

**To:** Honorable Mayor and City Council Members

**From:** John McDonough, City Manager

**Date:** For Submission onto the February 5, 2019 City Council Agenda

**Agenda Item:** Operating Agreement between the City of Sandy Springs (“City”) and the Sandy Springs Historic Community Foundation, Inc. d/b/a Heritage Sandy Springs (“Heritage”)

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***City Manager’s Recommendation:***

The City Manager’s office recommends that City Council approve the attached Operating Agreement between the City and Heritage.

***Background:***

The City owns Heritage Green, formerly designated the Sandy Springs Historic Site, which includes the Williams-Payne House Museum, the administrative offices at 135 Hildebrand Drive, the Bluestone Building, the Sandy Springs Society Entertainment Lawn, as well as park property located across the street from Heritage Green formerly known as “the batting cage property”, and the grounds otherwise contained in the Sandy Springs Historic Site (all referred to together as “Property”).

The Property is currently being leased, managed, administered and operated by Heritage pursuant to the terms of a Lease Agreement, dated March 25, 2008 (“Lease Agreement”) and a Restated Memorandum of Understanding, dated March 25, 2008, as amended by a certain First Amendment to Restated Memorandum of Understanding (“MOU”), between the City and Heritage (the Lease Agreement and the MOU, as amended, are herein referred to together as “Lease”).

In connection with the development of City Springs, Heritage and the City have been in discussions to update the working relationship between the parties to best utilize and integrate the Property. Heritage and the City desire to terminate the Lease and to enter into the attached Operating Agreement pursuant to which the City and Heritage formalize their new relationship. The Operating Agreement outlines the duties and obligations of the parties with respect to Heritage’s use and occupancy of the Property and the terms of management and administration of the Property.

***Discussion:***

The basic provisions of the proposed Operating Agreement are as follows:

1. Term. The initial term of the Operating Agreement ends on June 30, 2019. It renews annually for four (4) successive one-year terms unless earlier terminated. After the initial five (5) years of the Operating Agreement, it is renewable by mutual agreement of the parties.

2. Rent. To operate on the Property, Heritage will pay the City the sum of ten dollars (\$10.00) annually.
3. Termination. The Operating Agreement may be terminated for default, with a sixty (60) day cure period.
4. City's Responsibilities. The City's responsibilities under the Operating Agreement are:
  - (a) Master Planning and Capital Improvements. The City is responsible for all master planning and capital improvements related to the Property. This includes any improvements to the Property which increase its service capacity and which have an expected useful life of ten (10) years or more.
  - (b) Events and Programs. The City is responsible for all costs associated with events and programs held by the City on the Property.
  - (c) Maintenance. The City is responsible for routine maintenance, such as routine plumbing, electrical, heating and air-conditioning repairs, replacing broken windows, glass doors, door hardware and similar developments and malfunctions with respect to the exterior of structures on the Property, maintaining general landscaping of the Property, pick-up and disposal of all litter and trash on the exterior of structures on the Property, and performing major fixture replacements, such as the HVAC or roof, as well as any structural repairs that may be necessary.
5. Heritage's Responsibilities. Heritage's responsibilities under the Operating Agreement are:
  - (a) Requirements for Operations. Generally, Heritage is responsible for providing all equipment necessary for its operations on the Property and all expenses related to programming or events offered by Heritage on the Property.
    - i. Interior Maintenance. Heritage is responsible for keeping the interior of structures on the Property in good condition and repair at all times. This includes providing routine cleaning and replacement of materials used in the day-to-day operation of the Property, replacing broken windows, glass doors, door hardware and similar developments and malfunctions with respect to the interior of structures on the Property.
    - ii. Utilities. Heritage is responsible for payment of cost to supply electricity, water and gas to the structures on the Property.
  - (b) Services and Hours of Operation. Heritage agrees to make the Property and its services available on a consistent basis during regular hours for the benefit of the general public. Heritage may not close any part of the Property or change services or hours of operation without the prior written approval of the City.
6. Coordination and Scheduling. The parties agree to work together to maximize event opportunities on the Property and to coordinate scheduling and parking requirements. The City may use all or any part of the Property upon ten (10) business days' notice to Heritage, provided that Heritage has not previously scheduled the Property for use.
7. Standard Provisions. The Operating Agreement contains standard contract provisions related to insurance, indemnification, audit and inspection rights, notices, etc.

***Alternatives:***

Do not enter into the Operating Agreement and provide guidance on this matter going forward.

***Attachments:***

Resolution

Operating Agreement

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (“Agreement”) is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF SANDY SPRINGS, a municipal corporation of the State of Georgia (“City”), as lessor hereunder, and the Sandy Springs Historic Community Foundation, Inc. d/b/a HERITAGE SANDY SPRINGS, a non-profit organization (“Heritage”), as lessee hereunder;

### WITNESSETH:

**WHEREAS**, the City owns that certain property located in Land Lot 89 of the 17<sup>th</sup> District of Fulton County, Georgia, known as Heritage Green, formerly designated the Sandy Springs Historic Site, which includes the Williams-Payne House Museum, the administrative offices at 135 Hildebrand Drive, the Bluestone Building, the Sandy Springs Society Entertainment Lawn, as well as park property located across the street from Heritage Green formerly known as “the batting cage property”, and the grounds otherwise contained in the Sandy Springs Historic Site, as more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (all such property is hereinafter referred to collectively in this Agreement as the “Property”); and

**WHEREAS**, the Property was owned by Fulton County, Georgia, prior to the incorporation of the City of Sandy Springs (“City”); and

**WHEREAS**, the Property was purchased and transferred to the City pursuant to a Quitclaim Deed from Fulton County, Georgia, to the City, which Quitclaim Deed was filed and recorded in Deed Book 44050, Page 668, Fulton County Records on December 12, 2006; and

**WHEREAS**, the Property is currently being leased, managed, administered and operated by Heritage pursuant to the terms of that certain Lease Agreement, dated March 25, 2008 (“Lease Agreement”) and that certain Restated Memorandum of Understanding, dated March 25, 2008, as amended by a certain First Amendment to Restated Memorandum of Understanding (“MOU”), by and between the City and Heritage (the Lease Agreement and the MOU, as amended, are herein referred to together as “Lease”); and

**WHEREAS**, the parties now desire to terminate the Lease and to enter into this Agreement pursuant to which the City and Heritage formalize their working relationship moving forward, and to establish the duties and obligations of the parties with respect to Heritage’s use and occupancy of the Property and the terms of management and administration of the Property; and

**WHEREAS**, the Property is a part of the parks and recreation facilities of the City and is maintained for the benefit of the public and the use of the citizens of the City; and

**WHEREAS**, the City desires that the Property be made available to the general public for the purpose of promoting and presenting cultural, historical and educational activities;

**NOW, THEREFORE**, for and in consideration of the sum of ten dollars (\$10.00) in hand paid, the receipt and sufficiency of which is hereby acknowledged, and for good and valuable consideration and the mutual covenants and agreements hereinafter contained, the parties hereto mutually covenant and agree with each other as follows:

## **AGREEMENT**

### **1. Term; Rent; Termination**

(a) Term. The term of this Agreement shall commence on the date set forth in the preamble hereof and shall end on the 30th day of June, 2019, at midnight (“Initial Term”), and shall renew annually for four (4) successive one-year terms (the Initial Term and each successive one-year term are each referenced herein as a “Term”), unless earlier terminated in accordance with the provisions of this Agreement. After the initial five (5) year term, this Agreement shall be renewed upon mutual agreement of the parties.

(b) Rent. Heritage shall pay the City the sum of ten dollars (\$10.00) annually, payable on the anniversary date of this Agreement.

(c) Termination. If either party materially violates any of its obligations under this Agreement and, within sixty (60) days after receipt of written notice from the other party, has not substantially corrected such violation or, if the default alleged is not susceptible to cure within (90) days and the defaulting party does not promptly undertake and diligently pursue such cure within such cure is effected, then, the party giving notice of violation, at its option, may terminate this Agreement by giving written notice of termination to the other party. In such event, this Agreement shall terminate immediately and Heritage shall remove itself and its personal property from the Property within thirty (30) days after receiving such written notice of termination of the Agreement.

### **2. City’s Responsibilities**

(a) Master Planning and Capital Improvements. The City shall be responsible for all master planning and capital improvements related to the Property. For purposes of this paragraph, “capital improvements” shall include any improvements to the Property which increase its service capacity and which have an expected useful life of ten (10) years or more. “Capital improvements” shall not include maintenance and operation. The City will ask

representative(s) of Heritage to be involved in the process to determine master plans and capital improvements for the Property; however, the City shall have ultimate responsibility for such master planning and capital improvements decisions.

(b) Events and Programs. The City shall be responsible for all costs associated with events and programs held by the City on the Property, unless otherwise provided herein.

(c) Maintenance. The City shall be responsible for routine maintenance, as more particularly described below:

- i. providing routine plumbing, electrical, heating and air-conditioning repairs;
- ii. replacing broken windows, glass doors, door hardware and similar developments and malfunctions with respect to the exterior of structures on the Property;
- iii. maintaining the general landscaping of the Property and the pick-up and disposal of all litter and trash on the exterior of structures on the Property;
- iv. performing major fixture replacements, such as the HVAC or roof, as well as any structural repairs as may be necessary.

### **3. Heritage's Responsibilities**

(a) Heritage shall furnish all equipment necessary for its operations on the Property, unless otherwise provided herein, and shall be responsible for all expenses related to programming or events to be offered by Heritage on the Property, unless otherwise provided in this Agreement.

(b) Heritage shall use the Property as outlined by this Agreement and shall keep the interior of structures on the Property in good condition and repair at all times, reasonable wear and tear excepted. During each annual term of this Agreement, Heritage shall be responsible, at its sole expense, for all routine maintenance to the interior of structures on the Property and all minor repairs necessary for the preservation and ordinary operation of the Property including, but not limited to, the following:

- i. providing routine cleaning and replacement of materials used in the day-to-day operation of the Property including, but not limited to, janitorial services and supplies;
- ii. replacing broken windows, glass doors, door hardware and similar developments and malfunctions with respect to the interior of structures on the Property.
- iii. Utilities. Heritage shall pay and be responsible for electricity, water and gas supplied to the structures on the Property.

(c) Heritage shall notify the City in writing as soon as practicable of any dangerous or unsafe conditions on the Property.

**4. Improvements to Property (Other than Capital Improvements)**

Any changes or improvements to the Property shall not be made except with the prior written approval of the City.

**5. Assignment**

The right of Heritage to occupy and use the Property pursuant to this Agreement is restricted solely to Heritage on the terms and conditions described herein and shall not be assigned, transferred, sublicensed, encumbered, or subject to any security interest without the prior written authorization of the City. Any such attempted assignment, transfer, sublicense, encumbrance or security interest shall be void and of no effect.

**6. Event Opportunities; Coordination; Scheduling**

(a) Event Opportunities; Coordination. The parties desire to work together to maximize event opportunities on the Property. Heritage shall have the right to rent the interior space of structures on the Property for events without prior approval of the City. Outdoor events on the Property, however, shall be coordinated with the designated representative for the City to ensure incompatible events are not scheduled concurrently. Heritage shall schedule festivals, concerts, and significant events per the City's Special Events Policy.

To ensure sufficient parking is available for events held on the Property, Heritage shall coordinate all parking requirements with the City prior to an event. Each party shall be responsible for all expenses related to events and programming offered by such party and each party shall be entitled to retain revenues associated with its event.

(b) Scheduling. The parties agree to work together to utilize any existing scheduling program of the City or a City contractor or, if no such program exists, the parties agree to coordinate in developing a common scheduling program for events at the Property to enable each party to determine availability when scheduling use of the Property. Upon execution of this Agreement, both parties shall provide the name and contact information for the individual designated to be the single point of contact for coordinating events and scheduling. Events hosted by Heritage of less than 150 people do not require approval by the City, unless they conflict with a scheduled event at City Springs. For these events, Heritage must arrange for adequate parking accommodations outside of City Springs parking facilities.

**7. City's Use of Property; Coordination**

The City shall have the right to use all or any part of the Property upon ten (10) business days' notice to Heritage, provided that Heritage has not previously scheduled the Property or that part of the Property for use.

**8. Fixtures and Equipment**

Upon termination of this Agreement for any reason, Heritage shall have the right to remove any and all fixtures and equipment which Heritage has paid for and has placed upon the Property; provided, however, that Heritage shall repair any and all damages to the Property caused by such installation or removal.

**9. Compliance with Laws and Regulations**

Heritage shall, throughout each annual Term of this Agreement, at its sole expense, properly comply with all laws, regulations and policies of federal, state, county and municipal governments and appropriate departments, commissions, boards, and officers thereof, including but not limited to the City of Sandy Springs EQUAL EMPLOYMENT OPPORTUNITY POLICY, made necessary by Heritage's occupancy hereunder. In the event it is determined that the Property is required to be updated to comply with laws and regulations of federal, state, county and municipal governments and such update is not due to improvements being made to the Property by Heritage, then the City shall be responsible for the expenses of such update. In cooperation with the City, Heritage shall have the ability, consistent with the above laws and regulations, to set reasonable rules for the use of the Property.

**10. Insurance**

Heritage shall, at its own expense, at all times during the term of this Agreement, maintain in force a policy or policies of insurance, written by one or more responsible insurance carriers approved by the City which will insure it and the City against liability for personal injury, bodily injury and property damage to their property occurring in or about the Property. The limits under such insurance shall be not less than \$1,000,000 per accident. Heritage shall maintain and keep in force Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Heritage shall maintain Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease.

Heritage shall also maintain insurance required under the laws of the State of Georgia, and such other insurance as may be necessary to protect the City against any other liability to person or property arising under this Agreement by operation of law, whether such law be now in force or adopted subsequent to the execution of this Agreement.

If Heritage maintains broader coverage or higher limits than the minimums shown in this section, the City requires and shall be entitled to all coverage and for higher limits maintained by

Heritage. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

The City shall maintain in force at all times during the term of this Agreement, general liability insurance on the Property with not less than \$1,000,000 for any one occurrence.

The City shall maintain in force, at all times during the term of this Agreement, a policy or policies of fire insurance to the extent of at least eighty percent (80%) of the insurable value of the buildings and structures on the Property. Heritage shall maintain in force, at all times during the term of this Agreement, insurance coverage with a company or companies approved by the City on all insurable fixtures and equipment located in the buildings and structures on the Property to the extent of at least eighty percent (80%) of the insurable replacement value and adequate inventory insurance, the proceeds of which will, so long as this Agreement is in effect, be used for the repair or replacement of the property so insured. Heritage is not required to maintain insurance on rare and historical items that cannot feasibly be insured.

All insurance pursuant to this section shall name the City as an Additional Insured party on all liability policies and Waiver of Subrogation in favor of the City for Workers' Compensation and Employer's Liability to protect its interest as the Owner of the Property. Heritage shall furnish to the City at the execution of this Agreement a copy of the insurance policy or policies, and provide the City with continued proof of coverage as required by this Agreement during its entire term.

Heritage shall comply with the requirements of all policies of public liability, fire and other types of insurance at any time in force with respect to the Property which the City shall obtain as to the Property. In the event that Heritage makes improvements to the Property as provided in Section 4 hereof, Heritage shall require of each construction contract or contractor all bonding, insurance, affidavit and guarantee requirements currently required by the City as they may apply.

If any part of the Property shall be damaged or destroyed by fire or other casualty so insured against, Heritage agrees that it will claim no interest in any insurance settlement arising out of any such loss where premiums are paid by the City, or as to the City's insured interest in the Property, and that it will sign any and all documents required by the City or the insurance company or companies that may be necessary for use in connection with the settlement of any such loss.

Should Heritage fail to keep in effect and pay for such insurance as required by this section, the City may do so, in which event the insurance premiums paid by the City shall

become due and payable promptly by Heritage and failure of Heritage to pay them on demand shall constitute a breach of this Agreement.

**11. Indemnification**

Heritage shall indemnify the City against all claims, demands, liabilities, expenses and losses incurred by the City, including attorneys' fees and costs of defense, as the result of:

(a) Failure of Heritage to perform any covenants required to be performed under this Agreement;

(b) Any accident, injury or damage which shall happen in or about the Property which is the result of negligence on the part of Heritage; or

(c) Failure to comply with any requirements of any governmental authority made necessary by the Heritage's occupancy of the Property.

**12. Effect of Loss or Damage to Property**

In the event that the Property is rendered untenable in whole or in substantial part, as determined by Heritage, as the result of destruction or damage by fire, acts of war, or acts of God, this Agreement may be cancelled at Heritage's option. Heritage may, in lieu of cancellation, request in writing that the City rebuild and repair the Property and continue to operate the Property for the current Term of this Agreement; provided, however, that the City shall be under no obligation but shall have the option to rebuild or repair the Property if it elects to do so and provided the City gives written notice of such election to rebuild or repair to Heritage within ninety (90) days after having received from Heritage a written request to rebuild or repair the Property damaged or destroyed. If the City elects to rebuild or repair the Property and does so without unnecessary delay, Heritage shall be bound by the terms of this Agreement, without the abatement of rent. Heritage shall have the right to declare this Agreement terminated when more than ninety (90) days after the destruction or damaging of the Property shall have elapsed without the City having elected to repair or rebuild.

**13. Services and Hours of Operation**

Heritage agrees to make the Property and services provided by Heritage available on a consistent basis during regular hours for the benefit of the general public. Heritage may not close all or a part of the Property or change services or hours of operation without the prior written approval of the City. Such a change will only be approved if the City deems it necessary in the operation and management of the Property. Such approval shall not be unreasonably withheld. In the event that the City approves a closure of any part of the Property or a change in services or hours of operation, Heritage shall properly post the Property to inform the general

public of such closure or change. The parties shall meet annually to review the proposed calendar of events.

**14. Audit and Inspection Rights**

(a) The City may, at reasonable times, and for a period of up to three (3) years following the date of termination of this Agreement, audit, or cause to be audited, those books and records of Heritage that are related to Heritage's performance under this Agreement. Heritage agrees to maintain all such books and records at its principal place of business for a period of three (3) years after termination of this Agreement. Heritage shall make all necessary books and records available for audit at its principal place of business.

(b) The City may, at reasonable times during the term hereof, inspect Heritage's facilities and perform such inspections and process reviews as the City deems reasonably necessary to determine whether Heritage's performance under this Agreement complies with the terms of this Agreement. Heritage shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representatives.

**15. Notices**

Notice to the parties hereby shall be given by certified mail, as follows:

City:

City of Sandy Springs, Georgia  
1 Galambos Way  
Sandy Springs, Georgia 30327  
Attention: City Manager

Heritage:

Heritage Sandy Springs  
135 Hildebrand Drive  
Sandy Springs, Georgia 30328  
Attention: Executive Director

**16. Entire Agreement**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof including, but not limited to, the Lease and the MOU, and is based on mutual promises and other good and valuable consideration the sufficiency of which is hereby acknowledged. This Agreement may be modified only by a written document that is duly executed by both parties.

**17. Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all remaining provisions, shall remain in full force and effect as if such invalid or unenforceable term had never been included.

**18. Waiver of Breach**

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

**19. Headings**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

**20. Governing Law**

This Agreement is entered into with the intent that the laws of the State of Georgia shall govern its construction and enforcement.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and affixed their seals, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**HERITAGE SANDY SPRINGS**

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

[SEAL]

**CITY OF SANDY SPRINGS, GEORGIA**

By: \_\_\_\_\_  
Russell K. Paul, Mayor

Attest:

\_\_\_\_\_  
City Clerk

[SEAL]

**STATE OF GEORGIA  
COUNTY OF FULTON**

**RESOLUTION TO APPROVE OPERATING AGREEMENT BETWEEN THE CITY OF SANDY SPRINGS (“CITY”) AND THE SANDY SPRINGS HISTORIC COMMUNITY FOUNDATION, INC. D/B/A HERITAGE SANDY SPRINGS (“HERITAGE”); AND TO AUTHORIZE EXECUTION OF SAME**

**WHEREAS**, the City owns Heritage Green, formerly designated the Sandy Springs Historic Site, which includes the Williams-Payne House Museum, the administrative offices at 135 Hildebrand Drive, the Bluestone Building, the Sandy Springs Society Entertainment Lawn, as well as park property located across the street from Heritage Green formerly known as “the batting cage property”, and the grounds otherwise contained in the Sandy Springs Historic Site (all referred to together as “Property”); and.

**WHEREAS**, the Property is currently being leased, managed, administered and operated by Heritage pursuant to the terms of a Lease Agreement, dated March 25, 2008 (“Lease Agreement”) and a Restated Memorandum of Understanding, dated March 25, 2008, as amended by a certain First Amendment to Restated Memorandum of Understanding (“MOU”), between the City and Heritage (the Lease Agreement and the MOU, as amended, are herein referred to together as “Lease”); and

**WHEREAS**, in connection with the development of City Springs, Heritage and the City desire to update the working relationship between the parties to best utilize and integrate the Property; and

**WHEREAS**, Heritage and the City desire to terminate the Lease and to enter into a new Operating Agreement, a copy of which is attached hereto, pursuant to which the City and Heritage formalize their new relationship; and

**WHEREAS**, the attached Operating Agreement outlines the duties and obligations of the parties with respect to Heritage’s use and occupancy of the Property and the terms of management and administration of the Property; and

**WHEREAS**, Heritage and the City desire to enter into the attached Operating Agreement on the terms and conditions set forth therein.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the City of Sandy Springs, Georgia, and it is hereby resolved by the authority of same as follows:

1. The Operating Agreement, in substantial form to that document attached hereto, is hereby approved.
2. The Mayor is hereby authorized to execute the attached Operating Agreement.
3. The City Attorney and the City Manager are hereby authorized to make such minor changes and to take such actions as may be deemed necessary or prudent to effectuate the intent of this resolution prior to execution of the Operating Agreement by the Mayor.

**RESOLVED**, this the 5th day of February, 2019.

Approved:

\_\_\_\_\_  
Russell K. Paul, Chairperson

Attest:

\_\_\_\_\_  
Michael Casey, Secretary

(SEAL)