

ORDINANCE NO. 9, SERIES 2015

AN ORDINANCE OF FRANKLIN COUNTY, KENTUCKY, RELATING TO THE SALE AND ISSUANCE OF UP TO \$2,700,000 FRANKLIN COUNTY, KENTUCKY, DEDICATED TAX REVENUE REFUNDING BONDS, SERIES 2015 (SAVE THE GRAND THEATRE PROJECT); ACKNOWLEDGING THE PREVIOUS IMPOSITION OF AN ADDITIONAL 2% TRANSIENT ROOM TAX TO BE APPLIED TO RETIREMENT OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AND LOAN AGREEMENT AMONG THE COUNTY, SAVE THE GRAND THEATRE, INC. AND THE PURCHASER OF THE BONDS, AND RELATED DOCUMENTS; AUTHORIZING THE SALE OF THE BONDS; AND TAKING OTHER RELATED ACTION.

WHEREAS, Save the Grand Theatre, Inc., a nonprofit, non-stock charitable corporation (the "Corporation"), and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), was established for the purpose of acquiring the Grand Theatre, a structure of historic importance situated in the central business district of Frankfort, a city of the second class in Franklin County, Kentucky (the "County"), and causing it to be renovated, repaired, reconstructed and equipped as a fine arts facility to serve the general public and to promote and enhance the growth of tourism in the County and in the Commonwealth of Kentucky; and

WHEREAS, the Corporation completed the renovation of the Grand Theatre (the "Project") in 2009 partially through proceeds from the sale of the \$3,400,000 County of Franklin, Kentucky Adjustable Rate Dedicated Tax Revenue Bonds, Series 2007 (Save the Grand Theatre, Inc. Project) (the "Series 2007 Bonds"); and

WHEREAS, KRS 91A.392 authorizes the fiscal court of a county containing a city of the second class to levy an additional transient room tax not to exceed 2% of the rent for every occupancy of an accommodation of motor courts, motels, hotels, inns or like or similar accommodation businesses; and on December 1, 2006, the Fiscal Court of the County adopted Ordinance No. 15, Series 2006 (the "Original Tax Ordinance"), imposing the additional 2% transient room tax (in addition to the 3% transient room tax imposed pursuant to KRS 91A.390(1)), directing among other things that the additional 2% transient room tax (the "Dedicated Tax") (i) begin as of the first day of the month following the month in which the Series 2007 Bonds were issued, (ii) remain in full force and effect so long as the Series 2007 Bonds are outstanding, (iii) be paid at the same time and in the same manner as the 3% transient room tax authorized by KRS 91A.390(1), and (iv) be disbursed to the trustee for the Series 2007 Bonds to be appointed by the Fiscal Court of the County, to be used for the sole purpose of retiring the Series 2007 Bonds; and

WHEREAS, in order to save interest costs related to the Series 2007 Bonds, the Corporation, pursuant to KRS 91A.392, 91A.390(8) and Chapter 58 of the Kentucky Revised Statutes (the "Act"), is requesting the County to refund the Series 2007 Bonds by issuing its Dedicated Tax Revenue Refunding Bonds, Series 2015 (Save the Grand Theatre Project) (the

“Series 2015 Bonds”) in an amount not to exceed \$2,700,000 to be secured by the Dedicated Tax; and

WHEREAS, concurrent with this Ordinance, the County is undertaking by ordinance an amendment to the Original Tax Ordinance in order to have the Dedicated Tax apply to the Series 2015 Bonds, as the bonds refunding the Series 2007 Bonds; and

WHEREAS, the County has also been requested by the Corporation to enter into a Bond Purchase and Loan Agreement (the “Loan Agreement”) with the Corporation and the purchaser of the Series 2015 Bonds (the “Purchaser”) under the terms of which the County agrees to loan the (the “Project”) proceeds of the Series 2015 Bonds to the Corporation in order to (i) refund the Series 2007 Bonds, (ii) pay the termination fee on the interest rate swap related to the Series 2007 Bonds, (iii) pay the outstanding principal of the loan due from the Corporation to Farmers Bank & Capital Trust Co. related to the Project, and (iv) pay costs of issuance of the Series 2015 Bonds (collectively, the “Uses of Proceeds”), and the Corporation agrees to pay to the County specified payments which will be sufficient to retire the Series 2015 Bonds, including the payment of principal of and the interest on the Series 2015 Bonds as the same become due and the payment of administrative expenses in connection with the Series 2015 Bonds; provided that the proceeds of the Dedicated Tax shall be applied as credits against the Corporation’s payment obligations under the Loan Agreement; and

WHEREAS, under the Act the refinancing of the expansion and construction of the Grand Theatre, being a fine arts center useful to the promotion of tourism and located in the central business district of Frankfort, a second class city, is authorized and constitutes a public purpose, and the County has agreed and is willing, pursuant to the Act, to issue the Series 2015 Bonds hereinafter authorized to finance the Uses of Proceeds upon terms which are set forth in the Loan Agreement; and

WHEREAS, the Fiscal Court being sufficiently advised, it is in the best interests of both the Corporation and the citizens of the County that the Series 2015 Bonds be authorized, sold and issued and that the Loan Agreement be entered into; and

WHEREAS, the Series 2015 Bonds will be issued under the Loan Agreement, under the terms of which the County will assign and pledge to the Purchaser all right, title and interest of the County in the Loan Agreement (except certain rights reserved by the County) and all amounts on deposit from time to time in the Refunding Fund (as such term is defined in the Loan Agreement), but excluding any amounts on deposit in the Rebate Fund (defined in the Loan Agreement), as security for the payment of the principal of and the interest on the Series 2015 Bonds; and

WHEREAS, it is also proposed that in order (1) to facilitate the marketing of the Series 2015 Bonds, the County should authorize the use and distribution of a preliminary and a final Limited Private Placement Memorandum (together the “Limited Private Placement Memorandum”), and (ii) to carry out the advertised competitive sale of the Series 2015 Bonds, the County should authorize the publication of a Notice of Solicitation of Bids for the Series 2015 Bonds (the “Notice of Bid Solicitation”) and the use and distribution of an Official Terms

and Conditions of Bond Sale (the "Official Sale Terms") and an Official Bid Form (the "Bid Form"); and

WHEREAS, there have been presented to the County proposed forms of the Loan Agreement, the Limited Private Placement Memorandum, the Notice of Bid Solicitation, the Official Sale Terms, the Bid Form and the Series 2015 Bonds (as set forth in the Loan Agreement); and

WHEREAS, it appears that each of the documents hereinabove referred to is in appropriate form, subject to changes as hereinafter provided, and is an appropriate document for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF FRANKLIN COUNTY, KENTUCKY, AS FOLLOWS:

Section 1. Authority for Ordinance. For the purposes set forth in the preamble, this Ordinance is adopted pursuant to the provisions of the Act.

Section 2. Findings. It is hereby found, determined and declared that:

(a) the facts and recitations set out in the preamble of this Ordinance are adopted and incorporated as a part hereof and the terms defined in said preamble shall have the same meanings when used herein;

(b) the refinancing of the costs of the Project through the refunding of the Series 2007 Bonds promotes valid public purposes under the Act, and the Project constitutes and is hereby declared to be a public project within the meaning of KRS Chapter 58; and

(c) the Series 2015 Bonds will constitute only special and limited obligations of the County and will be payable solely from the agreements and revenues assigned and pledged to the payment thereof and will not constitute a general obligation or a pledge of the faith and credit of the County and will not directly, indirectly or contingently obligate the County to levy or to pledge any form of taxation whatever for the payment thereof, other than the Dedicated Tax.

Section 3. Authorization of Refunding of the Series 2007 Bonds. The refunding of the Series 2007 Bonds as set out in the Loan Agreement and this Ordinance is hereby authorized and ordered.

Section 4. Authorization of Series 2015 Bonds. The issuance of the Series 2015 Bonds in an amount not to exceed \$2,700,000 is hereby authorized and ordered. The Series 2015 Bonds shall be dated, mature (not later than November 15, 2032), bear interest, be subject to redemption prior to maturity and be payable as set forth in the Loan Agreement, provided that no interest rate on the Series 2015 Bonds shall exceed 12% per annum. The Series 2015 Bonds shall be issued as registered Series 2015 Bonds without coupons in various denominations with such rights of exchangeability and transfer of registration and shall be in the form and executed and authenticated in the manner provided in the Loan Agreement. The term "Series 2015

Bonds” as used herein shall be deemed to mean and include the Series 2015 Bonds as initially issued and delivered and Series 2015 Bonds issued in exchange therefor or in exchange for the Series 2015 Bonds previously issued.

Any Series 2015 Bonds hereafter issued in exchange or for transfer of registration for the Series 2015 Bonds initially issued and delivered pursuant to the Loan Agreement shall be executed in accordance with the provisions of the Loan Agreement, and such execution by the County Judge/Executive, attested by the Fiscal Court Clerk, whether present or future, is hereby authorized.

Section 5. Authorization of Loan Agreement. The execution, delivery and performance of the Loan Agreement shall be and the same are hereby authorized. The Loan Agreement shall be in substantially the form submitted to the County herewith, subject to such changes, insertions or omissions as may be approved by the County Judge/Executive, with the advice of the Corporation, and the execution of the Loan Agreement by the County Judge/Executive as hereby authorized shall be conclusive evidence of any such approval.

Section 6. Approval of Sale Documents. Each of the County Judge/Executive, the Fiscal Court Clerk and the County Treasurer is authorized to establish a time for the receipt of bids for the Series 2015 Bonds and to arrange for the publication in the State Journal and The Courier-Journal of the Notice of Bid Solicitation, which is hereby approved in substantially the form submitted herewith, at least 7 but no more than 21 days prior to the sale time. In connection with the sale of the Series 2015 Bonds, the use and distribution of the Limited Private Placement Memorandum, in substantially the form submitted to the County herewith, are hereby approved, subject to such changes, insertions or omissions as may be approved by the Corporation prior to the delivery thereof, provided that the County assumes no responsibility for any of the information therein contained except those sections that describe the County and the Dedicated Tax. The preliminary Limited Private Placement Memorandum may be declared to be in form “deemed final” for purposes of, and to the extent necessary under, SEC Rule 15c2-12(b)(1), by appropriate action of the County Judge/Executive or the County Treasurer.

Section 7. Initial Rate; Execution of Series 2015 Bonds. The Series 2015 Bonds shall be executed in the manner provided in the Loan Agreement and shall be delivered to the purchaser or purchasers thereof with instructions to that effect as provided in the Loan Agreement. Execution of the Series 2015 Bonds as provided herein shall constitute the authorization by the County of the initial interest rate of the Series 2015 Bonds as described therein.

Section 8. Tax Documents. Either of the County Judge/Executive and the County Treasurer is hereby authorized (a) to sign and file or cause to be filed a completed I.R.S. Form 8038, “Information Return for Private Activity Bond Issues,” as required by Section 149(e) of the Code, (b) to execute a non-arbitrage certification in order to comply with Section 148 of the Code and the applicable Income Tax Regulations thereunder, and (c) to execute and deliver other tax-related certificates and documents that may be required by Bond Counsel, Stites & Harbison, PLLC.

Section 9. No Personal Liability. No stipulation, obligation or agreement herein contained or contained in the Loan Agreement shall be deemed to be a stipulation, obligation or agreement of any officer, agent or employee of the County in his/her individual capacity, and no such officer, director, agent or employee shall be personally liable on the Series 2015 Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 10. General Authority. From and after the execution and delivery of the documents hereinabove authorized, the County Judge/Executive, Fiscal Court Clerk, County Treasurer and other proper officers, agents and employees of the County, and each of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the aforesaid documents as executed and are further authorized and directed to take any and all further actions and execute and deliver any and all documents and certificates as may be necessary or desirable in connection with the issuance of the Series 2015 Bonds, the execution and delivery of the Loan Agreement, and to document compliance with the applicable provisions of the Code. Specifically, but not by way of limitation, the County Judge/Executive, Fiscal Court Clerk and County Treasurer, and each of them, are hereby empowered and authorized (i) to approve the final terms, maturities, interest rate determination procedures and financial structure of the Series 2015 Bonds, all as recommended by the Corporation, and (ii) to effectuate the sale of the Series 2015 Bonds.

Section 11. Dedicated Tax Collections. The Dedicated Tax is pledged to the retirement of the Series 2015 Bonds and, as set out in the Tax Ordinance, the County Treasurer is authorized and directed to adopt appropriate procedures for the collection and enforcement of the Dedicated Tax and the disbursement of the Dedicated Tax collections in accordance with the provisions of the Loan Agreement, after deducting the County's normal and customary fees and expenses. The initial collection of the Dedicated Tax shall commence the end of January, 2016 for the calendar quarter ended December 31, 2015, and thereafter the collection shall be the end of each April (for the calendar quarter from January 1 – March 31), July (for the calendar quarter from April 1 – June 30), October (for the calendar quarter from July 1 – September 30) and January (for the calendar quarter from October 1 – December 31) thereafter.

Section 12. Actions Approved and Confirmed. All acts and doings of the officers of the County which are in conformity with the purposes and intent of this Ordinance and in the furtherance of the issuance of the Series 2015 Bonds, the execution, delivery and performance of the Loan Agreement and the imposition and collection of the Dedicated Tax, shall be, and the same hereby are, in all respects approved and confirmed.

Section 13. Severability of Invalid Provisions. If any one or more of the sections, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such sections, agreements or provisions shall be null and void and shall be deemed separable from the remaining sections, agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof or of the Series 2015 Bonds authorized hereunder.

Section 14. Effective Date. This Ordinance shall take effect and be in force immediately after its adoption as provided by law. The summary of this Ordinance read at the meetings of the Fiscal Court described below is approved for purposes of such readings and publication as provided by law, and the accuracy of such summary is hereby certified.

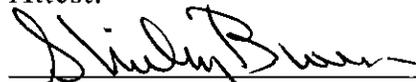
FIRST READING: October 16, 2015.

FINAL READING AND PASSAGE: October 27, 2015.

FRANKLIN COUNTY, KENTUCKY

By:   
County Judge/Executive

Attest:

  
Fiscal Court Clerk