

June 23, 2009

Patrick O'Donovan, Chair, Board of Directors
Barbara Edelman, Esq., Chair, Allocations Committee
James M. Clark, President & CEO
Cc: LexArts Board of Directors

Dear Mr. O'Donovan, Ms. Edelman and Mr. Clark:

As the leaders of LexArts and Actors Guild of Lexington (AGL), we bear considerable responsibility for allowing misunderstandings to turn a long collaborative relationship into a climate of mutual distrust.

We write to clarify facts about AGL's financial situation and about our satisfaction of the conditions set by LexArts for AGL's receipt of the full \$70,000 allocated for fiscal year 2009. Further, we dispel LexArts board members' misperceptions that have come to our attention in the days since we learned that LexArts chose not to fund AGL for fiscal year 2010. Finally, we request a rehearing and reconsideration of LexArts's denial of funding in accordance with appeal procedures.

AGL'S PAST AND CURRENT DEBT

We are open about AGL's past problems, and regret that LexArts has not acknowledged the responsible and productive corrective actions that we have taken.

Your letter denying 2010 funding read in part: "Your current status of insolvency presents problems we are unable to disregard."

By definition, this statement is correct: AGL's financial liabilities exceed our tangible assets. Nevertheless, we are concerned that LexArts has ignored the fact that over the past year we have reduced our debt, and have a plan to eliminate it entirely.

LexArts CEO Jim Clark told the *Lexington Herald-Leader* this weekend that AGL had in the relatively recent past a debt totaling more than \$80,000, and he estimated a current debt of approximately \$40,000. After this month, AGL will have finished three of the last four fiscal years "in the black". We are willing to make public our financial audits from the last four years in support of this statement. We have formulated a plan to eliminate our debt by June 30, 2012, which we believe to be a realistic time frame given the current economic recession.

It bears noting the source of our debt. In 2002, AGL made what has proven to be an imprudent decision: AGL spent \$79,000 on physical improvements (bathroom, electricity, fixtures, etc.) to the fourth floor of the Downtown Arts Center, a government-owned building for which LexArts is the lessor. For that expenditure, AGL depleted its reserve funds and took a bank loan, with a present balance of approximately \$17,000. We are current with this obligation. In a sad irony, however, this fourth floor office space has been essentially unusable most of the last two years. Though AGL has paid rent, LexArts has failed to provide heating or air conditioning for the last 22 months, despite repeated requests from AGL. This is contrary to the clear terms of the lease agreement which obligates LexArts to repair and keep in good order the HVAC system.

Our current debt includes approximately \$12,000 owed to the Internal Revenue Service. AGL has been paying monthly installments set by the IRS. This unfortunate matter was discussed at great length during last year's LexArts allocation hearing. Finalized in December 2008, AGL's installment agreement with the IRS requires monthly payments toward payroll taxes owed for the quarters ended December 31, 2007, and March 31, 2008. Not being able to satisfy these taxes was a regrettable occurrence and due in part to circumstances beyond AGL's control. AGL voluntarily contacted the IRS to make arrangements for monthly payments toward the prior taxes. The installment agreement also requires that AGL remain current with the payment of payroll taxes. Both of these conditions have been and continue to be met. A copy of the finalized installment agreement was provided to Mr. Clark, as were printouts from the IRS website showing the history of payments.

Rumors that the IRS is suing AGL board members are false. The IRS did send each Executive Committee member a letter dated October 31, 2008 "to discuss your duties and responsibilities as an officer/employee of Actors Guild of Lexington Inc and your potential personal liability for unpaid trust fund taxes due and owing" for two fiscal quarters. Further, a condition of our IRS agreement states: "If you do not make timely payments and keep your federal tax deposits current, this agreement will default and a trust fund penalty will be assessed against each responsible officer immediately." This is not a threatened lawsuit. AGL has fully complied with the IRS agreement and will continue to pay past and current payroll taxes as stipulated. We have repeatedly documented our compliance to LexArts.

FULL SATISFACTION OF THE LEXARTS ALLOCATIONS COMMITTEE'S CONDITIONS

The LexArts 2010 allocation denial letter also asserted: "While we tried to give AGL every opportunity this year to become a more stable organization we have not seen acceptable progress."

This declaration is the core of our misunderstanding.

In June 2008, LexArts set three firm conditions for AGL's receipt of our 2009 allocation, specifically withholding \$21,000 with the promise to release \$7,000 each time we met a benchmark; the conditions were repeated in a LexArts letter dated September 2, 2008. Each condition was a reasonable exercise of LexArts's fiduciary responsibility. We will address individually each condition, and its satisfaction.

Condition 1: " A qualified general manager has been hired;"

In response to the significant loss that AGL incurred in fiscal year 2008, LexArts wisely urged that AGL hire a theatre management professional. Beginning in June 2008, AGL conducted a national search for a Managing Director to function as an organizational equal to Artistic Director Rick St. Peter. After interviewing multiple qualified candidates, we ultimately hired Kimberly Shaw, whose academic credentials (BA, Spelman College; MFA, Columbia University) and extensive professional experiences plainly qualify her.

Ms. Shaw began full-time work at AGL on October 1, 2008, and has remained so to this date. On October 15, 2008, LexArts agreed to release in three monthly installments the \$7,000 withheld until satisfaction of this condition. LexArts paid us one third of the amount owed in October. LexArts paid us the balance of \$4,666.67 on January 10, 2009.

We have been informed through secondary sources that the LexArts Executive Committee believes we have deceived it about hiring a Managing Director. Allegedly, “Kim” told one of your board members that she works for AGL only one day per week. In fact, it is our new Development Director, not Kimberly Shaw, who has worked for AGL one day a week since December 2008. It concerns us that the Allocations Committee failed to exercise minimal due diligence to clear up this significant factual misunderstanding.

Condition 2: “\$110,000 in sponsorships has been secured;”

On January 19, 2009, AGL presented LexArts CEO Clark with documentation of having secured \$111,000 in sponsorships. In an e-mail message dated February 20, Mr. Clark requested that in-kind and cash gifts be clarified and said that he suspected we would not receive the \$7,000 until we physically collected \$110,000. On February 24, Mr. Clark received a new document showing that we had by then secured \$126,600 and collected \$102,983, with an additional \$10,000 as an in-kind gift to be realized on May 9 for the Scene and Be Seen event.

On February 26, 2009, Mr. Clark responded that the information “looks good”, that he would be meeting with the Chair of the Allocations Committee that day, and he would get back to us shortly.

On April 10, 2009, AGL met with Mr. Clark with a copy of the Profit and Loss Statement to show the sponsorship income on our official financial documents.

Ultimately, LexArts paid AGL \$7,000 for satisfying this condition on May 8, 2009.

Condition 3: “\$30,000 is raised through special events.”

Since an event scheduled for November 2008 had to be cancelled because of superseding obligations on Tony award nominee Laura Bell Bundy, this was inevitably the last of the conditions we would fulfill. As you know, LexArts beneficiaries are prohibited from fundraising during the active part of the LexArts annual campaign, extending this year into April.

Our first 2009 special event money, \$10,000 allocated to AGL from proceeds of the 2009 Beaux Arts Ball, derived from extensive AGL staff and board work on the event, which netted more than \$40,000. AGL’s Managing Director and Vice President joined the Beaux Arts Ball planning committee in November 2008. One or both of them attended every organizational session with the University of Kentucky College of Design students, and they collectively spent more than 40 hours helping to plan the Beaux Arts Ball and a prior fundraising reception at the home of Jim Gray (which was their idea). Half a dozen AGL staff and volunteers worked for hours at the Beaux Arts Ball itself. LexArts CEO Clark was kept apprised of these facts well in advance and gave our staff repeated assurances that the \$10,000 would count toward this third condition.

Scene and Be Seen, AGL’s 2nd annual major fundraising event, took place on May 9, 2009, earning a total of \$19,023 through event sponsorships (not including a \$10,000 in-kind gift counted toward the \$110,000 benchmark of Condition 2, above), ticket sales, raffle ticket purchases, and silent auction bids.

In April, a fundraising reception at a private home earned \$400, and a small amount of money was raised at the Give into the Groove charity event. In May, an AGL board member set up her birthday party as an elaborate AGL fundraiser, collecting \$2,642 in donations; notably, LexArts received \$1,400 in fees for this event, held in the Downtown Arts Center.

Notwithstanding his repeated assurances, Mr. Clark last week raised the concern that the check we received from Beaux Arts did not qualify as special event money. Although Mr. Clark has now verbally assured us that this amount will be credited, LexArts has not yet agreed to release the \$7,000 withheld pending satisfaction of this condition, which was fully satisfied earlier in the month.

AUDITOR'S "GOING CONCERN" FOOTNOTE

Given the significant loss incurred by Actors Guild in fiscal year 2008, a "going concern" footnote was included in the disclosures to the audited financial statements. The going concern note summarizes the financial condition of AGL on one date in time, June 30, 2008. The note explained that unless circumstances changed during the next year, AGL would not be able to withstand another year of losses such as the loss incurred in fiscal year 2008.

The note in the audited financial statements also explained the corrective measures that were being taken: hiring a managing director, hiring a development professional, reduction of expenses and creation of additional revenue streams. All of these measures were accomplished during the current fiscal year and AGL is projecting a profit for the year, assuming that LexArts releases the remainder of AGL's 2009 allocation.

In the allocations hearing, Mr. St. Peter explained these corrective measures in response to the going concern note. AGL Treasurer Tammy Farley, a CPA/CFP who regularly audits nonprofit organizations, explained a going concern note from an accountant's perspective, including the manner in which that type of note may be presented and why the note was applicable to AGL.

ADDITIONAL FACTS ABOUT AGL FINANCES AND THE LEXARTS ALLOCATION PROCESS

In addition to satisfying all of the revenue targets set by LexArts, under the expertise and hard work of Managing Director Shaw, AGL has cut its operating and production expenses by approximately 30 percent. Ms. Shaw initiated money-saving changes to the 2009 performance schedule, including: reduced runs of plays in February and March, and replacement of an extremely costly production. She advocated fiscally responsible changes in all areas of AGL's budget and introduced strategies to diversify AGL's revenue stream, such as locating free rehearsal space and soliciting donations from ticket buyers at the point of purchase. Through creative marketing as well as artistic excellence, the season's final production became AGL's best-selling show in five years.

One important change supported by the Managing Director was the hiring of a professional Development Director. AGL hired Brenda Psocketka, formerly a fundraiser for Atlanta's Alliance Theatre and the Lexington Children's Theatre. Ms. Psocketka started working for AGL one day a week because her salaried position was not in AGL's fiscal year 2009 budget; she begins full-time work July 1, 2009.

Despite the abbreviated work schedule, the Development Director has already enhanced AGL’s fundraising success, and has exciting plans for increasing revenue in the coming months.

In late April, LexArts circulated a one-page outline titled “Criteria for assessment of funding for Partner Organizations (formerly Beneficiary Groups)”, and specifying the relative importance of each criterion. We briefly address each, in the order presented by LexArts:

“Fulfillment of Mission Statement 40%”

All AGL programming, from main stage to education, is mission-driven, a fact not challenged by LexArts. At the same time that AGL has exercised greater fiscal controls, the theatre has succeeded in expanding audience diversity, media recognition and national support. AGL would be thrilled to discuss this at length.

“Effective and Responsible Fiscal Management and Governance 30%”

Above, we dispelled numerous factual misunderstandings in this area. AGL has also informed LexArts that we do not satisfy two of ten items in the list: “Directors and Officers insurance” and “Board approved conflict of interest statement”. We have made progress toward correcting both deficiencies. We take our financial condition very seriously; however, it should be noted that solvency and lack of debt are not listed among the LexArts funding criteria.

“Community Outreach and Public Service 20%”

AGL has several programs to provide free and reduced cost tickets to underserved audiences. Our Education Director, who is both a theatre professional and a licensed clinical psychologist, has led Page to Stage and Journal to Stage programs focused on at-risk youth. AGL has partnered in the last several years with: the Lexington Public Library, Hospice of the Bluegrass, Fayette County Public Schools, and the Florence Crittenton Home. We have also taken the Apprentice Players under our banner and have active youth and college internship programs.

“Participation in Campaign 5%”

Each employee and all but two AGL board members contributed to the just-concluded LexArts fundraising campaign. AGL has duly promoted LexArts in all of its public materials, including four pages listing LexArts donors in each playbill.

Presentation of Allocations Request 5%

We will not quarrel with the Allocation Committee’s opinion of the presentation quality of AGL’s written application and oral hearing. We note only that LexArts valued this criterion at 5% relative importance in the allocation assessment.

MOVING FORWARD

Without doubt, many of your donors contributed money to you with the understanding that LexArts funds theatre for adults – and AGL specifically. At the same time, LexArts prohibited AGL from raising funds independently. Regardless of whether the LexArts board chooses to reverse its allocation decision based on the facts we have laid out in this letter, AGL deserves a substantial portion of funds LexArts purported to raise on our behalf during the 2009 campaign.

On a personal level, we wish to express our disappointment in how LexArts has chosen to handle what should have been a respectful severance of a financial relationship that has been in existence for nearly two decades. LexArts notified AGL after sending out a press release – in a letter that was dated June 15 yet went through the LexArts postage meter on June 19. We learned about the allocation denial from a June 19 *Business Lexington* e-mail blast, and have since read in the media unnecessarily derogatory quotations from LexArts representatives. Still, we believe it is possible to have an amicable relationship in the future regardless of the decision your Board of Directors may make in response to this letter.

In these difficult economic and social times, there is no place for antagonism among arts groups, or individuals within them. We share similar missions to educate, inspire, entertain and challenge ever-wider audiences in Central Kentucky. We all increasingly partner with schools, social service charities, health care providers and other arts organizations, in the common pursuit of enriching citizens' lives through exploration and enjoyment of visual and performing arts.

AGL supports your mission: "LexArts promotes high quality arts experiences for the benefit of the people of central Kentucky through funding, advocacy, technical assistance, communication and programming initiatives." We applaud your well-publicized innovations, we express gratitude for the support you have given AGL and other local nonprofits, and we support your leadership. We hope, however, that you can understand the frustration of facing an injurious decision by your board which we believe was based on inaccurate allegations – and of being forced to respond in such a public manner.

We are confident that LexArts will pay AGL the \$11,083.34 currently due to us: \$4,083.34 for the June 2009 monthly allocation, and \$7,000 recognizing satisfaction of the special event fundraising condition. We are hopeful that, based on the facts in this letter, LexArts will reconsider its vote to eliminate funding to AGL. And we respectfully entreat you and your fellow board members to cease further public indictments of our worthy organization and its leaders.

Thank you for taking the time to review this information thoughtfully.

Sincerely,

James Dickinson, Esq.
President, Board of Trustees

Tammy D. Farley, CPA, CFP
Treasurer, Board of Trustees

Kimberly M. Shaw
Managing Director

Richard St. Peter
Artistic Director