

AMENDED AND RESTATED BYLAWS
OF
QUAIL BOTANICAL GARDENS FOUNDATION, INC.
a California Nonprofit Public Benefit Corporation

ARTICLE I
NAME AND OFFICES

Section 1.1 Name.

The name of this Corporation is:

“QUAIL BOTANICAL GARDENS FOUNDATION, INC.”

Section 1.2 Corporate Offices.

The principal office of the Corporation for the transaction of its business is located at 230 Quail Gardens Drive, Encinitas, California 92024. The Corporation may from time to time establish such other offices as the Board may designate or as the affairs of the Corporation may require.

ARTICLE II
PURPOSES

Section 2.1 Purposes.

This Corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law of the State of California and is not organized for the private gain of any person.

Section 2.2 Mission Statement.

The mission of the Corporation is to inspire people of all ages to connect with plants and nature.

Section 2.3 Specific Purposes. The specific purposes of this Corporation are as set forth in the Articles of Incorporation of this Corporation., which include the following purposes: to operate, maintain and support Quail Botanical Gardens and its attendant facilities as places of botanical beauty, diversity, education, and conservation pursuant to the policies established by the Board of the Corporation (“Board”). Without limiting the generality of the foregoing, to conduct such other activities as may, in the Board's discretion, be related to the general purposes of the Corporation. which shall include, but are not limited to, the following:

- (a) To conserve rare and endangered plants and their ecosystems and to promote sustainable use of natural resources;
- (b) To collect beautiful, fascinating and /or significant plants and display them in attractive gardens for recreation and learning;
- (c) To evaluate, introduce and cultivate plants which exhibit horticultural value locally;
- (d) To educate the public about plants and their vital role in human lives and in the natural environment;
- (e) To provide a peaceful setting for the public to experience nature's beauty;
- (f) To encourage the presence of indigenous wildlife; and
- (g) To preserve significant historic plantings and structures in the gardens.

Section 2.4 Nonprofit Public Benefit.

The Corporation is a non-profit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes, and it complies with Internal Revenue Code § 501(c)(3). The Corporation shall not, except to an insubstantial degree, carry on or engage in any activities or exercise any powers that are not in furtherance of the purposes of this Corporation, and it shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Internal Revenue Code § 501(c)(3), and (b) by a corporation, contributions to which are deductible under Internal Revenue Code § 170(c)(2), including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, and in the promotion of social welfare in accordance with the purposes stated in the Corporation's Articles of Incorporation. The net earnings of the Corporation shall be devoted exclusively to charitable and educational purposes and shall not inure to the benefit of any private individual. No Trustee or person from whom the Corporation may receive any property or funds shall receive or shall be entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Corporation be paid as salary or compensation to, or distributed to, or inure to the benefit of any member of the Board; provided, however, that (a) reasonable compensation may be paid to any Trustee while acting as an agent, including consultant, contractor, or employee of the Corporation for services rendered in affecting one or more of the purposes of the Corporation; and (b) any Trustee may, from time to

time, be reimbursed for his or her actual and reasonable expenses incurred in connection with the administration of the affairs of the Corporation.

Section 2.5 Nonpartisan.

The Corporation has been formed under California Nonprofit Public Benefit Corporation Law for the public purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and the Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote. The Corporation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described above.

Section 2.6 Dedication of Assets.

The properties and assets of the Corporation are irrevocably dedicated to charitable purposes. No part of the net earnings, properties or assets of the Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any Member or Trustee of the corporation. On liquidation or dissolution, all properties, assets and obligations shall be distributed and paid over to an organization dedicated to charitable purposes, provided that the organization continues to be dedicated to the exempt purposes as specified in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE III MEMBERS

Section 3.1 Members.

3.1.1 Classes of Membership. This Corporation shall have one or more classes of Memberships, subject to terms and conditions as determined by the Board from time to time. Subject to qualification(s) as determined by the Board from time to time, any person dedicated to the purposes of the Corporation shall be eligible for Membership upon approval of the Membership application by the President and timely payment of such dues and fees as the Board may fix from time to time. Each Member shall be entitled to one (1) vote, including, without limitation, Memberships in which two or more persons have an indivisible interest. As used herein “Member” means a person within the meaning of Section 5056 of the California Nonprofit Public Benefit Corporation Law (“California Corporations Code”) who is hereby granted the right to vote on the matters set forth below in Section 3.1.1.

3.1.2 Rights of Members. Members of the Corporation shall have authority to vote for the election of Trustees, or on a disposition of all or substantially all of the assets of the Corporation, or on a merger or consolidation, on a dissolution of the Corporation, or on such other matters as the Board deems appropriate for a vote of the Members; and shall have all of the benefits of Membership set forth in Section 5056 of the California Corporations Code.

Section 3.2 Annual Meeting.

The Annual Meeting of Members to elect Trustees and to transact such other business as may properly come before the meeting shall be held each year on such date, time, and place as may be fixed by the Board. The record date for establishing Members entitled to vote shall be the last day of the second month preceding the month in which the meeting is to be held. Upon its approval, the Board shall cause the slate of the Trustee-nominees and the slate of proposed Trustees to serve on the Executive Committee to be mailed to the Members of the Corporation with the notice required pursuant to Section 3.4.

Section 3.3 Special Meeting.

Special meetings of the Members may be called by the President of the Corporation, Board Chair, or by twenty-five percent (25%) of Trustees and shall be called by the Board Chair: upon the written request of Members having not less than five percent (5%) of the votes entitled to be cast at the meeting. The record date for establishing Members entitled to vote shall be the last day of the preceding the month in which the meeting is to be held.

Section 3.4 Notice and Waiver.

Written notice of each annual meeting of Members, stating the place, day and hour of meeting and the purpose or purposes for which the meeting is called, shall be mailed at least fourteen (14) but not more than thirty (30) days prior to such meeting to each Member of the Corporation at his or her address as the same appears in the records of Members of the Corporation. Written notice of each special meeting of Members, stating the place, day and hour of meeting and the purpose or purposes for which the meeting is called, shall be mailed at least ten (10) but not more than thirty (30) days prior to such meeting to each Member of the Corporation at his or her address as the same appears in the records of Members of the Corporation. Any notice may also be given by e-mail to any Member at his or her address as the same appears in the records of Members of the Corporation if the intended recipient has previously given consent to receive notice in such manner, provided such email notice is given in a timely manner pursuant to the requirements of this Section. A written waiver of notice signed by the Member or Members entitled to notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 3.5 Certification and Voting List.

As soon after the record date as is feasible, the Secretary shall prepare and certify a list of Members of the Corporation, in accordance with the criteria for Members specified in Section 3.1 of these Bylaws. Members so certified shall receive notice of and shall have the sole privilege of voting on matters submitted to them at annual and special meetings of the Membership of the Corporation. A complete and current list of Members of the Corporation shall be regularly maintained and kept on file and available for inspection by any Member at the annual meeting and at the principal office of the Corporation for at least thirty (30) days prior to each annual or special meeting.

Section 3.6 Quorum.

Twenty-five (25) of the Members entitled to vote and present in person shall constitute a quorum for the transaction of any business. In the event that the quorum set forth herein shall constitute less than one-third of the voting power of the Corporation, then the only matters that may be voted upon at any regular meeting actually attended in person by less than one-third of the voting power, are matters notice of the general nature of which was given as required under these Bylaws.

Section 3.7 Voting.

Each Member entitled to vote shall be entitled to one (1) vote in person on all matters properly submitted to the Membership. Except as otherwise provided by law, by the Articles of Incorporation or by these Bylaws, all action shall be decided by a majority vote of the Members present in person. There shall be no voting by proxies or voting *in absentia*.

Section 3.8 Termination, Expulsion, or Suspension of Members.

No Member may be expelled or suspended, and no Membership or Memberships in the Corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. The Board shall, by resolution, establish policies and procedures to terminate, expel, or suspend a Member. In the event the Board does not adopt procedures, the procedures herein shall apply..

3.8.1 Written Notice. An intent to terminate, expel, or suspend a Member shall be preceded by twenty (20) days written notice of the date when a hearing will be held to determine whether the Member shall be terminated, expelled, or suspended. Such notice shall set forth the reasons therefor. Said written notice shall be given by first class or certified mail sent to the last address of the Member to be terminated, expelled, or suspended, as shown on the Corporation's records.

3.8.2 Hearing. An opportunity shall be provided for the Member to be heard, orally and in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place. The Member shall be

entitled to have counsel present at and to participate in the hearing at his or her expense and to present and cross-examine any witnesses.

3.8.3 Liability. A Member who has been terminated, expelled, or suspended may be liable to the Corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to termination, expulsion, or suspension.

3.8.4 Challenges. Any proceeding challenging a termination, expulsion, or suspension, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the termination, expulsion, or suspension.

ARTICLE IV BOARD OF TRUSTEES

Section 4.1 General Powers.

The business and affairs of the Corporation shall be conducted under the direction of, and the control and disposal of the Corporation's properties and funds shall be vested in, its Board, except as otherwise provided in the California Nonprofit Public Benefit Corporation Law, any other applicable laws, the Corporation's Articles of Incorporation or these Bylaws.

4.1.1 Specific Powers. Without prejudice to the general powers set forth in Section 4.1, but subject to the same limitations, the Board shall have the power to:

- (i) Appoint and remove, at the Board's pleasure, all the Corporation's Officers, agents and employees; and prescribe powers and duties for them that are consistent with law, the Articles of Incorporation and these Bylaws;
- (ii) Change the principal office or the principal business office within San Diego County, California, from one location to another;
- (iii) Adopt and use a corporate seal and alter its form; and,
- (iv) Borrow money and incur indebtedness on the Corporation's behalf and cause to be executed and delivered for its purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities.

4.1.2 Relation Between Board and Executive Committee. The Board shall, based upon input from and recommendations of the Executive Committee, be the general advisory body of the Corporation and have final authority over policy decisions

of major consequence concerning long-range planning, corporate reorganization, and significant capital expenditures not previously budgeted. The Board shall annually adopt the fiscal budget for the Corporation. Notwithstanding any provision of these Bylaws to the contrary, the Executive Committee shall oversee all matters relating to operations of the Corporation and implementation of policies established by the Board; provided, however, that if a majority, but not less than twelve (12) of the Trustees present at a meeting duly held at which a quorum is present believes that an action of the Executive Committee or the Corporation's staff properly falls within the Board's purview, the Board may direct the Executive Committee to submit its recommendation to the Board for Board action thereon. The Executive Committee shall at all times remain subject to the legal limitations set forth in Section 6..2 below.

Section 4.2 Number, Election, Term, and Qualifications.

4.2.1 The Board shall consist of not less than seventeen (17) Trustees and no more than thirty-five (35) Trustees, until changed by amendment to these Bylaws, excluding Trustee(s)-Emeritus, if any. The exact number of Trustees shall be fixed, within the limits specified in this Section 4.2.1, by Board resolution.

4.2.2 The Chair and a Vice Chair or the secretary of the Quail Botanical Gardens Docent Society ("Docent Society") shall serve as ex-officio voting Trustees, each of whom shall serve for a term of one (1) year.

4.2.3 In order to qualify to become a Trustee and in order to maintain that position in good standing, each Trustee shall be a Member of the Corporation.

4.2.4 The Trustees, excluding the Chair and Vice Chair of the Docent Society, shall be divided into three (3) classes as nearly equal in number as possible and shall be known as Class I, Class II, and Class III. Newly elected Trustees shall assume their duties immediately following adjournment of the Annual Meeting and shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation, or removal. At each subsequent Annual Meeting of Members, the successor of those Trustees whose term then expires shall be elected to serve a term of three (3) years and shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation, or removal. A Trustee may succeed himself or herself in office, but such Trustee shall, in no event, serve more than nine (9) consecutive years.

Section 4.3 Board Member Attendance.

If a Trustee fails to attend a minimum of three (3) consecutive meetings per year, that Trustee will be deemed to have resigned and his or her position shall be deemed to have become vacant for the remainder of his or her term or until the vacancy is filled pursuant to Section 4.5 of these Bylaws. At the discretion of the Board Chair, imposition of this rule may be waived and absences excused due to extenuating circumstances. The minutes shall document any waiver and absences excused under this Section 4.3.

Section 4.4 Nomination of Trustees.

Recommendations for Trustee and Executive Committee nominees may be submitted by Members, incumbent Trustees, officers, and staff to the Nominating Committee. The Nominating Committee shall, after giving due consideration to such recommendations and such other persons as it may wish to consider, present its slate of Trustee-nominees and Executive Committee-nominees to the Board at least thirty (30) days prior to the next Annual Meeting of Members. The Nominating Committee report (which shall also include the Nominating Committee's recommendation for the total number of Trustees for the upcoming calendar year) shall be disseminated to the Trustees with their Meeting Notice for the regular Board meeting prior to the Annual Meeting of Members. Upon its approval, the Board shall cause the slate of the Trustee-nominees and the slate of Executive Committee-nominees to be mailed to the Members of the Corporation with the notice required pursuant to Section 3.4.

4.4.1 Additional nominations shall be submitted by the Secretary, provided that (i) each such additional nomination, with the written consent of each nominee, shall have been submitted in writing to and received at the principal offices of the Corporation not later than five (5) days prior to the Annual Meeting of Members, and (ii) each such additional nomination shall have been signed by a minimum of fifteen (15) Members who are Members as of the last day of the second month preceding the month in which the Annual Meeting is to be held. This Section 4.4.1 shall appear on the notice to Members required pursuant to Section 3.4. Except as specifically provided herein, nominations shall not be made from the floor. After nominations are closed, elections by the Members of the Corporation then present will follow in accordance with procedures established by the Secretary.

Section 4.5 Vacancies.

Any Trustee may resign at any time by giving written notice to the Board Chair, President, or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and, if not specified therein, it shall take effect upon receipt and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the Board for any reason may be filled by the affirmative vote of a majority of the remaining Trustees then in office, even if less than a quorum. A Trustee elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor and, until his or her successor is elected and qualified or until his or her earlier death, resignation, or removal.

Section 4.6 Regular Meetings.

A regular annual meeting of the Board shall be held promptly, after the annual meeting of Members, at the time and place determined by the Board for the purpose of electing Officers and for the transaction of such other business as may properly come before the meeting. There shall be no less than ten (10) regular meetings, including any

annual meeting, of the Board in each fiscal year, and the Board shall provide by resolution the time and place for the holding of such regular meetings.

Section 4.7 Special Meetings.

The Board Chair may call a special meeting of the Board whenever he or she deems it necessary, and shall call a special meeting whenever requested to do so in writing by five (5) or more Trustees or by the President. The Board Chair shall fix the place and time for holding any special meeting of the Board. Notice of each special meeting stating the purpose, place, day, and hour of the meeting shall be given to each Trustee at his or her last known business or home address at least four (4) days prior thereto by the mailing of written notice, or at least forty-eight (48) hours prior thereto by personal delivery of written notice or by telephonic or telegraphic notice or other electronic means of notice (and the method of notice need not be the same for each Trustee). If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage thereon prepaid. If sent by facsimile machine or other electronic means, such notice shall be deemed to be given when the facsimile machine or other electronic means prints or acknowledges that the transmission was successfully executed.

Section 4.8 Waiver of Notice.

Any Trustee may waive receipt of notice of any meeting before, at, or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of convening the meeting or objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any regular meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 4.9 Presumption of Assent.

A Trustee of the Corporation who is present at a meeting of the Board at which action on a corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting, or unless he or she shall file his or her written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after adjournment of the meeting or if dissent is not noted when the minutes are circulated or approved, the dissenting Trustee(s) may direct its inclusion. Such right to dissent shall not apply to a Trustee who voted in favor of such action.

Section 4.10 Quorum and Voting.

At least thirty percent (30%) of the fixed number of Trustees authorized by resolution of the Board pursuant to Section 4.2.1 above, including at least three (3) Officers, shall constitute a quorum for the transaction of business at any meeting of the

Board. Each Trustee shall be entitled to one (1) vote and the vote of a majority of the Trustees present in person at a meeting at which a quorum is present shall be the act of the Board unless a greater number is specifically required by these Bylaws, by the Corporation's Articles of Incorporation or by California law. If less than a quorum is present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present. There shall be no voting by proxies or voting *in absentia*. Voting shall be in person only. Subject to California Corporations Code Section 5211(a)(8) and any contrary provision of these Bylaws, every act or decision done or made by a majority of the Trustees present at a meeting duly held at which a quorum is present is the act of the Board.

Section 4.11 Compensation.

Trustees shall not receive compensation for their services as such, although the reasonable expenses of Trustees for attendance at Board meetings may be paid or reimbursed by the Corporation. Trustees shall not be disqualified from receiving reasonable compensation for services rendered to or for the benefit of the Corporation in any other capacity

Section 4.12 Meeting By Telephone, Teleconference or Electronic Transmission.

Members of the Board or any Committee may participate in a meeting of the Board or Committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting. Participation in a meeting through the use electronic transmission by and to the Corporation, other than conference telephone and electronic video screen communication, constitutes presence in person if (i) each member participating in the meeting can communicate with all of the other members concurrently; and (ii) each member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose and/or interpose an objection to, a specific action to be taken by the Corporation.

Section 4.13 Action Without a Meeting.

Any action required or permitted to be taken at a meeting of the Trustees or any committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken or to be taken, is signed by all of the Trustees or committee members entitled to vote upon such action at a meeting. Such consent (which may be signed in counterparts) shall have the same force and effect as a unanimous vote of the Trustees or committee members.

ARTICLE V

OFFICERS AND AGENTS

Section 5.1 Number and Qualifications.

The Officers of the Corporation shall consist of a Board Chair, one or more Vice Chairs, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other Officers, Assistant Officers and Agents, Assistant Secretaries and Assistant Treasurers, as may be deemed necessary or desirable by the Corporation's Trustees or California law. One person may hold more than one office at a time, except that neither the Secretary nor the Treasurer may simultaneously hold the offices of President or Board Chair. The President shall be an ex-officio nonvoting member of the Board.

Section 5.2 Election and Term of Office.

Except for the President, Vice President(s), or any other Officer(s) who renders services to the Corporation for compensation, the Officers of the Corporation shall be elected, for a term commencing upon election, by the Corporation's Trustees at the meeting of the Board immediately following the Annual Meeting of the Corporation. Each Officer shall hold office for a term of one (1) year or until his or her successor shall have been duly elected and shall have qualified, or until his or her earlier death, resignation, or removal.

Section 5.3 Officer Compensation.

The compensation of the Executive Director shall be fixed from time to time by the Board. The compensation of the Vice President(s), if any, shall be fixed from time to time by the President. During any period in which the Corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code, no payment of compensation (or payment or reimbursement of expenses) shall be made in any manner that might result in the imposition of any liability under Section 6941 of the Internal Revenue Code.

Section 5.4 Removal.

Any Officer or Agent (defined below in Article VIII, Section 8.1.1) may be removed by the Board, or a committee appointed by the Board for such purpose; with or without cause, whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an Officer or Agent shall not in itself create contract rights.

Section 5.5 Vacancies.

Any Officer may resign at any time, subject to any rights or obligations under any existing contracts between the Officer and the Corporation, by giving written notice to the Board Chair or the President or the Secretary. An Officer's resignation shall take

effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled for the unexpired portion of the term by action of the Board if the vacant position is one held by a Trustee or by the President; or by the President, with the advice and counsel of the Board Chair, if the vacant office is a staff position.

Section 5.6 Authority and Duties of Officers.

The Officers of the Corporation shall have the authority and shall exercise the powers and perform the duties specified by the President, the Board; or these Bylaws, except that in any event each Officer shall exercise such powers and perform such duties as may be required by law.

5.6.1 Board Chair. At its meeting immediately following the Annual Meeting of Members, the Board shall elect, from among those who are, or are to be, Trustees of the Corporation, a Board Chair who shall, when present, preside at all regular and special meetings of the Board, the Executive Committee and of the Members of the Corporation, shall present at the Annual Meeting of the Members of the Corporation a report on the activities of the Corporation during the preceding year, and shall generally perform all other duties incident to the office, required by the Bylaws or from time to time assigned to him or her by the Board.

5.6.2 Vice Chair of the Board. If one or more shall be elected by the Board from among those who are, or are to be, Trustees of the Corporation, the Vice Chair (s) of the Board shall assist the Board Chair, as requested, in the performance of his or her duties and shall have such other functions as these Bylaws may provide or as the Board or Board Chair may assign from time to time. In addition to the foregoing, the Vice Chair shall possess the powers and perform the duties incumbent upon the Board Chair during his or her absence or disability. In the event there is more than one Vice Chair, the Board shall designate one to possess the powers and perform the duties incumbent upon the Board Chair during his or her absence or disability.

5.6.3 President. The Board shall select and appoint a President (who shall be the "Executive Director") who shall function as the chief executive officer of the Corporation, under its supervision and direction, and who shall carry on the general affairs of the Corporation and shall have the authority to employ and fix salaries, with the power of removal of all employees subordinate to the President, in accordance with the personnel policies adopted by the Board. The President shall be a member of the staff of the Corporation and shall be a non-voting member of all Committees except the Audit Committee. It shall be his or her duty to approve the expenditure of the monies appropriated by the Board in accordance with the budget approved by the Board. The President shall make an annual report and periodic reports to the Board concerning the programs of the Corporation. All Agents and employees shall report and be responsible to the President. With the exception of Trustees, the President shall have supervision and control over all volunteer services performed for or on behalf

of the Corporation and all such volunteers shall serve at the pleasure of the President. The President shall perform such other duties as may be determined from time to time by the Board.

5.6.4 Vice President(s). The President may select and appoint one or more Vice Presidents who shall assist the President in carrying out the programs of the Corporation. In the event of the prolonged absence or disability of the President, the Board shall appoint one Vice President as acting President and, as such, the acting President shall have all the authority and duties vested in the President.

5.6.3 Secretary. The Board shall elect a Secretary who shall attend the meetings of the Members and of the Trustees and, to the extent feasible, of all Committees of the Board, and shall record the proceedings of the Corporation and of the Board and of all Committees of the Board, at their respective meetings. He or she shall provide for notification of the Members and Trustees of the Corporation of their respective meetings in accordance with these Bylaws, shall be the custodian of the corporate records and seal, shall furnish certifications of Board actions, Bylaws, and organizational documents, and shall perform such other duties as may be required by these Bylaws or as may be assigned by the Board or the President. In the absence of the Secretary, the Chair shall appoint a person to act as Secretary of a particular meeting.

5.6.4 Assistant Secretary. If one or more shall be elected, the Assistant Secretary(ies), in the absence of the Secretary, shall have all the authority and duties vested in the Secretary. He or she shall perform such duties as may be assigned to him or her by the Secretary, the Board, or the President.

5.6.5 Treasurer. The Board shall elect a Treasurer who shall be the Chief Financial Officer of the Corporation and shall receive and deposit in a bank or banks to be approved by the Board all the monies of the Corporation and keep an accurate account thereof. He or she shall make disbursements subject to such regulations as may be determined from time to time by the Board, and shall make reports of the finances of the Corporation annually and whenever requested by the Board or the President. He or she shall perform such other duties as may be required by these Bylaws or as may be assigned by the Board or the President. At the end of his or her term of office, the Treasurer shall deliver to his or her successor all books, monies, and other property of the Corporation then in his or her possession. The Board may require the Treasurer to give such security as it may direct for the faithful performance of his or her duties.

5.6.5 Assistant Treasurer. The President may select and appoint one or more Assistant Treasurers. If one or more shall be selected and appointed, the Assistant Treasurer, in the absence of the Treasurer, shall have all the authority and duties vested in the Treasurer. He or she shall perform such duties as may be assigned to him or her by the Treasurer, the Board, or the President.

ARTICLE VI COMMITTEES OF THE BOARD

Section 6.1 Designation of Committees.

The Board may designate one or more standing or special committees to direct the business of the Corporation. Each such committee may exercise the authority granted to it by the Board's enabling resolution. Any committee having authority of the Board shall consist of five (5) or more Trustees and shall not include as voting members any person who is not a Trustee.

Section 6.2 Limitations on Committee Powers.

The Board may delegate to any committee having the authority of the Board and any of the powers and the authority of the Board in the management of the business and affairs of this corporation, except the following:

6.2.1 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;

6.2.2 the filling of vacancies on the Board;

6.2.3 the amendment or repeal of these Bylaws or the adoption of new Bylaws;

6.2.4 the amendment or repeal of any resolution of the Board that by its express terms is not so amendable or reparable;

6.3.5 the appointment of committees of the Board or the members thereof; and

6.3.6 The approval of any self-dealing transaction except as permitted in Article IX, Section 9.1 of these Bylaws.

Rules governing procedures for meetings of any committee of the Board shall be as established by the Board or, in the absence thereof, by the committee itself. If no rules are established, then the rules that govern the Trustees shall govern each committee. All committees are to report promptly to the Board and only take such action(s) as is (are) specifically designated in these Bylaws or in the resolution establishing the committee or setting forth its duties and responsibilities. Except with respect to the Executive Committee, each committee shall consist of two (2) or more Trustees and such other persons as the Board may designate, who need not be members of the Board. The Board may designate one or more persons as alternate members of any committee, and such alternates may replace any absent or disqualified member of the committee at any meeting of the committee. In the absence or disqualification of a member of the

committee, and the alternate or alternates, if any, designated for such committee member, the member or members of the committee present at any meeting and entitled to vote, whether or not they constitute a quorum, may unanimously appoint another person to act at the meeting in the place of any such absent or disqualified member of the committee or alternate, except for vacancies on the Executive Committee, which shall be filled by the Board. Members of a committee shall serve until the next annual meeting of the Corporation or until their successors are appointed.

Section 6.3 Committee Chair.

The Board Chair, with the approval of the Board, shall appoint all committee chairs for the ensuing year at or within a reasonable time after the annual meeting of the Board. Committee chairs shall be members of the Corporation's Board. If the Board establishes a new committee by resolution, the Board Chair, with the approval of the Board, shall similarly appoint its Chair at the time the committee is established or within a reasonable time after the establishment of the committee.

Section 6.4 Committee Meetings.

Meetings of committees of the Board may be called by the respective Chairs thereof or by any two (2) members of the committee. At all meetings of any committee, a majority of the members of the committee shall constitute a quorum for the transaction of business, and the act of a majority of the members of the committee present at any meeting thereof at which there is a quorum shall be the act of the committee, except as may be otherwise specifically provided for by these Bylaws.

Section 6.5 Executive Committee.

Each year, at its annual meeting, the Board shall elect from among those who are, or are to be, Trustees of the Corporation upon election, an Executive Committee consisting of at least five (5) Trustees and shall not include as voting members any person who is not a Trustee. The Board may delegate to the Executive Committee any of the powers and authority of the Board in the management of the business and affairs of the corporation, except those enumerated in Section 6.2 above.

6.5.1 Composition. The members of the Executive Committee shall be the Board Chair, Vice Chair(s), President, Officers who serve the Corporation without compensation, Immediate Past Board Chair, the Docent Society Chair, and two (2) Trustees who shall be nominated by the Nominating Committee and selected by the Board and shall serve at the pleasure of the Board. The Board Chair shall be the Chairperson of the Executive Committee. Vacancies in the Executive Committee, shall be filled by the Board. Members of the Executive Committee who are not Trustees shall not vote on any matters which come before the Executive Committee.

6.5.2 Powers and Functions. During the intervals between meetings of the Board, the Executive Committee shall, subject to the limitations of Section 6.2 above,

possess and may exercise all the powers and functions of the Board in the management and direction of the affairs of the Corporation in all cases in which specific direction shall not have been given by the Board. Without limiting these powers, the Executive Committee shall also advise the Board regarding matters and policy not otherwise within the jurisdiction of the other Standing Committees.

6.5.2.1 The Executive Committee shall review and evaluate the performance and recommend to the Board the salary, benefits, direct or indirect, and other terms and conditions of any employment contract entered into with the President.

6.5.2.2 Subject to the limitations imposed under Section 6.2 above, the Executive Committee shall have the authority to act and bind the Corporation in matters ordinarily within the power of the Board and outside the ordinary powers of the Executive Committee, but only under emergency circumstances when it is improbable or unlikely that a quorum of the Board could be established in a timely manner to address/resolve the emergency.

6.5.3 Reports to Board Required/Quorum. A report of the activities of the Executive Committee shall be made at the next Board meeting and, to the extent feasible, mailed to the Trustees within ten (10) prior to such meeting. Regular minutes of the proceedings of the Executive Committee shall be kept. A majority of the members of the Executive Committee in office at the time shall be necessary to constitute a quorum and in every case an affirmative vote of a majority of the members of the Executive Committee present at a meeting shall be necessary for the taking of any action.

6.5.4 Rules of Procedure. The Executive Committee shall fix and establish its own rules of procedure and shall meet as provided by such rules and shall also meet at the call of its Chair or of any other two (2) members of the Committee.

Section 6.6 Nominating Committee.

The Board shall designate, at or within a reasonable time after the annual meeting of the Board, a Nominating Committee, which shall be composed of Trustees and other qualified persons, which may include staff persons and persons who are not Members of the Corporation. The Nominating Committee shall be responsible for proposing persons for election as Trustees at the next Annual Meeting of the Members of the Corporation, or in the event of Trustee vacancies between annual meetings of the Members of the Corporation, may propose replacement Trustees for election by the Board, and shall also recommend persons for consideration as Board Chair, Vice-Chair(s), and other Officers to be elected at the next annual meeting of the Board.

Section 6.7 Audit Committee.

The Board shall designate, at or within a reasonable time after the annual meeting of the Board, an Audit Committee composed of independent Trustees, which shall:

6.7.1 Recommend Independent Auditor. Recommend the firm to be employed as the Corporation's independent auditor, and review and approve the discharge of any such firm. The Audit Committee shall also review and approve the independent auditor's compensation, the terms of its engagement by the Corporation, and the independence of such auditor.

6.7.2 Review Independent Audit. Review, in consultation with the independent auditor, the result of each independent audit of the Corporation, the report of the auditor, any related management letter, and management's responses to recommendations made by the independent auditor in connection with the audit.

6.7.3 Review Annual Financial Statements. Review, in consultation with the independent auditor and management, the Corporation's annual financial statements; any report or opinion rendered by the independent auditor in connection with those financial statements; and any dispute between management and the independent auditor that arose in connection with the preparation of those financial statements. The Audit Committee shall review and report to the Board with respect to the financial portions of the Corporation's annual report.

6.7.4 Review Financial Statements. Review, before or after publication, the Corporation's financial statements.

6.7.5 Plan External Audits. Consider, in consultation with the independent auditor, the scope and plan of forthcoming external audits.

6.7.6 Evaluate Internal Accounting Controls. Consider, in consultation with the independent auditor and the chief internal auditor, if any, the adequacy of the Corporation's internal accounting controls.

6.7.7 Evaluate Accounting Principles and Practices. Consider, when presented by the independent auditor or otherwise, material questions of choice with respect to the choice of appropriate accounting principles and practices to be used in the preparation of the Corporation's financial statements.

6.7.8 Compliance With Conflict of Interest and Code of Ethics. Review the expense accounts and perquisites of Officers and senior staff and the Corporation's compliance with its conflict of interest policy and code of ethical conduct, except as such function may be delegated by the Board to another committee.

6.7.9 Consider Other Financial Matters. Have power to inquire into any financial matters in addition to those set forth in Sections 6.7.1 through 6.7.8 above.

6.7.10 Perform Other Assignments. Perform such other functions as may be assigned to it by law, the Corporation's Bylaws, or the Board.

ARTICLE VII VOLUNTEERS AND TRUSTEES-EMERITUS

Section 7.1 Volunteers.

The Board shall encourage the participation of members of the public who volunteer to provide valuable and appreciated services to the Corporation, which shall include those members of the Docent Society. All volunteers who provide services to the Corporation shall be subject to the general oversight and supervision of the Executive Director. The purpose of the Docent Society is to support the Corporation through a variety of activities and membership which shall be determined by the Docent Society in consultation with, and subject to the approval of, the Executive Director.

Section 7.2 Trustees-Emeritus.

Upon recommendation by the Nominating Committee, the Board may elect one or more Trustee(s)-Emeritus with the right to attend all regular and special meetings thereof, but with no power to make motions or to vote and who shall not be counted in determining a quorum and with no right to receive notices of meetings. Upon the Board's discretion, it may present and dispose of any matter in closed executive session to preserve confidentiality of matters discussed and for other legitimate business purposes.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Definitions.

8.1.1 For purposes of this Article, "Agent" means any person who is or was a Trustee, Officer, employee or other agent of this Corporation, or is or was serving at the request of this Corporation as a trustee, director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a trustee, director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of this Corporation or of another enterprise at the request of such predecessor corporation.

8.2.2 "Proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes attorneys' fees and any expenses of establishing a right to indemnification under this Article.

Section 8.2 Indemnification in Actions by Third Parties.

In each case in which indemnification is sought under this Section, the Board

shall determine or have determined by a court (as contemplated by Subsection 10.6 hereof) whether the Agent seeking indemnification has met the standard of conduct specified in this Section. If the Board or the appropriate court determines that such standard of conduct was met, this Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any proceedings (other than an action by or in the right of this Corporation to procure a judgment in its favor, an action brought under California Corporations Code Section 5233, or an action brought by the Attorney General or a person granted relator 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, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of this Corporation, and in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 8.3 Indemnification in Actions by or in the Corporation's Right.

In each case in which indemnification is sought under this Section, the Board shall determine or have determined by a court (as contemplated by Subsection 10.6 hereof) whether the Agent seeking indemnification has met the standard of conduct specified in this Section. If the Board or the appropriate court determines that such standard of conduct was met, 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 by or in the right of this Corporation, or brought under California Corporations Code § 5233, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an Agent of this Corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of this Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 8.4 Limitations.

No indemnification shall be made under this Section:

- (i) In respect of any claim, issue or matter as to which such person

shall have been adjudged to be liable to this Corporation in the performance of such person's duty to this Corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(ii) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(iii) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

Section 8.5 Indemnification Against Expenses.

To the extent that an Agent of this Corporation has been successful on the merits in defense of any proceeding referred to in Sections 10.2 or 10.3 below, or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 8.6 Required Determinations.

Except as otherwise specifically provided in this Article, any indemnification under this Article shall be made by this Corporation only if authorized in the specific case, upon a determination that indemnification of the Agent is proper in the circumstances because the Agent has met the applicable standard of conduct set forth in Sections 8.2 or 8.3, by:

(i) A majority vote of a quorum consisting of Trustees who are not parties to such proceeding; or

(ii) The court in which such proceeding is or was pending upon application made by this Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether such application by the agent, attorney or other person is opposed by this Corporation.

Section 8.7 Advance of Expenses.

Expenses incurred in defending any proceeding may be advanced by this Corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the Agent to repay such amount, unless it shall be determined ultimately that the Agent is entitled to be indemnified as authorized in this Article.

Section 8.8 Other Indemnification.

No provision made by the Corporation to indemnify its Agents (or the agents of a subsidiary, if any) for the defense of any proceeding, whether contained in the Articles of Incorporation, Bylaws, a resolution of Trustees, an agreement or otherwise, shall be valid unless consistent with prerequisites set forth in this Article. Nothing contained in this Article shall affect any right to indemnification to which persons other than such agents may be entitled by contract or otherwise. This Corporation shall have the power to indemnify, to advance expenses to, or to procure insurance for, any person who is an Agent of this Corporation, so long as such actions are consistent with this Article and comply with the California Nonprofit Public Benefit Corporation law.

Section 8.9 Forms of Indemnification Not Permitted.

No indemnification or advance shall be made under this Article, except as otherwise specifically provided in this Article, in any circumstances where it appears that it would be inconsistent with:

- (i) A provision of the Articles of Incorporation, these Bylaws, 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
- (ii) Any condition expressly imposed by a court in approving a settlement.

Section 8.10 Insurance.

This Corporation shall have the power to purchase and maintain insurance on behalf of any Agent of this Corporation against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, whether this Corporation would have the power to indemnify the agent against such liability under this Article; provided, however, that this Corporation shall have no power to purchase and maintain such insurance to indemnify any Agent of this Corporation for a violation of California Corporations Code Section 5233.

Section 8.11 Inapplicability to Fiduciaries of Employee Benefit Plans.

This Article does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an Agent of this Corporation, as defined in Section 10.1 below. This Corporation shall have power to indemnify such trustee, investment

manager or other fiduciary to the extent permitted by California Corporations Code Section 207(f).

Section 8.12 Minimum Standard.

The provisions of this Article shall provide the minimum indemnification coverage standard to be provided by this Corporation.

8.12.1 Pursuant to California Corporations Code Section 5231, a Trustee shall perform the Trustee's duties, including duties as a member of any committee of the Board upon which the Trustee may serve, in good faith, in a manner the Trustee believes to be in the Corporation's best interests 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 Trustee, a Trustee 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 Trustee believes to be reliable and competent in the matters presented; (b) legal counsel, independent accountants or other persons as to matters which the Trustee believes to be within that person's professional or expert competence; or (c) a committee of the Board upon which the Trustee does not serve as to matters within its designated authority, which committee the Trustee believes to merit confidence. Provided, that in any such case, the Trustee acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause that reliance to be unwarranted.

8.12.2 If future amendments to applicable law provide for a lesser coverage standard, this Article shall nonetheless control to the extent permitted by such law.

8.12.3 In case any provision in this Article shall be determined at any time to be unenforceable in any respect, the other provisions shall not in any way be affected or impaired thereby, and the affected provision shall be given the fullest possible enforcement in the circumstances, it being the intention of the Corporation to afford indemnification and advancement of expenses to its Trustees and Officers, acting in such capacities or in the other capacities specified in this Article, to the fullest extent permitted by law.

8.12.4 It is hereby expressly recognized that all Trustees and Officers of the Corporation, by serving as such after the adoption hereof, are acting in reliance on this Article and that the Corporation is estopped to contend otherwise.

Section 8.13 Notification to Members.

If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the Members, the Corporation shall, not later than the

next annual meeting of Members, unless such meeting is held within three months from the date of such payment and, in any event, within fifteen months from the date of such payment, mail to its Members of record at the time entitled to vote for the election of Trustees a statement specifying the action taken.

ARTICLE IX CONFLICT OF INTEREST

Section 9.1 Self-Dealing Transactions.

A self-dealing transaction or conflict of interest may exist when the interests or activities of any Trustee, Officer, or staff member may be seen as competing with the interests or activities of the Corporation, or the Trustee, Officer, or staff member derives a financial or other material gain as a result of a direct or indirect relationship. The provisions of this Section shall be interpreted in light of California Corporations Code Section 5233; if there is any inconsistency between this Section and California Corporations Code Section 5233, the latter shall control. Pursuant to California Corporations Code Section 5233, this Corporation shall not be a party to a transaction in which one or more of its Trustees has a material financial interest (an "Interested Trustee") unless:

(i) Approval by Attorney General. The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or

(ii) Approval by Board. Prior to entering into the transaction, after full disclosure to the Board of all material facts as to the proposed transaction and the Interested Trustee's interest and investigation and report to the Board as to alternative arrangements for the proposed transaction, if any, the Board in good faith and by a vote of a majority of the Trustees then in office (without including the vote of the Interested Trustee): (a) resolves and finds that (1) the transaction is in the Corporation's best interests and for this Corporation's own benefit, (2) the transaction is fair and reasonable as to this Corporation at the time the Corporation entered into the transaction, and (3) after reasonable investigation under the circumstances as to alternatives, this Corporation could not have obtained a more advantageous arrangement with reasonable efforts under the circumstances; and (b) approves the entire transaction; or

(iii) Interim Approval by Authorized Committee or Person. If it is not reasonably practicable to obtain approval of the Board prior to entering into the transaction, and, prior to entering into it, the Executive Committee or person authorized by the Board approves the transaction in a manner consistent with the procedure set forth in Subsection (ii); and the Board, after determining in good faith that this Corporation entered into the transaction for its own benefit and that the transaction was fair and reasonable as to this Corporation at the time it was entered into, ratifies the transaction at its next meeting by a vote of the majority of the Trustees then in office, without counting

the vote of the Interested Trustee.

Section 9.2 Disclosure Required.

Any possible conflict of interest or self-dealing transaction shall be disclosed to the Board by the person concerned, if that person is a Trustee or an Officer of the Corporation; or to the President, or to such person or persons as he or she may designate, if the person is not a Trustee or Officer of the Corporation.

Section 9.3 Abstinance from Vote.

When any conflict of interest or self-dealing transaction relates to a matter requiring action by the Board, the interested person shall call it to the attention of the Board or its appropriate Committee and such person shall not vote on the matter; provided however, that any Trustee disclosing a conflict of interest may be counted in determining the presence of a quorum at a meeting of the Board or a Committee thereof.

Section 9.4 Absence from Discussion.

Unless requested to remain present during the meeting in the discretion of the Board Chair, the person having the conflict shall retire from the room in which the Board or its Committee is meeting and shall not participate in the final deliberation or decision regarding the matter under consideration. However, that person shall provide the Board or Committee with any and all relevant information.

Section 9.5 Annual Distribution.

A copy of this conflict of interest Bylaw shall be furnished to each Trustee, Officer, and senior staff member who is presently serving the Corporation, or who may hereafter become associated with the Corporation. This policy shall be reviewed annually for the information and guidance of Trustees, Officers, and staff members. Any new Trustee, Officer, and staff member shall be advised of this policy upon undertaking the duties of such office. Each Trustee shall complete and submit an annual questionnaire dealing with this subject matter and certifying such Trustee's knowledge of this policy and/or compliance with it.

Section 9.6 Minutes.

The minutes of the meeting of the Board or Committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is doubt as to whether a conflict of interest exists, the matter shall be resolved by a vote of the Board or its Committee, excluding the person concerning whose situation the doubt has arisen.

ARTICLE X

MISCELLANEOUS

Section 10.1 Books and Minutes.

The Corporation shall keep correct and complete books and records of account and financial statements and shall also keep minutes of the proceedings of its Board and Committees. All books and records of the Corporation may be inspected by any Trustee or his or her accredited agent or attorney, for any proper purpose at any reasonable time, and by such Members who may have voting rights.

Section 10.2 Fiscal Year and Audit.

The fiscal year of the Corporation shall be July 1 through June 30, inclusive. Subject to the provisions of Section 6.7 above, after the close of each fiscal year of the Corporation, financial transactions of the Corporation for the preceding fiscal year shall be audited by certified public accountants, as directed by the Board, and a report of the audit shall be made to and approved by the Board.

Section 10.3 Conveyances and Encumbrances.

Property of the Corporation may be assigned, conveyed or encumbered by such Officers of the Corporation as may be authorized to do so by the Board, and such authorized persons shall have power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease, or other disposition of all or substantially all of the property and assets of the Corporation shall be authorized only in the manner prescribed by the applicable law.

Section 10.4 Designated Contributions.

The Officers of the Corporation may accept on its behalf, in accordance with policies and procedures set by the Board, any designated contribution, grant, bequest, or devise consistent with its general tax-exempt purposes, as set forth in the Corporation's Articles of Incorporation. As so limited, donor designated contributions will be accepted for special funds, purposes, or uses. Further, the Corporation shall retain sufficient control over all donated funds (including designated contributions) to assure that such funds will be used in a manner consistent with the restrictions contained in the grant and the Corporation's exempt purposes.

Section 10.5 Loans to Trustees and Officers Prohibited.

No loans or advances, other than customary travel advances, shall be made by the Corporation to any of its Trustees or Officers.

Section 10.6 Severability.

The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event, these Bylaws shall be construed in all respects as if such invalid provisions were omitted.

Section 10.7 Inspection of Corporate Records.

Every Trustee shall have the absolute right at any reasonable time to inspect the Corporation's books, records, documents of every kind, physical properties, and the records of each of its subsidiaries. The inspection may be made in person or by the Trustee's agent or attorney. The right of inspection includes the right to copy and make extracts of documents. The rights of Member's inspection of corporate records shall be as set forth in California Corporations Code Sections 6330 and 6333.

Section 10.8 Execution of Contracts.

The Board, except as the Bylaws may otherwise provide, may authorize any officer, or officers, agent or agents, to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of the Corporation and such authority may be general or confirmed to specific instances 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 in any amount. Provided, that pursuant to Section 5214 of the Nonprofit Public Benefit Corporation Law of the State of California, any such contract or instrument between the Corporation and any third person, when signed by the President or any Vice-President and the Secretary or Treasurer of the Corporation, shall be valid and binding upon the Corporation in the absence of actual knowledge on the part of said person that the signing officers had no authority to execute the same. The Corporation shall not enter into any contract with a term of longer than one year, or any contract, which binds the organization for obligations in excess of Twenty-Five Thousand Dollars (\$25,000) without approval of the President and one other officer of the Corporation.

Section 10.9 Annual Statement of Certain Transactions and Indemnifications.

Pursuant to Section 6322 of the California Corporation's Code, the Board shall cause an annual statement of certain transactions and indemnification's to be sent to the Trustees and to the Members not later than one hundred twenty (120) days after the close of the fiscal year. If the Corporation issues an annual report to the Board, this requirement shall be satisfied by including the required information, as set forth below, in said annual report. The Annual Statement and any accompanying material may be sent by electronic transmission by the Corporation if (i) a recipient has provided an unrevoked consent to the use of those means of transmissions under Section 20 of the California Corporation's Code and (ii) the transmission is capable of retention, retrieval and review and may thereafter be rendered into clearly tangible form. Such Annual Statement shall describe:

10.9.1 The amount and circumstances of any indemnification's or advances aggregating more than Ten Thousand Dollars (\$10,000) paid during the fiscal year of the Corporation to any officer or Trustee of the Corporation; provide, that no such report need be made in the case of indemnification approved by the Board; and

10.9.2 Any "covered transaction" (defined below) during the previous fiscal year of the Corporation involving (1) more than Fifty Thousand Dollars (\$50,000) or, (2) which was one of a number of "covered transactions" in which the same "interested person" (defined below) had a direct or indirect material financial interest, and which transactions, including such "interested person's" relationship to the transaction, and where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which the "interested person" is only a partner, only the interest of the partnership need be stated. For the purposes of this section, a "covered transaction" is a transaction in which the Corporation, or its parent or subsidiary, was a party, an in which either of the following had a direct or indirect material financial interest:

- a) Any Trustee or officer of the Corporation, or its parent or subsidiary; or
- b) Any holder of more than ten percent (10%) of the voting power of the Corporation, or of its parent or subsidiary.

For purposes of this section, any person described in either subparagraph (i) or (ii) above is an "interested person."

Section 10.10 Annual Reports.

The Board shall cause an annual report to be sent to the Members not later than one hundred twenty (120) days after the close of the Corporation's fiscal year. Such Annual Report may be sent to the Members by electronic transmission, subject to the requirements for electronic transmission set forth above in Section 10.9. Such reports shall contain in appropriate detail the following:

- a) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year;
- b) The principal changes in the assets and liabilities, including trust funds, during the fiscal year;
- c) The revenue or receipts of the Corporation, both restricted and unrestricted to particular purposes, for the fiscal year;
- d) The expenses or disbursements of the Corporation, for both general or restrictive purposes, during fiscal year; and
- e) All information required by Article X, Section 10.9 of these Bylaws.

The Annual Report should be accompanied by any report thereon of an independent accountant, or, if there is no such report the certificate of the Treasurer of the Corporation that such statements were prepared without audit from the books and records of the Corporation. The Annual Report need not be sent to the Members if the Corporation does not have more than (\$25,000) in revenues or receipts at any time during a fiscal year.

ARTICLE XI EFFECTIVE DATE AND AMENDMENTS

Section 11.1 Effective Date.

These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board in adopting them provide that they are to become effective at a later date.

Section 11.2 Amendments.

Except with respect to any amendment of these Bylaws which would materially and adversely affect the rights of Members as to voting or transfer, these Bylaws may be

amended, repealed, or modified, and new Bylaws adopted, by the affirmative vote of a majority of the Trustees present in person at a meeting at which a quorum is present. Any notice of a meeting of the Members or of the Board at which these Bylaws are to be amended, repealed, or modified shall include notice of such proposed action.

SECRETARY'S CERTIFICATE

The undersigned is the Secretary of Quail Botanical Gardens Foundation, Inc., a California public benefit corporation, and certifies that, as such is authorized to execute this certificate on behalf of said Corporation, and further certifies that the foregoing Bylaws, consisting of (_) pages, including, this page, constitute the Amended and Restated Bylaws of the Corporation as of this date, duly adopted by the Board of the Corporation on _____, 2005.

Dated: [date]

/s/ _____
[NAME], Secretary