

EXHIBIT A

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into this 1st day of December, 2006, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** ("Owner") and **KENTUCKY THEATER MANAGEMENT GROUP, INC.** ("Manager").

RECITALS:

Owner leases the land with improvements located at 212 East Main Street, Lexington, Kentucky (hereinafter the "Kentucky Theater" and at 218 East Main Street, Lexington Kentucky (hereinafter the "State Theater"), from the Lexington-Fayette Urban County Government Public Facilities Corporation, upon which Owner has furnished and equipped two first class theaters. The Premises are commonly known as and were previously operated as the Kentucky Theater and the State Theater (collectively referred to herein as the "Theaters" or the "Premises"). The Kentucky Theater contains a theater auditorium, lobby, stage, projection booth, and restrooms which are more particularly described on the attached Exhibit "A" as space "1". The State Theater adjoins the Kentucky Theater and contains a theater auditorium, lobby, stage and projection booth, which are more particularly described on the attached Exhibit "A" as space "3B".

Manager desires to assist Owner in furnishing, equipping and promoting the Theaters, and to manage and operate the Theaters on the terms set out herein.

Owner desires that the Theaters be operated by Manager and Manager, for a fee, wishes to manage the Theaters.

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

1. **Management Term.** The initial term of this Management Agreement shall be for a period of one (1) year beginning at 12:01 a.m. on December 1, 2006 (the "Commencement Date"). On or before the Commencement Date the Owner shall deliver to the Manager exclusive possession of the Premises. This Management Agreement shall automatically renew for two (2) additional terms of one (1) year each unless either party gives written notice to the other party of their intent not to renew the Agreement thirty (30) days prior to the termination of the each term.

2. **Operation of the Theater.**

A. Owner hereby engages Manager as the exclusive Manager of the Theaters during the Management Term described herein. In the performance of its duties as Manager of the Theaters, Manager shall have exclusive possession of the premises and shall act solely as an independent contractor with Owner. 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 Theaters shall be the sole responsibility of Manager and Owner shall not be liable for any such obligations, except as set forth to the contrary in paragraph 13 below.

B. Manager agrees to operate the Theaters under the name "Kentucky Theater."

C. Manager agrees to provide and keep in good repair, at Manager's expense, all concession operating equipment, theater projection equipment, projection sound equipment, ticketing equipment, stage sound and lighting equipment, and other trade equipment necessary to operate two first class theaters, which property shall remain the property of the Manager and may be removed from the Theater Premises by the Manager upon the Management Term's expiration or termination. Manager also may use, at Manager's own expense, any projection or concession equipment owned by Owner and located on the Premises, and Manager agrees that all of Owner's equipment shall remain on the Premises and be surrendered, in no worse than the same condition in which it was received, at any time during the Management Term, or at the Management Term's expiration or prior termination, as the case may be.

3. **Theater Employees.** All of the employees participating in the operation of the Theaters shall be employees of the Manager. Manager shall have the right to hire, discharge and supervise the work of all of its employees of the Theaters without restriction.

4. **Advertising and Promotion.** Manager agrees to use its best efforts to aggressively promote and advertise the Theaters, in a manner consistent with industry standards. Such efforts may include, but are not limited to:

A. Daily advertisement in a newspaper of general circulation or via a website listing the day's Theater schedule; and

B. Weekly newspaper advertisements in a newspaper of general circulation containing a complete listing of the Theater's schedule for the coming week.

Manager shall use its best efforts to notify the general public of films and presentations that may not be suitable for minors.

5. **Transfer of Net Receipts to Owner.** The Net Receipts, as defined herein, received by Manager in the operation of the Theaters, and sales taxes shall be deposited daily in a bank or banks selected by Owner, but may not be commingled with other funds (except for sales taxes) of Manager and shall be withdrawn only by representatives of Manager, provided such representatives shall be bonded or otherwise insured. Manager shall supply Owner with such bonds or other insurance. Manager shall transfer each calendar month to Owner all Net Receipts of the Theaters, as directed by Owner. The transfer of Net Receipts shall be accompanied by a monthly Sales Report as more fully described in paragraph 7 below. Any discrepancies between the Sales Report

and the Gross Receipts Report shall be corrected by the appropriate off-set during the following month or a reimbursement by the appropriate party.

"Net Receipts" shall be defined as "Gross Receipts" less the usual and customary fees and expenses paid for Special Events, talent, performance and artist fees and expenses. Usual and customary fees and expenses shall not include ordinary theater operating expenses.

6. Fees and Payments to Manager.

A. For each calendar month of the Management Term (and proportionately for a fraction of a calendar month), Owner shall pay to Manager as compensation for Management Services the following:

- (1) Ninety percent (90%) of Gross Receipts, excluding gross receipts from Special Events, as defined herein; and
- (2) Ninety-Five percent (95%) of Gross Receipts from Special Events, as defined herein.

"Special Events" shall mean any single performance or use of either Theater for non-traditional presentations including, but not limited to, film festivals, musical performances, live theater, lectures, and fund raising activities.

B. Payments of the fees for any calendar month shall be paid to the Manager by the 15th day of the following calendar month, subject, however, to the timely receipt of the Gross Receipts Report defined in paragraph 7C.

7. Gross Receipts.

A. On or before the tenth (10th) day of the second and each succeeding calendar month during the term of this Agreement (the "Term") and of the month following the end of the Term, Manager shall deliver to Owner a Sales Report consisting of the items identified in paragraph 7C(1) below. On or before the twentieth (20th) day of the second and each succeeding calendar month during the term of this Agreement and of the month following the end of the Term, Manager shall deliver to Owner a written monthly report certified to be correct by Manager showing the Gross Receipts in the immediately preceding month.

B. Manager shall deliver to Owner within ninety (90) days after the end of each calendar year an income statement, a balance sheet and a written report, showing the Gross Receipts and Net Receipts categorized by theater admissions, concessions (listing concession revenue from special events separately from all other concession revenue) and special events, and Management Fee for the preceding year. These reports should be prepared in accordance with generally accepted accounting principles and certified as correct by an officer of Manager.

C. The monthly Gross Receipts Report shall include the following information:

(1) Copies of all bank statements, including deposit slips and receipts; and

(2) Copies of all sales tax reports.

D. "Gross Receipts" shall be construed to include the entire amount of the sale price, whether for cash or otherwise, of all sales (including rentals) of merchandise and services and of all other receipts whatsoever, in respect of all business conducted at, in, upon or from the Premises although said orders may be filled elsewhere, including by way of illustration but not limited to, box office admission receipts and sales of any concession items, and including all sales by any subcontractor, concessionaire, licensee, vending machine, coin-operated machine or otherwise, by any person or entity, on the Premises. Gross Receipts shall not include, however, any sums shown separately from the price, which sums are collected and paid out for any sales tax or service tax or similar tax, imposition or assessment levied, imposed or assessed by any governmental authority which Manager is required to collect and remit, and does remit, to such authority; nor sales of fixtures or other capital items sold by Manager after use thereof in the conduct of Manager's business in the Premises. Each sale upon an installment or credit basis shall be included and treated as a sale for the full price in the month in which payment for such sale is received regardless of when such sale is made.

E. Full, true and accurate records from which Gross Receipts in any year of this Agreement can be readily and correctly determined shall be kept by Manager in accordance with all the requirements of this paragraph 7 and otherwise in accordance with general industry practices until at least the third anniversary of the end of this Agreement. Owner or anyone designated by Owner shall have access to such records at any and all times upon twenty-four (24) hours advance notice during business hours for the purpose of examining and reviewing all the accounting records and procedures adopted by Manager for the purpose of recording and control of all transactions affecting the determination of Gross Receipts. Manager covenants to comply with all reasonable directions issued to it by Owner from time to time respecting the accounting records and procedures to be adopted for the proper and accurate recording and control of all transactions affecting the determination of Gross Receipts. Owner shall not disclose any confidential information so obtained except to the extent that disclosure is reasonable in the conduct of Owner's business and/or the collection of amounts due to Owner, or to the extent disclosure is required by law.

F. (1) As the *bona fide* report of Gross Receipts are essential to Owner, in addition to its rights specified in paragraph 7D, Owner shall be entitled, at any time and from time to time to have all or any of the accounting records and procedures of Manager affecting the determination of Gross Receipts specially audited or examined by an independent certified public accountant designated by Owner and who may be required by Owner to report to Owner his opinion as to any matters arising under

paragraphs 7C and 7E, including the adequacy of Manager's accounting records and procedures, whether Manager has complied with paragraphs 7C and 7E, whether Manager has accurately reported Gross Receipts and the amount of Gross Receipts.

(2) Such independent certified public accountant shall report to Owner whether in his opinion as of the date of his audit or examination:

(a) Manager's accounting records and procedures comply with paragraph 7E; and

(b) Manager's accounting records and procedures were sufficient to permit an accurate determination of Gross Receipts, Net Receipts, and expenses for any period and such report shall contain his determination of Gross Receipts, Net Receipts and expenses for such period and the amount of any overpayment or underpayment of Net Receipts to Owner.

(3) Owner shall provide Manager with a copy of the accountant's report and if the accountant's report opined that any of the Manager's records or procedures were deficient, then:

(a) Manager shall forthwith and for the remainder of the Term take such steps as may be recommended, necessary or advisable to remedy the default; or

(b) Owner shall forthwith repay to the Manager any amount therein set out as an overpayment of Net Receipts or Manager shall forthwith pay to Owner any amount therein set out as an underpayment of Net Receipts to Owner, as the case may be.

(4) All costs of any special audit or examination or report under paragraph 7F(1) shall be payable by Manager to Owner on demand if such accountant shall report that in his opinion Manager's accounting records and procedures were inadequate or Manager was not complying with paragraphs 7C, 7D or 7E, or if Net Receipts for any period as determined by such accountant is more than three percent (3%) greater than as reported by Manager.

(5) The acceptance by Owner of any monthly Gross Receipts Report delivered by Manager or any payment of Net Receipts based thereon or on any accountant's determination or Owner's estimate, shall not be deemed to relieve Manager from its obligations to comply with the provisions of this Agreement or from the consequences of any default thereunder, nor be a waiver by Owner of any of the obligations of Manager or any of the rights of Owner under this Agreement. Without limiting the generality of the foregoing, Owner shall be entitled to all its remedies under this Agreement, including specific performance, and in any event shall have the remedy of termination and forfeiture if there shall be any substantial or continuing breach of such obligations by Manager, or if there shall have been any refusal or omission by Manager to

report or to maintain or produce records affecting the determination of Net Receipts, or to maintain accounting procedures recommended by an independent certified public accountant appointed by Owner.

G. Owner may require Manager to furnish monthly reports executed by Manager's concessionaires, licensees, or subcontractors with regard to their sales on the Premises.

8. **Use of Premises.** Manager shall use and occupy the Premises solely for: the purpose of the operation of two first class theaters and the presentation of motion pictures and other public (including live) presentations and entertainment, which presentations and entertainment may include but are not limited to style shows, telecasts, multimedia operations, meetings and other auditorium uses; the incidental retail sale of food, beverages and refreshments for consumption on the Premises; the incidental sale of records, books, videotapes, video cassettes, magazines, toys and novelties sold in connection with any particular presentation; the incidental operation of video games or similar electronic games; and for no other purpose without the prior written consent of Owner. Motion picture shows shall follow a repertoire format, consisting of a mixture of first run critically acclaimed films, second runs of box office hits, classic films and art films. 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 county governments, and agencies thereof, having jurisdiction with respect to the Premises, and of all other similar legally constituted authorities. Manager shall not do or suffer anything to be done on the Premises which shall result in an increase in the property and casualty insurance premiums paid by Owner in respect of the Premises. Manager may also use the Premises for any other purpose that the Owner shall in its absolute discretion approve.

9. **Utilities.**

A. Except for the telecommunication charges associated with the streaming or web casting of audio and video over the Internet of the weekly program conducted by PoetMan Records, USA, Inc. doing business as WoodSongs Old-Time Radio Hour ("WoodSongs") pursuant to an Agreement between Owner and WoodSongs, dated May 29, 2001, Manager shall pay all telephone or other telecommunication charges of whatever kind.

B. Manager shall pay all charges (the "Utility Charges") for heat, water, gas, electricity or sewer use that are used or consumed on the Premises.

10. **Eminent Domain.** If a part or whole 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, this Agreement shall terminate effective upon the date of the taking or sale, respectively, and 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.

11. **Assignment.** Neither this Agreement nor any interest of Manager therein 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.

12. **Damage and Destruction.** In the event of the destruction of or damage to the Premises, partial or otherwise, Owner shall have the option to terminate this Agreement or restore the Premises 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 \$80,000.00. Owner shall give Manager written notice of its intent within twenty (20) days from the date of destruction of the Premises.

13. **Repairs and Maintenance.**

A. Manager shall at all times maintain the Premises in a neat and clean condition and shall not suffer or permit to exist any nuisance upon the Premises.

B. Owner shall maintain and repair the Kentucky Theater marquee at its expense, except the Owner shall not be responsible for repairs to the marquee resulting from damage caused by the Manager, in which case the Manager shall be responsible for such damage.

C. Owner shall be responsible for the repair and maintenance of the roof, gutters, downspouts, exterior walls, the building front, except as set forth in paragraph 13B above, and sidewalks, unless the damage was caused by the Manager, in which case the Manager shall be responsible for such damage.

D. Owner shall maintain and repair the heating, ventilating and air-conditioning systems, and the interior of the premises, and shall be responsible for all other maintenance and repairs to the Premises of whatever kind, except that Manager shall reimburse Owner for the costs of minor repair expenses, including materials and labor, incurred each calendar month in excess of the first Two Hundred Dollars (\$200.00) in expenses incurred each month, unless the damage to be repaired was caused by the Manager, in which case the Manager shall be responsible for all such expenses. Manager shall notify Owner in writing of requests for repairs and Owner shall perform necessary repairs in a timely manner. Repairs or maintenance services that are initiated in one calendar month but are not completed until the next or subsequent calendar months shall be deemed to have been performed during the calendar month in which they are completed.

E. Manager shall notify Owner's Division of Building Maintenance and Construction when maintenance and repair services are needed. Upon receipt of such notice, if permitted by time and availability of personnel, the Division of Building

Maintenance and Construction will perform the services after providing Manager with a written estimate of the cost of the work to be performed, including material and labor. Manager shall, within thirty (30) days of receipt of an invoice, reimburse Owner for the actual costs of materials provided and services performed in completing the requested maintenance or repair in accordance with paragraph 13D above.

14. **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 Owner 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, materialmen's or other lien for any such labor or materials shall attach to or affect the estate or 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.

15. **Inspection.** Owner and the agents of Owner shall have the right to enter upon and inspect the Premises (i) at all times during business hours of Manager on the Premises, (ii) at any other time upon prior notice to Manager, and (iii) 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 structure of the Premises or for any other valid purpose.

16. **Alterations.**

A. 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, nor remove any Theater seats without the written consent of the Mayor of the Lexington-Fayette Urban County Government or her 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 trade fixtures and equipment in, upon and about the Premises in the place of Owner's equipment; 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 trade fixtures and equipment at their then fair market value.

B. 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 and operation of its business any more than is reasonably necessary in the circumstances and shall repair any damage to the Premises caused thereby.

C. Pursuant to paragraph 13.2 of the Wurlitzer Theater Organ Agreement among the Owner, the Kentucky Theater Group, Inc., the University of Kentucky, and Kentucky's Mighty Wurlitzer – Theater Organ Project, Inc., dated December 20, 2002 (the "Wurlitzer Agreement"), the Owner hereby transfers and assigns and the Manager hereby acknowledges, accepts, assumes, agrees to undertake and to fully comply with the rights, duties, responsibilities and obligations of the "Theater Group" contained in the Wurlitzer Agreement.

17. Owner's Remedies Upon Default.

A. (i) If Manager shall at any time be in default in the payment of any sums due under this Agreement and Manager shall fail to remedy such default within five (5) days after receipt of written notice thereof from Owner, or (ii) if Manager shall be in default in the performance of any of the covenants, terms, conditions, provisions, rules and regulations of this Agreement, and Manager shall fail to remedy such default within ten (10) days after receipt of notice thereof from Owner if the default relates to matters other than the payment of Net Receipts and such other sums except that, if such default cannot, with due diligence on the part of Manager, be cured within such ten (10) day period, same shall not be an event of default if within the ten (10) day period Manager uses its best efforts to proceed to cure same and thereafter continuously and diligently prosecutes such cure, or (iii) if Manager commits waste upon the Premises, or (iv) if Manager vacates or abandons the Premises and fails to remedy such default within five (5) days after written notice thereof from Owner, or (v) if Manager or any Guarantor 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, or (vi) if in any three consecutive calendar months during the term of this Agreement the aggregate Gross Receipts of the Theaters, as defined above, shall be less than \$90,000.00, 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 re-enter and possess the Premises by summary proceedings or otherwise, and in any event may dispossess the Manager. In the event of such re-entry, Owner may enter into management agreements with others without being obligated so to do, and in such event may apply the Net Receipts therefrom first to the payment of Owner's expenses (including reasonable attorney fees) incurred by reason of Manager's default, and the expense of entering into another management

agreement, including but not limited to the repairs, renovation or alteration of the Premises, and then to the payment of all sums due from Manager hereunder, Manager remaining liable for any deficiency. Manager hereby grants to Owner a lien upon and a security interest in all Gross Receipts and all property of Manager now or hereafter located upon the Premises for the payment of Net Receipts and all other sums due under this Agreement and the performance of all of Manager's other obligations under this Agreement, said lien and security interest to be in addition to any lien in the property of Manager vested in Owner by statute, and Manager agrees that upon any default by Manager hereunder (after any period for cure), Owner may preclude access to and from the Premises until the rights of Owner in any property of Manager located therein and thereon are adjudicated. Financing statements shall be executed and recorded with respect to said security interest.

B. All remedies available to Owner 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 Owner of any of its remedies or actions against Manager for past or future Gross Receipts or other sums due hereunder, nor shall the bringing of any action for Gross Receipts or other default be construed as a waiver of the right to obtain possession of the Premises.

18. **Manager's Remedies.** 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 representations having been made by Owner whatsoever as to the condition of the Premises, except as expressly stated otherwise herein.

19. **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.

20. **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. 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. 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) in the

event of damage or destruction to the building or to the Premises by fire or other casualty, for 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 Gross Receipts 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 this Agreement, 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.

21. **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.

22. **Hours of Business.** Manager will conduct its business in the Premises on days and during hours generally observed in the theater business in Fayette County, 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 business, except that on weekdays Manager shall not be obligated to open for business prior to 5:30 p.m.

23. **Continuous Occupancy.** Manager acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to Owner in the maintenance of Gross Receipts. Manager therefore covenants and agrees that throughout the term of this Agreement it will occupy the entire Premises and operate two first class theaters, as set out herein, and comply strictly with the provisions hereof. Manager acknowledges that Owner is executing this Agreement in reliance thereupon and that the same is a material element inducing Owner to execute this Agreement.

24. **Guaranty.** In consideration of the execution of this Agreement by Owner at the request of Guarantors and to induce Owner to execute this Agreement, the Guarantors hereby jointly and severally guarantee to Owner, its successors and assigns, the prompt payment of all sums due under this Agreement, and the performance by Manager of all terms, covenants and conditions contained in this Agreement, it being understood and agreed by Guarantors that this Guaranty is a condition to Owner entering into this Agreement; provided, however, anything contained in this paragraph 24 to the contrary notwithstanding, the maximum aggregate liability of the Guarantors under this Guaranty shall not exceed \$90,000.00. This Guaranty is a continuing Guaranty and shall remain in full force and effect so long as any of the Manager's obligations under this Agreement have not been fully paid or performed. Guarantors hereby waive all notice of any default of any kind on part of Manager and consent to any extensions of time or changes in the manner of payment or performance of any of the terms and conditions of

the Agreement that Owner may grant Manager. Owner shall have the right of immediate recourse against each Guarantor (and any one or more of them) for full and immediate payment or performance of Manager's obligations at any time after such obligations, or any part thereof, have not been paid or performed in full. This is a guaranty of payment, not of collection. Notwithstanding the death or adjudication of incompetency of any Guarantor, this Guaranty shall be binding on the estate or committee of such Guarantor. The Owner may, in the event of any default on the part of the Manager, proceed against the Guarantors, or any one or more of them, without having first proceeded against the Manager or jointly with the Manager and may continue to institute or maintain any such proceedings at such times until full recovery of all amounts due and owing to the Owner in accordance with this Agreement.

25. Indemnity.

A. The 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. The 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 25 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").

26. 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 the Manager, its agents, representatives, employees or subcontractors.

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

- (1) Insurance Services Office Form Number GL 0002 (Ed. 1/73) 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. 01/96).
- (2) Insurance Services Office Form Number CA 0001 (Ed. 12/93)

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: \$20,000.00.

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) The 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 paragraph 26 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, 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.

27. ***Force Majeure.***

A. Definition: "*Force majeure*" shall mean any event or condition, not existing as of the date of execution of this Agreement, not reasonably foreseeable 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 theater 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, inability to procure or shortage of motion picture products, 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.

28. **Owner's Use of Premises.**

A. Manager agrees that Owner shall have exclusive use of either the Kentucky Theater, the State Theater, or both Theaters 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 Management Term (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.

(2) Upon ten (10) days written notice, on any weekday (Monday through Friday) during each calendar year (and proportionately for a fraction of a calendar year) during the Management Term, 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 28A(1) and (2) above, the Manager agrees to make the Premises and two (2) of Manager's employees available to the Owner as necessary at no cost to the Owner. The Manager's employees 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 28A above.

D. All Gross Receipts, as defined in this Agreement, generated before, after, during, or attributable to the Owner's use of the Premises at any time set forth in paragraph 28A(1), (2) or (3) shall be payable to the Owner, and the Manager shall be entitled to no part of said Gross Receipts generated by the Owner's use, and said Gross

Receipts generated from the Owner's use shall be deducted from all other Gross Receipts for purposes of payment of a percentage of Gross Receipts pursuant to paragraph 6A above. Manager shall be entitled to reimbursement for any of its inventory or supplies used or sold by Owner to generate such Gross Receipts.

E. At all times referred to in this paragraph 28 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, Policy No. S.I. 1174-914-88, which coverage shall be excess of the general liability coverages the Manager is required to provide in paragraph 26B(1) above or in excess of any other good, valid and collectible insurance that the Manager has in force. Owner's insurance, as set forth in this paragraph, shall not contribute with Manager's insurance.

29. If Owner has defaulted on any of its obligations hereunder, such default shall be cured within ten (10) days of Owner's receipt of written notice of such default, except that if such default cannot, with due diligence on the part of Owner, be cured within such ten (10) day period, same shall not be an event of default if, within the ten (10) day period, Owner uses its best efforts to proceed to cure same, and thereafter continuously and diligently prosecutes such cure.

30. **Waiver.** The failure on the part of Owner to insist in any instance upon a strict observance by the Manager 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 Owner to demand of Manager and/or Guarantors' compliance therewith on any other occasion.

31. **Notice.** All notices from Owner to Manager hereunder shall be sufficient if delivered in writing or sent by registered or certified United States mail to the following address:

Kentucky Theater Group
214 East Main Street
Lexington, Kentucky 40507
Attention: Fred Mills

All notices from Manager to Owner hereunder shall be sufficient if actually delivered in writing or sent by registered or certified United States mail to the following address:

Chief Administrator's Office
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attention: Charlie Boland

A notice mailed in accordance with the provisions of this paragraph shall be deemed to have been given when mailed. Either party may change its address for the purpose of

this paragraph by giving notice in writing to the other party of such change in accordance with this paragraph.

32. **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.

33. **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.

34. **Fiscal Year.** As used herein, the term "fiscal year" shall be July 1 of any year through June 30 of the following year.

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

36. **Governing Law.** This Agreement shall be governed by and be construed in accordance with the laws of the Commonwealth of Kentucky in all respects, including all matters of construction, validity and performance.

37. **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, covenants or conditions of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

38. **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.

39. **Exhibits.** The exhibits to this Agreement are an integral part hereof and by this reference as incorporated herein as though fully set forth herein.

40. **Regulations.** The Owner and the Manager agree that this Agreement is and any subsequent agreement entered into by the parties shall be subject to the terms of Revenue Proceeding 82-14, as modified by the Tax Reform Act of 1986, or any other superseding guidance concerning management contracts issued by the Internal Revenue Service.

IN WITNESS WHEREOF, witness the signatures of the parties hereto effective as of the 16th day of November, 2006.

OWNER:

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: *Teresa Ann Isaac*
TERESA ANN ISAAC, MAYOR

ATTEST:

Liz Damrell
LIZ DAMRELL, COUNCIL CLERK

MANAGER:

Analy Scarone
BY: *Kendrick Trust Management Group*
TITLE: *President*

COMMONWEALTH OF KENTUCKY)
COUNTY OF *Fayette*)

The foregoing instrument was subscribed, sworn to and acknowledged before me by *Analy Scarone* as _____, on this the *8th* day of *November*, 2006.

My commission expires: *02/20/07*

Kay Coy
NOTARY PUBLIC, STATE AT LARGE, KY

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Lexington-Fayette Urban County Government

Request For Proposals

The Lexington-Fayette Urban County Government hereby requests proposals for **Management of Kentucky and State Theaters** to be provided in accordance with terms, conditions and specifications established herein.

Sealed proposals will be received in the Division of Central Purchasing, Room 338, Government Center, 200 East Main Street, Lexington, KY, 40507, until 2:00 PM, prevailing local time, on November 1, 2006.

Proposals received after the date and time set for opening proposals will not be considered for award of a contract and will be returned unopened to the Proposer. It is the sole responsibility of the Proposer to assure that his/her proposal is received by the Division of Central Purchasing before the date and time set for opening proposals.

Proposals must be sealed in an envelope and the envelope prominently marked:

RFP #31-2006 Management of Kentucky and State Theaters

If mailed, the envelope must be addressed to:

Purchasing Director
Lexington-Fayette Urban County Government
Room 338, Government Center
200 East Main Street
Lexington, KY 40507

Additional copies of this Request For Proposals are available from the Division of Central Purchasing, Room 338 Government Center, 200 East Main Street, Lexington, KY 40507, (859)-258-3320, at no charge.

Proposals, once submitted, may not be withdrawn for a period of sixty (60) calendar days.

The Proposer must submit one (1) master and seven (7) duplicates of their proposal for evaluation purposes.

The Lexington-Fayette Urban County Government reserves the right to reject any or all proposals, and to waive technicalities and informalities when such waiver is determined by the Lexington-Fayette Urban County Government to be in its best interest.

Signature of this proposal by the Proposer constitutes acceptance by the Proposer of terms, conditions and requirements set forth herein.

Minor exceptions may not eliminate the proposal. Any exceptions to the specifications established herein shall be listed in detail on a separate sheet and attached hereto. The Lexington-Fayette Urban County Government shall determine whether any exception is minor.

The Lexington-Fayette Urban County Government encourages the participation of minority- and women-owned businesses in Lexington-Fayette Urban County Government contracts. This proposal is subject to Affirmative Action requirements attached hereto.

Laws and Regulations

All applicable state laws, municipal ordinances and regulations of all authorities having jurisdiction over the project shall apply to the contract, and shall be deemed to be incorporated herein by reference.

Equal Employment Opportunity

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its subcontracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

Kentucky Equal Employment Opportunity Act

The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any "county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;
- (3) The contractor will post notices in conspicuous places, available to employees

and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section; and

(4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses."

The Act further provides:

"KRS 45.610. Hiring minorities -- Information required

(1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables.

(2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.

KRS 45.620. Action against contractor -- Hiring of minority contractor or subcontractor

(1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.

(2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

KRS 45.630 Termination of existing employee not required, when

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that employee was employed prior to the date of the contract.

KRS 45.640 Minimum skills

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job."

It is recommended that all of the provisions above quoted be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his workforce in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

Contention Process

Vendors who respond to this invitation have the right to file a notice of contention associated with the RFP process or to file a notice of appeal of the recommendation made by the Director of Central Purchasing resulting from this invitation.

Notice of contention with the RFP process must be filed within 3 business days of the bid/proposal opening by (1) sending a written notice, including sufficient documentation to support contention, to the Director of the Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his/her contention with the RFP process. After consulting with the Commissioner of Finance the Chief Administrative Officer and reviewing the documentation and/or hearing the vendor, the Director of Central Purchasing shall promptly respond in writing findings as to the compliance with RFP processes. If, based on this review, a RFP process irregularity is deemed to have occurred the Director of Central Purchasing will consult with the Commissioner of Finance, the Chief Administrative Officer and the Department of Law as to the appropriate remedy.

Notice of appeal of a RFP recommendation must be filed within 3 business days of the RFP recommendation by (1) sending a written notice, including sufficient documentation to support appeal, to the Director, Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his appeal. After reviewing the documentation and/or hearing the vendor and consulting with the Commissioner of Finance and the Chief Administrative Officer, the Director of Central Purchasing shall in writing, affirm or withdraw the recommendation.

EQUAL OPPORTUNITY AGREEMENT

The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

Bidders

I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.



Signature

Kentucky DREAMS GROUP, INC.

Name of Business)

WORKFORCE ANALYSIS FORM

Name of Organization: KENTUCKY THEATRE GROUP

Date: 10/21/06

Categories	Total	White		Black		Other		Total	
		M	F	M	F	M	F	M	F
Administrators	2	2							
Professionals									
Superintendents									
Supervisors									
Foremen									
Technicians	4	4							
Protective Service									
Para-Professionals									
Office/Clerical									
Skilled Craft									
Service/Maintenance	13	7	4	1	1				
Total:	19	13	4	1	1				

Prepared by: FRED MILLS OWNER/MANAGER
Name & Title

AFFIDAVIT

Comes the Affiant, _____, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is FRED MILLS and he/she is the individual submitting the proposal or is the authorized representative of KENTUCKY THEATRE GROUP INC, the entity submitting the proposal (hereinafter referred to as "Proposer").

2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.

3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.

5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.

6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

continued on next page

