

## AMENDED AND RESTATED BY-LAWS OF

### **theater et al, Inc.** (the "Corporation")

#### ARTICLE I

#### MEMBERS

The Corporation shall have no members.

#### ARTICLE II

#### BOARD OF DIRECTORS

**Section 1. Power and Number.** The Board of Directors shall have general power to control and manage the affairs and property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation. The Board shall consist of no less than three and no more than eleven directors.

**Section 2. Election and Term of Office.** The initial directors shall be persons named in the Certification of Incorporation. The directors shall be elected for a term of three years at the annual meeting of the Board of Directors by a majority of the directors then in office, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

**Section 3. Removal.** Any director may be removed, for cause (including a failure to meet customary obligations of a director), by a vote of a majority of the directors then in office, at any special meeting of the Board called for that purpose. A director who misses three consecutive meetings shall be automatically removed, but may be reinstated by a vote of a majority of the directors then in office for good cause shown.

**Section 4. Resignation.** Any director may resign from office at any time by delivering a resignation in writing to the President, and the acceptance of the resignation, unless required by its terms, shall not be necessary to make the resignation effective.

**Section 5. Vacancies and Newly Created Directorships.** Any newly created directorships and any vacancies on the Board of Directors arising at any time and from any cause may be filled at any meeting of the Board of Directors by a majority of the directors then in office, and the directors so elected shall serve until the next annual meeting.

**Section 6. Place and Time of Meetings.** The annual meeting of the Board shall be held each year at a time and place fixed by the Board. Regular meetings will be held once every four months at a time and place fixed by the President of the Board or in his or her absence, Vice President. A special meeting may be called at any time by the President or other officer or by written demand of any two directors at any time and place specified by them.

**Section 7. Notice of Meeting; Waiver.** Notice of the time and place of each regular, special or annual meeting of the Board, and, to the extent possible, a written agenda stating all matters upon which action is proposed to be taken, shall be mailed, postage prepaid, addressed to each director at his or her residence or usual place of business (or at such other address as he or she may have designated in a written request filed with the Secretary), sent via electronic mail or faxed to each director, at least one week before the day on which the meeting is to be held; provided, however, that notice of special meetings to discuss matters requiring prompt action may be given to him or her at such address by telephone, no less than forty-eight hours before the time at which such meeting is to be held. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

**Section 8. Quorums and Voting.** At all meetings of the Board of Directors, a majority of the entire Board shall constitute a quorum for the transaction of business. Except as otherwise provided by law or these By-laws, any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present at the time of the vote shall be the act of the Board. Directors who are employed by the Corporation outside their capacity as directors may not vote on matters concerning compensation.

**Section 9. Action by the Board.** Any action required or permitted to be taken by the Board or by any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consent shall be filed with the minutes of the proceedings of the Board or committee. Participation of one or more directors by conference telephone or similar telecommunications equipment allowing all persons participating in the meeting to hear each other at the same time shall constitute presence in person at a meeting.

**Section 10. Committees of the Board.** The Board, by resolution adopted by a majority of the entire Board, may establish and appoint an executive and other standing committees. The President shall appoint the Chairperson of each committee. Each committee so appointed shall consist of one or more directors and, to the extent provided in the resolution establishing it, shall have all the authority of the Board except as to the following matters:

1. the filling of vacancies on the Board or on any committee;
2. the amendment or repeal of the By-laws or the adoption of the new By-laws;
3. the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

Special Committees may be appointed by the President with the consent of the Board and shall have only the powers specifically delegated to them by the Board.

**Section 11. Compensation of Directors.** Directors shall not receive any compensation for their services as directors.

## ARTICLE III

### OFFICERS, EMPLOYEES and AGENTS

**Section 1. Officers.** The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers as the Board of Directors may from time to time elect. The President shall be a member of the Board of Directors. The other officers may, but need not, be members of the Board of Directors. Any two or more offices may be held by the same person except the offices of President and Secretary.

**Section 2. Election, Term of Office and Removal.** The officers of the Corporation shall be elected for a one year term at the annual meeting of the Board of Directors immediately following the election of directors, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal. Any officer of the Corporation may be removed, with or without cause, by a vote of a majority of the entire Board.

**Section 3. Other Agents and Employees.** The Board of Directors may from time to time appoint such agents and employees as it shall deem necessary, each of whom shall hold office during the pleasure of the Board of Directors, and shall have such authority, perform such duties and receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

**Section 4. Vacancies.** Any vacancy in any office may be filled by the Board of Directors. Any officer so elected shall hold office until the next annual meeting of the Board of Directors and the election and qualification of his or her successor.

**Section 5. President: Powers and Duties.** The President shall preside at all meetings of the Board of Directors and shall generally supervise the affairs of the Corporation. He or she shall keep the Board of Directors fully informed. He or she shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the corporation all contracts authorized either generally or specifically by the Board of Directors. The President shall also have such other powers and perform such other duties as the Board of Directors may from time to time prescribe. In the absence or inability of the President to act, a Vice President selected by the Board shall perform all the duties and may exercise any of the powers of the President.

**Section 6. Vice President: Powers and Duties.** A Vice President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

**Section 7. Secretary: Powers and Duties.** The Secretary shall keep the minutes of all meetings of the Board in books to be kept for that purpose, serve or cause to be served all notices of the Corporation and perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board.

**Section 8. Treasurer: Powers and Duties.** The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such depositories as the Board may designate. At the annual meeting of the Board and whenever else required by the Board, he or she shall render a statement of the Corporation's accounts. He or she shall at all reasonable times exhibit the Corporation's books and accounts to any officer or director of the

Corporation and shall perform all duties incident to the office of Treasurer subject to the control of the Board.

**Section 9.** **Artistic Director.** The Board of Directors shall appoint one person to act as Artistic Director who shall be responsible to the Board of Directors for the artistic management of the Corporation. If not otherwise a member of the Board of Directors, the Artistic Director shall be an ex-officio director with full voting power. The Artistic Director shall hold office during the pleasure of the Board of Directors and shall receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

**Section 10.** **Executive Director.** The Board of Directors shall appoint one person to act as Executive Director who shall be responsible to the Board of Directors for the administrative and business management of the Corporation. If not otherwise a member of the Board of Directors, the Executive Director shall be an ex-officio director with full voting power. The Executive Director shall hold office during the pleasure of the Board of Directors and shall receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

## ARTICLE IV

### BOARD ADVISORS

**Section 1.** **Powers.** The Board of Directors may appoint from time to time any number of persons as advisors of the Corporation to act either singly or as a committee of committees. Each advisor shall hold office at the pleasure of the Board of Directors, and shall have only the authority of obligations as the Board of Directors may from time to time determine.

**Section 2.** **No Compensation.** No advisor of the Corporation shall receive, directly or indirectly, any salary or compensation for any service rendered to the Corporation except that the Board of Directors may authorize reimbursement of expenditures reasonably incurred on behalf of activities for the benefit of the Corporation.

## ARTICLE V

### CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS

**Section 1.** **Checks, Notes and Contracts.** The Board of Directors is authorized to select the banks or depositories it deems proper for the funds of the Corporation. The Board of Directors shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts or other orders for the payment of money, acceptance, notes or other evidence of indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

**Section 2.** **Investments.** The funds of the Corporation may be retained, in whole or in part, in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board of Directors may deem desirable.

## ARTICLE VI

### OFFICE AND BOOKS

**Section 1. Office.** The office of the Corporation shall be located at such place as the Board of Directors may from time to time determine.

**Section 2. Books.** Correct books of account of the activities and transactions of the Corporation, including a minute book, which shall contain a copy of the Certificate of Incorporate, a copy of these By-Laws, and minutes of all meetings of the Board, shall be kept at the office of the Corporation.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 1. Fiscal Year.** The fiscal year of the Corporation shall begin on July 1 and end on June 30.

**Section 2. Non-Discrimination Policy.** The Corporation shall not discriminate against any director, officer, advisors, associate, employee or applicant for employment based on race, sex, age, sexual preference, religion, creed, national origin or disability.

## ARTICLE VIII

### INDEMNIFICATION AND INSURANCE

**Section 1. Indemnification.** The Corporation may, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he, his testator or intestate was a director, officer, employee or agent of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees. No indemnification may be made to or on behalf of any such person if (a) his or her acts were committed in bad faith or were the result of his or her active and deliberate dishonesty and were material to such action or proceeding or (b) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

**Section 2. Insurance.** The Corporation shall have the power to purchase and maintain insurance in accordance with, and subject to, the provisions of Section 726 of the New York Not-for-Profit Corporation Law to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of directors, officers, employees or agents pursuant to Section 1 of this Article VIII, or to indemnify such persons in instances in which they may be indemnified pursuant to Section 1 of this Article VIII.

## ARTICLE IX

## **AMENDMENTS**

These By-laws may be amended at any meeting of the Board of Director by a vote of the majority of the entire Board of Directors except that any amendment which is prohibited by the Certificate of Incorporation; or increases the quorum requirement or proportion of votes necessary for the transaction of business or of any specified item of business that must be authorized by a vote of two-thirds of the entire Board. Amendments cannot be considered at any meeting of the Board of Directors unless notice of proposed amendment has been included in the notice of meeting.