction on farmland or former farmland, complete and submit;
- xxv. National Register of Historic Places: if the facility is listed on the National Register of Historic Places, your plans should be reviewed by the Ohio Historic Preservation Office. If you are listed on the National Register of Historic Places and you are receiving a federal grant or federal funding, you must have the Ohio Historical Preservation Office conduct a section 106 review of your project. Contact their office at (614) 298-2000 for information and please copy your project manager on any correspondence. Their contact information is;

Ohio Historic Preservation Office

Resource Protection and Review
567 W. Hudson
Columbus, Ohio 43211

- xxvi. Description of culture provided if your project involves a local historical facility and the facility will not be open and operable at the conclusion of this project;

Project Information:

- xxvii. Construction Already Completed documentation such as contract(s), invoice(s), bid tab(s), certification of prevailing wage, for completed portions of this project;
- xxviii. Construction Schedule and Construction Budget;
- xxix. Design, Construction and other professional contracts;
- xxx. Detailed Cost Estimate inclusive of all hard costs, soft costs, and contingencies;
- xxxi. Construction Cash Flow Schedule showing cash-out corresponding with the construction schedule and cash-in corresponding with cash-out;
- xxxii. Construction Bridge Financing Documentation;
- xxxiii. Bid Specifications, Bid Tabulations and Bids;
- xxxiv. Construction Drawings for the current project;
- xxxv. Project Team organizational chart including resumes for each person on your project team. Please describe how each individual/organization was selected and each individual's and each organization's qualifications including the individual representing your organization, architect, contractor, construction manager, and/or owner's representative;
- xxxvi. Proof of Builder's Risk and Design Professional Liability Insurance including coverage amounts;
- xxxvii. Change Order Process for managing construction change orders; and
- xxxviii. Any additional information requested by the Commission staff.

Collectively, the foregoing items are referred to hereinafter as the "Project Sponsor's Submittals". The materials comprising the Project Sponsor's Submittals shall be submitted to the Commission not less than ninety (90) days prior to the Commission meeting at which the Project Sponsor seeks Commission action.

The Project Sponsor shall immediately notify the Commission if it anticipates that it will be requesting additional state appropriations to fund the Cultural Project or a different project related to the Facility.

Section 3. Capital Campaign Information. If the Project Sponsor is contributing to the costs of the Cultural Project with capital donations, the Project Sponsor shall apprise the Commission on a monthly basis, in writing, of the progress of the capital campaign. Such report shall include:

- (a) capital donations to date;
- (b) capital donations made since the last report;
- (c) anticipated receipt date of such contributions; and
- (d) to the extent permitted, the name of the contributor.

Section 3. Fully Funded Projects. Bond funds will not be paid for the Cultural Project until it is "fully funded." The Cultural Project is fully funded when the Project Sponsor can demonstrate that the funds to pay for all hard and soft costs of the Cultural Project have been Raised, as hereinafter defined. These costs include, but are not limited to, design, construction, land acquisition, environmental assessment and remediation, exhibits, furniture, fixtures, equipment, construction management and other professional service fees, financing costs including issuance and underwriting fees as well as debt service, legal fees, marketing, start-up operations, operating endowments, utilities and other start-up costs.

As used herein, "Raised" means the Project Sponsor has received written pledges from credit-worthy entities, written funding commitments from governmental entities and/or written guarantees and/or cash receipts, or a combination of these that are, to the Commission's satisfaction, sufficient to be deemed received by the Project Sponsor or are binding obligations upon the entity(ies) pledging or guarantying such funds. If lines of credit, loans, or local bonding, and/or other bridge financing or other cash flow mechanisms are utilized, they are acceptable only if they are backed up by written pledges and/or written guarantees from credit-worthy entities and/or written funding commitments from governmental entities, or a combination of these as approved by the Commission.

Section 4. Pro Rata Reimbursements. The Project Sponsor acknowledges that, once the conditions set forth in this Memorandum are met, including but not limited to the conditions set forth in Exhibit A, and the Commission has made its statutorily required determination, and the CU Agreement is executed between the Commission and the Project Sponsor, the state funds will be provided to reimburse the Project Sponsor for appropriate costs; but only after the Project Sponsor provides the Commission with paid invoices and other Commission required documentation as described in the CU Agreement. Reimbursement of costs with state funds will be made on a pro rata basis,

being a percentage of each invoice equal to the percentage that the total amount of state funds approved by the Commission for the Cultural Project bear to the total hard construction costs of the Cultural Project.

Section 5. Repayment of State Funds. The parties acknowledge that there may be circumstances, as described in the CU Agreement, which will require the early termination of that agreement and reimbursement by the Project Sponsor of certain amounts of the funds paid by the Commission. In such instance, the Project Sponsor agrees that it will repay the Commission in a timely manner the percentage of the principal amount of the Bonds used to pay the cost of the Cultural Project equal to the ratio of (x) the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Bonds to (y) the total number of months that the Bonds are scheduled to be outstanding multiplied by the appropriation, all as calculated by the OPFC (the straight line depreciated value of the Commission Improvements).

ARTICLE V REPORTING AND MISCELLANEOUS ITEMS

Section 1. Monthly Discussions. Throughout the term of this Memorandum, the Project Sponsor will initiate telephonic, e-mail or first-class U.S. Mail communications with the Commission staff, no less than once per month, to discuss the status of the Cultural Project.

Section 2. Other Matters. The Project Sponsor agrees to keep the Commission informed in writing or by presentation at future Commission meetings as detailed in Exhibit A or as deemed necessary, in the sole discretion of the executive director of the Commission, of any matters, financial, organizational, or otherwise which will have any impact on the construction of the Cultural Project and operation of the Facility.

Section 3. Guide. The Project Sponsor acknowledges that this Memorandum is intended to identify: (1) the actions the Project Sponsor must take; (2) the conditions that must be met; and (3) the findings, determinations, and authorizations the Commission must make prior to the execution of a CU Agreement and disbursement of state funds.

Further, while this Memorandum outlines such issues, it is not a complete listing of all matters that must be resolved prior to Commission making its determinations, the execution of the CU Agreement, and the disbursement of the state funds by the Commission. Accordingly, the Commission reserves the right to require that additional preliminary matters be resolved prior to the Commission providing its approval and the execution of a CU Agreement. Nothing in this Memorandum shall be construed to require the Commission to grant its approval of the Cultural Project, execute a CU Agreement with the Project Sponsor, or disburse state funds at any time.

The Commission and the Local Sponsor have caused this Memorandum to be executed by their duly authorized representatives as of the day and year first above written.

STATE OF OHIO, by and through the:
OHIO CULTURAL FACILITIES COMMISSION

LINCOLN THEATRE ASSOCIATION

By: _____
Kathleen M. Fox, Executive Director



Signature

LARRY H. JAMES
Printed Name

PRESIDENT
Title

ACKNOWLEDGEMENT BY FEE SIMPLE OWNER:

CITY OF COLUMBUS

Signature

Printed Name

Title

Date: _____

APPROVED AS TO FORM
The Ohio Attorney General
on attached approval form dated 4/23/09

Exhibit A
Commission Resolution R-09-14