

BY-LAWS OF THE RIVIERA THEATRE & ORGAN PRESERVATION SOCIETY,  
INC

**ARTICLE I**

**NAME**

This non-profit organization is incorporated under the laws of the State of New York under the name: Riviera Theatre & Organ Preservation Society, Inc. (hereinafter “RTOPS”)

**ARTICLE II**

**STATEMENT OF PURPOSE**

- A. To promote the Riviera Theatre and its Mighty Wurlitzer Organ as a vital and vibrant community treasure:
- B. To recognize the substantial efforts which have already been undertaken to restore and renovate the Riviera Theatre and the Mighty Wurlitzer Organ, consistent with the historic character of the facility and to continue to support such efforts in the future:
- C. To promote volunteerism, community involvement and increased financial support for the activities of RTOPS relative to the Riviera Theatre and the Mighty Wurlitzer Organ:
- D. To encourage, promote and sponsor concerts and shows featuring pipe organ music, artistic presentations, live productions, films, cultural events, musical performances, entertainment activities and tourism relative to the Riviera Theatre and the Mighty Wurlitzer Organ:
- E. To encourage the education and training of new performers on the theatre pipe organ, and in the theatre and performing arts:
- F. To educate by preserving and expanding, through workshops, lectures and demonstrations including but not limited to, the skill of theatre and pipe organ playing, building, voicing and maintenance:
- G. To receive and administer funds for charitable purposes, and to that end take hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons or corporations, any property, whether real, personal, tangible or intangible, or any undivided

interest therein, without limitations as to amount of value: to sell, convey or otherwise dispose of such property: to invest, reinvest or deal with the principal or income thereof, all in such manner as, in the judgment of the directors, will best promote the charitable purposes of the corporation without limitation, if any, as may be contained in the instrument under which such property is received, the Certificate of Incorporation, these by-laws or any laws applicable thereto: to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations if in the sole judgment of the Board of Directors such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable purposes of the Corporation: and to distribute property to qualified charitable organizations or for charitable purposes in accordance with the terms of gifts, bequests or devises to the Corporation not inconsistent with the purposes as set forth in the Certificate of Incorporation, these by-laws or in accordance with the determinations made by the Board of Directors pursuant to the Certificate of Incorporation and these by-laws:

- H. To do any other act or thing incidental to or in connection with the forgoing purposes or in the advancement thereof, but not for the pecuniary profit or financial gain of the Corporation's Directors or Officers or any private individual.

### **ARTICLE III**

#### **MEMBERS**

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##### Section 1: Membership

- A. A member shall be a person who has applied in writing to the secretary or the treasurer and who has satisfied the requirements as to payment of dues:
- B. Categories of membership and the amount of dues shall be established by the Directors:
- C. Any person may be elected as Honorary or Life member by a two-thirds (2/3) vote of the Directors present at any regular or special meeting.

Annual Honorary Members shall have no voting or property rights and shall pay no dues. Life Members shall have voting rights or property rights and shall pay no dues.

## Section 2: Termination of Membership

- A. Any member may resign by giving written notice to the secretary
- B. Upon written notice to the members and after an opportunity to be heard, membership in the Corporation may be terminated by the Board of Directors for cause, or for nonpayment of dues, fees or other assessments within sixty (60) days of the due date as established by the Board. A majority vote of the eligible Directors shall be necessary to terminate a membership. The termination of membership shall work as a forfeiture of all rights, titles, and interests of the Member in the Corporation and its affairs.
- C. Upon termination, either by cause or by resignation, a person must return any property, keys and documents belonging to the Society in his or her possession.

## **ARTICLE IV**

### **MEETING OF MEMBERS**

Section 1: Annual Meeting: The Annual Meeting of the Members of the Corporation, for the election of Directors and for the transaction of such other business as may be set forth in the Notice of Meeting, shall be held each year and at such time and place within or without the State of New York as the Chairman or Vice Chairman of the Board of Directors shall determine and the Notice of Meeting shall specify. That notwithstanding, the Annual Meeting shall be held within the first three (3) calendar months of the calendar year.

Section 2: Special Meetings: Special Meetings of the Members of the Corporation may be called by the Board of Directors upon a majority vote, or at the request in writing of at least ten percent (10%) of the Members who are eligible to vote. A request by the Members shall state the purpose or purposes for which the meeting is to be called. Each Special Meeting of the Members shall be held at such time and place within or without the State of New York as the Board of Directors or the Member calling the Special Meeting shall specify.

Section 3: Notice of Annual Meeting: Written notice of each Annual Meeting shall be given personally or by mail at least ten (10), but not more than fifty (50), days prior to the date of the Annual Meeting to each member. If mailed, such

notice shall be effective when deposited in the United States Mail, with postage thereon prepaid, directed to the Member's last address as it appears on the Record of Members. The Notice shall state the place, date and hour of the meeting, and the purpose or purposes for which it was called. The business which may be transacted at the Meeting shall be confined to the business which is related to the purpose or purposes set forth in the Notice.

Section 4: Notice of Special Meeting: Written Notice of each Special Meeting shall be given in writing, personally or by mail at least seven (7), but not more than thirty (30), days prior to the date of the Special Meeting to each Member. If mailed, such Notice shall be effective when deposited in the United States Mail, with postage thereon prepaid, directed to the Member's last address as it appears on the Record of Members. This Notice shall set the place, date and hour of the meeting, the purpose or purposes for which it is called and indicate that the Notice is being issued by or at the direction of the person calling the Meeting. The business which may be transacted at the meeting shall be confined to the business which is related to the purpose or purposes set forth in the Notice.

Section:5 Quorum: At each Annual or Special Meeting, a quorum for the transaction of business shall constitute ten percent (10%) of the Members eligible to vote.

Section 6: Procedure: The order of business and all matters of procedure at every Annual or Special Meeting shall be determined by the presiding officer.

## **ARTICLE V**

### **ELECTION OF DIRECTORS**

Section 1: Term of Office: The Board of Directors shall consist of twelve (12) Members of the Corporation who are in good standing. Each Director shall be elected for a term of three (3) years, their terms being numbered and staggered so that four (4) directors are elected each year.

Section 2: Election of Directors: Directors shall be elected at the Annual Meeting. The Election Committee shall tally the votes. The candidates receiving the most votes shall be deemed elected to the seats to be filled. In the case of a tie vote, the disinterested Directors shall select the winner of that seat from the candidates involved in the tie vote.

Section 3: Selection of Nominees: Nominees for vacancies on the Board of Directors shall be selected either by a nominating committee or any member in good standing shall nominate himself/herself to be a candidate.

Section 4: Assuming Duties: New Directors shall assume office at the Annual Meeting.

Section 5: Vacancies: In the event of a vacancy on the Board of Directors due to the resignation of a Member, his/her inability to serve, or for other reasons, the Directors shall appoint a successor. Newly created Director seats resulting from an increase in the number of Directors, and vacancies occurring for any reason, may be filled by a majority of the Directors then in office, although less than a quorum exists, for a term which lasts until the next Annual Meeting.

Section 6: Resignation: Any Director may resign at any time by giving his/her resignation to the Chairman, Vice Chairman or the secretary. Such resignation shall take effect at the time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7: Removal: Any Director may be removed with cause by a majority vote of the Board of Directors, at its sole discretion. Absence from three (3) meetings in any twelve (12) month period shall, without limitation, be cause for removal. At any meeting at which the removal of a Board member is to be addressed, notice of the proposed action must be included in the Notice for that meeting.

Section 8: Transitional Term of Office: This Section 8 is intended to provide for the transition from the predecessor Constitution and By-Laws with respect to the number and voting authority of the Corporation's existing Directors and Officers. All current Officers and Directors, at the time these By-Laws are adopted, shall remain in place and with full voting authority until the 1999 annual Meeting of the Corporation. At such Annual Meeting, the Board of Directors shall be organized as set forth in Section 1 of this Article V and any voting rights thereafter shall inure to the individual Directors as set for in these By-Laws.

## **ARTICLE VI**

### **BOARD OF DIRECTORS**

Section 1: Management of Corporate Affairs: Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the activities, property and affairs of the Corporation shall be managed by the Board of Directors.

Section 2: Regular Meetings: Regular Meetings of the Board of Directors of the Corporation, for the transaction of business as may be set forth in the Notice of

Meeting, shall be held on a monthly basis at such time, place, and date as determined by the Board of Directors.

Section 3: Special Meetings: Special Meetings of the Board of Directors may be called at any time by the Chairman, or in his absence, by the Vice Chairman, and must be called by such Officer on written notice by any two (2) of the Directors. Such request shall state the purpose or purposes for which the Special Meeting is to be called. Each Special Meeting of the Board of Directors shall be held at such time and place as the person calling the meeting shall determine, consistent with these By-Laws, and as specified in the Notice of Meeting.

Section 4: Notice of Special Meeting: Notice of Special Meeting of the Board of Directors stating date, time and place thereof shall be given by the Chairman, Vice Chairman, or Secretary to each Director by mailing the Notice, postage prepaid, addressed to each Director at his/her residence or place of business, not less than five (5) days before the meeting, or by delivering same in person, by facsimile or by telephone not less than three (3) days before the Meeting. That notwithstanding, Notice may be given in less than the prescribed periods of time and by other methods than stated above where a quorum of the Board of Directors submits a signed written waiver of such Notice and time requirements.

Section 5: Quorum and Action by the Board of Directors: At all meetings of the Board of Directors, except as otherwise provided by law, the Certificate of Incorporation, or these By-Laws, a quorum shall be required for the transaction of business and shall consist of not less than seven (7) of the entire Board of Directors, and a majority of the Directors present shall decide any question which comes before it, except a modification of these By-Laws or the Certificate of Incorporation which shall require a two-thirds (2/3) vote of the Board of Directors. A majority of the Directors present, whether or not a quorum, may adjourn any meeting to another time and place.

Section 6: Procedure: The order of business and all other matters of procedure at every Meeting of the Board of Directors may be determined by the person presiding at the Meeting.

Section 7: Action Without a Meeting: Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all Directors or members of the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Directors or members of the committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 8: Open Board Meetings: All board and committee meetings are open to the general membership and may be closed only according to the provisions of the New York State Open Meetings Law.

Section 9: Compensation: No Director(s) shall receive, directly or indirectly, salary, compensation or other emolument from the Corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more Corporate purposes, which shall be subject to prior approval by a majority of disinterested Directors.

Section 10: Special Advisors: From time to time, the Board of Directors may designate as special advisors a chosen number of outstanding persons from the community, who are interested in the objectives of the Corporation, to assist the Corporation in its operations. Selection as a special advisor shall not confer upon those selected any right to vote or to participate in the management of the Corporation, nor any liability with respect thereto.

## **ARTICLE VII**

### **COMMITTEES OF DIRECTORS**

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#### Section 1: Designation of Committees:

- A. Executive Committee: The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from its members an Executive Committee consisting of the Chairman, two (2) or more Directors, with the Chairman being designated as the Executive Committee Chairperson, and the Secretary and the Treasurer of the Corporation who have no voting authority. The Board may designate one or more Directors as alternate members of the Executive committee who may replace any absent member or members at any meeting of such committee. In the interim between meetings of the Board of Directors, the Executive Committee shall have all of the authority of the Board of Directors except as otherwise provided by law, and shall serve at the pleasure of the Board of Directors.
- B. Nominating Committee: The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members a Nominating Committee consisting of three (3) or more Directors, with one (1) Director being designated as the committee chairperson. The Board may designate one or more Directors as alternate members of the Nominating Committee who may replace any absent member or members at any meeting of such committee.

- C. **Other Committees:** The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members other committees as it sees fit which consist of three (3) or more Directors, with one (1) Director being designated as the committee chairperson. The Board may designate one or more Directors as alternate members of such committees who may replace any absent member or members at any meeting of such committees. In the interim between meetings of the Board of Directors, these committees shall have all authority given them by the Board of Directors except as otherwise provided by law with respect to issues over which they have been given stewardship. These committees shall serve at the pleasure of the Board of Directors.

## **ARTICLE VIII**

### **OFFICERS**

**Section 1: Officers:** The Board of Directors shall annually, at the first meeting of the Board after the Annual Meeting of the Members, appoint or elect a Chairman and Vice Chairman, who shall be chosen from among the Directors, and a Secretary and Treasurer, who need not be chosen from among the Directors. The Board of Directors may from time to time elect or appoint such additional Officers as it may determine. Such additional Officers shall have such authority and perform such duties as the Board of Directors may from time to time prescribe.

**Section 2: Term of Office:** The Chairman, Vice Chairman, Secretary and Treasurer shall, unless otherwise determined by the Board of Directors, hold office until the first meeting of the Board which follows the next Annual Meeting of the Members, and until their successors have been elected or appointed and qualified. That notwithstanding, no person shall serve a Chairman for more than two (2) consecutive annual terms without the approval of the Members at a duly called meeting. Such member approval must be given annually and can be revoked at any time at a duly called meeting of the Members. Each additional Officer appointed or elected by the Board of Directors shall hold such office for such term as shall be determined from time to time by the Board of Directors, and until his/her successor has been elected or appointed and qualified. Any Officer, however, may be removed or have his/her authority suspended by a two-thirds (2/3) majority of the Board of Directors at any time, with or without cause. If the Office of any Officer becomes vacant for any reason the Board of Directors shall have the power to fill the vacancy.

**Section 3: Resignation:** Any Officer may resign at any time by notifying the Board of Directors, the Chairman, or the Secretary of the Corporation in writing. Such resignation

shall take effect at the time designated therein, the acceptance thereof shall not be necessary to make it effective.

Section 4: Duties of Officers May be Delegated: In the case of the absence or disability of any Officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board, except where otherwise provided by law, the Certificate of Incorporation or these By-Laws, may delegate, for the time being, the powers and duties of any Officer to any other Officer, or to any member of the Board.

Section 5: The Chairman: The Chairman shall be the Chief Executive Officer of the Corporation and shall have the general powers and duties of supervision of the Corporation. The Chairman shall perform all such duties as are properly required by the Board of Directors. The Chairman shall preside at all meetings of the Board of Directors and shall be an ex officio member of any committee of the Board of Directors.

Section 6: The Vice Chairman : The Vice Chairman shall, in the absence or at the request of the Chairman, perform the duties and exercise the powers of the Chairman. The Vice Chairman shall perform all such duties as usually pertain to the Office or are properly required by the Board of Directors.

Section 7: The Secretary: The Secretary shall issue notices for all special meetings of Directors and Members where notices of such meetings are required by law or these By-Laws. The Secretary shall attend all meetings of the Board of Directors and keep the minutes thereof. The Secretary shall affix the Corporate Seal to and sign such instruments as require the Seal or the Secretary's signature, and shall perform such other duties as usually pertain to the Office or are properly required by the Board of Directors.

Section 8: The Treasurer: The Treasurer shall supervise the care and custody of all the monies and securities of the Corporation. The Treasurer shall cause to be entered into the books of the Corporation, to be kept for that purpose, full and accurate accounts of all monies received and paid on account of the Corporation. The Treasurer shall make and sign such reports, statements and instruments as may be required of him/her by the Board of Directors or by the laws of the United States, or of any state our country, and shall perform such other duties as usually pertain to the Office or are properly required of the Treasurer by the Board of Directors.

Section 9: The Immediate Past Chairman: The Immediate Past Chairman shall be permitted to attend all meetings of the Board of Directors and shall be permitted to offer opinions and advice as to any matter raised or discussed at such meetings. However, he/she shall have no authority to vote unless he/she is otherwise a member of the Board of Directors.

Section 10: Officers Holding Two or More Offices: Any two or more Offices, except those of the Chairman and Secretary, may be held by the same person, but no Officer shall execute or verify any instrument in more than one capacity if such instrument is required by law, or otherwise, to be executed or verified by two or more Officers.

Section 11: Compensation: No Officer of the Corporation shall receive, directly or indirectly, salary compensation or emolument from the Corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation.

## ARTICLE IX

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 1: Right of Indemnification: Each Director and Officer of the Corporation, whether or not then in Office, and any person whose testator or in testate was such a Director or Officer, shall be indemnified by the Corporation for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Not-For-Profit Corporation Law of the State of New York, or other applicable law, as such law now exists or may hereafter be adopted or amended. Provided, however, that the Corporation shall provide indemnification in connection with an action or proceeding, or part thereof, initiated by such Director or Officer, only if such action or proceeding, or part thereof, was authorized by the Board of Directors.

Section 2: Advancement of Expenses: Expenses incurred by a Director or Officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article IX may be paid by the Corporation in advance of the final disposition of such action or proceedings upon: (a) the receipt of an undertaking by or on behalf of such Director or Officer to repay such advancement in case such Director or Officer is ultimately found not to be entitled to such indemnification as authorized by this Article IX, and (b) approval by the Board of Directors acting as a quorum consisting of Directors who are not parties to such action or proceeding or, if such a quorum is not obtainable then approval by the Members who are entitled to vote. To the extent permitted by law, the Board of Directors or, if applicable, the members, shall not be required to find that the Director or Officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Corporation makes any such advance payment of expense hereunder.

Section 3: Availability and Interpretation: To the extent permitted under applicable law, the rights of the indemnification and to the advancement of expenses provided in this Article IX (a) shall be available with respect to events occurring prior to the adoption of this Article IX, (b) shall continue to exist after any recession or restrictive amendment to this Article IX with respect to events occurring prior to such recession or amendment, (c) shall be interpreted on the basis of applicable law in effect at the time of the occurrence such event or events giving rise to the action or proceeding or, at the sole discretion of the Director or Officer (or, if applicable, at the sole discretion of the testator or in testate of such Director or Officer seeking such rights), on the basis of applicable law in effect at

such time such rights are claimed, and (d) shall be in the nature of contract rights which may be enforced in any court of competent jurisdiction as if the Corporation and the Director or Officer for whom such rights are sought were parties to a separate written agreement.

Section 4: Other Rights: The rights of indemnification and to the advancement of expenses provide in this Article IX shall not be deemed exclusive of any other rights to which any Director or Officer of the Corporation or other person may now or hereafter be otherwise entitled, whether contained in the Certificate of Incorporation, these By-Laws, a resolution of the Members, a resolution of the Board of Directors or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article IX shall not be deemed exclusive of any rights, pursuant to law or otherwise, of any Director or Officer of the Corporation or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith, or any part thereof.

Section 5: Severability: If this Article IX, or any part hereof, shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article IX shall remain fully enforceable. Any payments made pursuant to this Article IX shall be made only out of funds legally available therefore.

## **ARTICLE X**

### **CORPORATE FINANCE**

Section 1: Corporate Funds: The funds of the Corporation shall be deposited in its name with such United States Banks, trust companies or other depositories as the Board of Directors may from time to time designate. All checks, notes, drafts and other negotiable instruments of the Corporation shall be signed by such Officer(s), agent(s) or employee(s) as the Board of Directors may from time to time designate. No Officers, agents or employees of the Corporation, alone or with others shall have the power to make checks, notes, drafts or other negotiable instruments in the name of the Corporation, or to bind the Corporation thereby, except as provided in this Article X.

Section 2: Fiscal Year: The fiscal year of the Corporation shall be the calendar year unless otherwise provided by the Board of Directors.

Section 3: Loans to Directors and Officers: No loans shall be made by the Corporation to its Directors or Officers.

Section 4. Gifts:

- a. The Board of Directors, the Executive Committee of the Board of Directors, or any authorized Officer, employee or agent of the Corporation may accept on behalf of the Corporation any contribution, gift, bequest or devise for any general or specific purpose or purposes of the Corporation
- b. The Board of Directors has the right to reject any such gift, if the majority feels it would not be in the best interest of the Society.
- c. Board members shall not accept gifts personally as a result of their position with the Society.

Section 5: Voting of Securities Held by the Corporation: Stocks or other securities owned by the Corporation may be voted in person or by proxy as the Board of Directors shall specify. In the absence of any direction from the Board of Directors, such stocks or securities shall be voted on by the Chairman as he or she shall determine.

Section 6: Income from Corporation Activities: All income from activities of the Corporation shall be applied to the maintenance, expansion or operation of the lawful activities of the Corporation.

## **ARTICLE XI**

### **AMENDMENTS**

Section 1: Amendments of the By-Laws: By-Laws of the Corporation may be adopted, amended or repealed: (a) at any meeting of the Members, notice of which shall have included specification of the proposed action, by vote of two-thirds (2/3) of the Members of the Corporation who are entitled to vote, or (b) at any meeting of the Board of Directors, notice of which shall have been given to the membership including specification of the proposed action, by a two-thirds (2/3) vote of the entire Board of Directors. Provided, however, that if any By-Law regulating an impending election of the Directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of the Members for the election of Directors the By-Law adopted, amended or repealed, together with a concise statement of the changes made.

Section 2: Member Resolutions: A resolution calling for the amendment of the By-Laws of the Corporation may be submitted by any Member in good standing after being signed by one-third (1/3) of the Members who are eligible to vote. The resolution must be submitted to the Secretary of the Corporation at least ten (10) days prior to the beginning of the maximum period of time set forth in Article IV, Sections 3 and 4, for the mailing of the Notice for meetings of the Members.