

**AMENDED AND RESTATED BYLAWS OF THE KIWANIS CLUB OF
SAN DIEGO FOUNDATION, INC., A CALIFORNIA NONPROFIT
PUBLIC BENEFIT CORPORATION**

ARTICLE I OFFICIAL NAME AND FISCAL YEAR

Section 1. Name. This organization shall be known as the Kiwanis Club of San Diego Foundation, Inc., and shall sometimes be referred to herein as the “Corporation” or the “Foundation.”

Section 2. Fiscal Year. The fiscal year of the Foundation shall be from October 1 to September 30 of the following year, unless the Board of Trustees shall change it.

ARTICLE II OBJECTS

The Foundation is organized and is to be operated exclusively for charitable purposes, and no part of the net earnings shall inure to the benefit of any member or individual. The objects shall also consist of those Purposes more specifically designated in the Articles of Incorporation of the Foundation. This corporation is organized and shall be operated exclusively to support the charitable purposes of the San Diego Kiwanis Club (EIN: 95-0904597), a California nonprofit corporation (referred to herein as the "Supported Organization" or “Kiwanis Club”), as a § 509(a)(bottom flush) supporting organization.

ARTICLE III OFFICES

Section 1. Principal Office. The Foundation’s principal office shall be fixed and located in the City of San Diego, County of San Diego, California, as the Board of Trustees (herein called the “Board”) shall determine. The Board is granted full power and authority to change said principal office from one location to another.

Section 2. Additional Offices. The Foundation may own, occupy or otherwise maintain additional offices or facilities for the conduct of any proper corporate purpose within the State of California upon the approval or ratification of the Board.

ARTICLE IV MEMBERSHIP AND AMBASSADORS

Section 1. Foundation Members. The Foundation shall have one Member. The sole Member of this Corporation is the Kiwanis Club.

Section 2. Kiwanis Club Members. All members of the Kiwanis Club shall be and become Ambassadors of this Foundation upon their election and qualification for membership in the Kiwanis Club. Persons ceasing to be members of the Kiwanis Club for any reason whatsoever shall thereupon also cease to be Ambassadors of the Foundation.

Section 3. Distinguished Ambassadors. In addition to members of the Kiwanis Club, the Foundation's Board may elect to Ambassadorship a select number of persons who have performed distinguished public service or who have contributed funds to this Foundation but are not members of the Kiwanis Club. Said persons shall be Ambassadors of this Foundation for the term and under the conditions established by the Foundation's Board from time to time. The

number of Ambassadors of the Foundation under this classification and authority shall at no time exceed twenty-five (25) in number.

Section 4. Transferability and Severability. Ambassadorships are not transferable or severable. An Ambassadorship may not stand in the name of more than one person.

Section 5. Ambassadors' Voting Rights. No Ambassador shall have a vote on any matter relating to this Foundation by reason of his or her status as an Ambassador.

ARTICLE V AMBASSADOR MEETINGS

Section 1. Annual Meeting. The annual meeting of Ambassadors shall be held each year at such a time and place as is determined by the Foundation's Board. The purpose of the annual meeting of Ambassadors is for the Foundation's Board to deliver an annual report to the Ambassadors. The annual report shall include, without limitation, general information regarding the financial status, projected proposed budget to the extent available, and to the extent applicable information regarding revisions to charitable policies, practices, and activities of the Foundation.

Section 2. Special Meetings. Special meetings of Ambassadors may be called at any time by the Board of Trustees or the President of the Foundation. Notice of a special meeting shall be given to the Ambassadors that a meeting will be held at a time fixed by the Board.

Section 3. Place of Meetings. Meetings of Ambassadors shall be held either at a regular Kiwanis Club meeting, the principal office of the Foundation or at any other place fixed by the Board.

Section 4. Notice of Meetings. Written notice of each meeting of Ambassadors shall be given not less than ten (10) days before the date of the meeting to each Ambassador. Such notice shall state the place, date and hour of the meeting as well as the means of communication, if any, by which Ambassadors may participate in the meeting.

Notice of an Ambassador's meeting shall be given either personally, by electronic transmission by the Corporation, or by mail, or by other means of written communication, addressed to an Ambassador at the address or email address of such Ambassador appearing on the books of the Foundation or given by the Ambassador to the Foundation for the purpose of notice, or, if no such address appears or is given, at the place where the principal office of the Foundation is located. Any notice required in this Section 4 may be set forth in the "Tidings" publication, the website of the Kiwanis Club, or a similar publication of the Kiwanis Club. An affidavit or declaration of giving of any notice or report in accordance with the provisions of this part, executed by the secretary or any assistant secretary, shall be deemed *prima facie* evidence of the giving of the notice or report.

Section 5. Proxies. No Ambassador shall be permitted to nominate a proxy to attend the annual Ambassadors' meeting in his or her place.

Section 6. Conduct of Meeting. The President of the Foundation shall preside as Chair at all meetings of the Ambassadors. The President shall conduct each such meeting in a businesslike and fair manner, but shall not be obligated to follow any particular technical, formal or parliamentary

rules or principles of procedure. Without limiting the generality of the foregoing, the President shall have all the powers usually vested in the chair of a meeting of the Ambassadors.

The Secretary of the Foundation shall act as Secretary of all meetings of the Ambassadors, but in the absence of the Secretary at any meeting of the Ambassadors, the presiding officer may appoint any person to act as Secretary of the meeting.

ARTICLE VI TRUSTEES

Section 1. Board of Trustees. The Board of Trustees of the Foundation shall be referred to in name as the “Board of Trustees” and a Trustee herein shall occupy the identical status, powers, rights and duties of a “director” as defined in the California Nonprofit Corporation Law, Section 5047. The term “Board” herein shall refer to the Board of Trustees. The term “Trustee” shall connote no greater or lesser status, powers, rights or duties than those of a “director” as defined in the California Nonprofit Corporation Law. The terms “Trustee,” and “director” herein are interchangeable.

Section 2. Powers. Subject to limitations of the Articles, of these Bylaws, and of the California Nonprofit Public Benefit Corporation Law, the activities and affairs of the Foundation shall be conducted and all corporate powers shall be exercised by or under the direction of the Foundation's Board.

The Board may delegate the management of the activities of the Foundation to any person or persons or committees however composed, provided that the activities and affairs of the Foundation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

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

- f. To determine the policies and activities of the Foundation, to discipline Ambassadors, to approve the budget, to approve all bills, to take counsel with committees, and to have general management of the Foundation.

Section 3. Duties.

- a. A Trustee shall perform the duties of a Trustee, including duties as a member of any committee of the Board upon which the Trustee may serve, in good faith, in a manner such Trustee believes 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.
- b. In performing the duties of a Trustee, a Trustee shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:
 - i. One or more officers or employees of the Foundation whom the Trustee believes to be reliable and competent in the matters presented;
 - ii. Counsel, independent accountants or other persons as to matters which the Trustee believes to be within such person's professional or expert competence; or
 - iii. A committee of the Board upon which the Trustee does not serve, as to matters within its designated authority; which committee the Trustee believes to merit confidence, so long as, in any case, the Trustee acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Section 4. Number of Trustees. The Foundation's Board shall consist of:

- a. Nine (9) persons elected by the sole Member as Trustees at large,
- b. All Officers of the Foundation, and
- c. One (1) Officer of the Kiwanis Club, as provided in Section 6 (c) herein.

Section 5. Qualifications. Each Trustee shall be a member in good standing of the Kiwanis Club.

Section 6. Election and Term of Office. The term of office of said Trustees and the manner of their selection shall be as follows:

- a. In each year of this Foundation, three (3) Trustees are to be elected for a term of office of three (3) years and, when appropriate, for terms of two (2) years or one (1) year, in order to fill any vacancies in anyone of the three classes of Trustees, so that the term of office of only three (3) of the elected Trustees expires in each year. At the first regular meeting of the Board of Directors of the Kiwanis Club after the annual meeting of the general membership

of the Kiwanis Club, up to three (3) Trustees shall be elected for a term of three (3) years. All Trustees shall enter upon their official duties on the first day of October of the year in which they are elected.

- b. Those persons elected as officers of this Foundation under Article VII of these Bylaws shall be Trustees of the Foundation, and said Trustees shall serve during their respective terms of office, as the named officer of the Foundation, or until their successors shall be duly elected and qualified. If in any year the Immediate Past President of the Foundation ceases to be a Trustee, the person who served as President of the Foundation most recently prior to the Immediate Past President shall automatically become Immediate Past President within the meaning of this provision.
- c. One (1) of the Trustees shall be the President of the Kiwanis Club, and said Trustee shall serve during his or her respective term of office as the named officer of the Kiwanis Club or until his or her successor shall be duly elected and qualified.

The nomination and election of Trustees shall be conducted in accordance with the provisions of Article VIII herein.

Section 7. Vacancies. Subject to Section 5226 of the California Nonprofit Corporations Code, any Trustee may resign effective upon giving written notice to the President, the Secretary, or the Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected before such time to take office when the resignation becomes effective.

Vacancies in the Foundation's Board for the position designated in Section 6(c) herein shall be filled by the new person occupying the office in the Kiwanis Club which represents said seat on the Board, except that in the event that the Kiwanis Club at any time is without a President, the Kiwanis Club may designate an officer to serve as a Trustee until such President's successor shall have been duly elected and qualified.

Vacancies on the Board of the Foundation may be filled by approval of the Kiwanis Club's Board of Directors. The Foundation's Board may elect a Trustee at any time to fill any vacancy not filled by the Kiwanis Club's Board of Directors within two (2) months of notification to the Kiwanis Club of the vacancy occurring.

A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Trustee, or if the authorized number of Trustees be increased, or if the Kiwanis Club's Board fails, at any meeting at which any Trustee or Trustees are elected, to elect the full authorized number of Trustees to be voted for at that meeting. The election of the Trustees shall be held at the first meeting of the Board of Directors of the Kiwanis Club after the annual meeting of the general membership of the Kiwanis Club each year.

The Board may declare vacant the office of a Trustee who has been declared of unsound mind by a final order of a court, convicted of a felony, or been found by a final order or judgment of any court to have breached any duty arising under Section 5231, 5234 or 5236 of the California Nonprofit Public Benefit Corporation Law.

Any Trustee may be removed without cause when removal is approved by a majority of all members of the Kiwanis Club pursuant to Section 5222 of the California Nonprofit Public Benefit Corporation law, or by a majority of the Directors then in office of the Board of Directors of the Kiwanis Club, when authorized under Section 5222 of the California Nonprofit Public Benefit Corporation law.

No reduction of the authorized number of Trustees shall have the effect of removing any Trustee prior to the expiration the Trustee's term of office.

Section 8. Place of Meeting. Regular or special meetings of the Board shall be held at any place within or without the State of California which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Foundation.

Section 9. Conduct of Meeting. The President shall preside as Chairman at all meetings of the Board, whether regular or special as set forth in Sections 10 and 11 of this Article. The President shall conduct each such meeting in a businesslike and fair manner, but shall not be obligated to follow any particular technical, formal or parliamentary rules or principles of procedure. The Board may from time to time establish informal parliamentary procedures as guidelines for the conduct of the meeting. The President's rulings on procedural matters shall be conclusive and binding on all Trustees, unless at the time of a ruling a request for a vote is made, in which case the decision of a majority of such Trustees present at the meeting shall be conclusive and binding on all Trustees. Without limiting the generality of the foregoing, the President shall have all the powers usually vested in the chairman of a meeting of the Board.

Section 10. Regular Meetings.

The Foundation's Board shall meet regularly at least once each month or as necessary and at the call of the President. The President shall have the discretion to cancel a monthly regular meeting, should there be no business to transact. At the discretion of the Board, Committee chairs shall meet with the Foundation's Board in joint session.

Other regular meetings of the Board shall be held without call or notice on such dates and at such times as may be fixed by the Board.

Section 11. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President, any Vice President, the Secretary, or by any two (2) Trustees.

Special meetings of the Board shall be held upon four (4) days' notice by first class mail or forty-eight (48) hours' notice given personally or by telephone, including a voice messaging system or by electronic transmissions. Any such notice shall be addressed or delivered to each Trustee at such Trustee's address as it is shown upon the records of the Foundation or as may have been given to the Foundation by the Trustee for purposes of notice of, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the Trustees are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mail, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic transmission, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient. A copy of the written notice shall be retained and incorporated with the minutes of any meeting.

Section 12. Quorum. One third (1/3) of the authorized number of Trustees constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Section 14 of this Article. 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 regarded as the act of the Board, unless a greater number is required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 13. Participation in Meetings by Conference Telephone. Trustees may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Trustees participating in such meeting can hear one another. Participation pursuant to this Section constitutes presence in person at the meeting.

Section 14. Waiver of Notice. Notice of a meeting need not be given to any Trustee who signed a waiver of notice or a 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 Trustee. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 15. Adjournment. A majority of the Trustees present, whether or not a quorum is present, may adjourn any Trustees' meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent Trustees if the time and place be fixed at the meeting adjourned. However, if the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Trustees who were not present at the time of the adjournment.

Section 16. Action without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all Trustees shall have equal opportunity to participate and individually or collectively consent in writing or via electronic transmission to such action. Such consent or consents shall have the same effect as a unanimous vote of the Board, except as provided in Section 5211(b) of the California Nonprofit Public Benefit Corporation Law relating to "interested directors," and shall be filed with the minutes of the proceedings of the Board.

Section 17. Rights of Inspection. Every Trustee shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Foundation.

Section 18. Fees and Compensation. Trustees and members of committees shall receive no compensation for their services. Trustees and committee members may receive reimbursement for expenses, as may be fixed or determined by the Board.

Section 19. Committees. The Foundation's Board may designate one or more committees, each consisting of two or more Trustees, and delegate to such committees any authority of the Board, except with respect to:

- a. The approval of any action for which the California Nonprofit Public Benefit Corporation Law also requires approval of the members or approval of a majority of all members;
- b. The filling of vacancies on the Board or in any committee which has the authority of the Board;
- c. The amendment or repeal of Bylaws or the adoption of new Bylaws;
- d. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- e. The appointment of other committees of the Board or the members thereof;
- f. The expenditure of Foundation funds to support a nominee for Trustee after there are more people nominated for Trustee than can be elected; or
- g. The approval of any self-dealing transaction, except as permitted in Section 5233(d)(3) of the California Nonprofit Public Benefit Corporation Law.

Any such committee must be created, and the members thereof be approved by the Foundation's Board and appointed, by the President of the Foundation's Board or through a resolution adopted by a majority of the authorized number of Trustees then in office, provided a quorum is present, and any such committee may not be designated an Executive Committee or by such other name unless the Board shall so specify.

The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and any other actions of any such committee shall be governed by the provisions of Article VI applicable to meetings and actions of the Board. Minutes shall be taken and kept of each meeting of each committee.

ARTICLE VII OFFICERS

Section 1. Officers. The Officers of this Foundation shall consist of a President, Immediate Past President, First Vice President, Second Vice President, Secretary, Chief Financial Officer (also known as Treasurer), and other officers as the Foundation's Board may establish from time to

time. The Chief Financial Officer and Secretary may be the same person.

Section 2. Qualifications. Each officer shall be a voting member in good standing of the Kiwanis Club. No offices other than those of Secretary and Chief Financial Officer may be combined in one person.

Section 3. Term. All officers shall enter upon their official duties on the first day of October of each year and shall serve for a term of one (1) year or until their successors shall be duly elected and qualified.

Section 4. Responsibilities of Officers.

- a. President. Subject to the control of the Board, the President shall be the general manager of the Foundation and shall supervise, direct and control the Foundation's activities, affairs and officers. The President shall preside at all Board meetings as Chair. The President shall have such other powers and duties as the Board or the Bylaws may prescribe.
- b. Immediate Past President. The Immediate Past President shall have such duties as may from time to time be determined by the Foundation's Board. If in any year the Immediate Past President ceases to be a Trustee, the Ambassador of the Foundation who served as President of the Foundation most recently prior to said Immediate Past President shall automatically become the Immediate Past President within the meaning of this provision.
- c. Vice Presidents. If the President is absent or disabled, the Vice Presidents, if any, in order of their ranks as fixed by the Board, or, if not ranked, a Vice President designated by the Board, shall perform all duties of the President. When so acting, a Vice President shall have all powers of and be subject to all restrictions on the President. The Vice Presidents shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.
- d. Secretary.
 - i. Book of Minutes. The Secretary shall keep or cause to be kept, at the Foundation's principal office or such other place as the Board may direct, a book of minutes of all meetings, proceedings and actions of the Board, of committees of the Board, and of Ambassador meetings. The minutes of meetings shall include the time and place that the meeting was held, whether the meeting was annual, regular or special, and if special, how authorized, the notice given, and the names of those present at Board and committee meetings. The Secretary shall keep or cause to be kept, at the principal office in California, a copy of the Articles of Incorporation and Bylaws, as amended to date.
 - ii. Notices, Seal, and Other Duties. The Secretary shall give, or cause to be given, notice of all meetings of Ambassadors, of the Board, and of committees of the Board required by these Bylaws to be given. The Secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

e. Chief Financial Officer.

- i. Books of Account. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Foundation's properties and transactions. The Chief Financial Officer shall send or cause to be given to the Trustees such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board. The books of account shall be open to inspection by any Trustee at all reasonable times.
- ii. Deposit and Disbursement of Money and Valuables. The Chief Financial Officer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Foundation with such depositories as the Board may designate, shall disburse the Foundation's funds as the Board may order, shall render to the President and the Board, when requested, an account of all transactions as Chief Financial Officer and of the financial condition of the Foundation, and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.
- iii. Bond. If required by the Board, the Chief Financial Officer shall give the Foundation a bond in the amount and with the security or sureties specified by the Board for faithful performance of the duties of the office and for restoration to the Foundation of all of its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement or removal from office. The cost of such bond, if approved by the Board, shall be an expense of the Foundation.

Section 5. Other Duties. Officers shall have such other duties as are ordinarily and customarily incumbent upon their positions, and such other duties as may from time to time be determined by the Foundation's Board.

Section 6. Election. The officers of the Foundation, except such officers as may be elected or appointed in accordance with the provisions of Section 9 of this Article, shall be chosen annually by, and shall serve at the pleasure of the Board, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successors shall be elected.

Section 7. Subordinate Officers. The Foundation's Board may elect, and may empower the President to appoint such other officers as the activities of the Foundation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine. The period of service by appointment or election shall not exceed the end of the fiscal year (September 30) in which the election occurred.

Section 8. Removal and Resignation. Any officer may be removed, either with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

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

Section 9. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled by the Board as soon as practicable at its next regular or special meeting.

Section 10. Compensation. Any compensation to be paid to an officer shall be determined by the Board.

Article VIII ELECTIONS

Section 1. Time for Election. The election of Trustees shall be held at the first regular meeting of the Board of Directors of the Kiwanis Club after the annual meeting of its general membership each year.

Section 2. Notice of Nominees. At least one (1) regular meeting before the election of Trustees, provided for in Article VIII Section 1, nominations for Trustee consideration by the Board of Directors of the Kiwanis Club may be presented at a regular meeting of the Board of Directors of the Kiwanis Club or at the annual meeting of the members of the Kiwanis Club. The Board of Directors of the Kiwanis Club shall be under no obligation to elect such nominees presented to the membership of the Kiwanis Club.

ARTICLE IX AMENDMENTS

Any amendment of these Bylaws may be adopted by a majority vote of the Trustees then in office at a meeting of the Foundation's Board, provided written notice of the proposed amendment shall have been given the Trustees at least two (2) weeks prior to the meeting. There shall be no voting by proxy. Any amendment to this Article etc. must be approved by the Board of Directors of the Kiwanis Club, before it shall become effective.

ARTICLE X OTHER PROVISIONS

Section 1. Inspection of Articles and Bylaws. The Foundation shall keep in its principal office in the State of California the original or a copy of its Articles of Incorporation and of these Bylaws as amended to date, which shall be open to inspection by Trustees at all reasonable times during office hours.

Section 2. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsements thereof executed or entered into between the Foundation and any other person, when signed by the President or any Vice President, and the Secretary, or the Chief Financial Officer of the Foundation, shall be valid and binding on the Foundation in the

absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by resolution of the Board, and unless so authorized by the Board, no other 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 amount.

Section 3. Representation of Shares of Other Corporations. The President or any other officer or officers authorized by the Board or the President are each authorized to vote, 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. The authority herein granted 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 executed by said officer.

Section 4. Construction and Definition. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

ARTICLE XI INDEMNIFICATION

Section 1. Definitions. For the purposes of this Article, "agent" means any person who is or was a Trustee, director, officer, employee, or other agent of the foundation, or is or was serving at the request of the Foundation as a Trustee, director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Trustee, director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the Foundation or of another enterprise at the request of such predecessor corporation, "proceeding" includes any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative, and "expenses" includes, without limitation, attorneys' fees and expenses of establishing a right to indemnification under Section 4 or 5(c) of this Article.

Section 2. Indemnification in Actions by Third Parties. The Foundation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Foundation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Foundation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person reasonably believed to be in the best interests of the Foundation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 2:

- a. In respect of any claim, issue, or matter as to which such person shall have been determined to be liable to the Foundation in the performance of such person's duty 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 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 such action concerns assets held in charitable trust and is settled with the approval of the Attorney General.

Section 3. Indemnification Against Expenses. To the extent that an agent of the Foundation has been successful on the merits in defense of any proceeding referred to in Sections 2 or 3 of this Article 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 4. Required Determinations. Except as provided in Section 4 of this Article, any indemnification under this Article 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 Sections 2 or 3 of this Article by:

- a. A majority vote of a quorum consisting of Trustees who are not parties to such proceeding;
- b. Approval of the Trustees, with the persons to be indemnified not being entitled to vote thereon; or
- c. The court in which such proceeding is or was pending upon application made by the Foundation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Foundation.

Section 5. Advance 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. The provisions of Section 5236(a) of the California Nonprofit Public Benefit Corporation Law shall not apply to advances made pursuant to this Section 6.

Section 6. Other Indemnification. No provision made by the Foundation to indemnify its or its subsidiary's Trustees or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution of Trustees, an agreement, or otherwise, shall be valid unless consistent with this Article. Nothing contained in this Article shall affect any right to indemnification to which persons other than such Trustees and officers may be entitled, by contract or otherwise.

Section 7. Forms of Indemnification Not Permitted. No indemnification or advance shall be made under this Article, except as provided in Section 4 or Section 5(c) in any circumstance where it appears:

- a. That it would be inconsistent with a provision of the Articles, 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
- b. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 8. Insurance. The Foundation shall have power to purchase and maintain insurance on behalf of any agent of the Foundation against any liability asserted against or incurred by the agent in 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.

Section 9. Non applicability to Fiduciaries of Employee Benefit Plans. This Article does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent of the Foundation as defined in Section 1 of this Article. The Foundation shall have power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 207 of the California General Corporation Law.

Article XII EMERGENCY PROVISIONS

Section 1. General. The provisions of this Article shall be operative only during a national emergency declared by the President of the United States or the person performing the President's function, or in the event of a nuclear, atomic, or other attack on the United States or a disaster making it impossible or impracticable for the Foundation to conduct its business without recourse to the provisions of this Article. Said provisions in such event shall override all other Bylaws of the Foundation in conflict with any provisions of this Article, and shall remain operative as long as it remains impossible or impracticable to continue the business of the Foundation otherwise but thereafter shall be inoperative; provided that all actions taken in good faith pursuant to such provisions 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.

Section 2. Unavailable Trustees. All Trustees of the Foundation 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 like effect as if such persons had resigned as Trustees, so long as such unavailability continues. Failure to attend monthly meetings of the Board for a period of three (3) consecutive months or greater may be grounds for removal.

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.

Section 4. Quorum. The number of Trustees necessary to constitute a quorum shall be one-third (1/3) of the number of Trustees remaining pursuant to Section 2.

Section 5. Trustees Becoming Available. Any person who has ceased to be a Trustee pursuant to the provisions of Section 2 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 such person has expired in accordance with its original terms or a successor has been selected and qualified.

Article XIII PROPERTY DEDICATION

The property of this Foundation is irrevocably dedicated to charitable and educational purposes meeting the requirements for exemption provided by Section 214 of the Revenue and Taxation Code, and no part of the net income or assets of this organization shall inure to the benefit of any private member. Upon the dissolution or winding up of the Foundation, its assets remaining after payment or provision for payment of all debts and liabilities of this Foundation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable and educational purposes meeting the requirements for exemption provided by Section 214 of the Revenue and Taxation Code and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code. In making such distribution upon the dissolution or winding up of the Foundation, primary consideration should be given to the desire of the Foundation that such assets shall be utilized to carry out charitable and educational aims within the community of San Diego through programs not necessarily identical but similar to what the Foundation has supported in the past.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of the San Diego Kiwanis Club Foundation, Inc., a California Nonprofit Public Benefit Corporation; and
2. That the foregoing Bylaws, comprising 15 pages, constitute the Bylaws of the San Diego Kiwanis Club Foundation, Inc. as duly adopted by action of the former General Membership of the San Diego Kiwanis Club Foundation, Inc., duly taken on _____, 2019, and as fully adopted by action of the Foundation's Board of Trustees, duly taken on _____, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the San Diego Kiwanis Club Foundation, Inc., on _____, 2019.

David Jay, Secretary