

Amended and Restated Bylaws of The Scholarship Foundation of Santa Barbara

A California Nonprofit Public Benefit Corporation

April 18, 2016

ARTICLE 1. PURPOSE

- § 1.1** The purpose of the Foundation is to assist Santa Barbara County students in their pursuit of higher education through scholarships, financial aid advising and any other programmatic activities that improve student access and degree completion.
- § 1.2** The Foundation is organized exclusively for public charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954 or the corresponding provision of any future United States Internal Revenue law. Its general purpose is to collect and administer funds for scholarship grants and loans and stimulate the use of existing scholarships.

ARTICLE 2. OFFICES

- § 2.1 Principal Office.** The principal office for the transaction of the activities and affairs of the Foundation shall be in Santa Barbara County, California. The Board of Directors (Board) may change the principal office from one location to another. Any change of location of the principal office shall be communicated to the State of California in compliance with the Foundation's designation as a nonprofit public benefit corporation within the state of California.
- § 2.2 Other Offices.** Additional offices may be established at any time by the Board at any place or places.

ARTICLE 3. MEMBERSHIP

- § 3.1 Members.** The Foundation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the directors.
- § 3.2 Other "Members."** Nothing in this ARTICLE 3 shall limit the right of the Foundation to refer to persons associated with it as "members" even though those persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 5056 of the California Nonprofit Corporation Law.

ARTICLE 4. DIRECTORS

- § 4.1 Board of Directors.** Subject to limitations of the Articles of Incorporation of the Foundation (the "Articles") and these Amended and Restated Bylaws, the activities and affairs of the Foundation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors ("Board"). The Board may delegate the management of the activities of the

Foundation to any person or persons, a management company, or committees however composed, provided that the activities and affairs of the Foundation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to these general powers, but subject to the provisions just stated, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Amended and Restated Bylaws:

- a. To select and remove the officers, agents, and employees of the Foundation, prescribe qualifications, powers, and duties for them that are not inconsistent with law, the Articles, or these Amended and Restated Bylaws, fix their compensation, and require from them security for faithful service.
- b. To conduct, manage, and control the affairs and activities of the Foundation and to make such rules and regulations therefor not inconsistent with law, the Articles, or these Amended and Restated Bylaws, as they may deem best.
- c. To adopt, make, and use a corporate seal and to alter its form from time to time as the Board may deem best.
- d. To borrow money and incur indebtedness for the purposes of the Foundation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for debt.

§ 4.2 Number of Directors. The authorized number of directors shall be up to forty (40) and shall be fixed, from time to time, by approval of the Board. When the Board acts to elect or appoint one or more new directors, or when the Board acknowledges any resignation or other event resulting in a vacancy, it will be implied, unless the Board specifically states to the contrary, that the resulting number of sitting directors is the new number of directors “fixed by approval of the Board” in accordance with the foregoing sentence.

§ 4.3 Election and Term of Office. Candidates for the Board of Directors shall be nominated by the Governance Committee, as set forth in these Bylaws. Each director shall serve a term which expires on June 30 of the third year following the year in which he or she is elected. Directors may serve an unlimited number of terms provided they continue to perform their Board responsibilities as defined in these Bylaws and in the Board job descriptions approved by the full Board. At the completion of each term, Board members seeking reappointment will go before the full Board for confirmation of each additional term.

§ 4.4 Board Independence. No more than 20 percent of the Board shall be comprised of interested persons. An “interested person” is someone who (1) is currently compensated by the Foundation within the last 12 months for services rendered, either as a full-time or part-time employee,

independent contractor or otherwise; or (2) any relative, spouse or descendent of someone described in (1) above.

§ 4.5 Vacancies. Any director may resign effective upon giving written notice to the Chair of the Board, the CEO/President, the Secretary, or the Board, unless the notice specifies a later time for the effectiveness of the resignation; provided that, except upon notice to the Attorney General, no director may resign if the Foundation would then be left without a duly elected director or directors in charge of its affairs. If the resignation is effective at a future time, a successor may be selected before that time, to take office when the resignation becomes effective. Vacancies in the Board shall be filled in the same manner as the director(s) whose office is vacant was selected, provided that vacancies to be filled by election by directors may be filled by a majority of the remaining directors, although less than a quorum, or by a sole remaining director.

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

The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order of judgment of any court to have breached any duty arising under Article 3 of the California Nonprofit Public Benefit Corporation Law, or who has failed to attend three consecutive meetings of the Board. The Board may remove any director without cause by a vote of a majority of all sitting directors. No reduction of the authorized number of directors shall have the effect of removing any director before expiration of the director's term of office.

§ 4.6 Place of Meeting. Meetings of the Board shall be held at any place within California that has been designated by resolution of the Board or in the notice of meeting or, if not so designated, at the principal office of the Foundation.

§ 4.7 Annual Meetings. The Board shall hold an annual meeting for the purpose of organization, selection of directors and officers, and the transaction of other business. The Board shall fix a date each year for the annual meeting that is no more than 15 months after the prior annual meeting.

§ 4.8 Regular Meetings. Regular meetings of the Board shall be held without call or notice on dates and at times fixed by the Board.

§ 4.9 Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the Chair of the Board, the CEO/President, or 20 percent of the directors then in office. Special meetings of the Board shall be held upon five days' notice by first-class mail or 48 hours' notice given personally or by telephone (including a voice messaging system or other system or technology designed to record and communicate messages), facsimile, electronic mail, or other electronic means. Any such notice shall be addressed or delivered to each director at the director's address as shown upon the records of the Foundation or as may have been given to the Foundation by the director for purposes of notice or, if the address is not shown on the

Foundation's records or is not readily ascertainable, at the place where the meetings of the directors are regularly held. Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mail, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office or residence of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

§ 4.10 Quorum. A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in § 4.13. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board, unless a greater number is required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If 3 or fewer directors are in office, all Board actions must be unanimous.

§ 4.11 Participation in Meetings by Telephone and Electronic Transmission. Members of the Board may participate in a directors' meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the Foundation. Participation in a directors' meeting through use of conference telephone or electronic video screen communication constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another.

§ 4.12 Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of its minutes, whether before or after the meeting, or who attends the meeting without protesting, before or at its commencement, the lack of notice to that director. All waivers, consents, and approvals as to a Board meeting shall be filed with the corporate records or made a part of the minutes of the meeting.

§ 4.13 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any Board meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 72 hours, notice of any adjournment to another time or place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

§ 4.14 Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all directors individually or collectively consent in writing to the action. The consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board.

§ 4.15 Annual Report. The Board shall cause an annual report to be distributed to all directors not later than 120 days after the close of the Foundation's fiscal year. The report shall set forth all of the following in appropriate detail:

- a. The assets and liabilities, including the trust funds, of the Foundation as of the end of the fiscal year for which the report is prepared. This shall clearly identify assets and liabilities belonging to each trust fund held by the Foundation.
- b. The principal changes in assets and liabilities, including trust funds, during the fiscal year covered by the report.
- c. The revenue or receipts of the Foundation, both unrestricted and restricted to particular purposes, for the fiscal year covered by the report.
- d. The expenses or disbursements of the Foundation, for both general and restricted purposes, during the covered fiscal year.
- e. Information as to transactions with interested persons and indemnifications, pursuant to California Corporations Code §6322.

§ 4.16 Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect the Foundation's books, records, documents, and physical properties, except those protected by donor privacy guidelines or materials protected by state and federal privacy laws. The inspection may be made in person or by the director's agent or attorney. The right of inspection includes the directors' right to copy or make extracts of documents, at their own expense.

§ 4.17 Committees. The Board may appoint one or more committees, each consisting of two or more directors, and delegate to those committees any of the authority of the Board except authority to:

- a. Fill vacancies on the Board or on any committee;
- b. Amend or repeal Bylaws or adopt new Bylaws;
- c. Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- d. Appoint other committees of the Board or members of other committees;
- e. Expend corporate funds to support a nominee for director after there are more people nominated for director than can be elected; or
- f. Approve any self-dealing transaction, as those transactions are defined in §5233(a) of the California Nonprofit Public Benefit Corporation Law (Corporations Code §5233(a)).

Any committee to which any authority of the Board is delegated may only be created, and its members appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present. Any such committee may be designated an Executive Committee or given another name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any of these committees shall be conducted. In the absence of prescription by the Board, a committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or a committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this ARTICLE 4 applicable to meetings and actions of the Board.

§ 4.18 Advisory Committees. The Board may establish one or more standing or ad hoc advisory committees. Advisory committees serve to inform and advise the Board at its pleasure, and do not have any of the authority of the Board. Recommendations of an advisory committee must be affirmed by the Board to become the action of the Foundation.

§ 4.19 No Compensation. Directors and members of committees may receive such reimbursement of expenses as the Board may determine by resolution to be just and reasonable to the Foundation at the time that the resolution is adopted. Other than such reimbursement, directors and committee members shall serve without compensation.

§ 4.20 Consent to Electronic Communications. A written notice given by the Foundation to a Director, or by a Director to the Foundation and/or other Directors, may be given by electronic mail or by facsimile transmission if each Director that is a sender or recipient has given the Foundation a signed written consent to electronic communications, on a form approved by the Foundation.

ARTICLE 5. OFFICERS

§ 5.1 Officers. The officers of the Foundation shall be a Chair of the Board, a President/Chief Executive Officer (CEO), a Vice Chair, a Secretary, and a Treasurer. Such other officers and assistant officers, as may be deemed necessary, may be elected or appointed in accordance with the provisions provided herein. Any number of offices may be held by the same person except as provided in the Articles, these Amended and Restated Bylaws, and applicable law. Pursuant to Corporations Code §5213, neither the Secretary nor the Treasurer may serve concurrently as the Chair of the Board.

§ 5.2 Appointment. The officers of the Foundation, except officers appointed in accordance with the provisions of § 5.4, shall be chosen once every other year, and shall serve at the pleasure of, the Board. Each officer shall hold office until his or her resignation, removal, or other disqualification from service or until his or her respective successor shall be elected.

- § 5.3 Removal and Resignation.** Any officer may be removed, either with or without cause, by the Board at any time. Any officer may resign at any time by giving written notice to the Foundation addressed and sent to the Board, the Chair of the Board, or the Secretary. An officer's resignation shall take effect at the date notice of resignation is received by the addressee or at any later time specified in the resignation and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective.
- § 5.4 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Amended and Restated Bylaws for regular appointment to the office, provided that vacancies may be filled as they occur and not on an annual basis.
- § 5.5 Chair of the Board.** The Chair of the Board will serve as the Foundation's chief volunteer officer. The chair provides leadership in supporting the mission and goals of the organization and shall, in general, supervise and control all of the business of the Board of the Foundation. The Chair facilitates communication between the Board and the President/Chief Executive Officer. The Chair shall preside at all meetings of the Board of Directors and the Executive Committee. In addition, the Chair may sign, with the President/Chief Executive Officer or any other proper officer of the Foundation, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Foundation; and in general, shall perform all duties incident to the office of the Chair and such other duties as may be prescribed by the Board of Directors from time to time.
- § 5.6 Vice Chair.** In the absence of the Chair or in event of his/her inability or refusal to act, the Vice-Chair shall perform the duties of the Chair and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice-Chair shall perform such other duties as from time to time may be assigned by the Chair or by the Board of Directors. At any time when the Board has appointed more than one Vice-Chair, the powers set forth in this § 5.6 shall be exercised in the order that has been designated by the Board, e.g., First Vice-Chair, Second Vice-Chair, etc.
- § 5.7 Secretary.** The Secretary shall keep or cause to be kept, at the principal office or other place ordered by the Board, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice given of the meeting, the names of those present at Board and committee meetings, and the proceedings of the meetings. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the Foundation's Articles and Bylaws, as amended to date. The Secretary shall keep, or cause to be kept, the seal of the Foundation in safe custody, and shall have other powers and perform such other duties prescribed by the Board.

§ 5.8 Treasurer. The Treasurer shall be the Chair of the Finance Committee. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Foundation's properties and transactions. The Treasurer shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board. The books of account shall be open to inspection by any director at any reasonable time.

§ 5.9 President/Chief Executive Officer. The Board may appoint a President/Chief Executive Officer upon such terms and conditions and at such compensation as the Board deems proper. The President/Chief Executive Officer, upon appointment, will serve at the pleasure of the Board and will be responsible for the conduct of the business of the Foundation within its prescribed policies. He or she will report to the Chair and will be responsible for hiring, assigning, supervising, and terminating employees of the Foundation pursuant to the policies established by the Board.

§ 5.10 Compensation. The compensation, if any, of the CEO/President and other key employees of the Foundation shall be determined in accordance with the following rules:

- a. Review and approval.** Compensation of the person shall be reviewed and approved by the Board or Human Resource Committee of the Foundation, provided that persons with conflicts of interest with respect to the compensation arrangement abstain from participating in meetings and voting therein.
- b. Use of data as to comparable compensation.** From time to time the compensation of the person shall be reviewed and approved using data as to comparable compensation for similarly qualified persons in functionally comparable positions in similarly situated Foundations.
- c. Contemporaneous documentation and recordkeeping.** There shall be contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement.

ARTICLE 6. CONFLICTS OF INTEREST

§ 6.1 Purpose. The purpose of this Conflict of Interest Policy (this "Conflict Policy") is to protect the interests of the Foundation when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Director or might result in a possible excess benefit transaction. This Conflict Policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit organizations.

§ 6.2 Definitions.

- a. **Interested Person.** Any Director, Officer or member of a committee with Board-delegated powers, who has a direct or indirect Financial Interest, as defined below, is an Interested Person.
- b. **Financial Interest.** A person has Financial Interest if the person has, directly or indirectly, through business, investment, or family:
 - (i) An ownership or investment interest in any entity with which the Foundation has a transaction or arrangement.
 - (ii) A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement; or
 - (iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A Financial Interest is not necessarily a conflict of interest. Under § 6.3b, below, a person who has a Financial Interest may have a conflict of interest only if the Board or committee, as the case may be, decides that a conflict of interest exists.

§ 6.3 Procedures.

- a. **Duty to Disclose.** In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of the Financial Interest and be given the opportunity to disclose all material facts to the Board considering the proposed transaction or arrangement.
- b. **Determining Whether a Conflict of Interest Exists.** After the Interested Person discloses the Financial Interest and all material facts to the Board, and after any discussion, the Interested Person shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.
- c. **Procedures for Addressing the Conflict of Interest.**
 - (i) An Interested Person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
 - (ii) The chairperson of the Board meeting shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

- (iii) After exercising due diligence, the Board or committee shall determine whether the Foundation can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (iv) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested Directors, whether the transaction or arrangement is in the Foundation's best interests, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Board shall make its decision as to whether to enter into the transaction or arrangement.
- (v) The decision of the Board as to whether to enter into the transaction or arrangement with the Interested Person may be effected by unanimous written consent in lieu of a Board meeting, as allowed by law, provided that the Interested Person abstains from the vote in writing.
- (vi) The Foundation shall provide all Board members with an annual report listing all transactions with or indemnification of any Interested Person, as and in the manner required by applicable law, including but not limited to California Corporations Code §6322.
- (vii) Prior to approving a transaction with an Interested Person, the Board of the Foundation shall consider, with the advice of counsel, whether to notify the California Attorney General, as permitted by Title 11 California Code of Regulations §999.2, and whether to seek the prior approval of the Attorney General.

d. Violations of the Conflict of Interest Policy.

- (i) If the Board or committee has reasonable cause to believe an Interested Person has failed to disclose actual or possible conflicts of interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.
- (ii) If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the Board, or committee, as the case may be, determines the Interested Person has failed to disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action.

§ 6.4 Records of Proceedings. The minutes of the Board and all committees with Board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine

whether a conflict of interest was present, and the Board's decision as to whether a conflict in fact existed.

- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

§ 6.5 Annual Statements. Each Director, Officer and member of a committee with Board-delegated powers shall annually sign a statement which affirms such person has read and understands this Conflict Policy as part of the Bylaws of this Foundation, has agreed to comply with this Conflict Policy and understands that the Foundation is nonprofit and in order to maintain its federal exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

ARTICLE 7. INDEMNIFICATION

§ 7.1 Definitions. The following definitions apply for the purposes of this ARTICLE 7:

- a. "agent" means any person who is or was a director, officer, employee, or other agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee, or agent of another foreign or domestic entity;
- b. "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and
- c. "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under § 7.4 or § 7.5b.

§ 7.2 Indemnification in Actions by Third Parties. The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Foundation to procure a judgment in its favor, an action brought under §5233 of the California Nonprofit Public Benefit Corporation Law, 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 that person is or was an agent of the Foundation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with that proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of the Foundation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that 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 Foundation or that the person had reasonable cause to believe that the person's conduct was unlawful.

§ 7.3 Indemnification in Actions by or in the Right of the Foundation. The Foundation shall have power to 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 the Foundation, or brought under §5233 of the California Nonprofit Public Benefit Corporation Law, 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 the person is or was an agent of the Foundation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of that action if the person acted in good faith, in a manner such person believed to be in the best interests of the Foundation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this § 7.3:

- a. In respect of any claim, issue, or matter as to which that person shall have been adjudged to be liable to the Foundation in the performance of that person's duty to the Foundation, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;
- b. Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- c. 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.

§ 7.4 Indemnification Against Expenses. To the extent that an agent of the Foundation has been successful on the merits in defense of any proceeding referred to in § 7.2 or § 7.3 of this ARTICLE 7 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.

§ 7.5 Required Determinations. Except as provided in § 7.4, any indemnification under this ARTICLE 7 shall be made by the Foundation 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 § 7.2 or § 7.3 of this ARTICLE 7, by:

- a. A majority vote of a quorum consisting of directors who are not parties to the proceeding; or
- b. The court in which the proceeding is or was pending upon application made by the Foundation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by the Foundation.

- § 7.6 Advance of Expenses.** Expenses incurred in defending any proceeding may be advanced by the Foundation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay that amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this ARTICLE 7.
- § 7.7 Other Indemnification.** No provision made by the Foundation to indemnify its directors or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution of directors, an agreement, or otherwise, shall be valid unless consistent with this ARTICLE 7. Nothing contained in this ARTICLE 7 shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.
- § 7.8 Forms of Indemnification Not Permitted.** No indemnification or advance shall be made under this ARTICLE 7, except as provided in § 7.4 or § 7.5b, in any circumstances in which it appears:
- a. That it would be inconsistent with a provision of the Articles, these Amended and Restated 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
 - b. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.
- § 7.9 Insurance.** The Foundation shall have power to purchase and maintain insurance on behalf of any agent of the Foundation against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the Foundation would have the power to indemnify the agent against liability under the provisions of this ARTICLE 7, provided, however, that the Foundation shall have no power to purchase and maintain such insurance to indemnify any agent of the Foundation for a violation of §5233 of the California Nonprofit Public Benefit Corporation Law.
- § 7.10 Nonapplicability to Fiduciaries of Employee Benefit Plans.** This ARTICLE 7 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 that person may also be an agent of the Foundation as defined in § 7.1. The Foundation shall have power to indemnify that trustee, investment manager, or other fiduciary to the extent permitted by §207(f) of the California General Corporation Law.
-

CERTIFICATION BY SECRETARY

I, the undersigned Secretary of the Foundation, certify that the foregoing Amended and Restated Bylaws were approved by the Board of Directors on _____, 2016.

Date:

Secretary