

**BYLAWS
OF
HORTON PLAZA THEATRES FOUNDATION**
A California Nonprofit Public Benefit Corporation

**ARTICLE 1
OFFICES**

Section 1.1 Principal Office. The Corporation's principal office shall be fixed and located at such place within the City of San Diego as the Board of Directors (herein called the "Board") shall determine. The Board is granted full power and authority to change the principal office from one location to another within the City of San Diego.

Section 1.2 Other Offices. Branch or subordinate offices may be established at any place or places by the Board at any time within the City of San Diego.

**ARTICLE 2
PURPOSE**

Section 2.1 Legitimate Theatres. The specific purpose of the Corporation is to establish, operate, and maintain one or more legitimate theatres in the City of San Diego, State of California, for the production and presentation of dramatic, musical, and artistic works and for the promotion, either alone or in cooperation with other nonprofit organizations or governmental entities, of theatre and fine arts in the City of San Diego, through educational, cultural and artistic programs.

Section 2.2 Limitations. This Corporation is a nonprofit, nonsectarian, nonracial, nonpolitical organization. The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net earnings, contributions, or assets of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, trustees, officers, or other private persons, except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the Articles and otherwise in these Bylaws. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation. This Corporation shall not participate or intervene in any political campaign (including the publication or distribution of statements) on behalf of any candidate for public office.

ARTICLE 3 MEMBERS

This Corporation shall have no voting members within the meaning of the Nonprofit Corporation Law ("Law"). The Corporation's Board of Directors may, in its discretion, admit individuals to one or more classes of nonvoting members; the class or classes shall have such rights and obligations as the Board finds appropriate.

ARTICLE 4 BOARD OF DIRECTORS

Section 4.1 Powers. Subject to the limitations of the Articles of Incorporation and these Bylaws, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the Corporation to any person(s), a management company or committees 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. No assignment, referral or delegation of authority by the Board or anyone else shall preclude the Board from exercising the authority required to meet its responsibility for the conduct of the activities of the Corporation and the Board shall retain the right to rescind any such delegation.

Section 4.2 Limitation of Powers. Notwithstanding the general powers set forth in Section 4.1, the Board shall not have the power to select plays to be produced and performed in the Corporation's facilities, or to make other artistic and literary decisions. The Board shall, however, be charged with the selection of theatre companies which will be permitted to stage productions in the Corporation's facilities.

Section 4.3 Number, Term and Qualifications of Directors.

- (a) The number of directors shall be not less than seven (7) nor more than thirty-five (35), the exact number to be fixed at seven (7) until changed by resolution of the Board. At all times the authorized number of directors shall be an odd number. In no event shall the term of a director be shortened by a reduction in the size of the Board.
- (b) The City Council of the City of San Diego shall appoint fifty percent (50%) plus one (1) of the authorized number of directors, and the balance shall be appointed by Horton Plaza LLC, as successor in interest to Ernest W. Hahn, Inc.

- (c) At the discretion of the Board, the Board may from time to time appoint honorary or advisory members who shall be non-voting members of the Board.
- (d) Directors shall be appointed for a term of three (3) years, as follows:
 - (i) City Directors: Directors appointed by the City shall serve a term of three (3) years.
 - (ii) Horton Plaza LLC Directors: All directors appointed by Horton Plaza LLC shall serve a term of three (3) years.

Each director shall hold office until the expiration of the term for which appointed and until a successor has been appointed and qualified. Each successor director shall be appointed by the same entity appointing his or her predecessor and to the same term of years as his or her predecessor.

Each director's term shall end and his or her successor director shall take office at noon on June 7 of each year in which a successor director is appointed to such office under these Bylaws, except that in the event of a vacancy in any office, a successor director shall take office as soon as he or she is qualified and duly appointed to office.

A director appointed by the City may be appointed a second consecutive term, but may not be appointed to a third consecutive term. A partial term served by a director appointed by the City to fill a vacancy shall not be counted for purposes of the foregoing limitation. A director appointed by the City may be reappointed to the Board after a lapse of one year following completion of two consecutive terms in office.

Directors appointed by Horton Plaza LLC shall not be subject to the foregoing limits on successive terms.

- (e) The following should be observed in the appointment of directors: experience in group decision-making; demonstrated ability to be objective and deliberative in the approach to complex multi-dimensional problems; willingness to contribute time and effort to the affairs of the Corporation; willingness to abide by resolutions dealing with conflict of interest; and representation of a cross section of the community and from a variety of career categories.
- (f) Each director shall be a resident of San Diego County, California at the time he or she takes office.

Section 4.4 Resignation and Removal. Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any director may resign effective upon giving written notice to the President, the Secretary or the Board, unless the notice specifies a

later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be appointed before such time, to take office when the resignation becomes effective. The City Council of the City of San Diego may remove any director appointed by the City Council. Horton Plaza LLC may remove any director appointed by Horton Plaza LLC.

Section 4.5 Vacancies. A vacancy or vacancies on the Board shall be deemed to exist in the case of the death, resignation or removal of any director or if the authorized number of directors is increased.

The Board may declare vacant the office of a director who has been absent from three (3) or more consecutive meetings, or has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order or judgment of any court to have breached any duty arising under Article 3 of the California Nonprofit Public Benefit Corporation Law.

Vacancies on the Board shall be filled in the same manner as the director whose office is vacant was selected. Each director so appointed shall hold office until the expiration of the term of the replaced director and until a successor has been appointed and qualified.

Section 4.6 Rights of Inspection. 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 properties of the Corporation.

Section 4.7 Fees and Compensation. Appointed directors shall not receive any compensation for their services; however, the Board may approve the reimbursement of a director's actual and necessary expenses incurred in the conduct of the Corporation's business.

Section 4.8 Nonliability of Directors and Certain Officers.

- (a) Volunteer Directors. Pursuant to Section 5239 of the Nonprofit Corporation Law of the State of California, there shall be no personal liability to a third party on the part of a volunteer director or volunteer officer of this Corporation caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all the following conditions are met:
 - (i) The act or omission was within the scope of the director's or officer's duties;
 - (ii) The act or omission was performed in good faith;
 - (iii) The act or omission was not reckless, wanton, intentional, or grossly negligent;
 - (iv) The Corporation has complied with the requirements of subsection (b) below.

- (b) Requirement to Obtain Liability Insurance. In order to obtain the full benefit of the limitation of liability set forth in subsection (a) above, the Corporation and the directors shall make all reasonable efforts in good faith to obtain liability insurance in the form of a general liability policy for the Corporation or a director's and officer's liability policy.

Section 4.9 Indemnity for Litigation. The Corporation hereby agrees to exercise the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a director, officer, employee or other agent (as defined in Section 317 of the California Corporation Code) of the Corporation, to the full extent allowed under the provisions of Section 5238 of the Nonprofit Public Benefit Corporation Law of the State of California relating to the power of a Corporation to indemnify any such person. The amount of such indemnity shall be so much as the Board of Directors determines and finds to be reasonable, or, if required by said Section 5238, the amount of such indemnity shall be so much as the court determines and finds to be reasonable.

Section 4.10 Standard of Conduct. Pursuant to Section 5231 of the California Nonprofit Public Benefit Corporation Law, a director shall perform the duties of a director, including duties as a member of any committee of the Board upon which the director may serve, 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. In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Corporation whom the director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence. Provided, that in any such case, the director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

ARTICLE 5 MEETINGS OF THE BOARD

Section 5.1 Legal Compliance. Notwithstanding any other provision in these Bylaws, all meetings of the Board shall be held in compliance with the requirements of the Brown Act and any other applicable requirements under the Law.

Section 5.2 Place of Meetings. Meetings of the Board may be held at the principal office of the Corporation or at any other place within or without the State of California which has been designated in the notice of the meeting, or if there is no notice, from time to time by resolution of the Board.

Section 5.3 Annual Meetings. The Board shall hold an annual meeting each April for the purpose of organization, selection of officers, and the transaction of other business.

Section 5.4 Regular Meetings. Regular meetings of the Board, including the annual meeting, shall be held without call or notice on such dates and at such times and places as may be from time to time fixed by the Board.

Section 5.5 Special Meetings. Special meetings of the Board for any purpose(s) may be called at any time by the President, Secretary, Executive Director, or any two directors.

Special meetings of the Board shall be held upon four (4) days notice by first class mail or forty-eight (48) hours notice given personally or by telephone, including a voice messaging system or by electronic transmission that are fixed by the Board or required by the director.

Section 5.6 Meetings by Telecommunication Equipment. Any meeting may be held by conference telephone or other communications equipment permitted by the Law and the Brown Act, as long as all directors participating in the meeting can communicate with one another and all other requirements of the Law and the Brown Act are satisfied. All such directors shall be deemed to be present in person at such meeting.

Section 5.7 Quorum. A majority of the directors then in office (excluding non-voting directors) shall constitute a quorum. Except as otherwise provided in these Bylaws or by any applicable law, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is an act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting. Directors may not vote by proxy.

Section 5.8 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any directors' meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be

given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 5.9 No Action Without a Meeting. The Board may not take any action by unanimous written consent without a meeting and without prior notice as required by this Article 5 under any circumstances. Any such action by the unanimous written consent of the Board shall be invalid.

Section 5.10 Conduct of Meetings. Meetings of the Board shall be presided over by the President, or in her or his absence, by the Vice President, or in the absence of the President and Vice President, by a person chosen by the majority of directors present at the meeting.

ARTICLE 6 OFFICERS

Section 6.1 Officers. The officers of the Board shall be a President, Vice President, Secretary, and Treasurer. All officers except those elected or appointed under Section 4.3 must be directors. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President. The officer of the Corporation shall be the Executive Director and shall be an employee of the Corporation.

Section 6.2 Election. The officers of the Board, except such officers as may be elected or appointed in accordance with the provisions of Section 6.3 or Section 6.6, shall be chosen at the annual meeting by and shall serve at the pleasure of the Board, and shall hold their respective offices until their resignation, removal or other disqualification from service, or until their respective successors shall be elected.

Section 6.3 Subordinate Officers. The Board may elect, and may empower the President to appoint, such other officers as the business of the Board or Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 6.4 Removal. Any officer may be removed, either with or without cause, by the vote of a majority of the Board at any regular or special meeting. Any such removal shall be without prejudice to the rights, if any, of an officer under any contract of employment.

Section 6.5 Resignation. Any officer may resign at any time by giving written notice to the Board, or to the President, or the Secretary of the Board, but without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at a later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.6 Vacancy. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6.7 President. The President shall, when present, preside at all meetings of the Board and Executive Committee. The President is authorized to execute in the name of the Corporation all the contracts and other documents authorized either generally or specifically by the Board to be executed by the Corporation, except when by law the signature of the Executive Director is required. The President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

Section 6.8 Vice President. The Vice President shall, in the absence of the President, or in the event of her or his inability or refusal to act, perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President. The Vice President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

Section 6.9 Secretary. The Secretary, or her or his designee, shall be custodian of all records and documents of the Corporation which are to be kept at the principal office of the Corporation, shall act as Secretary of all the meetings of the Board, and shall keep the minutes of such meetings in books proposed for that purpose. The Secretary, or her or his designee, shall attend to the giving and serving of all notices of the Corporation. The Secretary shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

Section 6.10 Treasurer. The Treasurer of the Corporation shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts and disbursements.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated from time to time by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, and shall render to the President and directors, upon request, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall present to the Board at all regular meetings an operating statement and report since the last preceding regular meeting of the Board. The Treasurer shall cause the books of account to be audited each year by a certified public accountant and a report of such audit shall be presented to the Board not later than the fourth month following the close of the fiscal year. The Treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

Section 6.11 Executive Director.

- (a) Duties. Subject to the control, advice and consent of the Board, the Executive Director shall, in general, supervise and conduct the activities and operations of the Corporation, shall keep the Board fully informed and shall freely consult with the Board concerning activities of the Corporation, and shall see that all orders and resolutions of the Board are carried into effect. The Executive Director shall be empowered to act, speak for, or otherwise represent the Corporation between meetings of the Board. The Executive Director shall be authorized to contract, receive, deposit, disburse, and account for funds of the Corporation; to keep and maintain, or cause to be kept and maintained, adequate and correct accounts of its assets and liabilities, arrange for the annual audit, and other matters customarily included in the financial statements. The Executive Director shall execute in the name of the Corporation all contracts and other documents authorized either generally or specifically by the Board to be executed by the Corporation and to negotiate all material business transactions of the Corporation. The Executive Director shall perform such other duties as may be prescribed from time to time by the Board.
- (b) Subject to the confirmation by the Board with a two-thirds (2/3) vote, the President shall appoint a qualified candidate to the position of Executive Director.
- (c) Review and Compensation. The Board shall set the compensation of the Executive Director. With the Board's input, the Executive Committee, or designee, shall perform an annual performance evaluation.
- (d) Suspension; Termination. The Board shall have the right at any time to suspend and terminate the Executive Director, with or without cause.
- (e) Vacancy. In the event of a vacancy in the office of the Executive Director, for whatever reason, or in the event the Executive Director is unable to or refuses to perform the duties set forth herein or assigned by the Board, the Board shall select a qualified director of the Corporation to serve as the interim Executive Director until Executive Director is able to return to her or his duties or a permanent replacement is selected by the Board.

ARTICLE 7
COMMITTEES

Section 7.1 Appointment of Committees. The Board of Directors may appoint an Executive Committee and such other committees, as the Board from time to time deems necessary or appropriate to conduct the business and further the objectives of this Corporation. The appointment by the Board of an Executive Committee and any other committee having the

authority of the Board shall be by resolution adopted by a majority of directors then in office. The Executive Committee and any other committee having authority of the Board shall consist of two (2) or more directors.

Section 7.2 Powers and Authority of Committees. The Board of Directors may delegate to the Executive Committee or any other committee having the authority of the Board, any of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, except the following:

- (a) The approval of any action for which the Nonprofit Public Benefit Corporation Law of the State of California also requires the approval of members of a Corporation, in which event the approval of the Board of Directors shall be required.
- (b) The filling of vacancies on the Board or in any committee, which has the authority of the Board.
- (c) The fixing of compensation of the directors for serving on the Board or on any committee.
- (d) The amendment or repeal of Bylaws or the adoption of new Bylaws.
- (e) The amendment or repeal of any resolution of the Board, which by its express terms is not so amendable or repealable.
- (f) The appointment of committees of the Board or the members thereof.
- (g) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected,
- (h) The approval of any self-dealing transaction.

ARTICLE 8 OTHER PROVISIONS

Section 8.1 Validity of Instruments. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by the President or Vice President and the Secretary or Treasurer of the Corporation shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person(s) and in such manner as from time to time shall be determined by the Board and, unless so authorized by the Board, 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 for any purpose or amount.

Section 8.2 Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws. Words in these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions and headings in these Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision.

Section 8.3 Fiscal Year. The fiscal year of the Corporation shall commence on July 1 and end June 30.

ARTICLE 9 AMENDMENT

Section 9.1 Bylaws. These Bylaws will be reviewed not less often than once every four (4) years and documented as to date of review. New Bylaws may be adopted or these Bylaws may be amended or repealed by two-thirds (2/3) vote of the Board, provided notice of such proposed amendment has been given to the Board at least seventy-two (72) hours in advance of the vote. New or amended Bylaws shall be filed with the City Clerk of the City of San Diego after adoption by the Board.

CERTIFICATE OF ADOPTION OF BYLAWS

I certify that I am the elected and acting Secretary of Horton Plaza Theatres Foundation, a California nonprofit public benefit Corporation, and that the foregoing Bylaws, comprising of 12 pages, constitutes the Bylaws of said Corporation as adopted at a meeting of the Board of Directors held on July 11, 2017.

IN WITNESS WHEREOF, I have signed my name to this certificate on July 11, 2017.



Larry Marshall, Secretary