

LEASE AGREEMENT

This property LEASE AGREEMENT ("**Lease**"), commencing the 1st of May, 2022, by and between **The City of Aurora**, a municipal corporation and home rule government, (herein after "**Lessor**") and **The Fox Valley Music Foundation**, a non-profit organization (hereinafter "**Lessee**") and, together with Lessor, collectively referred to herein as the "**Parties**".

In consideration of the rents, covenants, and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged and agreed, Lessor and Lessee covenant, warrant, and agree as follows:

1. Premises

(a) Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the Premises at 19-21 Broadway, PIN numbers 15-22-336-010 and 15-22-336-011, located in Aurora, Illinois for the Term of this Agreement.

(b) Lessee shall have access to the entire property.

(c) Lessee agrees to accept possession of the Premises in its existing **AS-IS** condition on the date of this Lease, without representation or warranty by Lessor, express or implied, and with no obligation of Lessor to repaint, remodel, repair, improve, or alter the Premises, or to perform any construction, remodeling, or other work of improvement upon the Premises. Without limiting the generality of the foregoing, Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty regarding the condition of the Premises, the Building, or the Property, the suitability of the Premises for Lessee's use, or the condition, capacity, or performance of the Building Systems.

2. Purpose

The purpose of this lease is to allow Lessee to access and utilize the premise for office space and operating the Venue, a live music performance center.

3. Term and Termination

(a) This Lease shall commence on May 1, 2022.

(b) The initial term of this Lease will expire on April 31, 2027.

(c) This Lease is renewable for one (1), five (5) year term, subject to written consent of both Parties.

(d) After the initial five (5) year term, if the City determines there is a higher and better use for the property, the City shall have the ability to terminate the lease upon a one (1) year written notice.

4. Rent

(a) Lessee covenants and agrees to pay fixed rent in advance on the first (1st) day of each calendar year during the term of the lease and without notice, a sum of one dollar (\$1.00) a year.

(b) If the Lease commences mid-year year, then the annual rent shall still be one dollar (\$1.00) for the remainder of that calendar year and shall be due within 30 days of the commencement of the Lease.

(c) This is a net lease. Rent shall be paid to Lessor absolutely net of all costs and expenses incurred by Lessee in connection with its occupancy of the Premises.

5. Fees

Lessee agrees to pay to the City on a yearly basis on or before June 30th the following:

(a) One hundred and seventy-five dollars (\$175.00) in lieu of the annual Special Service Area tax that other downtown businesses pay to be deposited into the SSA fund and used for the purposes for which the SSA tax is collected and used; and

(b) One thousand, one hundred and eighty-five dollars (\$1,185.00) in lieu of the portion of real property taxes that would be collected and paid by a property owner that is not a tax-exempt entity to be paid over by the City to the East Aurora School District.

6. Utilities

Lessee shall be responsible to pay all utilities associated with leasing the property. This shall include but not be limited to: water, natural gas, security system expenses, waste removal, electricity, telephone service, cable and internet. To the extent such costs and expenses payable by Lessee cannot be charged directly to, and paid by, Lessee, such costs and expenses shall initially be paid by Lessor and thereafter be reimbursed by Lessee.

7. Property Taxes

The Premises is currently tax exempt from real estate taxes, in accordance with 35 ILCS 200/15-60. The Premises will remain exempt as this is a not-for profit lease, for the overall benefit of the public. 35 ILCS 200/15-60.

8. Maintenance

The Parties agree that maintenance shall be divided as follows:

(a) Lessor shall be responsible for: roof maintenance and repair, and structural maintenance and repair, and sprinkler system testing. As soon as possible, once Lessee becomes aware of any maintenance needed that is Lessor's responsibility, Lessee will inform Lessor in writing.

(b) Lessee shall be responsible for: everything except roof maintenance/repair and structural maintenance/repair. This includes but is not limited to: keeping the property in good safe condition, landscaping, yard maintenance, snow removal, waste removal, light fixtures, security systems, building code compliance, sprinkler systems, plumbing, cleaning, janitorial services, smoke detectors, fire inspections (including fire extinguisher testing), carbon monoxide detectors, illuminating and maintaining outdoor areas including parking, walkways, and driveways, providing and changing light bulbs, removing ice, snow, and litter from walks, driveways, and parking areas.

9. Permitted Use of Premises; Compliance with Laws; Hazardous Materials

(a) The Premises shall be used as office space and to operate the Venue, a live music performance center.

(b) Premises shall be used only for the permitted use, and for no other unauthorized purposes.

(c) Lessee, at Lessee's sole cost and expense, shall comply with all applicable laws, ordinances, rules, and regulations of governmental and quasi-governmental authorities, including, without limitation, the Americans with Disabilities Act of 1990, (and as amended by any Americans with Disabilities Act Amendments adopted thereafter) that are applicable to the Premises and the use or occupancy of the Premises.

(d) Lessee shall not cause or permit any Hazardous Materials to be generated, used, released, stored, or disposed of in or about the Premises, the Building, or the Property; provided, however, Lessee may use and store reasonable quantities of cleaning and office supplies and other similar materials as may be reasonably necessary for Lessee to conduct normal business operations and maintain the Premises. Lessee shall indemnify and hold Lessor, its employees, and agents, harmless from and against any damage, injury, loss, liability, charge, demand, claim, cost, or expense (including attorneys' fees and disbursements) based on or arising out of the presence or removal of, or failure to remove, Hazardous Materials generated, used, released, stored, or disposed of by Lessee or any Lessee Party in or about the Premises, the Building, or the Property, whether before or after the lease commencement date.

10. Alterations

(a) Lessee shall be permitted to make reasonable improvements to the premises upon obtaining Lessor's written consent. Lessor's written consent shall not be unreasonably withheld. Notwithstanding the foregoing, Lessee shall be required to provide Lessor with prior written notice at least thirty (30) days before commencing construction of any alteration.

(b) All improvements or alterations related to health and safety should be completed in advance of Lessee occupying the property.

(c) Lessee agrees that all such work shall be done at Lessee's sole cost and expense and in a good and workmanlike manner, that the structural integrity of the Building

shall not be impaired, and that no liens shall attach to all or any part of the Premises, the building, or the property by reason thereof. Lessee shall obtain, at its sole expense, all permits required for such work.

(d) All permitted alterations and additions to the Premises shall remain for the benefit of the Lessor unless otherwise agreed to in writing by Lessor. All alterations and additions shall be surrendered to Lessor on or before the lease expiration date. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture, or any other items that can be removed without material harm to the Premises will remain Lessee's property, and shall not become the property of Lessor but shall be removed by Lessee, at its sole cost and expense, not later than the lease expiration date.

(e) Any alterations approved by Lessor must be fully completed prior to the termination of the Lease. Any alterations or improvements left incomplete may be completed by Lessor, the cost of which Lessee will be responsible.

11. Lessee Not to Misuse or Sublet/Assign Premises

(a) Lessee will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than as an office space and a live music performance center.

(b) Lessee will not permit the Premises to be used for any unlawful purpose, or for any purposes that will injure the reputation of the Lessor.

(c) Lessee will not make or allow anyone using the Premises to make any permanent surface improvements without prior written authorization by the Lessor.

(d) Lessee shall not have the right to assign this Lease or to sublet the Premises or any part thereof without the prior written consent of Lessor.

12. Concealed Firearms Prohibited

Pursuant to Illinois Statute, concealed firearms are prohibited from being carried on or into a building controlled by a local unit of government. 430 ILCS 66/65(a)(5). Lessee agrees to display Illinois State Police Concealed Carry Prohibited Area signs on the premises. 430 ILCS 66/65(d). These signs can be found on the Illinois State Police Firearms Services Bureau website. Signs shall be clearly and conspicuously posted at the entrance of a building, premises, or real property. 430 ILCS 66/65(d).

13. Insurance

(a) Lessee shall procure and maintain policies of insurance, at its own cost and expense, providing for public liability insurance during the entire term hereof covering both Lessee and Lessor as named co-insureds with terms and in companies satisfactory to Lessor with limits of not less than \$1,000,000/2,000,000 for personal injury and \$1,000,000 for property damage for any one occurrence.

(b) The aforesaid insurance shall be issued by a company authorized to do business in Illinois, and shall unconditionally provide that it is not subject to cancellation or non-renewal except after at least thirty (30) days prior written notice to Lessor for the purpose of assuring such notice as to liability insurance, Lessor shall be designated therein as the "Additional Named Insured". The original insurance policies (or certificates thereof satisfactory to Lessor) together with satisfactory evidence of payment of the premiums thereon, shall be deposited with Lessor at the commencement of lease, and renewals thereof not less than thirty (30) says prior to the end of the term of such coverage. Lessee's insurance shall provide primary coverage and any insurance of Lessor shall be considered secondary and non-contributory.

(c) Lessor shall not be liable for any damage or damages of any nature whatsoever to persons or property caused by explosion, fire, theft, breakage, vandalism, falling plaster, sprinkler drainage, plumbing systems, air conditioning equipment, the interruption of any public utility or service, steam, gas, electricity, water, rain, or other substances leaking, issuing, or flowing into any part of the Premises, or by natural occurrence, acts of the public enemy, riot, strike, insurrection, war, court order, requisition, or order of a governmental body or authority, or by anything done or omitted to be done by any Lessee, occupant, or person in the building, it being agreed that Lessee shall be responsible for obtaining appropriate insurance to protect its interests.

14. Indemnification

Lessee shall indemnify, defend, and hold Lessor, its employees, agents, elected officials, and agents of Lessor or any such other person harmless from and against any and all claims, losses, costs, liabilities, damages, and expenses, including, without limitation, penalties, fines, and reasonable attorneys' fees, to the extent incurred in connection with or arising from the use or occupancy or manner of use or occupancy of the Premises or any injury or damage caused by Lessee, Lessee Parties, or any person occupying the Premises through Lessee.

15. Signs

Lessee may at its own cost and expense install signs on the Premises. All signs must comply with all City of Aurora ordinances.

16. Parking

This lease does not include any parking spots or lots.

17. Lessor's Access to Premises

Lessor, its agents, employees, and independent contractors shall have the right to enter the Premises upon not less than twenty-four (24) hours' notice to:

- (a) inspect the Premises;

- (b) supply any service or repair to be provided or performed by Lessor to Lessee;
- (c) show the Premises to prospective purchasers, mortgagees, beneficiaries, or Lessees (but with respect to prospective Lessees, no earlier than three (3) months prior to the Lease Expiration Date);
- (d) determine whether Lessee is complying with its obligations under this Lease; and
- (e) alter, improve, or repair the Premises or any other portion of the Building.

Notwithstanding the foregoing, Lessor shall not be required to provide prior notice to Lessee in the event of an emergency. Except to the extent caused by Lessor's gross negligence or willful misconduct, Lessee waives any claim for damages for any injury or inconvenience to or interference with Lessee's business.

18. Lessee's Default

Each of the following events shall be an "Event of Default" hereunder:

- (a) Lessee's failure to pay when due any installment of Rent for a period of thirty (30) days after the due date.
- (b) Lessee's failure to perform or observe any other covenant, condition, or other obligation of Lessee and such failure continues for a period of ten (10) days after Lessor gives Lessee written notice thereof.
- (c) The Premises becomes vacant or abandoned for greater than thirty (30) days.
- (d) At Lessor's option, the occurrence of any of the following:
 - (i) the appointment of a receiver to take possession of all or substantially all the assets of Lessee or the Premises;
 - (ii) the filing of any voluntary petition in bankruptcy by Lessee, or the filing of any involuntary petition by Lessee's creditors, which involuntary petition remains undischarged for a period of thirty (30) days;
 - (iii) the attachment, execution, or other judicial seizure of all or substantially all of Lessee's assets or the Premises, if such attachment or other seizure remains undismissed or undischarged for a period of thirty (30) days after the levy thereof;
 - (iv) the admission of Lessee in writing of its inability to pay its debts as they become due;

19. Lessor's Remedies

(a) If Lessee defaults for failure to pay rent, Lessor may serve Lessee with a demand to pay any outstanding rent within five (5) days. If Lessee defaults for any other term of the lease, Lessor may serve Lessee with a demand to cure the breach within ten (10) days. Failure to pay all outstanding rent or remedy the breach within the timeframe of the demand may result in Lessor filing a Complaint for Forcible Entry and Detainer.

(b) If Lessee is found to have breached the terms of this Lease, Lessor may hold Lessee liable for:

(i) Rent and other indebtedness that otherwise would have been payable by Lessee to Lessor prior to the expiration of the Term, less any amount that Lessor receives from re-letting the Premises after all of Lessor's costs and expenses actually and reasonably incurred in such re-letting have been subtracted;

(ii) any amounts Lessor actually and reasonably incurs in re-letting the Premises during the remainder of the Term; and

(iii) other necessary and reasonable expenses (including without limitation reasonable attorneys' fees) incurred by Lessor in enforcing its remedies.

(c) Lessor shall use reasonable efforts to relet the Premises or any part thereof, alone or together with other premises, for such term(s) as Lessor, in its sole discretion, may determine, but Lessor shall not be liable for, nor shall Lessee's obligations be diminished by reason of, Lessor's failure to re-let the Premises or collect any rent due upon such reletting. If Lessor relets the Premises and collects rent in excess of the rent, additional rent, and other rent items owed by Lessee hereunder, Lessor shall be entitled to retain any such excess and Lessee shall not be entitled to a credit therefor.

(d) Lessor's rights and remedies set forth in this Lease are cumulative and in addition to Lessor's other rights and remedies at law or in equity, including those available as a result of any anticipatory breach of this Lease. Lessor's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Lessor's delay or failure to exercise or enforce any of Lessor's rights or remedies or Lessee's obligations shall not constitute a waiver of any such rights, remedies, or obligations. Lessor shall not be deemed to have waived any default unless such waiver expressly is set forth in an instrument signed by Lessor. Any such waiver shall not be construed as a waiver of any covenant or condition except as to the specific circumstances described in such waiver. Neither Lessee's payment of an amount less than a sum due nor Lessee's endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction. Notwithstanding any request or designation by Lessee, Lessor may apply any payment received from Lessee to any payment then due. Lessor may accept the same without prejudice to Lessor's right to recover the balance of such sum or to pursue other remedies. Re-entry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

20. Notices

Notices or other writings which either party is required to, or may wish to send to the other in connection with this Lease, shall be in writing and shall be delivered personally or sent by U.S. registered or certified mail, return receipt required addressed as follows:

If to Lessor:

Mayor's Office
City of Aurora
44 East Downer Place
Aurora, Illinois 60505

With a Copy to:

Corporation Counsel
City of Aurora
44 E. Downer Place
Aurora, Illinois 60505

If to Lessee:

Fox Valley Music Foundation
c/o Kevin Drendel
19-21 Broadway
Aurora, IL 60505

21. Severability

It is the intention of both of the parties hereto that the provisions of this Lease shall be severable in respect to a declaration of invalidity of any provision hereof.

If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall remain in effect and shall be enforceable to the full extent permitted by law.

22. Modification of Lease Agreement Terms

This Lease may only be amended, modified, or supplemented by an agreement in writing duly executed by both Lessor and Lessee.

23. Survival

Lessee's obligations and Lessor's right to recover under the following sections will survive the termination of this Lease Agreement:

Section 4. Rent
Section 5. Fees
Section 6. Utilities

Section 7. Property Taxes
Section 9(d). Hazardous Materials
Section 10. Alterations
Section 14. Indemnification
Section 19. Lessor's Remedies
Section 24. Governing Law and Jurisdiction
Section 2.5 Attorneys' Fees

24. Governing Law and Jurisdiction

The Laws of the State of Illinois shall govern the validity, performance and enforcement of this Lease. Any legal action or proceeding relating this Agreement shall be brought exclusively in the 16th Judicial Circuit Court in Kane County, Illinois. Lessee consents to such exclusive jurisdiction and agrees that venue is proper.

25. Attorney's Fees

Should there be any legal disputes regarding this Lease, the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Lease agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the date first above written.

LESSEE

LESSOR:

FOX VALLEY MUSIC FOUNDATION
an Illinois non-profit corporation

CITY OF AURORA,
an Illinois Municipal Corporation

BY: _____
Director

BY: _____
Mayor

ATTEST: _____

ATTEST: _____
City Clerk