

EXHIBIT A**SUBLEASE AND MANAGEMENT AGREEMENT**

THIS SUBLEASE AND MANAGEMENT AGREEMENT ("Agreement") is made and entered into this 7th day of March, 2002, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** ("Landlord" or "Owner"), an urban county government of the Commonwealth of Kentucky, 200 East Main Street, Lexington, Kentucky 40507 and **LEXINGTON ARTS AND CULTURAL COUNCIL, INC.** ("Tenant" or "Manager"), a Kentucky nonprofit corporation, 161 North Mill Street, Lexington, Kentucky 40507.

RECITALS:

WHEREAS, Owner leases the land with improvements located at 141-143 East Main Street, Lexington, Kentucky (hereinafter the "Downtown Arts Center"), from the Commonwealth of Kentucky, which Owner is renovating and intends to furnish and equip as a contemporary community theater with approximately 250 seats and gallery spaces with areas for classrooms, studios and offices as well as a café and related theatre support spaces. The Downtown Arts Center is referred to herein as the "Center" or the "Premises" and is more particularly described in Exhibit "A", which is attached hereto.

WHEREAS, Manager desires to manage and operate a portion of the Center, specifically excluding the private gallery space and the café area, and Owner desires that the Center be managed and operated by Manager on the terms set out herein.

WHEREAS, in order to facilitate the effective management of the Center and as a part of the inducement for Manager to manage the Center, Owner desires to let and sublease the Center, excluding the private gallery space and the café area, to Manager and Manager desires to rent and sublet the Center, excluding the private gallery space and the café area, from Owner.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, Owner and Manager agree as follows:

1. **Lease.** For the term, at the rent and otherwise upon the terms, conditions and provisions contained herein, Landlord does hereby let and sublease to Tenant and Tenant does hereby rent and sublease from Landlord the property known as the Downtown Arts Center. It is expressly agreed that the private gallery space and café area, which are more particularly described in Exhibit "B", which is attached hereto, are excluded from this Lease and Management Agreement. Unless expressly stated otherwise, all references to the "Downtown Arts Center" or the "Center" in this Agreement exclude the private gallery space and café area.

2. **Management Services.** Owner hereby engages Manager as the exclusive Manager of the Center during the Management Term described herein. In the performance of its duties as Manager of the Center, Manager shall have exclusive possession of the Premises and shall act solely as an independent contractor. Nothing

herein shall constitute or be construed to be or create a partnership or joint venture or agency relationship between Owner and Manager. All debts and liabilities to third persons incurred by Manager in the ordinary course and scope of its operation and management of the Center shall be the sole responsibility of Manager and Owner shall not be liable for any such obligations, except as set forth to the contrary herein. Manager agrees to operate the Center under the name "Downtown Arts Center".

3. **Lease and Management Term.**

A. **Term.** The terms of the Lease and Management Agreement shall be concurrent. There shall be eleven (11) terms. The initial term of this Agreement shall be for a period of approximately five (5) months beginning at 12:01 a.m. on a day (the "Commencement Date") specified by the Owner in a written notice to the Manager and ending at 11:59 p.m. on June 30, 2002. The second and each subsequent term of the agreement shall be for a period of one (1) year each, commencing at 12:01 a.m. on July 1 and ending at 11:59 p.m. on June 30 of each year.

ENDS 6/30/2012

B. **Renewal and Termination.** This Agreement shall automatically renew for each term of the Agreement unless either party gives thirty (30) days prior written notice to the other party of their intent not to renew. In addition, the parties acknowledge that the continuation and renewal of this Agreement is subject to the appropriation of adequate funds by Owner's legislative body, the Urban County Council, in each fiscal year. If, in the exercise of its good faith judgment, either party determines that the funds appropriated in any given fiscal year by the Urban County Council are not adequate in light of that party's obligations hereunder, then said party may terminate this Agreement by providing written notice of termination within (30) days of the date that the Urban County Council makes such an appropriation. Termination of this Agreement pursuant to this paragraph shall be effective no earlier than thirty (30) days from the date upon which notice of the same is given in accordance with paragraph 25 below.

C. **Commencement Date.** The Owner shall deliver written notice of the Commencement Date to the Manager at least ten (10) days prior to the Commencement Date. On or prior to the Commencement Date the Owner shall deliver to the Manager exclusive possession of the Premises, which shall be substantially completed, along with a Certificate of Occupancy and all other governmental approvals.

4. **Management and Operation of the Center.**

A. **Use of Premises.** Manager shall use and occupy the Premises for the purpose of operating a first class contemporary community theater and public gallery spaces with classrooms, studios and offices. The Center may be used for a wide variety of visual and performing arts functions and activities including, but not limited to, meetings and conferences (which may or may not be related to the visual or performing arts), the sale of items displayed in the public gallery spaces, the sale of tickets to Center events and functions, rental of Center facilities, and other uses consistent with a multi-function visual and performing arts center.

Manager shall be responsible for the day-to-day operation of the Center, including, but not limited to: (a) coordinating and selecting exhibits to display in the public gallery space; (b) coordinating and selecting programming for theater space; (c) coordinating and selecting programming for any recurring uses of the Center (such as Art a la Carte); and, (d) subleasing space in the Center. Manager shall be guided in its management decisions by the policies and procedures adopted by its Board of Directors.

Manager may also use the Premises for any other purpose that the Mayor or CAO of the Lexington-Fayette Urban County Government, or their designated representative, may approve. Manager must obtain the written consent of the Mayor or CAO of the Lexington-Fayette Urban County Government, or their designated representative, to the terms and conditions of any sublease for a period of one year or longer, which consent will not be unreasonably withheld.

Manager shall not do or suffer anything to be done on the Premises that would result in an increase in the property and casualty insurance premiums paid by Owner in respect of the Premises.

B. Center Employees. All of the employees participating in the management or operation of the Center shall be employees of the Manager. Manager shall have the right to hire, discharge and supervise the work of all of its employees without restriction. Manager agrees to comply, and to cause its employees, agents, customers, visitors, and invitees to comply with all applicable laws, statutes, ordinances, rules, orders and regulations of the federal, state and local governments, and agencies thereof, having jurisdiction with respect to the Premises, and of all other similar legally constituted authorities.

Manager shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, disability, sex, or age, shall promote equal employment and shall cause each of its subcontracting agencies to do so. This program of equal employment shall apply to every aspect of Manager's policies and practices.

Manager shall adopt a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure that provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where Manager conducts business. The policy shall be submitted to Owner for review within thirty (30) days of the execution of this Agreement.

C. Hours of Business. Manager will conduct its business in the Premises on days and during hours generally and customarily observed in the art center business in the Commonwealth of Kentucky, and at such other times as are from time to time determined by Manager acting in good faith for the best interests of the Center.

D. **Alcoholic Beverages.** Manager may allow the possession, sale and consumption of alcoholic beverages (including malt beverages, distilled spirits and wine) in the Center; provided, however, that Manager shall comply, and cause its employees, tenants, agents, customers, visitors, and invitees to comply with all applicable state and local alcoholic beverage control statutes, ordinances, and regulations.

If Manager decides to allow the possession, sale and consumption of alcoholic beverages (including malt beverages, distilled spirits and wine) in the Center then it shall give the operator of the café (located on the first floor of the Center) the right to negotiate to provide catering services (including the provision of food and alcoholic beverages) during all events held at the Center, whether such events are conducted by the Manager or by other users or tenants of the Center. The opportunity to provide such services is contingent upon successful negotiations between the café operator and the Manager, users or tenants of the Center, and the parties shall act in good faith when negotiating for such services. The Manager, users and tenants of the Center are not obligated to hire the café operator to provide such catering services and the café operator is not obligated to provide such catering services. Manager shall include this right of good faith negotiation in all rental or lease agreements for the Center.

5. **Fees and Payments.**

A. **Collection and Remittance.** Manager shall, on a monthly or more frequent basis, collect all revenues generated by the operation of the Center, including all rental generated from the sublease or per use rental of the facility, and remit them to Owner by depositing them in a bank account or account designated by Owner. All such funds collected by Manager shall be the property of Owner. It is understood by the parties that if Manager finds it necessary to institute legal proceedings to collect rent payments from tenants or users of the Premises, it shall do so in its own name and may first reduce from the funds recovered its reasonable and necessary expenses incurred, including reasonable attorneys fees, during the collection process.

B. **Reports.** Manager shall deliver to Owner's Division of Accounting, within twenty (20) days after the end of the initial five-month term and after the end of each quarter of each subsequent term, a written report including the following information for the preceding quarter:

- (1) A report on all revenue or "gross receipts" generated by Manager for use of the premises; and
- (2) A report identifying the division of "gross receipts" among the Center tenants.

Additionally, in each calendar year during the term of this Agreement (commencing in calendar year 2002 for Fiscal Year 2003), the Manager shall participate in Owner's annual budget process as if it were an "outside agency." Manager's participation shall include the submission of a completed outside agency budget application packet, attending budget

meetings, and otherwise providing Owner with all necessary information regarding the Management of the premises.

C. **Compensation.** As compensation for Manager's services, Manager shall be entitled to receive the following:

(1) **Management Fee.** For the initial five (5) month term of the Agreement, Owner shall pay Manager a fee in the sum of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00), which sum shall be due and payable on or before the 1st day of March, 2002. For the second and each subsequent term of the Agreement, Owner shall pay Manager a fee in the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00). Payment shall be made in twelve (12) monthly installments on the first day of each calendar month of the Management Term.

The parties anticipate that the actual costs of managing the premises will change during the term of this Agreement. Therefore, the parties agree to reconsider the Management Fee on an annual basis during Owner's budget process and, subject to the Urban County Council's appropriation of sufficient funds, to amend this Agreement to reflect a fair, reasonable and adequate compensation for such management services. Nothing contained herein shall in any way limit either party's right to elect not to renew or to terminate in accordance with the provisions of paragraph 3(b), above.

(2) **Center Space.** In addition to the office space designated for Manager's use in performing the services required by this Agreement, Manager may occupy up to one thousand (1,000) square feet of space in the Center for a rental of One Dollar (\$1.00) per year for each and every year during the term of this Agreement.

(3) **Fee Discounts.** Manager and all member groups of the Manager shall be entitled to use the Center at reduced fee rates for both "per use" rentals and long term rentals of office space. In no event shall the fees paid by Manager or the members of the Lexington Arts and Cultural Council be reduced by more than eighty-five percent (85%) of the fees charged to the general public.

6. **Utilities and Expenses.**

A. Owner shall provide, at its expense, utilities (including heat, water, gas, electricity, and sewer user services), cleaning or janitorial services, security services, pest extermination, trash removal, fire alarm, and elevator maintenance service for the Premises.

B. Owner shall provide, at its expense, but in an amount not exceeding Seven Thousand Five Hundred Dollars (\$7,500.00), a telephone system for use by Manager in the management and operation of the Premises. The telephone system purchased and installed by Owner shall belong to and remain the property of Owner and shall remain on the Premises.

C. Manager shall pay all telephone or other telecommunication charges for telephones and telecommunication devices and for all expenses incurred for office supplies (including paper, pens, poster board) to be used by Manager in the management and operation of the Premises, Upon termination of the Agreement, any and all supplies purchased by Manager for operation of the Center shall belong to Owner and shall remain on the Premises.

D. Manager shall provide, at its expense, all equipment that its deems reasonably necessary to operate the Center, including a copier machine, a facsimile machine, and at least three (3) personal computers. All such equipment purchased by Manager for use in the management and operation of the Center shall belong to and remain the Property of Owner and shall remain on the Premises.

E. Owner shall be responsible for payment of all *ad valorem* taxes, if any, assessed against the Premises. Manager and its tenants or sublessees shall be responsible for any taxes assessed against personality or chattel owned by them and kept on the Premises.

7. **Eminent Domain.** If twenty-five percent (25%) or more of the Premises shall be taken by or pursuant to governmental authority or through exercise of the right of eminent domain or sold under threat thereof, then either party may terminate this Agreement by giving sixty (60) days written notice of termination to the other party. All obligations of Owner and Manager otherwise accruing after the date of such termination shall be discharged. All proceeds of any condemnation award or sale made under threat of condemnation shall be the property of Owner. Notwithstanding the foregoing, the Manager may assert any claims it has against the condemning authority for any taking of the Manager's personal property that is not a fixture and that is removable from the Premises without damage to the Premises.

8. **Assignment.** Neither this Agreement nor any interest of Manager herein shall be assigned, mortgaged, pledged, encumbered, or in any manner (by operation of law or otherwise) transferred, in whole or in part, by the Manager.

9. **Damage and Destruction.** In the event of the destruction of or damage to the Premises, partial or otherwise, other than ordinary wear and tear, Owner shall have the option to terminate this Agreement if the restoration or repairs cannot be completed within sixty (60) days from the date of destruction or if such restoration will cost in excess of \$250,000.00. Owner shall give Manager written notice of its intent to restore or terminate within thirty (30) days from the date of destruction of the Premises.

10. **Repairs and Maintenance.**

A. Owner shall be responsible for all necessary repairs to and maintenance of the Premises of whatever kind and shall maintain the Premises in a neat and clean condition.

B. Manager and shall not suffer or permit to exist any nuisance upon the Premises and shall notify Owner immediately if any cleaning or repairs are needed or if any extraordinary maintenance service should be performed.

C. If any damage, destruction or waste is caused, suffered or permitted on the Premises by Manager, its agents, officers, employees or invitees, then Manager shall reimburse Owner to the actual and reasonable costs incurred by Owner to repair or restore the Premises. Manager shall make payment to Owner within fifteen (15) days of receiving a written invoice or statement of costs from Owner.

11. **Liens.** Manager shall not do or suffer anything to be done whereby Owner's interest in the Premises or any part or the whole of the Premises may be encumbered by any mechanic's, materialmen's or other lien and no such attempted or filed lien shall be valid. Manager shall, whenever and as often as any mechanic's or materialmen's lien is filed against Owner's interest or property which purports to attach thereto and to be for labor performed or material furnished to Manager, give Owner immediate written notice thereof and discharge the same of record within ten (10) days after the date of filing, or contest the same in good faith and indemnify and hold harmless against any loss, cost, damage or expense (including reasonable attorney fees) resulting therefrom and if Manager does not remove the lien within fifteen (15) days, Manager will substitute a Bond for the property upon which the lien is asserted. Notice is hereby given that Owner shall not be liable for any labor or materials furnished to Manager and that no mechanic's or other lien for any such labor or materials shall attach to or affect the estate of interest of the Owner in and to the Premises. Notwithstanding the provisions above, the Owner shall have the right, but not the obligation, to pay and remove any such lien and Manager shall reimburse the Owner for the cost of all expenses incurred in connection therewith.

12. **Inspection.** Owner and the agents of Owner shall have the right to enter upon and inspect the Premises (a) at all times during business hours of Manager on the Premises, (b) at any other time upon twenty-four hour prior written notice to Manager, and (c) at any time in the event of an emergency, for the purpose of examining the same for compliance with the terms of this Agreement, or to make repairs to the Premises or for any other valid purpose.

13. **Alterations.** Manager agrees that it will make no alterations to the Premises which are structural, substantial or permanent in nature, nor post or attach or affix to the exterior or interior of the Premises air-conditioners or other objects (other than the banners that will be attached to the front of the Premises), nor remove any fixtures without the written consent of the Mayor or CAO of the Lexington-Fayette Urban County Government or their designated representative having been first obtained on each occasion thereof, said consent not to be unreasonably withheld. Manager shall have the right to install its fixtures and equipment in, upon and about the Premises in the place of Owner's equipment and fixtures; provided, however, that Manager shall pay any and all taxes on same and shall remove the same on or before the expiration of this Agreement, and if so requested by Owner, promptly after any termination of this Agreement; and provided, further, that Manager shall promptly thereafter repair all damage caused to the Premises

by reason of such installation or removal and return the Owner's equipment to its original position. In the event either party elects not to renew this Agreement for an additional term or terms, Owner may purchase Manager's fixtures and equipment at their then fair market value.

Owner may from time to time make repairs, replacements, changes or additions to the structure, systems, facilities and equipment in the Premises where necessary to serve the Premises provided that in doing so Owner shall not disturb or interfere with Manager's use of the Premises any more than is reasonably necessary in the circumstances and shall repair any damage to the Premises caused thereby.

14. Remedies Upon Default.

A. If either party shall at any time be in default in the performance of any of the covenants, terms, conditions, provisions, rules and regulations of this Agreement, and shall fail to remedy such default within ten (10) days after receipt of notice thereof from the other party, unless such default cannot, with due diligence on the part of the defaulting party, be cured within said ten (10) day period, and the defaulting party uses its best efforts to proceed to cure same, and thereafter continuously and diligently prosecutes such cure, then the other party, in addition to all other remedies given to that party by law or in equity, may by written notice to the defaulting party immediately terminate this Agreement.

B. If the Manager commits waste upon the Premises, or upon Manager's vacating or abandoning the Premises and failing to remedy such default within five (5) days after written notice thereof from Owner, or if Manager shall be adjudged bankrupt or shall make an assignment for the benefit of creditors, or if a receiver of any property of Manager in or upon the Premises be appointed in any action, suit or proceeding by or against Manager and not removed within thirty (30) days after appointment, then Owner, in addition to all other remedies given to Owner by law or in equity, may by written notice to Manager immediately terminate this Agreement, or without terminating this Agreement, may immediately reenter and possess the Premises by summary proceedings or otherwise, and in any event may dispossess the Manager.

C. All remedies available under this Agreement, at law or in equity, are cumulative and concurrent. No termination of this Agreement nor any taking or recovering of possession of the Premises shall deprive either party of any of its remedies or actions against the other party for any sums due hereunder, nor shall the bringing of any action for any default by the Owner be construed as a waiver of the right to obtain possession of the Premises.

D. Upon termination of this Agreement, Manager shall forthwith take the following action:

(1) Surrender and deliver to Owner the Premises; all rents, fees and revenue collected by Manager; and; all materials, supplies, keys, copies of all contracts and sublease agreements for the Premises, and such other accounting documents,

papers and other reports and records pertaining to this Agreement that Manager may possess.

(2) Assign and deliver to Owner or its designated successor Manager all contracts and sublease agreements relating to the operation, maintenance and use of the Premises.

(3) Within forty-five (45) days of termination, deliver to Owner the reports required by paragraph 5B of this Agreement for the period not covered by any previous report.

E. Within fifteen (15) days of receiving all funds identified in paragraph D(1) above and the reports identified in paragraph D(3) above, Owner shall pay to Manager any Management Fee due Manager according to paragraph 5C.

15. **Manager's Representations.** Manager represents and warrants to Owner that it has made an adequate inspection of the Premises and agrees to accept the Premises "AS IS, WHERE IS" with no representation having been made by Owner whatsoever as to the condition of the Premises, except as expressly stated otherwise herein, and except that Owner is renovating and remodeling the Premises and, with the exception of "fit up" for the Third and Fourth Floors, has agreed to complete said remodeling and renovation prior to the Commencement Date.

16. **Other Instruments.** Manager agrees to execute and deliver to Owner, within five (5) days after written request by Owner made therefor, (i) a subordination in recordable form of this Agreement to the mortgage of any governmental or institutional Lender to Owner or agent of the Owner, (ii) to provide any such Lender, or Owner, from time to time with written notice confirming the terms of this Agreement, and whether or not any default by Manager or Owner exists hereunder, and (iii) such other instruments in recordable form setting forth such terms of this Agreement as are necessary to provide any potential purchaser of all or any portion of the Premises or any Lender to Owner with notice of this Agreement and the status hereof.

17. **Subordination, Attornment and Mortgagee Protection.** Manager agrees that this Agreement shall be subject and subordinate to any and all Mortgages now or hereafter in existence against the Premises, so long as the holder of such Mortgage or Mortgages agrees in writing that as long as a Manager is not in default under this Agreement that the holder of such Mortgage and their successors and assigns will not interfere with Manager's or any subtenant's use and occupancy of the Premises. If any Lender initiates foreclosure proceedings, Manager agrees, upon written request of any such Lender or any purchaser at foreclosure sale, as the case may be, to attorn and pay gross receipts to such party and to execute and deliver any instruments necessary or appropriate to evidence or effectuate such attornment and non-disturbance. Nothing contained in the foregoing shall affect any prior rights of any Lender with respect to the proceeds of any condemnation or eminent domain proceeding (or deed or other instrument in lieu thereof) or of any fire or casualty insurance policies affecting the Premises, or impose upon any

Lender any liability for (i) the erection or completion or any alterations or improvements to the Premises, (ii) any damage or destruction to the building or to the Premises by fire or other casualty, any repairs, or restorations, (iii) any default by Owner under the Agreement (occurring prior to any date upon which such Lender shall have become Manager's Owner), or any credits, offsets or claims against Owner or against the revenues generated by use or rental of the Premises as a result of any acts or omissions of Owner (committed or omitted prior to such date).

"Mortgage" shall mean all mortgages, deeds of trust, and other such encumbrances now, heretofore or hereafter placed upon the Premises, or any part thereof, and all renewals, modifications, consolidations, replacements or extensions thereof, and all indebtedness now or hereafter secured thereby and all interest thereon.

"Lender" shall mean the holder of any Mortgage at the time in question, whether or not such holder was a Lender to Owner or otherwise acquired the Mortgage.

18. **Surrender**. Manager shall, concurrently with the expiration of this Agreement or the termination thereof for any reason, peaceably surrender the Premises to Owner in good order, condition and repair.

19. **Continuous Operation**. Manager acknowledges that its continued management and operation of the Premises and the regular conduct of business on the Premises are of utmost importance to Owner. Manager therefore covenants and agrees that throughout the term of this Agreement it will manage the Premises and operate a first class art center, as set out herein, and comply strictly with the provisions hereof. Manager acknowledges that Owner is executing this Agreement in reliance upon Manager's covenant and that the same is a material element inducing Owner to execute this Agreement.

20. **Indemnity**.

A. Manager agrees to indemnify, hold harmless and defend the Owner from any and all losses or claims, of whatever kind, that arise from or are alleged to have arisen, in whole or in part, from the Manager's execution, performance or breach of this Agreement.

B. Owner agrees to indemnify, hold harmless and defend the Manager from any and all losses or claims, of whatever kind, that arise from or are alleged to have arisen, in whole or in part, from the Owner's execution, performance or breach of this Agreement.

C. The word "losses" in this paragraph 20 includes, but is not limited to, all losses, of whatever kind, resulting from hazardous substances, within the meaning of any federal, state or local law, rule, regulation or ordinance, including, but not limited to, The Comprehensive Environmental Response Compensation Act ("CERCLA") and Resource Conservation and Recovery Act ("RCRA").

21. **Insurance.** Manager shall procure and maintain at its expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Manager, its agents, representatives, employees or subcontractors.

as: A. Minimum Scope of Insurance. Coverage shall be at least as broad

- (1) Insurance Services Office Form Number GL 0002 (Ed. 1/98) covering Comprehensive General Liability and Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" from CG-0001) (Ed. 01/98).
- (2) Insurance Services Office Form Number CA 0001 (Ed. 07/97) covering Automobile Liability, Code 1 "any auto".
- (3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes.
- (4) Commercial crime.

than: B. Minimum Limits of Insurance. Manager shall maintain limits no less

- (1) General Liability: \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to this project/ location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000.00 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the Kentucky Revised Statutes.
- (4) Commercial Crime:
 - (i) Including Employee Dishonesty Coverage: \$50,000.00
 - (ii) Money and Securities In and Out: \$10,000.00 each.

C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

- (1) General Liability and Automobile Liability Coverages.
 - (a) Owner, its agents, employees and officials are to be covered as an insured respects: liability arising out of activities performed by or on behalf of the Manager; Builder's Risk; products and completed operations of the Manager; premises owned, occupied or used by the Manager; or automobiles owned, leased, hired or borrowed by the Manager.
 - (b) Manager's insurance coverage shall be primary insurance as respects Owner. Any insurance or self-insurance maintained by Owner shall be excess of the Manager's insurance and shall not contribute with it.
 - (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Owner.
 - (d) Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (2) Workers' Compensation and Employers' Liability Coverage. The insurer shall agree to waive all rights of subrogation against Owner for losses arising from work performed by the Manager for Owner.
- (3) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, to Owner's Division of Risk Management.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A VIII.

E. All insurance policies shall conform to policies and requirements of and be filed with Owner's Division of Risk Management. Any questions regarding these insurance requirements should be directed to the Division of Risk Management.

22. Force Majeure.

A. Definition: "*Force majeure*" shall mean any event or condition, not existing as of the date of signature of this Agreement, not reasonably foreseen as of such

date and not reasonably within the control of either party, which prevents in whole or in material part use of the Premises as a visual and performing arts facility or which renders such use of the Premises so difficult or costly as to be commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of *force majeure*: acts of state or governmental action, orders, legislation, regulations, restrictions, priorities, or rationing, riots, disturbance, war (declared or undeclared), strikes, lockouts, slow-downs, prolonged shortage of energy supplies, interruption of transportation, embargo, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion.

B. Notice: Upon giving three (3) days written notice to the other party, a party affected by an event of *force majeure* shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of *force majeure*. Such notice shall include a description of the nature of the event of *force majeure*, and its cause and possible consequences. The party claiming *force majeure* shall promptly notify the other party of the termination of such event.

C. Confirmation: The party invoking *force majeure* shall provide to the other party confirmation of the existence of the circumstances constituting *force majeure*. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts claimed to constitute *force majeure*.

D. Suspension of Performance: During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of *force majeure*, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

E. Termination: Should the period of *force majeure* continue for more than three (3) consecutive months, either party may terminate this Agreement without liability to the other party, except for payments due to such date, upon giving written notice to the other party.

23. Owner's Use of Premises.

A. Manager agrees that Owner shall have exclusive use of all or a portion of the Premises for any purpose at the following times:

(1) Upon seventy-five (75) days written notice, on any twelve (12) days per calendar year during the term of this Agreement (and proportionately for a fraction of a calendar year) except any Friday, Saturday or Sunday, and except on New Year's Eve and Day, Christmas Eve and Day, Thanksgiving Day, the Fourth of July, Labor Day, and Memorial Day, between the hours of 5:00 p.m. and 12:00 a.m., when the Manager does not have scheduled plans to use the Premises.

(2) Upon ten (10) days written notice, on any weekday (Monday through Friday) during each calendar year during the term of this Agreement, between the hours of 6:00 a.m. and 5:00 p.m., when the Manager does not have scheduled plans to use the Premises.

B. At the times referred to in paragraphs 23A(1) and (2) above, the Manager agrees to make the Premises and one (1) of Manager's employees available to the Owner as necessary at no additional cost to the Owner. The Manager's employee shall work under the direction of the Owner and fully cooperate with the Owner;

C. The Owner shall pay the Manager no fee for use of the Premises at any of the times set forth in paragraph 23A above.

D. At all times referred to in this paragraph 23 when the Owner is using the Premises, the Owner shall include the Manager as an insured under the general liability coverages of the Owner's self-insurance policy, which coverage shall be excess of the general liability coverage the Manager is required to provide in paragraph 21B(1) above or in excess of any other good, valid and collectible insurance which the Manager has in force. Owner's insurance, as set forth in this paragraph, shall not contribute with Manager's insurance.

24. **Waiver.** The failure on the part of either party to insist in any instance upon a strict observance by the other of any provision of this Agreement shall not be construed as a waiver of that or any other provision of this Agreement, nor shall it diminish the right of either party to demand of the other compliance therewith on any other occasion.

25. **Notice.** All notices given hereunder shall be sufficient if delivered in writing or sent by registered or certified United States mail to the following:

TO MANAGER: Lexington Arts and Cultural Council, Inc.
161 North Mill Street
Lexington, Kentucky 40507
Attention: Executive Director

TO OWNER: Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attention: Chief Administrative Officer

A notice mailed in accordance with the provisions of this section shall be deemed to have been given when mailed. Either party may change its address for the purpose of this section by giving notice in writing to the other party of such change in accordance with this section.

26. **Successors and Assigns.** The covenants, conditions and agreements made and entered into by the parties hereto are declared and agreed to be binding upon

and to inure to the benefit of their respective heirs, executors, administrators, successors and permitted assigns.

27. **Pronouns.** As used herein, when the sense requires, pronouns in any gender shall include any other gender, pronouns in the singular shall include the plural, and pronouns in the plural shall include the singular.

28. **Captions.** The captions to the sections of this Agreement are inserted for convenience only and shall be ignored in interpreting its provisions.

29. **Governing Law.** This Agreement shall be governed by and be construed in accordance with the laws of the Commonwealth of Kentucky.

30. **Partial Invalidity.** If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and such remaining terms, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

31. **Entirety of the Agreement.** This instrument contains the final, complete and exclusive agreement between the parties, and no statements, promises or inducements made by any party hereto, or by an agent of any party hereto, which is not contained in this Agreement shall be valid or binding; and no modification, variation or amendment of this Agreement shall be of any force unless such modification, variation or amendment is in writing and has been signed by all the then parties to this Agreement.

IN WITNESS WHEREOF, witness the signatures of the parties hereto effective as of the 7th day of March, 2002.

OWNER:

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: *Pam Miller*
PAM MILLER, MAYOR

MANAGER:

LEXINGTON ARTS AND CULTURAL
COUNCIL, INC.

BY: *Dee Fizdale*
DEE FIZDALE,
EXECUTIVE DIRECTOR

ATTEST:

Liz Damrell
LIZ DAMRELL, COUNCIL CLERK

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was subscribed, sworn to and acknowledged before me by Dee Fisdale as Executive Director, for and on behalf of the Lexington Arts and Cultural Council, Inc., on this the 27th day of February, 2002.

My commission expires: November 14, 2005

Genia Green
NOTARY PUBLIC, STATE AT LARGE, KY

G:ALW/agr037



GENA GREEN
Notary Public, Kentucky
State At Large
My Commission Expires
NOVEMBER 14, 2005

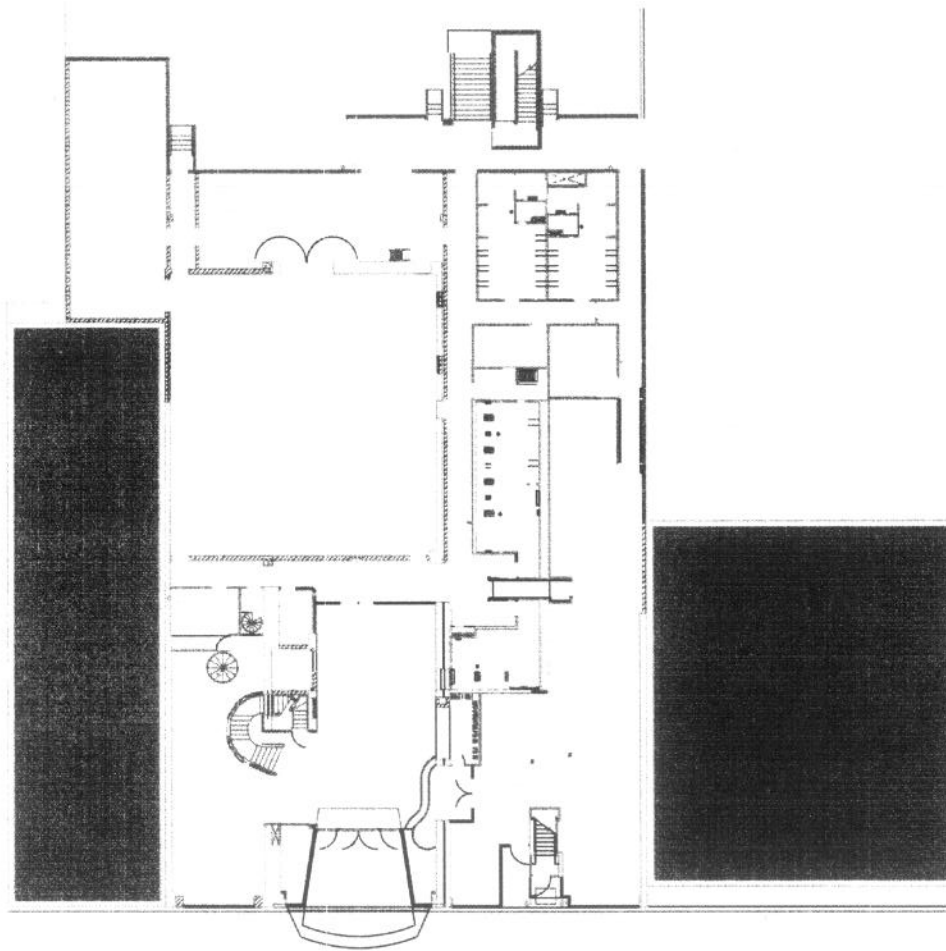


EXHIBIT A-1

FIRST FLOOR

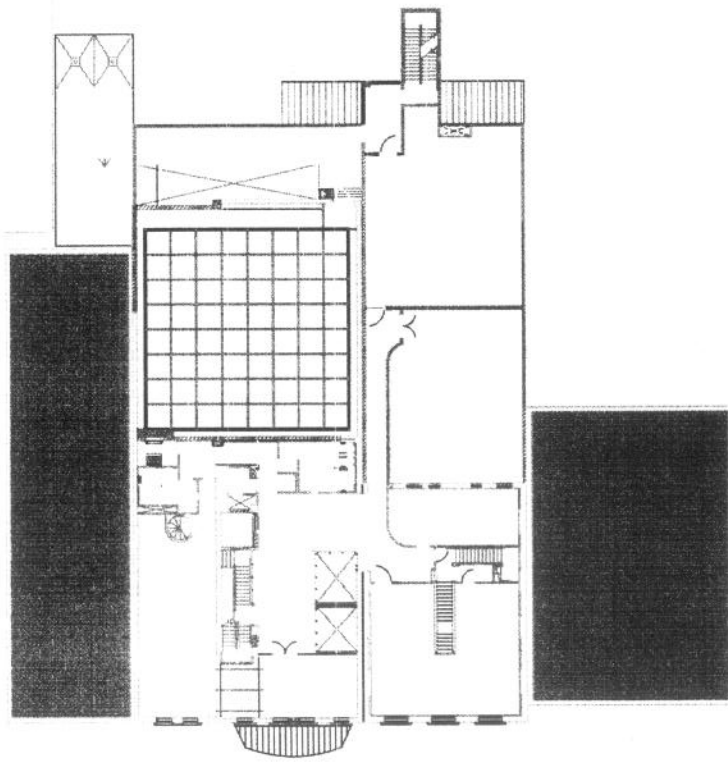
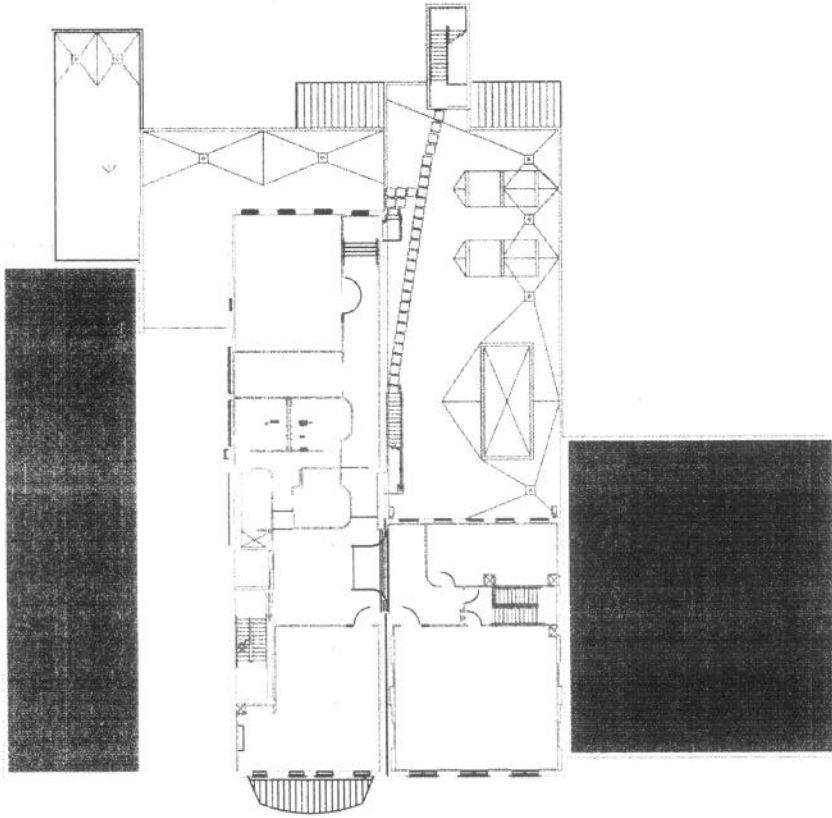


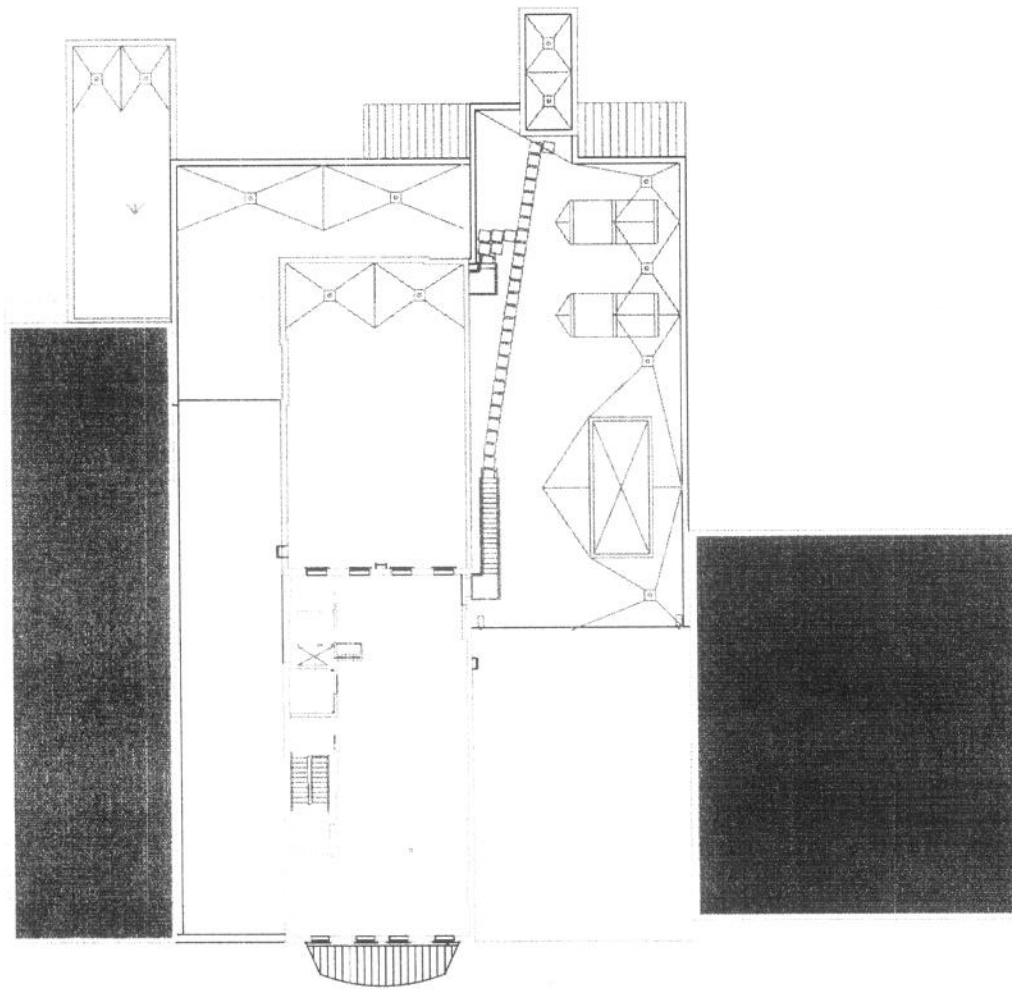
EXHIBIT A-2

SECOND FLOOR



**Third Floor
Downtown Arts Center**

EXHIBIT A-3



Fourth Floor Downtown Arts Center

EXHIBIT A-4

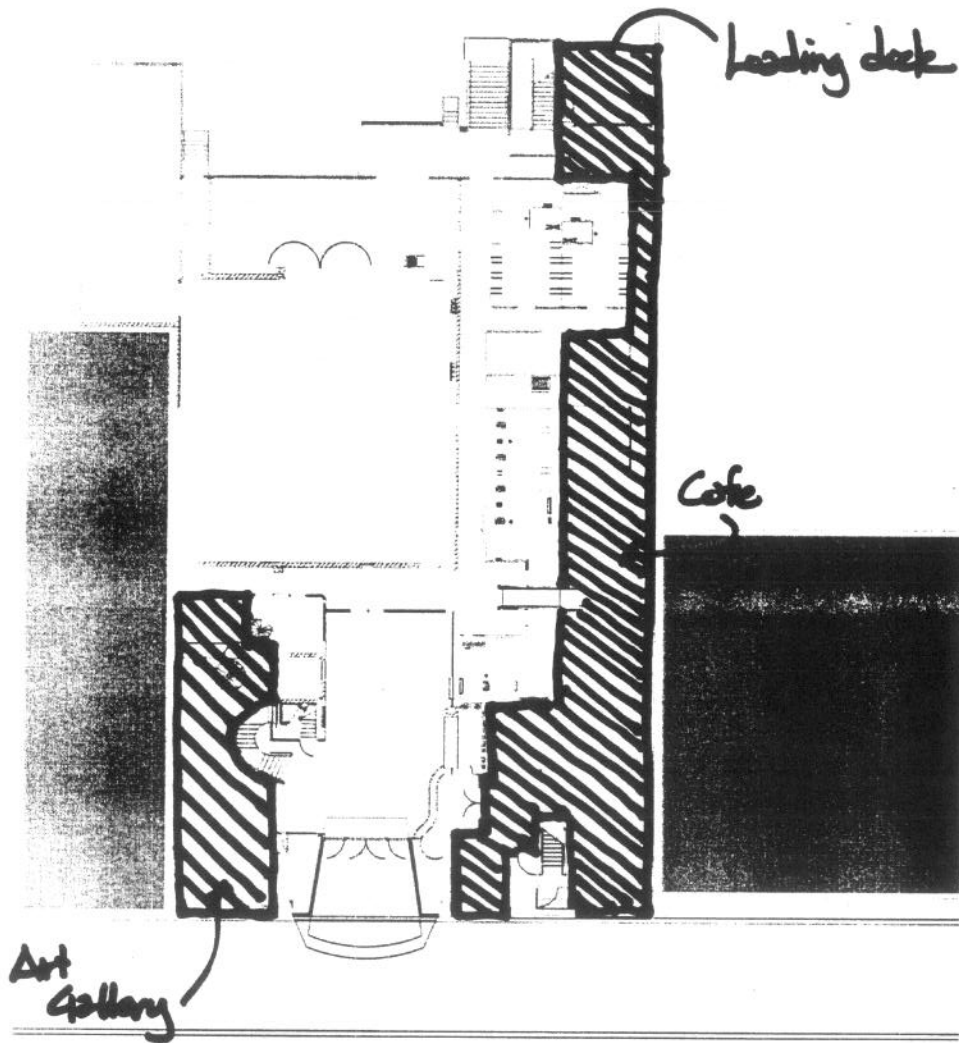


EXHIBIT B

FIRST FLOOR