



penn theater performance company

THE PLACE FOR ARTS, EVENTS, & CULTURE IN BUTLER, PENNSYLVANIA

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Amended and Restated Bylaws of the Penn Theater Performance Company

**Revised August 28, 2023; Approved September 21, 2023
Butler, Pennsylvania**

ARTICLE I. NAME & PLACE OF ORGANIZATION & SCOPE OF BYLAWS

The name of this Pennsylvania non-profit corporation is the “Penn Theater Performance Company” (hereinafter sometimes referred to as the “Corporation”), operating and caring for the historic Penn Theater located in Butler, Pennsylvania. The principal place of business and the registered office of this non-profit Corporation in the Commonwealth of Pennsylvania is 149 N. Main Street, Butler, PA 16001, and the same may be updated from time to time by the Board of Directors. The Corporation may have additional offices and places of business in such places, within or outside the Commonwealth of Pennsylvania, as the Board of Directors may designate or as the business of the Corporation may require.

These Bylaws (hereafter referred to as “Bylaws”) constitute the corporate governance rules adopted by the Penn Theater Performance Company for the regulation and management of its corporate affairs, as well as the affairs of the Penn Theater.

ARTICLE II. POWERS, MISSION, VISION, & PURPOSE

Section 1. Guaranteed & Protected Powers

The Penn Theater Performance Company shall have the general purposes and powers stated in its Articles of Incorporation, as may be amended, as well as those powers granted by the Nonprofit Corporation Law of 1988 of the Commonwealth of Pennsylvania, or any successor legislation, as the same may be amended.

Section 2. Mission

The Penn Theater Performance Company will reinvigorate the historic Penn Theater as the region’s premiere hub for arts, entertainment, culture, and heritage through community-centered, high quality, diverse events, promoting economic revitalization for downtown Butler, while enriching the quality of life of our citizens and lifting up the needs of those marginalized across our Butler County community.

Section 3. Vision & Values

The Penn Theater Performance Company envisions the Penn Theater as not only a high-quality, community-centered performance theater, but also a gateway to downtown Butler, an anchor for its rich cultural and historic heritage, a source for outreach and support, and the heart for arts, events, and culture in the region.

The Penn Theater is Butler built, Butler proud, Butler resilient, and Butler strong. We value community, collaboration, charitable good works, holistic wellness, equity, stewardship of donor’s time, talent, and treasure, transparency, innovative solutions, while hosting and producing high quality events and entertainment.

Section 4. Nonprofit Purpose

The Penn Theater Performance Company is a Pennsylvania non-member non-profit Corporation, organized and operated exclusively for charitable, religious, educational, and scientific purposes, including for such purposes the providing distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

The net earnings of the Corporation shall not inure to the benefit of, or be distributable to its directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities prohibited by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code or the corresponding section of any future federal tax code.

ARTICLE III. STATEMENT OF NON-DISCRIMINATION

The Penn Theater Performance Company is an equal employment opportunity entity and shall not unlawfully discriminate against any person in the hiring of personnel, election of officers or board members, provision of services via the Penn Theater, contracting for or purchasing of goods or services, or in any other way, on the basis of race, color, sex, national origin, physical, mental, or emotional condition, religion, age, sexual orientation, gender identity, or any other basis prohibited by law. This policy against discrimination includes, but is not limited to, a commitment to full compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as well as any subsequent amendments to such statutes duly passed seeking equity, inclusion, and access for all. Harassment or intimidation of any person because of that person's race, color, sex, national origin, physical, mental, or emotional condition, religion, age, sexual orientation, gender identity, or any other identity protected by law is specifically prohibited. The Penn Theater Performance Company is committed to cultivating an environment that is free of any unlawful harassment and prohibits discrimination against employees, board members, volunteers, community members, guests, or any person.

ARTICLE IV. BOARD OF DIRECTORS

Section 1. General Powers

The affairs of the Penn Theater Performance Company shall be managed under the direction of the Board of Directors. The Board shall have control of any corporate property and shall determine all corporate policies. The Board shall have all power and authority to carry out the business and affairs of the Penn Theater Performance Company and to fulfill its purpose with respect to the Penn Theater. The Board shall have the power to make all corporate decisions, or to validate decisions made by those reporting to the Board, including staff members and an Advisory Council (Article VI).

In its current corporate form, the Penn Theater Performance Company has no members and no shareholders, as the Corporation is organized on a non-stock, non-member basis.

Section 2. Number, Tenure & Qualifications

The number of directors on the Board of Directors shall consist of at least three (3) and not more than twelve (12), which includes its officers: the Chair & President, the Secretary, and the Treasurer. The Board of Directors may amend the number of directors at their discretion from time to time.

The Board of Directors shall, upon election, immediately enter upon the performance of their duties and shall continue in office until their successors shall be duly elected and qualified. All prospective Directors must be approved by a majority vote of the current Board of Directors. No vote on new members of the Board of Directors shall be held unless a quorum of the Board of Directors is present and otherwise in accordance with these Bylaws.

Each Director shall be a natural person of full age but need not be a resident of Pennsylvania. Each Director shall hold office until the expiration of the term for which he or she was selected and until the Director's successor has been selected and qualified (at the President's pleasure) or until the Director's earlier death, resignation, or removal.

Nominations for election to the Board of Directors may be made by the Board of Directors or any authorized committee of the Board. Nominations, other than those made by or on behalf of the Board of Directors, shall be made in writing and shall be received by the Secretary of the Corporation not later than (i) with respect to an election of Directors to be held at an annual meeting of the Corporation, sixty (60) days prior to the anniversary date of the immediately preceding annual meeting of the Corporation and, (ii) with respect to an election of directors to be held at a special meeting, the close of business on the fifteenth (15th) day following the date on which notice of the meeting is first given or public disclosure of the meeting is made.

Any Director may resign at any time from his or her position as a Director of the Corporation upon written notice to the Corporation. The resignation shall be effective upon its receipt by the Corporation or at a later time as may be specified in the notice of resignation.

ARTICLE V. BOARD OFFICERS

The officers of the Corporation shall be the Chair & President, Secretary, and Treasurer, and each must be active members of the Board of Directors in good standing.

Section 1. Chair & President

The Chair & President will act as a visionary, shepherd, and representative thereof. The Board Chair & President:

- ▶ Provides leadership and direction to the Board, ensuring accountability and compliance.
- ▶ Establishes long- and short-term goals, objectives, and priorities, and aids in actualizing them.
- ▶ Manages meetings, conducting business effectively and efficiently, and sets meeting agendas.
- ▶ Reports to the Board on the status of major operations and projects.
- ▶ Arranges for substitute leadership in their absence.
- ▶ Acts as a signatory on behalf of the Corporation for financial and legal purposes.
- ▶ Liaises with local leaders, the media, other agencies, and the community, enhancing relationships.
- ▶ Performs other duties as required by the Board of Directors or the Bylaws.

Section 2. Secretary

The Secretary will act as a clerk, record-keeper, and enforcer thereof. The Secretary:

- ▶ Records all attendance, votes, and minutes of all proceedings as a record of all Corporation activity.
- ▶ Arranges all meetings of the Board and sends notices for all meetings.
- ▶ Maintains and protects all official files and legal documents of the Corporation.
- ▶ Performs other duties as required by the Board of Directors or the Bylaws.

Section 3. Treasurer

The Treasurer will act as a bookkeeper, accountant, and auditor thereof. The Treasurer:

- ▶ Assists in the preparation of the budget and monitors the budget in conjunction with the Chair & President and the Executive Director.
- ▶ Ensures the Board's financial policies are being followed and reports to the Board on finances.
- ▶ Prepares any required financial reporting forms.
- ▶ Maintains all bank accounts and oversees all financial transactions.
- ▶ Acts as a signatory on behalf of the Corporation for financial and legal purposes.
- ▶ Performs other duties as required by the Board of Directors or the Bylaws.

Section 4. Election of Officers

At the meeting prior to the annual meeting, any interested prospective or current Board members wanting to serve for the respective offices on the Board of Directors may nominate themselves or others. Nominations shall also be accepted from the floor at the annual meeting. All officers must be Directors. The election shall be held at the annual meeting of the Board or at the discretion of a majority of the current Board in order to fill vacancies. Those officers elected shall serve a term of three (3) years, commencing at the next meeting following the annual meeting. There shall not be a limit on the number of terms that an officer may serve.

ARTICLE VI. ADVISORY COUNCIL

Section 1. General Powers & Limitations

The Board of Directors, at its discretion, may create and delegate certain duties associated with the operation of the Corporation to the Advisory Council, whose members shall be appointed by and accountable to the Board of Directors.

The number of members on the Advisory Council shall be determined by the Board of Directors. The Advisory Council shall operate under the oversight and direction of the Board of Directors, which retains all powers and authorities outlined in Article IV.

Section 2. Duties, Obligations, & Qualifications

The duties and obligations of the Advisory Council shall be determined by the Board of Directors and shall comprise assisting the Board of Directors with the goal and mission of the Corporation and participating in regular, annual, and special meetings as scheduled.

Prospective members of the Advisory Council shall possess a passion to serve the Butler community, support the goal and mission of the Corporation, and hold specific expertise and professional knowledge beneficial to the Corporation.

Each member of the Advisory Council shall be a natural person of full age and shall hold office until the expiration of the term for which he or she was selected or until such person's successor has been selected and qualified (at the Board of Director's pleasure) or until the earlier death, resignation, or removal of such Advisory Council member.

ARTICLE VII. COMMITTEES

Section 1. Committee Formation & Dissolution

The Board of Directors shall have the power to create one or more committees within the Advisory Council and/or the Board of Directors in order to assist, oversee and/or manage specific needs of the Corporation. This occurs by majority vote at any meeting. The Board shall also have the power to dissolve committees as it deems appropriate and in the best interest of the Corporation, with or without cause. This also occurs by majority vote at any meeting. The Board is authorized to alter committee membership by majority action as it deems appropriate and in the best interest of the Corporation, with or without cause.

Section 2. Standing Committees

The Board recognizes the importance of standing committees, which may exist in service to the Board on an ongoing basis. Standing committees shall have at least two (2) members.

a. Executive:

The Executive Committee is comprised of the Corporation's officers and shall have all the powers and authority of the Board of Directors in the intervals between meetings while remaining subject to the

direction and control of the full Board. The Executive Director and Solicitor may participate in Executive Committee meetings, as invited.

- b. **Finance:**
The Finance Committee, being chaired by the Treasurer, is comprised of members with specific skills and interests in financial and accounting operations and shall aid the Treasurer in developing and reviewing fiscal procedures and the annual budget.
- c. **Operations & Events:**
The Operations & Events Committee, being chaired by the Executive Director, is comprised of members with specific skills and interests in event and venue management and shall aid the Executive Director in developing and managing programming, operations, procedures, and staffing.
- d. **Marketing:**
The Marketing Committee, being chaired by the Executive Director or a designated Advisory Council member or Director, is comprised of members with specific skills and interests in marketing and communications and shall aid the Executive Director in developing and managing marketing, promotional, communications, and advertising strategies.
- e. **Facilities Management:**
The Facilities Management Committee, being chaired by the Executive Director or a designated Advisory Council member or Director, is comprised of members with specific skills and interests in maintenance and construction, and shall aid in restoring the facility, maintaining the facility, and developing capital projects.
- f. **Fundraising:**
The Fundraising Committee, being chaired by the Executive Director or a designated Advisory Council member or Director, is comprised of members with specific skills and interests in fundraising and grant writing and shall aid in generating ongoing corporate and personal sources of financial support for the non-profit.
- g. **Technical:**
The Technical Committee, being chaired by the Executive Director or a designated Advisory Council member or Director, is comprised of members with specific skills and interests in venue audio and lighting production and shall aid in the procurement, upkeep, and use of various equipment within the Penn Theater.
- h. **Legal:**
The Legal Committee, being chaired by the Board's Solicitor, is comprised of members with specific skills and interests in non-profit law, and shall aid the Board in mitigating and managing risk, adhering to all applicable federal, state, and local laws, and operating the Corporation and theater legally.

Section 3. Ad-Hoc Committees

The Board recognizes the importance of ad-hoc committees, which exist in service to the Board for specific, time-bound reasons. The Board may create ad-hoc committees by a majority vote for a variety of reasons, including, but not limited to, strategic planning, large events, large projects, development of new processes, submission for large funding or other matters.

ARTICLE VIII. GOVERNANCE POLICIES OF THE BOARD OF DIRECTORS & ADVISORY COUNCIL

Section 1. Meetings & Location of Meetings

The Chair & President of the Board shall set the date and time for holding **regular** meetings of the Board of Directors and of the Advisory Council. Notice of these meetings shall be sent to all Directors and Advisory Council members within a reasonable time frame, prior to the meeting date.

An **annual** meeting of the Board shall be held at a date and time in the month of July of each calendar year, as determined by the Board Chair & President.

Special meetings of the Board may be called by or at the request of the Chair & President or any two members of the Board. Notice of any special meeting shall be reasonably given in advance of the meeting. The person or persons authorized to call special meetings must detail the special meeting's purpose and intended outcomes at the time of request.

Meetings of the Penn Theater Performance Company typically will be held at the Penn Theater Administration Suite, including regular, annual, and special meetings of the Board of Directors and the Advisory Council. If a change in venue is requested or required, reasonable notice shall be provided to all attendees in advance.

One or more persons may participate in a meeting of the Board of Directors or Advisory Council by means of conference telephone or other electronic means as long as the participants in the meeting have the opportunity to hear each other. Participation in a meeting held by means of such electronic technology shall constitute presence in person at the meeting.

Attendance at any meeting shall constitute a waiver of notice of such meeting, except where the attendee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted upon, nor the purpose of, any regular meeting of the Board of Directors or the Advisory Council need be specified in the notice or waiver of notice, unless specifically required by law or by these Bylaws.

Section 2. Quorum & Attendance

The presence, either in person or by way of conference call or other electronic means, of a majority of current Directors of the Board or members of the Advisory Council, as the case may be, shall be necessary at any meeting to constitute a quorum to transact business by the Board or the Advisory Council. The act of a majority of the Directors present at a meeting at which a quorum is present shall be a lawful act of the Corporation, unless the act of a greater number is required by law or by these Bylaws. The act of a majority of the members of the Advisory Council present at a meeting at which quorum is present shall be a lawful act of the Advisory Council.

Section 3. Discipline & Dismissal

Members of the Board of Directors and the Advisory Council are expected to conduct themselves in a manner that reflects positively on the Penn Theater Performance Company and shall comply with all corporate policies set forth herein and otherwise, including but not limited to the non-discrimination policy, the confidentiality policy, and the conflict of interest policy.

Members of the Advisory Council who are found to have violated any of the Penn Theater Performance Company's corporate policies, or to have committed conduct unbecoming a representative of the Corporation, may be automatically and immediately dismissed.

Advisory Council members may be dismissed with or without cause, at any time, by a majority vote of the Board of Directors if in their judgment the best interest of the Penn Theater Performance Company would be served by such a severance. In the event of dismissal, the Secretary shall notify the member of the Advisory Council in writing that they have been formally dismissed, and the Board may proceed to fill the vacancy.

Section 4. Vacancies

Whenever any vacancy occurs on the Advisory Council, it may be filled by appointment by the Board of Directors at its discretion.

Whenever a vacancy occurs on the Board of Directors for anyone other than the Chair & President, the Board may fill such vacancy at its discretion upon a unanimous vote of the remaining members of the Board.

Vacancies may be created and filled according to specific methods approved by the Board of Directors, so long as all methods are in compliance with governing law and these Bylaws.

Section 5. Compensation

Directors, as such, shall not receive any salary for their services, but by resolution of the Board of Directors, expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board of Directors; provided, however, that nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. A Director may be a salaried officer of the Corporation. The Penn Theater Performance Company may provide reasonable compensation to corporate staff, independent contractors, or other individuals for services rendered. For avoidance of doubt, however, no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its trustees, Directors, officers, Advisory Council members, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

Section 6. Action by Unanimous Written Consent

Any action, required to be taken or any action which may be taken at a meeting of the Board, may be taken without a meeting if an authorization consent via written, verbal, or electronic means setting forth the action so taken is sent to all Board members and is unanimously affirmed the Board following notice of the intended action.

Section 7. Parliamentary Procedure

Any question concerning procedures at meetings shall be determined by the Chair & President by reference to the most updated version of Robert's Rules of Order, which outlines standard parliamentary procedure. For avoidance of doubt, the Solicitor of the Board and the Executive Director of the Penn Theater, or another person appointed by the Chair & President, shall serve the Board as de-facto parliamentarians, offering advice and guidance pertaining to parliamentary procedure, pertinent laws, and these Bylaws.

Section 8. Standard of Care, Justifiable Reliance & the Business Judgement Rule

A Director of the Corporation shall stand in a fiduciary relationship to the Corporation and shall perform the duties of Director, including such duties as a member of any committee of the Board of Directors upon which the Director may serve, in good faith, in a manner that the Director reasonably believes to be in the best interests of the Corporation and with such care, including the skill and diligence, as a person of ordinary prudence would use under similar circumstances. The Director may also consider the following interests and factors that the Director considers appropriate:

- a. In discharging the duties of their respective positions, the Directors, committees of the Board of Directors and individual Directors may, in considering the best interests of the Corporation, consider to the extent they deem appropriate:
 - (i) The effects of any action upon any or all groups affected by such action, including, employees, suppliers, customers and creditors of the Corporation, and upon communities in which offices or other establishments of the Corporation are located;
 - (ii) The short-term and long-term interests of the Corporation, including benefits that may accrue to the Corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the Corporation;
 - (iii) The resources, intent and conduct (past, stated and potential) of any person seeking to acquire control of the Corporation;

- (iv) All other pertinent factors; or
- b. In discharging the duties of their respective positions, the Board of Directors, committees of the Board of Directors and individual Directors of the Corporation may, in considering the best interests of the Corporation, consider the effects of any action upon employees, upon suppliers and customers of the Corporation and upon communities in which offices or other establishments of the Corporation are located, and all other pertinent factors.

In addition, absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken by a Director or any failure to take any action shall be presumed to be in the best interests of the Corporation.

In performing the duties of a Director, and in accordance with the Business Judgment Rule (as described herein below), a Director is entitled to rely in good faith upon information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by (i) one or more officers or employees of the Corporation or an affiliate of the Corporation who the Director reasonably believes to be reliable and competent in the matters presented, or (ii) counsel, public accountants or other persons as to matters which the Director reasonably believes to be within the professional or expert competence of such person, or (iii) a committee of the Board of Directors upon which the Director does not serve, duly designated in accordance with law, as to matters within its designated authority, and which the Director reasonably believes to merit confidence. A Director is not considered to be acting in good faith, in regard to matters detailed in this paragraph, if such Director has knowledge concerning the matter that causes the Director to believe reliance is unwarranted.

The “Business Judgment Rule” is as follows: a Director who makes a business judgment in good faith fulfills a Director’s duties if 1) the subject of the business judgment does not involve self-dealing by the Director, or an associate or affiliate of the Director, and 2) the Director is informed with respect to the subject of the business judgment to the extent the Director rationally believes that the business judgment is in the best interests of the Corporation.

The duty of the Board of Directors is solely to the nonprofit corporation and not to any other person or group.

An officer shall perform an officer’s duties in good faith, in a manner the officer reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who performs such officer duties as such shall not be liable for monetary damages for action taken pursuant to their officer duties.

Section 9. Limitation of Personal Liability of Directors & Officers.

To the fullest extent that the laws of the Commonwealth of Pennsylvania, as in effect on the date of the adoption of these Bylaws or as such laws are thereafter amended, permit elimination or limitation of the liability of Directors and officers, no Director or officer of the Corporation shall be personally liable as such for monetary damages for any action taken, or any failure to take any action, as a Director or an officer unless, (1) the Director or officer has breached or failed to perform the Director and/or officer duties under the NPCL and (2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

Any amendment or repeal of this provision or adoption of any other provision of these Bylaws or the Corporation’s Articles of Incorporation which has the effect of increasing Director liability shall operate prospectively only and shall not have any effect with respect to any action taken, or failure to act, prior to the adoption of such amendment, repeal or other provision. Recklessness, as defined in the laws of the Commonwealth of Pennsylvania, means a conscious disregard of substantial and unjustifiable risk and consideration of circumstances actually known to the Director making a decision on behalf of the Corporation. In order to be considered reckless, the conscious disregard in said decision-making must involve a gross deviation from the standard of conduct that a reasonable person would observe in the Director’s situation. This provision shall not apply to a Director’s responsibility or liability pursuant to any criminal statute or a Director’s liability for payment of taxes under any local, state or federal law.

ARTICLE IX. EXECUTIVE DIRECTOR

The Executive Director shall serve the Board as an *ex-officio*, non-voting member of the Board of Directors and Advisory Council. The Executive Director shall provide reports to the Board and Advisory Council at regular, annual, and special meetings, shall serve and lead standing or ad-hoc committees, shall manage and direct the day-to-day operations and administration of the Corporation, and shall supervise all other Corporate Staff.

The Executive Director reports to the Chair & President and shall be the Corporate Staff member with a direct relationship with the Board. The Executive Director shall be the administrative staff member supervising all other Corporate Staff members and the Corporation's daily work.

ARTICLE X. WALLACE GROUP PRODUCTIONS, LLC (LANDLORD)

The Penn Theater Performance Company enjoys a flexible yet delineated land-lease agreement with Wallace Group Productions, LLC, the private corporation which owns the real estate on which the Penn Theater is located (the physical plant, building, land, air rights, and earth and mineral rights), and which has undertaken the substantial costs of construction resulting from the Penn Theater renovation and restoration project. Wallace Group Productions, LLC exists as the landlord; the Penn Theater Performance Company exists as the tenant. This arrangement is contingent upon Wallace Group Productions, LLC, existing as a commercial development enterprise, owning an historic venue in downtown Butler, and the Penn Theater Performance Company existing as a non-profit community-centered arts, entertainment, culture, and heritage organization, managing that same historic venue.

ARTICLE XI. CONFLICT OF INTEREST

Section 1. Other Business Interests.

Any member of the Board of Directors or the Advisory Council (or affiliate of any thereof) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Corporation, and the Corporation shall have no rights by virtue of these Bylaws in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Corporation, shall not be deemed wrongful or improper. No member of the Board of Directors or the Advisory Council (or affiliate of any thereof) shall be obligated to present any particular investment opportunity to the Corporation even if the opportunity is of a character that, if presented to the Corporation, could be taken by the Corporation, and any member of the Board of Directors or the Advisory Council (or affiliate of any thereof) shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity.

Section 2. Interested Transactions.

A contract or transaction between the Corporation and one or more of its officers, Directors, Advisory Council members, or between the Corporation and another domestic or foreign association in which one or more such individuals has a management role or a financial or other interest, shall not be void or voidable solely for that reason, or solely because the officer, Director or Advisory Council member is present at or participates in the meeting of the Corporation that authorizes the contract or transaction, or solely because the vote of such individual is counted for that purpose, *so long as the following occurs*:

- a. the material facts as to the relationship or interest and as to the transaction are disclosed or known to the Directors and/or Advisory Council members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of those individuals; or
- b. the contract or transaction is fair to the Corporation as of the time it is authorized, approved, or ratified by the Advisory Council and/or the Board of Directors, as appropriate.

ARTICLE XII. CONFIDENTIALITY

Board members, Advisory Council members, and employees are not authorized to disclose, divulge, or make accessible confidential information belonging to, or obtained through their affiliation with, the Penn Theater Performance Company to any person, including relatives, friends, and business and professional associates, other than to persons who have a legitimate need for such information, to whom such information would directly benefit the Corporation, and to whom the Corporation has authorized such disclosure. Board members, Advisory Council members, and employees shall use confidential information solely for the purpose of performing services as part of their official role or capacity. This policy is not intended to prevent disclosure where and when disclosure is required by law or mandated by judicial authority or decree.

Board members, Advisory Council members, and employees must exercise good judgment and care at all times to avoid unauthorized or improper disclosures of confidential information, both in person and via electronic means. Conversations in public places, such as restaurants, elevators, and airplanes, should be limited to matters that do not pertain to information of a sensitive or confidential nature; they should be aware of the risk of inadvertent disclosure and should, for example, refrain from leaving confidential information in plain view and refrain from the use of speakerphones to discuss confidential information if the conversation could be heard by unauthorized persons. Board members, Advisory Council members, and employees must carefully consider what they make public via their personal online accounts or presences.

Upon the end of term in office, dismissal, or resignation or termination of an employee's employment, each person shall return, with or without reminders from the Penn Theater Performance Company, all documents, passwords, access codes, pieces of borrowed equipment or technology, and other materials or assets, regardless of medium, that may contain or be derived from confidential information in their possession.

ARTICLE XIII. INDEMNIFICATION

Section 1. Scope of Indemnification

To the full extent not prohibited by law, the Corporation shall have the power to indemnify and hold harmless any current or former Director, officer, Advisory Council member, employee, or agent, or any person who may have served at the Corporation's request (each of the foregoing directors, officers, members, employees, agents, and persons is referred to in this Article individually as an "indemnitee"), against expenses actually and necessarily incurred by such indemnitee in connection with the defense of any action, suit, or proceeding in which that indemnitee is made a party by reason of being or having been such director, officer, member, employee, or agent, except in relation to matters as to which that indemnitee shall have been adjudged in such action, suit, or proceeding to be liable for self-dealing, willful misconduct, or recklessness in the performance of a duty. The foregoing indemnification shall not be deemed exclusive of any other rights to which an indemnitee may be entitled under these Bylaws, as amended, or any agreement or resolution of the Board of Directors, or otherwise.

Notwithstanding the foregoing, to the extent that a Director or officer or other representative of the Corporation has been successful on the merits or otherwise in defense of any proceeding, the Corporation shall indemnify that person against expenses, including but not limited to reasonable attorneys' fees, actually and reasonably incurred by that person in connection therewith.

Notwithstanding the foregoing, except as provided in Section 2 herein below, the Corporation may indemnify any person seeking indemnification in connection with a proceeding (or part thereof) initiated by that person only if the proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Expenses incurred by a Director or officer or other representative in defending any proceeding may be paid by the Corporation in advance of the final disposition of the proceeding upon receipt from or on behalf of the party or parties of an undertaking to repay such expenses if and to the extent it shall ultimately be determined that they are not entitled to be indemnified by the Corporation and upon receipt by the Corporation of a request therefor stating in reasonable detail the expenses incurred.

Any right to indemnification and advancement of expenses provided in these Bylaws or conferred pursuant to the power granted in these Bylaws shall continue as to a person who has ceased to be a Director, officer or other representative of the Corporation or to serve in any of the other capacities described herein, and shall inure to the benefit of the heirs, executors, and administrators of such person. Any repeal, modification, or adoption of any provision inconsistent with this provision shall be prospective only, and neither the repeal or modification of these Bylaws nor the adoption of any provision inconsistent with these Bylaws shall adversely affect any limitation on the personal liability of a Director of the Corporation existing at the time of such repeal or modification or the adoption of such inconsistent provision.

Except in instances where the Director, officer or other representative of the Corporation has been successful on the merits or otherwise, the indemnification and/or advancement of expenses provided for hereinabove shall be made by the Corporation only as authorized in the specific case upon a determination that the Director, officer or other representative of the Corporation should be indemnified and/or expenses should be advanced because he or she acted in good faith and in a manner in which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation. Such determination shall be made: (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding; or (b) if such quorum is not obtainable or if the Board of Directors so directs, by independent legal counsel. In no event, however, shall any payment be made where indemnification is not permitted by law.

Section 2. Payment of Indemnification

If a claim for indemnification pursuant to these Bylaws is not paid in full by the Corporation within sixty (60) days after a written claim for indemnification has been received by the Corporation, the claimant may, at any time thereafter, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part on the merits or otherwise in establishing his or her right to indemnification or to the advancement of expenses, the claimant shall be entitled to be paid also the expense of prosecuting such claim.

Section 3. Non-Exclusivity of Rights

The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of a final disposition and the right to payment of expenses shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses hereunder may be entitled under these Bylaws or an agreement, vote of Directors, or otherwise, both as to actions in his or her official capacity and as to actions in any other capacity while holding that office. The Corporation has the express authority to enter into such agreements or arrangements as the Board of Directors deems appropriate for the indemnification of and advancement of expenses to present or future Directors and officers as well as employees, representatives, or agents of the Corporation in connection with their status with or services to or on behalf of the Corporation or any other corporation, partnership, joint venture, trust, or other enterprise, including any employee benefit plan, for which such person is serving at the request of the Corporation.

Section 4. Funding

The Corporation may create a fund of any nature, which may be, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, including its obligation to advance expenses, whether arising under or pursuant to this Article XIII or otherwise.

Section 5. Insurance

The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer or representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation has the power to indemnify such person against such liability under the laws of this or any other state.

ARTICLE XIV. ADMINISTRATIVE & FINANCIAL OPERATIONS

Section 1: General Administrative Operations

The Corporation shall maintain an administrative office to manage the daily functions of the Penn Theater Performance Company. The Executive Director shall provide primary oversight and supervision of this space and its staff.

Section 2: General Financial Operations

The Corporation shall maintain complete books and records of accounts and minutes of the proceedings of the Board and its corresponding committees. The Corporate fiscal year will run concurrently with the calendar year and shall end on the 31st day of December each year. The Board, by majority vote, may alter the timing of its Corporate fiscal year.

The Corporation shall develop and actualize a budget. Any major change in the budget must be approved by the Board by majority vote. At the end of the fiscal year, committees must submit annual reports, showing income, expenditures, and pending income.

The Corporation shall develop and follow financial and accounting processes. The Executive Director will work with the Treasurer to ensure operational transparency, industry best practices, and accountability.

Section 3. Distribution of Assets upon Dissolution

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE XV. AMENDMENTS TO GOVERNING DOCUMENTS

The Board may amend these Bylaws and/or the Articles of Incorporation at any regular, annual, or special meeting. Written notice setting forth the proposed amendment, with a summary of the changes to be affected, shall be distributed two (2) meetings in advance of the vote to encompass a first and second reading.

With respect to the Articles of Incorporation, any amendments shall require the affirmative majority vote of the Board of Directors. With respect to these Bylaws, any amendments shall require a majority vote of the Board of Directors.

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