

# PUBLIC/PRIVATE PARTNERSHIP AGREEMENT

This Public/Private Partnership Agreement ("Agreement") is made and effective August 27, 2013.

BETWEEN: Downtown Development Authority (the "DDA"), a City of Stockbridge authority organized and existing under the laws of the State of Georgia with its head office located at:

4640 North Henry Boulevard  
Stockbridge, GA 30281

AND: Phoenix Theater Academy, Inc. d/b/a Academy Theater ("Academy"), a company organized and existing under the laws of the State of Georgia, with its head office located at:

146 Burke Street  
Stockbridge, GA 30281

## 1. PURPOSE AND PRIOR AGREEMENTS

1.1 DDA and Academy are entering into this public/private partnership agreement for the purpose of providing a loan to Academy so as to allow it to begin to provide arts, cultural, and leisure services to the City of Stockbridge with the intention that Academy will begin to show a return on the DDA's investment in its services and activities in the future that will be profitable for the City of Stockbridge, and in the meantime contribute to the economic and cultural welfare of the Stockbridge community.

1.2 Academy agrees that it has previously entered into a lease with the DDA of its headquarters at 146 Burke Street, Stockbridge, Georgia 30281, and previously entered into a general agreement for cultural and leisure services with the DDA. The parties incorporate both such agreements herein as if specifically set forth, and agree that any breach by Academy of the lease or the general agreement shall constitute a breach of this agreement and allow the DDA to exercise the rights afforded under this agreement as if it had been breached by Academy.

## 2. LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Academy hereby unconditionally promises to pay DDA the outstanding principal amount of all sums borrowed under this Agreement and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

(a) Availability. Subject to the terms and conditions of this Agreement, DDA agrees to make advances to Academy, in an aggregate amount not to exceed \$25,000.00 (the "Line of Credit") according to the following schedule: \$8,000.00 during August of 2013; \$11,000.00 during

September of 2013; and \$6,000.00 during October of 2013. All advances will be deposited into the account of Academy at a bank located in Stockbridge, GA.

(b) **Repayment.** Academy shall make quarterly payments of interest on all unpaid principal amounts commencing on January 1, 2014 and continuing thereafter on the first (1st) business day of each successive quarter during the term of the loan. In addition to the interest payments, during the final twenty-five (25) months of the loan term Academy will pay \$1,000.00 per month in principal until the principal is repaid. Principal payments shall be made on a monthly basis on the tenth day of each month.

(c) **Voluntary Prepayment.** Academy shall have the option to prepay all sums borrowed in whole or in part at any time without prepayment penalty.

(d) **Mandatory Prepayment.** If sums advanced hereby are accelerated following the occurrence of an Event of Default, Academy shall immediately pay to DDA an amount equal to all outstanding principal and accrued but unpaid interest.

(e) **Maturity.** All sums borrowed hereunder and all accrued and unpaid interest, if not sooner repaid, will be paid by Academy to DDA on August 31, 2016.

## 2.2 Payment of Interest on the Credit Extensions.

(a) **Interest Rate.**

(i) **Advances.** Subject to Section 2.3(b), the principal amount outstanding under the Line of Credit shall accrue interest at the rate of four (4%) per annum.

(b) **Default Rate.** At the option of DDA, immediately upon the occurrence and during the continuance of an Event of Default, the principal amount outstanding under the Line of Credit shall bear interest at a rate of six (6%) percent per annum (the "Default Rate").

## 3. SECURITY

3.1. **Grant of Security Interest.** Academy hereby grants DDA, to secure the payment and performance in full of all of their obligations hereunder, a continuing security interest in, and pledges to DDA, all of their tangible and intangible property, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Without limiting the generality of the foregoing the collateral will include all of the personal property and assets of Academy, a partial listing of which is attached as Exhibit 1.

3.3 **Perfection.** Academy agrees that the intent of Academy and DDA is that all obligations of Academy hereunder be secured by the first priority perfected security interest in the collateral granted herein.

3.4 **Termination.** If this Agreement is terminated, DDA's lien in the collateral shall continue until all obligations of Academy hereunder are satisfied in full, and at such time, DDA shall

terminate its security interest in the collateral and all rights therein shall revert to Academy. In the event all obligations are satisfied in full, and this Agreement is terminated, DDA shall terminate the security interest granted herein.

3.5 Authorization to File Financing Statements. DDA and Academy hereby authorize DDA to file financing statements covering the collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect DDA's interest or rights hereunder.

3.6. Inspection Rights. The Chair of the DDA shall have the right from time to time upon reasonable notice to review the books and records of Academy solely for the purpose of determining the collectability of the Line of Credit. Any information gathered from such review shall be considered confidential information of Academy ("Confidential Information"). DDA agrees not to use or disclose any Confidential Information except as may be needed to collect any sums due hereunder after an Event of Default by Academy. Confidential Information shall not include any information that Academy makes publicly available without restriction.

3.7. Debt. Academy agrees that until all of its obligations hereunder are satisfied in full, it shall not borrow any additional money against any collateral hereunder. Academy agrees that until all of its obligations hereunder are satisfied in full, it will not incur any debt in excess of \$1,000.00 without the pre-approval of the DDA. Funds loaned by the DDA to Academy pursuant to this agreement shall not be used to repay any existing debt of Academy.

#### 4. DEFAULT

An Event of Default shall exist if for any reason Academy fails to make any payment when due, and Academy does not cure such failure within 10 days after written notice from DDA. In any such instance an Event of Default shall exist, and DDA may demand immediate payment of the entire remaining unpaid balance of all sums borrowed hereunder and all accrued and unpaid interest.

#### 5. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Either party may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 5.

If to Academy:

146 Burke Street  
Stockbridge, GA 30281  
Email: [academytheatre@mindspring.com](mailto:academytheatre@mindspring.com)

If to DDA:  
4640 North Henry Boulevard  
Stockbridge, GA 30281  
Email: [jtw@killlearn.com](mailto:jtw@killlearn.com)  
[bjmathis@cityofstockbridge-ga.gov](mailto:bjmathis@cityofstockbridge-ga.gov)  
[blinkous@fmglaw.com](mailto:blinkous@fmglaw.com)

## 6. GENERAL PROVISIONS

6.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Academy may not assign this Agreement or any rights or obligations under it without DDA's prior written consent.

6.2 Time of Essence. Time is of the essence for the performance of all obligations in this Agreement.

6.3 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

6.4 Amendments; Integration. No purported amendment or modification of this Agreement shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. The Agreement represents the entire agreement about this subject matter and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Agreement merge into the Agreement.

6.5 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

6.6 Attorneys' Fees, Costs and Expenses. In any action or proceeding between parties arising out of or relating to the Agreement the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

6.7 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

6.8 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

6.9 No benefit. Academy warrants and represents that to the best of its knowledge, no member, employee, officer, agent or official of the DDA, nor any member of their immediate family, has any interest direct or indirect in Academy, nor in any proceeds or benefits arising from this Agreement.

6.10. Debarment. Academy warrants and represents that it is not presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or excluded from participation in this Agreement by any state or federal department or agency or the DDA and Academy shall not in the performance of this Agreement, knowingly enter into any contract with a person or entity who is debarred, suspended, proposed for debarment or suspension, or otherwise ineligible.

6.11 Independent Contractor. Academy is an independent contractor and its employees are not employees of the DDA. Academy is solely responsible for the conduct and control of the work to be completed by it under this Agreement. Academy is solely responsible for reporting and paying any required local, state and federal taxes relating to its activities and the advances made to it hereunder to the extent applicable. Employees, independent contractors and principals of Academy, or any person who receives any form of consideration for services to Academy or who performs any activities that Academy is required to perform hereunder shall be deemed to be the sole responsibility of Academy for the purposes of all worker's compensation and insurance claims.

6.12 Governing law. The parties expressly agree that the laws of the State of Georgia shall control in all instances involving the interpretation, construction and validity of this Agreement.

6.13 Waiver. Neither failure nor delay on the part of the DDA to exercise any right, power or privilege under this Agreement shall be deemed to operate as continuing waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of additional rights, powers, or privileges. No waiver of any breach of any term, condition or covenant shall be construed as a continuing waiver of any subsequent breach hereunder.

6.14 Third Party Beneficiaries. Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the DDA.

6.15 Indemnity. Academy agrees to indemnify, save and hold harmless, and defend the DDA and the City of Stockbridge, their officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injuries (including accidental death) which arise out of Academy's operation and performance of its obligations hereunder, including but not limited to, reasonable attorney's fees.

DDA:  
Downtown Development Authority

By J.T. Williams  
J.T. Williams  
Chairman

8/27/13  
Date

WIG:  
Phoenix Theater Academy, Inc.

By Corinne Fey  
Name: CORINNE FEY  
Title: MANAGING DIRECTOR

8/27/13  
Date

0.11 Intellectual Contribution: Academics in independent contractor status and its employees shall not be considered as sole responsible for the subject and content of the work to be completed by it under this Agreement. Academics is solely responsible for preparing and paying any required local, state and federal taxes relating to its activities and the activities of its independent contractor and principal. Academics, to the extent applicable, employees, independent contractors and principals of Academics who receives any form of consideration for services rendered to Academics, or any person who is required to perform services for Academics, shall be deemed to be sole responsibility of Academics for the purposes of all workers' compensation and insurance claims.

0.12 Governing Law: The parties expressly agree that the laws of the state of Illinois shall control in all instances involving the interpretation, construction and validity of this Agreement.

0.13 Waiver: Neither failure nor delay on the part of the DDA to exercise any right, power or privilege under this Agreement shall be deemed to operate as continuing waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of additional rights, powers, or privileges. No part of any waiver of any term, condition or covenant shall be construed as a continuing waiver of any subsequent breach hereunder.

0.14 Third Party Beneficiaries: Nothing contained in the Agreement shall constitute a contract relationship with or a cause of action in favor of a third party against the DDA.

0.15 Indemnity: Academics agrees to indemnify, save and hold harmless, and defend the DDA and the City of Rockbridge, their officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injuries (including accidental death) which arise out of Academics' operation and performance of its obligations hereunder, including but not limited to reasonable attorney's fees.

WFO:  
 Phyllis Upton Adams, Inc.  
 By \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

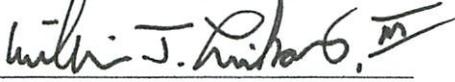
DDA:  
 Downey Development Authority  
 By \_\_\_\_\_  
 J.T. Williams  
 Chairman  
 Date \_\_\_\_\_

ATTEST:



Rhonda A. Blackmon, DDA Secretary and City Clerk

APPROVED AS TO FORM:



William J. Linkous, III, City and DDA Attorney