

**AMENDED AND RESTATED**

**BYLAWS**

OF

**THE DAVID AND LUCILE PACKARD FOUNDATION**

a California Nonprofit Public Benefit Corporation

**ARTICLE I**

**NAME**

The name of this Corporation is THE DAVID AND LUCILE PACKARD FOUNDATION.

**ARTICLE II**

**OFFICES**

**Section 1. Principal Office.** This Corporation's principal office is located at 300 Second Street, Los Altos, Santa Clara County, California 94022.

**Section 2. Change of Address.** The Board of Trustees is granted full power and authority to change the principal office from one location to another. Any such change shall be noted by the Secretary in the Minutes of the Board of Trustees.

**ARTICLE III**

**OBJECTIVES AND PURPOSES**

This Corporation is organized and operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law (the "Code"), including but not limited to the making of distributions for such purposes to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code.

**ARTICLE IV**

**NONPARTISAN ACTIVITIES**

**Section 1.** This Corporation has been formed under the California Nonprofit Public Benefit Corporation Law for charitable purposes, and it shall be nonprofit and nonpartisan. No substantial part of the activities of this Corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation. This 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.

**Section 2.** This Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not consistent with its status as a tax-exempt nonprofit charitable organization and in furtherance of the purposes described above.

**ARTICLE V  
DEDICATION OF ASSETS**

The properties and assets of this Corporation are irrevocably dedicated to charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code and meeting the requirement for exemption provided by Section 23701d of the California Revenue and Taxation Code, as such code sections may be amended from time to time.

**ARTICLE VI  
MEMBERSHIP**

**Section 1. Members.** This Corporation shall have one (1) class of members (“the Members”).

(a) **Initial Members.** This Corporation shall have four (4) Members. The initial Members shall be David Woodley Packard, Nancy Packard Burnett, Susan Packard Orr, and Julie Packard.

(b) **Authorized Number of Members.** The number of Members of this Corporation may be decreased (to not less than one Member) or increased at any time by written ballots signed by a majority of the persons then holding office as Members and delivered to the Secretary of this Corporation; provided, however, that no reduction in the authorized number of Members shall have the effect of terminating the membership of any Member then holding office.

(c) **Eligible Members.** Only members of the Packard Family are eligible to be Members of this Corporation. The term “Packard Family” shall mean the initial Members and the spouses and issue of the initial Members.

(d) **Transfer of Membership.** Any Member of this Corporation may transfer his or her membership at any time to any member of the Packard Family by a written statement consenting to the transfer signed by the transferor and the transferee and delivered to the Secretary of this Corporation.

(e) **Term of Office of Member.** Each Member of this Corporation shall serve until the earliest of: (i) the death or incapacity of such Member; (ii) the resignation of such Member (as evidenced by a written statement signed by the Member and delivered to the Secretary of this Corporation); (iii) the transfer by a Member of his or her membership in this Corporation to another member of the Packard Family as provided in Section 1(d) above; (iv) the termination of membership status for any Member (other than the initial Members) pursuant to a decision of a majority of the Members then holding office, as evidenced by written ballots signed by a majority of such Members and delivered to the Secretary of this Corporation; or (v) a change in Article VI of these Bylaws whereby the membership status of any Member is eliminated.

**Section 2. Powers of Members.** The Members of this Corporation shall have the powers set forth below. Any powers assigned to members of a corporation by the California Nonprofit Public Benefit Corporation Law which are not listed below shall vest in and be exercised by the Board of Trustees of this Corporation. The powers of the Members of this Corporation shall be exercised by a majority of the Members of this Corporation then holding office.

(a) The Members of this Corporation shall approve any amendment, revision or deletion of the Bylaws of this Corporation.

(b) The Members of this Corporation shall determine the authorized number of Members as provided in Section 1(b) above.

(c) The Members of this Corporation shall elect additional Members whenever a vacancy occurs.

(d) The Members of this Corporation, without cause or explanation, may remove any General Trustee or may cancel the election of any person as a General Trustee.

(e) The Members of this Corporation shall elect the Family Trustees.

(f) The Members of this Corporation shall elect the Next Generation Trustees.

**Section 3. Voting Rights.** Each Member is entitled to one vote on each matter submitted to a vote of the Members. Members may not cumulate votes for the election of Family Trustees or Next Generation Trustees.

**Section 4. Manner of Acting.** The Members may, but shall not be required to, hold meetings. Any action taken and any matters voted upon by the Members shall be evidenced in writing and reflected in the minutes of a meeting, written ballot, or written consent, and delivered to the Secretary of this Corporation. Any action required or permitted to be taken by a majority of the Members by written ballot may be taken by all of the Members by unanimous written consent.

**Section 5. Action By Written Ballot.** Any action required or permitted to be taken by a majority of the Members of this Corporation pursuant to these Bylaws, including but not limited to the election of the Family Trustees or the Next Generation Trustees, or the removal or cancellation of the election of a General Trustee, shall be evidenced by written ballots signed by a majority of the Members then in office. One written ballot shall be distributed to each Member entitled to vote on the proposed action. Such written ballots indicating the approval or disapproval of the proposed action shall be effective upon delivery to the Secretary of this Corporation of the required number of votes to constitute a majority of the Members. Upon receipt of any such written ballots, the Secretary of this Corporation shall promptly furnish copies thereof to each member of the Board of Trustees and to the President of this Corporation.

**Section 6. Action By Written Consent.** Any action required or permitted to be taken by all of the Members of this Corporation pursuant to these Bylaws shall be evidenced by unanimous written consent signed by all of the Members then in office. Such written consent may be executed in counterparts. Such written consent shall be effective upon delivery to the Secretary of this Corporation. Upon receipt of any such written consent (or consents), the Secretary of this Corporation shall promptly furnish copies thereof to each member of the Board of Trustees and to the President of this Corporation.

## ARTICLE VII BOARD OF TRUSTEES

**Section 1. General Powers.** Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of Incorporation and these Bylaws, including any limitations that require approval of the Members, the activities and affairs of this Corporation shall be conducted, the disposition of its property and funds shall be managed and controlled, and all corporate powers shall be exercised by or under the ultimate direction of the Board of Trustees.

**Section 2. Specific Powers.** Without prejudice to the general powers set forth above, but subject to the same limitations, the Board of Trustees shall have the power to:

(a) Appoint and remove all of the officers, agents, and employees of the Corporation, at the pleasure of the Board; prescribe powers and duties for them that are consistent with the law, with the Articles of Incorporation, and with these Bylaws; fix their compensation; and require from them security for faithful performance of their duties.

(b) Conduct, manage and control the affairs and activities of this Corporation, and make such rules and regulations therefor as the Trustees deem best.

(c) Change the principal office in California from one location to another; cause this Corporation to be qualified to conduct its activities in any other state, territory, dependency, or country; conduct its activities within or outside California; and designate any place within or outside California for holding any meeting of the Board.

(d) Adopt and use a corporate seal, and alter the form of the seal.

(e) Borrow money and incur indebtedness on behalf of this Corporation and cause to be executed and delivered for the purposes of this Corporation, in the Corporation's name, promissory notes, bonds, debentures, deeds of trust, mortgages, hypothecations, pledges, and other evidences of debt and securities therefor.

**Section 3. Definition of Trustee.** For the purposes of these Bylaws, the term "Trustees" shall specifically refer to the directors of this Corporation as that term is defined in the California Nonprofit Public Benefit Corporations Code. Collectively, the Trustees shall be known as the Board of Trustees (the "Board").

**Section 4. Classes of Trustees.** This Corporation shall have four (4) classes of Trustees entitled to vote, namely, Family Trustees, Next Generation Trustees, General Trustees, and Ex Officio Trustee. To express this Corporation's gratitude and respect for retiring Trustees, the Board may create a non-voting honorary position of Trustee Emeritus.

**Section 5. Authorized Number of Trustees.** This Corporation shall have at least thirteen (13) and no more than fifteen (15) authorized Trustees, five (5) of whom shall be Family Trustees, seven (7) of whom shall be General Trustees, and one (1) of whom shall be the President of this Corporation as Ex Officio Trustee. In addition, from time to time, this Corporation may

have up to two (2) Next Generation Trustees. The exact number of authorized Trustees shall be thirteen (13), unless and until it is fixed at fourteen (14) or fifteen (15), by a resolution adopted by the Board of Trustees, when one (1) or two (2) Next Generation Trustees are being elected.

**Section 6. Term of Office of Trustees.**

(a) **Family Trustee.** The term of office of each Family Trustee shall be three (3) years commencing with the election of such Trustee at the annual meeting of this Corporation held in June of each year, and expiring at the annual meeting three (3) years after the date of the election of such Trustee and when the successor for such Trustee has been elected and qualified; provided, however, that any Family Trustee may be elected for a one- (1), two- (2), or three- (3) year term of office as may be determined by a majority of the Members of this Corporation then holding office. There shall be no limit on the number of terms in office that a Family Trustee may serve.

(b) **Next Generation Trustee.** The term of office of each Next Generation Trustee shall be two (2) years commencing with the election of such Trustee at the annual meeting of this Corporation held in June of each year, and expiring at the annual meeting two (2) years after the date of the election of such Trustee and when the successor for such Trustee has been elected and qualified; provided, however, that any Next Generation Trustee may be elected for a one- (1), or two- (2) year term of office as may be determined by a majority of the Members of this Corporation then holding office. There shall be no limit on the number of terms in office that a Next Generation Trustee may serve.

(c) **General Trustee.** The term of each General Trustee shall be three (3) years commencing with the election of such Trustee at the annual meeting of this Corporation held in June of each year, or commencing at such other meeting of the Board of Trustees if the annual meeting is not held or if one or more General Trustees are not elected at the annual meeting, and expiring at the annual meeting three (3) years after the date of the election of such Trustee and when the successor for such Trustee has been elected and qualified. No General Trustee shall serve more than three (3) consecutive three- (3) year terms in office; provided, however, that a General Trustee may be elected for a fourth or fifth consecutive three-year term of office if the Members of this Corporation, acting unanimously, consent to the waiver of the three three-year term limit with respect to such Trustee. Such consent shall be evidenced by written consent signed by all Members then in office and filed with the Secretary of this Corporation prior to the annual meeting at which the third or fourth three-year term of office shall expire for any General Trustee.

(d) **Ex Officio Trustee.** The term of office of the President as Ex Officio Trustee shall be concurrent with his or her term of office as President.

**Section 7. Election of Family, Next Generation, and General Trustees.**

(a) **Family Trustees.** Family Trustees shall be elected by the Members of this Corporation in accordance with the provisions of Article VI, Section 2(e) and Article VII, Section 6(a).

(b) **Next Generation Trustees.** Next Generation Trustees shall be elected by the Members of this Corporation in accordance with the provisions of Article VI, Section 2(f) and Article VII, Section 6(b).

(c) **General Trustees.** General Trustees shall be nominated by the method of nomination authorized by the Board of Trustees or by any other method authorized by law. General Trustees shall be elected by a majority of the Trustees then holding office.

**Section 8. Restrictions on Interested Persons as Trustees.** Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. An “interested person” is: (a) any person currently being compensated by this Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor or otherwise, excluding any reasonable compensation paid to a Trustee as Trustee; or (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this Section 8 shall not affect the validity or enforceability of any transaction entered into by this Corporation.

**Section 9. Vacancies in the Board.**

(a) **Events Causing Vacancies.** Vacancies in the Board shall exist on the death, resignation, or removal of any Trustee; if the authorized number of Trustees is increased; or if the full number of authorized Trustees is not elected at an annual meeting of the Board.

(b) **Resignation of Family, Next Generation, or General Trustees.** Except as provided in this paragraph, any Family Trustee, Next Generation Trustee, or General Trustee may resign by giving written notice to the Chairman of the Board, the President, the Secretary, or the Board. The resignation shall be effective when the notice is given unless the notice specifies a later date for the resignation to become effective. If the resignation is effective on a later date, a successor may be selected by the Board or the Members as provided under Article VII, Section 7, to take office as of the date when the resignation becomes effective. A Trustee shall not resign if this Corporation would then be left without a duly elected Trustee or Trustees in charge of its affairs, except upon notice to the Attorney General of California.

(c) **Filling Vacancies.**

(i) Vacancies on the Board in respect to Family Trustees shall be filled by the Members of this Corporation as evidenced by the written ballots signed by a majority of the Members of this Corporation then in office.

(ii) Vacancies on the Board in respect to Next Generation Trustees shall be filled by the Members of this Corporation as evidenced by the written ballots signed by a majority of the Members of this Corporation then in office.

(iii) Vacancies on the Board in respect to General Trustees shall be filled by a majority vote of the remaining Trustees then in office, whether or not less than a quorum, or by a sole remaining Trustee.

(iv) Each Family Trustee, Next Generation Trustee, or General Trustee so selected shall hold office until the expiration of the term of the predecessor Trustee and until a successor has been elected and qualified.

(d) **No Vacancy on Reduction of Number of Trustees.** No reduction of the authorized number of Trustees shall have the effect of removing any Trustee before the Trustee's term of office expires.

**Section 10. Removal of Trustees by Board of Trustees.**

(a) **With Cause.** The Board may declare vacant the office of a Trustee on the occurrence of any of the following events:

(i) The Trustee has been declared of unsound mind by a final order of court;

(ii) The Trustee has been convicted of a felony; or

(iii) The Trustee has been found by a final order or judgment of any court to have breached any duty arising under Chapter 2, Article 3 of the California Nonprofit Public Benefit Corporation Law Section 5230 et seq. (Standards of Conduct), as amended from time to time.

(b) **Without Cause.**

(i) Any General Trustee may be removed without cause if such removal is approved by the vote of three-fourths of the Trustees then in office.

(ii) Any General Trustee, any Family Trustee, or any Next Generation Trustee may be removed without cause if such removal is approved by the Members of the Corporation as evidenced by written ballots signed by a majority of the Members then in office and delivered to the Secretary of the Corporation.

**Section 11. Annual Meeting.**

(a) **Time.** The annual meeting of the Board for the purpose of electing Trustees and officers, and for such other matters as may come before the meeting shall be held at such time and place in the month of June in each year as may be designated by the Board or by the Chairman of the Board.

(b) **Notice.** Notice of each annual meeting of the Board shall be mailed by the Secretary of this Corporation to the last known post office address of each Trustee not less than fourteen (14) days before the meeting, and such notice shall state the place, day, and hour thereof.

**Section 12. Regular Meetings.** Provisions for regular meetings of the Board and the time and place thereof may be designated by the Board or the Chairman of the Board and reflected in the Minutes. No notice need be given of any so designated regular meetings.

**Section 13. Special Meetings.**

(a) **Authority to Call.** Special meetings of the Board for any purpose may be called at any time by the Chairman of the Board, the President, the Secretary, or any two Trustees. Special meetings shall be held at any place within or outside the State of California that has been

designated in the notice of the meeting, or, if not stated in the notice, or if there is no notice, at the principal office of this Corporation. Notwithstanding the above provisions of this Section 13, a special meeting of the Board may be held at any place consented to in writing by all of the Trustees, either before or after the meeting. If the consents are given, they shall be filed with the Minutes of the meeting.

(b) **Manner of Giving Notice.** Notice of the time and place of special meetings shall be given to each Trustee by one of the following methods: (i) personal delivery of written notice; (ii) first-class mail, postage prepaid; (iii) Express Mail, Federal Express or other express delivery service which could reasonably be expected to deliver that notice promptly to the Trustee's address, charges prepaid; (iv) telephone, either directly to the Trustee or to a person at the Trustee's office or home who would reasonably be expected to communicate that notice promptly to the Trustee, or by leaving a message on a voice message system or other system or technology designed to record and communicate messages; (v) electronic transmission, either directly to the Trustee or to a person at the Trustee's office or home who would reasonably be expected to communicate the notice promptly to the Trustee; (vi) facsimile; (vii) electronic mail; or (viii) other electronic means of communication. All such notices shall be given or sent to the Trustee's address, telephone number, or electronic mail address as shown on the records of this Corporation.

(c) **Time Requirements of Notice.** Notices sent by first-class mail shall be deposited in the United States mails at least four (4) days before the time set for the special meeting. Notices given by personal delivery, express delivery, telephone (including a voice message system), facsimile, electronic mail, or other electronic means of communication shall be delivered, telephoned, or sent, respectively, at least forty-eight (48) hours before the time set for the meeting.

(d) **Notice Contents.** The notice shall state the time and date of the special meeting and the place, if the place is other than the principal office of this Corporation. The notice need not specify the purpose of the special meeting.

**Section 14. Meetings by Telephone or Other Communication Equipment.** Members of the Board may participate in any Board or Committee meeting through use of conference telephone, electronic video screen communication, or other communications equipment. Participation in a Board or Committee meeting through use of conference telephone constitutes presence in person as long as all members participating in the meeting are able to hear one another. All Trustees so participating shall be considered to be present in person at the meeting. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than conference telephone) constitutes presence in person at that meeting if all of the following apply:

(a) Each member participating in the meeting can communicate with all of the other participating members concurrently;

(b) Each member is provided the means of participating in all matters before the Board or Committee, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by this Corporation; and

(c) This Corporation adopts and implements some means of verifying both of the following: (i) a person participating in the meeting is a Trustee or other person entitled to

participate in the Board or Committee meeting; and (ii) all actions of, or votes by, the Board or Committee are taken or cast only by the Trustees and not by persons who are not Trustees.

**Section 15. Quorum.** The majority of the authorized number of Trustees shall constitute a quorum of the Board for the transaction of business, except to adjourn as hereinafter provided. 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 shall be the act of the Board, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including those provisions relating to: (a) approval of contracts or transactions in which a Trustee has a direct or indirect material financial interest; (b) approval of certain transactions between corporations having common trustees or directors; (c) creation of and appointments to Committees of the Board; and (d) indemnification of Trustees. The Board may continue to transact business at any meeting at which a quorum is initially present, despite the withdrawal of some Trustees, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting, or such greater number as may be required by law, the Articles of Incorporation, or these Bylaws.

**Section 16. Waiver of Notice.** Notice of a meeting need not be given to any Trustee who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the Minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the Minutes of the meeting. Notice of a meeting need not be given to any Trustee who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

**Section 17. Conduct of Meetings.** The Chairman of the Board or, in his or her absence, the Vice Chairman, if any, or the President, or any Trustee selected by the Trustees present shall preside at meetings of the Board. The Secretary of this Corporation or, in the Secretary's absence, the Assistant Secretary, if any, or any person appointed by the presiding officer shall act as Secretary of the meeting.

**Section 18. Adjournment.** A majority of the Trustees present at any meeting of the Board, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of adjournment need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, personal notice of the time and place of the adjourned meeting shall be given prior to the time of the adjourned meeting to the Trustees who were not present at the time of adjournment.

**Section 19. Action Without Meeting.** Any action that the Board is required or permitted to take may be taken by the Board without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such written consent may be executed in counterparts. Such written consent (or consents) shall be delivered to the Secretary of this Corporation and filed with the Minutes of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. For the purposes of this Article VII Section 19 only, "all members of the Board" shall not include any "interested director" as defined in Section 5233 of the California Nonprofit Public Benefit Corporation Law (self-dealing), as amended from time to time.

**Section 20. Fees and Compensation of Trustees.** Each Trustee may receive reasonable expenses incurred in attending meetings of the Board as may be fixed from time to time by action of the Board. The Trustees other than the Ex Officio Trustee shall serve without compensation. The Ex Officio Trustee may receive such compensation for his or her services as such Trustee and as an officer as the Board may determine by resolution to be fair, just, and reasonable to this Corporation at the time that the resolution is adopted. Nothing contained in these Bylaws shall be construed to preclude any Trustee from serving this Corporation in any other capacity as an officer, employee, agent, or otherwise, and receiving reasonable compensation for such services.

**Section 21. Delegation.** Except as otherwise provided in these Bylaws or by applicable law, the Board may, by resolution duly adopted by it, delegate its powers and the management of the activities of this Corporation to particular Trustees or Committees of the Board, or to other committees however composed, or to officers or employees of this Corporation; provided, however, that the activity and affairs of this Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. No delegation of authority by the Board to particular Trustees, Committees of the Board, other committees, officers, employees, or anyone else shall preclude the Board from exercising the authority required to meet its responsibility for the conduct of the activities and affairs of this Corporation.

## **ARTICLE VIII COMMITTEES**

**Section 1. Committees of the Board.** Each Committee of the Board shall consist of two or more Trustees, to serve at the pleasure of the Board. Except as otherwise specified in the Articles of Incorporation or these Bylaws, appointments to a Committee of the Board shall be by majority vote of the Trustees then in office.

(a) **Standing Committees.** This Corporation shall have four (4) standing Committees of the Board, namely, the Executive Committee, the Finance Committee, the Investment Committee, and the Audit Committee.

(b) **Additional Committees.** The Board, by resolution, may create one or more additional Committees of the Board, such as a Committee on the Board, Compensation Committee, and program committees, and may determine the responsibilities thereof, as the Board from time to time may determine.

(c) **Nondelegable Powers.** The Board may delegate to any Committee of the Board, by resolution, any of the authority of the Board, except that the Board shall not delegate and a Committee of the Board shall not:

- (1) Fill vacancies on the Board or in any Committee of the Board;
- (2) Fix compensation of the Trustees for serving on the Board or on any committee;
- (3) Amend or repeal these Bylaws or adopt new Bylaws;
- (4) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;

(5) Appoint any other Committees of the Board or appoint the members of Committees of the Board;

(6) Expend corporate funds to support a nominee for Trustee after there are more people nominated for Trustee than can be elected;

(7) Approve any potentially self-dealing transaction: (i) to which this Corporation is a party and in which one or more Trustees has a material financial interest; or (ii) between this Corporation and an entity in which one or more of this Corporation's Trustees has a material financial interest, except as special approval is provided for in Section 5233(d)(3) of the California Nonprofit Public Benefit Corporation Law, and as may not be prohibited under Section 4941(d) of the Internal Revenue Code, as such code sections may be amended from time to time;

(8) Approve any action which also requires approval of the Members or approval of a majority of all Members.

**Section 2. Executive Committee.**

(a) The Executive Committee of the Board shall consist of at least five (5) Trustees, including the Chairman of the Board and the President. The President shall be an ex officio voting member of the Executive Committee. Any additional members of the Executive Committee shall be appointed by the Board; provided, that notwithstanding the above, at least two (2) members shall always be Family Trustees.

(b) The Executive Committee, subject to any limitations imposed by the Nonprofit Public Benefit Corporation Law, the Articles of Incorporation, these Bylaws, and/or the Board of Trustees, shall have the power to transact all regular business of this Corporation during the interim between the meetings of the Board, provided, however, that the Executive Committee shall have no authority with respect to the nondelegable powers listed in Article VIII, Section 1(c).

(c) At each meeting of the Board, the Executive Committee shall report on the actions it has taken in the interim since the previous meeting of the Board.

**Section 3. Finance Committee.** The Finance Committee of the Board shall consist of at least two (2) Trustees. The President shall be an additional ex officio voting member. The Finance Committee shall have the following duties and shall exercise the following powers:

(a) To review and recommend the fiduciary and regulatory operations of this Corporation, including controls, insurance, and policies;

(b) To review and recommend annual operating, capital, investment, and PRI budgets and changes to the budgets;

(c) To oversee compliance with and reporting on the Internal Revenue Code requirements applicable to tax exempt private foundations; and

(d) To employ, at the expense of this Corporation, one or more banks or trust companies, or similar financial institutions to handle the Corporation's financial transactions, statistical services, or payroll services, and to recommend such changes as appear to be desirable to safeguard the interests of this Corporation.

**Section 4. Investment Committee.** The Investment Committee of the Board shall consist of at least two (2) Trustees. The President shall be an additional ex officio voting member. The Investment Committee shall have the following duties and shall exercise the following powers:

- (a) To oversee management of the investment assets of the Corporation;
- (b) To develop investment policies, objectives, organizational structure, and long-term asset allocation targets for approval by the Board. To present to the Board at least annually a review of investment performance, objectives, policy and strategy, and long-term asset allocation targets; and
- (c) To oversee the internal investment function and external investment managers, custodians, consultants, and investment professionals, and oversee investment performance.

**Section 5. Audit Committee.** The Audit Committee of the Board shall consist of at least two (2) Trustees. Members of the Audit Committee shall not have a material financial interest in any entity doing business with this Corporation. The President shall not be a member of the Audit Committee. The chairperson of the Audit Committee shall not be a member of the Finance Committee and less than one-half of the members of the Audit Committee may also be members of the Finance Committee. The Audit Committee shall have the following duties and shall exercise the following powers:

- (a) To meet with the Corporation's independent auditors at least annually and review the scope of the annual audit (inclusions and exclusions), any open questions as to the choice of acceptable accounting principles to be applied, any matters of difference of opinion or dispute between the independent auditors and the officers or employees of this Corporation, and all other matters relating to the auditors' relationship with the Corporation;
- (b) To advise and assist the Board in evaluating the auditors' performance, including the scope and adequacy of the auditors' review, and the auditors' independence;
- (c) To nominate, for approval by the Board, the firm of independent auditors to be retained or terminated by the Corporation, and may negotiate the independent auditor's compensation, on behalf of the Board;
- (d) To review the Corporation's annual financial statements, including the footnotes, and discuss such statements with the auditors prior to release of the Corporation's annual report;
- (e) To receive and consider the auditors' comments and suggestions as to internal control procedures, adequacy of staff, and other matters, and based upon such comments and suggestions, to make such recommendations to the Board as the Audit Committee deems necessary and appropriate;

(f) To review and determine whether to accept or reject the audit;

(g) To review any nonaudit services to be performed by the auditing firm, determine that such services conform with standards for auditor independence, and approve the performance of nonaudit services by the auditing firm; and

(h) To meet with and request and obtain reports and information from such officers, employees, and others as the Audit Committee, in consultation with the President, determines to be necessary in carrying out its duties as set forth above.

**Section 6. Advisory Committees.** By resolution duly adopted by the Board, the Board may create one or more advisory committees. Members of advisory committees may be persons who are Trustees and persons who are not members of the Board, and may be appointed upon such terms and conditions as the Board may determine.

**Section 7. Appointment of Committees of the Board.**

(a) Except as otherwise set forth in these Bylaws, the Chair and members of all Committees of the Board shall be appointed by majority vote of the Trustees then in office as provided in Section 5212 of the Nonprofit Public Benefit Corporation Law. Committee members shall serve at the pleasure of the Board and any person may be removed as a member of any Committee at any time. The Board may fill any vacancies that may exist on any Committee at any time. The duties and powers of all Committees of the Board shall be subject to the same limitations as are imposed upon the Executive Committee with respect to the nondelegable powers listed in Article VIII, Section 1(c) of these Bylaws and to the limitations contained in the Nonprofit Public Benefit Corporation Law, or imposed by the Articles of Incorporation, or otherwise imposed by these Bylaws. One or more Trustees may be designated as alternate members of any Committee, and may replace any absent member at any meeting of the Committee.

(b) Persons who are not members of the Board may be appointed as nonvoting advisors to Committees of the Board, upon such terms and conditions as the Board may determine, provided, however, that such advisors shall not vote on any matter wherein the Committee has been delegated power to act on behalf of the Board.

**Section 8. Term of Office of Committee Members.** Each Trustee shall serve as a member of a Committee of the Board at the pleasure of the Board, but not to exceed such Committee member's term as a Trustee.

**Section 9. Meetings and Actions of Committees of the Board.** Meetings and actions of Committees of the Board shall be governed by, held, and taken in accordance with the provisions of Article VII of these Bylaws, concerning meetings and other Board actions, except that the time for regular meetings and calling of special meetings of Committees may be determined either by resolution of the Board, or if none, by resolution of the Committee. Notice of special meetings of Committees shall also be given to any and all alternate Committee members, who shall have the right to attend all meetings of that Committee. Minutes shall be kept of each meeting of any Committee of the Board and shall be filed with the corporate records. All action by any Committee of the Board shall be reported to the Board at the next meeting thereof, and, insofar as rights of third parties shall not be affected thereby, shall be subject to revision and alteration by the Board.

The Board may adopt rules for the government of any Committee not inconsistent with the provisions of these Bylaws, or if none, the Committee may adopt such rules.

## **ARTICLE IX OFFICERS**

**Section 1. Number and Titles.** The officers of this Corporation shall be a Chairman of the Board, a President, a Secretary, and a Chief Financial Officer. This Corporation may also have, at the Board's discretion, one or more Vice Chairmen, one or more Vice Presidents, one or more Assistant Secretaries, a Chief Financial Officer, one or more Assistant Financial Officers, and such other officers with such titles and duties as may be stated in these Bylaws or determined by the Board. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer shall serve concurrently as either the President or the Chairman of the Board. The Chairman of the Board shall be a member of the Board. The President shall be an Ex Officio member of the Board. The other officers may be, but are not required to be, members of the Board.

**Section 2. Appointment of Officers.** The President and the other officers of this Corporation, except those appointed in accordance with the provisions of Section 3 of this Article IX, shall be chosen by and shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

**Section 3. Subordinate Officers.** The Board may appoint and may authorize the President to appoint any other officers that the activities of this Corporation may require. Each appointed officer shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the Board.

**Section 4. Removal of Officers.** Without prejudice to the rights of an officer under any contract of employment, any officer may be removed with or without cause by the Board and also, if the officer was not chosen by the Board, by the President on whom the Board may confer that power of removal. If the person holding the office of President shall be removed as such officer, such person shall concurrently be removed as Ex Officio Trustee.

**Section 5. Resignation of Officers.** Any officer may resign at any time by giving written notice to this Corporation. The resignation shall take effect as of the date the notice is received or at any later date specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of this Corporation under any contract to which the officer is a party. If the person holding the office of President resigns, such person shall concurrently resign as Ex Officio Trustee.

**Section 6. Vacancies in Offices.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 7. Responsibilities of Officers.**

(a) **Chairman of the Board.** The Chairman of the Board shall preside at all meetings of the Board and shall exercise and perform such other powers and duties as the Board may assign

from time to time or as may be prescribed in these Bylaws. The Chairman of the Board shall be a member of and preside at all Executive Committee meetings, and may be an ex officio voting member of all standing Committees of the Board. If the Chairman of the Board is not a member of a Committee of the Board, the Chairman may attend Committee meetings and vote on Committee actions, unless otherwise limited by the California Nonprofit Corporation Law, the Nonprofit Integrity Act of 2004, these Bylaws, the Committee Charters, or the Conflict of Interest Policy adopted by the Board of Trustees. If there is no President, the Chairman of the Board shall also be the general manager and chief executive officer of this Corporation, and shall have the powers and duties of the President prescribed by these Bylaws.

**(b) President.** Subject to the control of the Board, the President shall be the general manager and chief executive officer of the Corporation, and shall have general supervision, direction, and control of the activities, affairs, and other officers of this Corporation. In the absence of the Chairman of the Board, and the Vice Chairman, if any, the President shall preside at all meetings of the Board. The President shall have the general powers and duties of management usually vested in the office of general manager of a corporation, including the power to sign instruments and documents on behalf of this Corporation, and such other powers and duties as may be assigned from time to time by the Board. The President shall be an Ex Officio voting member of the Board of Trustees. If the President ceases to serve as an officer for any reason (such as death, disqualification, disability, resignation, retirement, or removal), the President shall automatically cease to serve as Ex Officio Trustee. The President shall be an ex officio voting member of all Committees of the Board, unless otherwise limited by the California Nonprofit Corporation Law, the Nonprofit Integrity Act of 2004, these Bylaws, the relevant Committee Charters, or the Conflict of Interest Policy adopted by the Board of Trustees. The Board shall review and approve the compensation, including benefits, of the President to assure that it is fair, just and reasonable. Review and approval shall occur initially upon the hiring of the President, whenever the President's term of employment, if any, is renewed or extended, and whenever the President's compensation is modified. Review and approval shall not be required if a modification of compensation or benefits extends to substantially all employees. A Committee of the Board may review the President's compensation, however, authority to approve the President's compensation is reserved for the Board.

**(c) Vice Presidents.** In the absence or disability of the President, the Vice Presidents, if any are appointed, in order of their rank as fixed by the Board or, if not ranked, the Vice President designated by the Board, shall perform all the duties of the President, other than serving as Ex Officio Trustee. A Vice President so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have other powers and perform other duties respectively prescribed for them by the Board.

**(d) Secretary.** The Secretary shall keep, or cause to be kept, at the principal office of this Corporation, or such other place as the Board may order, a book of Minutes of all meetings and actions of the Board, Committees of the Board, and the Members, and the Articles of Incorporation and the Bylaws, as amended from time to time. The Secretary shall keep or cause to be kept, at the principal office of this Corporation, or such other place as the Board may order, a record of the Corporation's Members, showing each Member's name, address, and class of membership. The Secretary shall issue, or cause to be issued, notice of all meetings of the Board, any meeting of Committees of the Board, and any meetings of the Members as required by law or these Bylaws to be given. The Secretary shall have charge of the corporate seal and the corporate minute books,

shall sign instruments with the President requiring the signatures of the President and the Secretary, and shall make such reports and perform such other and further duties as may be required by law or as may be prescribed or required from time to time by the Board.

(e) **Chief Financial Officer.** The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, in written form or in any other form capable of being converted into written form, adequate and correct books and records of account of the properties and transactions of this Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses. The Chief Financial Officer shall send or cause to be given to the Members and Trustees such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board. The Chief Financial Officer shall have the custody of all moneys and securities of this Corporation, and shall be responsible for the safekeeping of the latter, unless by resolution of the Board, a committee, custodian, or other agency shall be appointed to have custody of all or a portion of the securities. The Chief Financial Officer shall have general charge of keeping expenditures and commitments within the limits or authorizations approved by the Board. The Chief Financial Officer shall: (i) deposit, or cause to be deposited, all moneys and other valuables in the name and to the credit of this Corporation with such depositories as the Board may designate; (ii) disburse the funds of this Corporation as the Board may order; (iii) render to the Chairman of the Board, if any, the President, and the Trustees, on request, an account of all transactions as Chief Financial Officer and of the financial condition of this Corporation; and (iv) have such other powers and perform such further duties as may be required by law, these Bylaws, or as may be prescribed or required from time to time by the Board. If required by the Board, the Chief Financial Officer shall give bond in such amount and with such surety as shall be specified from time to time by the Board. The Board, or a duly authorized Committee of the Board, shall review and approve the compensation, including benefits, of the Chief Financial Officer to assure that it is fair, just and reasonable. Review and approval shall occur initially upon the hiring of the Chief Financial Officer, whenever the Chief Financial Officer's term of employment, if any, is renewed or extended, and whenever the Chief Financial Officer's compensation is modified. Review and approval shall not be required if a modification of compensation or benefits extends to substantially all employees.

## **ARTICLE X FINANCE**

**Section 1. Custodian of Securities.** The Board may from time to time appoint one or more banks or trust companies doing business in California or elsewhere to act as custodian of any securities for a reasonable compensation, and exercise in respect thereof such powers as may be conferred by resolution of the Board. The Board may remove any such custodian at any time. The Chief Financial Officer shall be relieved of all responsibility for any securities committed by the Board to the custody of any such securities custodian.

**Section 2. Execution of Instruments.** All conveyances, contracts and other instruments shall be signed by the President or by the Vice President, if any, and be attested by the Secretary or Assistant Secretary, provided that the Board shall have power to designate any other officers or agents to execute any designated instrument.

**Section 3. Banks, Checks and Wire Transfers.** The moneys of this Corporation shall be deposited in such manner as the Board shall designate, in such banks or trust companies as the

Board shall direct, and shall be drawn out only by checks signed, direct deposits, or wire transfers authorized and approved in such manner as may be provided by resolution or resolutions from time to time adopted by the Board.

**Section 4. Annual Audited Financial Statements.** Annual financial statements shall be prepared using generally accepted accounting principles and shall be audited by an independent certified public accountant or firm in conformity with generally accepted auditing standards. The Board shall approve the retention and termination of the independent auditor. The annual audited financial statements shall be made available to the California Attorney General and to the public no later than nine (9) months after the end of this Corporation's fiscal year.

## **ARTICLE XI RECORDS AND REPORTS**

**Section 1. Maintenance of Corporate Records.** This Corporation shall keep at its principal office the original or a copy of the Articles of Incorporation and Bylaws, as amended from time to time. This Corporation shall keep Minutes of proceedings or actions of the Board and any Committee(s) of the Board, Minutes of any meetings or actions of the Members by written ballot or written consent, and a record of each Member's name, address, and class of membership. The accounting books and records shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal office of this Corporation. The Minutes shall be kept in written or typed form; and the accounting books and records shall be kept either in written or typed form, or in any other form capable of being converted into written, typed, or printed form, or in any combination of these forms.

**Section 2. Inspection.**

(a) **By Trustees.** Every Trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of this Corporation and each of its subsidiary corporations, if any. This inspection by a Trustee 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.

(b) **By Members.** Any Member shall have the right to inspect at reasonable times on reasonable notice, the records containing Members' names, addresses, and voting rights, the accounting books and records, the Minutes of the proceedings or actions of the Board and any Committee(s) of the Board, Minutes of any meetings or actions of the Members by written ballot or written consent, for a purpose reasonably related to the Member's interest as a Member. This inspection by a Member may be made in person or by the Member's agent or attorney. The right of inspection includes the right to copy, or request a copy from the Secretary of this Corporation, and the right to make extracts of documents.

**Section 3. Annual Report.** To the extent required by law or determined by the Board, the Board shall cause an annual report to be prepared and provided to the Trustees and the Members, within one hundred twenty (120) days of the close of this Corporation's fiscal year. The annual report may be sent by electronic transmission, if approved by the Board. The annual report shall contain the following information in appropriate detail:

- (a) The assets and liabilities, including the trust funds, of this Corporation as of the end of the fiscal year.
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (c) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (d) The expenses or disbursements of this Corporation, for both general and restricted purposes, during the fiscal year.
- (e) Any information required by Section 6322 of the California Nonprofit Public Benefit Corporation Law.

The annual report shall be accompanied by any report on it of the independent accountants or, if there is no such report, by the certificate of an authorized officer of this Corporation that such statements were prepared without audit from this Corporation's books and records.

**Section 4. Annual Statement of Certain Transactions and Indemnifications.** As part of the annual report to the Trustees and Members, or as a separate document if no annual report is issued, this Corporation shall, within one hundred twenty (120) days after the end of the Corporation's fiscal year, annually prepare and mail or deliver to each Member and furnish to each Trustee a statement of any transaction or indemnification in which this Corporation was a party, and in which an "interested person" (any director or officer of this Corporation, or its subsidiary, if any) had a direct or indirect material financial interest, as required under Section 6322 of the California Nonprofit Public Benefit Corporation Law. For the purpose of this statement, a mere common directorship is not a material financial interest. This statement may be sent by electronic transmission, if approved by the Board.

## **ARTICLE XII INDEMNIFICATION**

**Section 1. Interpretation.** This Article XII shall be interpreted to grant this Corporation the power to indemnify its agents as defined herein to the maximum extent permitted under the California Corporations Code, as amended from time to time. The following sections of this Article XII reflect the law as currently enacted and are included herein for reference and not by limitation.

**Section 2. Definitions.** For the purpose of this Article XII:

- (a) "**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;
- (b) "**proceeding**" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

(c) “**expenses**” includes without limitation all attorneys’ fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of the agent’s position or relationship as agent, and all attorneys’ fees, costs, and other expenses incurred in establishing a right to indemnification under this Article XII.

**Section 3. Indemnification in Actions Brought by Third Parties.** This Corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action described in Section 4 below) by reason of the fact that such person is or was an agent of this Corporation, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the 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. In the case of a criminal proceeding, such person must also have had no reasonable cause to believe that 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 this Corporation or that the person had reasonable cause to believe that the person’s conduct was unlawful.

**Section 4. Indemnification in Actions by or in the Right of this Corporation.** This Corporation 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 this Corporation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law (self-dealing), 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. However, no indemnification shall be made under this Section 4:

(a) 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;

(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.

**Section 5. Indemnification Against Expenses.** To the extent that an agent of this Corporation has been successful on the merits in the defense of any proceeding referred to in Section 3 or Section 4 of this Article XII, or in the defense of any claim, issue, or matter therein,

the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with such defense.

**Section 6. Required Determinations.** Except as provided in Section 5 of this Article XII, any indemnification under this Article XII 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 Section 3 or Section 4 of this Article XII, by:

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

(b) The court in which such proceeding is or was pending. The court's determination may be made on application brought by this Corporation, the agent, 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 this Corporation.

**Section 7. Advance of Expenses.** Expenses incurred in defending any proceeding may be advanced by this Corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article XII.

**Section 8. Limitations.** No provision made by this Corporation to indemnify its Trustees or officers for the defense of any proceeding, whether contained in the Articles of Incorporation, these Bylaws, a resolution of the Board, an agreement, or otherwise shall be valid unless consistent with this Article XII and the California Nonprofit Public Benefit Corporation Law, and the Internal Revenue Code.

**Section 9. Contractual Rights of Nontrustees and Nonofficers.** Nothing contained in this Article XII shall affect any right to indemnification to which persons other than Trustees and officers of this Corporation, or any subsidiary hereof, may be entitled by contract or otherwise.

**Section 10. Forms of Indemnification Not Permitted.** No advance or indemnification shall be made under this Article XII, except as provided in Section 5 or Section 6(b), in any circumstance in which it appears:

(a) That the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, these Bylaws, a resolution of the Board, 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 the indemnification or advance would be inconsistent with any condition expressly imposed by a court in approving a settlement.

**Section 11. Insurance.** This Corporation shall have 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 or not this Corporation would have the power to indemnify the agent against such liability under the

provisions of this Article XII. However, this Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of this Corporation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law (self-dealing), as amended from time to time. Subject to applicable law (including but not limited to legal restrictions on use of this Corporation's assets, required findings by or on behalf of this Corporation, any applicable federal or state tax laws (including, if this Corporation holds assets upon charitable trusts, its status with respect to such assets) and to the laws referred to in Section 13 of this Article XII, this Corporation shall use reasonable efforts in good faith to obtain and maintain general liability insurance (to the extent generally available on commercially reasonable terms) on behalf of the Trustees and officers, including but not limited to insurance as contemplated by Section 5047.5 of the California Nonprofit Public Benefit Corporation Law (general liability policy covering volunteer officers and directors).

**Section 12. Nonapplicability to Fiduciaries of Employee Benefit Plans.** This Article XII does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's fiduciary capacity, even though such person may also be an agent of this Corporation as defined in Section 2 of this Article XII. This Corporation shall have power to indemnify such trustee, investment manager, or other fiduciary, including the power to purchase and maintain insurance on behalf of any fiduciary of such plans, to the extent permitted by the Section 207(f) of the California General Corporation Law, as amended from time to time.

**Section 13. Federal and State Exculpatory Provisions.** Nothing in this Article XII shall limit or otherwise adversely affect the rights of qualifying agents of this Corporation under the Federal Volunteer Protection Act of 1997, Section 5047.5 of the California Nonprofit Public Benefit Corporation Law, or similar provisions of other laws or public policies limiting such liability, as now in effect or as any thereof may be amended.

**Section 14. Separability.** Each and every paragraph, sentence, term, and provision of this Article XII is separate and distinct so that if any paragraph, sentence, term, or provision shall be held to be invalid or unenforceable for any reason, its invalidity or unenforceability shall not affect the validity or enforceability of any other paragraph, sentence, term, or provision of this Article. To the extent required, any paragraph, sentence, term, or provision of this Article XII may be modified by a court of competent jurisdiction to preserve its validity and to provide the claimant with, subject to the limitations set forth in this Article XII and any agreement between this Corporation and the claimant, the broadest possible indemnification permitted under applicable law.

### **ARTICLE XIII EMERGENCY PROVISIONS**

**Section 1. General.** The provisions of this Article XIII shall be operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of an attack on the United States or during a catastrophe, disaster, or emergency condition making it impossible or impracticable for this Corporation to conduct its business without recourse to the provisions of this Article XIII. The provisions of this Article XIII in that event shall override all other provisions in these Bylaws in conflict with any provisions of this Article XIII, and shall remain operative as long as it remains impossible or impracticable to continue the business of this Corporation otherwise, but thereafter shall be

inoperative. All actions taken in good faith pursuant to these provisions, however, shall thereafter remain in full force and effect unless and until revoked by action taken pursuant to the provisions of the Bylaws other than those contained in this Article XIII.

**Section 2. Unavailable Trustees.** All Trustees of this Corporation who are not available to perform their duties as Trustees by reason of physical or mental incapacity or for any other reason, or whose whereabouts are unknown, shall automatically cease to be Trustees, with the same effect as if they had resigned as Trustees, for as long as their unavailability continues.

**Section 3. Authorized Number of Trustees.** The authorized number of Trustees shall be the number of Trustees remaining after eliminating those who have ceased to be Trustees pursuant to Section 2 of this Article XIII.

**Section 4. Quorum.** The number of Trustees necessary to constitute a quorum shall be the number bearing the same proportional relationship to the number of Trustees remaining pursuant to Section 2 of this Article XIII as the quorum established in Section 15 of Article VII bears to the authorized number of Trustees set forth in Section 5 of Article VII.

**Section 5. Trustees Becoming Available.** Any person who has ceased to be a Trustee pursuant to the provisions of Section 2 of this Article XIII and who thereafter becomes available to serve as a Trustee shall automatically resume performing the duties and exercising the powers of a Trustee, unless the term of office of that person has expired in accordance with its original terms and a successor has been selected and qualified, or the Board has declared the position vacant.

**Section 6. Alternate Officers or Agents.** The Board, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during the emergency any or all officers or agents of this Corporation shall for any reason be unavailable or rendered incapable of discharging their duties. The Board, either before or during any such emergency, may, effective in the emergency, change the principal office of this Corporation, or designate several alternative offices, or authorize the officers so to do.

#### **ARTICLE XIV CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions contained in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular includes the plural, the plural includes the singular, and the term “person” includes both a legal entity and a natural person.

#### **ARTICLE XV AMENDMENTS BY BOARD AND MEMBERS**

New Bylaws may be adopted, or these Bylaws may be amended, restated, or repealed by majority vote of the Board of Trustees, and with the approval of a majority of the Members of this Corporation then holding office.

CERTIFICATE OF SECRETARY

OF

THE DAVID AND LUCILE PACKARD FOUNDATION  
a California Nonprofit Public Benefit Corporation

I certify that I am the presently elected and acting Secretary of this Corporation and that the foregoing Bylaws, consisting of twenty-two (22) pages, are the Amended and Restated Bylaws of this Corporation as duly adopted at a meeting of the Board of Trustees thereof held on June 22, 2007, to become effective as of the date approved by the Board, and upon receipt of written approval by a majority of the Members of this Corporation then holding office.

I further certify that approval by a majority of the Members was received on June 22, 2007, and that the effective date of the foregoing Amended and Restated Bylaws is June 22, 2007.

Dated: June 28, 2007

/s/ Barbara P. Wright  
BARBARA P. WRIGHT, Secretary