



California State University
SAN MARCOS

The
Foundation

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CSUSM

Foundation Board

Bylaws

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**RESTATED BYLAWS
OF
CALIFORNIA STATE UNIVERSITY SAN MARCOS
FOUNDATION**

A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

Amended and Restated
As of October 6, 2017

ARTICLE I

OFFICES

SECTION 1.01. PRINCIPAL OFFICE

The principal office ("principal executive office") for the transaction of the business of the California State University San Marcos Foundation ("Foundation") is located at California State University San Marcos, San Marcos, California. The Board of Directors may change the principal office from one location to another, at any place within the State of California.

SECTION 1.02. OTHER OFFICES

The Board of Directors may at any time establish branch or subordinate offices at any place or places where the Foundation is qualified to do business.

ARTICLE II

PURPOSE

The Foundation is organized under the California Nonprofit Corporation Law and the California Education Code, and will operate as an auxiliary organization of the University under Section 8900, et seq. of the California Education Code. The Foundation shall engage only in the activities permitted by the Articles of Incorporation of the Foundation, the Operating Agreement between the Foundation and the Trustees of the California State University (the "Board of Trustees") and applicable law. The Foundation is organized for the following public and charitable purposes:

- (a) Support and enhance the vision, mission and values of the University;
- (b) Develop and improve the facilities of the University for broader educational opportunities and service to students, alumni and the public;

(c) Take an active role in fundraising and development processes in support of the University;

(d) Provide financial assistance to the University for its scientific, literary, educational and charitable purposes through gifts, loans and allocations to the University and its controlled affiliates;

(e) To establish and provide funding for scholarships and other student assistance programs to the University, and other programs essential to the academic mission of the University;

(f) Administer and manage gifts, bequests, devises, endowments, trusts and similar funds, and their investments;

(g) Promote a greater and better understanding of the University and its mission and accomplishments within the community; and

(h) Do any other act or thing and engage in and carry on any other activity in any manner connected with or incidental to, or calculated to promote, assist, aid or accomplish any of the aforesaid purposes.

ARTICLE III

NONPARTISAN ACTIVITIES

The Foundation is a nonprofit public benefit corporation and is not organized for the private gain of any individual. No substantial part of the activities of the Foundation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and the Foundation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office. The Foundation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes and objectives described above.

ARTICLE IV

DEDICATION OF ASSETS

The property of the Foundation is irrevocably dedicated to charitable, scientific, literary and/or educational purposes. No part of the net earnings or assets of the Foundation shall ever inure to the benefit of any director or officer of the Foundation or to the benefit of any private individual whatsoever (except that reasonable compensation may be paid for services rendered to or for the Foundation affecting one or more of its purposes). Upon the dissolution or winding up of the Foundation, after paying or adequately providing for the debts and obligations thereof,

any remaining assets shall be distributed for use in furtherance of the purposes of the Foundation as set forth in the Articles of Incorporation and these Bylaws, to one or more nonprofit corporations organized and operated for the benefit of California State University San Marcos, or if no such entity exists, then to one or more nonprofit corporations organized and operated for the benefit of the California State University (“CSU”), in each case as approved by the President of California State University San Marcos and the Chancellor of the CSU. Such nonprofit corporation or corporations must be organized and operated exclusively for charitable, scientific, literary and/or educational purposes and which are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (or any corresponding provision of any previous or future United States Internal Revenue Law).

ARTICLE V

MEMBERS

The Foundation shall have no members.

ARTICLE VI

DIRECTORS

SECTION 6.01. POWERS

(a) Voting and other rights. Any action which would, by operation of law or otherwise, require a vote of members shall require only a vote of the directors. All directors of the Board, elected, appointed and ex officio, shall be voting directors of the Board and each director shall have one vote, which may not be cast by proxy. All rights which would, by operation of law or otherwise, vest in the members shall vest in the directors.

(b) Corporate powers. Subject to limitations imposed by law, the Articles of Incorporation, the Operating Agreement or these 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. The Board of Directors may delegate the management of the activities of the Foundation to any person or persons, other entities or committees, 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 of Directors.

SECTION 6.02. NUMBER AND QUALIFICATIONS OF DIRECTORS

The authorized number of directors shall be not less than thirteen (13) nor more than fifty (50), the exact number to be fixed from time to time by a majority of the then authorized and acting directors. The initial authorized number of directors of the Foundation shall be twenty-

one (21) until changed by the directors. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of said director's term of office, unless a director is affirmatively removed as hereinafter provided. Directors need not be residents of the State of California.

All directors shall be appointed or elected as provided in this Article VI. All directors, other than the Ex Officio Directors, designated in Section 6.03 of this Article VI, shall be approved by the President of the University, reviewed and recommended for election by the authorized committee, and elected by majority vote of the directors in office at the time of any such election. Subject to the limitations described in Section 6.07(f) of this Article VI, University employees and officers may serve as directors. Any Ex Officio Director who ceases to hold the office that qualifies him or her for a position on the Board shall thereupon cease to be a director (unless he or she assumes another qualifying office or is elected to the Board).

SECTION 6.03. EX OFFICIO DIRECTORS

The following officers of the University shall serve as Ex Officio Directors of the Foundation and shall remain directors of the Foundation for as long as they hold one of the following offices of the University: The President of the University, the Vice President of University Advancement, and the Vice President of Finance and Administrative Services.

The President of the University has the discretion to modify the titles and functions of the officers of the University. If any such modification affects any University position designated as one qualifying an individual to serve as an ex officio director, then the President of the University may appoint as Ex Officio Directors, those officers of the University who hold positions that are most closely analogous in function to the offices identified in this Section.

SECTION 6.04. APPOINTED DIRECTORS AND TERM OF OFFICE

(a) Faculty Directors. At least one (1), but no more than two (2), of the directors shall be University faculty and shall be appointed by the President of the University to serve as a director for a one (1) year term and until a qualified successor is appointed. An appointed faculty member shall remain a director of the Foundation, during the appointed term, for as long as they are a member of the faculty of the University.

(b) Student Directors. At least one (1), but no more than two (2), of the directors shall be individuals from the student body of the University and shall be designated and appointed by the President of the University to serve as a director for a one (1) year term and until a qualified successor is appointed. An appointed student representative shall remain a director of the Foundation, during the appointed term, for as long as they are a member of the student body of the University.

SECTION 6.05. ELECTED DIRECTORS AND TERM OF OFFICE

Except as provided in Sections 6.03 and 6.04, directors shall be nominated by a committee, as authorized by the Board of Directors and according to the committee policies and procedures, and elected at the annual meeting of the Board of Directors. Directors shall hold office for a term of three (3) years, subject to the removal limitation set forth in Section 6.06(a)(iii). Each director, including a director elected to fill a vacancy or elected at a special meeting, shall hold office until expiration of the term for which elected, and until a successor has been elected and qualified. At the conclusion of any term of office, directors shall be elected by majority vote of the directors in office immediately preceding the election; however, if an annual meeting is not held or the directors are not elected at an annual meeting, they may be elected at any regular or special meeting of the Board of Directors held for that purpose by majority vote of the directors in office immediately preceding the election. Staggered terms may be implemented as seen fit by the currently residing Board of Directors. An elected director is eligible to serve up to three (3) consecutive three (3) year terms. Mid-term appointments to fill vacancies on the Board shall not be counted towards term limits.

SECTION 6.06. EMERITUS DIRECTORS

A person, through service to the Foundation and the University, may be nominated for emeritus status if he or she (i) serves as an elected director for three terms (a total of nine years, whether or not consecutive) or who has served as an elected director and is nominated for consideration by the President of the University; (ii) leaves the Board in good standing; (iii) has provided distinguished service; (iv) has promoted the interests and goals of the University; and (v) has made a significant financial contribution to the welfare of the University. Nomination shall be made, upon approval by the President of the University, at the annual meeting of the Board of Directors, and such Emeritus Directors shall be elected by majority vote of the Board. It is expected an Emeritus Director shall continue their strong commitment to the University and may continue to provide advice and counsel to the Board, and may attend meetings of the Board and committees. However, an Emeritus Director shall not have the right to vote as a director, shall not be counted as a director in office, and shall not be counted towards a quorum. Emeritus Directors shall serve a three-year term with infinite renewals upon approval of the Board of Directors.

SECTION 6.07. RESIGNATIONS, REMOVALS AND VACANCIES

(a) Resignations. Except as provided in this paragraph, any director may resign, which resignation shall be effective on giving written notice to the Chair of the Board, the Chief Executive Officer, or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. If the resignation of a director is effective at a future time, the Board of Directors may elect a successor to take office as of the date when the resignation becomes effective. No director may resign when the Foundation would then be left without a duly elected director or directors in charge of its affairs.

(b) Removal Without Cause. An elected director (as opposed to an ex officio director

or an appointed director) may be removed, without cause, by a majority of the directors then in office. An appointed director may be removed without cause by the President of the University.

(c) Removal for Cause. The Board of Directors may declare vacant the office of a director who has been declared of unsound mind by a final order of the court or convicted of a felony or has been found by final order or judgment of any court to have breached a duty under Sections 5231 (basic duties), 5234 (financially interested directors) or 5236 (illegal loans or guarantees) of the California Nonprofit Public Benefit Corporation Law, to the Foundation or another nonprofit public benefit corporation.

(d) Vacancies. A vacancy or vacancies in the Board of Directors 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, or upon the failure to elect the number of directors to be elected at a meeting at which any director or directors are to be elected. Vacancies in the office of an elected director may be filled by the affirmative vote of a majority of the remaining directors then in office, though less than a quorum, or by the sole remaining director. Vacancies, however caused, in the office of an appointed director, may be filled as provided in Section 6.04. Vacancies in the office of an ex officio director, created by a change in position with the University or by resignation, shall be filled by the persons who succeed them in the office which qualified them as directors. Each director elected or appointed to fill a vacancy shall hold office until the expiration of the term for which elected or appointed and until a successor has been elected or appointed and qualified.

(e) No vacancy on reduction of number of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

(f) Restriction on interested directors. Not more than 49% of the persons serving on the Board of Directors at any time may be interested persons. Pursuant to Section 5227 of the California Nonprofit Corporation Law and current IRS Regulations, an "interested person" is (i) a person currently being compensated by the corporation and/or University for services rendered to it in the previous 12 months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director, or (ii) a 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. Notwithstanding the foregoing, any violation of the provisions of this Section shall not affect the validity or enforceability of any transaction entered into by the Foundation.

SECTION 6.08. PLACE OF MEETINGS; MEETINGS BY TELEPHONE

Regular meetings, including the annual meeting, of the Board of Directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board. In the absence of such designation, regular meetings, including the annual meeting, shall be held at the principal executive office of the Foundation. Special meetings of the Board 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 executive office of the Foundation. Notwithstanding the above provisions of this Section 6.08, an annual, regular or special meeting of the Board of Directors may be held at any place consented to in writing by all board members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting. Any meeting, annual, regular or special, may be held by conference telephone or similar communication equipment, as long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting.

SECTION 6.09. NOTICE OF MEETINGS

Notice of regular meetings of the Board shall be in writing and delivered to all directors at least seven (7) days before the meeting. Notice shall be deemed delivered when deposited with United States mail or private overnight courier service, postage or fees prepaid; upon delivery, when personal delivered; or upon transmission, when sent by facsimile, electronic mail, or other electronic messaging device. Notice of any special meeting of the Board shall be in writing and delivered to all directors at least 48 hours before the meeting by personal delivery, telephone, including a voice messaging device, or by electronic transmission. The notice of any meeting, annual, regular, or special, shall state the date, place and hour of the meeting and the general nature of the business to be transacted. A copy of the notice of the meeting, together with the agenda for the meeting, shall be posted in the principal office of the corporation, and shall be given to any persons entitled thereto pursuant to Education Code Section 89921. The attendance by a director at any meeting shall constitute that director's waiver of notice of such meeting, unless the director attends the meeting for the express purpose of objecting to the meeting because it has not been lawfully noticed or held, and the director announces that objection at the beginning of the meeting.

SECTION 6.10. OPEN MEETINGS

All meetings of the Board shall be open and public, and all persons shall be permitted to attend any meeting of the Board; except that the Board may hold closed sessions during any meeting to consider those matters that may lawfully be considered under Education Code Section 89923. The Board shall not take any action on any issue until that issue has been publicly posted for at least seven days as required by Education Code Section 89924.

SECTION 6.11. REGULAR MEETINGS

Regular meetings of the Board of Directors shall be held at least once each calendar quarter and at such time and place as shall from time to time be fixed by the Board of Directors.

SECTION 6.12. ANNUAL MEETING

The annual meeting of the Board of Directors shall be held for the purpose of organization, election of directors and officers and the transaction of other business, and shall be the meeting in the second quarter of the calendar year, on the day, time and place as fixed by the

Board of Directors.

SECTION 6.13. SPECIAL MEETINGS

Special meetings of the Board of Directors for any purpose may be called at any time by the Chair of the Board, the Chief Executive Officer, or by a majority of directors then in office. Notice of the special meeting of the Board shall be given at least 48 hours before the meeting to all directors and according to Section 6.09. Notice of the special meeting shall be posted in the principal office of the Foundation, at least 24 hours before the meeting. The notice of any special meeting shall specify the purpose of the meeting, and no other business may be conducted at the meeting.

SECTION 6.14. QUORUM

A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 6.16. Every act or decision done or made by a majority of the directors present shall be regarded as the act of the Board of Directors, subject to the provisions of law or the Articles of Incorporation. 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.

SECTION 6.15 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 the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

SECTION 6.16. ADJOURNMENT

A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

SECTION 6.17. NOTICE OF ADJOURNMENT

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case notice of the time and place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

SECTION 6.18. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

SECTION 6.19. FEES AND COMPENSATION OF DIRECTORS

No director shall receive any salary, fee, or other compensation for his or her services as a director; however, the Board may authorize reimbursement of actual and necessary expenses incurred by directors in the performance of their duties as a director or as a member of a committee of the Board.

SECTION 6.20. NO LIABILITY OF DIRECTORS

No director shall be personally liable for the debts, liabilities or obligations of the Foundation. The directors of the Foundation shall have no liability for dues or assessments.

ARTICLE VII

COMMITTEES

SECTION 7.01. COMMITTEES OF THE BOARD

The Board of Directors may, by resolution adopted by a majority of the directors then in office, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. The CEO, with the exception of the audit committee, shall be an ex officio member of all committees. Subject to the approval of the Board of Directors, other persons who are not directors may serve as voting members of committees, provided that, pursuant to Section 5212(b) of the Nonprofit Corporation Law, non-board members may not serve on any committee that exercises the authority of the Board. Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except that no committee, regardless of board resolution, may:

- (a) Fill vacancies on the Board of Directors or in any committee which has the authority of the Board;
- (b) Fix compensation of the directors for serving on the Board or on any committee;
- (c) Amend or repeal bylaws or adopt new bylaws;

(d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;

(e) Appoint any other committees of the Board of Directors or the members of these committees;

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

(g) Except as provided in Section 5233(d)(3) of the California Corporations Code and Section 89907 of the Education Code, approve any transaction (i) to which the Foundation is a party and one or more directors have a material financial interest; or (ii) between the Foundation and one or more of its directors or between the Foundation and any person in which one or more of its directors have a material financial interest.

SECTION 7.02. MEETINGS AND ACTION OF COMMITTEES

Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article VI of these Bylaws, concerning meetings of directors, with such changes in the context of the Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, and that special meetings of committees may also be called by resolution of the Board of Directors or by resolution of the committee. Notice of special meetings of committees shall also be given to all alternate members of the committee, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

SECTION 7.03. ADVISORY COMMITTEES

The Board of Directors may from time to time appoint (or disband) such advisory committees as it deems appropriate, consisting of directors and/or persons who are not directors, but such advisory committees shall not be deemed committees of the Board of Directors, subject to Sections 7.01 and 7.02; and shall not exercise any power of the Board of Directors.

ARTICLE VIII

OFFICERS

SECTION 8.01. OFFICERS

The Foundation shall have a Chair of the Board, a Vice Chair of the Board, a Chief Executive Officer (“CEO”), a Secretary, and a Chief Financial Officer (“Treasurer”). The Chair of the Board and Vice Chair of the Board shall be currently serving directors, and shall be

elected by the Board of Directors. The Chief Executive Officer, Secretary and Chief Financial Officer shall serve ex officio. The Foundation may also have, at the discretion of the Board of Directors, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 8.04. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as either the Chair of the Board or the Chief Executive Officer.

SECTION 8.02. EX OFFICIO OFFICERS

The current Vice President of University Advancement shall serve as the Chief Executive Officer (“CEO”) and the current Vice President of Finance and Administrative Services shall serve as the Secretary and Treasurer. Each individual shall hold that position for as long as they hold the respective office of the University.

The President of the University has the discretion to modify the titles and functions of the officers of the University. If any such modification affects any University position designated as one qualifying an individual to serve as an ex officio officer, then the President of the University may appoint as ex officio officers of the corporation, those officers of the University who hold positions that are most closely analogous in function to the offices identified in this Section.

SECTION 8.03. ELECTION OF OFFICERS

The Chair of the Board and Vice Chair of the Board shall be elected by the Board of Directors at the annual meeting, and each shall serve at the pleasure of the Board for a two year term. An individual elected to the offices of Chair or Vice Chair must be concurrently serving as a director and is eligible to serve up to three (3) consecutive terms.

SECTION 8.04. SUBORDINATE OFFICERS

The Board of Directors may appoint, and may authorize the Chair of the Board or the Chief Executive Officer or another officer to appoint, any other officers that the business of the Foundation may require, each of whom 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 of Directors. Individuals so appointed shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

SECTION 8.05. REMOVAL OF OFFICERS

With the exception of an ex officio officer, and subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board of Directors, by an officer on whom such power of removal may be conferred by the Board of Directors.

SECTION 8.06. RESIGNATION OF OFFICERS

Any officer may resign at any time by giving written notice to the Foundation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Foundation under any contract to which the officer is a party.

SECTION 8.07. 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 8.08. RESPONSIBILITIES OF OFFICERS

(a) Chair of the Board. The Chair of the Board shall preside at meetings of the Board of Directors. The Chair of the Board shall exercise and perform such other powers and duties as may be prescribed from time to time by the Board of Directors or these Bylaws. In the absence of the Chair of the Board, the Vice Chair of the Board, if there is one, shall fulfill the duties of the Chair.

(b) Vice Chair of the Board. The Vice Chair of the Board shall have such powers as may be prescribed from time to time by the Board of Directors; and, in the absence or disability of the Chair of the Board, the Vice Chair shall exercise all of the powers and shall perform all duties of the Chair.

(c) Chief Executive Officer. The terms “chief executive officer,” “CEO” and “executive director” shall be used interchangeably and refer to the same person. The Chief Executive Officer is the general manager and chief corporate officer of the Board and shall be responsible, subject to control and supervision of the Board of Directors, for the general supervision, direction and control of the business, officers and affairs of the Foundation, and shall have such other powers and duties as may be prescribed from time to time by the Board of Directors or these Bylaws. The CEO, with the exception of the audit committee, shall be an ex officio member of all committees. In the absence or disability of both the Chair of the Board and the Vice Chair of the Board, the CEO shall be the Chair.

(d) Secretary. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors and committees of directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, and the proceedings of such meetings. The Secretary shall keep, or cause to be kept, at the principal executive office, as determined by resolution of the Board of Directors, a record of the corporation’s directors, showing the names of all directors and their addresses. In addition, the Secretary shall give, or shall have caused to be given, notice of all meetings of the Board of Directors as required by the bylaws. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws. If

for any reason the Secretary shall fail to give notice of any special meeting of the Board of Directors called by one or more of the persons identified in Section 6.13, then any such person or persons may give notice of any such special meeting.

(e) Chief Financial Officer. The terms “chief financial officer” and “treasurer” shall be used interchangeably and refer to the same person. The Treasurer shall be the custodian of all funds, securities and other valuables of the Foundation; and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of all the properties and business transactions of the Foundation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses. The Treasurer shall keep separate records on all special funds coming into the possession or control of the Foundation for management and disbursement, including all special trust funds, scholarship accounts, loan funds, revolving funds, activity or organization funds, and general income accounts. The Treasurer shall retain copies of any and all indentures, contracts, or documents containing or relating to any restrictions, covenants, or conditions imposed by donors to said funds, as to the manner, method, or control of said trust or endowment funds. Such books and records shall be kept at the principal executive office or such other place as the Board of Directors may direct. The Treasurer shall have such other powers and perform such other duties as from time to time may be assigned in writing by the Board or the Bylaws. In the absence or disability of the Chair of the Board, the Vice Chair of the Board, and the Chief Executive Officer, and if there be no vice presidents or if no vice presidents are present and available, the Treasurer shall perform all the duties of the Chair of the Board and Chief Executive Officer, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chair of the Board or Chief Executive Officer.

SECTION 8.09. FEES AND COMPENSATION OF OFFICERS

Except as otherwise authorized by the Board, officers of the Foundation shall not receive any salary, fee, or other compensation for his or her services as an officer; however, the Board may authorize reimbursement of actual and necessary expenses incurred by officers in the performance of their duties as an officer of the Foundation .

ARTICLE IX

INDEMNIFICATION AND INSURANCE

SECTION 9.01. INDEMNIFICATION

The Foundation shall indemnify any person who was or is a party or 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 Section 5233 of the Nonprofit 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 the Foundation) by reason of the fact that such person is or was an Agent, against Expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such

Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Foundation and, in the case of a criminal Proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in the best interests of the Foundation, or that such person had reasonable cause to believe that such person's conduct was unlawful.

SECTION 9.02. INDEMNIFICATION FOR CERTAIN OTHER MATTERS

The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Foundation to procure a judgment in its favor, an action brought under Section 5233 of the Nonprofit 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 the Foundation, by reason of the fact that such person is or was an Agent, 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 the Foundation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances, except that no indemnification shall be made under this Section 9.02: (i) in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Foundation in the performance of such person's duties to the Foundation, 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 circumstances of the case, such person is fairly and reasonably entitled to indemnity for the Expenses which such court shall determine; (ii) of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or (iii) of Expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.

SECTION 9.03. SUBSEQUENT INDEMNIFICATION

To the extent that an Agent of the Foundation has been successful on the merits in defense of any Proceeding referred to in Section 9.01 or Section 9.02 hereof or in defense of any claim, issue or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection therewith.

SECTION 9.04. INDEMNIFICATION AUTHORIZATION

Except as provided in Section 9.03 hereof, any indemnification under this Article IX 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 Section 9.01 or Section 9.02 hereof by: (i) a majority

vote of a quorum consisting of directors who are not parties to such Proceeding or (ii) the court in which such Proceeding is or was pending upon application made by the Foundation, the Agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the Agent, attorney or other person is opposed by the Foundation.

SECTION 9.05. ADVANCEMENT OF EXPENSES

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

SECTION 9.06. LIMITATION ON INDEMNIFICATION

No indemnification or advance shall be made under this Article IX except as provided in Section 9.03 or clause (ii) of Section 9.04, in any circumstance where it appears: (i) that it would be inconsistent with a provision of the Foundation's Articles of Incorporation, these Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the Proceeding in which the Expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification or (ii) that it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

SECTION 9.07. INSURANCE

The Foundation shall have power to purchase and maintain insurance on behalf of any Agent 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 the Foundation would have the power to indemnify the Agent against such liability under the provisions of this Article IX; provided, however, that the Foundation shall have no power to purchase and maintain such insurance to indemnify any Agent for a violation of Section 5233 of the Nonprofit Corporation Law.

SECTION 9.08. DEFINITIONS

For the purposes of this Article IX, (i) "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 corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Foundation or of another enterprise at the request of such predecessor corporation; (ii) "Attorney General" means the Attorney General of the State of California; (iii) "Expenses" includes without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Section 3 or clause (ii) of Section 4; and (iv) "Proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative.

ARTICLE X

RECORDS AND REPORTS

SECTION 10.01. MAINTENANCE OF CORPORATE RECORDS

The Foundation shall keep, at the Foundation's principal executive office:

- (a) Adequate and correct books and records of account;
- (b) Minutes in written form of the proceedings of its board and committees of the board;
- (c) A record of its directors, giving their names and addresses.

SECTION 10.02. MAINTENANCE AND INSPECTION BY DIRECTORS

The Foundation shall keep at its principal executive office the original or a copy of the Articles and Bylaws as amended to date. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of the Foundation and each of its subsidiary corporations. This inspection by a director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

SECTION 10.03. ANNUAL REPORT TO DIRECTORS

Not later than 120 days after the close of the Foundation's fiscal year, the Board shall cause an annual report to be sent to the directors. Such report shall contain the following information in reasonable detail:

- (a) The assets and liabilities, including the trust funds, of the Foundation 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 the Foundation both unrestricted and restricted to particular purposes, for the fiscal year.
- (d) The expenses or disbursements of the Foundation, for both general and restricted purposes, during the fiscal year.
- (e) Any information required by Section 6322 of the California Corporations Code relating to annual statements of certain transactions and indemnifications.

The report required by this Section shall be accompanied by any report thereon of independent accountants, or if there is no such report, by the certificate of an authorized officer of the Foundation that such statements were prepared without audit from the books and records of the Foundation.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. ADDITIONAL DUTIES OF THE UNIVERSITY PRESIDENT

The President of the University shall ascertain that all expenditures made by the Foundation are in accordance with the policies of the Board of Trustees and shall be responsible for the propriety of all expenditures made by the Foundation and the integrity of the financial reporting of the Foundation pursuant to Section 89900(b) of the California Education Code. The President of the University shall require this corporation to operate in conformity with the policy of the Board of Trustees and the University.

The Board shall submit its programs and budgets to the President of the University for review at such times and in such manner as the President of the University may specify. Should the President of the University determine that any program or appropriation planned by the Foundation is not consistent with the policy of the Board of Trustees and the University, the program or appropriation shall not be implemented. If, upon review of a program or appropriation that the President of the University has previously approved, the President of the University determines that the program or appropriation is operating outside the acceptable policy of the Board of Trustees and the University, then by direction of the President of the University that program or appropriation shall be discontinued until further review is accomplished and an appropriate adjustment is made.

SECTION 11.02. BUDGET

The Board of Directors shall adopt a budget for each fiscal year, which may be reviewed and revised as necessary during the course of the year. Expenditures for items not provided for in the adopted budget shall require specific approval of the Board of Directors. Expenditures provided for in the adopted budget may be disbursed without such specific approval. Appropriations for funds for use outside of the normal business operations of the Foundation shall be approved in accordance with the policy and regulations of the Board of Trustees by the officer designated for such purpose by the Board of Trustees.

SECTION 11.03. COMMERCIAL SERVICES

If the Foundation operates commercial services on a campus of the California State University or in a state university union, such services shall be self-supporting and any surplus funds from such operations shall be used for purposes that are consistent with the regulations of the Board of Trustees.

SECTION 11.04. USE OF FUNDS

The funds of the Foundation shall be used for purposes consistent with Board of Trustees and University policy, and shall not be used:

(a) To support or oppose any candidate for public office, whether partisan or not, or to support or oppose any issue before the voters of the State of California or any subdivision thereof or any city, municipality, or local governmental entity of any kind except as may be permitted by Section 89300 of the Education Code. This Section 9.5(a) shall not prohibit:

(i) Expressions published in the student press, or

(ii) Support of positions taken by the Board of Trustees on issues which the Board of Trustees determines will significantly affect the California State University or any campus thereof; or

(b) To make personal loans for non-educationally related purposes, except that such loans may be made when specifically authorized by a trust instrument under which the funds were received.

SECTION 11.05. LOANS TO DIRECTORS AND OFFICERS

The Foundation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer, unless approved by the California Attorney General; provided, however, that the Foundation may advance money to a director or officer of the Foundation for expenses reasonable anticipated to be incurred in the performance of the duties of such director or officer, provided that in the absence of such advance, such director or officer would be entitled to be reimbursed for such expenses by the Foundation.

SECTION 11.06. ACCEPTANCE OF CONDITIONAL GIFTS

The Foundation shall accept only such grants, contracts, bequests, trusts or gifts which are in compliance with Education Code Section 89903.

SECTION 11.07. FUNDS FOR RESEARCH AND OTHER PROJECTS

Donations and gifts for research and other projects, which are accepted by Foundation, shall be accepted and maintained by it in accordance with policies and regulations established by the Board of Trustees.

SECTION 11.08. NOTICES

All notices or other communications required or permitted by these Bylaws, except as otherwise specified by law, shall be in writing and shall be deemed delivered when deposited with United States mail or private overnight courier service, postage or fees prepaid and addressed to the person to be notified at the most recent address of such person on the books of the Foundation; upon delivery, when personal delivered; or upon transmission, when sent by facsimile, electronic mail, or other electronic messaging device.

SECTION 11.09. CHECKS, DRAFTS, AND EVIDENCES OF INDEBTEDNESS

All checks, drafts, or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Foundation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

SECTION 11.10. SIGNING CONTRACTS

Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or sign any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances; and, unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

SECTION 11.11. REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The Chief Executive Officer or any other officer or officers authorized by the Board of Directors or by the CEO are each authorized to vote and to represent and exercise on behalf of the Foundation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Foundation. This authority may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly signed by said officer.

SECTION 11.12 CONSTRUCTION AND DEFINITIONS

Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the California Corporations Code, applicable to nonprofit corporations and nonprofit public benefit corporations, and the California Education Code, applicable to auxiliary organizations of the California State University, shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the singular number includes the plural, the plural number includes the singular, and the term "person" includes a corporation or other legal entity as well as a natural person. All references in these Bylaws to the California Corporations Code and the California Education Code shall be deemed to be to such law as it may be amended and in effect from time to time. References to Articles and Sections are to Articles and Sections of these Bylaws unless the context clearly indicates otherwise.

ARTICLE XII

AMENDMENTS

Except as otherwise provided in these Bylaws, the Board of Directors may adopt, amend or repeal bylaws, provided that, if any provision of these bylaws requires the vote of a larger proportion of the directors than otherwise required by law, such provision may not be altered, amended or repealed except by vote of such larger number of directors.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the presently elected and acting Secretary of California State University San Marcos Foundation, a California nonprofit public benefit corporation, and that the foregoing Amended and Restated Bylaws, consisting of 20 pages, constitute a true and correct copy of the Bylaws of the Foundation as amended and restated on October 6, 2017.

IN WITNESS WHEREOF, I have hereunto subscribed my name this sixth day of October, 2017.



(CORP SEC), Secretary