

OPERATING AGREEMENT

*Copy mailed to
R. B. 10-8-75*

THIS AGREEMENT made and entered into this 1st day of October, 1975, by and between CITY OF OAKLAND, a municipal corporation, hereinafter called "City," and PARAMOUNT THEATRE OF THE ARTS, INC., a ^{California} nonprofit corporation, hereinafter called "Operator."

W I T N E S S E T H:

WHEREAS, City has acquired or is about to acquire the Paramount Theatre of the Arts property and certain personal property and equipment located at the Paramount Theatre of the Arts, commonly known as 2025 Broadway, Oakland, Alameda County, California 94612; and

WHEREAS, City desires to have Operator, as an agent, operate and manage in a professional manner the Paramount Theatre of the Arts building and its related personal property and equipment, such building, personal property and equipment hereinafter sometimes called the "Facility," for and on behalf of the City during the term hereof; and

WHEREAS, the City and Operator have executed this Operating Agreement for the purpose of setting forth the terms and conditions under which the Operator will operate said Facility.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term: The Operator will operate the Facility as an agent for and on behalf of the City commencing as of October 1, 1975, for the period ending June 30, 1976, and from year to year thereafter.

2. Rights of the City: The Facility shall be used at all times during the term hereof for the benefit of the City for public use and purposes and shall be operated subject to

such rates, charges, rules and regulations as shall be initially fixed and established by the City and as thereafter modified all in accordance with paragraph 6 hereof. The City shall at all times establish the rates and charges for the use of the Facility which will meet to the extent possible the payment of the costs of operation and maintenance of the Facility to be made out of gross receipts (as that term is hereinafter defined).

The Facility shall be operated in a professional manner with a high standard of operation that will benefit the citizens of the City, bring credit to the City and provide adequate revenue to maintain its operation without unreasonable cost to the City.

Should the rates, charges, rules and regulations established by the City in accordance with this paragraph 2, either in the first period ending June 30, 1976, or in any succeeding annual period be such as to prevent the payment of costs of operation and maintenance to be made out of gross receipts (as that term is hereinafter defined), the City and the Operator, at City's request, shall agree upon and select an independent firm of consultants to review and recommend such changes in the rates, charges, rules and regulations, and method of operation, as in the opinion of such consultants would enable payment of costs of operation and maintenance to be made out of gross receipts. Upon receipt and acceptance of such recommendations, the City and Operator shall revise the rates, charges, rules and regulations and method of operation so as to comply with the provisions of this paragraph 2. The cost of any such study made by such consultants shall be treated as a cost of operation and maintenance.

3. Payments During the Term of this Agreement: The Operator agrees, for and on account of each annual period

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during the term of this Operating Agreement, to pay to the City an amount equal to One Hundred Percent (100%) of the net operating income for such period. The Operator shall pay operating and maintenance expenses out of gross receipts to the extent gross receipts are available. If anticipated gross receipts are insufficient to pay operating and maintenance expenses as they become due, City shall make ^{equal quarterly} monthly payments to Operator within budgetary limits sufficient to enable Operator to pay such expenses as they become due, plus a reasonable amount for contingencies.

4. Defined Terms: As used in this Operating Agreement, the following are defined terms and shall have the following meanings, whether or not said terms shall have some other meaning for different purposes:

(a) The term "gross receipts" includes, but is not limited to, the gross revenues received by or for the Operator from the operation of said Facility, including such income or revenues as may be received by or for the Operator from providing the use of the Facility in the ordinary course of business.

(b) The term "operating and maintenance expense" means and includes all normal and reasonable operating and maintenance expenses of the operation of the Facility which, upon examination and audit, are approved by the City Manager of the City, including, but not limited to (i) wages and salaries, utilities, supplies, repairs, replacements, taxes, insurance, auditing fees, legal fees, and the other expenses of the Operator in the performance of its obligations under this Operating Agreement, (ii) all management expense and promotional expense incurred, (iii) any alterations, improvements, or capital additions, and (iv) such other,

proper and necessary expenses as are customary in the operation of such a facility. Such expenses will be approved by the City Manager of the City if such expenses were contemplated by the budget for the period in which such expenses were incurred, prepared in accordance with paragraph 5 of this Operating Agreement, or, if not so contemplated, if such expenses, in the opinion of the City Manager of the City, are proper or necessary in the operation of such a facility.

(c) The term "net operating income" means the sum of gross receipts and payments received from City pursuant to paragraph 3 of this Agreement, less operating and maintenance expenses.

(d) The term "management expense" means and includes all administrative, general and managerial expenses incurred by the Operator including all amounts to be paid as a fee or otherwise to the professional operator or manager to be employed by the Operator pursuant to paragraph 7 hereof.

5. Budget, Statements, Books and Records: The Operator

shall prepare or cause to be prepared prior to the commencement of the term of this Operating Agreement a budget setting forth in reasonable detail the contemplated expenditures to be included in the operation of the Facility during the first period ending June 30, 1976, including contemplated expenditures for alterations, improvements and capital additions. The Operator shall annually thereafter during the term hereof prepare a similar budget for each succeeding annual period. A copy of each such budget shall be filed with the City Manager of the City and said City Manager of the City shall review the budget and make such recommendations with respect thereto as he may deem advisable and deliver a copy thereof to the Operator. Each said budget shall be changed to conform to any recommendations of the City Manager of the City and the Operator shall conform to each such budget with such changes, if any, as shall have been recommended therein.

Ed. J. A. The Operator shall within ^{twenty (20)}~~ten (10)~~ days after the end of each calendar month during the term of this Operating Agreement render to the City a correct, detailed and complete statement in writing showing all gross receipts and operating and maintenance expenses in, on, about, or from said Facility during such month. Such statement shall be signed and verified under oath and forwarded to the City Manager of the City by United States mail. The Operator agrees to keep full, true and accurate books, records and accounts at all times during the term hereof of the gross receipts and of the operating and maintenance expenses of said Facility and of such matters as may be required by the City Manager of the City, and representatives of the City shall at all times have the right to inspect, examine and audit all such records and accounts. Operator shall obtain a fidelity bond covering the professional

manager and all employees in the amount of \$50,000. The amount of the fidelity bond may be changed as may be directed in writing by the City Manager of City.

6. Establishment of Rates, Charges, Rules and Regulations: As provided in paragraph 2 hereof the Facility shall be operated subject to such rates, charges, rules and regulations which shall be initially fixed and established by the City and which may thereafter be modified in accordance with the procedure herein set forth.

The Operator will prepare, or cause to be prepared, prior to the commencement of the term of this Operating Agreement a draft of proposed rules, regulations, rates and charges which the Operator recommends be established during the first period ending June 30, 1976. The Operator shall annually thereafter during the term hereof, prepare a similar draft of recommended rules, regulations, rates and charges for each succeeding annual period. The City Manager of the City shall review said draft and make such recommendations with respect thereto as he may deem advisable and deliver a copy thereof to the Operator.

Such proposed rules, regulations, rates and charges shall be changed to conform to any recommendations of the City Manager of the City and the Operator shall conform to such rules, regulations, rates and charges with such changes, if any, as shall have been recommended therein. Such rules, regulations, rates and charges may be modified during each annual period by the Operator with the concurrence of the City Manager of the City. Should the Operator desire any such modifications it will so notify the City Manager of the City and within thirty (30) days thereafter he shall approve, modify or reject such modifications.

7. Professional Operation: The Operator agrees to employ,

as a professional operator or manager, a person, firm or corporation experienced in the management and operations of such a facility to operate and manage the Facility. Prior to any such employment, the City Manager of the City shall be informed of the professional operator or manager selected and no such professional operator or manager shall be employed until he has been approved and the fee to be paid such professional operator or manager shall have been approved by the City Manager of the City. The Operator further agrees that it will not enter into any contract employing the professional operator or manager unless such contract provides:

(a) That the professional operator or manager will comply with all of the terms of this Operating Agreement applicable to the Operator;

(b) That the said contract can be terminated by the Operator upon ten (10) days' notice in writing to the professional operator or manager in the event such professional operator or manager fails to comply with any of the obligations imposed upon it by said contract;

(c) That the professional operator or manager will operate or manage the facility in a professional manner; and

(d) That the contract can be cancelled at the option of the Operator at any time upon three (3) months' prior written notice. The Operator further agrees that if the City shall request cancellation of any such contract, it will forthwith give notice of such cancellation in accordance with the terms provided in this paragraph 7.

8. All contracts entered into by Operator for the use of the Facility or its operation shall be subject to the approval of the City Manager *as he may require.*

9. Termination on Default of Operator: In the event

Agreement. In the event that a default is of such a serious nature that the safety of the building, public or substantial sums of money are in jeopardy, City may terminate this Operating Agreement by delivery of written notice.

10. Execution in Counterpart: This Operating Agreement may be simultaneously executed in any number of counterparts each of which when so executed shall be deemed to be an original but altogether shall constitute but one and the same Operating Agreement, and it is also understood and agreed that separate counterparts of this Operating Agreement may separately be executed by the Operator and the City all with the same full force and effect as though the same counterpart had been executed by the Operator and the City.

11. Operator agrees that at no time during the term of this Operating Agreement will any member of its Board of Directors be members of the Oakland Symphony Orchestra Association.

12. Termination: This agreement may be terminated at any time without stated cause by either party upon the giving of six (6) months' written notice to the other party.

IN WITNESS WHEREOF, this Operating Agreement has been made and entered into by the parties hereto as of the day, month and year first above written.

Attest:

/s/ "Robert C. Dickson"
(SEAL)

CITY OF OAKLAND,
a municipal corporation

By: /s/ "D. E. Custer"
"City"

Attest:

/s/ "Pete Bolto"
(SEAL)

PARAMOUNT THEATRE OF THE ARTS, INC.,
a California nonprofit corporation

By: /s/ "Kenneth L. Thompson"
"Operator"

Approved as to
form and legality:

/s/ "Ralph C. Kiehl"
Asst. City Attorney

Resolution No.: 55001 C.M.S.

Accounting Office No.: 90447

SUMMARY STATEMENT
ON BEHALF OF
PARAMOUNT THEATRE OF THE ARTS, INC.

A group of seven Oakland residents learned of the Oakland Symphony Orchestra Association's proposed offer to convey the Paramount Theatre of the Arts property, including certain personal property useable in its operations, a very valuable property, debt free to the City of Oakland subject to a very limited reservation of a license to use the facility for 40 concerts or musical performances and 58 rehearsals per year, and for library, storage and office space. These Oakland residents earnestly believe acceptance of such offer would be to the best interest of the citizens of Oakland. Being aware of the likelihood that the City would not wish to be burdened with day to day operations of such a facility if the offer is accepted, the group of Oakland residents caused Articles of Incorporation of Paramount Theatre of the Arts, Inc., a non-profit corporation, to be drafted, approved and signed by them as incorporators. The specific and primary purposes for which the proposed corporation was formed are recited in such Articles of Incorporation as follows:

"To operate and manage the Paramount Theatre of the Arts for the account of the City of Oakland, State of California, and in connection therewith seek, secure, organize, promote, create, establish, produce, display, conduct, and manage any and all types, kinds and classes of public recreation, theatrical, cultural, artistic, educational and aesthetic exhibitions, contests, performances, enterprises, productions, pageants, and other attractions for the Paramount Theatre of the Arts, for the development and advancement of the City of Oakland, a municipal corpor-

ation organized and existing under the laws of the State of California, without pecuniary profit to the individual members of this corporation.

To receive gifts, contributions, endowments and loans from individuals and corporations and grants from Federal, State and other governmental entities to finance the objects and purposes aforesaid."

The incorporators are:

H. R. Lange
Edmund C. Sajor
Julia M. Taber
Claude G. Furbush, M.D.
Kenneth L. Thompson
Henry J. Rodriguez
Ray Collins

The Articles of Incorporation have not been filed with the Secretary of State but are available to be so filed at which time the proposed corporation would become a viable entity. The incorporators recommend that the facility be operated in much the same manner (with one major exception) as the Oakland-Alameda County Coliseum, is operated by Oakland-Alameda County Coliseum, Inc. The exception is that Paramount Theatre of the Arts, Inc., having no debt service to provide for, need not be an independent contractor but may operate as an agent only for the City of Oakland. In other words, it is proposed that the incorporators of the Paramount Theatre of the Arts, Inc. will receive no compensation from anyone for their services as directors or otherwise and the nonprofit corporation itself would receive no compensation from the City for its activities in managing the facility for the account of the City.

The incorporators of Paramount Theatre of the Arts, Inc. have met, considered and taken the following actions in the hope that the City of Oakland would find their proposal acceptable:

1. Authorized counsel to make available for the Mayor and City Council for their consideration, this proposal.

2. Approved in principle proposed by-laws to conform to the Articles of Incorporation.

3. Approved in principle a draft of an Operating Agreement between the corporation and the City as drafted by counsel and authorized counsel, if City Council, so directs, to submit it to the City Council's staff to work out the most satisfactory form of budgeting the costs of operating the facility, billing rentals for use of the facility and banking of revenues to the credit of the City of Oakland.

4. Discussed the selection of a proposed professional General Manager, namely, Peter Botto, who has so satisfactorily acted in such capacity for the Oakland Symphony Orchestra Association.

5. Approved in principle a draft by Peter Botto of proposed "General Rules and Regulations and Rates and Related Information Concerning the Use and Occupancy of the Paramount Theatre in Oakland, California" (the suggested rates being believed to be competitive) to be submitted to City Council's staff if so directed by the City Council.

6. Directed counsel to prepare a Summary Statement for presentation to the Oakland Mayor and City Council, if requested.

7. Directed counsel and another representative or representatives of incorporators to appear at the July 15, 1975, work session of the Oakland City Council and at any work sessions with the Oakland City Council's staff which the City Council may direct with respect to Paramount Theatre of the Arts matters.

8. Directed counsel to withhold until further direction filing Articles of Incorporation and application for its tax exemption.

754518

ENDORSED
FILED

In the office of the Secretary of State
of the State of California

SEP 23 1975

MARCH FONG EU, Secretary of State

Mertle P. Kennelme
Deputy

ARTICLES OF INCORPORATION
OF

PARAMOUNT THEATRE OF THE ARTS, INC.

I

The name of this corporation is:

PARAMOUNT THEATRE OF THE ARTS, INC.

II

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a) That the specific and primary purposes for which this corporation is formed are as follows:

1) To operate and manage the Paramount Theatre of the Arts for the account of the City of Oakland, State of California, and in connection therewith seek, secure, organize, promote, create, establish, produce, display, conduct, and manage any and all types, kinds and classes of public recreation, theatrical, cultural, artistic, educational and aesthetic exhibitions, contests, performances, enterprises, productions, pageants, and other attractions for the Paramount Theatre of the Arts, for the development and advancement of the City of Oakland, a municipal corporation organized and existing under the laws of the State of California, without pecuniary profit to the individual members of this corporation.

2) To receive gifts, contributions, endowments and loans from individuals and corporations and grants from Federal, State and other governmental entities to finance the objects and purposes aforesaid.

b) The general purposes and powers are as follows:

1) To have and to exercise all rights and powers conferred on nonprofit corporations under the laws of California, including the power to contract, rent, buy or sell personal or real property, provided, however, that this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this corporation.

2) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

III

This corporation is organized pursuant to the General Non-profit Corporation Law of the State of California. This corporation

does not contemplate pecuniary gain or profit to the members thereof, and it is organized for nonprofit purposes.

IV

The county in the State of California where the principal office for the transaction of business is located is the County of Alameda, State of California.

V

The property of this corporation is irrevocably dedicated to charitable and educational purposes meeting the requirements for exemption provided by Section 214 of the California Revenue and Taxation Code and no part of the net income or assets of this organization shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private individual. Upon the dissolution or winding up of the corporation, its assets remaining after payment of, or provision for payment, of all debts and liabilities of this corporation, shall be distributed to the City of Oakland, California for public purposes.

VI

The members of this corporation shall consist of those persons who shall at the time constitute the members of the Board of Directors of this corporation.

VII

The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

<u>Name</u>	<u>Address</u>
Kenneth L. Thompson	2641 La Cuesta Oakland, CA 94611
H. R. Lange	565 Bellevue Avenue, Apartment 2206 Oakland, CA 94610
Henry J. Rodriguez	19 Bell Waver Way Oakland, CA
Edmund C. Sajor	365 Perkins Street, #107 Oakland, CA 94610
Claude G. Furbush, M.D.	492 Staten Avenue Oakland, CA 94610
Julia M. Taber	4612 Reinhardt Oakland, CA 94619
Ray Collins	7924 East 14th Street Oakland, CA 94621

Except to the extent that the Bylaws may provide that any vacancy created by the resignation or removal of a director elected by the members may be filled by a vote of the members subject to concurrence of the Mayor and City Council of the City of Oakland who are at such time in office, if the office of any director becomes vacant, the remaining directors in office, by a majority vote, may appoint any qualified person to fill such vacancy, subject to concurrence of the Mayor and City Council of the City of Oakland who are at such time in office, such appointee to hold office until his successor shall have been elected and shall have qualified.

VIII

The authorized number and qualifications of members of the corporation, the different classes of membership, if any, the property, voting and other rights and privileges of members shall be as set forth in the Bylaws.

IX

No member, director or officer of the corporation shall be compensated for services. The members, directors and officers of the corporation shall not be individually liable for the debts or obligations of the corporation nor subject to the payment of any fees or dues to the corporation nor subject to any assessment by the corporation.

IN WITNESS WHEREOF, the undersigned, being the persons hereinabove named as the first directors, have executed these Articles of Incorporation, this 5th day of June, 1975.

<u>W R Sawyer</u>	<u>Claude J. Turbush, Jr.</u>
<u>Shel C. Fay</u>	<u>Kenneth L. Thompson</u>
<u>Julia M. Baker</u>	<u>William D. Dickey</u>
<u>Roy L. Linn</u>	

STATE OF CALIFORNIA)
) ss
COUNTY OF Alameda)

On this 5th day of June, 19 75,
before me, Marian L. Howard, a Notary Public for the State
of California, personally appeared H. R. LANGE, EDMUND C. SAJOR,
JULIA M. TABER, CLAUDE G. FURBUSH, M.D., KENNETH L. THOMPSON,
HENRY J. RODRIGUEZ and RAY COLLINS,
known to me to be the persons whose names are subscribed to the within
Articles of Incorporation, and acknowledged to me that they executed the
same.

Marian L. Howard
Notary Public

