

**BYLAWS**  
**of**  
**U.C. SAN DIEGO FOUNDATION**  
**a California Nonprofit Public Benefit Corporation**

**(As amended and restated on September 25, 2009)**

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**BYLAWS**  
**of**  
**U.C. SAN DIEGO FOUNDATION**  
**a California nonprofit public benefit corporation**

**ARTICLE 1**  
**NAME, PURPOSE, AND OFFICES**

**1.1 Name.** The name of this corporation is U.C. SAN DIEGO FOUNDATION (the “Foundation”).

**1.2 Purpose.** The purpose of this corporation is to foster community support, promote philanthropic giving, invest and manage gift funds and assets, provide advice and counsel to the Chancellor and to act as advocates for the benefit of the University of California, San Diego campus, in accordance with applicable University policies, guidelines and procedures. These activities will be performed within the scope of Section 501(c)(3) of the Internal Revenue Code.

**1.3 Principal Office.** The principal office of the Foundation shall be fixed and located at such place as provided by the University of California San Diego, as its officially recognized campus foundation office. Should the University not provide a principal office, the Board of Trustees will determine the location of the principal office.

**ARTICLE 2**  
**MEMBERSHIP**

**2.1 Members.** The Foundation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the Trustees.

**2.2 Associates.** Nothing in this ARTICLE 2 shall be construed as limiting the right of the Foundation to refer to persons associated with it as “members” even though such persons are not members, and no such reference shall constitute anyone a member within the meaning of Section 5056 of the California Nonprofit Corporation Law (the “Law”). The Foundation may confer by amendment of its Articles of Incorporation (the “Articles”) or of these Bylaws some or all of the rights of a member, as set forth in the Law, upon any person or persons who do not have the right to vote for the election of Trustees or on a disposition of substantially all of the assets of the Foundation or on a merger or on a dissolution or on changes to the Foundation’s Articles or Bylaws, but no such person shall be a member within the meaning of said Section 5056 of the Law.

**ARTICLE 3**  
**TRUSTEES**

**3.1 General Corporate Powers.** Subject to the limitations of the Law, the Articles, and these Bylaws, the activities and affairs of the Foundation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the Foundation to any person or persons, a management company or committees, however composed, provided that the activities and affairs of the Foundation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

**3.2 Specific Powers.** Without prejudice to the general powers set forth in the Law and in Section 3.1 above, 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:

**3.2.1** To conduct, manage, and control the affairs and activities of the Foundation, and to make such rules and regulations therefore not inconsistent with law, the Articles, or these Bylaws, as the Board may deem appropriate.

**3.2.2** To adopt, make, and use a corporate seal and to alter the form of such seal from time to time as the Board may deem appropriate.

**3.2.3** To borrow money and incur indebtedness for the purposes of the Foundation and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefore.

**3.3 Number of Trustees.** The authorized number of Trustees, including Elected and Ex Officio Trustees, shall be not less than fifteen (15) nor more than fifty (50) until changed by amendment of the Articles or these Bylaws, with the exact number of Trustees to be fixed within the specified limits by approval of the Board. A majority of the Trustees shall be persons not employed by UCSD.

**3.4 Elected Trustees**

**3.4.1** Nominations for new Elected Trustees shall be presented by the Nominating Committee, based on candidates' demonstrated strong interest in the affairs of UCSD and having occupied leadership positions in business, professional, or civic affairs.

**3.4.2** At all times, one of the Elected Trustees shall be a member of the UCSD Faculty.

**3.4.3** Elected Trustees shall be elected by majority vote of the Board in attendance at any meeting of the Board at which a quorum is present or by unanimous written consent as provided in Section 3.20.

**3.5 Selection and Term of Office.** Except as provided in Section 3.8, the terms of office of Elected Trustees shall be three (3) years, coinciding with the Foundation's fiscal year. Each Elected Trustee shall take office upon election and shall hold office until a successor has been elected and qualified.

**3.5.1** Except as noted in Section 3.5.2, Elected Trustees shall serve no more than two (2) consecutive terms.

**3.5.2** The UCSD Faculty member shall serve no more than one (1) single term as Trustee.

**3.5.3** Elected Trustees may be elected to the Board again after a one (1) year absence.

**3.5.4** A Trustee who is elected to serve as Chair of the Board but does not have sufficient term of years remaining to serve the term as Chair shall have his or her term of office extended through the Chair term.

**3.5.5** A former Chair of the Board shall hold the title of “Chair Emeritus” in perpetuity.

**3.6** **Ex Officio Trustees.** The persons holding the following UCSD positions shall be Ex Officio Trustees, by virtue of their University appointments or support organization offices held:

**3.6.1** UCSD’s Chancellor;

**3.6.2** UCSD’s Vice Chancellor of External and Business Affairs; and

**3.6.3** The President of the Alumni Association.

Ex Officio Trustees shall serve for so long as they hold their University appointments or support organization offices, whether it be for more or less than three (3) years.

**3.7** **Interested Persons.** Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. For purposes of this Section 3.6, an interested person is:

**3.7.1** Any person being compensated by the Foundation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Trustee as a Trustee; or

**3.7.2** Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Any violation of the provisions of this Section 3.6 shall not affect the validity or enforceability of any transaction entered into by the Foundation.

**3.8** **Resignation and Vacancies**

**3.8.1** Subject to the provisions of Section 5226 of the Law, any Elected Trustee may resign effective upon giving written notice to the Chair of the Board, 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 selected before such time, to take office when the resignation becomes effective.

**3.8.2** A vacancy on the Board shall be deemed to exist in case of the death, resignation, or removal of any Trustee or an increase in the authorized number of Trustees. Vacancies on the Board shall be filled by election by the Trustees, pursuant to Section 3.4.3 above, provided that any such vacancy may be filled by a majority of the Trustees, although less than a quorum, or by a sole remaining Trustee at any regular or special meeting of the Board. Each Trustee so selected shall serve the remainder of the fiscal year in which elected and begin his or her regular term on July 1 of the

following fiscal year, except as the Board may otherwise determine via resolution at the time of election.

**3.9 Removal.** Any Trustee, including the support organization representative referenced in Section 3.6.3, but not including the University officials referenced in Sections 3.6.1 and 3.6.2, may be removed from office by the affirmative vote of a majority of all voting members of the Board, at any regular or special meeting called for that purpose, for conduct detrimental to the interest of the Foundation, for lack of sympathy with its objectives, or for refusal to render reasonable assistance in carrying out the Foundation's purposes. A Trustee with respect to whom removal has been proposed shall be entitled to at least five (5) days' notice in writing by mail of the meeting at which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting. The Board may declare vacant the office of a Trustee who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final court or judgment of any court to have breached any duty arising under Sections 5230 through 5238 of the Law. No reduction of the authorized number of Trustees shall have the effect of removing any Trustee prior to the expiration of the Trustee's term of office.

**3.10 Place of Meetings.** Meetings of the Board shall be held at any place within or outside the State of California which has been designated from time to time by the Secretary of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Foundation.

**3.11 Annual and Regular Meetings.** The annual meeting shall be held before the end of the fiscal year. Regular meetings of the Board shall be held quarterly. Elections may be held at either annual or quarterly meetings, at a date, time and place as may be fixed by the Board.

**3.12 Special Meetings.** Special meetings of the Board for any purpose or purposes may be called at any time by the UCSD Chancellor, the Chair of the Board, the President, or any five (5) Trustees.

### **3.13 Notice**

**3.13.1** Annual and special meetings of the Board shall be held upon at least ten (10) 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 transmission by the Foundation as defined in Section 20 of the California Corporations Code. 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 or, if such address is not shown on such records or is not readily ascertainable, at the place where the meetings of the Board are regularly held.

**3.13.2** Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mail, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who

the person giving the notice has reason to believe will promptly communicate it to the receiver. The notice of a special meeting shall state the time of the meeting and the place, if the place is other than the principal office of the Foundation.

**3.14 Quorum.** A majority of the number of Trustees then serving constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Section 3.19. 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 be 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.

**3.15 Participation in Meetings by Conference Telephone and Electronic Means.** Trustees may participate in a meeting of the Board, or a committee meeting, through use of a conference telephone, electronic video screen communication or electronic transmission by and to the Foundation pursuant to Sections 20 and 21 of the California Corporations Code. Participation in a meeting through the use of conference telephone or electronic video screen communication constitutes presence in person at that meeting as long as all members participating in that meeting can hear one another. Participation in a meeting through use of electronic transmission by and to the Foundation, other than telephone conference and electronic video screen communication, constitutes presence in person at that meeting if both of the following apply:

**3.15.1** Each member participating in the meeting can communicate with all of the other members concurrently.

**3.15.2** Each member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the Foundation.

**3.16 Waiver of Notice.** Notice of a meeting need not be given to any Trustee who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Trustee. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**3.17 When Notice Not Necessary.** At any meeting at which every Trustee shall be present, even though without any notice or waiver thereof, any business may be transacted.

**3.18 Entry of Notice.** Any entry of the manner of giving of notice of any meeting, if read and approved at a subsequent meeting of the Board, shall be conclusive on the question of giving of notice of such meeting.

**3.19 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, except as provided in the next sentence. If the meeting is adjourned for more than twenty-

four (24) hours, reasonable 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.

**3.20 Action Without Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action in writing, or by telegraph, facsimile, electronic mail, or other electronic means of communication. Such consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board. For the purposes of this Section only, “all members of the Board” shall not include any “interested director” as defined in Section 5233 of the Law.

**3.21 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.

**3.22 Fees and Compensation.** No compensation shall be paid to any Trustee for his or her services as a Trustee, although Trustees may be reimbursed, by resolution of the Board, for expenses incurred on behalf of the Foundation. The Foundation shall not make any loan of money or property to, or guarantee the obligation of, any Trustee, unless approved by the Attorney General; provided, however, that the Foundation may advance money to a Trustee for expenses reasonably anticipated to be incurred in the performance of such Trustee’s duties, provided that in the absence of any such advance, such Trustee would be entitled to be reimbursed for such expenses by the Foundation. Subject to the provisions of Section 3.6, nothing contained in this Section 3.22 shall preclude a Trustee from serving the Foundation in any other capacity as an Officer, agent, employee, or otherwise, and receiving reasonable compensation therefor, so long as such compensation would not violate the provisions of Section 4958 of the Internal Revenue Code.

**3.23 Standard of Conduct.** 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 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:

**3.23.1** One or more Officers or employees of the Foundation as to matters within such person’s scope of responsibility;

**3.23.2** Counsel, independent accountants or other persons as to matters within such person’s professional or expert competence; or

**3.23.3** A Committee of the Board upon which the Trustee does not serve, as to matters within its designated authority, so long as the Trustee acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

### **3.24 Transactions in Which Trustees Have Personal Interest**

**3.24.1** Any transaction of the Foundation in which any of its Trustees have a material financial interest shall be entered into or consummated only if:

**3.24.1.1** The California Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or

**3.24.1.2** The transaction is fair and reasonable and in the best interest of the Foundation at the time the Foundation enters into the transaction, and:

**3.24.1.2.1** The Board, prior to consummating the transaction, or any part thereof, with knowledge of the material facts concerning the transaction and such Trustee's interest in the transaction, and after reasonable investigation under the circumstances as to alternatives, determines that the Foundation could not have obtained a more advantageous arrangement with reasonable efforts under the circumstances; and

**3.24.1.2.2** The Board authorizes or approves the transaction in good faith by the vote of a majority of the Trustees then in office, without counting the vote of the interested Trustee or Trustees (although such Trustee or Trustees may be counted for purposes of determining the presence of a quorum at the meeting at which such action is taken).

**3.24.2** If it is not reasonably practicable to obtain approval by the Board prior to entering into the transaction, a committee or person authorized by the Board may approve the transaction in a manner consistent with the standards of Section 3.24.1; provided, however, that at its next meeting the Board:

**3.24.2.1** Determines that it was not reasonably practicable to obtain approval by the Board prior to entering into the transaction;

**3.24.2.2** Determines that the committee or person authorized by the Board approved the transaction in the required manner; and

**3.24.2.3** Ratifies the transaction by a vote of the majority of the Trustees then in office without counting the vote of the interested Trustee or Trustees (although such Trustee or Trustees may be counted for purposes of determining the presence of a quorum at the meeting at which such action is taken).

**3.24.3** Sections 3.24.1 and 3.24.2 shall not apply to:

**3.24.3.1** An action of the Board fixing the compensation of a Trustee as a Trustee or Officer of the Foundation;

**3.24.3.2** A transaction which is part of a public or charitable program of the Foundation if it:

**3.24.3.2.1** Is approved or authorized by the Foundation in good faith and without unjustified favoritism; and

**3.24.3.2.2** Results in a benefit to one or more Trustees or their families because they are in the class of persons intended to be benefited by the public or charitable program; or

**3.24.3.3** A transaction of which the interested Trustee or Trustees have no actual knowledge and which does not exceed the lesser of one percent (1%) of the gross receipts of the Foundation for the preceding fiscal year or One Hundred Thousand Dollars (\$100,000).

**3.24.4** Any contract or other transaction (other than transactions subject to Sections 3.24.1 or 3.24.3 above) between the Foundation and any corporation, firm, association, or other entity of which one or more of this Foundation's Trustees are directors or trustees shall be entered into or consummated only if:

**3.24.4.1** The material facts relating to the transaction and to such Trustee's other directorship are fully disclosed or known to the Board or committee, and the Board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Trustee or Trustees; or

**3.24.4.2** The contract or transaction is just and reasonable as to the Foundation at the time it is authorized, approved, or ratified.

**3.24.5** Notwithstanding any provision of this Section 3.24, at any time during which Section 4958 of the Internal Revenue Code (the "Code") applies to the Foundation, the Foundation shall consider the possible effect of Section 4958 on any transaction which could constitute an excess benefit transaction as defined in Section 4958(c) of the Code. At any time during which Section 4941 of the Code applies to the Foundation, the Foundation shall not enter into any transaction which would constitute direct or indirect self-dealing as defined in Section 4941(d) of the Code.

## **ARTICLE 4 COMMITTEES OF THE BOARD**

**4.1 Membership and Term.** The Board, by resolution adopted by a majority of the Trustees then serving, provided a quorum is present, may create one or more Committees, each consisting of two (2) or more Trustees and such other persons determined by the Foundation Chair in accordance with governing law, to serve at the pleasure of the Board. Committee Chairs shall be appointed annually by the Foundation Chair. Committee members, except for Audit Committee members, shall be appointed annually by the Foundation Chair in consultation with each Committee Chair. Audit Committee members shall be appointed in accordance with the provisions of the Audit Committed Charter described in Section 4.3. The Foundation Chair may appoint one or more Trustees as alternate members of any Committee, who may replace any absent member at any meeting.

**4.2 Ex Officio Committee Members.** Except as provided in the Audit Committee Charter described in Section 4.3 below, the Chancellor, Chair, and President shall be Ex Officio members of all Committees of the Board and may at their discretion attend any or all meetings as voting members.

Neither the Chancellor nor the President may be a member of the Audit Committee or may vote thereon.

**4.3 Audit Committee.** For any fiscal year in which the Foundation receives or accrues gross revenues of \$2 million or more, the Board of Trustees shall establish an Audit Committee in accordance with the provisions of California Government Code Section 12586(e). The composition and duties of the Audit Committee shall be as set forth in the Audit Committee Charter adopted by the Board.

**4.4 Executive Committee.** The Executive Committee shall consist of the following members of the Board: (1) the Chancellor; (2) the Chair (or Vice Chair as alternate per Section 4.1); (3) the President; (4) the Treasurer (or Assistant Treasurer as alternate per Section 4.1); and (5) the Chairs of the Audit, Development, and Investment Committees. The Executive Committee, except when the Board is in session, and except as its powers may be otherwise limited by the Board, shall have and may exercise the powers of the Board in the management of the business and affairs of the Foundation and may authorize the seal of the Foundation to be affixed to all papers which may require it. The Executive Committee shall also have the power of general supervision, management, and control of the business of the Foundation and over its several Officers. Any action which under the provisions of the Law may be taken at a meeting of the Executive Committee, may be taken without a meeting if authorized by a writing signed by all members of the Executive Committee who would be entitled to vote at a meeting for such purpose and filed with the Secretary of the Foundation.

**4.5 Standing or Special Committees**

**4.5.1** The term “standing committee” or “special committee” shall mean any committee appointed by the Board which is authorized by specific delegation, without further Board action, to make and implement decisions on behalf of the Board, or to implement, with some degree of discretion, decisions of the Board pursuant to guidelines established by the Board. Notice of, and procedures for, meetings of standing or special committees shall be as prescribed by the Chair of each such standing or special committee, and meetings of standing or special committees may be called by the Board or the Chair of the standing or special committee.

**4.5.2** In the event that the Board determines that the management of the Foundation would be benefited by the establishment of one or more standing or special committees in addition to the Executive Committee, the Board may from time to time establish one or more such committees. The establishment of a standing or special committee shall be effected by a resolution of the Board approved by the vote of the majority of the Trustees then in office which specifically sets forth the powers and duties delegated to such committee. Each such committee shall consist of two or more Trustees and shall be presided over by a Trustee selected by the Board.

**4.6 Limitations upon Committees of the Board.** No committee of the Board shall have any of the authority of the Board with respect to:

**4.6.1** The filling of vacancies on the Board or on any committee which has the authority of the Board;

**4.6.2** The fixing of compensation of Trustees for serving on the Board or on any committee which has the authority of the Board;

**4.6.3** The amendment or repeal of Bylaws or the adoption of new Bylaws;

**4.6.4** The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

**4.6.5** The creation of other committees of the Board or the appointment of members thereof if such committee will have the authority of the Board;

**4.6.6** The expenditure of corporate funds to support a nominee for Trustee after there are more people nominated for Trustee than can be elected; or

**4.6.7** The approval of any self-dealing transaction described in Section 5233 of the Law, except that when it is not reasonably practicable to obtain approval of the Board prior to entering into such a transaction, a committee authorized by the Board may approve the transaction in a manner consistent with the standards set forth in Section 5233(d) of the Law subject to ratification by a majority of the Trustees then in office (without counting the vote of any interested Trustee) at the next meeting of the Board.

**4.7** **Committee Meetings; Notice; Voting; Minutes.** Meetings of a committee may be called by the Chair of the Board, President, the Chair of the committee, or a majority of the committee's voting members. Each committee shall meet as often as is necessary to perform its duties. Notice of a meeting of a committee may be given at any time and in any manner reasonably designed to inform the committee members of the time and place of the meeting. Each committee shall keep minutes of its proceedings and shall report periodically to the Board.

**4.8** **Committee Quorum.** At all Committee meetings, a majority of the membership of the Committee then serving shall be necessary and sufficient to constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which there is a quorum shall be the act of the Committee, except as may be otherwise specifically provided by law or by these Bylaws. If at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting without further notice to any absent member. With the exception of the Executive Committee, Ex Officio Committee members will not be included in determining the number of Committee members that constitutes a quorum, but if present shall be included in determining if the quorum has been met.

**4.9** **Resignation of Committee Members.** Any member of a committee may resign at any time by giving written notice to the Chair of the committee or to the President. Such resignation, which may or may not be made contingent upon formal acceptance, shall take effect upon the date of receipt or at any later time specified in the notice.

**4.10** **Vacancies on Committees.** A vacancy in any committee shall be filled for the unexpired portion of the term in the same manner as the committee member whose position is vacant was selected.

## ARTICLE 5 OFFICERS

### 5.1 Executive Officers

**5.1.1 Officers.** The Executive Officers of the Foundation shall be the Chair, one or more Vice Chair(s), the Treasurer and such other Officers as the Board of Trustees deems appropriate from time to time.

**5.1.2 Duties of the Chair.** The Chair shall preside at meetings of the Board of Trustees. To the extent authorized by the Law and these Bylaws, the Chair shall do and perform such other duties as may be assigned by the Board.

**5.1.3 Duties of the Vice Chair(s).** The Vice Chair(s) shall, at the request of the Chair or in the Chair's absence or disability, perform the duties of the Chair and possess the powers of the Chair. To the extent authorized by these Bylaws, the Vice Chair shall have such other duties as may be assigned by the Board.

**5.1.4 Duties of the Treasurer.** The Treasurer shall present the Foundation's Statements of Financial Position to the Board at each of its quarterly meetings. The Treasurer shall, prior to each quarterly meeting, review the financial status of the Foundation with the Chief Financial Officer. He or she shall also advise on such other matters as the Foundation staff and Board shall require. The Treasurer may co-sign Foundation checks, notes, and other payments in excess of an amount specified by Foundation policy, made on behalf of the Foundation.

**5.1.5 Election and Term of Executive Officers.** The Executive Officers shall be Elected Trustees. They shall be elected by the Board from among their number at each annual meeting of the Board, with terms to coincide with the Foundation's fiscal year.

**5.1.6 Combined Offices.** The Board of Trustees may designate one individual to hold two or more Executive Offices described in Section 5.1, provided, however, that the Treasurer may not serve concurrently as Chair or Vice Chair.

**5.1.7 Vacancies.** In case any Executive Office of the Foundation becomes vacant by death, resignation, retirement, disqualification, or any other cause, the majority of the Trustees then in office, although less than a quorum, may elect an Officer to fill such vacancy, and the Officer so elected shall hold office and serve until the election and qualification of his/her successor.

**5.1.8 Removal.** Any Executive Officer may be removed from office by the affirmative vote of a majority of all voting members of the Board, at any regular or special meeting called for that purpose, for conduct detrimental to the interest of the Foundation, for lack of sympathy with its objectives, or for refusal to render reasonable assistance in carrying out the Foundation's purposes. An Executive Officer with respect to whom removal has been proposed shall be entitled to at least five (5) days' notice in writing by mail of the meeting at which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting.

## **5.2 Operating Officers**

**5.2.1 Number of Operating Officers.** The Operating Officers of the Foundation shall be UCSD's Chancellor, the President, one or more Vice President(s), the Assistant Treasurer, the Chief Financial Officer, the Secretary and such other Officers as the Board of Trustees deems necessary from time to time.

**5.2.2 The President.** The individual serving as UCSD's Vice Chancellor of External and Business Affairs shall serve as the Foundation's President. The duties of the President shall be to:

**5.2.2.1** Direct the programs of the Foundation;

**5.2.2.2** Supervise the Vice Presidents and Chief Financial Officer;

**5.2.2.3** Exercise such other administrative duties as are necessary or desirable;

**5.2.2.4** Accept gifts on behalf of the Foundation and, in his or her discretion, delegate the authority to accept gifts to the Vice Presidents and Chief Financial Officer;

**5.2.2.5** When necessary and proper, endorse checks, notes and other obligations payable to the Foundation and deposit same to the credit of the Foundation at such bank or banks or depository as the Board may designate;

**5.2.2.6** Sign Foundation checks, notes, and other payments made on behalf of the Foundation, and cause such payment to be made as may be necessary or proper on behalf of the Foundation, provided that checks in excess of an amount specified by Foundation policy shall require the signature of another Officer of the Board; and

**5.2.2.7** Ensure that the Foundation is in compliance with policies and requests of the University of California and inform the Board of Trustees of all such policies.

The President may delegate his or her duties, subject to the approval of either the Chair or Vice Chair, but shall be responsible for overall supervision of any such delegation.

**5.2.3 The Vice Presidents.** The individual serving as UCSD's Associate Vice Chancellor of Development shall serve as the Foundation's First Vice President and the individual serving as UCSD's Associate Vice Chancellor of Health Sciences Development shall serve as the Foundation's Second Vice President.

**5.2.3.1** The First Vice President shall:

**5.2.3.1.1** Be responsible for the overall fund-raising strategies and activities for the Foundation and the campus, shall work in coordination with the Second Vice President to present such strategies and activities to the Board, and shall oversee General Campus and Scripps Institution of Oceanography development, as well as the centralized development operations; and

**5.2.3.1.2** Sign Foundation checks, notes, and other payments made on behalf of the Foundation, in the absence of the President, Treasurer or Assistant Treasurer, and cause such payment to be made as may be necessary or proper on behalf of the Foundation, provided that checks in excess of an amount specified by Foundation policy shall require the signature of another Officer of the Board.

**5.2.3.2** The Second Vice President shall:

**5.2.3.2.1** Be responsible for the fund-raising strategies and activities for the Health Sciences and shall work in coordination with the First Vice President to present such strategies and activities to the Board; and

**5.2.3.2.2** Sign Foundation checks, notes, and other payments made on behalf of the Foundation, in the absence of the first Vice President, and cause such payment to be made as may be necessary or proper on behalf of the Foundation, provided that checks in excess of an amount specified by Foundation policy shall require the signature of another Officer of the Board.

**5.2.4** **The Assistant Treasurer.** The individual serving as UCSD's Vice Chancellor of Resource Management and Planning shall serve as the Foundation's Assistant Treasurer. The Assistant Treasurer shall serve in the absence of the Treasurer, and shall provide for routine Treasurer functions, including the co-signing of Foundation checks, notes, and other payments made on behalf of the Foundation in excess of an amount specified by Foundation policy.

**5.2.5** **The Chief Financial Officer.** The individual serving as UCSD's Assistant Vice Chancellor of Advancement Services in External and Business Affairs shall serve as the Foundation's Chief Financial Officer. The Chief Financial Officer shall:

**5.2.5.1** Supervise the day to day corporate operations of the Foundation, including Accounting and Board Liaison operations;

**5.2.5.2** Be physical custodian of all the books, records, papers and seal of the Foundation;

**5.2.5.3** Ensure proper custody of all funds, property and securities in the name of the Foundation;

**5.2.5.4** Ensure proper investment of the Foundation's assets in accordance with policies established by the Investment Committee;

**5.2.5.5** Ensure proper collection, acceptance, and receipting of all contributions to the Foundation;

**5.2.5.6** Ensure the full and accurate accounting of all monies and obligations received and paid or incurred on account of the Foundation, and oversee the proper preparation of quarterly and annual financial statements for approval by the Foundation Treasurer and review by the Foundation Board;

**5.2.5.7** Ensure the proper preparation and submission of such reports and accounts as may be required by The Regents of the Office of the President of the University of California; and

**5.2.5.8** Sign Foundation checks, notes, and other payments made on behalf of the Foundation in the absence of the President, Treasurer or Assistant Treasurer and cause such payment to be made as may be necessary or proper on behalf of the Foundation, provided that checks in excess of an amount specified by Foundation policy shall require the signature of another Officer of the Board.

**5.2.6** **The Secretary.** The individual serving as UC San Diego Foundation Board Liaison shall serve as the Foundation's Secretary. The Secretary shall:

**5.2.6.1** Maintain all non-financial corporate documents and correspondence of the Foundation;

**5.2.6.2** Keep, or cause to be kept, a book of minutes of all meetings of the Board and committees of the Board, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, and the proceedings thereof;

**5.2.6.3** Keep, or cause to be kept, the original or a copy of the Foundation's Articles and Bylaws, as amended to date;

**5.2.6.4** Give, or cause to be given, notice of all meetings of the Board and any committees thereof required by law or by these Bylaws to be given; and

**5.2.6.5** Have such other powers and perform such other duties as may be prescribed by the Board.

**5.2.7** **Designation/Term of Operating Officers.** Each of the foregoing Operating Offices shall be automatically filled by the individual holding the respective University appointment specified and each such individual shall serve as an Operating Officer for the duration of his or her respective University appointment.

## **ARTICLE 6 OTHER PROVISIONS**

**6.1** **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 endorsement thereof, executed or entered into between the Foundation and any other person, when signed by the Chair of the Board, the President, or any Vice President and the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer 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 the Board, and, unless so authorized by the Board, no Officer, agent, or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or to render it

liable for any purpose or amount. No contract, transaction or act shall be taken on behalf of the Foundation if such contract, transaction or act is a prohibited transaction or would result in the denial of the tax exemption under the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

**6.2 Agents.** The Board may appoint such agents and representatives of the Foundation with such powers and to perform such acts or duties on behalf of the Foundation as the Board may see fit, so far as may be consistent with these Bylaws, to the extent authorized or permitted by law.

**6.3 Representation of Shares of Other Corporations.** Unless otherwise ordered by the Board, the Chancellor, the Chair, 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 such Officer in person or by any other person authorized to do so by proxy or power of attorney duly executed by said Officer. The Board may confer like powers upon any other person and may revoke any such powers as granted at its pleasure.

**6.4 Investments.** Except as otherwise specifically provided by the provisions of any trust with respect to which this Foundation shall undertake to act as Trustee, the Foundation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board without being restricted to the class of investments which a Trustee is or may hereafter be permitted by law to make or any similar restriction, provided, however, that no action shall be taken by or on behalf of the Foundation if such action is a “prohibited transaction” or would otherwise result in the denial or revocation of its tax exemptions or status.

**6.5 Construction and Definitions.** 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.

**6.6 Amendments.** These Bylaws may be amended or repealed, subject to the provisions of the Law, by the approval of the Board at any regular or special meeting.

**6.7 Maintenance of Certain Records.** The accounting books, records, and minutes of proceedings of the Board and all Committees of the Board shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal office of the Foundation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form, or in any other form capable of being converted into written, typed, or printed form.

**6.8 Annual Report.** The Board shall cause an annual report to be furnished to the Trustees not later than one hundred twenty (120) days after the close of the Foundation’s fiscal year. The annual report shall be accompanied by any report thereon of independent accountants or, if there is no such accountant’s report, the certificate of an authorized Officer of the Foundation that such statements

were prepared without audit from the books and records of the Foundation. The annual report shall contain in appropriate detail the following:

**6.8.1** The assets and liabilities, including the trust funds, of the Foundation as of the end of the fiscal year;

**6.8.2** The principal changes in assets and liabilities, including trust funds, during the fiscal year;

**6.8.3** The revenue or receipts of the Foundation, both unrestricted and restricted to particular purposes, for the fiscal year;

**6.8.4** The expenses or disbursements of the Foundation, for both general and restricted purposes, for the fiscal year; and

**6.8.5** Any information required by Section 6.9 of these Bylaws.

**6.9 Annual Statement of Certain Transactions and Indemnifications**

**6.9.1** The Foundation shall furnish annually to its Trustees a statement of any covered transaction or indemnification described below, if such covered transaction or indemnification took place. Such annual statement shall be affixed to and sent with the annual report described in Section 6.8 of these Bylaws. A covered transaction under this Section 6.9 is a transaction in which the Foundation was a party, and in which either of the following interested persons had a direct or indirect material financial interest (excluding a mere common directorship):

**6.9.1.1** Any Trustee or Officer of the Foundation, or its parent or subsidiary; or

**6.9.1.2** Any holder of more than ten percent (10%) of the voting power of the Foundation, its parent or its subsidiary.

**6.9.2** The statement required by this Section 6.9 shall describe briefly:

**6.9.2.1** Any covered transaction (including compensation of Officers and Trustees) during the previous fiscal year involving more than Fifty Thousand Dollars (\$50,000), or which was one of a number of covered transactions in which the same interested persons had a direct or indirect material financial interest and which transactions in the aggregate involve more than Fifty Thousand Dollars (\$50,000);

**6.9.2.2** The names of the interested persons involved in such transactions, stating such person's relationship to the Foundation, the nature of such person's interest in the transaction, and, where practicable, the amount of such interest; provided that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated; and

**6.9.2.3** The amount and circumstances of any indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000) paid during the fiscal year to any Officer or Trustee of the Foundation pursuant to ARTICLE 7 of these Bylaws.

**6.10 Financial Audits.** Pursuant to California Government Code Section 12586(e), for any fiscal year in which the Foundation receives or accrues gross revenues of \$2 million or more, the Foundation shall prepare a financial statement which shall be audited by an independent certified public accountant in accordance with generally accepted accounting principles.

**6.11 Fiscal Year.** The fiscal year of the Foundation shall coincide with the fiscal year of the University of California.

**6.12 Seal.** The Board shall adopt a suitable seal for the Foundation, which shall be circular in form, which shall contain in the center thereof the inscription, “Incorporated August 28, 1972, California” and in the perimeter thereof, “U.C. San Diego Foundation.”

**6.13 Prohibition Against Sharing in Foundation Earnings.** No Trustee, Officer or employee of or member of a Committee of or person connected with the Foundation, or any other private individual shall receive at any time any of the net earnings or pecuniary profits from the operation of the Foundation, provided, that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Foundation in effecting any of its purposes as shall be fixed by the Board; and no such person or persons shall be entitled to share in the distribution of any of the Foundation assets upon the dissolution of the Foundation. All persons making contributions to the Foundation upon trust or otherwise shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Foundation, whether voluntary or involuntary, the assets of the Foundation, after all debts have been satisfied, then remaining in the hands of the Board shall be distributed, transferred, conveyed, delivered, and paid over to The Regents of the University of California for the benefit of the San Diego campus as provided in the Foundation’s Articles of Incorporation.

**6.14 Exempt Activities.** Notwithstanding any other provision of these Bylaws, no Trustee, Officer, employee, or representative of this Foundation shall take any action or carry on any activity by or on behalf of the Foundation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code and regulations as they now exist or as they may hereafter be amended.

**6.15 Policies and Guidelines on Campus Foundations.** To the extent these Bylaws are in conflict with or silent on applicable administrative guidelines and policies on Campus Foundations, promulgated by the Board of Regents of the University of California as they may be amended from time to time, the applicable administrative guidelines and/or policies shall be controlling.

## **ARTICLE 7 INDEMNIFICATION**

**7.1 Definitions.** For the purposes of this ARTICLE 7, the following definitions shall apply:

**7.1.1** References to “agent” mean any person who is or was a Trustee, Officer, employee, or other agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the Foundation or of another enterprise at the request of such predecessor corporation;

**7.1.2** References to “proceeding” mean any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

**7.1.3** References to “expenses” include without limitation attorneys’ fees and any expenses of establishing a right to indemnification under Sections 7.5 or 7.6.2.

**7.2 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 proceeding (other than an action by or in the right of the Foundation to procure a judgment in its favor, an action brought under Section 5233 of the Law, or an action brought by the Attorney General or a person granted realtor status by the Attorney General for any breach of duty relating to assets held in charitable trust) 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 such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Foundation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The Foundation shall, to the maximum extent permitted by law, indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Foundation to procure a judgment in its favor, an action brought under Section 5233 of the Law, or an action brought by the Attorney General or a person granted realtor status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an Officer or Trustee of the Foundation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Foundation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Foundation or that the person had reasonable cause to believe that the person’s conduct was unlawful.

**7.3 Indemnification in Actions by or in the Right of the Foundation.** The Foundation shall have 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 Law, or brought by the Attorney General or a person granted realtor 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 actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Foundation and with such care, including reasonable inquiry, as an ordinarily prudent person in a

like position would use under similar circumstances. The Foundation shall, to the maximum extent permitted by law, 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 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 Officer or Trustee of the Foundation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Foundation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Notwithstanding the foregoing, no indemnification shall be made under this Section 7.3:

**7.3.1** In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Foundation in the performance of such person's 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;

**7.3.2** Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

**7.3.3** Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

**7.4** **Limitation on Indemnification.** Notwithstanding the foregoing Sections 7.2 and 7.3, at any time during which Section 4941 of the Code applies to the Foundation, no indemnification shall be made nor indemnification reimbursement insurance purchased where it would constitute an act of self-dealing under Section 4941 of the Code.

**7.5** **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 7.2 and 7.3, or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

**7.6** **Required Determinations.** Except as provided in Section 7.5, any indemnification under this ARTICLE 7 shall be made by the Foundation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Sections 7.2 and 7.3, by:

**7.6.1** A majority vote of a quorum consisting of Trustees who are not parties to such proceeding; or

**7.6.2** 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.

**7.7 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 7.

**7.8 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 7. Nothing contained in this ARTICLE 7 shall affect any right to indemnification to which persons other than such Trustees and Officers may be entitled by contract or otherwise.

**7.9 Forms of Indemnification Not Permitted.** No indemnification or advance shall be made under this ARTICLE 7, except as provided in Sections 7.5 or 7.6.2, in any circumstances where it appears:

**7.9.1** 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

**7.9.2** That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

**7.10 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 7; provided, however, that the Foundation shall have no power to purchase and maintain such insurance to indemnify any agent of the Foundation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law.

**7.11 Nonapplicability to Fiduciaries of Employee Benefit Plans.** This ARTICLE 7 does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent of the Foundation as defined in Section 7.1. The Foundation shall have power to indemnify such trustee, investment manager, or other fiduciary to the extent permitted by subdivision (f) of Section 5140 of the California Nonprofit Corporation Law.

## CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting Secretary of U.C. SAN DIEGO FOUNDATION, a California public benefit corporation; and

(2) That the foregoing Bylaws, comprising twenty (20) pages, constitute the Bylaws of said corporation, as duly adopted by resolution of the Board of Trustees at a meeting held on September 25, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my name this September \_\_\_\_, 2009.

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Carrie Banks Spillane  
Secretary