



PUBLIC FACILITIES AUTHORITY

Rusty Paul, Chairperson

John Paulson
Ken Dishman
Chris Burnett
Gabriel Sterling
Tibby DeJulio
Andy Bauman

Tuesday, December 5, 2017

Public Facilities Authority

Following Work Session

SPECIAL CALLED MEETING OF THE CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY (THE “AUTHORITY”)

City Council Chambers

1. **PFA17-59 CALL TO ORDER** – Chairperson Rusty Paul
2. **PFA17-60 ROLL CALL** – Secretary Michael Casey
3. **PFA17-61 APPROVAL OF MEETING AGENDA**

NEW BUSINESS

4. **PFA17-62** Approval of the minutes from the November 7, 2017 Public Facilities Authority meeting
5. **PFA17-64** Resolution to Approve Recommendation of the Sandy Springs Foundation, Inc. to Name the City Springs Performing Arts Center Theater
(Presented by John McDonough, General Manager)
6. **PFA17-65 ADJOURNMENT**

TO: Members of the City of Sandy Springs Public Facilities Authority

FROM: John McDonough, General Manager of the Authority

DATE: November 30, 2017 for submission on the December 5, 2017 Authority Meeting agenda

ITEM: Resolution to Approve Recommendation of the Sandy Springs Foundation, Inc. to Name the City Springs Performing Arts Center Theater

Background and Discussion:

On November 7, 2017, the City of Sandy Springs Public Facilities Authority ("Authority"), in a special called meeting, approved opportunities and criteria for naming assets owned by the Authority in City Springs, including the Performing Arts Center main theater.

Tricia and Kenneth G. Byers, Jr., residents of the City with significant personal and business ties to the community for many years, made a generous donation of \$2,500,000.00 ("Donation") to the Sandy Springs Foundation, Inc. ("Foundation") pursuant to the terms of a Gift Agreement ("Agreement"). The Donation will be used to support the Foundation's mission, including education, programming and operations at the Performing Arts Center.

In the Agreement, the Byers requested that the Foundation consider a recommendation to the Authority to name the PAC Theater "Byers Theatre". The Foundation has accepted the Donation, researched the Donors' request for a recommendation for naming the PAC Theater in light of applicable criteria, and now presents its recommendation to the Authority for the Naming ("Recommendation"), which is attached to the resolution.

Recommendation:

The General Manager recommends approval of the attached resolution and Recommendation.

Attachments:

Resolution with attached Recommendation.

**STATE OF GEORGIA
COUNTY OF FULTON**

**RESOLUTION TO APPROVE RECOMMENDATION OF THE SANDY
SPRINGS FOUNDATION, INC. TO NAME THE CITY SPRINGS
PERFORMING ARTS CENTER THEATER**

WHEREAS, on November 7, 2017, the City of Sandy Springs Public Facilities Authority (“Authority”), in a special called meeting, approved opportunities and criteria for naming assets owned by the Authority in the new City development known as “City Springs”; and

WHEREAS, the City Springs Performing Arts Center Theater (“PAC Theater”) is an asset owned by the Authority at City Springs subject to naming opportunities; and

WHEREAS, Tricia and Kenneth G. Byers, Jr. (“Donors”) have made a generous donation (“Donation”) to the Sandy Springs Foundation, Inc. (“Foundation”) and have requested the Foundation to consider a recommendation to the Authority to name the PAC Theater “Byers Theatre” (“Naming”); and

WHEREAS, the Foundation has accepted the Donation, has researched the Donors’ request for a recommendation for Naming the PAC Theater, and now desires to present a recommendation to the Authority for the Naming (“Recommendation”), pursuant to the terms and conditions of the Recommendation; and

WHEREAS, a copy of Recommendation is attached to this resolution; and

WHEREAS, the Authority has reviewed the Recommendation and hereby desires to approve the Naming, subject to all terms and conditions of the Recommendation;

NOW, THEREFORE, BE IT RESOLVED by the City of Sandy Springs Public Facilities Authority, as follows:

1. The Foundation’s Recommendation to name the PAC Theater “Byers Theatre” is hereby approved, subject to all terms and conditions of the Recommendation, as attached to this resolution; and
2. So long as the Donors comply with the terms and conditions of the Recommendation, the Naming shall be binding on the Authority; and
3. The General Manager and the attorney for the Authority are hereby authorized to take such actions deemed necessary or prudent to effectuate the intent of this resolution.

RESOLVED this the _____ day of December, 2017.

Approved:

Russell K. Paul, Chairman

Attest:

Michael D. Casey, Secretary

(Seal)

ATTACHMENT

**RECOMMENDATION OF THE SANDY SPRINGS FOUNDATION, INC.
FOR NAMING THE PERFORMING ARTS CENTER THEATER AT CITY SPRINGS**

Recommendation for Naming

Date: December 5, 2017

For: City of Sandy Springs Public Facilities Authority ("PFA")

From: Executive Committee / Sandy Springs Foundation, Inc. ("Foundation")

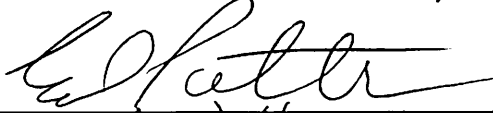
Re: Recommendation for Naming of City Springs Performing Arts Center Theater ("PAC Theater")

Tricia and Kenneth G. Byers, Jr. ("Donors") have made a generous donation ("Donation") to the Foundation. The Donors have requested that the Foundation consider a recommendation to the City of Sandy Springs Public Facilities Authority ("PFA") to name the PAC Theater "The Byers Theatre" for a period of twenty (20) years ("Naming"). The Donors understand that the PFA has sole discretion as to any naming of City Springs' assets, including the PAC Theater, and that even with a recommendation from the Foundation, there is no assurance the Naming will be approved by the PFA.

The Foundation has reviewed and researched the Donors' request for Naming contained in the Agreement attached hereto ("Agreement"), and hereby recommends to the PFA that it name the PAC Theater "The Byers Theatre" in accordance with the Agreement for the following reasons:

- A. The Donation is significant in relation to the Naming request.
- B. Donors have significant ties to the City of Sandy Springs ("City"), with a long residency and history of service and participation in the community. The request for Naming is consistent with the values and standards of the City.
- C. The request for Naming includes an earmark of twenty percent (20%) of the Donation to underwrite the operations of the City Springs Theatre Company that will rent the PAC and provide superlative musical theater for the citizens of the City.
- D. The request for Naming includes a legacy bequest of less than twenty percent (20%) from the Donors' estate.

SANDY SPRINGS FOUNDATION, INC.



Name: Ed Patterson

Title: Vice Chair, Sandy Springs Foundation

Gift Agreement

This Gift Agreement ("Agreement"), effective as of Nov 27, 2017 ("Effective Date"), is made and entered into by and between Tricia and Kenneth G. Byers, Jr., whose address is 6285 Barfield Road, Atlanta, GA 30328 ("Donor") and the Sandy Springs Foundation, Inc. ("Foundation") to acknowledge the Donor's generous gift to the Foundation to be used in any way consistent with the purpose and mission of the Foundation. Based upon the recitals below, and in consideration of the mutual promises and benefits hereunder, the parties hereto hereby agree as follows:

RECITALS

Donor wishes to make a charitable gift to the Foundation as set forth in this Agreement.

The Foundation desires to accept such gift, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. **Gift.** Donor hereby pledges to the Foundation the following gift: \$2,500,000 ("Gift").
2. **Payment of the Gift.** The Gift is an irrevocable pledge to the Foundation. Payments in support of this pledge shall begin immediately upon the execution of this Agreement with an initial payment of \$500,000 and will continue thereafter according to the following schedule:

Amount of Payment by Donor

Due Date

\$400,000

December 31, 2018

\$400,000

December 31, 2019

\$400,000

December 31, 2020

\$400,000

December 31, 2021

\$400,000

The earlier of: December 31, 2026, or the death of Kenneth G. Byers, Jr.

Donor may accelerate the payment of any or all of this pledge at any time in Donor's discretion so long as the cumulative total of all Gift payments meets the foregoing schedule. Payments shall be paid by Donor to the Foundation via check, electronic funds transfer, stocks or other securities, or other methods acceptable to Donor and the Foundation.

3. **Use of the Gift.** The Gift shall be used for any purposes within the Foundation's mission. The initial down payment of Five Hundred Thousand Dollars (\$500,000) shall be earmarked and directed through the Foundation to the City Springs Theatre Company ("Theatre Company"). The Theatre Company shall use the earmarked funds solely to benefit education, programming and operations of the Sandy Springs Performing Arts Center ("SSPAC"). The Foundation shall obtain assurances from the Theatre Company before providing the earmarked funds that such funds will be used as stated above.
4. **Acknowledgment.** The Foundation acknowledges that the Donor desires a recommendation from the Foundation to the City of Sandy Springs Public Facilities Authority ("PFA") to name the SSPAC Theatre "The Byers Theatre," with the naming to remain in place for a period of twenty (20) years. Donor acknowledges that approval of any recommendation for naming is entirely within the discretion of the PFA, and that the Foundation has no authority to make a commitment or to take any action in that regard.
5. **Termination.** In addition to any rights and remedies available at law:
 - a. **Non-Payment.** In the event of any default in payment of the Gift as provided in this Agreement:
 - i. The Foundation may terminate this Agreement and shall have no further obligation or liability to the Donor and shall not be required to return any portion of the Gift already paid; and
 - ii. The Foundation may recommend to the PFA revocation of any naming approved by the PFA as a result of a recommendation made by the Foundation; and

b. **Change of Circumstances.** In the unlikely event the Foundation determines in its reasonable and good faith opinion that circumstances have changed such that the naming granted for the Donor would adversely impact the reputation, image, mission or integrity of the City, the PFA, the SSPAC Theater, or the Foundation, the Foundation may terminate this Agreement and recommend to the PFA the immediate termination of any naming approved by the PFA for the Donor.

Donor acknowledges that the Donor shall have no right or claim against the City, the Foundation, or the PFA for termination of this Agreement or revocation of any naming as provided in this section.

7. **Publicity.** For purposes of publicizing the Gift, the Foundation shall have the right, without charge, to photograph the Donor and use the names, likenesses, and images of the Donor in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing SSPAC's development and business activities. This right of publicity is subject to the approval of the Donor.
8. **Assignment.** This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.
9. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.
10. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Subject to the sovereign immunity of the State of Georgia, any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Fulton County, Georgia, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.
11. **Foundation Executive Committee Approval.** This Agreement and the recognition provided for herein are subject to the approval of the Executive Committee of the Foundation and this Agreement shall not be effective unless and until approved by the Executive Committee.

DONOR

Kenneth G. Byers, Jr.
Kenneth G. Byers, Jr.

Tricia Byers
Tricia Byers

11/27/2017
Date

SANDY SPRINGS FOUNDATION, INC.

By: [Signature]
Signature

Name: Ed Patterson
Title: Vice Chair

11/29/2017
Date