



Item: SP: A-3

STRATEGIC PLANNING COMMITTEE

Wednesday, June 11, 2008

SUBJECT: Facilities Use Agreement with Living Room Theaters, Inc.

PROPOSED COMMITTEE ACTION

Recommend approval of a long-term Facilities Use Agreement with Living Room Theaters, Inc. ("LRT").

BACKGROUND INFORMATION

The University received a gift from LRT in late 2006 in order to construct a classroom and high definition digital technology-based movie theatre complex on the Boca Raton campus, which facility shall provide state-of-the-art classroom space appropriate for teaching courses in film studies by the University's School of Communication & Multimedia Studies ("SCMS"). The University received matching funds for the gift last year.

In connection with the construction of the film studies building, the SCMS desires to establish collaboration with an organization that operates digital cinemas specializing in independent and world film in order to enhance the curriculum of the SCMS and its co-curricular programs, create opportunities for student and faculty research and creative work and enrich and expand cultural opportunities on campus.

As a result of a competitively offered process, the SCMS now desires to enter into a long-term collaboration with LRT. LRT is an organization that operates digital cinemas specializing in independent and world film. LRT proposes to collaborate with the SCMS, emphasizing a business model compatible with the goals of the school, creating opportunities for student access to independent and foreign films and visits from directors, actors, and those involved in the industry, creating opportunities for SCMS students to learn the digital film business, cultivating a cinephile culture on campus, building the capacity for new university degrees, and serving on the advisory board of the SCMS.

In connection with this academic collaboration, the University shall permit LRT the right to use the film studies facility during non-academic hours (generally evenings and weekends) for the showing of independent and foreign films of significant aesthetic, historical and intellectual value, for the benefit of the University student, faculty, staff, and local community. LRT shall consult with the SCMS throughout the programming process in order to maximize the

affiliation and coordination of the programming with the academic mission and offerings of the SCMS.

The proposed facilities use agreement, which is premised on the existence and continuity of the academic affiliation, provides for an initial term of 15 years, with a possible 10 year extension. LRT shall pay the University a monthly Maintenance Fee for costs associated with janitorial services, security, utilities and general maintenance, as well as a Food Service Fee for the operation of a small cafe. LRT shall also be responsible for equipping the film studies facility with needed projectors and other related theater equipment, as well as providing associated maintenance and repair. The proposed agreement otherwise includes the university's general facilities use requirements, including appropriate provisions for insurance and indemnification.

IMPLEMENTATION PLAN/DATE

The Facilities Use Agreement will become effective upon BOT approval; provided, however, that the term of the agreement shall not commence until the completion and opening of the theatre complex (estimated May/June 2010).

FISCAL IMPLICATIONS

LRT shall pay a proportionate share of plant, operations and maintenance costs commensurate with their permitted hours of operation.

Supporting Documentation: Proposed Facilities Use Agreement

Presented by: Manjunath Pendakur, Dean
Dorothy F. Schmidt College of Arts and Letters

Phone: 561-297-3803

Florida Atlantic University
FACILITIES USE AGREEMENT

1. The Florida Atlantic University Board of Trustees (“University” or “FAU”) currently intends to construct a new building which will house a digital technology-based movie theatre complex (“Theater” or “Facility”) for use by the University and specifically, the University’s School of Communication & Multimedia Studies (“SCMS”), in furtherance of the educational mission of the University. The Theater is currently projected to contain approximately 8200 gross square feet, housing four digital cinemas/classrooms of 50 seats each, a small kitchen/dining area and a small office.

2. In connection with the construction of the Theater, SCMS is establishing a collaboration to operate the digital cinemas specializing in independent and world film. This collaboration is intended to enhance the curriculum of SCMS and its co-curricular programs, create opportunities for student and faculty research and creative work, and enrich and expand cultural opportunities at the University’s Boca Raton campus.

3. Pursuant to ITN 07J-507 (“ITN”), the University, by and through this Facilities Use Agreement (“Agreement”), agrees to collaborate with and make the Theater available to Living Room Theaters, Inc. (hereinafter known as “User”). The terms and conditions of such collaboration and use shall be governed by: (i) the terms and conditions set forth in this Agreement; (ii) the terms and conditions set forth in the Addendum attached hereto as Exhibit A; and (iii) the terms and conditions set forth in User’s July 23, 2007 ITN response (“ITN Response”). In the event of a conflict between these three documents, the terms and conditions of this Agreement will take priority, followed by the terms and conditions of the attached Exhibit A and then the terms and conditions of the ITN Response.

4. Subject to the termination rights set forth herein, for a period of fifteen (15) University Academic Calendar Years after the completion and opening of the Theater (“Term”), the University hereby agrees to permit User to use the Theater during the following periods: (a) from 5 pm to 1 am Monday through Friday; and (b) from 12 pm to 1 am Saturdays and Sundays. By mutual agreement of the parties, the User may also be permitted to use the Theater for additional periods on Fridays between 12 pm and 5 pm and during University holidays. Upon mutual written consent of the parties, this Agreement may be extended for an additional period up to ten (10) years. In addition to the University’s normal contract oversight, this Agreement will undergo a formal review process by FAU every three (3) years of the Term. This review will be conducted by the Dean of the Dorothy F. Schmidt College of Arts and Letters (or his or her designee) and will examine compliance with the terms of this Agreement as well as mutually agreeable areas of refinement, clarification or modification. Formal reviews may occur at other points during the term of this Agreement as deemed reasonably necessary by the University or the User

5. The use of the Theater by User shall be permissible only for the showing of independent and foreign films of significant aesthetic, historical and intellectual value, for the benefit of the University student and local community. User shall consult with the University throughout the programming process in order to maximize the affiliation and coordination of such programming with the academic mission and offerings of the SCMS.

6. All ticketed events will be administered by User. User agrees to offer University students a discounted ticket price.

7. The University shall require that all tickets include a University fee to offset University parking costs associated with the User’s use of the Theater. For the first three years of the Agreement, the parking fee for each ticket will be as follows: (i) year one \$.50 per ticket; (ii) year two \$1.00 per ticket; and (iii) year three \$1.50 per ticket. During the third year of the Agreement the parking fee may be adjusted for future years in accordance

with the formal review process set forth in paragraph 4 above and in accordance with any percentage increase in the Consumer Price Index for the South Florida region; provided, however, that in no event shall such fee fall below \$1.50 per ticket. The parking fee may be waived for University faculty, staff and students with valid identification. User may, at its own discretion, break down the parking fee as a different line item in the receipts it gives out to its customers.

8. Subject to the provisions of paragraph 4 above, User agrees to submit its desired dates and times of use for the Theater on an annual basis for the upcoming University Academic Calendar Year (August-July) no later than June 30 of each calendar year. Any dates and times not scheduled for use by User shall be available for use by the University or its designees in accordance with University policy.

9. User shall be responsible at all times for the costs associated with University provided janitorial services, security, utilities and maintenance for User's use of the facility ("Maintenance Fee"), as more particularly set forth in Exhibit B. The Maintenance Fee shall be due and payable by User on or before the first day of each month of the Term and shall be adjusted annually based on the PO&M (Plant, Operations & Maintenance) Rate as provided by the Florida Board of Governors Budget Office per building classification (currently \$8.63 per sq ft annually). The University reserves the right to charge User its prorated share of expenses associated with any common areas. User shall be solely responsible for obtaining, maintaining and paying for all other utilities, including but not limited to, telephone service, internet access, computer services and any other utility desired by User. User acknowledges that University may establish reasonable fees and charges for the use of various facilities, equipment and services provided by University other than those specifically provided herein or for incremental expenses beyond those provided for herein pursuant to standard University policies and procedures.

10. In addition to the Maintenance Fee set forth in paragraph 9 above, User shall pay a fee for the use of the private kitchen adjacent to the Theater during those times when the User's use of the Theater has been scheduled and on Fridays ("Food Service Fee"), as more particularly set forth in Exhibit B. The Food Service Fee shall be due and payable by User on an annual basis thirty (30) days in advance of each year of the Term. The Food Service Fee shall be reviewed every three (3) years pursuant to the formal review process set forth in paragraph 4 above and may be adjusted in accordance with the percentage increase in the Consumer Price Index for the South Florida region. User may use the kitchen to operate a small up-scale market cafe serving high-quality food such as tapas, sophisticated sandwiches, gourmet coffees, beer and wine. User shall be solely responsible for providing, servicing and maintaining any needed kitchen appliances, equipment or supplies and appropriate clean-up, permits and liabilities associated with such service. Upon termination of its ongoing food contract with its current food service provider, the University agrees to exclude User from subsequent contracts and to allow User to operate the kitchen beyond the User's scheduled use of the Theater.

11. User may not make improvements or alterations to the Theater or the surrounding facilities without the express written approval of the University's Vice President of Facilities and subject to University standard building requirements and guidelines. Unless expressly agreed in writing, any improvements and alterations approved by University shall become a part of the facility and shall become the property of the University, free and clear of all liens and encumbrances.

12. User shall purchase University parking decals for all of its full and part-time employees who do not already have valid decals, subject to University parking rules and regulations. User shall comply with and shall ensure that its employees, invitees and agents comply with all parking rules and regulations of University, including the registration of all vehicles used on the University campus, at User's expense.

13. User shall be responsible for equipping the Facility with all theater and other instruments and equipment (e.g. projectors, screen replacements, computers, furniture etc.) needed for User's use of the Facility, including all equipment maintenance, repair and replacement. User agrees to allow University use of all such

equipment for use in the Facility during non-User hours and in connection with University classes or other University-sponsored events, at no cost to the University. The University agrees to contribute up to \$500 per year for replacement screens, subject to available funding, if the parties mutually agree that a screen need be replaced and the need for such replacement is directly attributable to the negligent (excluding gross negligence and willful misconduct) acts or omissions of the University and its officers, employees, servants, and agents while acting within the scope of their employment by University.

14. The grant of the rights to User set forth herein is premised on the existence of an academic affiliation between the University and User, as more specifically set forth on Exhibit C. If, in the reasonable discretion of the University, the User's lack of compliance with this agreement makes the academic affiliation between the parties no longer viable, and in addition to any other termination rights set forth in the attached Addendum, the University reserves the right to terminate this Agreement upon sixty (60) days written notice to User. If, in the reasonable discretion of the User, the University's lack of compliance with this agreement makes the academic affiliation between the parties no longer viable, and in addition to any other termination rights set forth in the attached Addendum, the User reserves the right to terminate this Agreement upon sixty (60) days written notice to University.

15. Notwithstanding anything to the contrary set forth herein, User expressly understands and acknowledges that nothing herein shall require the University to commence or complete the construction of the building in which the Theater will be housed or to do so with any particular specifications or in any particular time period.

16. The design and installation of all signage on the exterior or interior of the facility and all advertising material associated with the facility shall be subject to the advance written approval of the University's Vice President of Facilities and/or Vice President of Communications, as appropriate, and subject to University regulations and policies. User will be allowed to update the marquee, shadowboxes, posters, review boards and other similar advertising materials without the approval of the University's Vice President of Facilities and/or Vice President of Communications. User will use templates pre-approved by the University's Vice President of Facilities and/or Vice President of Communications for its newspaper listings and website. All signage and advertising material shall be at the sole cost and expense of User.

17. (a) If, in the reasonable opinion of the Director, Office of Space Utilization & Analysis, or the Dean of the FAU Dorothy F. Schmidt College of Arts & Letters, the User fails to fulfill any material obligation specified in this Agreement or the activity to be conducted is not in any material respect as described in this Agreement, and the User fails to cure any such deficiencies within thirty (30) days after receiving written notice, the University may cancel this Agreement by giving written notice to the User.

(b) If, in the reasonable opinion of the User, the University fails to fulfill any material obligation specified in this Agreement or the activity to be conducted is not in any material respect as described in this Agreement, and the University fails to cure any such deficiencies within thirty (30) days after receiving written notice, the User may cancel this Agreement by giving written notice to the University. If the User becomes subject to rules or regulations applicable to universities, state or federal institutions, as a result of the relationship and transactions described and arising from this Agreement, the User may in its sole discretion cancel this Agreement by giving written notice to the University.

18. User shall keep the Facility in good order and shall promptly report to University all structural and mechanical systems requiring maintenance and repair. User shall repair all damage caused by User and its employees, agents, independent contractors, patrons, servants, invitees or guests. As part of the Maintenance Fee set forth in paragraph 9 above, the University will clean the Facility once a day, at the current level of service, after completion of User's activities for that day in accordance with standard University guidelines. All other extra or

non-routine cleaning required by User's use and occupancy of the Facility, or otherwise requested by User, including cleanup after University classes, shall be the responsibility of User. The University shall call upon its faculty, students and staff to deliver the Facility in reasonable conditions to User.

19. User agrees to conduct its activities in the Facility in a careful and safe manner. User agrees to assume all risk of damage to and loss of User's property at the Facility and injury or death to persons related to User's use or occupancy of the Facility from any cause except if loss, injury or death is a result of the gross negligence or fraud of the University. The User agrees to hold the University, the Florida Board of Governors, the State of Florida, and their respective officers, agents, volunteers and employees (collectively, the "University Parties") harmless and to defend and indemnify them from and against any and all claims, damages or liabilities, including reasonable attorneys fees, that may arise indirectly or directly from User's material breach of any term or condition of this Agreement or any acts or omissions in connection with User's use of the University's facilities or services, whether caused by the User's actions or negligence or the actions or negligence of the User's employees, agents, contractors or invitees or any third parties invited or contracted by User in connection with this Agreement.

20. Contemporaneously with the occupation of the building by the User, the User agrees to furnish to the University proof of comprehensive general liability insurance coverage (property damage, bodily injury, damage to rented premises, including fire) and automobile liability insurance coverage in the amount of \$1,000,000 each occurrence or combined single limit and \$2,000,000 aggregate, with an additional \$5,000,000 commercial umbrella policy, naming the Florida Atlantic University Board of Trustees, the Florida Board of Governors, the State of Florida and their respective officers, agents, volunteers and employees as additional insureds, issued in form and by a company acceptable to the University. The University reserves the right, in its sole discretion, to also require insurance coverage as set forth above from any of User's participants, contractors, vendors, invitees or other third parties participating, assisting or using the University facilities or services in connection with this Agreement. User shall further provide proof of worker's compensation coverage in accordance with applicable law. The University has discretion as to the type of documents furnished as proof of coverage. Proof of coverage required by the University may include the furnishing of certified copies of the policies from the issuing insurance companies or such other proof as deemed necessary by the University including but not limited to Certificates of Insurance.

21. The User agrees to comply with all laws of the United States and of the State of Florida, the rules, regulations and policies of the University, specifically including without limitation the University's sexual harassment regulations and policies, and any applicable municipal or county ordinances (collectively "the Laws"). Failure to comply with any one or more of the Laws may, at the discretion of the University, result in the termination of this Agreement by University. If, in the opinion of the University, violation of one or more of the Laws may cause a public hazard or nuisance, the University may demand the immediate correction of such violation or may terminate the event authorized to be conducted by this Agreement. User shall have sole responsibility to provide any special assistance or other accommodations for User's disabled guests, invitees and employees.

22. User shall be responsible for all sales, use, excise, state and local business income taxes attributed to its operations under this Agreement.

23. If User desires security beyond that generally provided by the University or if the University determines in its reasonable discretion that additional security is necessary in connection with User's activity, additional security may be provided with the advanced coordination of the University and at User's sole cost and expense.

24. The User shall not assign or sublease all or any part of its obligations under this Agreement or its permission to use any portion of the facilities without the advance written consent of the University, which consent

may be withheld in University's sole and absolute discretion, nor shall User permit any use of the facilities other than as specified in this Agreement. Nothing herein shall prohibit or prevent User from requesting use of the facility from University other than as set forth herein in accordance with University policies regarding facilities use by third parties (specifically including any use or rental fees). Any such request shall be considered in the sole and absolute discretion of the University.

25. The User, its officers, employees, volunteers, agents, invitees and contractors expressly waive all rights, claims and demands, and forever releases, discharges and holds harmless the University Parties from any and all demands, claims, actions and causes of action arising in connection with this agreement and arising directly or indirectly out of User's use of the University facilities and services, whether caused by the User's action or negligence or the action or negligence of the User's employees, agents, contractors or invitees or any third parties contracted or invited by User in connection with this agreement. The University reserves the right, in its sole discretion, to require User's officers, employees, volunteers, agents, participants, contractors, vendors, invitees or other third parties participating, assisting or using the University facilities or services in connection with this Agreement to execute a separate written waiver and release in a form to be provided by University.

26. This Agreement shall be considered to have been executed in the State of Florida and shall be interpreted and enforced in accordance with the laws of the State of Florida. Proper jurisdiction for any disputes arising from or relating to this Agreement shall lie exclusively in the state or federal courts located in Palm Beach County, Florida.

27. No act of the parties hereto shall be construed as creating or establishing a partnership, or joint venture, of any type between University and User and neither party shall be authorized to commit or to obligate the other party without such other parties' prior written consent.

28. User accepts the use of the facilities on an "as is" basis and University makes no representations or warranties about their condition or fitness or use for a particular purpose.

29. User, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, by any federal, state, or governmental entity or any judicial body having jurisdiction over User or its operations and activities, for any activity of User and for any and all operations conducted by User, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from User's operations and activities on the premises have been obtained and are being fully complied with.

30. User shall permit the University, its agents and employees to enter into and upon the Theater at all reasonable times for the purpose of inspecting the facilities and making any necessary repairs or alterations. The University reserves the right to schedule periodic maintenance and repairs which may necessitate temporary adjustments to User's hours of operation. Such repair and maintenance shall include but not be limited to, interior painting, repairs to interior walls, doors, flooring, carpet replacement, and other minor and major renovation projects. The University shall make reasonable efforts to provide prior notice to User and minimize disruption to User's activities in conducting such inspections, repairs or alterations.

31. User hereby represents and warrants that its use of University facilities and services as set forth herein will not violate any copyright or infringe upon the literary or any other rights of any person, firm, or corporation, including but not limited to, the right of privacy. User also represents and warrants that, as of the effective date of this Agreement and to the best of its knowledge and belief, entering into this Agreement and performing its obligations hereunder will not violate any applicable governmental law, resolution, ordinance or

regulatory act. User also represents and warrants that to the best of its knowledge and belief, it has obtained all necessary licenses, permissions and clearances to do so.

32. University hereby represents and warrants that its use of User's equipment as set forth herein will not violate any copyright or infringe upon the literary or any other rights of any person, firm, or corporation, including but not limited to, the right of privacy. University also represents and warrants that, as of the effective date of this Agreement and to the best of its knowledge and belief, entering into this Agreement and performing its obligations hereunder will not violate any applicable governmental law, resolution, ordinance or regulatory act. University also represents and warrants that to the best of its knowledge and belief, it has obtained all necessary licenses, permissions and clearances to do so.

33. University reserves the right to give its consent of all pictures which are of University property or which identify University, which consent may be withheld in University's sole and absolute discretion. Nothing herein shall grant to User any interests in or rights to use the University name, logo or trademarks without the prior written consent of the University's Vice President of Communications, which consent may be withheld in University's sole and absolute discretion.

34. Nothing herein shall grant the University any interests in or rights to use the User's name, logo or trademark without the prior written consent of User, which consent may be withheld in the User's sole and absolute discretion.

35. Subject to the public records provisions of Chapter 119, Florida Statutes, the University acknowledges that it and its representatives may, in the course of performing the services contemplated in this Agreement be exposed to or acquire information which is proprietary or confidential to the User or its respective affiliates, clients, investors or customers or to a third party to whom any of the foregoing has an obligation of confidentiality. All of the foregoing information in any form obtained by the University and disclosed as such by the User in writing, shall be deemed to be confidential and proprietary information of the User. The University shall and shall cause its representatives to (i) hold such information in strict confidence, (ii) not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of such information or give or disclose such information to third parties or use such information for any purpose whatsoever to the detriment of the User or its respective affiliates, as applicable, and (iii) take any reasonable steps that are necessary in order to ensure that it does not and its representatives who are exposed to such proprietary and confidential information are aware of, and will comply with, such obligations with respect to such proprietary and confidential information.

36. If the University is unable to give User possession of the facilities on the specified date by reason of a force majeure event, the University shall not be subject to liability for failure to give possession. A force majeure event shall include fire, earthquake, hurricane, flood, acts of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, litigation, war or other act of any foreign nation, power of government of governmental agency or authority or any other cause, like or unlike any cause above mentioned which is beyond the control or authority of the University. University further reserves the right to require evacuation of the facility when it is deemed necessary by the University for the safety of the University community or User.

37. The performance of the University of any obligations with respect to the facility shall be subject to and contingent upon the availability of funds specifically appropriated by the state legislature or the prime funding agency, or otherwise lawfully expendable for the Theater for the current and future periods. The University shall give notice to User of the non-availability of such funds when University has knowledge.

38. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon gas that

exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit.

39. Upon termination of this Agreement for any reason, User will at once surrender possession of the Facility to University in as good condition as when first received, normal wear and tear excepted, and remove all of User's personal property therefrom. Any personal property of User not removed within thirty (30) days from the date of termination will be removed, stored or disposed of by University at its discretion and at User's expense.

40. To the maximum extent permitted by law, in no event shall a party to this Agreement be liable to the other or any other party for any special, incidental, indirect, or consequential damages whatsoever, arising out of the Agreement (including, without limitation, damages for loss of business profits, business interruption, or any other pecuniary loss) whether for breach of contract, failure of essential purpose, negligence, or otherwise, even if the party has been advised of the possibility of such damages.

41. All notices required to be given under this Agreement shall be sent by certified or overnight mail to: FAU: Florida Atlantic University, Attn: Director, Space Utilization & Analysis, 777 Glades Road, ADM 121, Boca Raton, FL 33431-0991, with a copy to Florida Atlantic University, Attn: Dean, College of Arts and Letters, 777 Glades Road, Boca Raton, FL 33431-0991 and to User: Diego Rimoch Saraga, Director, Living Room Theaters, Inc., 921 SW Washington St. Suite 220, Portland OR 97205.

Living Room Theaters, Inc.

Florida Atlantic University Board of Trustees

Authorized Officer

Frank T. Brogan, President

Title

Date

Date

Exhibit A

(see attached)

AGREEMENT FOR SERVICES

As a condition of award for this solicitation, the successful vendor and Florida Atlantic University shall enter into a two party agreement as mandated by, Florida Atlantic University Regulations 6.008.

The vendor is required to complete, sign, and return with their bid/proposal this exhibit. If selected as the award vendor an award notice will be submitted to the vendor for signature. This exhibit, along with the award notice and any special terms and conditions will comprise the final Agreement for Services.

TERMS AND CONDITIONS

This agreement on terms and conditions is between Florida Atlantic University, acting for and on behalf of the Florida Atlantic University Board of Trustees, a public corporation of the State of Florida, referred to as "University" and LIVING ROOM THEATERS, INC., referred to as "Vendor".

The Parties, in consideration of the mutual covenants and stipulations set forth in a University's solicitation and the Vendor's proposal/bid, agree as follows:

- A. The Vendor is an independent contractor pursuant to Florida law. The Vendor assumes full responsibility for completion of the requirements, as provided in the Florida Atlantic University's solicitation ITN 07J-507 and the Vendor's proposal/bid.
- B. In the event University owes payment to the Vendor, the University shall mail the Vendor's payment within forty (40) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, as provided in accordance with the terms and conditions of the applicable purchase order/agreement. Failure to mail the warrant within 40 days shall result in the University paying interest at a rate of 1% per month on the unpaid balance from the expiration of such 40 day period until such time as the warrant is issued to the Vendor. The interest penalty shall be mailed within 15 days after mailing the warrant. The University has established a "Vendor Ombudsman". The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s). The University's ombudsman may be contacted at (561) 297-3893. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to the University.

- C. The Vendor agrees that bills and invoices for fees or other compensation for services or expenses shall cite the Contract and shall be submitted to the contract manager in detail sufficient for a proper preaudit and postaudit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. Payment will be tendered only for services or the portion of services completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission.**
- D. The performance of the University of any of its obligations under this Contract shall be subject to and contingent upon the availability of funds appropriated by the state legislature or the prime funding agency, or otherwise lawfully expendable for the purpose of this Contract for the current and future periods. The University shall give notice to Vendor of the non-availability of such funds when University has knowledge. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed prior to the date notice is received.**
- E. If this Contract includes reimbursement for travel expenses, such reimbursement must comply with Sections 112.061, Florida Statutes and will be processed in accordance with University travel policies.**
- F. Each party assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of that party and its own officers, employees and other agents. Vendor also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance of Vendor fulfilling Vendor's obligations under this Contract.**
- G. The Vendor shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Contract. Refusal by the Vendor to allow such public access shall be grounds for cancellation of this Contract by the University.**
- H. This Contract shall be subject to cancellation by either party upon 120 days written notice. A termination penalty may not be charged to the University. The University shall be liable only for payment for service rendered prior to the effective date of termination.**
- I. Any renewals, amendments, alterations or modifications to this Contract must be signed or initiated and approved by all signatories of this Contract. Renewals shall be at the sole discretion and option of the University and shall be under the same terms and conditions as the initial term unless otherwise amended or stated in the Contract.**

- J. The validity, construction and effect of the Contract shall be governed by the law of the State of Florida. The University, as a public entity of the State of Florida, is entitled to the benefits of sovereign immunity coextensive therewith, including immunities from taxation. In the event either party is required to obtain from any governmental authority any permit, license or authorization as a prerequisite to perform its obligations, the cost shall be borne by the party required to obtain such permit, license or authorization.**
- K. In accordance with Section 112.3185, Florida Statutes, the Vendor certifies that to the best of his knowledge and belief no individual employed by him or subcontracted by him has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services. Violation of this section by Vendor shall be grounds for cancellation of this Contract by the University.**
- L. Vendor agrees to indemnify and hold free and harmless, and defend the State of Florida, the Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including attorneys fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities and promotions of every kind and nature of Vendor or its officers, employees, agents and contractors, in connection with this Contract, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right.**
- M. Vendor may not, without the advance written approval of University, assign any right or delegate any duties under this contract, nor may it transfer, pledge, surrender or otherwise encumber or dispose of its interest in any portion of this Contract.**
- N. Each term and condition of this Contract is material and any breach or default by Vendor in the performance of each such term and condition shall be a material breach of the entire Contract for which University shall have the right to terminate this Contract immediately upon notice to Vendor and without termination penalty to University.**
- O. It is understood and agreed that nothing contained is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Vendor as the agent or representative of University for any purpose in any manner whatsoever. Vendor is not authorized to bind University to any contracts or other obligations. Vendor shall not expressly or impliedly represent to any party that Vendor and University are partners or that Vendor is the agent or representative of University or of the Board of Trustees for any purpose or in any manner whatsoever.**

- P. Failure to exercise or delay in exercising any right, power or remedy accruing to University on any breach or default of Vendor shall not impair any such right, power or remedy, or be construed as a waiver of any such breach or default or of any similar breach or default occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default occurring.**
- Q. All documents submitted as part of Vendor's offer are incorporated by this reference. In the event of inconsistency between such documents or the attached Contract and the provisions of this Addendum, the provisions of this Addendum will govern. This Addendum and such documents embody the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between University and Vendor other than are set forth. No subsequent alterations, amendment, change or addition to this Addendum shall be binding upon either University or Vendor unless reduced to writing and signed by them and by direct reference made part hereof.**
- R. The University may not accept a competitive solicitation from, or purchase commodities or contractual services from a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date the person or affiliate was added to the convicted vendor list. Services awarded to or rendered by Vendor in violation of this provision shall result in termination of the Contract.**
- S. The University shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this Contract.**
- T. Vendor agrees to abide by all applicable federal, state and local laws, ordinances and regulations and all University regulations and policies, specifically including without limitation the University's sexual harassment regulations and policies.**
- U. In the event any provision of the Contract shall be held invalid or unenforceable by any court of competent jurisdiction or other applicable legal authority, such holding shall not invalidate or render unenforceable any other provision hereof.**
- V. No default, delay or failure to perform shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.**

W. All notices required to be given under the Contract shall be sent by certified mail to: Florida Atlantic University, Attn: Purchasing, ADM 121, 777 Glades Road, Boca Raton, FL 33431-0991.

LIVING ROOM THEATERS, INC.



Signature
DIEGO RIMOCH

Name
DIRECTOR

Title
JULY 23, 2007

Date

**FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES**

Signature

Name

Title

Date

Exhibit B

Fee Schedule

Monthly Fees:

Initial Maintenance Fee: \$4135.00 per month*
(based on \$8.63 per sq ft)

Total Initial Monthly Fees: **\$4135.00 per month***
(based on \$8.63 per sq ft)

Annual Fee:

Initial Food Service Fee: \$10,000.00 per year

Total Initial Annual Fees: **\$10,000.00 per year**

All fees are subject to: (i) annual adjustment as set forth in the Agreement and (ii) other reasonable adjustments for unusual or extraordinary cost increases, excessive or extraordinary use or consumption, or incremental expenses beyond those provided by University pursuant to standard University policies and procedures. Fees do not include permit or other licensing fees for User's use of the Facility, which are the sole obligation and cost of User.

Fees shall be remitted to: Florida Atlantic University, Attn: Controller's Office, 777 Glades Road, ADM 149, Boca Raton, FL 33431-0991. Fees not paid within ten (10) days after due shall be subject to a 1½% late fee.

If additional hours are approved for User use beyond those set forth in Paragraph 4 of the Agreement, which additional hours may include Friday afternoons and/or University holidays, the monthly fees shall be increased proportionately.

*Maintenance Fee calculated as follows:

$$8200 \text{ GSF (Theater)} + 650 \text{ GSF (50\% Common Area)} = 8850 \text{ Total GSF}$$

$$8850 \text{ GSF} \times \$8.63 \text{ PO\&M} = \$76,375 \text{ annually}$$

$$\$76,375 \text{ annually} \div 12 \text{ months} = \$6364 \text{ monthly} \times 65\% \text{ (prorated User hours)} = \$4135 \text{ per month}$$

Exhibit C

Academic Affiliation

The Dean of the Dorothy F. Schmidt College of Arts & Letters (DSCAL), in consultation with the Director of the School of Communication & Multimedia Studies (SCMS), will conduct periodic reviews of the academic collaboration between the DSCAL and Living Room Theaters (LRT). Significant elements of the academic collaboration are as follows:

- One or more LRT principals will serve on the Advisory Board of the SCMS. Board members are responsible for collaborating with the Director on long-range planning, program development, and fundraising. Board members are expected to participate, preferably in person but by teleconference if necessary, in meetings organized by the Director of SCMS; board members are expected to be thoughtful contributors to SCMS planning. In particular, SCMS expects to invite the advice of LRT principals on the feasibility and structure of new degrees and on configuring current degrees to anticipate industry trends.
- SCMS film professors and the Director of the Film and Video Certificate Program will collaborate with LRT's programmers on the creation of LRT's schedule of significant foreign and independent films. The resultant schedule will articulate significantly with courses and curricula in SCMS and in the Film and Video Studies programs, as well as with the mission of SCMS. The schedule will provide FAU students, faculty and community with access to a range of important films from outside the United States as well as with access to significant independent films made inside the US. LRT will provide discounted tickets to FAU students.
- LRT will equip the theaters with appropriate projectors and screens, and will permit the use of this equipment by FAU for classes and film festivals.
- LRT's principals will share their expertise with SCMS students through lectures, workshops, and other curricular and co-curricular enhancements. LRT will collaborate with SCMS to bring other experts to campus: producers, directors, critics, screenwriters, scholars who do research on film, etc. LRT will collaborate with SCMS to schedule these curricular and co-curricular opportunities to complement LRT's schedule of films and SCMS's course offerings.
- SCMS multimedia journalism students will have the opportunity to write film reviews for web posting and do radio interviews with film directors and actors for the SCMS webcast and digital radio stations. These will be posted and archived on the SCMS website, Wavelengths, affiliated with Proteus. Select examples of this work will be featured in links from the LRT website.
- SCMS students and students in the graduate Film and Video certificate program will have the opportunity to prepare and deliver introductions to select films as well as lead discussions of them.
- LRT will collaborate on FAU film festivals with the faculty in the Film and Video certificate programs as well as the faculty of SCMS. LRT will share its film catalogue and access to films and filmmakers with the Film Festival planners, and will develop its schedule of films to accommodate the dates of the festivals. LRT will permit the use of its website to publicize the festivals. FAU film festival offerings and MFA shows featuring the work of SCMS student or faculty filmmakers shall be publicized on the theatre marquee and external display boxes. As with other ticketed events, LRT will retain all the revenue generated by Film Festivals.

- LRT will offer FAU students the opportunity to learn the digital film business by providing opportunities for part-time employment, internships, and research assistantships. LRT will collaborate with SCMS faculty on the design of internship and assistantship opportunities. These will cover a broad range of areas such as theater technologies, marketing and audience identification, theater management, and the planning and evaluation of programming.
- LRT will serve as a resource for graduate students to write their MA theses or PhD dissertations utilizing information gathered via their involvement with LRT, derived from studying LRT audiences, or through resources available to LRT (e.g., data banks).
- LRT will serve as a resource for the scholarly work of the faculty in SCMS and the Film and Video program through its data banks and the access provided through its programming and the films that it brings to campus.