

EQUIPMENT RENTAL AGREEMENT

THIS AGREEMENT made and entered into between FLIX, Inc., herein sometimes referred to as "Lessor" or "FLIX", and the lessee, shown on the obverse hereof.

WHEREAS, Lessor is engaged in the business of renting and selling motion picture and video equipment and

WHEREAS, Lessee hereby desires to rent the equipment indicated on the equipment list attached hereto and by reference made a part hereof upon the terms and conditions hereinafter set forth.

NOW THEREFORE, for and in consideration of the mutual promises and covenants between parties, and other good and valuable considerations, the sufficiency and receipt of which is hereby acknowledged, it is agreed as follows:

1. EQUIPMENT RENTED, PAYMENT AND INSPECTION

- a. Equipment rented, Term. Lessor hereby rents to Lessee the items of equipment indicated on the equipment list, attached hereto and by reference a part hereof. Lessee agrees to return rental equipment on the dates shown. Rental charges do not apply toward purchase. Rental rates are good for this rental period only
- b. Payment: Total payment due is \$13,500, which includes equipment delivery; pick up, rental and non-theatrical film rights. Lessee agrees to payment of 50% on May 15, 2017 and the remaining 50% on July 1, 2017
- c. Inspection by Lessee. Lessor is in no way responsible for any liability, claims, costs or expenses arising out of the use or possession of said rental equipment by Lessee.

2. FILMS AND FILM RIGHTS

- a. By no later than the city approves the contract in May, 2017, Lessor shall acquire, and transfer to Lessee as necessary, all licenses and rights necessary for Lessee to show five (5) films, to be chosen by Lessee from a list prepared by Lessor, at events open to the public at no charge. By the same date, Lessor shall provide Lessee documentation to verify that it has acquired all such necessary licenses and rights, to Lessee's satisfaction.
- b. Lessor shall provide Lessee with a DVD or Blu-ray Disc for each film selected under Sec. 2(a), *supra*, by the date provided therein.
- c. The Lessee agrees that all films selected under Sec. 2(a), *supra*, are licensed for non-theatrical use only and cannot be advertised via local television, radio or newspapers. The Lessee will not and will not permit others to broadcast any print or any part thereof over radio or television; sell any print to others; cut or edit the print in any way nor copy or duplicate all or any part of the print; delete or permit the deletion of the copyright notice or any credits from the print or do any other thing which might impair the copyright in any motion picture; or otherwise use the print in any manner or for any purpose not expressly licensed.
- d. Except as permitted herein, Lessee shall not make or allow any public advertisement that uses the copyrighted title of a film to be shown under



this agreement via radio, television, or newspaper. Lessee may make or allow public advertisements that use the copyrighted title of films to be shown under this agreement provided such titles appear only in posters, internet webpages, social media, and press releases.

- e. Lessor shall indemnify, defend, and hold harmless Lessee from and against any and all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments, including attorney's fees, that may arise from its failure to fulfill its obligations under Sec. 2(a), *supra*. This provision shall survive the termination or expiration of this Agreement.

3. LESSEE'S RESPONSIBILITIES AND LIABILITIES

- a. Delivery, Safekeeping and Return. Lessor will deliver said equipment to Lessee. Lessee will assume full responsibility upon delivery of said equipment. Lessee agrees to the safekeeping of said equipment and keeping said equipment in a good state of condition and repair, free from damage of any kind, and the safe return or delivery of said equipment upon agreed date.
- b. Destroyed, Lost or Stolen Equipment. In the event that all or any one or more items of the equipment hereby rented is destroyed, lost or stolen while in the actual or constructive possession of Lessee through the negligence, gross negligence, recklessness, wantonness, or intentional malfeasance of Lessee or its employees, Lessee shall immediately replace such equipment with equipment of the same type, kind, quality and value, satisfactory to the Lessor, and upon the Lessee's failure to promptly make such replacement Lessee shall immediately pay Lessor the replacement value of such equipment.
- c. Damaged Equipment. In the event that any item of equipment hereby rented is damaged or ceases to function properly while in the actual or constructive possession of Lessee or its agents or employees, it is hereby agreed that Lessee shall immediately return said equipment to Lessor for repair or restoration to its original serviceable condition. Lessor agrees that all such repairs shall take place and the equipment shall be returned to Lessee within seven (7) days of the day on which Lessor is notified of the need for repair. In the event Lessor is not able to repair and return the equipment in the time provided, it shall provide Lessee with equivalent equipment at no extra charge. Lessee shall pay the full cost of such repairs or restoration if the equipment is damaged through the negligence, gross negligence, recklessness, wantonness, or intentional malfeasance of Lessee or its employees. Otherwise, the cost of repairs shall be born by Lessor.
- d. Delivery. Lessee agrees to assume full responsibility and liability for the safekeeping and return to Lessor's premises of all items of equipment rented under the terms of this Agreement, from the time the equipment leaves Lessor until it is returned to Lessor's premises.

4. INSPECTION BY LESSOR

With at least forty-eight(48) hours advance notice in writing, Lessor



or its agents or employees may inspect the equipment or any area where it is being stored or used during normal business hours, Monday-Friday, between 8:00 a.m. and 5:00 p.m. If it is found that the equipment is being misused, abused or if Lessee is in default as to any provisions hereof, Lessor may terminate the agreement early and require Lessee to return the equipment immediately. In such event, Lessor shall be entitled to payment at a pro rata basis based on the percentage of the rental term completed.

5. LESSEE'S DEFAULT

- a. If the Lessee shall default on any of the terms, covenants and conditions herein, or fail to punctually make any of the payments hereunder, or if any execution or other writ or process shall be issued in any action or proceeding against the lessee whereby the said rental equipment might become or appear to become in danger of being seized, taken and retained; or if proceedings in bankruptcy, receivership or insolvency shall be instituted by or against the lessee or his property, or if the lessee shall enter into any arrangement or composition with his creditors in which the equipment might be seized, taken, or retained, the Lessor shall have the option of declaring this agreement terminated, and shall be entitled to return of the equipment immediately. In such event, Lessor shall be entitled to payment at a pro rata basis based on the percentage of the rental term completed. Nothing contained herein shall be construed to bar or prevent the Lessor, in the event of monies being owed to it for rental, repair, replacement, or other costs, from suing and recovering the monies due it.

6. VALUE OF RENTAL EQUIPMENT

- a. Lessee agrees that the value of the leased equipment in the event of loss or damage during the rental period shall be the replacement cost of such equipment including any taxes and any applicable freight.

7. SUBLEASE OR ASSIGNMENT

- a. Without the prior written consent of the Lessor, Lessee shall not sublease or assign the rental equipment to any third person or entity, and agrees to at all times during the term of Agreement to retain said equipment in Lessee's exclusive possession, under Lessee's direct control and supervision.

8. MISCELLANEOUS

- a. The acceptance of the return of the rental equipment shall not constitute a waiver by Lessor of any claims that it may have against the Lessee, nor a waiver of claim for latent or patent damage to the equipment. This agreement compromises and contains the entire agreement and understanding between parties hereto, including warranties and representations, if any, and may not be amended or modified except in writing, signed by both parties, with the same formalities as applied to this



document. Lessor shall not be liable for any injury, loss or damage directly or consequently arising out of the use of the equipment whether used singularly or in conjunction with any other equipment.

IN WITNESS HEREOF, this Agreement has been signed and sealed by Lessee on the obverse hereof. Lessee acknowledges that the list(s) of rented equipment is attached hereto, and that the Lessee has received a copy of this Agreement with equipment list attached.

Date: 4-3-17

•Lexington-Fayette Urban County Government (Lessee)

BY: _____ ITS: _____

FLIX, Inc. (Lessor)

BY:  ITS: pres. sec. treas