

## SECOND AMENDMENT TO OPERATION AGREEMENT

WHEREAS, the **CITY OF LAWRENCEVILLE, GEORGIA** (the “City”) and the **AURORA THEATRE, INC.** (the “Aurora Theatre”) did enter into an Operation Agreement dated July 23, 2021, for the operation of the Lawrenceville Arts Center, as defined in said Operation Agreement; and

WHEREAS, the parties did amend certain provisions of said Operation Agreement in a First Amendment to Operation Agreement dated February 7, 2022; and

WHEREAS, the parties desire to amend certain provisions of the Operation Agreement as amended.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree that the Operation Agreement is amended as follows:

Paragraph 1 is amended by deleting the original paragraph in its entirety and replacing it with the following:

1. **Term.** The Term of this Operation Agreement shall commence on July 23, 2021, and shall expire on the Expiration Date (as such date is defined in the Lease) or earlier termination of the Lease, it being understood and agreed that the Lease and this Operation Agreement shall be co-terminus excepting those provisions of this Operation Agreement which by their terms shall survive the expiration or earlier termination hereof. The parties acknowledge that it may be necessary to revise the terms of this Operation Agreement periodically, and agree that the Operation Agreement shall be reviewed and may be modified as mutually agreed upon and approved by the Aurora Board and City Council within ninety (90) days after the approval by the City of the initial Five-Year Business Plan and the initial Annual Marketing Plan of the Complex, and at least every two years thereafter. The parties agree to work in good faith to modify the Operation Agreement as needed to improve the use of the Premises.

Paragraph 2.a. is amended by deleting the original paragraph in its entirety and replacing it with the following:

- a. A City staff member shall be entitled to participate in all interviews for these staff positions, and with the final selection of the Complex General Manager being subject to approval of the City Manager.
  - i. *Complex General Manager* – minimum of 1 staff member with 10 years minimum experience with facility/event management with an emphasis on operating a performing arts complex with multiple indoor and outdoor spaces made available to 3<sup>rd</sup> party rentals.

- ii. *Facilities Sales & Booking Manager and Event Coordinator* – minimum of 2 staff members (one senior and one junior position) who satisfy the requirements set forth on Exhibit “B” attached hereto and made a part hereof. Notwithstanding the foregoing, the Aurora Theatre has no obligation to hire a Booking Associate until such time that demand supports such hire, which the parties hereto estimate to be in 2022.
- iii. *Facility Maintenance Supervisor* – minimum of 1 staff member who satisfies the requirements set forth on Exhibit “C” attached hereto and made a part hereof.
- iv. *Information Technology Company* – hiring of a information technology firm or company that services IT needs of the Premises including but not limited to installation of appropriate computer equipment, software programs, wi-fi network, and appropriate coordination with City IT staff (it being understood and agreed that the Information Technology Company does not need to serve the Premises exclusively).

Notwithstanding anything herein to the contrary the positions to be hired pursuant to this Section 2(a) can be filled with current Aurora Theatre staff and employees if said staff and employees meet the criteria above and if Aurora Theatre then hires a new employee to fill the vacated spot. In addition, Aurora Theatre shall have the right to terminate employment of any positions it fills pursuant to this Operation Agreement provided that it notifies the City of said termination and that it works in good faith to fill the open position created; provided, however, that any termination and hiring of the Complex General Manager shall require the approval of the City Manager.

The Complex General Manager shall be hired in accordance with the provisions of this paragraph not later than September 5, 2022. The term of the Interim Complex General Manager shall not end until at least one month after the hire of the Complex General Manager. The Event Coordinator (also referred to as Booking Associate) shall be hired no later than December 31, 2022.

Paragraph 2.b. is amended by deleting the original paragraph as amended in its entirety and replacing it with the following:

- b. Five Year Business Plan: A strategic business plan that outlines in detail the approach of scheduling Aurora produced shows and booking of 3<sup>rd</sup> party rentals and events including projections on revenue and expenses related to the operation of the facility. This plan shall also include staffing requirements and shall be updated one year from the approval by the City of the initial Five Year Business Plan and at least once every two years thereafter. All reports and updates shall be provided to the City on a regular schedule to be developed and agreed upon by the parties. The Business Plan shall include proposals to utilize the following rentable spaces: 250-seat Strickland Family Mainstage, Peach State Federal Credit Union Studio, 500-seat Grand Stage Theatre, Morgan Cabaret, Kistner Gallery, Borders Rehearsal Hall, and the Outdoor Courtyard,

and shall include plans for the accrual of capital accounts to fund expected capital expenditures. The first-year business plan shall be submitted to the City on or before June 30, 2022.

Paragraph 2.c. is amended by deleting the original paragraph as amended in its entirety and replacing it with the following:

- c. Annual Marketing Plan of the Complex: A marketing plan that outlines how the Lawrenceville Arts Center including all rentable spaces located within the Premises will be marketed and booked. This plan shall include marketing regionally and locally to ensure maximizing the use of the facility in a manner that meets the goals and objectives for the Lawrenceville Arts Center. The parties agree that the goal of the parties is to have all rentable areas of the Lawrenceville Arts Center used as frequently as reasonably possible in a manner that will draw residents and visitors to the Downtown Lawrenceville Area, provide the community with exposure to a diverse assortment of quality fine arts, provide support for fine arts education at the K-12 level and the college level, and provide a welcoming community place for gathering. The Marketing Plan shall specifically list each space available for rental within the Premises, proposed uses for each space, the maximum number of events anticipated per year in each space, and the anticipated revenue and expense from the rental of each space, The initial plan should provide rental and revenue projections for at least the first three years of operation and set forth how the Aurora Theatre anticipates obtaining use of or rental of all spaces at a minimum of seventy per cent (70%) occupancy of each space for each year, and how Aurora Theatre plans to increase this occupancy rate on a yearly basis, and how these rentals are accomplishing the goals for the use of the Lawrenceville Arts Center. The Marketing Plan shall be submitted to the City on or before May 27, 2022 and shall be updated annually and provided to the City no later than July 1 of each year. For avoidance of doubt, year one shall commence on July 1, 2022, year two on July 1, 2023, and so on.

Paragraph 4 is amended by deleting the original paragraph in its entirety and replacing it with the following:

1. **Default.**

- a. The occurrence of any one or more of the following shall constitute a default under this Operation Agreement: (i) failure to complete the hiring of an Interim Complex General Manager within the time frame established by this Operation Agreement; (ii) failure to complete the hiring of all staff as required by this Operation Agreement within the time frames set forth in this Agreement; (iii) failure to provide the Initial Five Year Business Plan, Annual Marketing Plan, Annual Market Analysis, Annual Maintenance Plan, Food and Beverage Plan, and Security Plan within the times frames set forth in this Agreement, to correct any deficiencies in these plans or to provide these plans in future years within the time-frames required by this Operation Agreement; (iv) failure to achieve the use and revenue

projections set forth in any Annual Marketing Plan of the Complex within the year covered by that plan, default in the payment of any payroll, utility bill, or other regular operating expenses, the failure to properly maintain any accrued capital accounts, escrow accounts or other separate accounts required by this Operation Agreement or the Lease, or failure to submit any financial reports or information as required by this Operation Agreement or the Lease; (e) the filing of any petition for relief under any provision of the Federal Bankruptcy Code or any similar state law is brought by or against the Aurora Theatre and remains pending for at least ninety (90) days; (v) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by or the insolvency of the Aurora Theatre; (vi) the suspension of the operations of the Aurora Theatre for a period of more than thirty (30) days; (vii) the dissolution of the Aurora Theatre or the merger or consolidation of the Aurora Theatre with another entity; or (viii) violation of any other provision of this Operation Agreement or the Lease by either party that is not cured after proper notice as provided in this Operation Agreement or in the Lease.

- b. In the event any party hereto shall breach or default in the performance of this Operation Agreement, and fails to cure said default within sixty (60) days of written notice of the default (provided however, that if such default cannot by its nature be fully cured within said sixty (60) day period, the defaulting party shall have a reasonable additional period to cure same provided that it continuously prosecutes the curing action with diligence, and further provided that such additional period to cure shall not exceed sixty (60) days in the aggregate), and such failure to cure continues for thirty (30) additional days after an effective reminder notice from the non-defaulting party to the defaulting party of such failure; then, in that event, the non-defaulting party may pursue all remedies available at law and equity including but not limited to immediate termination of this Operation Agreement. Notwithstanding the foregoing, in no event shall either party be liable to the other party hereunder for any consequential, punitive, special or indirect damages under this Lease or under this Operation Agreement. In order for the aforementioned reminder notice to be effective, it must state on its face in the following: **“FAILURE TO COMPLY WITH THIS NOTICE WITHIN THIRTY (30) DAYS AFTER THE DATE HEREOF SHALL CONSTITUTE A DEFAULT UNDER THE AGREEMENT.**

Except as specifically amended herein, the remainder of the original Operation Agreement is hereby ratified and reaffirmed by the parties and shall remain in full force and effect with the only modification being as set forth in the First Amendment to Operation Agreement dated February 7, 2022 and as set forth in this Second Amendment to Operation Agreement. This Amendment shall become effective upon the date approved by the last party as shown below.

**IN WITNESS WHEREOF**, the Parties have executed this Second Amendment to Operation Agreement under their hands and seals, the day and year shown below.

CITY OF LAWRENCEVILLE, GEORGIA

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Mayor David Still

ATTEST: \_\_\_\_\_  
City Clerk

AURORA THEATRE, INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Anthony Rodriquez

Date: \_\_\_\_\_

\_\_\_\_\_  
Ann-Carol Pence