



155 E. WILSON STREET
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MADISON, WI 53703
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November 21, 2012

TO: Alcohol License Review Committee

RE: Alcohol License Application for Frank Productions, Inc.

Dear Sir or Madam:

On October 16, 2012 Frank Productions Inc. submitted an application for a liquor license for the Orpheum Theater at 216 State Street, Madison.

That application did not include a copy of the Orpheum Theater management agreement between Frank Productions, Inc. and Rebecca DeMarb, Receiver because the agreement had not yet been fully negotiated and signed.

The agreement has now been fully executed and a copy of it is attached here. Please attach this agreement to the application submitted by Frank Productions on October 16, 2012.

Should you have any questions or need additional information please contact me.

Thank you.

A handwritten signature in black ink, appearing to be "Larry Frank", with a long horizontal line extending to the right.

Larry Frank
CEO
Frank Productions, Inc.
608-284-5467
lfrank@frankproductions.com

AGREEMENT

THIS AGREEMENT, executed on the 17th day of October, 2012, by and between Frank Productions, Inc. ("Frank"), a Wisconsin limited liability company, with its office located at 155 E. Wilson Street, Madison, Wisconsin, and Rebecca R. DeMarb, solely in her capacity as the Receiver appointed in Dane County Case No. 12 CV 3615 ("Receiver").

WITNESSETH:

WHEREAS, on October 9, 2012, Dane County Circuit Court Judge Maryann Sumi (the "Court") appointed the Receiver over the real estate and personal property located at 216 State Street, Madison, Wisconsin (collectively, the "Real Estate") and owned by 216 State Street, LLC (the "Debtor"), in Dane County Case No. 12 CV 3615 (the "Case"), on behalf of the interests of Plaintiff, Monona State Bank (the "Bank"); and

WHEREAS, the business commonly known as "The Orpheum," a sometime concert venue, night club, movie theater, bar and restaurant, has been operated at the Real Estate (the "Business"); and

WHEREAS, the Receiver desires for Frank to manage the Business on behalf of the Receiver; and

WHEREAS, Frank is fully qualified and experienced to operate the Business; and

NOW, THEREFORE, the Receiver and Frank, for valuable consideration, agree as follows:

Section 1. Term. The term of this Agreement will begin effective on November 1, 2012, or on the date that a Frank receives a liquor license to operate at the Real Estate, whichever is later (the "Effective Date") and will continue until the Termination Date, being defined as the earliest of (1) the Court discharging the Receiver of her duties as Receiver; (2) mutual agreement of the parties; (3) upon the confirmation of the sheriff's sale of the Real Estate; or (4) when it is otherwise terminated by the terms of this Agreement (the "Management Period"). If the Effective Date has not occurred by December 15, 2012, then this Agreement shall terminate unless extended by mutual agreement of the parties.

Section 2. Scope and Nature of Frank's Responsibilities: Frank shall book, and oversee shows, concerts, entertainment and private events, including weddings (collectively, "Event" or "Events"), at the Business and take all usual and customary actions to hold Events at the Real Estate including cleaning for the Events, preparing the building for Events, orchestrating and oversee the acquisition and sale of alcoholic beverages, and acquiring and

selling food and other related inventory traditionally associated with the Events. In addition, Frank shall be responsible taking all reasonable efforts to secure the Real Estate.

Section 3. Payment to the Receiver. For the use of the Real Estate and the personal property under the control of the Receiver, Frank shall make payment to the Receiver.

- A. Frank shall pay to the Receiver the greater of the following:

REDACTED PROVISIONS

- B. Frank will make the Base Payment to the Receiver on the first day of each month that this Agreement is in effect. The first month's Base Payment shall be payable on the Effective Date and pro-rated based upon the number of days remaining in the calendar month of the Effective Date. Similarly, the Receiver shall refund Frank for the pro-rated number of days in the final month of this Agreement between the Termination Date and the last day of that final month.
- C. The parties shall calculate the Event Net Profits as set forth in this paragraph.

REDACTED PROVISIONS

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- D. Both parties acknowledge, understand and agree that all of Frank's income from the Events constitutes the Frank's earned income and shall at all times remain property of Frank. Frank's income is not and at no point be construed as income of the Business, an asset of the Debtor or collateral of the Bank. In return, Frank shall not pledge the credit of the Receiver or the Bank, nor shall Frank in the name of, or on behalf of the Receiver or the Bank, borrow any money or execute any promissory note, bill, or exchange or other obligation.
- E. Frank agrees that it will take all action to make the operation of the Business, individually, on a profitable basis. Frank agrees that it will not hold Events at the Real Estate as a loss-leader for its other business.

Section 4. Management Duties. The parties anticipate that Frank will hold Events at the Real Estate. In general, Frank shall perform all duties and responsibilities which are normally performed by a manager of such Events. Frank is only responsible for the management of the Business and all its contents which are controlled by the Receiver, and no other property.

- A. Frank shall perform the functions customarily performed by the manager of any business similar to the Business, including, but not limited to, the functions of this paragraph.
- i. Frank will secure and maintain reasonable and adequate insurance protection in the management and operation of the Business, except for property insurance, but including and not limited to public and personal liability insurance, worker's compensation, with the Receiver and the Bank as a loss payees on all such policies and all such insurance shall be subject to the approval of the Receiver and the Bank;
 - ii. Frank will establish and maintain full books and records for the Events with correct entries of all receipts and expenditures of managing the Events. All books, accounts, and records maintained for the operation of the Business, the Events, shall be open at all reasonable hours for inspection and audit by the Receiver for that purpose. Frank agrees to keep all income from operation of the Business, the Events, separate and distinct from its other entities.
 - iii. Frank will have bank account(s) for operation of the Business, separate from any of its other bank accounts. Although Frank's account(s) will not be collateral of the Bank, Frank will hold such account(s) at Monona State Bank.
 - iv. All revenue and expenses of operating the Business will be Frank's and, as such, will be reportable on Frank's income tax returns. Accordingly, Frank will be responsible for all tax reporting, including payroll, income, sales, etc., pertaining to the operation of the Business. In all cases, the applicable identification numbers and responsibility for payment will be of the Frank. Frank will prepare all tax returns including sales tax, payroll tax and income tax returns and other reports required by the United States of America, the State of Wisconsin, or any agency or municipality thereunder, with regard to the operation of the Business.
 - v. Frank shall from time to time, provide to the Receiver information on Events scheduled to occur at the Real Estate.
 - vi. Frank is responsible for taking all actions to ensure that the plumbing is operating properly prior to an Event, up to and including calling a Roto-Rooter service prior to an Event. Frank shall be responsible for the costs of this service.

- vii. Frank shall be responsible for payment, accruing after the Effective Date through the end of the Management Period, of all operating expenses relating to its operation of the Business, including all booking fees, purchase of show specific inventory and alcoholic beverages, employment, marketing, preparation of the Real Estate for a specific event, and advertising.
 - viii. Frank will operate the Business, reasonably and with the exercise of its sound business judgment, and, so far as is economically and legally possible, in accordance with the same procedures, practices, management techniques, and other rules of operation used by Frank in the management of its own businesses and those managed for the account of others.
 - ix. Under no circumstances will the Receiver employ Employees for the Events or for Frank's operation of the Business. The parties acknowledge that as part of employing the employees who will work at the Business, Frank will be the one to select, employ, terminate the employment of, supervise, direct, train and assign the duties of its own employees. Frank will set the rates of compensation and Frank shall be responsible for payment of their wages.
- B. All necessary licenses and permits, including but not limited to the liquor license and entertainment license, Wisconsin Sellers' Permit must be in the name of the Frank. This Agreement is contingent upon the Frank receiving all required licenses including a liquor license and/or entertainment license to operate the Business at the Real Estate. The Receiver will cooperate with Frank to the extent necessary in the acquisition of a liquor license.
- C. With respect to those shows, concerts and other forms of entertainment that are booked at the Business after the Management Period, Receiver acknowledges and understands that Frank has invested substantial monies in orchestrating these events. Receiver shall therefore honor those events and the Receiver's arrangement with Frank under the terms of this Agreement. In the event that any of those events are scheduled after the confirmation of the Real's Estate's Sheriff's Sale in the Case, the Receiver take all reasonable steps to ensure that the confirmation of said sale shall bind the successful bidder to the terms of this Agreement with respect to those booked shows. The Receiver will send notice sale and notice of confirmation to Frank and Frank will only book shows after the time when the hearing on confirmation of sale is scheduled with the Receiver's consent.
- D. Frank will file any required federal Special Occupational Tax return.

Section 5. The Real Estate.

REDACTED PROVISIONS

- B. Frank will take all action to maintain the Real Estate to the extent it needs to be maintained for specific Events. For example, Frank will assume responsibility for cleaning the Real Estate before and after an Event, making sure that the plumbing is functioning before and after an Event (including calling Roto-Rooter, if necessary), and taking other actions that are required specifically to hold the Events. If any damage to the Real Estate occurs as the result of an Event, Frank shall be responsible for returning the Real Estate to its pre-event condition.
- C. The Receiver is required to maintain the Real Estate for any purpose that it would need to be maintained if the Real Estate were sitting empty and not being used for Events. For example, the Receiver is responsible for making sure that the Real Estate is heated as the Real Estate would need to be heated even in the absence of any Events. The Receiver will pay all utility bills for the Real Estate and will pay property insurance for the Real Estate. Further, the Receiver is responsible for making any repairs to the Real Estate that would be necessary in the absence of this Agreement.
- D. Frank will pay and reimburse the Receiver for the utility bills in excess of the amounts required if the Real Estate were empty and not in use ("Additional Utilities"). The Additional Utilities will be determined on the following basis: Of the monthly utility bills, the Receiver will be responsible for 60% of the bills. Of the remaining 40% of the bills, 10% the 40% for each day Frank holds an Event at the Real Estate. For example, if a monthly bill is \$2,000.00 and Frank holds two Events at the Real Estate during the period of time covered by the bill, the Frank would reimburse the Receiver \$160.00. Frank will pay the charges for Additional Utilities to the Receiver within ten (10) days of receiving a copy of the utility bill from the Receiver. Frank may treat Additional Utilities as part its Event Expenses pursuant to the terms of this Agreement. Frank will exercise all reasonable care to minimize the utility costs for its use of the Real Estate, including keeping the building heated to 50 degrees Fahrenheit on non-Event days.
- E. Repairs required to maintain the Real Estate in its current condition or to resolve any existing building code requirements will be the responsibility of

the Receiver. Improvements or alterations required to accommodate the conduct of Events will be the responsibility of Frank. By way of illustration and not limitation, repairs to electrical service to provide for existing equipment and service are the responsibility of the Receiver and repairs or changes to electric service to accommodate additional lighting, sound or other equipment for Events are the responsibility of Frank. The parties responsible for applicable repairs shall make those repairs within a reasonable time.

- F. Frank will not permit any inspections, broker opinions, appraisals or other reviews of the Real Estate, on behalf of itself or others, without the Receiver's express consent.
- G. Frank will have keys to the Real Estate and will be entitled to regular access to the Real Estate without prior notice to the Receiver. The Receiver will have unfettered access to the Real Estate.
- H. At the termination of this Agreement, Frank may remove any equipment or personal property installed or belonging to Frank provided such equipment or personal property is not a fixture. Frank will bear the cost of removal of such equipment or personal property and all costs associated with any repair or modification required upon such removal. The failure of the Receiver or Frank perform any of the agreements, covenants, or conditions of this Agreement (other than the payment of Base Payment) by reason of war, riot, lockout, strike, casualty, or act of God, or by reason of restrictions of regulations of any federal, state, or local governmental authority, or other cause beyond Frank's or Receiver's control, whether similar or dissimilar to those above enumerated, shall not be a default hereunder as long as such cause continues, unless otherwise provided for herein.
- I. In the event the Real Estate is damaged by fire or other casualty, and the cost of repair and replacement shall cost more than one-third of the cost of the entire building to repair and replace, the Base Payment shall abate as of the date of the occurrence of said damage, and any unearned Base Payment paid in advance shall be refunded. The Receiver and Frank shall each have the option of terminating this Agreement by delivering written notice to terminate to the other within forty-five (45) days of the date of occurrence of said damage. If both parties elect not to terminate the Lease, and such election shall be evidenced by a written agreement within forty-five (45) days of the date of occurrence of said damage, then the Receiver shall with due diligence rebuild and replace said building in substantially the same condition as it was prior to such destruction or damage, within one hundred eighty (180) days of said notice; excepting therefrom any delays due to strikes, acts of God or any other cause beyond the control of the Receiver; once the Real Estate is restored, to

its condition prior to such destruction or damage, the primary term under this Agreement shall begin to run for the balance of the term (extended by a period of time equal to the date of occurrence of said damage to the date of completion of said construction), and shall be subject thereafter to all of the provisions of this Agreement. Frank's obligation to pay the Base Payment shall remain abated until the Real Estate is restored as stated in this paragraph and the terms of this Agreement are running again.

REDACTED PROVISIONS

Section 6. Sale. The parties anticipate that the Bank will be successful in pursuing its Complaint for foreclosure of the Real Estate and Personal Property and that the Real Estate and Personal Property will be sold. This Agreement shall terminate upon the confirmation of the sheriff's sale, except as provided in Section (4)(C), above. Nothing in this Agreement is intended in any way to limit Frank's ability to bid at the sheriff's sale for the Real Estate and Personal Property or to otherwise purchase the Real Estate and Personal Property in any other way including, but not limited to, assignment of the Bank's rights in the Case.

Section 7. Accordance with Laws. Frank shall be responsible for operation of the Business in accordance with all applicable laws and regulations during the Management Period including but not limited to compliance with all federal, state or municipal laws, ordinances and regulations relating to Business, laws relating to equal opportunity employment and all other legal requirements of the governmental departments having jurisdiction.

Section 8. Business Style. To the extent permitted by law, during the Management Period, the Business shall continue to use the business names, styles and trademarks in use on the Effective Date and shall not change the business name during the Management Period. Frank agrees to perform all services in a faithful, diligent, and efficient manner, and shall at all times be subject to the reasonable instructions of the Receiver. Nothing in this provision, however, shall be construed as limiting Frank's use of its own name, and reputation, in the booking, marketing and advertising of shows, concerts and other entertainment and events at the Business as well as any other Event related activities that require use of Frank's own name.

Section 9. Leases. Frank shall timely perform all duties in compliance with those leases approved by the Receiver and related to the Business during the Management Period.

Section 10. Confidentiality. Receiver acknowledges and agrees that Frank's records with respect to Events shall remain completely confidential. If the Court requests review of such records, Receiver shall request that such review be in camera only and exclude all portions of the records that are irrelevant to the financial aspects of Frank's duties.

Section 11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Wisconsin. Venue shall be in Dane County Circuit Court. The parties acknowledge this Agreement is the result of negotiations between them and shall not be construed against either party or on the grounds of authorship.

Section 12. Counterparts/Facsimile. It is understood by all parties that this Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the parties and delivered to the other parties. It is not required that all parties sign the same counterpart. Additionally, this Agreement may be executed by electronic (e-mail) signature or facsimile. An electronic or facsimile signature shall have the same force and effect as an original signature on this Agreement.

Section 13. Construction. The terms of this Agreement were negotiated and agreed to as between both parties, and as such, this Agreement shall not be deemed to have been prepared by any single party hereto.

Section 14. Limitations on Liability. Frank shall not be liable under any tort theory or breach of contract theory for management decisions made in good faith and in compliance with the written terms of this Agreement, except for willful misconduct or gross negligence.

Section 15. Attorneys' Fees. In the event of any litigation arising hereunder by and between the Receiver and Frank, the prevailing party thereto shall be entitled to reimbursement for all attorney fees incurred by it in connection with said litigation.

Section 16. No Joint Venture. Nothing herein contained shall be deemed or be construed by the parties hereto nor by any third party as creating the relationship of partnership or of joint venture between the parties hereto or of any other relationship other than that of independent contractor.


Section 17. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned by the Frank without the prior written consent of the Receiver.

Section 18. Enforceability. If any provisions of this agreement or the application of any provision to any person or circumstance is held invalid or unenforceable, the remainder hereof and the application of such provision to other persons or circumstances shall remain valid and enforceable. The failure of either party to strictly enforce any provision or

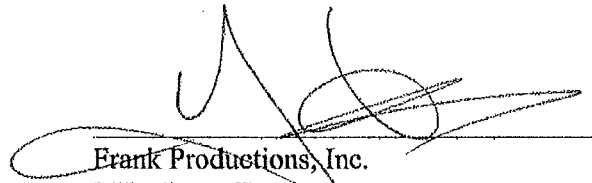
condition of this agreement shall not be deemed a waiver or estoppel against the parties seeking such enforcement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Dated this 17th day of October, 2012.



Rebecca R. DeMarb
Solely in her Capacity as Receiver for
216 State Street, LLC



Frank Productions, Inc.
BY: Larry Frank
ITS: Chief Executive Officer