

THOUSAND OAKS CITY COUNCIL



Supplemental Information Packet

Cynthia M. Rodriguez

Agenda Related Items - Meeting of November 15, 2016

Supplemental Packet Date: November 15, 2016

1:30 P.M.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed, typically a minimum of two—one available on the Thursday preceding the City Council meeting and the second on Tuesday at the meeting. The Thursday Supplemental Packet is available for public inspection in the City Clerk Department, 2100 E. Thousand Oaks Boulevard, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2) Both the Thursday and Tuesday Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2100 E. Thousand Oaks Boulevard.

Americans with Disabilities Act (ADA):

In compliance with the ADA, if you need special assistance to participate in this meeting or other services in conjunction with this meeting, please contact the City Clerk Department at (805) 449-2151. Assisted listening devices are available at this meeting. Ask City Clerk staff if you desire to use this device. Upon request, the agenda and documents in this agenda packet, can be made available in appropriate alternative formats to persons with a disability. Notification at least 48 hours prior to the meeting or time when services are needed will assist City staff in assuring reasonable arrangements can be made to provide accessibility to the meeting or service.



City Attorney's Office
MEMORANDUM

2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2170 • Fax 805/449.2175 • www.toaks.org

2016 NOV 15 AM 10:34
CITY CLERK DEPARTMENT
OF THOUSAND OAKS

TO: Cynthia M. Rodriguez, City Clerk
FROM: Patrick J. Hehir, Assistant City Attorney *PJH*
DATE: November 15, 2016

**SUBJECT: Agenda Item 8.A. Alliance for the Arts Statutory Merger into
Thousand Oaks Civic Arts Plaza Foundation**

Please see attached 5 documents to be added to the November 15, 2016 City Council Agenda/Supplemental Packet:

- Amended and Restated Articles of Incorporation for the Thousand Oaks Civic Arts Plaza Foundation
- Restated Bylaws for the Thousand Oaks Civic Arts Plaza Foundation
- Agreement and Plan of Merger between Alliance for the Arts and Thousand Oaks Civic Arts Plaza Foundation (short and long form)
- Memorandum of Understanding ("MOU") between City and Thousand Oaks Civic Arts Plaza Foundation
- Revised Cultural Affairs Commission Resolution regarding amendment of CAC Membership

If you have any questions, please contact me.

TO COUNCIL 11-15-16
AGENDA ITEM NO. 8.A.
MEETING DATE 11-15-16

Agreement of Merger

This Agreement of Merger ("Agreement") dated November ____, 2016, is entered into between THOUSAND OAKS CIVIC ARTS PLAZA FOUNDATION, a California Nonprofit Public Benefit Corporation (herein "Surviving Corporation") and ALLIANCE FOR THE ARTS, a California Nonprofit Public Benefit Corporation (herein "Merging Corporation").

1. Merging Corporation shall be merged into Surviving Corporation pursuant to the terms of that certain Agreement and Plan of Merger by and between Merging Corporation and Surviving Corporation dated as of November ____, 2016.
2. Each membership of Merging Corporation shall terminate as of the Effective Date set forth below.
3. Surviving Corporation's articles of incorporation shall be amended as of the Effective Date in the following respect:

Article I of the Articles of Incorporation is amended to read as follows:

"The name of the corporation is THOUSAND OAKS ALLIANCE FOR THE ARTS"

4. Merging Corporation shall, from time to time, as and when requested by Surviving Corporation, execute and deliver all such documents and instruments and take all such action necessary or desirable to evidence or carry out this merger.
5. The effect of the merger and the effective date of the merger shall be the later of January 3, 2017 or as is prescribed by law (the "Effective Date").

IN WITNESS WHEREOF the parties have executed this Agreement.

THOUSAND OAKS CIVIC ARTS PLAZA
FOUNDATION
("Surviving Corporation")

ALLIANCE FOR THE ARTS
("Merging Corporation")

By: Robert Biery
Its: President

By: Richard Williams
Its: Chair

By: Marisa Hanke
Its: Secretary

By: Matthew Burke
Its: Secretary

Agreement and Plan of Merger

Dated as of _____, 2016

By and Between

ALLIANCE FOR THE ARTS

and

THOUSAND OAKS CIVIC ARTS PLAZA FOUNDATION

Agreement and Plan of Merger

This Agreement and Plan of Merger (the "Agreement") is made and entered into as of _____, 2016, by and between ALLIANCE FOR THE ARTS, a California nonprofit public benefit corporation ("Alliance"), and THOUSAND OAKS CIVIC ARTS PLAZA FOUNDATION, a California nonprofit public benefit corporation ("Foundation"), (collectively referred to as the "Parties").

RECITALS

The Board of Directors of Foundation and the Board of Directors of Alliance have determined that it is in the best interest of their respective corporations and the communities they serve that Alliance merge with and into Foundation under the terms and conditions herein set forth.

AGREEMENT

In consideration of the mutual covenants, agreements, representations and warranties herein contained, the Parties hereto agree as follows:

1. AGREEMENT AND PLAN OF MERGER

1.1. Merger

As of the Effective Date (as defined below) and upon the terms and subject to the conditions of this Agreement, Alliance shall be merged with and into Foundation (the "Merger") in accordance with the provisions of the California Nonprofit Public Benefit Corporation Law (the "NP Law"), whereupon the separate corporate existence of Alliance shall cease and Foundation shall be the surviving corporation (the "Surviving Corporation").

1.2. Closing

Unless this Agreement has been terminated pursuant to Section 7 hereof, the closing of the transactions contemplated in this Agreement (the "Closing") shall take place on the Effective Date set forth in Section 1.3.

1.3. The Effective Date

The Merger shall become effective on January 3, 2017, or at such later date set forth in the Certificate of Merger to be issued by the SOS upon the filing of the Certificate (the "Effective Date").

1.4. Rights and Privileges of Surviving Corporation

From and after the Effective Date, the Surviving Corporation shall possess all of the rights, privileges and powers and be subject to all of the restrictions, liabilities and obligations of both Alliance and Foundation in accordance with the NP Law, including all donor agreements and commitments set forth in *Schedule 1.4* (the "Donor Agreements").

1.5. Articles of Incorporation and Bylaws

As of the Effective Date, the Articles of Incorporation and the Bylaws of Foundation as amended pursuant to Sections 5.3 and 5.2 hereof shall become the Articles of Incorporation and the Bylaws, respectively, of the Surviving Corporation.

1.6. Directors

In accordance with the Bylaws of Foundation, the Board of Directors of the Surviving Corporation immediately following the Effective Date shall consist of seven directors, three of whom shall be named by the Board of Directors of Alliance and elected to the Board of Directors of the Surviving Corporation as set forth on *Schedule 5.4* of this Agreement, three of whom shall be elected by the Board of Directors of the Foundation, and one of whom who shall be a working artist or a member of the community with a history of support and demonstrated interest in the arts elected by the other six directors. Terms of directors shall be staggered as set forth in the "Amended and Restated Bylaws of Thousand Oaks Civic Arts Plaza Foundation" included in *Schedule 5.2* to this Agreement.

1.7. Members

All rights of members of Alliance prior to the Effective Date will terminate at the Effective Date, it being specifically understood that current Alliance members shall have no rights in the Foundation.

1.8. Transfer of Assets and Liabilities

Subject to the covenants contained in Section 4, all assets, rights and liabilities of Alliance immediately prior to the Effective Date shall become the assets, rights and liabilities of the Surviving Corporation upon the Effective Date without the requirement of further action on the part of Alliance or Foundation, and all assets, rights and liabilities of Foundation immediately prior to the Effective Date shall continue as assets, rights and liabilities of the Surviving Corporation without the requirement of further action on the part of Foundation. The Surviving Corporation shall continue to provide services to Alliance's existing donors, and benefactors as required in agreements with its donors previously entered into by Alliance

2. REPRESENTATIONS AND WARRANTIES OF ALLIANCE

To the best of Alliance's knowledge and belief, Alliance represents and warrants to Foundation as of the date of this Agreement and as of the Effective Date that:

2.1. Alliance Good Standing

Continuously since its incorporation, it has been and is now a corporation duly organized, validly existing and in good standing under the laws of the State of California as a nonprofit public benefit corporation.

2.2. No Subsidiaries

Alliance has no subsidiaries, nor is it the owner nor does it hold any equity, partnership, profit or other interest in any other entities, whether for-profit or not-for-profit.

2.3. Alliance Tax-Exempt Status

Alliance is recognized as a tax-exempt public charity within the meaning of Section 501(c)(3) of the Internal Revenue Code (the "IRC"), and is recognized as tax exempt under Section 23701d of the California Revenue and Taxation Code (the "RTC").

2.4. Alliance Articles and Bylaws

Schedule 2.4a and *Schedule 2.4b* to this Agreement are complete, correct and current copies of the Articles of Incorporation and Bylaws of Alliance, respectively, and that no changes in those instruments have been made since the date of delivery or will be made prior to the Effective Date.

2.5. Alliance Corporate Authority

Alliance has the corporate power and corporate authority to conduct all of the activities conducted by it and to own and lease all of the assets owned or held under lease by it.

2.6. Alliance Financial Statements

Alliance has provided to Foundation its financial statements as of September 30, 2015, examined and certified with an unqualified report on those statements by Alliance's Certified Public Accountant, and unexamined financial statements as of July 31, 2016 (collectively, the "Alliance Financial Statements"). In the opinion and to the best knowledge of the Chief Executive Officer of Alliance, the Alliance Financial Statements:

- 2.6.1. Are in accordance with the books and records of Alliance;
- 2.6.2. Are complete and correct and fairly present the financial condition of Alliance, the consolidated results of operations of Alliance and the results of operations of Alliance for the periods covered;
- 2.6.3. Have been prepared in accordance with generally accepted accounting principles applicable to tax-exempt public charities in general, except to the extent set forth in the Alliance Financial Statements, the notes to the Alliance Financial Statements, or in the accountant's reports on the Alliance Financial Statements; and
- 2.6.4. Contain and reflect reserves in the opinion of the management of Alliance adequate for all material accrued and contingent liabilities and for all reasonably anticipated material losses.

2.7. Restricted Assets

Schedule 2.7 of this Agreement is a complete list of:

- 2.7.1. All assets held by Alliance that are permanently restricted or temporarily restricted within the meaning of Statement of Financial Accounting Standards No. 116 (each, a "Restricted Asset"), including, for each Restricted Asset, the name of the donor or donors, current

accounting, and description of the restriction, and whether the restriction is a permanent restriction or a temporary restriction;

- 2.7.2. All assets or funds held by any third parties in the name of, or for the benefit of, Alliance (each, an “Agency Fund”), regardless of the nature of instrument under which such assets are held.

Alliance will provide Foundation copies of all gift instruments and agreements pertaining to each Restricted Asset and any Agency Fund.

2.8. Alliance Contingent Liabilities

As of August 31, 2016, Alliance has no liabilities, absolute, contingent or otherwise, known, suspected or unknown, which are not reflected in the Alliance Financial Statements except as otherwise noted in *Schedule 2.8* to this Agreement, and all loans and investments reflected in the Alliance Financial Statements are authorized under and comply in all respects with all applicable federal, state and local laws and regulations.

2.9. Alliance Information Returns

Alliance has duly filed, or obtained extensions of time to file, all tax returns, federal, state and local, and all related information required to be filed in connection with such returns. No tax deficiency has been or is to the knowledge of Alliance proposed to be assessed against it by any federal, state or local authority or agency.

2.10. Alliance Regulatory Filings

To the best of Alliance’s knowledge, Alliance has duly filed all reports required to be filed pursuant to statute or regulation of all applicable federal, state and local governmental authorities, and all such reports are true and correct in all material respects.

2.11. Alliance Regulatory Consent

Neither Alliance, nor any of its directors, officers, employees, or legal counsel, has any knowledge of any reason required regulatory approval of the transactions contemplated by this Agreement will not be granted or will not be so granted without the imposition of conditions unacceptable to Foundation and Alliance, or of any reason why the covenants of Alliance, and the conditions to the performance of Alliance’s obligations pursuant to this Agreement, cannot be fulfilled prior to the Effective Date.

2.12. Alliance Good Title

Alliance has good and marketable title to all of its assets, including, but not limited to, all of its assets that are reflected in the Alliance Financial Statements that have not been disposed of in the ordinary and regular course of its business, free and clear of all mortgages, pledges, liens, claims, security interests, conditional sale agreements, charges, encumbrances and restrictions of every kind and nature. All properties of Alliance are in good repair and condition and adequate for the businesses of Alliance as presently conducted.

2.13. Alliance ERISA Plans

- 2.13.1. Until April 16, 2016, Alliance maintained a Section 403(b) retirement plan under which eligible employees could make pre-tax salary deferrals [describe other contribution provisions]. Alliance terminated said 403(b) Plan effective April 16, 2016, by way of written resolutions by its Board of Director and by notice provided to eligible employees on [insert date].
- 2.13.2. To the best of the Alliance's knowledge and belief, written copies of all employee welfare and employee pension benefit plans of Alliance, as defined under Sections 3(1) and 3(2) of Employee Retirement Income Security Act of 1974 ("ERISA"), respectively, which have been sponsored by, maintained by, or contributed to by Alliance, in effect during the five (5) year period ending on the Effective Date, including, without limitation, all pension, profit sharing, savings and thrift, bonus, incentive or deferred compensation, retirement plans or arrangements under Sections 403(b) or 408 of the Code, severance pay and medical and life insurance plans in which any current or former employees of Alliance participate ("Alliance Employee Plans"), have been provided to Foundation. To the best of the Alliance's knowledge and belief, except as set forth in *Schedule 2.13* to this Agreement, all Alliance Employee Plans (including those that have been terminated) are in compliance with and have been administered in compliance with all material requirements of law, including, without limitation, the Code and ERISA, all contributions required to be made to each such plan under the terms of such plan, ERISA, or the Code for all periods of time before the Effective Date have been made or accrued, and all Form 5500 Return/Reports, schedules thereto, and all other required reports and written disclosures have or will be timely been filed and or communicated.

2.14. Alliance Agreements

Except to the extent set forth in *Schedule 2.14a* to this Agreement, to the best of Alliance's knowledge and belief, Alliance is not a Party to any oral or written lease, agreement, contract or other commitment or potential obligation (collectively referred to as "Alliance Understandings") that individually, or with all other Alliance Understandings relating to the same or a similar subject matter, involves:

- 2.14.1. Any Alliance Understanding for the employment of any trustee, officer or employee which is not terminable at will;
- 2.14.2. Any Alliance Understanding dealing with any advertising, brokerage, commission, licensing, dealership, representative or agency relationship;
- 2.14.3. Any Alliance Understanding with any labor organization;
- 2.14.4. Any lease, whether as lessor or lessee, or any mortgage, pledge, conditional sales contract, security agreement, or any other similar Alliance Understanding with respect to any real or personal property under which Alliance is a debtor or to which any of its property is subject;
- 2.14.5. Any group insurance, bonus, deferred compensation, incentive compensation, stock option, severance pay, pension, retirement or any other Alliance Understanding

- respecting plans or agreements which provide or might provide benefits to the employees, officers or trustees of Alliance;
- 2.14.6. Any Donor Agreement the terms of which either (i) require recognition of the donor permanently for a period that terminates after the Effective Date and (ii) restrict the use by which contributed funds may be expended, whether permanently or temporarily, and which have not been fully expended. In listing Donor Agreements subject to subsection (ii) hereof on Schedule 2.14a, Alliance need not list the name of the donor.
 - 2.14.7. Any Alliance Understanding providing for a future purchase of materials, supplies, services, merchandise or equipment, the price of which exceeds \$5,000;
 - 2.14.8. Any Alliance Understanding for the sale of any of the assets of Alliance, or for the grant of any preferential right to purchase any of such assets, or which requires the consent of any third party to the transfer or assignment of any of such assets;
 - 2.14.9. Any guarantee, undertaking to pay, letter of credit, subordination or other similar or related type of Alliance Understanding or any Alliance Understanding by which Alliance may be liable for the payment of, or be required to perform, the obligations of any other person or entity;
 - 2.14.10. Any Alliance Understanding for the borrowing of any money by Alliance or for a line of credit to Alliance;
 - 2.14.11. Any Alliance Understanding to provide funds, whether as a loan or otherwise, for any construction project or other business venture pursuant to which Alliance is entitled to a proportionate share of the profits, if any, derived from any project or venture;
 - 2.14.12. Any Alliance Understanding for any one capital expenditure or series of related capital expenditures in excess of \$5,000;
 - 2.14.13. Any Alliance Understanding to make a loan (whether or not yet fully funded and disbursed) to any borrower or related group of borrowers in any amount that exceeds \$1,000;
 - 2.14.14. Any Alliance Understanding to participate in or to purchase or otherwise acquire any loan (whether or not yet fully funded or disbursed) by any third person in which the participation, purchase or other acquisition exceeds \$1,000 unsecured or \$1,000 secured;
 - 2.14.15. Any Alliance Understanding of any kind (including but not limited to, Alliance Understandings relating to demand or time deposits) with any trustee, officer, or employee of Alliance or with any member of the immediate family (as defined below) of any such trustee, officer, or employee. The "immediate family" of an individual means his or her spouse, ancestors, descendants and siblings; and
 - 2.14.16. Any Alliance Understanding for insurance of any type other than insurance described in Sections 2.14.5 and 2.19.

Except as stated in *Schedule 2.14b* to this Agreement, true and correct copies of all documents relating to the foregoing Alliance Understandings have been delivered to Foundation prior to the date of this Agreement.

2.15. Alliance Liabilities

Alliance:

- 2.15.1. Except for pending or threatened employment matters, to the best of Alliance's knowledge, will not incur any losses, damages, liabilities, costs or expenses of any kind in connection with any actions, suits, proceedings or investigations that may arise from or relate to any state of facts now existing, whether known or unknown;
- 2.15.2. To the best of Alliance's knowledge, will not incur any losses, damages, liabilities, costs or expenses of any kind in connection with any actions, suits, proceedings or investigations which may arise from or relate to any state of facts now existing, whether known or unknown, except to the extent of the reserve for that purpose reflected in the Alliance Financial Statements and specifically identified in *Schedule 2.15a* to this Agreement;
- 2.15.3. To the best of Alliance's knowledge, is not in default under or with respect to any judgment, order, writ, injunction or decree of any court or any federal, state, municipal or other governmental authority, department, commission, board, agency or other instrumentality;
- 2.15.4. To the best of Alliance's knowledge, is not in, or charged with, any violation or breach of any federal, state or local law or administrative regulation, nor is it or any of its trustees or officers under investigation with respect to any federal, state or local law or administrative regulation;
- 2.15.5. To the best of Alliance's knowledge, will not, by execution or performance of this Agreement, be in default under, violate any provision of, or breach any Understanding to which Alliance is a Party or by which Alliance is bound; and
- 2.15.6. To the best of Alliance's knowledge, has not committed any unfair labor practice and, except as set forth in *Schedule 2.15b* to this Agreement, is not involved in any labor dispute or disturbance other than routine grievances, none of which is material.

2.16. Alliance Legal Compliance

To the best of Alliance's knowledge, Alliance has complied in all material respects with all laws, regulations and orders applicable to it or to its business and has performed in all material respects all of its obligations required to be performed by it and is not in default in any material respect under any contract or other instrument to which it is a Party (irrespective of any requirement under any such contract or other instrument requiring the passage of time or the giving of notice, or both, to constitute a default.

2.17. No Alliance Material Board Dissent

To the best of Alliance's knowledge, there are no material disputes between and among any of Alliance's directors or officers respecting Foundation, Alliance or the subject matter of this Agreement.

2.18. Alliance Disputes

Except as set forth in *Schedule 2.18* to this Agreement:

- 2.18.1. To the best of Alliance's knowledge, there are no material disputes or disagreements between Alliance and any person having business relations with it; and
- 2.18.2. Except as to directors who will be resigning from the Alliance Board as of the Effective Date when the Surviving Corporation's Board is in place, no director, officer or management employee of Alliance has terminated or given notice of termination of his or her employment or resigned his or her position, and Alliance has no knowledge that any such trustee, officer or employee proposes to terminate his or her employment or resign his or her position with Alliance.

2.19. Alliance Insurance Policies

Alliance maintains in full force and effect policies of insurance with respect to its respective assets and business, against such casualties and contingencies and in such amounts, and of such types and forms as are customarily provided by similarly situated businesses to protect their assets and business, and no notice of lapse, termination or cancellation has been given with respect to any such policy maintained by Alliance (the "Alliance Insurance Policies"). Alliance has provided Foundation with copies of all Alliance Insurance Policies. Prior to the Closing, Alliance will instruct the carriers of each Alliance Insurance Policy to designate Foundation (and its directors, officers, employees and agents, to the extent trustees, officers, employees and agents of Alliance are covered), as well as any currently named loss payees, as named insureds or loss payees as appropriate, with regard to said policies and to issue a certificate or certificates to that effect, which certificate(s) will be delivered to Foundation prior to the Effective Date.

2.20. Alliance Claims

Except as set forth in *Schedule 2.20*, to the best of Alliance's knowledge there is no action, suit, proceeding or governmental investigation (other than governmental investigations contemplated by this Agreement) pending, or to the knowledge of Alliance threatened against or affecting Alliance or any of its assets.

2.21. Alliance Power of Attorney

Alliance has not granted or otherwise given any power of attorney in favor of any person, and no person has the power to act on behalf of or bind Alliance in connection with any of its assets or business affairs, except for its officers and employees acting pursuant to the authority duly delegated to them by its Bylaws or Board of Directors. No trustee, officer, employee or agent of Alliance, directly or indirectly:

- 2.21.1. Owns, has any interest in, or is a trustee, officer or employee of, any entity that is a competitor, lessor, lessee, supplier or customer of Alliance;
- 2.21.2. Owns or has any interest in any copyright, trademark, trade name, franchise, patent, invention, permit, license, or confidential or secret information that Alliance uses or proposes to use in, or the use of which is useful for, the conduct of its business; or
- 2.21.3. Owns or has any interest in any cause of action or claim whatsoever against, or is indebted to, Alliance.

2.22. Alliance Business Conduct

Alliance has not, at any time, conducted its business other than in the ordinary and regular course of business. Except as has been disclosed to Foundation, there has not been any material change in the business, condition, financial or otherwise, or assets and liabilities of Alliance, as reflected in the Alliance Financial Statements, nor has there been any damage, destruction or loss, whether or not covered by insurance, which has materially affected the business or assets of Alliance or which is substantial in amount, or any material change in the nature of or in the condition, other than financial, of the business of Alliance, or any event, condition or state of facts of any character whatsoever the occurrence of which affects or threatens to affect, materially or adversely, the results of operations, business, assets or financial condition of Alliance.

2.23. Alliance Corporate Consent

The principal terms of this Agreement have been approved by the members of Alliance, and the Board of Directors of Alliance has approved this Agreement subject to the receipt of the other approvals required herein and have directed the officers of Alliance to consummate the transactions contemplated in this Agreement and to take all other actions required to be taken by it pursuant to the provisions of this Agreement. Except for such authorization and approvals, no other corporate action on the part of Alliance is required in connection with the consummation of the transactions contemplated by this Agreement. Alliance has the power and authority to approve, execute and deliver this Agreement, and to consummate the transactions contemplated by this Agreement, and to take all other actions required to be taken by it pursuant to the provisions of this Agreement; and this Agreement is valid and binding upon Alliance in accordance with its terms.

2.24. No Alliance Violations

Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute any violation or breach of the Articles of Incorporation or the Bylaws of Alliance or any provision of any contract or other instrument to which Alliance is a Party or by which its assets may be affected or secured, or any order, writ, injunction, or decree.

2.25. No Alliance Misrepresentations

Neither this Agreement nor any statement, report, document, list, certificate or other information furnished or to be furnished to Foundation pursuant to this Agreement or in connection with this Agreement or any of the transactions contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained in this Agreement, in light of the circumstances in which they are made, not misleading.

2.26. Alliance Employees

Alliance will terminate all employees of Alliance no later than the day before the Effective Date. At the time of said employment terminations, Alliance will pay each employee any

and all commissions, bonuses, expense reimbursements, payroll and accrued vacation pay, and will have made all payroll tax and ERISA plan payments it is required to make under law or contract.

3. Representations and Warranties of Foundation

To the best of the Foundation's knowledge and belief, Foundation represents and warrants to the Alliance, as of the date of this Agreement and as of the Effective Date, that:

3.1. Foundation Good Standing

It is a corporation duly organized, validly existing and in good standing under the laws of the State of California as a nonprofit public benefit corporation validly existing and in good standing under the law of the State of California.

3.2. Foundation Tax-Exempt Status

It is recognized as a tax-exempt public charity within the meaning of Section 501(c)(3) of the IRC, and it is recognized as tax exempt under Section 23701d of the RTC.

3.3. Foundation Articles and Bylaws

Schedules 3.3a and *3.3b* to this Agreement, respectively, are complete, correct and current copies of the Articles of Incorporation and Bylaws of Foundation. No changes in those instruments have been made since the date of delivery or will be made prior to the Effective Date.

3.4. Foundation Corporate Authority

Foundation has the corporate power and corporate authority to conduct all the activities conducted by it and to own and lease all of the assets owned or held under lease by it.

3.5. Foundation Information Returns

Foundation has duly filed, or obtained extensions of time to file, all tax returns, federal, state and local, and all related information required to be filed in connection with such returns. No tax deficiency has been or is to the knowledge of Foundation proposed to be assessed against it by any federal, state or local authority or agency.

3.6. Foundation Regulatory Filings

Foundation has duly filed all reports required to be filed pursuant to statute or regulation of all applicable federal, state and local governmental authorities and all such reports are true and correct in all material respects.

3.7. Foundation Regulatory Consent

Neither Foundation, nor any of its directors, officers, employees, or legal counsel, has any knowledge of any reason required regulatory approval of the transactions contemplated by this Agreement will not be granted or will not be so granted without the imposition of

conditions unacceptable to Foundation and Alliance, or of any reason why the covenants of Foundation, and the conditions to the performance of Foundation's obligations pursuant to this Agreement, cannot be fulfilled prior to the Effective Date.

3.8. Foundation Legal Compliance

To the best of Foundation's knowledge, Alliance has complied in all material respects with all laws, regulations and orders applicable to it or to its business and has performed in all material respects all of its obligations required to be performed by it and is not in default in any material respect under any contract or other instrument to which it is a Party (irrespective of any requirement under any such contract or other instrument requiring the passage of time or the giving of notice, or both, to constitute a default) and, except for agreements for the borrowing of funds, no Each Party under any such contract or other instrument is in default in any material respect under those agreements.

3.9. No Foundation Material Board Dissent

To the best of Foundation's knowledge, there are no material disputes between and among any of Foundation's directors or officers respecting Foundation, Alliance or the subject matter of this Agreement.

3.10. Foundation Corporate Consent

The Board of directors of Foundation has authorized the execution and delivery of this Agreement by Foundation, have approved and adopted the terms of the merger set forth in the Agreement, and, subject to the receipt of the other approvals provided in this Agreement, have directed the officers of Foundation to consummate the transactions contemplated in this Agreement and to take all other actions required to be taken by it pursuant to the provisions of this Agreement. Except for such authorization and approvals, no other corporate action on the part of Foundation is required in connection with the consummation of the transactions contemplated by this Agreement. Foundation has the power and authority to approve, execute and deliver this Agreement, and to consummate the transactions contemplated by this Agreement, and to take all other actions required to be taken by it pursuant to the provisions of this Agreement; and this Agreement is valid and binding upon Foundation in accordance with its terms.

3.11. No Foundation Misrepresentations

Neither this Agreement nor any information furnished or to be furnished to Alliance or to any regulatory authority, pursuant to this Agreement or in connection with this Agreement or any of the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained in this Agreement, in light of the circumstances in which they are made, not misleading.

4. PRE-MERGER COVENANTS

4.1. Affirmative Covenants of Alliance

On and after the date hereof and until the earlier of the Effective Date or the date, if any, on which this Agreement is earlier terminated pursuant to Section 7.1 of this Agreement (the "Termination Date"), Alliance shall:

- 4.1.1. Conduct its operations according to its ordinary and usual course of business consistent with past practice;
- 4.1.2. Carry on its business practices and keep its books of account, records and files in the regular manner and in compliance with all applicable statutory and regulatory requirements applied on a consistent basis;
- 4.1.3. Use its best efforts to preserve its business organization intact, to retain the services of its present officers and employees and to preserve the good will of its customers and others having business relations with it;
- 4.1.4. Pay and perform all of its debts, obligations and liabilities as and when due and all Understandings to which it is a Party in accordance with the terms and provisions of those Understandings;
- 4.1.5. Duly and timely file all reports and returns required to be filed with any federal, state or local governmental authority or agency; and
- 4.1.6. Comply in all material respects with all laws that may be applicable to it or its business.

4.2. Negative Covenants of Alliance

Without limiting the generality of the foregoing, and except for actions to be taken in connection with any of the transactions contemplated hereby or in the ordinary course of their businesses, without the prior written consent of the Each Party, Alliance shall not, on or after the date hereof and until the earlier of the Effective Date or the Termination Date:

- 4.2.1. Merge with, consolidate with, sell its assets to or acquire substantially all the assets or capital stock of, any other entity or person, or enter into any other transaction not in the ordinary and usual course of its business;
- 4.2.2. Incur any indebtedness for borrowed money or guarantee any such indebtedness;
- 4.2.3. Create or amend any pension or profit-sharing plan, bonus, deferred compensation, death benefit, or retirement plan, or any other fringe benefit plan or program;
- 4.2.4. Amend its Articles of Incorporation or Bylaws, as amended to the date hereof;
- 4.2.5. Pay or agree to pay any bonus or extra compensation or change the method of determining the compensation paid by it on or after the date of this Agreement to any officer, director, agent, consultant or employee;
- 4.2.6. Enter into or amend any employment contract or any bonus, incentive compensation, deferred compensation, profit sharing, stock option, retirement, pension, group insurance or other benefit plan.
- 4.2.7. Make any capital expenditure, except for ordinary repairs and replacement;

4.2.8. Enter into any agreement other than those entered into in the ordinary and regular course of its business and not of unusual size or duration, consistent with prior practice, which, if entered into prior to the date of this Agreement, would not have been required to be set forth in *Schedule 2.14a* or *2.14b* to this Agreement.

4.3. Action With Consent

Notwithstanding Sections 4.1 and 4.2 hereof, either Party may undertake such activity with the consent of the other Party, which consent shall be in a writing, prior to engaging in or undertaking such activity.

4.4. Impending Breaches

Neither Party will take any action that would cause or constitute a breach, or would, if it had been taken prior to the date of this Agreement, have caused or constituted a breach, of any of the representations and warranties set forth in Sections 2 or 3 of this Agreement, or have caused or constituted a material breach of any of the covenants contained in this Section, or that may result in the nonfulfillment of any condition set forth in Sections 5 or 6 of this Agreement. Each Party will, in the event of, and promptly after becoming aware of, the occurrence of or the impending or threatened occurrence of, any event, that would cause or constitute a breach or would, if it had occurred prior to the date of this Agreement, have caused or constituted a breach of any of the representations and warranties set forth in Sections 2 or 3 of this Agreement, or have caused or constituted a material breach of any of the covenants contained in this Section, or that may result in the nonfulfillment of any condition set forth in Section 5 or 6 of this Agreement, give detailed notice of that awareness to the other Party and will use its best efforts to prevent or remedy promptly such breach.

4.5. Access

Foundation, its representatives, legal counsel, accountants and agents who individually have entered into that certain Confidential and Nondisclosure Agreement (the "NDA") included herewith as *Exhibit "D"* will be permitted full access to, and will be permitted to make copies of any abstracts from, all of the books and records of Alliance, will have full access to its premises and physical properties, and will be permitted to discuss its affairs, finances and accounts with its directors, trustees, officers, management, legal counsel, accountants, suppliers, and government officials empowered to regulate its activities. Alliance will do everything reasonably necessary to enable Foundation and its representatives, counsel, accountants, agents and management to make a complete examination of its financial statements, business, assets and properties and the condition of them, and to update such examination at such intervals as it will deem appropriate. No such examination, however, will constitute a waiver or relinquishment on the part of Foundation of its rights to rely upon the representations and warranties made by Alliance in or pursuant to this Agreement. Alliance shall limit access of its books and records, financial statements, business, assets and properties to its employees, directors, representatives, legal counsel, accountants and agents who individually have entered into the NDA.

4.6. Financial, Corporate and Operating Records

Each Party will promptly furnish to the other Party all financial and operating reports with respect to it as may be prepared from time to time between or after the date of this Agreement including, without limitation, all minutes of each meeting of its Board of Directors, of its membership and of any committees thereof, and any written report it or its executives, officers, employees or agents have filed with or submitted to any federal, state, county or local government agency. All financial reports provided hereunder will:

- 4.6.1. Be in accordance with its books and records;
- 4.6.2. Fairly and accurately present the consolidated and unconsolidated financial condition of Alliance as of such date;
- 4.6.3. Be prepared in accordance with generally accepted accounting principles and practices, applicable to tax-exempt public charities and applied on a basis consistent with prior periods; and
- 4.6.4. Contain and reflect adequate reserves for all material accrued and contingent liabilities and for all reasonably anticipated losses.

4.7. Other Documents

Each Party will promptly furnish to other Party information with respect to any document, event, transaction or condition entered into or occurring after the date of this Agreement that, had it occurred or been in effect on or prior to the date of this Agreement, would have been required to be included in any of the Schedules to this Agreement, and copies of all documents with respect to those items.

4.8. Third-Party Discussions

Neither Alliance nor any of its executives, trustees or officers will engage in any discussions with any third persons with respect to the possible merger of, or the sale or other disposition of, all or substantially all of its assets.

4.9. Consents

Alliance will obtain all consents and permits from third parties under all contracts or other arrangements that may be required to avoid the breach of the terms, or the termination, of such contracts or arrangements or the acceleration of Alliance's performance of its obligations under such contracts or arrangements, as a result of or in connection with Alliance's performance of its obligations under this Agreement.

4.10. Confidentiality

Each Party will hold in strictest confidence all documents and information concerning the Each Party obtained in the course of the transactions contemplated by this Agreement, and, if such transactions are not consummated, such confidences will be maintained as provided in this Agreement and all such documents will be returned to providing Party.

4.11. Costs and Expenses

Except as otherwise expressly provided herein, all reasonable costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid, in the event that the Merger becomes effective, by the Surviving Corporation. If this Agreement is terminated prior to the Effective Date, then all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party that incurred such costs or expenses; provided, however, that if a Party breaches this Agreement in bad faith, that Party shall reimburse the Each Party for all reasonable costs and expenses it incurred in connection with this Agreement and the transactions contemplated thereby. Prior to the Effective Date, Alliance shall be responsible for all costs incurred in its ongoing operations, and Foundation shall be responsible for all costs incurred in its ongoing operations.

4.12. Notification of Certain Matters

Foundation shall give prompt notice to Alliance, and Alliance shall give prompt notice to Foundation, of (i) the occurrence, or failure to occur, of any event that would be likely to cause any representation or warranty of such Party contained herein to be untrue or inaccurate in any material respect at any time from the date hereof to the Effective Date; and (ii) any material failure of Alliance or Foundation or any of their respective affiliates, as the case may be, or of any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

5. CONDITIONS OF ALLIANCE OBLIGATIONS

The obligation of Alliance to consummate the Merger shall be subject to and conditioned upon, at Alliance's option, the satisfaction of each of the following conditions (the "Alliance Conditions"):

5.1. Representations and Warranties

The representations and warranties of Foundation set forth in this Agreement will be true in all material respects on and as of the Effective Date with the same effect as though made as of such date, except for any matters that are limited to an earlier date and any variations permitted by this Agreement; and Foundation will have performed all covenants and obligations and complied with all Foundation Conditions to be performed by it or complied with at or prior to the Effective Date.

5.2. Bylaws

Foundation will adopt as restated bylaws the "Amended and Restated Bylaws of Thousand Oaks Civic Arts Plaza Foundation" included in *Schedule 5.2* to this Agreement.

5.3. Articles of Incorporation

Foundation will adopt restated Articles of Incorporation as set forth in *Schedule 5.3* to this Agreement and the SOS will certify said restated Articles of Incorporation.

5.4. Election of Directors

Foundation's Board of Directors shall elect as new Foundation directors three persons designated by the Alliance Board of Directors and listed in *Schedule 5.4* to this Agreement; provided, however, that the Foundation Board of Directors shall not be obligated to elect any person who has violated the California Alcoholic Beverage Control Act or is otherwise disqualified to obtain an alcoholic beverage license. Thousand Oaks City Council will ratify or confirm in a public meeting the directors submitted by Alliance and Foundation.

5.5. Adoption of Certain Policies

Foundation's Board of Directors shall enter into a Memorandum of Understanding between the City of Thousand Oaks and the Foundation pertaining to certain financial and other support between the city and the Foundation, and assume the Alliance for the Arts Commitment to Donors & Founders as set forth in *Schedule 5.5a* and *Schedule 5.5b*, respectively.

5.6. Thousand Oaks City Council Consent

The Thousand Oaks City Council shall review and make a final determination to approve the Merger after final approval of the Merger by Foundation and Alliance, prior to notifying the California Attorney General's officer of the Merger.

5.7. Attorney General Consent

The consent to the Merger, or waiver of its right to object to the Merger, by the California Attorney General's office required to consummate the Merger and the other transactions contemplated hereby have been obtained.

5.8. No New Legal Actions

No suit, action, investigation, inquiry or other proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the Merger or any of the other transactions contemplated hereby.

5.9. No Injunctions

As of the Effective Date, there shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction directing that the Merger or any of the other transactions contemplated herein not be consummated as so provided herein or impose any conditions on the consummation of the Merger or any of the other transactions contemplated hereby, which is unduly burdensome on Alliance or the Surviving Corporation.

6. CONDITIONS OF FOUNDATION'S OBLIGATIONS

The obligation of Foundation to consummate the Merger shall be subject to and conditioned upon, at Foundation's option, the satisfaction of each of the following conditions (the "Foundation Conditions"):

6.1. Representations and Warranties

The representations and warranties of Alliance set forth in this Agreement will be true in all material respects on and as of the Effective Date with the same effect as though made as of such date, except for any matters that are limited to an earlier date and any variations permitted by this Agreement; and Alliance will have performed all covenants and obligations and complied with all Alliance Conditions to be performed by it or complied with at or prior to the Effective Date.

6.2. Financial Statements

The Alliance Financial Statements will have contained and reflected adequate reserves for all material accrued and contingent liabilities and for all reasonably anticipated material losses, including, but not limited to (i) amounts reserved for the payment of all federal, state and local taxes of whatever nature accrued and payable by the Alliance for or with respect to the respective periods reflected in the Alliance Financial Statements and for or with respect to all prior periods and (ii) amounts reserved for possible losses, accrued expenses or accrued uncollected revenue with respect to the respective periods reflected in the Alliance Financial Statements.

6.3. No Adverse Change in Alliance's Financial Position

As of the Effective Date, there shall have been no material adverse change in the financial condition, business or affairs of Alliance since August 31, 2016, and Alliance shall not have suffered any material loss (whether or not insured) by reason of physical damage caused by fire, earthquake, accident or other calamity that substantially affects the value of its assets, properties or business, and Foundation shall have received certificates of Alliance, signed by its principal financial officer and dated the Effective Date.

6.4. Thousand Oaks City Council Consent

The Thousand Oaks City Council shall review and make a final determination to approve the Merger prior to notifying the California Attorney General's officer of the Merger.

6.5. Attorney General Consent

The consent to the Merger, or waiver of its right to object to the Merger, by the California Attorney General's office required to consummate the Merger and the other transactions contemplated hereby have been obtained.

6.6. No New Legal Actions

No suit, action, investigation, inquiry or other proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened that questions the validity or legality of the Merger or any of the other transactions contemplated hereby.

6.7. No Injunctions

As of the Effective Date, there shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction directing that the Merger or any of the other transactions contemplated hereby not be consummated as so provided herein or imposing any conditions on the consummation of the Merger or any of the other transactions contemplated hereby, which is materially burdensome on Foundation or the Surviving Corporation.

6.8. Insurance Tail Coverage

Prior to the Effective Date, with regard to Alliance's Non-Profit Organization Directors and Officers Liability and Employment Practices Liability insurance policy issued by Travelers Casualty and Surety Company of America (the "D&O Policy"), Alliance shall:

- 6.8.1. Have acquired extended reporting and run-off extended reporting period coverage for all liability coverages and cyber coverages for no less than three (3) years following the Effective Date;
- 6.8.2. Have notified the issuer of the D&O Policy of the merger as required pursuant to "Change of Control" provisions therein; and
- 6.8.3. Provide Foundation with written confirm of each of the above.

7. TERMINATION AND REMEDIES

7.1. Termination Before Merger

Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and abandoned at any time before the Effective Date:

- 7.1.1. By the mutual consent of Alliance and Foundation or by either party if Alliance Conditions or Foundation Conditions have not been met;
- 7.1.2. By Alliance or by Foundation at any time if there has been a material adverse change in the business, financial condition, or results of operations of Each Party after August 31, 2016;
- 7.1.3. By Alliance or by Foundation at any time if there has been a material breach of any representation or warranty made by Each Party herein or in any certificate or other document delivered pursuant hereto, or if there has been any failure by Each Party to perform in all material respects all obligations or to comply with all covenants on its part to be performed hereunder.

7.2. Procedure Upon and Effect of Abandonment or Termination Before Merger

In the event of any termination and abandonment pursuant to Section 7.1 hereof, written notice thereof shall forthwith be given to the other parties and the transactions contemplated hereby shall thereupon be terminated and/or abandoned, without further action by Alliance or Foundation, and, except as provided in Section 5.12, there shall be no liability on the part of any of Foundation or Alliance or their respective officers and directors.

8. MISCELLANEOUS

8.1. Survival of Representations and Warranties

No representations or warranties made by Foundation or Alliance in this Agreement, or in any certificate or other document furnished or to be furnished by Foundation or Alliance pursuant hereto, shall survive the Effective Date.

8.2. Notices

Any notice, consent, approval, request, demand, declaration or other communication required hereunder shall be in writing to be effective and shall be given and shall be deemed to have been given if (i) delivered in person with receipt acknowledged; (ii) faxed or emailed and electronically confirmed; (iii) deposited into the custody of a nationally recognized overnight courier for next day delivery; or (iv) placed in the federal mail, postage prepaid, certified or registered mail, return receipt requested, in each case addressed as follows:

If to Alliance prior to Effective Date:

Richard Williams, Chair
Alliance for the Arts
2100 E. Thousand Oaks Blvd.
Thousand Oaks, CA 9136
Email: richardwilliams@roadrunner.com
Facsimile #: _____
Confirming #: _____

With a copy to:

Douglas Bordner, Esq.
Myers, Widders, Gibson, Jones & Feingold, LLP
100 E. Thousand Oaks Blvd., Ste 103
Thousand Oaks, CA 91360
Email: dbordner@mwgjlaw.com
Facsimile #: 805.426.8105
Confirming #: 805.496.0111

If to Foundation or to Surviving Corporation:

Robert Biery, Chair
Thousand Oaks Civic Arts Plaza Foundation
2100 E. Thousand Oaks Blvd.
Thousand Oaks, CA 91362

Email: r-biery@msn.com
Confirming #: 805-499-8811

With a copy to:

Barry McComb, Executive Director
Thousand Oaks Civic Arts Plaza Foundation
2100 E. Thousand Oaks Blvd.
Thousand Oaks, CA 91362
Email: BMcComb@toaks.org
Facsimile #: _____
Confirming #: 805.449.2707

and

Arthur Rieman, Esq.
The Law Firm for Nonprofits®, P.C.
4705 Laurel Canyon Blvd, Ste 306
Studio City, CA 91607
Email: arthur@lfnp.com
Facsimile #: 818.286.1967
Confirming #: 818.623.9898

or at such other address as may be substituted by giving the other parties not fewer than five (5) business days' advance written notice of such change of address in accordance with the provisions hereof. The giving of any notice required hereunder may be waived in writing by the Party entitled to receive such notice. Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been duly served, delivered and received on the date on which personally delivered with receipt acknowledged or facsimile and electronically confirmed if the delivery or facsimile is completed prior to 5 p.m. local time on a business day (if later, such delivery or facsimile shall be deemed to have taken place at 9 a.m. local time the following business day), or one (1) business day after being deposited into the custody of a nationally recognized overnight courier for next day delivery, or five (5) business days after the same shall have been placed in the federal mail as aforesaid. Failure or delay in delivering copies of any consent, notice, demand, request, approval, declaration or other communication to the persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

8.3. Binding Effect; Benefits

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Notwithstanding anything

contained herein to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person (other than the Parties hereto or their respective successors and permitted assigns) any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.4. Entire Agreement; Amendment or Supplement

This Agreement, together with the Exhibits, Schedules and other agreements and documents contemplated hereby, constitutes the final written expression of all of the agreements between the Parties hereto, and is a complete and exclusive statement of those terms. Except as specifically included or referred to herein, this Agreement and the Exhibits, Schedules and other agreements and documents contemplated hereby supersede all prior understandings, negotiations and agreements concerning the matters specified herein. Any representations, promises, warranties or statements made by any Party that differ in any way from the terms of this written Agreement, and the Exhibits, Schedules and other agreements and documents contemplated hereby, shall be given no force or effect (except as specifically included or referred to herein). The Parties hereto specifically represent, each to the other, that there are no additional or supplemental agreements between them related in any way to the matters herein contained unless specifically included or referred to herein.

8.5. Governing Law; Venue

This Agreement, and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of action), shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed entirely within such state.

8.6. Counterparts

This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document. It is not necessary that each Party execute the same counterpart, so long as identical counterparts are executed by all parties hereto. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple signature pages affixed thereto constitutes an original counterpart instrument. All of such counterpart signature pages shall be read as though one and they shall have the same force and effect as if all of the Parties hereto had executed a single signature page.

8.7. Headings

Headings of the Sections of this Agreement are for the convenience of reference only, and shall be given no substantive or interpretive effect whatsoever.

8.8. Waivers

At any time prior to the Effective Date, any Party may, by written notice signed by such Party's President or Chair to the other parties hereto, (i) extend the time for the

performance of any of the obligations or other actions of the other parties hereunder; (ii) waive any inaccuracies in the representations or warranties of the other parties contained herein or in any other agreement or document delivered pursuant hereto; (iii) waive compliance with any of the conditions or covenants of the other parties contained herein; or (iv) waive performance of any of the obligations of the other parties hereunder. Except as provided in the immediately preceding sentence, no action taken pursuant hereto, including without limitation any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. No failure or delay on the part of any Party in exercising any right, privilege, power or remedy under this Agreement, and no course of dealing among the Parties, shall operate as a waiver of such right, privilege, power or remedy; nor shall any single or partial waiver or exercise of any right, privilege, power or remedy under this Agreement preclude any other or further exercise of such right, privilege, power or remedy, or the exercise of any other right, privilege, power or remedy. No notice to or demand on any Party in any case shall entitle such Party to any other or further notice or demand in any similar or other circumstances or constitute a waiver of the right of the Party giving such notice or making such demand to take any other or further action in any circumstances without notice or demand.

8.9. Merger of Documents

This Agreement and all agreements and documents contemplated hereby constitute one agreement and are interdependent upon each other in all respects.

8.10. Incorporation of Exhibits and Schedules

All Exhibits and Schedules attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

8.11. Severability

If for any reason whatsoever, any one or more of the provisions hereof shall be held or deemed to be illegal, inoperative, unenforceable or invalid as applied to any particular case or in all cases, such case shall not have the effect of rendering such provision illegal, inoperative, unenforceable, or invalid in any other case or of rendering any of the other provisions hereof illegal, inoperative, unenforceable or invalid. Furthermore, in lieu of each such illegal, invalid, unenforceable or inoperative provision, there shall be added automatically, as part of this Agreement, a provision similar in terms of such illegal, invalid, unenforceable or inoperative provision as may be possible and as shall be legal, valid, enforceable and operative.

8.12. Assignability

Neither this Agreement nor any of the Parties' rights hereunder may be assigned or otherwise transferred by any Party without the prior written consent of the other parties hereto.

8.13. References

The use of the words, "hereof," "herein," "hereunder," "herewith," "hereto," "hereby," and words of similar import shall refer to this entire Agreement, and not to any particular article, section, subsection, clause, or paragraph of this Agreement, unless the context clearly indicates otherwise.

8.14. Calendar Days, Weeks and Months

Unless otherwise specified herein, any reference to "day," "week," or "month" herein shall mean a calendar day, week or month.

8.15. Gender; Plural and Singular

Unless the context clearly indicates otherwise, the singular shall include the plural and vice versa. Whenever the masculine, feminine or neuter gender is used inappropriately in this Agreement, this Agreement shall be read as if the appropriate gender had been used.

8.16. Director; Member

Unless otherwise specified herein:

8.16.1. The word "director" as used herein shall mean a member of the governing body of a Party (and within the meaning of section 5047 of the NP Law), regardless of the term used to define or describe such persons in a Party's bylaws. For purposes of clarity, the word "director" as used herein includes members of the "Executive Committee" of Alliance as that term is defined in Alliance's bylaws;

8.16.2. The term "Board of Directors" as used herein means the governing body of a Party. For purposes of clarity, the word "Board of Directors" includes the "Executive Committee" of Alliance as that term is defined in Alliance's Bylaws; and

8.16.3. The word "member" means any member of a Party within the meaning of Section 5056 of the NP Law. For purposes of clarity, the word "member" does not include any person or entity who does not have a right to vote in the election of one or more of a Party's directors even if that person or entity is denominated as a member by the respective Party or its bylaws. The word "membership" refers to the collective members of a Party.

8.17. Cumulative Rights

All rights and remedies specified herein are cumulative and are in addition to, not in limitation of, any rights or remedies the Parties hereto may have by statute, at law, in equity, or otherwise, and all such rights and remedies may be exercised singularly or concurrently.

8.18. No Implied Covenants

Each Party, against the other, waives and relinquishes any right to assert, either as a claim or as a defense, that any Each Party is bound to perform or liable for the nonperformance of any implied covenant or implied duty or implied obligation, other than an implied covenant of good faith.

8.19. Arbitration

In the event of any dispute under this Agreement, the Parties shall attempt to resolve the matter themselves in an amicable manner. Failing such resolution, any dispute under this Agreement shall be resolved by binding arbitration in Ventura County in accordance with Streamlined arbitration rules of the Judicial Arbitration and Mediation Services (JAMS) then in effect, or any other rules mutually agreed to by the parties. Any award or order made in any such arbitration may be entered as a judgment in a court of competent jurisdiction. To the extent permitted by federal and state law, any dispute, and the resolution thereof in any manner, shall be and remain confidential information, and all parties shall protect the confidential information from public disclosure, using any and all reasonable legal and technical means.

8.20. Attorneys' Fees

The substantially prevailing Party in any dispute between the Parties hereto arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs from the Each Party, whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

8.21. Indirect Action

Where any provision hereof refers to action to be taken by any person or Party, or which such person or Party is prohibited from taking, such provision shall be applicable whether the action in question is taken directly or indirectly by such person or Party.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused the same to be duly delivered on their behalf on the day and year hereinabove first set forth.

ALLIANCE FOR THE ARTS

By: Richard Williams
Its: Chair

By: Matthew Burke
Its: Secretary

THOUSAND OAKS CIVIC ARTS PLAZA FOUNDATION

By: Robert Biery
Its: President

By: Marisa Hanke
Its: Secretary

**Amended and Restated Articles of Incorporation of
Thousand Oaks Alliance for the Arts**

The undersigned certify that:

1. They are the chair and secretary, respectively, of Thousand Oaks Alliance for the Arts, a California nonprofit public benefit corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

ARTICLE I

The name of the corporation is THOUSAND OAKS ALLIANCE FOR THE ARTS.

ARTICLE II

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes of this corporation is to present performers, artists, entertainers, speakers and cultural events at Thousand Oaks Civic Arts Plaza's Bank of America Performing Arts Center, to contribute to the economic vitality and quality of life of Thousand Oaks and the greater Conejo Valley, California, and to carry on other activities associated with this purpose as allowed by law.

ARTICLE III

- (a) This corporation is organized and operated exclusively for the charitable purposes set forth in Article II hereof within the meaning of section 501(c)(3) of the Internal Revenue Code (the "IRC") and meeting the requirements of Section 214 of the California Revenue and Taxation Code ("the RTC").
- (b) Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under section 501(c)(3) of the IRC or (2) by a corporation contributions to which are deductible under section 170(c)(2) of the IRC.
- (c) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation,

and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

ARTICLE IV

- (a) The property of this corporation is irrevocably dedicated to the charitable purposes set forth in Article II hereof meeting the requirements for exemption provided by section 214 of the RTC. No part of the net income or assets of the organization shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person.
- (b) On the dissolution or winding up of the corporation, after paying or adequately providing for the debts, obligations and liabilities of the corporation, the remaining assets of this corporation shall be distributed to such organization (or organizations) that are organized and operated exclusively for charitable purposes and that has established its tax exempt status under section 501(c)(3) of the IRC and satisfies the requirements of section 214 of the RTC.

- 3. The foregoing Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.
- 4. The corporation has no members.

By:
Chair

By:
Secretary

**Restated Bylaws of
Thousand Oaks Alliance for the Arts**

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**Amended and Restated Bylaws of
THOUSAND OAKS ALLIANCE FOR THE ARTS
a California Public Benefit Corporation**

**ARTICLE 1
OFFICES**

1.1. PRINCIPAL OFFICE

The Corporation shall have a principal office at which it shall maintain its official records and transact other business. The principal office shall be located in the City of Thousand Oaks, California.

1.2. OTHER OFFICES

The Corporation may also have other offices in the Conejo Valley, California, as the Board of Directors may determine.

**ARTICLE 2
PURPOSES, EFFECTIVE DATE, OPEN MEETINGS**

2.1. OBJECTIVES AND PURPOSES

The primary purpose of this Corporation is as set forth in the Corporation's Articles of Incorporation.

2.2. EFFECTIVE DATE

These Amended and Restated Bylaws shall be effective as of the latter of January 3, 2017 or the date the merger between Alliance for the Arts, a California nonprofit public benefit corporation ("AFTA") and the Corporation is endorsed by the Secretary of State (the "Effective Date").

2.3. BROWN ACT

All meetings of the Board and of committees of the Board shall be subject to The Ralph M. Brown Act, as amended (Gov't Code section 54950 *et seq.*).

ARTICLE 3
DIRECTORS, ELECTION AND REMOVAL

3.1. POWERS

The Corporation shall have a Board of Directors (referred to, in these bylaws, as the "Board"). The activities and affairs of the Corporation and all corporate powers shall be exercised by or under the direction of the Board, acting as a body. The Board may delegate the management of the activities of the Corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

3.2. QUALIFICATIONS

It shall be a qualification of any person who is a director of this Corporation that he or she meet the requirements of the California Department of Alcoholic Beverage Control for the Corporation to maintain its liquor license.

3.3. NUMBER OF DIRECTORS

The Board shall have seven (7) directors.

3.4. ELECTION AND TERM OF OFFICE OF DIRECTORS

- 3.4.1. As of the Effective Date, the Board shall be comprised of three (3) directors appointed by AFTA prior to January 3, 2017, and three (3) directors elected by the Board of the Corporation prior to the effective date.
- 3.4.2. Within three (3) months of the Effective Date, the Board shall elect a seventh director, who shall be a working artist or a member of the community with a history of support and demonstrated interest in the arts.
- 3.4.3. At the first meeting of the Board after the Effective Date, the Board shall provide for staggered terms of directors by designating one (1) director appointed by AFTA and one (1) director elected by the Corporation to each of one (1), two (2) and three (3) year terms. The initial term of the community Board appointee will serve an initial term of three (3) years. The initial terms of one or two years will not count as full terms. The initial terms for Alliance and Foundation appointees will be determined by a blind draw. The terms of office of all directors subsequent to the initial terms shall be three (3) years, expiring at the end of the calendar year. Each director, including a director elected to fill a vacancy or elected at a special meeting, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified.
- 3.4.4. Following the initial terms of all directors, directors subsequently shall be elected by the Board. Directors shall be elected at each annual meeting to fill those terms that expire at the end of the calendar year of the scheduled annual meeting. If directors are not elected at any annual meeting,

they may be elected at any other regular or special meeting held for that purpose (which need not be the exclusive purpose of that meeting).

- 3.4.5. After each vote of the Board to elect directors, the Thousand Oaks City Council shall vote whether to ratify each person so elected to serve as a director of the Corporation. Only persons who have been so ratified by the Thousand Oaks City Council may serve as directors of the Corporation.
- 3.4.6. No person shall serve as a director of this Corporation for more than three (3) consecutive full terms. For purposes hereof, a partial term of two (2) years or more will constitute a full term. A director who has served the maximum number of terms may be eligible to serve as a director after two (2) years have passed since that person was last a director.

3.5. REMOVAL OF DIRECTORS

- 3.5.1. The Board may declare vacant the office of a director who:
 - 3.5.1.1. Has been declared of unsound mind by a final order of a court of competent jurisdiction, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under section 5230 and following of the California Nonprofit Corporation Law (the "Nonprofit Law");
 - 3.5.1.2. Fails to satisfy the qualification to serve as a director set forth in Section 3.2; or
 - 3.5.1.3. Fails to attend at least two-thirds (2/3) of the meetings of the Board during any 12-month period.
- 3.5.2. A director may be removed without cause:
 - 3.5.2.1. By the vote of five (5) directors then in office, or
 - 3.5.2.2. By the vote of a majority of the Thousand Oaks City Council.

3.6. VACANCIES

- 3.6.1. Vacancies on the Board shall exist (i) on the death, resignation or removal of any director or (ii) whenever the number of authorized directors is increased.
- 3.6.2. Any director may resign effective upon giving written notice to the Chair of the Board, the Secretary, or the Board. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. No director may resign if such resignation will leave the Corporation without at least one duly elected director in charge of its affairs except upon notice to the Attorney General of the State of California.
- 3.6.3. A reduction of the number of authorized directors shall be effective only upon the expiration of the then-current directors' terms of office or upon the occurrence of any other vacancy in the

Board, unless the reduction or the amendment also provides for the removal of one or more specified directors.

- 3.6.4. Subject to ratification by City Council as set forth in Article 3.4.5 above, vacancies on the Board may be filled by approval of the Board or, if the number of directors then in office is less than a quorum, by the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice as required under the Brown Act.
- 3.6.5. A person elected to fill a vacancy as provided by this Section shall hold office until the expiration of the term of the person being replaced.

**ARTICLE 4
DIRECTOR DUTY OF CARE AND CONDUCT**

4.1. DUTY OF CARE AND LOYALTY

It is the obligation of each director of the Corporation to perform his or her duties in good faith, in a manner such director believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

4.2. GENERAL DUTIES

4.2.1. It is the duty of each director to:

- 4.2.1.1. Perform any and all duties imposed on him or her individually, or collectively upon the Board, by law, by the Articles of Incorporation of this Corporation, or by these bylaws.
- 4.2.1.2. Ensure all Board policies and decisions are implemented and carried out;
- 4.2.1.3. Honor all donor agreements and commitments assumed or entered into by the Corporation.

4.2.2. It is the duty of the Board to meet at such times and places as required by these bylaws.

4.3. RESTRICTION REGARDING INTERESTED DIRECTORS

Notwithstanding any other provision of these bylaws, not more than 49 percent of the persons serving on the Board may be interested persons. An "interested person" is:

- 4.3.1. Any person currently being compensated by the Corporation for services rendered it within the previous twelve (12) months excluding any reasonable compensation paid to a director as director. For purposes of this definition, compensation means any payment as a full or part-time employee, an officer, a contractor, a vendor or otherwise.

- 4.3.2. Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

4.4. SELF-DEALING

The Corporation shall not enter into any contract or transaction, directly or indirectly, with any: (i) director of the Corporation; (ii) officer of the Corporation; (iii) the Chair of the Board or chief executive officer, nor the treasurer or chief financial officer; (iv) any person who during the 5-year period ending on the date of the such transaction was in a position to exercise substantial influence over the affairs of the Corporation; or (v) any person who is a relative by blood or marriage of such a person or who along with such a person owns more than 35 percent of the voting power, profit interest or beneficial interest in an entity, unless:

- 4.4.1. The material facts regarding that person's financial interest in such contract or transaction, or regarding such common directorship, officership, or financial interest, are fully disclosed in good faith and noted in the minutes, or are known to all directors, prior to consideration by the Board of such contract or transaction;
- 4.4.2. Such contract or transaction is authorized in good faith by a vote of the majority of the directors then in office, without counting the votes of any director who has a financial interest in the transaction;
- 4.4.3. Before authorizing or approving the transaction, the Board considers and in good faith determines, after reasonable investigation, that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
- 4.4.4. At the time the transaction is entered into:
 - 4.4.4.1. The transaction is fair and reasonable to the Corporation; and
 - 4.4.4.2. The Corporation entered into it for its own benefit.

4.5. MUTUAL DIRECTORS

The Corporation shall not enter into a contract or transaction with any other entity of which one or more of the Corporation's directors are directors (or the equivalent) unless:

- 4.5.1. The material facts as to the transaction and as to such director's other directorship are fully disclosed or known to the Board, and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote or votes of the common director or directors, or
- 4.5.2. The contract or transaction is just and reasonable to the Corporation at the time it is authorized, approved or ratified.

4.6. COMPENSATION

Directors shall serve without compensation. Directors and other disqualified persons may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 4.2.

4.7. LOANS TO OFFICERS OR DIRECTORS

The Corporation shall not make any loan of money or property to or guarantee the obligation of any director or officer.

4.8. NON-LIABILITY OF DIRECTORS

The directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

4.9. INSURANCE FOR CORPORATE AGENTS

This Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents to cover any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising from the officers, directors, employees, or agents status as such.

4.10. INDEMNIFICATION BY CORPORATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

4.10.1. For purposes of this Section, the following terms shall have the meanings ascribed:

4.10.1.1. "Agent" means any person who is or was a director, officer, employee, or other agent of this Corporation, or is or was serving or acting at the request of this Corporation as a director, office employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of this Corporation or of another enterprise at the request of the predecessor corporation;

4.10.1.2. "Proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

4.10.1.3. "Expenses" includes, without limitation, all attorney fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his position or relationship as agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

4.10.2. Subject to the required findings to be made pursuant to Subsection 4.10.6, this Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any

proceeding for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding, other than an action brought by, or on behalf of, this Corporation, or by an officer, director or person granted related status by the Attorney General, or by the Attorney General on the ground that the defendant director was or is engaging in self-dealing within the meaning of section 5233 of the Nonprofit Law or by the Attorney General or a person granted related status by the Attorney General for any breach of duty relating to assets held in charitable trust, by reason of the fact that such person is or was an agent of this Corporation.

4.10.3. This Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action brought by or on behalf of this Corporation by reason of the fact that the person is or was an Agent of this Corporation, for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both of the following are met:

4.10.3.1. The determination of good faith conduct required by Subsection 4.10.6 must be made in the manner provided for in that Subsection; and

4.10.3.2. Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent should be entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

4.10.4. To the extent that an agent of this Corporation has been successful on the merits in the defense of any proceeding referred to in this Article, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim. If an Agent either settles any such claim or sustains a judgment rendered against him, then the provisions of Subsections 4.10.3 and 4.10.6 shall determine whether the Agent is entitled to indemnification.

4.10.5. If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of this Corporation, with or without court approval, the Agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the proceeding.

4.10.6. The indemnification granted to any Agent in Subsections 4.10.2 through 4.10.4 is conditioned on the following:

4.10.6.1. The Agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he believed to be in the best interest of this Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere, or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in the best interest of this

Corporation or that he had reasonable cause to believe that his conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his conduct was unlawful; and

4.10.6.2. The determination that the Agent did act in a manner complying with Subsection 4.10.6.1, above, shall be made by:

4.10.6.2.1. The Board of Directors by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or

4.10.6.2.2. The court in which the proceeding is or was pending. Such determination may be made on application brought by this Corporation or the Agent or the attorney or other person rendering a defense to the Agent, whether or not this Corporation opposes the application by the Agent, attorney, or other person.

4.10.7. Expenses incurred in defending any proceeding may be advanced by this Corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article. However, no indemnification or advance shall be made under this Section, in any circumstance when it appears:

4.10.7.1. That the indemnification or advance would be inconsistent with a provision of the Articles or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

4.10.7.2. That the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

4.10.8. Nothing contained in this Section shall affect any right to indemnification to which persons other than directors and officers of this Corporation, or any subsidiary hereof, may be entitled by contract or otherwise. This Section does not and shall not apply to any proceeding against any trustee, investment manager, or other fiduciary of a pension, deferred compensation, savings, thrift, or other retirement, incentive, or benefit plan, trust, or provision for any or all of the Corporation's directors, officers, employees, and persons providing services to the Corporation or any of its subsidiary or related or affiliated corporations, in that person's capacity as such, even though that person may also be an agent of the Corporation as defined in bylaws. Nothing contained in this Section shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

4.11. EMERGENCY POWERS

The emergency bylaw provisions of this Section are adopted in accordance with section 5151(g) of the Nonprofit Law. Notwithstanding anything to the contrary herein, this Section applies solely

during an Emergency, which is the limited period of time during which a quorum cannot be readily convened for action as a result of the following events or circumstances until the event or circumstance has subsided or ended and a quorum can be readily convened in accordance with the notice and quorum requirements in Sections 5.5 and 5.9 of these bylaws:

- 4.11.1.1. A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or regardless of cause, any fire, flood, or explosion;
 - 4.11.1.2. An attack on this state or nation by an enemy of the United States of America, or on receipt by this state of a warning from the federal government indicating that an enemy attack is probable or imminent;
 - 4.11.1.3. An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government function, or population, including, but not limited to, mass evacuations; or
 - 4.11.1.4. A state of emergency proclaimed by the governor of the state in which one or more Directors are resident, or by the President of the United States.
- 4.11.2. During an emergency, the Board may:
- 4.11.2.1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency;
 - 4.11.2.2. Relocate the principal office or authorize the officers to do so;
 - 4.11.2.3. Give notice to a director or directors in any practicable manner under the circumstances, including, but not limited to, by publication and radio, when notice of a meeting of the Board cannot be given to that director or directors in the manner prescribed by Section 5.5 of these bylaws; and
 - 4.11.2.4. Deem that one or more officers present at a Board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

**ARTICLE 5
MEETINGS OF THE BOARD**

5.1. REGULAR AND ANNUAL MEETINGS

- 5.1.1. The Board shall hold regular meetings designated in advance by the Board, at such place and time determined by the Board. The last regular meeting of the calendar year shall be the annual meeting.

- 5.1.2. At the annual meeting the Board shall undertake the election of directors and officers and the transactions of other business. Whenever there is an election to fill a seat on the Board of Directors, each director may cast one vote for each director to be elected. Cumulative voting by directors for the election of directors is not permitted. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected.

5.2. SPECIAL MEETINGS

Special meetings of the Board may be called by the Chair of the Board, a Vice Chair, the Secretary, or by any two directors, and such meetings shall be held at the place, designated by the person or persons calling the meeting, or in the absence of such designation, at the principal office of the Corporation.

5.3. MINUTES

The Board shall be responsible for recording, approving and maintaining minutes of the proceedings of the meeting of the Board and of committees of the Board. The Secretary or Secretary's designee shall take the minutes of Board. The book of minutes may be maintained in electronic form provided that they can be printed at any time.

5.4. PLACE OF MEETINGS

- 5.4.1. Meetings of the Board shall be held at the Thousand Oaks Civic Arts Plaza or at any place that, from time to time, has been designated by the Board within Southern California, and adopted by resolution.

- 5.4.2. Any director may participate in a meeting, and any meeting of the Board may be held by, conference telephone, video screen or other transmission, provided the requirements of Gov't Code section 54943 and those specified below are met. A director who participates in a meeting by such means shall be considered present in person for that meeting.

5.4.2.1. In the case of a meeting held by conference telephone or video screen, all directors participating in the meeting are able to hear one another.

5.4.2.2. In the case of other electronic transmission,

5.4.2.2.1. Each director participating in the meeting can communicate with all other directors concurrently, and

5.4.2.2.2. Each director is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose or to interpose an objection to a specific action to be taken by the Corporation.

5.5. NOTICE OF MEETINGS

- 5.5.1. Notices of Board meetings are valid if made by:

5.5.1.1. First-class mail, postage prepaid;

- 5.5.1.2. Personal delivery of a written notice;
 - 5.5.1.3. Delivery by overnight courier or private delivery service that can be and is confirmed;
 - 5.5.1.4. Telephone, including a voice messaging system or other technology designed to record and communicate messages, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate that notice promptly to the director;
 - 5.5.1.5. Facsimile, e-mail or other electronic means, provided that to a director has given his or her consent to receive notice by such means and if a record capable of retention, retrieval and review of such notice is recorded.
- 5.5.2. Notice of regular meetings need not be given if fixed by a resolution of the Board that is noted in minutes distributed to all directors. Otherwise, notice of regular meetings to the Directors will be valid if made no less than 14 days prior to the date of the meeting. Notice of special meetings shall be valid if made at least 48 hours prior to the date and time of the meeting and notice must be delivered by personal delivery or any other means that ensures receipt at least 48 hours before the time of the meeting, except for notice by mail which is not valid unless made four days prior to the date of the meetings. Written notice of any meeting shall be given to any person, other than a director, who requests such notice in writing and pays in advance for the copying and postage.
- 5.5.3. The agenda for each regular Board meetings shall be posted in a public place within the Thousand Oaks Civic Arts Plaza no later than 72 hours before the time of the meeting, on the City's website, and as otherwise required under the Brown Act.
- 5.5.4. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than 24 hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to directors absent from the original meeting if the adjourned meeting is held more than 24 hours from the time of the original meeting.

5.6. CONTENTS OF NOTICE

Notice of meetings not herein dispensed with shall specify the place (if other than the Corporation's principal office), day, hour and agenda of the meeting.

5.7. OPEN MEETINGS

As required by the Brown Act, meetings of the Board and of Committees of the Board shall be open and all persons shall be permitted to attend. However, the Board may hold closed sessions during any meetings to consider those matters that may lawfully be considered in such sessions under the Brown Act.

5.8. WAIVER OF NOTICE AND CONSENT TO HOLDING MEETINGS

- 5.8.1. Notice of a meeting of the Board need not be given to any director who either, before or after the meeting:

- 5.8.1.1. Signs a waiver of notice;
 - 5.8.1.2. Signs a written consent to the holding of the meeting;
 - 5.8.1.3. Approves of the minutes of the meeting; or
 - 5.8.1.4. Attends the meeting and who, before or at the beginning of the meeting, does not protest the lack of proper notice to him or her.
- 5.8.2. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

5.9. QUORUM FOR MEETINGS

- 5.9.1. A majority of the directors then in office shall constitute a quorum for the transaction of any business except adjournment.
- 5.9.2. No business shall be considered by the Board at any meeting at which a quorum, as defined above, is not present. The only motion which is permitted at a meeting at which a quorum is not initially present is a motion to adjourn. A majority of the directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board.

5.10. MAJORITY ACTION AS BOARD ACTION

- 5.10.1. The Board may act by approving a resolution properly set before the Board by the affirmative vote of a majority of the directors present at a duly held meeting at which a quorum is present subject to the more stringent provisions of these bylaws or the Nonprofit Law.
- 5.10.2. The following actions shall require a vote of five (5) directors:
- 5.10.2.1. Removal of a director pursuant to Subsection 3.5.2;
 - 5.10.2.2. Any amendment to the Corporation's Articles of Incorporation including, without limiting the foregoing, change in the purpose of the Corporation;
 - 5.10.2.3. Any amendment to the Corporation's bylaws; and
 - 5.10.2.4. Amendments of the Alliance for the Arts Commitment to Donors & Founders.
- 5.10.3. During the calendar years 2017 and 2018, approval of the Corporation's annual budget shall require the vote of five (5) directors.

5.11. CONDUCT OF MEETINGS

All meetings, procedural matters of debate and motions of the Board and of Committees of the Board shall be governed by any special rules of procedure adopted by resolution of the Board., or if no special rule covers the issue by Rosenberg's Rules of Order, including such revisions thereof as may from time to time be published, except insofar as such rules are inconsistent with these Bylaws, with the Articles of Incorporation or with applicable law.

5.12. CODE OF ETHICS

All Directors and advisory board members shall sign an Ethics Policy adopted by the Board.

**ARTICLE 6
OFFICERS OF THE CORPORATION**

6.1. NUMBER OF OFFICERS

The officers of the Corporation shall be a Chair of the Board (the "Chair"), Vice Chair, Secretary, and a Treasurer. The Corporation may also have, as determined by the Board, one or more Vice Chairs, Assistant Secretaries, Assistant Treasurers, or other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve as the Chair of the Board.

6.2. QUALIFICATIONS

Any director may serve as an officer of the Corporation.

6.3. ELECTION AND TERM OF OFFICE

6.3.1. Except those officers appointed in accordance with the provisions of Section 6.4 of this Article, officers shall be elected by the Board at the annual meeting, and shall serve at the pleasure of the Board. All Officers shall be appointed for two-year terms and shall serve no more than two consecutive two-year terms at that position.

6.3.2. The initial terms of the Chair and Treasurer in office as of the Effective Date shall expire on December 31, 2018. The initial terms of the Vice Chair and Secretary in office as of the Effective Date shall expire on December 31, 2017.

6.3.3. Except as set forth in Subsection 6.3.2, the Chair and Treasurer shall be elected in even-numbered years and the Vice Chair and Secretary shall be elected in odd-numbered years.

6.4. SUBORDINATE OFFICERS

The Board may appoint, and may authorize the Chair of the Board to appoint, such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board.

6.5. REMOVAL AND RESIGNATION

- 6.5.1. Any officer may be removed, either with or without cause, by the Board, at any regular or special meeting of the Board, or by an officer on whom such power of removal may be conferred by the Board.
- 6.5.2. Any officer may resign at any time by giving written notice to the Board or to the Chair of the Board. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.6. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise of the Chair shall be filled by the Board. In the event of a vacancy in any other office, such vacancy may be filled temporarily by appointment of the Chair until such time as the Board fills the vacancy. A person elected to a vacant office by the Board shall hold that office until the expiration of the term.

6.7. DUTIES OF CHAIR OF THE BOARD

The Chair is to:

- 6.7.1. Preside at all meetings of the Board;
- 6.7.2. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these bylaws, in the name of the Corporation, execute such contracts, checks, or other instruments which may from time to time be authorized by the Board; and
- 6.7.3. Perform all other duties incident to his or her office and such other duties as may be required by the Nonprofit Law, by the Articles of Incorporation of this Corporation, or by these bylaws, or which may be prescribed from time to time by the Board.

6.8. DUTIES OF VICE CHAIRS

In the absence or disability of the Chair, the Vice Chairs, if any, in order of their rank as fixed by the Board or, if not ranked, a Vice Chair designated by the Board, shall perform all powers of, and be subject to all the restrictions upon, the Chair. The Vice Chairs shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or the Chair.

6.9. DUTIES OF SECRETARY

The Secretary shall perform such duties as determined by the Board including ensuring proper and accurate record keeping of meetings, policies, resolutions, activities and records as required by law, maintaining the Corporation's legal documents, reviewing and distributing minutes of meetings, and ensuring proper notice of meetings of the Board and committees as required by the Corporation's bylaws and state law.

6.10. DUTIES OF TREASURER

The Treasurer shall perform such duties as determined by the Board to ensure that appropriate financial reports are made available to the Board on a timely basis and oversee the financial affairs of the Corporation.

**ARTICLE 7
EXECUTIVE DIRECTOR**

7.1. EXECUTIVE DIRECTOR

The Cultural Affairs Director of the City of Thousand Oaks shall serve as the Executive Director of the Corporation. The Executive Director shall be the chief executive officer of the Corporation and shall generally supervise, direct and control the Corporation's activities, business and affairs. The Executive Director shall perform all duties incident to the office and all other duties that may be prescribed by law, the Articles of Incorporation, these Bylaws, or the Board of Directors from time to time. The Executive Director shall be responsible to the Board and shall report to the Chair. The Executive Director shall be a non-voting, advisory member of the Board and the Executive Committee.

**ARTICLE 8
COMMITTEES**

8.1. COMMITTEES

- 8.1.1. Subject to the Brown Act, the Board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more Committees of the Board that exercise some authority of the Board, each consisting of two or more directors, to serve at the pleasure of the Board and have such authority as is delegated by the Board (each, a "Committee of the Board"). Persons who are not directors may not serve on such committees.
- 8.1.2. By a majority vote of the directors then in office, the Board may at any time revoke or modify any or all of the authority delegated to any Committee of the Board, increase or decrease (but not fewer two) the number of members of any Committee of the Board, and fill vacancies in any Committees of the Board from among the directors.
- 8.1.3. All Committees of the Board shall keep regular minutes of their proceedings, cause them to be filed with the corporate records, and report the same to the Board from time to time as the Board may require.
- 8.1.4. The following powers are reserved to the Board of Directors as a whole and may not be delegated to any committees thereof:
 - 8.1.4.1. The filling of vacancies on the Board or on any Committee of the Board that has the authority of the Board;

- 8.1.4.2. The appointment of Committees of the Board or the members thereof;
- 8.1.4.3. The amendment or repeal of bylaws or Articles of Incorporation, or the adoption of new bylaws or Articles of Incorporation;
- 8.1.4.4. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- 8.1.4.5. The approval of any action for which the law requires approval of members or approval of a majority of all members regardless whether the Corporation has members; and
- 8.1.4.6. The approval of any transaction to which this Corporation is a party and in which one or more of the directors has a material financial interest, except as expressly provided in section 5233(d)(3) of the Nonprofit Law.

8.2. AUDIT COMMITTEE

- 8.2.1. This Corporation shall have an Audit Committee, which may consist of the entire Board. Notwithstanding the other provisions of this Article, the Audit Committee, if there is one, shall have the following duties and composition:
- 8.2.2. It shall be the duty of the Audit Committee to:
 - 8.2.2.1. Recommend to the Board of Directors the retention and termination of the independent auditor;
 - 8.2.2.2. Confer with the auditor to satisfy the committee members that the financial affairs of the Corporation are in order;
 - 8.2.2.3. Review and determine whether to accept the audit; and
 - 8.2.2.4. Approve performance of any non-audit services to be provided by the auditing firm.
- 8.2.3. The Audit Committee shall be composed of at least two people. Audit Committee members need not be directors of the Corporation. In addition, the composition of the Audit Committee is restricted as follows:
 - 8.2.3.1. No person who receives compensation from the Corporation, including, without limiting the foregoing, any paid staff and anyone who does business or has any financial interest in any entity that does business with the Corporation, may not serve on the Audit Committee.
 - 8.2.3.2. If the Corporation has a finance committee, its members must comprise less than 50 percent of the Audit Committee and the chair of the finance committee may not serve on the Audit Committee.

8.3. MEETINGS AND ACTIONS OF COMMITTEES

Meetings and actions of all Committees of the Board shall be governed by, noticed, held and taken in accordance with the provisions of Article 5, substituting the words "Committee of the Board" for a Board, and a committee m for "director," as context requires. Notwithstanding said requirements, the time for regular meetings of Committees of the Board may be fixed by resolution of the Board or by the Committee of the Board. The time for special meetings of Committees of the Board may also be fixed by the Board. The Board may also adopt rules and regulations pertaining to the conduct of meetings of Committees of the Board to the extent that such rules and regulations are not inconsistent with the provisions of these bylaws.

8.4. ADVISORY COMMITTEES

The Corporation may have advisory committees as may from time to time be designated by resolution of the Board. Such advisory committees may consist of persons who are not directors. These additional committees shall act in an advisory capacity only, and shall be clearly titled as "advisory" committees.

**ARTICLE 9
EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

9.1. EXECUTION OF INSTRUMENTS

Except as otherwise provided in these bylaws, the Board may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

9.2. CHECKS AND NOTES

The Board shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts and other orders for payment of money. Such authority may be general or confined to specific instances.

9.3. DEPOSITS

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

9.4. GIFTS

The Board may accept on behalf of the Corporation, any contribution, gift, bequest, or devise for the charitable or public purposes of this Corporation.

9.5. REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The Chair or any other officer or officers authorized by the Board are each authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares of any other Corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized to do so by proxy or power of attorney duly executed by said officer. Notwithstanding the above, the Board shall vote or direct the Chair with respect to matters involving this Corporation's membership in other nonprofit corporations.

9.6. ALLIANCE FOR THE ARTS FUNDS

Funds received by the Corporation from Alliance for the Arts less the amount needed to cover the first 18 months of the Corporation's operations after the Effective Date shall be permanently restricted pursuant to a Memorandum of Understanding between the City of Thousand Oaks and the Corporation. Emergency distributions from such funds may be made upon the unanimous consent of the Board so long as the amount of the emergency distribution is not more than five (5) percent annually and does not invade principal.

**ARTICLE 10
CORPORATE RECORDS, REPORTS AND SEAL**

10.1. MAINTENANCE OF CORPORATE RECORDS

The Corporation shall keep at its principal office:

- 10.1.1. Minutes of all meetings of directors and committees of the Board, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- 10.1.2. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- 10.1.3. A copy of the Corporation's Articles of Incorporation and these bylaws as amended to date; and
- 10.1.4. Copies of all filings made to the Internal Revenue Service, the California Franchise Tax Board, California Secretary of State, and California Attorney General that the Corporation is required, by statute or regulation, to make generally available to the public.

10.2. DIRECTORS' INSPECTION RIGHTS

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical property of the Corporation. Any inspection under the provisions of this Article may be made in person or by an agent or attorney. The right to inspection includes the right to copy and make extracts.

10.3. ANNUAL FINANCIAL REPORT

- 10.3.1. The Board shall cause an annual report to be furnished not later than 120 days after the close of the Corporation's fiscal year to all directors of the Corporation, which report shall contain the following information in appropriate detail:
- 10.3.1.1. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year;
 - 10.3.1.2. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
 - 10.3.1.3. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year; and
 - 10.3.1.4. The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year.
- 10.3.2. The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without an audit from the books and records of the Corporation.
- 10.3.3. This requirement of an annual report shall not apply if the Corporation receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all directors.

10.4. ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS

The Corporation shall, within 120 days after the end of the Corporation's fiscal year, annually prepare and furnish to each director a statement of any transactions or indemnifications of the following kind:

- 10.4.1. Transaction (i) to which the Corporation, or its parent or subsidiary, was a party, (ii) in which an "interested person" had a direct or indirect material financial interest, and (iii) which involved more than \$50,000 or was one of several transactions with the same interested person involving, in the aggregate, more than \$50,000. For these purposes, an "interested person" is either:
- 10.4.1.1. Any director or officer of the Corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or
 - 10.4.1.2. Any holder of more than 10 percent of the voting power of the Corporation, its parent, or its subsidiaries.
- 10.4.2. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the Corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

10.4.3. Any indemnification or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director of the Corporation pursuant to section 5238 of the Nonprofit Law.

**ARTICLE 11
MISCELLANEOUS PROVISIONS**

11.1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the Corporation shall begin on the first day of July in each calendar year and end on the last day of June of the following year.

11.2. AMENDMENT OF BYLAWS

Subject to any provision of these bylaws or to any law applicable to the amendment of bylaws of a Nonprofit Public Benefit Corporation, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted only by the affirmative vote of five (5) directors in accord with Subsection 5.10.2.3 and ratification by the Thousand Oaks City Council.

11.3. AMENDMENT OF ARTICLES OF INCORPORATION

Any amendment of the Articles of Incorporation may be adopted by the affirmative vote of five (5) directors in accord with Subsection 5.10.2.2 and ratification by the Thousand Oaks City Council.

11.4. DETERMINATION OF MEMBERS

This Corporation shall have no voting members within the meaning of the Nonprofit Law.

11.5. CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Nonprofit Law shall govern the construction of these bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, the term a person includes both the Corporation and a natural person, and vice versa. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF THOUSAND OAKS
AND THE
THOUSAND OAKS CIVIC ARTS PLAZA FOUNDATION**

This Memorandum of Understanding ("MOU") is entered into this 15th day of November, 2016, by and between the Thousand Oaks Civic Arts Plaza Foundation, a nonprofit corporation, hereinafter referred to as "FOUNDATION," and the City of Thousand Oaks, hereinafter referred to as "CITY."

Recitals

- A. The CITY is a government agency that consists of nine (9) departments including the Cultural Affairs Department ("CAD"). The mission of CAD is to advance, support and promote diverse arts and cultural programs to strengthen CITY's economy and quality of life for its residents.
- B. FOUNDATION is a California nonprofit public benefit corporation exempt from federal income tax as described by section 501(c)(3) of the Internal Revenue Code (the "IRC"), and is qualified to receive tax-deductible contributions under section 170 of the IRC as well as tax-deductible bequests, devises, transfers or gifts under section 2055, 2106, or 2522 of the IRC.
- C. FOUNDATION is tasked with the specific purpose to advance, support and present visual and performing arts, cultural events, entertainers, and arts education at the Bank of America Performing Arts Center ("BAPAC"), to honor donors, and to protect the visual and performing arts legacy in Thousand Oaks and the Conejo Valley. It accomplishes this purpose in part by soliciting and raising funds as well as by accepting gifts, grants and other forms of revenue from any source consistent with the requirements of CITY. FOUNDATION also secures the principal of all endowments and investment funds. Contributions that are not designated for specific projects may be used to fund and support general programming and operations at the BAPAC, including FOUNDATION administrative costs and expenses.
- D. FOUNDATION and CITY each desire to promote a beneficial relationship between the organizations and endeavor to work collaboratively to fulfill the mission and purpose of each organization.

Effective Date of Agreement

This MOU will become effective only upon the certification by the Secretary of State of a statutory merger ("Merger Agreement") between Alliance for the Arts ("ALLIANCE"), a California nonprofit public benefit corporation, and FOUNDATION, which will follow ratification of the Merger Agreement by the City Council, execution of the Merger Agreement by ALLIANCE and FOUNDATION, and waiver by the California Attorney General's Office of its right to object to the merger. By signing this MOU, the parties agree that the following paragraphs will constitute a legally binding and enforceable agreement. In consideration of the foregoing recitals, the parties also agree to the mutual covenants and understandings set forth below:

1. FOUNDATION will:

- a. Support programs, policies, mission and purpose as outlined in FOUNDATION's Articles of Incorporation, bylaws and adopted corporate policies and resolutions for the benefit of the public through donations, gifts, grants, and other forms of revenue.
- b. Coordinate its funding goals, programs and campaigns with CAD.
- c. Be responsible for stewardship of donated and granted funds designated for future use to enhance BAPAC and its programs.
- d. Provide CITY with the most recent and up-to-date copies of its Articles of Incorporation and Bylaws, as they may be amended from time to time.
- e. Abide by all donations and naming rights policies of BAPAC as adopted by City Council.
- f. Solicit and accept donations as agreed to with CAD.
- g. In July of each year, prepare and provide an annual work plan to CITY. The work plan shall include:
 - i. Planned activities and operations for FOUNDATION.
 - ii. Annual Adopted Budget by FOUNDATION.
- h. In January of each year, prepare and provide a year-end report to CITY. The report shall include at least the following items:
 - i. Summary of FOUNDATION activities and operations for prior fiscal year.
 - ii. List of current directors and officers.
 - iii. An audited annual financial statement.
 - iv. A copy of the most recent annual federal tax filing (i.e., IRS Form 990 or 990-EZ).
 - v. List of special events, receipt of large donations, and other reasonable, relevant information requested by CITY.

2. The FOUNDATION will provide the following Programs and Services:

- a. Kids & the Arts
 - i. Funding for Kids & the Arts to ensure students have access to educational performances at BAPAC.
 - ii. Continue to fund the three (3) annual Pacific Festival Ballet school performances and one (1) Kingsman Shakespeare school performance through June 2017.
 - iii. Endeavor to expand the mix of educational activities presented and funded by FOUNDATION to include master classes and in-school residencies.

- b. Grants
 - i. The community grants program previously entitled "Alliance Performance Grants," to be called "Theatres Performance Credits" ("TPC").
 - ii. Provide TPC to support BAPAC resident companies and local nonprofit arts organizations in order to lower the cost of renting BAPAC venues.
 - iii. TPC will be available to BAPAC resident companies and Thousand Oaks-based nonprofit arts organizations presenting performances at BAPAC. The Board of the FOUNDATION will establish criteria for administering this program.

- c. CAP Presents Series
 - i. Foundation has served as the in-house presenting arm of BAPAC since 1994.
 - ii. The purpose of the CAP Presents Series is to enrich the lives of the citizens of Thousand Oaks and the surrounding communities through the presentation of local, national and international performing arts programming.
 - iii. FOUNDATION will act as the in-house presenting arm of the Thousand Oaks Civic Arts Plaza ("TOCAP") for various headline artists, family, educational, world music and other diverse performances throughout the season.

- d. Concessions
 - i. FOUNDATION shall hold and maintain the liquor license to serve BAPAC.
 - ii. FOUNDATION will be responsible for operating Concessions Services at BAPAC, including hiring staff or outside contractors to manage said services at both theatres.
 - iii. CITY will receive a percentage of net income from concession operations in an amount set forth in the Agreement For Concession Services between CITY and FOUNDATION.
 - iv. Contracts between CITY and FOUNDATION and FOUNDATION's agreement with the current outside vendor it uses for concession

operations are attached and may be amended by FOUNDATION from time to time as needed with additional written approval by City Council.

- v. FOUNDATION shall continue to provide this service pursuant to the existing agreement and any future amended agreements unless said agreement is terminated.

- e. Mural Program
 - i. Operation and management responsibilities of the Mural fundraising program, in which specific donors sponsor CITY approved artists to design and paint murals in the TOCAP parking structure, is transferred to FOUNDATION.
 - ii. FOUNDATION will confirm existing donor and artist agreements and the FOUNDATION will honor those agreements.
 - iii. FOUNDATION is authorized to secure donors to underwrite the public mural program in CITY's Parking Structure.

- f. Naming Rights
 - i. FOUNDATION may raise funds via naming opportunities at TOCAP. The right to market naming opportunities is non-exclusive. If a naming opportunity arises, prior to entering into any agreement or agreeing with the donor to enter into an agreement, FOUNDATION shall meet with the City Manager or his or her designee to discuss the terms of the proposed naming opportunity. FOUNDATION shall not enter into any naming rights agreement without written approval by City Manager or the designee. Unless waived by CITY, the following provisions shall govern any naming rights agreement:
 - 1. Each contract shall have a duration clause that takes into account the amount of the donation and the location and size of the signage requested. There shall be no naming rights agreement with a duration in perpetuity.
 - 2. All signage must comply with CITY's sign ordinance and related CITY policies regarding signs.
 - ii. CITY will have final approval of any naming rights agreement before it is executed with the naming party. City Manager or designee may approve said agreement.
 - iii. All net proceeds raised from naming rights agreements will be deposited into the Thousand Oaks Civic Arts Plaza Endowment Fund ("TOCAPEF").

- g. Donor Recognition
 - i. FOUNDATION agrees to honor any verified donor agreement received from ALLIANCE and identified in the Merger Agreement entered into between FOUNDATION and ALLIANCE after ratification of the Merger Agreement by City Council.

3. The CITY will:

- a.** Allow FOUNDATION to use the name and images of CITY and BAPAC subject to the approval of CITY. The parties shall enter into a separate license agreement that sets forth the terms and conditions for the use of the name and images of CITY by FOUNDATION.
- b.** Allow FOUNDATION's use of certain CITY facilities, subject to the limitations set forth in Section 7 of this MOU, as well as use of certain property, equipment and staff to the extent that they are available, and at a level subject to the approval of the CAD Director.
- c.** Work in good faith with FOUNDATION in its fundraising efforts.
- d.** Provide staffing and administrative support, including:
 - i.** Cultural Affairs Department
 - 1. CAD shall provide staff to support the activities of FOUNDATION on a pro-bono basis; however, City Council has the sole discretion to withdraw CITY staff support with six months' notice to the FOUNDATION's Board.
 - 2. Pursuant to the FOUNDATION's bylaws, the Executive Director of FOUNDATION shall be the CITY Director of CAD.
 - 3. CITY shall provide FOUNDATION with BAPAC attendance numbers and other reasonable and relevant information requested by FOUNDATION.
 - ii.** Finance Department
 - 1. CITY's Finance Director will serve as the Chief Financial Officer for FOUNDATION.
 - 2. Finance Department shall provide staff to support the financial activities of FOUNDATION on a pro-bono basis; however, City Council has the sole discretion to withdraw CITY staff support with six months' notice to FOUNDATION's Board. Financial activities include treasury, accounting, taxes, and audits.
 - 3. Finance shall provide FOUNDATION with quarterly and yearly financial information and other reasonable and relevant information requested by FOUNDATION.
 - 4. CITY will annually cause a certified audit to be performed on FOUNDATION for review by the Board and for public dissemination.

4. Term

- a.** The initial term of this MOU shall be ten (10) years, to December 31, 2026, unless sooner terminated as permitted under the terms of this MOU.

- b. The Agreement shall be renewed automatically for subsequent periods of five (5) years unless the MOU is terminated under the terms of this MOU or by written mutual agreement confirmed by majority vote of both City Council and FOUNDATION Board of Directors.

5. City Council Involvement in activities of FOUNDATION

- a. City Council ratification is required for any amendments to FOUNDATION's bylaws.
- b. City Council ratification is required for any amendments to FOUNDATION's Articles of Incorporation.
- c. City Council ratification is required for appointment of any and all FOUNDATION Board members.
- d. City Council shall have the authority to remove any FOUNDATION Board member without cause.
- e. City Council ratification is required for any amendments to FOUNDATION's Mission Statement.
- f. If the number of vacancies on the Board result in having three (3) or less directors, the Executive Director of the Foundation shall have the authority to create an advisory committee made up of persons with a history of support of the FOUNDATION, including the former ALLIANCE members and directors, working artists, and members of the community with a history of support and demonstrated interest in the arts. This committee shall recommend persons to fill those vacancies to either the remaining directors or the Executive Director, if there are none, who shall consider and formally elect directors to the Board, subject to City Council ratification.

6. Employment of ALLIANCE employee

- a. CITY will hire and pay salary and benefits for one (1) temporary at-will employee position as an hourly CAD Coordinator for approximately one (1) year, whose duties will be to assist FOUNDATION with development activities and donor engagement. FOUNDATION will reimburse CITY up to \$150,000 for transition expenses including transition employee salary and benefits for said employee.
- b. FOUNDATION shall review the continued long-term need for services and the funding mechanism to retain support staff. Nothing in this MOU shall require CITY to continue to fill the temporary position after December 22, 2017.

7. Use of BAPAC facilities

- a. CITY will provide FOUNDATION with access to TOTV for community outreach information programs consistent with CITY guidelines and any applicable state, federal, or local law, and subject to approval by City Manager or designee.
- b. Subject to availability, and with the exception of the Kavli Theatre and Scherr Forum, CITY will provide FOUNDATION with the use of public facilities and equipment at TOCAP, including meeting rooms, the Verizon Founders Room, the Licata Lounge, chairs, tables, parking spaces, storage and related facilities associated with the TOCAP at no charge. FOUNDATION will be responsible for any additional costs associated with the use of the facilities at TOCAP including, but not limited to, associated labor expenses. Access to and use of these facilities will be coordinated by CAD.

8. Investment and/or Endowment Funds

- a. FOUNDATION Board will elect a Treasurer and adopt an investment policy.
- b. ***FOUNDATION'S Endowment Fund***
 - i. On the later of June 30, 2017 or such later date mutually agreeable to FOUNDATION's Board of Directors and City Finance Director, CITY shall establish an agency fund or similar fund to benefit FOUNDATION by depositing \$4 Million with California Community Foundation (CCF), or another community foundation selected by the FOUNDATION Board and ratified by the CITY Council, and subject to the following restrictions:
 1. The fund agreement with CCF or other community foundation shall include the following provisions:
 - a. Annual distribution shall not exceed 5% of the fund's assets. Such amount may be distributed or withdrawn annually at the request of the FOUNDATION Board.
 - b. At no time may the initial \$4 Million principal or any additional contribution be invaded.
 - c. FOUNDATION has the right to transfer all funds to another community foundation or trust with similar terms subject to ratification by City Council.
 2. Parties acknowledge that the initial distribution from this fund shall not occur during the first 18 months after deposit of the funds into the fund.
- c. ***ALLIANCE Restricted Funds***
 - i. FOUNDATION will maintain and control approximately \$6 Million in investments that originated from ALLIANCE fundraising activities ("Alliance Funds").

- ii. FOUNDATION shall retain at least \$610,000 of Alliance Funds to cover its operations for the first 18 months after the effective date of the Merger Agreement, including \$150,000 for salaries/miscellaneous expenses, including those of the at-will employee identified in Section 6.a., \$160,000 for theatre support, and \$300,000 for current and future grant funding. The remaining amount of the Alliance Funds shall be permanently restricted as set forth in the bylaws and this MOU.
- iii. Other than for the initial disbursement as set forth in the preceding paragraph, or by any other method prescribed by this document, all Alliance Funds, together with the Carpenter Grant, will be permanently restricted under the terms of the bylaws and this MOU.
- iv. FOUNDATION Board, through its Treasurer, shall select a community foundation or investment manager(s) for the permanently restricted funds. Any Alliance Funds deposited in a community foundation or investment manager account shall be subject to the following terms:
 - 1. At no time may the initial principal of the Alliance Funds deposited be invaded (using a 12-quarter rolling average).
 - 2. Annual distributions of no more than 5% of the net assets are permitted so long as the original principal is not invaded.
 - 3. Emergency distributions of no more than an additional 5% annually may be requested with a unanimous vote of the FOUNDATION Board, so long as the initial principal is not invaded. Approval of emergency distributions shall be ratified by the City Council.

The initial distribution from the permanently restricted/endowed funds will not occur during the first 18 months after establishment of the fund or until Fiscal Year 2018-19.

d. ***Thousand Oaks Civic Arts Plaza Endowment Fund***

- i. Funds in the Ventura County Community Foundation's (VCCF) TOCAPEF shall continue to be subject to that agreement between CITY and VCCF dated July 27, 1993.
- ii. Any annual distributions or withdrawals from that fund shall be used solely to fund theatre operations.

e. ***Use of Funds***

- i. Income of FOUNDATION will be used solely to support its purpose and mission as set forth in its Articles of Incorporation and adopted policies.
- ii. FOUNDATION agrees to uphold and abide by all restrictions on any donor agreement entered into between a donor and Alliance.

f. ***Annual Contribution to City Theatres Fund***

- i. Theatre operations shall receive minimum funding as set forth below, which shall come from the TOCAPEF, and any delta shall be provided by FOUNDATION:
 - 1. 2016-17: \$300,000
 - 2. 2017-18: \$300,000

3. 2018-19: \$500,000
4. 2019-20: \$500,000
5. 2020-21: \$500,000
6. 2021-2022 and subsequent years: an annual increase of 2% from the previous year's minimum funding amount.

9. Policies & Reserves

- a. The FOUNDATION Board will establish and, from time to time, revise reasonable policies, and may use CITY policies for normal operations.
- b. Signatory policies shall be written procedures adopted by the FOUNDATION Board and will include a policy that the Executive Director will have authority to place offers for artists with performance fees valued at \$50,000 or less.
- c. FOUNDATION will work to establish a minimum \$500,000 reserve for CAP Presents. After this reserve threshold is met, additional profits from CAP Presents may be used to fund other programs pursuant to a vote of the FOUNDATION Board. This minimum reserve level is based on a \$2 Million presenting budget. If that budget increases, then the minimum reserve level shall grow as well so that the reserve level is always set at 25% of the presenting budget; however, it shall never be reduced to less than \$500,000 regardless of the presenting budget.
- d. Board will establish an appropriate reserve for concession operations. After that minimum reserve level is met, additional profits may be used to fund other programs pursuant to a vote of the FOUNDATION Board.
- e. FOUNDATION shall not purchase any goods or services on behalf of CITY without written permission from CITY.

10. Termination and Breach

- a. Either party may sue for specific performance/injunctive relief. FOUNDATION waives its right to object to a Petition for Injunctive Relief or Specific Performance brought by CITY.
- b. If CITY sues FOUNDATION for specific performance, injunctive relief, or under any other theory of law, FOUNDATION shall be prohibited from using the funds contributed by CITY identified in Section 8 above and any interest earned from said funds to defend itself against a claim, action or suit brought by CITY.
- c. Notwithstanding any action for specific performance or injunctive relief as set forth in section 10.a. or 10.b. of this MOU, either party may terminate this MOU for cause upon the occurrence by the other party of any breach of a material term of this MOU, including, without limiting

the foregoing, one or more substantial violations or omissions of an obligation required to be performed under this MOU pursuant to the following process:

- i. Non-breaching party provides written notification of material breach and provides breaching party 30 calendar days to cure.
 - ii. If, after 30 days, the dispute still exists, the parties agree to participate in private, nonbinding mediation, the cost of which is split evenly among the parties.
 - iii. If the parties are unable to resolve their dispute following mediation, the non-breaching party may terminate this MOU following 30 days' written notice.
- d. In the event of a termination following a material breach by FOUNDATION, FOUNDATION shall be prohibited from receiving any disbursement from the any of the funds described in Section 8 of this MOU.
- e. If FOUNDATION dissolves for any reason or ceases to operate at BAPAC, or if this MOU is terminated for any other reason whatsoever, FOUNDATION will cause CITY contribution of \$4 Million as outlined in Section 8 above, plus any net income earned from said amount, to be transferred to either another existing public charity exempt from federal income tax as described by section 501(c)(3) of the IRC and is qualified to receive tax-deductible contributions under section 170 of the IRC as well as tax-deductible bequests, devises, transfers or gifts under section 2055, 2106, or 2522 of the IRC, subject to City Council ratification, or to a similarly-structured corporation created at CITY's request for the specific purpose of advancing, supporting and presenting visual and performing arts, cultural events, entertainers, and arts education at TOCAP, honoring donors, and protecting the visual and performing arts legacy in Thousand Oaks and the Conejo Valley.

11. Insurance/Indemnification

- a. FOUNDATION will purchase Directors & Officers Liability insurance coverage with no less than \$1 Million in coverage limits. If said Directors & Officers Liability Insurance does not include employment practices liability coverage, FOUNDATION will purchase an Employment Practices Liability insurance policy with no less than \$1 Million in coverage limits.
- b. FOUNDATION may purchase and continually maintain commercial general liability, automobile, workers' compensation, property and special event insurance that will cover the events and other actions of the FOUNDATION as necessary and required by law.

- c. All FOUNDATION insurance policies shall name CITY as an additional insured and FOUNDATION shall provide CITY with current additional insured certificates issued by FOUNDATION's respective insurance carriers.
- d. Indemnification by CITY: CITY shall fully indemnify, hold harmless and defend FOUNDATION, its officers, directors, volunteers, agents, and employees from and against any and all costs, claims and expenses incurred by FOUNDATION in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by the negligence or willful misconduct of CITY or its agents, employees or others under CITY's control; provided, however, that CITY's obligations pursuant to this section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of FOUNDATION, its officers, directors, volunteers, agents, and employees.
- e. Indemnification by FOUNDATION: FOUNDATION shall fully indemnify, hold harmless and defend CITY, and CITY's officers, officials, directors, volunteers, agents, and employees from and against any and all costs, claims and expenses incurred by CITY in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by the negligence or willful misconduct of FOUNDATION or its officers, directors, volunteers, agents, employees or others under FOUNDATION's control; provided, however, that FOUNDATION's obligations pursuant to this section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of CITY or its officials, officers or employees.
- f. **NOTICE OF CLAIMS.** Any party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). FOUNDATION shall also comply with all claims and notice requirements a party must follow when seeking redress against a public entity as required by the California Government Claims Act (the "Act"). In addition to claims and notice requirements required under the Act, any Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced. Failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this section, unless such Indemnifying Party has been prejudiced by such failure, or the Indemnified Party was required to but failed to comply with the requirements set forth in the Act.

12. Assignment

- a. This MOU is not assignable or transferable by either party without the express, written consent of the other party.

13. Third Party Agreements

- a. Neither party shall enter into any contract that would obligate the other (and/or its facilities, equipment or personnel) without the prior written approval of the other party. Neither party has the authority to bind the other, by contract or otherwise, in any amount.

14. FOUNDATION Records

- a. FOUNDATION shall keep and maintain records and accounts of its operations, financial status and program expenditures for a period of not less than seven (7) years following each budget period. Such records and reports must be kept in the FOUNDATION office, and a duplicate may be maintained in the CAD office. Such records and reports shall cover all activities of FOUNDATION whether pursuant to this MOU or otherwise. CITY shall have the right to inspect, copy and audit such records and accounts during and/or following the close of any FOUNDATION fiscal year following reasonable notification to FOUNDATION.

15. Notice

- a. Each party shall provide written notice to the other party of any updated information that affects this MOU and any other notices by addressing a letter to the attention of the other party at 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362.

The parties, having been duly authorized by their respective Council or Board, execute the MOU on November 15, 2016.

CITY OF THOUSAND OAKS

Joel Price, Mayor

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, Interim City Manager

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO FORM:

Tracy M. Noonan, City Attorney

THOUSAND OAKS CIVIC ARTS
PLAZA FOUNDATION

Robert Biery, Chair

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF THOUSAND OAKS ESTABLISHING THE
THOUSAND OAKS CULTURAL AFFAIRS
COMMISSION AND RESCINDING RESOLUTION
2010-094

WHEREAS, on June 22, 2010 the City Council adopted Resolution No. 2010-062 which established the Thousand Oaks Cultural Affairs Commission (CAC) and rescinded Resolutions 2007-089 and 2009-082; and,

WHEREAS, on November 9, 2010 the City Council adopted minor changes to Resolution No. 2010-062 as follows: clarify language concerning Alliance Board members' membership on the CAC, Section 4. 1. b; allow CAC to set its own meeting dates, Section 8. 2.; allow CAC to change from Mason's Manual of Legislative Procedure to Rosenberg's Rules of Order for governance, 8.2.1; and deleting subsection 7. d; since said section was no longer necessary based on City's current practice regarding appointments and,

WHEREAS, Alliance, Foundation and City are collectively working on merging Alliance into the Foundation and Foundation adopting a new name: Thousand Oaks Alliance for the Arts;

WHEREAS, due to the merger, the membership of CAC should be amended to be consistent with the structure of the merger set forth above.

WHEREAS, to make these changes this Resolution rescinds and restates Resolution 2010-094 except for these minor changes.

NOW THEREFORE, the City Council of the City of Thousand Oaks resolves as follows:

Section 1. Establishment and Name.

There is hereby formally established a Thousand Oaks Cultural Affairs Commission (hereinafter known as "CAC") to serve as an advisory body to the City Council. The principle purpose of the CAC is to provide advice on matters pertaining to the arts and cultural development in the City with priority focus on the Thousand Oaks Performing Arts Center's Fred Kavli Theatre and Scherr Forum Theatre.

Section 2. Function and Duties.

The function and duties of the CAC are as follows:

- a. Develop public and private support for the Fred Kavli and Scherr Forum Theatres.
- b. Support the fundraising and endowment campaign of the Alliance of the Arts.
- c. Review and make recommendations to the City Council on rental rates and user charges for all groups presenting performances in the Theatres during the City's budget process. The City Council has final authority on all rental rates and user charges.
- d. Explore methods of obtaining private, local, state and federal grants to promote art and other cultural projects within the City.
- e. Render advice on artistic, aesthetic and other cultural aspects of community life. Examples include recommendations to City Council for art proposals such as the proposed Regional Art Museum, murals for City owned or controlled facilities or donation of art to City.
- f. All works of art to be acquired, commissioned or permanently displayed on City property shall be reviewed by the CAC, which shall judge the appropriateness of such work in relation to its aesthetic values and the site for which it is intended. These judgments shall be rendered at a public meeting at which time the community will be encouraged to participate. The CAC's judgments, as well as any public comments, shall then be transmitted to the City Council. City Council has final approval on any proposed works of art. No work of art accepted by the City may be removed, relocated or altered in any way without review and recommendation by the CAC and final approval by the City Council. "Work of art" as used in this section includes all forms of art of a permanent character intended for ornamentation, commendation or reviewing.
- g. Develop guidelines for becoming a Resident Group and consider recommendations for benefits granted to such groups. The guidelines and benefits shall be approved by City Council.
- h. Explore the development of a volunteer program for all art activities similar to City's VIP for police activities.
- i. Develop guidelines for art events becoming officially sponsored City events. Guidelines to be approved by City Council.
- j. Develop a criteria and process for awarding grants for the arts.

- k. Review and study reinstating City's Percent for Public Arts Program and make a recommendation to the City Council.
- l. Hold an annual brainstorming session on Theatres' programming opportunities. "Operations/Programming of the Theatres" Sub-committee will review and receive report of staff's programming recommendations for Foundation shows, and thereafter report out to CAC for general information purposes and review.
- m. Receive and expeditiously act on all special assignments made by the City Council and submit reports and recommendations to the City Council on these assignments.
- n. Special projects such as children's festivals or programming for special constituencies shall be recommended by the CAC to the City Council. The City Council has final authority on all special projects.
- o. The Cultural Affairs Commission shall submit an annual report to the City Council on their activities and any other periodic reports the City Council or CAC deem appropriate.

Section 3. Limitation on Duties.

- 1. CAC shall also have the following limitations on its duties, responsibility and authority:
 - a. Staff and personnel issues are not the duty or responsibility of the CAC. All staff are City employees subject to the rules and regulations established by the City Council.
 - b. The annual operating budget including personnel, operations and maintenance is not the responsibility of the CAC. The City Council retains complete authority over all budgets involving city funds.
 - c. The CAC shall have no authority for issues relating to the physical plant or use of Fred Kavli or Scherr Forum Theatres and facilities. The City Council retains complete authority over the Civic Arts Plaza facilities, as well as 403 Hillcrest facilities.

Section 4. Composition and Qualifications.

- 1. The CAC shall consist of eleven (11) members and all are voting members. The terms of the members shall be for a period of three years, terms being staggered. Members may be reappointed at the expiration of their term. The makeup of the members is:

- a. Eight members shall be appointed by City Council. Appointees are to be active in the performing arts, visual arts and/or philanthropy for the arts.
 - b. Two members shall be nominated by the Thousand Oaks Alliance for the Arts and confirmed by City Council.
 - c. One member shall be nominated by the Friends of the Civic Arts Plaza and confirmed by City Council.
2. All members of the Cultural Affairs Commission shall be at least 18 years of age and shall be a citizen of the United States. A majority of the members must reside within the Thousand Oaks city limits.
 3. Notwithstanding the foregoing, for the first appointments to the CAC 4 members will be appointed for 3 year terms, 4 members will be appointed for two year terms and three members will be appointed for a 1 year terms as determined by the City Council. Members are allowed to be reappointed after expiration of their term.

Section 5. Subcommittees.

1. The following standing subcommittees of the CAC are established:
 - a. Thousand Oaks Civic Arts Plaza Foundation
 - b. Theatre Operations
 - c. Community Outreach

CAC shall determine the number of members needed to accomplish the work of each subcommittee and shall appoint the members thereto.

2. The CAC may appoint such other subcommittees as may be required to accomplish the work of the CAC.

Section 6. Liaisons to CAC.

Representatives serving as liaisons to the Cultural Affairs Commission in a non-voting capacity are as follows:

- a. Arts Council of the Conejo Valley shall have one representative.
- b. Ventura County Arts Council shall have one representative.
- c. Conejo Recreation & Park District shall have one representative.

Section 7. Removal or Vacancy.

Members of the CAC may be removed from office or the office declared vacant in the following manner and for the following reasons:

- a. By a majority vote of the City Council.
- b. If a member shall be absent from 3 consecutive regular meetings of the CAC without the Commission's approval of such absences. If the CAC fails to approve such additional absences, the removal shall be automatic and no action by the City Council shall be necessary.
- c. If a member shall be absent from 4 regular meetings in any twelve month period without the CAC's approval of such absences. If the CAC fails to approve such additional absences, removal shall be automatic and no action by the City Council shall be necessary.

Section 8. Officers, Meetings and Rules.

1. The CAC shall observe the following organizational rules:
 - a. Annually elect a Chair and Vice Chair and such other officers as deemed necessary at a regular meeting of the Commission.
2. The CAC shall observe the following rules in the conduct of meetings and business:
 - a. Regular meetings shall be held every other month (September, November, January, March, May, and July) at Thousand Oaks City Hall as such time fixed annually by resolution of the CAC.
 - b. All regular meetings shall be open to the public.
 - c. City Councilmembers and the City Manager, when in attendance, shall have the right to be heard on all matters, however, shall have no vote as to any action to be taken.
 - d. Rules for the transaction of business shall be adopted and followed by the CAC.
 - e. A public record (meeting notes) shall be prepared indicating all resolutions, findings, and determinations of the CAC and shall be public information.
 - f. A special meeting may be called at any time as provided by the provisions as found in California Government Code Sections 54950, et. seq., as the same may be amended from time to time hereafter.
 - g. All actions and business by the CAC shall be conducted by the CAC as a whole, unless a representative or subcommittee thereof is formally appointed by the Commission to act on its behalf.

- h. It shall be the responsibility of the CAC to be represented at meetings of the City Council and other commissions when matters of joint concern are to be discussed, and to advise the Chair of other commissions of pending CAC matters that might be of concern to that commission.
- i. No decision of the CAC requiring City funds shall be final and binding on the City unless approved by the City Council or unless authority for such decision making has been granted to the CAC by the City Council.
- j. All meetings shall comply with the procedures and substantive regulations of California Government Code Sections 54950, et.seq., as the same may be amended from time to time hereafter.
- k. A quorum of the CAC must be present in order to transact business and to act. A quorum shall occur only when 6 or more members are present.
- l. In the absence of specific rules of order and procedure, the conduct of meetings shall be governed by Rosenberg's Rules of Order.

Section 9. Funding, Expenditures and Assistance.

The individual members of the CAC shall receive no compensation for their services. CAC may request and receive reasonable assistance from City staff in terms of clerical help, reprographic services, meeting space, and professional assistance. Any project not already assigned to CAC requiring over 20 hours or more of staff time must be authorized by City Council. Any requests for financial assistance shall be submitted by City staff on behalf of the CAC and processed through the normal City budgeting process.

The CAC may, with the approval of the City Council, solicit and accept gifts and grants from any source to assist in the performance of its functions. Such funds must be deposited in a specifically designated City account, or other City account authorized by the City Council, and may only be spent as authorized by the City Council.

[Remainder of page intentionally left blank]

Section 10. Rescission.

1. Council Resolution No. 2010-094 is hereby rescinded and superseded by this resolution.

Passed and Adopted

Joel R. Price, Mayor
Thousand Oaks, California

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, Interim City Manager

APPROVED AS TO FORM:
Office of the City Attorney

Patrick J. Hehir, Assistant City Attorney

November 14, 2016

Thousand Oaks City Council

Today's agenda Item 8A, Alliance for the Arts

Council,

Maybe you can help me.....I'd like to know where I can get 4.5% return on my investments.

I'd also like to know how the Council can justify spending General Fund money of \$4 million, taxed from all Thousand Oaks residents, and use it to benefit the few who can afford and attend shows.

You should instead be figuring out a way to keep our roads maintained.

John Fonti

2016 NOV 14 PM 12:40
CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

TO COUNCIL 11-15-16
AGENDA ITEM NO. 8.A.
MEETING DATE 11-15-16

Janis Daly - Fwd: Cctoaks16 nov15 16 sports funding comm CAP consolidation \$4 million + Selig Solar YES!

From: CityClerk
To: Rodriguez, Cyndi; Daly, Janis
Date: 11/15/2016 10:00 AM
Subject: Fwd: Cctoaks16 nov15 16 sports funding comm CAP consolidation \$4 million + Selig Solar YES!

For supplemental?

<i.quidwai@gmail.com> wrote:

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2016 NOV 15 AM 10:31
CITY CLERK'S OFFICE
CITY OF THOUSANDS OAKS

Nov 15 2016 TOCC agenda 10 A

Janna Covell Manager

This is the committee , grant that cost our city manager his JOB!

Why is there NO memo from the committee

MINUTES not accurate:

Oct 18, 16 New members took oath; but NO names, WHY?

Says meetings Oct 24-25 but those minutes are not to be found.

What happened to the legitimate concern of Scott that the scope of the approved project was changed, hence disqualifying the grant. This is a basic rule of the process.

Why is the report sanitized to not have a word about the shenanigans of the past.

Please provide info before meeting.

Nick Quidwai

concernedcitizensthoudsandoaks@gmail.com

805-390-2857

Cctoaks16 nov15 16 sports funding comm

TO COUNCIL 11-15-16
AGENDA ITEM NO. 8.A., 9.A., 10A.
MEETING DATE 11-15-16

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Nov 15 2016 TOCC agenda 9 A

Harry Selvin is a local hero that helps make TO special. He has the BEST buildings in the city. Has done wonders & the Palm Gardens is an example.

Every one talks about green buildings; energy independence but when it comes to building to building & approving we have people like the Planing Commisioners that say no!

We urge prompt approval of this trail blazing new way to provide solar energy; we need to be bold and go for new ways that are a step in the right way.

IT IS THE BUSINESS THAT IS TAKING ALL THE RISKS!

Ridiculous for government to say no!

We urge a yes vote!

Nick Quidwai

ALSO 8 A CAP MERGER

It is about time that city acknowledges that we were sold a bill of crap that no tax payer funds will be used to support the theatres; calling CCitz naysayers for decades deserves an apology. No theaters run without an apology. Thanks for correcting that this is NOT the biggest theater between LA & San Fran!

Glad that you are establishing an endowment; however it is long overdue to have an additional endowment for social services; the current endowment does not encourage new programs; + community needs have grown exponentially. We need an endowment as was promised by former city manager Scott Mitnick.

Nick Quidwai

concernedcitizensthoudsandoaks@gmail.com

805-390-2857 Nov 15 16 agenda alliance consolidation Selvin solar

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Nov 15 2016 TOCC agenda 10 A

Janna Covell Manager

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Cctoaks16 nov15 16 sports funding comm

Nick Quidwai

Newbury Park CA 91320-1821 USA I.quidwai at gmail.com

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