

Summary of Proposed Amendment of Articles and Bylaws

Quail Botanical Gardens Foundation, Inc.

To: _____

The purpose of this summary is to inform you of the proposed amendments of the Articles of Incorporation and Bylaws of the Quail Botanical Gardens Foundation, Inc.

Articles of Incorporation

The Articles of Incorporation of Quail Botanical Gardens Foundation, Inc. have been amended several times since 1961. The purpose of the Amended and Restated Articles of Incorporation, is to eliminate provisions that are no longer required or advisable, to incorporate those provisions that identify more clearly the purposes and mission of the Corporation; and to comply with statutory requirements for the amending of this charter document.

Bylaws

The subparagraphs of each Article of the Amended and Restated Bylaws have been renumbered for clarity and references to a trustee or trustees in the lower case has been consistently changed to "Trustee" or "Trustees". Reference to members of the Board has in most cases been changed to "Trustees". Reference to the Board of Trustees is referred to as the "Board". A brief synopsis of the material changes in each section of the Bylaws proposed to be amended is set forth below:

- a. **Article I (Name and Offices):** The revised sections clarify the correct name and address of the Corporation.
- b. **Article II (Purposes):** The revised sections describe the nature of the legal entity, incorporate the mission statement of the Corporation, describe the general purposes of the Corporation and incorporate the goals of the Corporation, which are also contained in the amended and restated Articles of Incorporation. These revised sections also describe the restrictions, which are incumbent on the Corporation in order to preserve its exempt status from federal and state property and income taxes. Former Article XI (Dissolution) is deleted and incorporated into new Section 2.6 (Dedication of Assets).

- c. **Article III (Members):** Former Article III (Seal) is deleted, because the reference to a corporate seal is not legally required to be part of the Bylaws. Reference to former Article VI (Membership Meetings) and former Article X (Members and Dues) has been deleted and revised in Article II. The revised sections of Article II describe in a single Article the classes of Membership, the voting rights of the Members, meetings and notices of meetings of Members, rights of due process for termination, expulsion or suspension of Memberships, and reduce the number of persons from forty to twenty-five who are required to be present at a Members' meeting to constitute a quorum. The rights of the Members to vote as permitted by law are identified as the right to vote (i) to elect Trustees; (ii) on a disposition of all or substantially all of the assets of the Corporation; (iii) on a merger or dissolution of the Corporation; and (iv) on matters as the Board deems appropriate, and as required by law.

d. **Article IV (Board of Trustees)**

Former Article V has been moved to this new Article IV, in order to clarify the statutory and discretionary powers of the Board (Section 4.1), its relationship to the Executive Committee (Section 4.1.2), to identify the mechanism required by the Code to set the exact number of Trustees (section 4.2); to clarify the persons who may service as ex-officio voting members of the Board (Section 4.2.2); to restate the maximum number of consecutive years a Board member may serve (9 years) (Section 4.2.4); to include a provision for declaring an office of a member of the Board vacant for three consecutive unexcused absences from Board meetings (Section 4.3); and to set out a method for nomination of Trustees and members of the Executive Committee (Section 4.4). Because of this new section 4.4, former Article VII (Nominations and Elections) has been deleted and revised. References have been deleted to statutory removals of members of the Board of Trustees.

Former Article V has been revised in this Article IV to specify the number of members of the Board required to call a meeting (five) and to modify the notice requirements to that required by law (Section 4.7); and to require at least 30% of the fixed number of Trustees and three Officers to constitute a quorum for the transaction of business, which is necessary for compliance with the California Corporations Code (Section 4.10).

The additional new provisions of this Article IV identify requirements for compensation of Trustee (Section 4.11), meetings by telephone, teleconference or electronic transmission (Section 4.12), and actions permitted without a meeting (Section 4.13).

Former Article V has been revised in new Article IV to remove references to a separate accounting system and reports to the Board, since the revised Bylaws create an Audit Committee (Section 6.7); and identify the state requirements for annual statements and reports (Sections 10.9 and 10.10). Former Section 11 of this Article containing provisions dealing with indemnification and insurance have been removed, because new provisions consistent with state laws have been included in Article VIII.

e. Article V (Officers)

Former Article VIII has been deleted and restated in Article V, to identify the number and qualifications of officers (Section 5.1); elections and term of office (Section 5.2); compensation of officers (Section 5.3); removal of officers (Section 5.4); vacancies of office (Section 5.5); and authority and duties of officers (Section 5.6). In order to clarify the duties of the President, new Section 5.6.3 provides that the Executive Director will be the President and will function as the chief executive officer of the Corporation.

f. Article VI (Committees)

Former Article IX on Committees has been revised and replaced in Article VI to identify the statutory limitations of committees of the Board (Section 6.2); clarification of the composition, powers, functions, reports and rules of procedure of the standing Executive Committee (Section 6.5); identification of additional standing committees and their duties, consisting of the Nomination Committee (Section 6.6) and the Audit Committee (Section 6.7).

References in former Section 3 of Article IX to the Docent Society have been deleted and replaced in new Article VII (Volunteers and Trustees-Emeritus).

g. Article VII (Volunteers and Trustees-Emeritus)

New Section 7.1 describes the value of volunteers who provide services to the Corporation, and specifically references appreciation of the members of the Docent Society. This new section describes the duties of the Executive Director with respect to volunteers to include the provision of general oversight and supervision of all volunteers. This section also recognizes the

purpose of the Docent Society as supporting the Corporation through activities and membership, which includes consultation with, and approval of, the Executive Director of the Corporation.

New Section 7.2 described the election of individuals who will serve as Trustees-Emeritus with rights of attendance, but not of voting at meetings of the Board of Trustees. This section also permits the Board to have meetings in closed executive sessions for legitimate business reasons, such as preservation of confidentiality and other purposes.

h. Article VIII (Indemnification and Insurance)

This new Article VIII incorporates the statutory provisions, which allow the corporation to offer indemnification for its agents and to purchase insurance for this purpose.

i. Article IX (Conflict of Interest)

This Article has been included to identify the statutory definitions of self-dealing transactions of Trustees, Officers or staff members; and the mechanisms permitted by law to deal with such matters, including requisite approval processes (Section 9.1); disclosures required (Section 9.2); abstentions from voting and absence from discussions (Section 9.3 and Section 9.4); and the distribution of bylaws and questionnaires on this subject (Section 9.5); and minutes of meetings where self-dealing transactions are reviewed and approved (Section 9.6).

j. Article X (Miscellaneous)

This new Article contains statutory requirements on the keeping of corporate books and minutes (Section 10.1); fiscal year and audit (Section 10.2) which replaces former Article IV; permissible transactions such as property assignments and liens, acceptance of contributions and prohibitions on making loans (Sections 10.3 through 10.5); severability of Bylaws provisions, inspections of corporate records, execution of contracts (Sections 10.6 through 10.8); and required annual statements and reports to Trustees and Members (Sections 10.9 and 10.10).

k. Article XI (Amendments to Bylaws)

Former Article XIII has been deleted and replaced with this new Article, which defines the Effective Date of the Bylaws (Section

11.1) and the process of amendment of the Bylaws. Under new Section 11.2, the Bylaws may be amended, repealed or modified by the affirmative vote of a majority of the members of the Board at any meeting where a quorum is present, except in cases where such amendments would adversely affect the voting or transfer rights of Members. As required by law, in such instances, the Members must approve any such amendments.

Former Article XIV (Standing Rules, Operating Procedures, Committees and Mission Statement) has been deleted as not required by law, and to afford maximum latitude by the Board to develop its rules of procedures for establishing and implementing corporate policies of governance and conduct.

By: _____

Date: _____