



AMENDED AND RESTATED BYLAWS OF SAN JOSÉ STATE UNIVERSITY RESEARCH FOUNDATION,

A California Nonprofit Public Benefit Corporation
and Auxiliary Organization

ARTICLE 1: OFFICES

Section 1.1 Principal Office

The principal office for the transaction of the business of the Corporation shall be located at or near San José State University, San José, in Santa Clara County, California ("SJSU"). The Directors may change the principal office from one location to another, and this section shall be amended accordingly.

Section 1.2 Other Offices

The Board of Directors may at any time establish branch offices, either within or outside the State of California, in order to advance the proper purposes of the Corporation.

ARTICLE 2: PURPOSES

This Corporation has been formed under the California Nonprofit Public Benefit Corporation Law for the purposes stated in the Articles of Incorporation.

ARTICLE 3: BOARD OF DIRECTORS

Section 3.1 Powers

(a) **General Corporate Powers.** The business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors.

(b) **Specific Powers.** Without prejudice to their general powers, the Directors shall have the power to:

(i) Prescribe any powers and duties for the Officers that are consistent with the law, with the Articles of Incorporation, and with these Bylaws; and fix their compensation, if any.

(ii) Change the principal executive office or the principal business office in the State of California from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency, or country, and conduct business within or outside the State of California; and designate any place within or outside the State of California for the holding of any meeting.

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

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

Section 3.2 Number of Directors and Manner of Selection

The composition of the Board of Directors shall include categories prescribed in the California Code of Regulations applicable to auxiliaries, to wit: representation from each of the following categories: university administration and staff; faculty; non-campus personnel; and students.

The authorized number of Directors shall be between ten (10) and eighteen (18), with the specific authorized number established by the Board. The Board shall be composed as follows:

(a) Ex Officio Directors: The persons serving in the following SJSU offices shall be Directors of the Corporation for the duration of their service in such offices: University Vice President for Research and Innovation ("VPRI"); University Associate Vice President for Research ("AVP for Research"), University Vice President for Finance and Administration; and University Provost/Senior Vice President for Academic Affairs. If an Ex Officio Director ceases to serve in the corresponding SJSU office for any reason, such person shall immediately cease to be a Director or Officer of this Corporation, without further action by the Board.

(b) Designated Directors: Directors shall be nominated by the VPRI and designated by the University President of SJSU acting in his or her official capacity (the "Designator"), in the following categories and numbers:

(i) University Representation, Deans: Up to three (3) college deans. The AVP for Research will identify nominees for dean vacancies and communicate their names to the VPRI. Associate deans shall not be "deans" for this purpose.

(ii) University Representation, Faculty: Up to six (6) faculty members or former faculty members who are administrators with retreat rights to tenured faculty status, in each case, who do not qualify as deans under 3.2(b)(i). The AVP of Research will identify nominees and communicate their names to the VPRI.

(iii) Community Representation: One (1) to three (3) community members. The Secretary will identify potential community members and communicate their names to the VPRI.

(iv) Student Representation: One (1) University student. The student shall be recommended to the VPRI by the AVP of Research in consultation with the President of Associated Students of SJSU.

Section 3.3 Ex Officio and Designated Director Terms

The terms of Designated Directors end on a staggered basis at the close of the Annual Meeting, except as otherwise provided in the action of the Designator designating such director.

(a) Ex Officio Directors: Terms continue for duration of specified University Office.

(b) Designated Dean Directors and Faculty Directors: Staggered four-year terms without term limits.

(c) Community Directors: Staggered four-year terms without term limits.

(d) Student Director: One-year term with a maximum of three terms.

Section 3.4 Qualifications of Board Members

(a) Faculty Directors shall be experienced principal investigators on grants or contracts. Of the up to six (6) faculty Directors, no more than one may be tenure track (untenured). Up to two (2) may be non-dean administrators with retreat rights to faculty.

(b) Community Directors shall have public or private sector positions, experience and the capability to promote and develop the mission of the Corporation.

(c) The Student Director shall have Research, Scholarly and Creative Activity (RSCA) experience.

Section 3.5 Vacancies

(a) Events Causing Vacancy. A vacancy on the Board of Directors shall be deemed to exist at the occurrence of any of the following:

(i) The death, resignation, or removal of any Director.

(ii) The declaration by resolution of the Board of Directors of a vacancy in the office of a Director who has been declared of unsound mind by court order or convicted of a felony, or who has been found by final order or judgment of any court to have breached a duty under the California Corporations Code and following of the California Nonprofit Corporation Law.

(iii) The failure of the Designator to designate a Director pursuant to the provisions of Section 3.2(b).

(iv) A vacancy in the office of the VPRI; AVP for Research; University Vice President for Finance and Administration; or University Provost/Senior Vice President for Academic Affairs which causes there to be a vacancy in the corresponding Ex Officio Directorship.

(v) The increase of the authorized number of Directors that create vacancies.

(b) Resignation. Except as provided in this paragraph, any Director may resign, which resignation shall be effective upon receipt of written notice (unless the notice specifies a later effective date) by the President or the Secretary, and the Designator (in the case of a Designated Director).

(c) Removal.

(i) Any Designated Director may be removed, with or without cause, by the vote of the majority of the Directors then in office, and with the concurrence of the Designator. Any vacancy caused by the removal of a Designated Director shall be filled as provided in Section 3.5(d).

(ii) Any Designated Director may be removed by a majority of the Directors who meet all of the required qualifications to be a Director when their status changes in such a way that it affects their qualification to be a Director as described in Sections 3.2 and 3.4.

(iii) The Board may declare vacant the office of a Designated Director, if at the time the Designated Director was selected, the Bylaws provided that the Designated Director may be removed for missing three (3) meetings, and the Designated Director fails to attend three (3) meetings.

(iv) The Designator may remove any Designated Director without cause and without a vote of the Board.

(d) Filling of Vacancies. Any vacancy caused by the death, resignation, or removal of a Director shall be filled in accordance with the provisions of Sections 3.2, 3.3, and 3.4.

Section 3.6 Place of Meeting; Meeting by Telephone

Regular meetings of the Board of Directors may be held at any place within or outside the State of California, as designated from time to time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation. Special meetings of the Board shall be held at any place within or outside of the State of California, as designated in the notice of meeting or, if not stated in the notice or if there is no notice, at the principal office of the Corporation. Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or similar communications equipment, so long as all of the following apply: (a) each Board member participating in the meeting can communicate with all the other members concurrently; (b) each member is provided the means of participating in all matters before the board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation; and (c) the corporation adopts and implements means of verifying both of the following: (i) a person communicating by telephone, electronic video equipment, or other communications equipment is a Director entitled to participate in the board meeting; and (ii) all statements, questions, actions, or votes were made by that Director and not by another person not permitted to participate as a Director. Participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

Section 3.7 Annual and Quarterly Meeting

The Board of Directors shall hold a meeting once a year in the fall at a time and place designated by the President for purposes of honoring Director service, receiving any Ex Officio or Designated Directors, appointing committee membership, and transacting other business. The Board shall meet quarterly or as needed to conduct regular business. Notice of these meetings shall be in accordance with Section 3.9.

Section 3.8 Special Meetings

Special meetings of the Board of Directors for any purpose may be called at any time by the President or the majority of the Board. Notice of these meetings shall be in accordance with Section 3.9.

Section 3.9 Notice of Regular and Special Meetings

The Corporation shall give notice of all Board meetings in accordance with the requirements of the California Education Code, or any subsequent law enacted which governs California State University auxiliary organizations, and the California Corporations Code governing nonprofit public benefit corporations. The Board shall, at least one week prior to the date set for a meeting, give written notice of each regular and special meeting that is called, to each Director and to any individual or medium that

has filed a written request for notice. Any request for notice filed with the Corporation shall be valid for one year from the date on which it is filed, unless a renewal request is filed. An agenda listing the matters to be considered at each meeting shall be included in the notice for the meeting. At a special meeting, no other business shall be considered beyond that specified in the agenda.

Section 3.10 Waiver of Notice

The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, consent to holding of the meeting, or approval of the minutes. 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. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about lack of adequate notice.

Section 3.11 Quorum

A majority of the Board of Directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 3.12, but in no event shall quorum be less than one-fifth (1/5) of the authorized number of directors or two (2) directors, whichever is larger. Every act or decision done or made by a majority of the Directors present at a meeting held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of the California Nonprofit Corporation Law. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of any Director, if any action taken is approved by at least a majority of the quorum required for the meeting.

Section 3.12 Adjournment

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

Section 3.13 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. This notice may be waived in the same manner as set forth under Section 3.10.

Section 3.14 Other Meeting Requirements

The Corporation shall conduct all Board meetings in accordance with the appropriate section of the California Education Code. 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 regular or special meeting, as permitted by California Education Code. The Board in such closed sessions may consider matters relating to litigation, collective bargaining, or the appointment, employment, evaluation of performance, or dismissal of an employee, or to hear complaints or charges brought against an employee by another person or employee, unless the employee requests a public hearing. For purposes of this section, "employee" does not include any person elected or appointed to an office. The Board may, upon the affirmative vote of a majority of its members, hold a closed session

to discuss investments where a public discussion could have a negative impact on the Corporation's financial situation; in this case, a final decision shall only be made during public sessions.

The Board may not take action on any issue until that issue has been publicly posted for at least one week.

Section 3.15 Compensation of Directors

The Board may authorize the advance or reimbursement of actual reasonable expenses incurred by a Director or member of a committee in carrying out his or her duties. Directors shall not otherwise be compensated.

Section 3.16 Restriction on Interested Directors

Not more than 49 percent of the persons serving on the Board of Directors at any time may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous 12 months, whether as a full-time or part-time employee, independent contractor, or otherwise; (b) any shareholder, employee or Officer of any corporation, or partner or employee of any partnership, which has rendered compensated services to the Corporation within the previous 12 months; and (c) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any person described in (a) or (b) of these Bylaws. Any violation of the provisions of this paragraph shall not, however, affect the validity or enforceability of any transaction entered into by the Corporation.

Section 3.17 Voting

All Directors have full voting rights, consistent with the California Nonprofit Public Benefit Corporation Law. Voting by proxy is prohibited.

Section 3.18 Action Without a Meeting

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

Section 3.19 Standard of Care

(a) General. A Director shall perform the duties of a Director, including duties as a member of any Board Committee on which the Director may serve, in good faith, in a manner such Director believes to be in the best interest of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a Director, a Director 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 this Corporation whom the Director believes to be reliable and competent as to the matters presented;

(ii) counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

(iii) a committee upon which the Director does not serve that is composed exclusively of any combination of Directors or persons described in (i) or (ii), as to matters within the committee's designated authority, provided that the Director believes such committee merits confidence;

so long as in any such case, the Director 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.

Except as provided in Article 8 below, a person who performs the duties of a Director in accordance with this Section shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a Corporation, or assets held by it, are dedicated.

(b) Investments. Except with respect to assets held for use or used directly in carrying out this Corporation's public or charitable activities, in managing and investing this Corporation's investments, the Board shall adhere to the standards set forth in the preceding paragraph, and shall: (a) consider the charitable purposes of this Corporation; (b) act in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) consider:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences, if any, of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall portfolio;
- (5) The expected total return from income and appreciation of investments;
- (6) This Corporation's other resources;
- (7) The needs of this Corporation to make distributions and to preserve capital;
- (8) An asset's special relationship or special value, if any, to the charitable purposes of this Corporation.

Board decisions about an individual investment shall be made not in isolation but rather in the context of this Corporation's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to this Corporation.

Notwithstanding the above, no investment violates this section where it conforms to: (a) the intent of the donor as expressed in a gift instrument; or (b) provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to this Corporation.

ARTICLE 4: COMMITTEES

Section 4.1 Committees of Directors

The Board of Directors may, by resolution adopted by a majority of the Directors then in office, designate one or more committees consisting of two or more Directors, and only of Directors, to serve at the pleasure of the Board. Any member of any committee may be removed, with or without cause, at any time by the Board. Any committee, to the extent provided in a resolution of the Board, shall have all or a portion of the authority of the Board, except that no committee, regardless of the Board resolution, may:

- (a) Set the number of directors within a range specified in these Bylaws;
- (b) Elect directors or remove directors without cause;
- (c) Approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of this Corporation;
- (d) Fill vacancies on the Board of Directors or on any committee;
- (e) Fix compensation of directors for serving on the Board or any Board Committee;
- (f) Amend or repeal the Articles of Incorporation or Bylaws or adopt new Bylaws;
- (g) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (h) Designate any other committee of the Board or appoint the members of any Board committee;
- (i) Approve any transaction (i) to which the Corporation is a party and as to which one or more Directors has a material financial interest, or (ii) between the Corporation and one or more of its Directors or between the Corporation and any corporation or firm in which one or more of its Directors has a material financial interest.

Section 4.2 Executive Committee

The Executive Committee shall be a standing committee consisting of seven (7) Directors, and only Directors, as follows: (a) the four (4) Ex Officio Directors, for the duration of their service as such (i.e., the VPRI; the AVP for Research; the University Vice President for Finance and Administration; and the University Provost/Senior Vice President for Academic Affairs); (b) the Chairs of each of the Audit, Finance & Investment, and Sponsored Programs Advisory Committees, for the duration of their service as such; and (c) one or more Designated Directors who are Dean, Faculty, or Community Directors, and are elected to the Executive Committee by the Board of Directors as necessary to maintain an Executive Committee of seven (7) Directors, provided that at least one Committee member elected pursuant to this subsection (c) shall be a Faculty Director. From time to time, the Directors described in (a), (b), and (c) above may overlap. The President shall serve as chair of the Executive Committee. The Secretary serves in support of this Committee, if and as requested by the chair of the Committee, but is not a member of the Executive Committee. The Executive Committee, if constituted as described in Section 4.1 and unless limited by a resolution of the Board, shall have and may exercise all the authority of the Board in the management of the business and affairs of the Corporation between meetings of the

Board; provided, however, that the Executive Committee shall not have the authority of the Board in reference to those matters enumerated in Section 4.1.

Section 4.3 Finance and Investment Committee

The Corporation shall have a standing Finance and Investment Committee composed of the Treasurer (as Committee Chair), the Vice President, a dean Director, at least two faculty Directors, and up to two community Directors. The Finance and Investment Committee shall: 1) review the Corporation's financial and investment positions at least quarterly and make summary reports to the Board; 2) recommend policy and practices to the Board relating to Corporation finances and investments; 3) preview the Annual Report prior to submission to the Board; and 4) undertake other related projects assigned by the Board.

Section 4.4 Audit Committee

At all times this Corporation is required by applicable law to have an annual independent audit. The standing Audit Committee shall consist of a Director appointed by the Board as Committee Chair, up to one dean Director, at least one community Director, and at least two faculty Directors, with the following limitations: (a) Directors who are employees of the Corporation or who receive, directly or indirectly, any consulting, advisory, or other compensatory fees from the Corporation (other than for service as Director) may not serve on the Audit Committee; (b) the President and Treasurer may serve on the Audit Committee only if such persons are volunteers and are not compensated by this Corporation; and (c) the Audit Committee may not include any person who has a material financial interest in any entity doing business with this Corporation.

The Audit Committee shall perform the duties and adhere to the guidelines set forth from time to time by the Board. These duties include, but are not limited to: (i) assisting the Board in choosing an independent auditor and recommending termination of the auditor, if necessary, (ii) subject to the approval of the Board, negotiating the auditor's compensation on behalf of the Board, (iii) conferring with the auditor regarding the Foundation's financial affairs, (iv) reviewing and accepting or rejecting the audit, (v) reviewing the semi-annual financial reports and the audited financial statements of the Foundation's retiree medical trust; (vi) approving performance of any non-audit services provided to the Corporation by the auditor's firm.

Members of the Audit Committee shall not receive compensation for their service on the Audit Committee in excess of that provided to Directors for their service on the Board. If the Corporation has a Finance and Investment Committee, a majority of the members of the Audit Committee may not concurrently serve as members of the Finance and Investment Committee, and the Chair of the Audit Committee may not serve on the Finance and Investment Committee.

Section 4.5 Sponsored Programs Advisory Committee

The Corporation shall have a standing Sponsored Programs Advisory Committee composed of the Vice President (as Committee Chair), at least two faculty Directors, and the student Director. This Advisory Committee shall undertake a summary review of active externally sponsored projects and grants, pending proposals, and related matters on at least a quarterly basis and shall report its findings to the Board. The Board may assign special projects to this Committee.

Section 4.6 Other Advisory Committees

The Board may establish one or more additional Advisory Committees to the Board. The members of any Advisory Committee may consist of Directors or non-Directors. Advisory committees may not exercise the authority of the Board to make decisions on behalf of the corporation, but shall be limited to making recommendations to the Board or the Board's authorized representatives and to implementing Board decisions and policies. Advisory Committees shall be subject to the supervision and control of the Board.

Section 4.7 Meeting and Action of Committees

(a) Of Board Committees. Meetings and actions of Board Committees shall be governed by and held and taken in accordance with the provisions of Article 3 of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

(b) Of Advisory Committees. Subject to the authority of the Board of Directors, Advisory Committees may determine their own meeting rules and whether minutes shall be kept.

The Board of Directors may adopt rules for any committee not inconsistent with the provisions of these Bylaws, including Section 3.14.

Section 4.6 Committee Supervision and Reliance

If a committee is composed and appointed as required by Section 4.1 above (concerning Board Committees), it may act with the authority of the Board to the extent and with the scope provided by the Board. Otherwise, the Board of Directors shall remain responsible for oversight and supervision of the committee as an Advisory Committee. If a committee meets the criteria of Section 3.19(a)(iii), the individual Directors may rely on it in discharging their fiduciary duties as provided in that Section.

ARTICLE 5: OFFICERS

Section 5.1 Designation of Executive Officers

The Executive Officers of the Corporation, except those appointed in accordance with the provisions of Section 6.2 of this Article, shall be as follows: President, who shall be the VPRI; Vice President, who shall be the AVP for Research; Treasurer, who shall be the University Vice President for Finance and Administration; and Secretary, who shall be the Executive Director (or a titled position prescribed by the Board of Directors). Officers, except for the Secretary, shall be Directors. One person may hold two or more offices, except no person serving as Secretary, Treasurer, or Chief Financial Officer may serve concurrently as President.

Section 5.2 Subordinate Officers

The Board of Directors may establish and elect any other Officers that the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified by the Bylaws or determined from time to time by the Board of Directors. Such subordinate Officers need not be Directors.

Section 5.3 Removal of Officers

Any Subordinate Officer or the Secretary may be removed, with or without cause, by the Board of Directors with the concurrence of the Designator.

Section 5.4 Resignation of Officers

Any Subordinate Officer or the Secretary may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary, and to the Designator. Any resignation shall take effect at the date of receipt of that notice or at any later time specified in that notice. Unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

Section 5.5 Vacancies in Office

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 that Office.

Section 5.6 Responsibilities of Officers

- (a) President. The President shall be the chief executive officer of the Corporation with supervisory responsibilities determined by Board resolution, and have such other powers and duties as may be prescribed by resolution of the Board of Directors or these Bylaws. The President shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. The President shall see that the Board is advised on all significant matters of the Corporation's business, and shall see that all orders and resolutions of the Board are carried into effect. The President shall be empowered to act, speak for, or otherwise represent the Corporation between meetings of the Board within the boundaries of policies and purposes established by the Board and as set forth in the Articles of Incorporation and these Bylaws. The President shall be responsible for keeping the Board informed at all times of staff performance as related to program objectives, and for implementing any personnel policies adopted by the Board.
- (b) Vice President. The Vice President shall perform the duties of the President in the absence of the President. Other duties may be assigned by resolution of the Board of Directors or these Bylaws.
- (c) Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall attend to the following, in addition to such other powers and duties as may be prescribed by resolution of the Board of Directors or these Bylaws:
 - (i) Books of Account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.
 - (ii) Deposit and Disbursement of Money and Valuables. The Treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositors as may be designated by the Board of Directors; shall disburse funds of the Corporation as may be ordered by the Board of Directors; shall render to the President and Directors, whenever they request it, an account

of all financial transactions and of the financial condition of the Corporation; and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

(iii) **Bond.** If required by the Board of Directors, the Treasurer shall give the Corporation a bond in the amount and with the surety specified by the Board for the faithful performance of the duties of his or her office and for restoration to the Corporation of all its books, papers, vouchers, money, and other property of every kind in his or her possession or under his or her control on his or her death, resignation, retirement, or removal from office.

(iv) **Acting for President.** In the absence of the President and the Vice President, the Treasurer will perform duties of the President.

(d) **Secretary.** The Secretary shall attend to the following:

(i) **Book of Minutes.** 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 regular and special meetings, and if special, how authorized, the notice given, the names of those present at such meetings, and the proceedings of such meetings.

(ii) **Notices and Other Duties.** The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors required by the Bylaws to be given. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

ARTICLE 6: RECORDS AND REPORTS

Section 6.1 Maintenance of Articles and Bylaws

The Corporation shall keep at its principal executive office the original or a copy of its Articles and Bylaws as amended to date.

Section 6.2 Maintenance of Other Corporate Records

The accounting books, records, and minutes of the proceedings of the Board of Directors and any committee(s) of the Board of Directors shall be kept at such place or places designated by the Board of Directors or, in the absence of such designation, at the principal executive office of the Corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept in either written or typed form or in any other form capable of being converted into written, typed, or printed form.

Section 6.3 Inspection by Directors

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 Corporation 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 6.4 Annual Reports

Within 120 days after the end of the Corporation's fiscal year, the Finance and Investment Committee shall furnish or cause to be furnished a written report to all Directors containing the following information:

- (a) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the Corporation both unrestricted and restricted for particular purposes, for the fiscal year;
- (d) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year;
- (e) Any transaction during the previous fiscal year involving more than \$50,000 in which the Corporation (or its parent or subsidiaries, if any) was a party and in which any Director or Officer of the Corporation has a direct or indirect financial interest, or any of a number of such transactions in which the same person had a direct or indirect financial interest and which transactions in the aggregate involved more than \$50,000; and
- (f) The amount and circumstances of any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any Director or Officer of the Corporation pursuant to Article 7 of these Bylaws.

For each transaction, the report must disclose the names of the interested persons involved in such transaction and state such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the value of such interest.

The report shall be accompanied by any report of independent accountants. Such report may be furnished to the Directors by electronic transmission in accordance with Section 14.2 of these Bylaws. The Annual Report shall be prepared consist with the provisions of Section 6.5.

Section 6.5 Financial Audit

The Corporation shall select a qualified certified public accountant to conduct an annual independent financial audit as prescribed by the California Education Code. Any audited financial statements obtained by the Corporation shall also be made available for inspection by the Attorney General and by the general public after the close of the fiscal year to which the statements relate. For three years, such statements (a) shall be available at the Corporation's offices during regular business hours and (b) shall be made available either by mailing a copy to any person who so requests in person or in writing, or by posting them on the Corporation's website.

ARTICLE 7: INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 7.1 Right to Indemnification

This Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any action or proceeding by reason of the fact that such person is or was an Officer, Director,

or agent of this Corporation, or is or was serving at the request of this Corporation as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, or other enterprise, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding, to the fullest extent permitted under the California Nonprofit Corporation Law.

In determining whether indemnification is available to the Director, Officer, or agent of this Corporation under California law, the determination as to whether the applicable standard of conduct set forth in the California Corporations Code has been met shall be made by a majority vote of a quorum of Directors who are not parties to the proceeding. If the number of Directors who are not parties to the proceeding is less than two-thirds of the total number of Directors seated at the time the determination is to be made, the determination as to whether the applicable standard of conduct has been met shall be made by the court in which the proceeding is or was pending.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 7.2 Advancing Expenses.

The Board of Directors may authorize the advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition, if the Board finds that:

- (a) the requested advances are reasonable in amount under the circumstances; and
- (b) before any advance is made, the agent will submit a written undertaking satisfactory to the Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this Article.

The Board shall determine whether the undertaking must be secured, and whether interest shall accrue on the obligation created thereby.

Section 7.3 Insurance

This Corporation shall have the power and shall use its best efforts to purchase and maintain insurance on behalf of any Director, Officer, or agent of the Corporation, against any liability asserted against or incurred by the Director, Officer, or agent in any such capacity or arising out of the Director's, Officer's, or agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under Section 7.1 of these Bylaws; provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any Director, Officer, or agent of the Corporation for any self-dealing transaction, as described in the California Corporations Code.

ARTICLE 8: CONTRACTS AND LOANS WITH DIRECTORS AND OFFICERS

Section 8.1 Contracts with Directors and Officers

(a) Self-Dealing Transactions. Except as provided in Section 8.1(b) below, the Board of Directors shall not approve, or permit the corporation to engage in, any self-dealing transaction. A self-dealing transaction is a transaction to which this corporation is a party and in which one or more of its

directors has a material financial interest, unless the transaction comes within California Corporations Code Section 5233(b).

(b) Approval. Subject to Section 8.1(c), this corporation may engage in a self-dealing transaction if the transaction is approved by a court or by the Attorney General. This corporation may also engage in a self-dealing transaction if the Board determines, before the transaction, that (i) this corporation is entering into the transaction for its own benefit; (ii) the transaction is fair and reasonable to this corporation at the time; and (iii) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the director's interest in the transaction, and by a vote of a majority of the directors then in office, without counting the vote of the interested director or directors.

(c) Notwithstanding the foregoing, no Director shall enter into a transaction that is prohibited by California Education Code Section 89908, which include the following:

(i) The contract or transaction is between the Corporation and a Director;

(ii) The contract or transaction is between the Corporation and a partnership or unincorporated association of which a Director is a partner or in which a Director is the owner or holder, directly or indirectly, of a proprietorship interest;

(iii) The contract or transaction is between the Corporation and a corporation in which a Director is the owner or holder, directly or indirectly, of 5 percent of more of the outstanding common stock; or

(iv) A Director has a financial interest in the contract or transaction, and without first disclosing such interest to the Board at a public meeting of the Board, influences or attempts to influence another Director to enter into the contract or transaction.

Section 8.2 Loans to Directors and Officers

The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer, unless approved by the Attorney General of the State of California; provided, however, that the Corporation may advance money to a Director or Officer of the Corporation for expenses reasonably 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 Corporation.

Section 8.3 Contracts and Payment Authorizations

(a) Execution of Contracts. The Board of Directors may authorize one or more Officers, agents or employees to enter into any contract or to execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances and, unless so authorized by the Board, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it liable for any purpose or in any amount.

(b) Payments. 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 Corporation and any and all securities owned or

held by the Corporation requiring signature for transfer 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 8.4 Unlawful Use of Nonpublic Information for Personal Gain

No person shall utilize any information not a matter of public record, which is received by such person by reason of his or her Directorship, for personal pecuniary gain, regardless of whether such person is a Director at the time such gain is realized.

Section 8.5 Conflict of Interest Policy

The Corporation shall develop, adopt and maintain a Conflict of Interest Policy Statement, to be reviewed annually, that complies with applicable laws, regulations, and University policies and directives.

ARTICLE 9: FISCAL YEAR

The fiscal year of the Corporation shall end on June 30.

ARTICLE 10: AMENDMENTS

These Bylaws may be adopted, amended, or repealed by a majority vote of the entire Board of Directors; provided, however, that amendment or repeal of this ARTICLE 10 shall require the vote of two-thirds of the entire Board of Directors. The adoption, and any amendments or repeal of these Bylaws shall also require the written concurrence of the Designator.

ARTICLE 11: LAWS GOVERNING AUXILIARY ORGANIZATIONS

The Corporation shall comply with all applicable laws and regulations, including system and University policy, governing auxiliary organizations operating in the California State University.

ARTICLE 12: MEMBERS

This Corporation shall not have voting members within the meaning of the California Nonprofit Corporation Law.

ARTICLE 13: SUPPORTING ORGANIZATION RESTRICTIONS

The activities of this corporation, as exercised and managed by the Board, shall be consistent with the Corporation's role as a supporting organization to SJSU.

This Corporation shall not accept any contribution from any "prohibited person." For purposes of this Section, a "prohibited person" is: (i) a person who controls, directly or indirectly, either alone or with persons listed described in (ii) and (iii) below, the governing body of SJSU or any other organization of which this Corporation is a supporting organization (within the meaning of Section 509(a)(3) of the Internal Revenue Code); (ii) a member of the family of an individual listed in (i) above; or (iii) a corporation, partnership, trust, or estate more than 35 percent of which is actually or constructively controlled by persons described in (i) or (ii) above. For purposes of this Section, a member of an individual's family includes his or her spouse, ancestors, children, grandchildren, great-grandchildren, and

spouses of children, grandchildren, and great-grandchildren, as well as the individual's brothers and sisters, by whole or half blood, and their spouses.

ARTICLE 14: CONSTRUCTION AND DEFINITIONS

Section 14.1 Construction and Definitions

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, and the plural number includes the singular.

Section 14.2 Electronic Transmission

Subject to any guidelines and procedures that the Board of Directors may adopt from time to time, the terms "written" and "in writing" as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means and may include electronic transmissions, such as facsimile or email, provided (i) for electronic transmissions from the Corporation, the Corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (ii) for electronic transmissions to the Corporation, the Corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

CERTIFICATE OF ADOPTION

I, the undersigned, the duly appointed Secretary of the San José State University Research Foundation, a California nonprofit public benefit corporation, do hereby certify:

That the foregoing Amended and Restated Bylaws consisting of **17** pages were approved as the Bylaws of the Corporation by the Board of Directors of the Corporation on 7/7/2020, 2020, and the same do now constitute the Bylaws of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7/7/2020, 2020.

DocuSigned by:

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Eugene Kunde

Secretary
San José State University Research Foundation
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