

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this “**Memorandum**”) is made this 19th day of August, 2022, by and between NEW SPIRE ARTS, INC., a Maryland non-stock corporation (“**NSA**”), AUSERMAN FAMILY FOUNDATION, INC., a Maryland non-stock corporation (“**AFF**”), WEINBERG CENTER FOR THE ARTS, INC., a Maryland non-stock corporation (“**WCA**”), THE PERFORMING ARTS CENTER STATUTORY TRUST, a Maryland statutory trust (the “**Trust**”), and THE CITY OF FREDERICK, a municipal corporation of the State of Maryland (the “**City**”).

WHEREAS, with the support of AFF, NSA operates a 13,027 square foot flexible black-box theater and event space located at 15 West Patrick Street, Frederick, Maryland (the “**Theater**”);

WHEREAS, the Trust owns the building in which the Theater is located (the “**Building**”), which Building also includes a 2,414 square foot space having an address of 15 North Market Street, Frederick, Maryland (the “**Retail Space**”);

WHEREAS, in 2018, the Trust completely renovated the Building at a cost of approximately Five Million Dollars (\$5,000,000.00), of which AFF funded approximately Three Million Five Hundred Thousand Dollars (\$3,500,000.00), and State grants, tax credits, and other contributors funded the balance;

WHEREAS, the Trust currently leases the entire Building to NSA, and NSA subleases the Retail Space to District Arts, LLC, for use as an art gallery, pursuant to a written lease with a term ending May 31, 2024;

WHEREAS, presently, NSA operations are not financially sustainable and have historically been funded in large part by AFF;

WHEREAS, with the support of the City, WCA has for many years successfully managed the Weinberg theater, located near the Theater, at 20 West Patrick Street, Frederick, Maryland (the “**Weinberg Center**”);

WHEREAS, all of WCA’s staff are City employees and WCA’s board of directors is appointed by the City;

WHEREAS, at NSA’s request, the City and The Maryland Ensemble Theatre Association, Inc., a Maryland non-stock corporation, are providing short-term “in-kind” partner support for NSA in the form of limited programming, operations, technical, and ticketing assistance;

WHEREAS, in light of NSA’s present issues concerning financial sustainability and the success of the City and WCA in operating the Weinberg Center, NSA and AFF have asked the City and WCA to consider permanent assumption of NSA’s operations (the “**Business**”), whereupon NSA would transfer all of NSA’s assets and operating agreements to the City and dissolve;

WHEREAS, in the interest of the arts, patrons, revitalization, and economic impact, the City and WCA have agreed to consider such action, if it can be accomplished in a cost-neutral manner with limited risk to current operations;

WHEREAS, the City and WCA believe that the assumption of the Business can be accomplished in a cost-neutral manner with limited risk to current operations, if (i) the Trust provides the City with favorable lease terms for the Theater and an option to purchase the Building at a steep discount, (ii) NSA transfers all of its assets to the City and dissolves, (iii) AFF agrees to provide an agreeable level of funding for the operation of the Theater, and (iv) the City and WCA are provided control of all aspects of the operation of the Theater; and

WHEREAS, the City has determined that it is desirable to assume the operations of the Theater on and in accordance with the terms set forth herein, as it will allow the City to support its goals of promoting the arts, revitalizing downtown Frederick, and benefiting the local economy in a cost- and operational risk-neutral manner.

**WITNESSETH:**

NOW, THEREFORE, for no monetary consideration but in consideration of the foregoing recitals, which are fully incorporated hereinbelow by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and their respective successors and assigns, do hereby agree as follows:

1. *Assumption of NSA Assets and the Business by the City.*

1.1. *Assumption of NSA Assets.* NSA shall deliver all of NSA's corporate organizational and governance records to the City on or before August 21, 2022. Effective as of 12:00 a.m. on August 22, 2022 (the "**Transfer Date**"), on the terms and provisions of this Memorandum, NSA hereby assigns to the City, free and clear of all liens, claims, and encumbrances, all of NSA's cash assets, less any amounts retained and designated by NSA to pay estimated remaining liabilities and obligations of NSA through the date of NSA's dissolution, and personal property (collectively, the "**Assigned Assets**"), including the Assigned Assets listed on **Exhibit A**, and all of NSA's right, title, and interest in and to the contracts and commitments set forth on **Exhibit B** attached hereto (collectively, with the hereinafter described Additional Contracts, the "**Assigned Contracts**"). The City hereby accepts the aforesaid assignment of the Assigned Assets and agrees to assume, as of 12:00 a.m. on August 22, 2022 (the "**Commencement Date**"), all of NSA's liabilities and obligations under the Assigned Contracts to the extent such liabilities and obligations relate solely to the period from and after the Commencement Date (collectively, the "**Assumed Liabilities**"). All liabilities and obligations of NSA other than the Assumed Liabilities (collectively, the "**Retained Liabilities**") shall remain the liabilities of NSA and shall not be assumed by the City.

1.2. *Assumption and Operation of NSA Business.* Effective as of the Commencement Date, the City hereby agrees to assume all of the operating responsibilities of the Business, including management, staffing, programming, ticketing, rentals, utilities, budgeting, bookkeeping, accounting, and caring for the Theater in accordance with the New Lease described below, for the period commencing on the Commencement Date and ending no earlier than the date

upon which the New Lease is terminated (the “**Termination Date**”). During the period from the Commencement Date until the Termination Date (the “**Commitment Period**”), WCA shall be responsible for overseeing the operations of the Business on behalf of the City, with the same scope of power, authority, and responsibility as WCA currently operates the Weinberg Center. The City shall create a separate budget for the Business to track, among other things as the City may desire to track, the Business’ revenue by category (e.g., ticket sales, rentals, sponsorships), the Business’ expenses by category (e.g., programming, staff, cleaning, equipment), and attendance and use of the Theater and other Business events. Further, at all times during the Commitment Period, the City agrees to continue to use the name “New Spire Arts” for all purposes in connection with the Theater and the marketing and branding of the Business, provided that the City shall have the right to brand “New Spire Arts” as being related to or affiliated with the City and/or WCA. In connection with assuming the operations of the Business, the City may, but shall have no obligation to, on the Commencement Date, hire NSA’s current Client Services Manager in whatever capacity the City deems appropriate.

1.3. *Operations of NSA Prior to Commencement Date.* During the period from the Effective Date through the Transfer Date (the “**Interim Period**”), NSA shall not enter into any new contracts or commitments (collectively, “**Additional Contracts**”), or modify, amend, or terminate any Assigned Contract, without the City’s prior written consent, which shall not be unreasonably conditioned, withheld, or delayed. During the Interim Period, NSA will provide copies of all material written documents and correspondence generated or received by NSA during the Interim Period. NSA shall take such actions as are necessary to terminate NSA’s sole employee and satisfy all of NSA’s Retained Liabilities, in each case, on or before August 21, 2022. Further, within 30 days after the Transfer Date, NSA shall take such actions as are necessary to wind down its affairs and dissolve its corporate existence.

2. *Lease of Theater.* The existing Master Lease Agreement between the Trust and NSA shall be terminated on or before the Transfer Date. Commencing on the Commencement Date, the Trust agrees to lease the Theater to the City, and the City agrees to lease the Theater from the Trust, on the terms, provisions, covenants, and conditions of a written lease agreement between the Trust and the City (the “**New Lease**”), which the Trust and the City shall execute on or before the Commencement Date. The City and the Trust agree that, subject to the actual terms, provisions, covenants, and conditions of the New Lease, the New Lease would include the following basic concepts: (i) an initial lease term of three (3) years, commencing on the Commencement Date and ending on August 21, 2025 (the “**Initial Lease Term**”); (ii) two (2) options for the City to extend the term of the lease for successive periods of one (1)-year per option (the Initial Lease Term, as extended by the two (2) one (1)-year option periods being the “**Lease Term**”); (iii) annual rent of One Hundred Dollars (\$100.00) during the Lease Term; (iv) an option for the City to purchase the Building at the end of the Lease Term for One Hundred Dollars (\$100.00); (v) an option for the City to terminate the New Lease at any time upon six (6) months’ notice; and (vi) the Trust assuming responsibility for maintaining major Building systems, including HVAC, roof, structural, and fire and life-safety systems at no cost to the City. The parties acknowledge and agree that, to the extent of any disagreement between the terms and provisions of this Memorandum and the terms and provisions of the New Lease, as between the Trust and the City, the terms and provisions of the New Lease shall govern and control.

3. *AFF Funding Commitment.* During the Initial Lease Term (or such earlier date as the New Lease has terminated) (the “**Grant Period**”), AFF will provide the City with an annual financial grant of One Hundred Sixty Thousand Dollars (\$160,000.00) (collectively, the “**Grant Funds**”). Each annual grant of Grant Funds shall be made on August 22 and shall be used by the City as needed to cover costs related to the operation of the Business by the City as provided in this Memorandum and for no other purpose. No Grant Funds shall be payable for any period following the Grant Period.

4. *Forgiveness of Notes.* The City and the Trust acknowledge and agree that (a) the Building was previously owned by The Frederick Arts Council, Inc., a Maryland non-stock corporation (the “**Arts Council**”); (b) the Arts Council was indebted to the City for a loan in the original principal amount of Fifty Thousand Dollars (\$50,000.00) (the “**City Loan**”), and to Frederick County, Maryland (the “**County**”), for a loan in the original principal amount of Fifty Thousand Dollars (\$50,000.00) (the “**County Loan**”); and (c) in connection with the acquisition of the Building, the Trust agreed to assume the Arts Council’s liabilities under the City Loan and County Loan, which currently have balances of approximately Ninety-Five Thousand Dollars (\$95,000.00) and Seventy-Eight Thousand Dollars (\$78,000.00), respectively. The City agrees that the City Loan shall be forgiven, effective as of the Commencement Date. The City further agrees to provide reports of occupancy, attendance, programming, or other information, as reasonably requested by the Trust from time to time in connection with any County Loan forgiveness requests and/or grants and to provide letters of support in furtherance of such forgiveness.

5. *Breach of Memorandum.*

5.1. *By NSA, AFF, or the Trust.* If NSA, AFF, or the Trust fails or refuses to perform its obligations as required under this Memorandum, then after thirty (30) days’ written notice provided by the City to NSA, AFF, or the Trust, as applicable, indicating the nature of said default, if NSA, AFF, or the Trust, as applicable, has not cured said default, the City may seek and obtain equitable relief to enforce the terms and conditions of this Memorandum, either through a decree for specific performance or an injunction, and further, the City shall be entitled to bring a legal action for damages or other redress or terminate this Memorandum with respect to the ongoing performance obligations of the parties hereunder.

5.2. *By the City.* If the City fails or refuses to perform its obligations as required under this Memorandum, then after thirty (30) days’ written notice provided to the City, as applicable, indicating the nature of said default, if the City has not cured said default, then NSA, AFF, or the Trust, as applicable, may seek and obtain equitable relief to enforce the terms and conditions of this Memorandum, either through a decree for specific performance or an injunction, and further, NSA, AFF, and the Trust shall be entitled to bring a legal action for damages or other redress or terminate this Memorandum with respect to the ongoing performance obligations of the parties hereunder. For purposes of this Memorandum, a failure or refusal of WCA to perform its obligations as required under this Memorandum shall, as to NSA, AFF, and the Trust, constitute a failure or refusal by the City to perform its obligations as required under this Memorandum.

5.3. *Venue.* The parties agree that any judicial action arising out of this Memorandum shall take place in Frederick County, Maryland.

6. *Intentionally Deleted.*

7. *Miscellaneous Provisions.*

7.1. This Memorandum, including the Exhibits attached hereto, which are incorporated herein by this reference, contains the entire agreement between the parties and may not be amended unless in writing and signed by both parties.

7.2. This Memorandum may not be assigned by the parties without the express written consent of the other party, which consent shall not be unreasonably withheld or delayed.

7.3. This Memorandum shall become effective on and only on its execution by all of the parties hereto (the “**Effective Date**”).

7.4. This Memorandum shall be given effect and construed by application of the law of Maryland, and any action or proceeding arising hereunder shall be brought in the courts of Maryland sitting in Frederick County.

7.5. This Memorandum is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

7.6. Each party shall execute such further assurances thereof as the other party may request that may be necessary to carry out the intent of this Memorandum.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed and sealed effective on the date first above written.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

WITNESS:

NEW SPIRE ARTS, INC., a  
Maryland non-stock corporation

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

Name:

Title:

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the  
subscriber, a Notary Public in and for the state and county aforesaid, personally appeared  
\_\_\_\_\_, \_\_\_\_\_ of New Spire Arts, Inc., a Maryland non-stock corporation,  
known to me, or satisfactorily proven, to be the person whose name is subscribed to the within  
instrument, and acknowledged that s/he executed the same as the duly authorized \_\_\_\_\_  
of New Spire Arts, Inc. for the purposes therein contained.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

WITNESS:

AUSHERMAN FAMILY FOUNDATION,  
INC., a Maryland non-stock corporation

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

Name:

Title:

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a Notary Public in and for the state and county aforesaid, personally appeared \_\_\_\_\_, \_\_\_\_\_ of Ausherman Family Foundation, Inc., a Maryland non-stock corporation, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that s/he executed the same as the duly authorized \_\_\_\_\_ of Ausherman Family Foundation, Inc. for the purposes therein contained.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

WITNESS:

WEINBERG CENTER FOR THE ARTS,  
INC., a Maryland non-stock corporation

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

Name:

Title:

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a Notary Public in and for the state and county aforesaid, personally appeared \_\_\_\_\_, \_\_\_\_\_ of Weinberg Center for the Arts, Inc., a Maryland non-stock corporation, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that s/he executed the same as the duly authorized \_\_\_\_\_ of Weinberg Center for the Arts, Inc. for the purposes therein contained.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public



WITNESS:

THE PERFORMING ARTS CENTER  
STATUTORY TRUST, a Maryland  
statutory trust

\_\_\_\_\_

By: \_\_\_\_\_(Seal)  
Marvin E. Ausherman, Trustee

STATE OF MARYLAND, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a Notary Public in and for the state and county aforesaid, personally appeared Marvin E. Ausherman, Trustee of The Performing Arts Center Statutory Trust, a Maryland statutory trust, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that s/he executed the same as the duly authorized Trustee of The Performing Arts Center Statutory Trust for the purposes therein contained.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

WITNESS:

THE CITY OF FREDERICK, a municipal corporation of the State of Maryland

\_\_\_\_\_

By: \_\_\_\_\_ (Seal)  
Michael C. O'Connor, Mayor

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a Notary Public in and for the state and county aforesaid, personally appeared Michael C. O'Connor, Mayor of the City of Frederick, a municipal corporation of the State of Maryland, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same as the Mayor of the City of Frederick for the purposes therein contained.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

Reviewed and Approved for Legal Sufficiency:

\_\_\_\_\_  
City Attorney

# FIXED ASSET RECORD with DEPRECIATION

## Exhibit A

DATE: 3/17/2022

Asset Name	Asset Class	Description	Physical Location	Asset No.	Serial No.	Acquisition Date	Acquisition Cost	Depreciation Method	Useful Life (Years)	Salvage Value	Previous Depreciation	First Year %	Depreciation This Period
RCF PASSIVE 3000W (4"V.C.) SUBWOOFER		large speaker	basement	N/a	n/A	7/1/2021	\$2,108.49	SL	40.00	\$500.00	\$0.00	100%	\$40.21
RCF PASSIVE 3000W (4"V.C.) SUBWOOFER		large speaker	basement	N/a	n/A	7/1/2021	\$2,108.49	SL	40.00	\$500.00	\$0.00	100%	\$40.21
RCF PASSIVE 3000W (4"V.C.) SUBWOOFER		large speaker	basement	N/a	n/A	7/1/2021	\$2,108.49	SL	40.00	\$500.00	\$0.00	100%	\$40.21
RCF PASSIVE 3000W (4"V.C.) SUBWOOFER		large speaker	basement	N/a	n/A	7/1/2021	\$2,108.49	SL	40.00	\$500.00	\$0.00	100%	\$40.21
Yamaha piano		baby grand piano	theater	n/A	n/A	9/5/2019	\$7,600.00	SL	50.00	\$7,000.00	\$0.00	100%	\$12.00
<b>Total</b>							<b>\$16,033.96</b>			<b>\$9,000.00</b>	<b>\$0.00</b>		<b>\$172.85</b>

## **EXHIBIT B**

### **LIST OF CONTRACTS AND COMMITMENTS**

Rental Commitments for the following dates and consideration:

- October 1<sup>st</sup> Associations of Nigerians in Frederick \$810 (\$405 prepaid)
- October 5<sup>th</sup> Nymeo business meeting \$785 + open bar
- Dec 15-22 Endangered Species Theater- fee range of \$1,950 - \$2,375
- December 23 Yewande Oladeinde \$1,054