ATTACHMENT 4

**RESOLUTION NO. 16-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA UPHOLDING THE PLANNING COMMISSION'S DECISION AND APPROVING PLANNING APPLICATION PA-16-48 FOR ARTS AND LEARNING CONSERVATORY AT 3184 AIRWAY AVENUE, SUITE A**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Matt Christensen, authorized agent for Arts and Learning Conservatory, and Berean Community Church, the property owner, requesting approval of a Conditional use permit for the following:

- To establish a music/theater arts and learning program for elementary and middle-school age children called Arts and Learning Conservatory. The proposed Conservatory will be located in an existing 6,000 square foot industrial building formerly utilized by the Berean Community Church. The building will be used for the following uses: administrative offices; after school music and theatre programs from 4:00 pm to 9:00 pm, Monday through Friday; summer day camp from 8:00 am to 3:00 pm, Monday through Friday, from June 15th through August 15th; and theatrical productions on 6 weekends Friday through Sunday throughout the year.
- To approve a site-specific shared parking arrangement due to unique operating characteristics. A parking study prepared by LSA Associates identified a parking demand of 101 parking spaces during the 6 weekends throughout the year with theatrical productions.

WHEREAS, a duly noticed public hearing held by the Planning Commission on June 13, 2016 with all persons having the opportunity to speak for and against the proposal, and the project was approved by the Commission on a 5-0 vote.

WHEREAS, an appeal of the Planning Commission's approval of the project was filed on June 17, 2016.

WHEREAS, a duly noticed public hearing held by the City Council on August 2, 2016 with all persons having the opportunity to speak for and against the proposal.

WHEREAS, the approval of Planning Application PA-16-48 will supersede the current Minor CUP for the Berean Church; therefore, Zoning Application ZA-10-22 shall be revoked at this location.

WHEREAS, the project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgment of the City of Costa Mesa.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of contained within Exhibit B, the City Council hereby **APPROVES** Planning Application PA-16-48.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-16-48, and upon the applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval and/or mitigation measures.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

**PASSED AND ADOPTED this 2nd day of August, 2016.**

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

CITY CLERK OF THE
CITY OF COSTA MESA

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE )

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution Number 16__ as considered at a regular meeting of said City Council held on the 2nd day of August, 2016, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 2nd day of August, 2016, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2016

## EXHIBIT A

**FINDINGS (APPROVAL)**

A. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) because:

**Finding:** The proposed use is substantially compatible with uses in the same general area and would not be materially detrimental to other properties within the area.

**Facts in Support of Findings:** The proposed use, with the recommended conditions of approval, will be compatible with the other uses in the immediate vicinity. Compliance with the conditions of approval will allow this use to operate with minimal impact on surrounding properties and uses.

**Finding:** Granting the use will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

**Facts in Support of Findings:** The use is an existing industrial project consistent with the MP zoning of the property and, as conditioned, compatible with the properties in the vicinity. Compliance with the applicable Building and Fire Safety Codes will ensure that the use is not materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

*The existing overall parking supply for the complex (493 spaces) has been determined to be adequate for the proposed use and existing uses within the complex.* The parking study conducted by LSA Associates for the religious facility in Suite J as part of ZA-15-38 has been updated by LSA Associates for the proposed use. The study compared the existing conditions, including the approved religious facility in Suite J, with the existing church use and the proposed Conservatory.

**Finding:** Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation for the property.

**Facts in Support of Findings:** The property has a General Plan Designation of Industrial Park. The project, as conditioned, is consistent with the applicable provisions of the General Plan Designation. The request, as conditioned, is consistent with the following goals and objectives of the General Plan.

The following describes the proposed project's consistency with specific goals and objectives of the General Plan, Land Use Element.

- **Goal LU-1: Land Use:** *It is the goal of the City of Costa Mesa to provide its citizens with a balanced community of residential, commercial, industrial,*

*recreational, and institutional uses to satisfy the needs of the social and economic segments of the population and to retain the residential character of the City; to meet the competing demands for alternative developments within each land use classification within reasonable land use intensity limits; and to ensure the long term viability and productivity of the community's natural and man-made environments.*

***Consistency:*** The recommended conditions of approval protects the balance of land uses satisfying the needs of the community as it pertains to instructional/education uses on the property without adversely impacting the adjoining uses. Therefore, the project is consistent with this General Plan goal.

B. The project is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15301 for Existing Facilities. The project, as conditioned, is consistent with the applicable General Plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

C. The project, as conditioned, is consistent with Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code in that the development project's traffic impacts will be mitigated by the payment of traffic impact fees.

## EXHIBIT B

## CONDITIONS OF APPROVAL

Plng. 1. The use shall be limited to the type of operation described in this staff report and herein: On a daily basis, a maximum of 15 students would arrive for instruction 4:00 pm to 9:00 pm, Monday through Friday. Summer camp instruction could accommodate a maximum of 40 students from 8:00 am to 3:00 pm, Monday through Friday, from June 15th through August 15th. The Conservatory staff consists of eight instructors and administrators. Students will be dropped off at the site and their parent's vehicle or other after-school transportation does not remain on-site during the instructional period. Performances for the parents of students are held on 6 weekends throughout the year. Members of the public are able to purchase tickets for these performances as well (up to 250 persons total). These performances are held Fridays at 7:00 pm, Saturdays at 1:00 pm and 7:00 pm, and Sundays at 2:00 pm.

Any change in the operational characteristics shall require review by the Planning Division and may require an amendment to the Conditional Use Permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change. As a ministerial action through a zoning verification letter, the Development Services Director may authorize minor amendments to the Conditional Use Permit relating to the increased frequency of assembly events/theatrical shows after a parking assessment is completed and adequate parking supply is validated. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].

2. All uses shall be conducted within the tenant space (underroof).

3. The applicant shall provide a detailed parking management plan to the Planning Division for review and approval prior to the establishment of the use.

4. If parking shortages or other parking-related problems arise, the operator shall institute appropriate operational measures necessary to minimize or eliminate the problem, including, but not limited to, modifying the hours of operation.

5. The conditions of approval and ordinance or code provisions of Planning Application PA-16-48 shall be blueprinted on the face of the site plan as part of the plan check submittal package.

6. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the establishment of the use. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.

7. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute appropriate security and operational measures are necessary to comply with this requirement.

8. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.

9. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time.

10. The applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of, or which are in any way related to, the applicant's project, or any approvals granted by City related to the applicant's project. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section. City shall have the right to choose its own legal counsel to represent the City's interests, and applicant shall indemnify City for all such costs incurred by City.

## CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

Plng. 1. Approval of the zoning application is valid for one year from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by one of the following actions: 1) obtains building permits for the authorized construction and initiates construction; and/or 2) obtains a business license and/or legally establishes the business. If the applicant is unable to establish the use/obtain building permits within the one-year time period, the applicant may request an extension of time. The Planning Division must receive a written request for the time extension prior to the expiration of the zoning application.

2. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.

Bldg. 3. Comply with the requirements of the 2013 California Building Code, 2013 California Electrical Code, 2013 California Mechanical Code, and 2013 California Energy Code (or the applicable adopted, California Building Code, California Electrical Code, California Mechanical Code, and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the

California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings, and elements by individuals with disability shall comply with Chapter 11B of the 2013 California Building Code.

4. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
5. If required, a business license shall be obtained prior to the initiation the business.
6. The applicant shall submit a Traffic Impact Fee to the Transportation Division prior to the establishment of the use. The fee is required to fulfill mitigation of off-site traffic impacts pursuant to the prevailing schedule of charges adopted by the City Council. The traffic impact fee is calculated and includes credits for existing uses. NOTE: The Traffic Impact Fee will be recalculated at the time of the establishment of the use based upon any changes in the prevailing schedule of charges adopted by the City Council and in effect at that time.

**SPECIAL DISTRICT REQUIREMENTS**

The requirements of the following special districts are hereby forwarded to the applicant:

Sani. 1. It is recommended that the applicant contact the Costa Mesa Sanitary District at (949) 645-8400 for current district requirements.

CDFA 2. Comply with the requirements of the California Food and Agriculture (CDFA) to determine if red imported fire ants exist on the property prior to any soil movement or excavation. Call CDFA at (714) 708-1910 for information.

AQMD 3. Applicant shall contact the Air Quality Management District (800) 288-7664 for potential additional conditions of development or for additional permits required by AQMD.

**RESOLUTION NO. 16-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA DENYING PLANNING APPLICATION PA-16-48 FOR ARTS AND LEARNING CONSERVATORY AT 3184 AIRWAY AVENUE, SUITE A**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Matt Christensen, authorized agent for Arts and Learning Conservatory, and Berean Community Church, the property owner, requesting approval of a Conditional use permit for the following:

- To establish a music/theater arts and learning program for elementary and middle-school age children called Arts and Learning Conservatory. The proposed Conservatory will be located in an existing 6,000 square foot industrial building formerly utilized by the Berean Community Church. The building will be used for the following uses: administrative offices; after school music and theatre programs from 4:00 pm to 9:00 pm, Monday through Friday; summer day camp from 8:00 am to 3:00 pm, Monday through Friday, from June 15th through August 15th; and theatrical productions on 6 weekends Friday through Sunday throughout the year.
- To approve a site-specific shared parking arrangement due to unique operating characteristics. A parking study prepared by LSA Associates identified a parking demand of 101 parking spaces during the 6 weekends throughout the year with theatrical productions.

WHEREAS, a duly noticed public hearing held by the Planning Commission on June 13, 2016 with all persons having the opportunity to speak for and against the proposal, and the project was approved by the Commission on a 5-0 vote.

WHEREAS, an appeal of the Planning Commission's approval of the project was filed on June 17, 2016.

WHEREAS, a duly noticed public hearing held by the City Council on August 2, 2016 with all persons having the opportunity to speak for and against the proposal.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, the City Council **DENIES** Planning Application PA-16-48 with respect to the property described above.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

**PASSED AND ADOPTED this 2nd day of August, 2016.**

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

CITY CLERK OF THE
CITY OF COSTA MESA

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE )

I, BRENDA GREEN, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution Number 16__ as considered at a regular meeting of said City Council held on the 2nd day of August, 2016, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 2nd day of August, 2016, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2016

## EXHIBIT A

**FINDINGS (DENIAL)**

A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that:

**Finding:** The proposed use is not compatible with developments in the same general area and would be materially detrimental to other properties within the area.

**Finding:** Granting the conditional use permit will be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

**Finding:** Granting the conditional use permit will allow a use, density, or intensity which is not in accordance with the General plan designation.

B. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.

C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.