

**RESTATED BYLAWS**  
**OF**  
**THE MONTEREY HISTORY AND ART ASSOCIATION, LTD.**  
**REVISED SEPTEMBER 2011**

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## **ARTICLE I OFFICES**

**Section 1.1 Principal Office.** The principal office of this corporation shall be located at 5 Custom House Plaza, Monterey, California 93940, or at such other address as the board of directors shall from time to time determine. The board of directors is granted full power and authority to change the principal office from one location to another. The corporation may establish or maintain additional offices at such other places as the board of directors may determine.

## **ARTICLE II PURPOSES**

**Section 2.1 General and Specific Purposes; Limitations.** This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. This corporation is organized under the California Nonprofit Public Benefit Corporation Law exclusively for charitable and educational purposes within the meaning of Internal Revenue Code §501(c)(3) or the corresponding section of any future United States internal revenue law. Specifically, this corporation is organized for the following purposes:

- (a) to collect, preserve and own works of art, artifacts and materials pertaining to the history and art of Monterey and the State of California.
- (b) To foster and promote an interest in the art and history of Monterey and California.
- (c) To assist and further all projects and activities connected directly or indirectly with the purpose of this organization.
- (d) To have and hold, buy and sell such property, both real and personal, as may be necessary to carry out the object of of this organization.

Notwithstanding any other provision of these bylaws, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise and powers that are not in furtherance of the purposes of this corporation, and this corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Internal Revenue Code §501(c)(3) or the corresponding provision of any future United States internal revenue law, or (b) by a corporation, contributions to which are deductible under Internal Revenue Code §170(c)(2) or the corresponding provision of any future United States internal revenue law.

**Section 2.2 Dedication of Assets.** The corporation's assets are irrevocably dedicated to charitable and educational purposes. No part of the net earnings, properties, or assets of the corporation, on dissolution or otherwise, shall enure to the benefit of any private person or individual, or to any director or officer of the corporation. On liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of the corporation, shall be distributed to such organization (or organizations) organized and operated exclusively for charitable or educational purposes which has (or have) established its (or

their) tax exempt status under Internal Revenue Code section 501(c)(3) or the corresponding provisions of any future United States internal revenue law.

**Section 2.3. Governing Law.** The provisions of the California Nonprofit Public Benefit Corporation Law (sometimes referred to herein as the “Law”) shall govern the conduct of the affairs of the Corporation, except as otherwise provided or modified herein or in the articles of incorporation to the extent permitted by the Law.

**Section 2.4. Parliamentary Authority.** Robert’s Rules of Order, Revised, shall govern this organization in all parliamentary situations that are not provided for in the law or in its Articles of Incorporation, Bylaws or adopted rules.

### **ARTICLE III MEMBERSHIP**

**Section 3.1 Members.** This corporation shall have one class of voting members. Notwithstanding the foregoing, the Board of Directors may create non-voting memberships, and establish the requirements for such memberships and the corresponding benefits.

**Section 3.2 Membership Rights.** Members in good standing shall have the right to vote, as set forth in these bylaws, on the election of directors, on the disposition of all or substantially of the corporation’s assets, on any merger, consolidation or other corporate transaction requiring the approval of the members under the California Nonprofit Benefit Corporation Law and on any election to dissolve the corporation. Honorary Members shall have the right of voice at member meetings. Charter Members and Regular Members shall have such other rights as are afforded to members under the California Nonprofit Benefit Corporation Law.

**Section 3.3 Membership Dues and Fees.** Each Member must pay, within the time established by the board of directors, the dues and fees fixed from time to time by the board of directors. Members must pay, within the time frame established by the board of directors, the fees fixed from time to time by the board of directors for participation in the corporation’s activities. The board of directors may, in its discretion, establish different fees for different classes of members. Historically, Members were given the option of paying a single payment amount in exchange for lifetime membership. All existing “life members”, as they were historically referred to, shall continue to receive all the benefits and ~~privileges~~ privileges afforded Members without the requirement of any additional contribution.

**Section 3.4 Members in Good Standing.** Members who have paid all required dues and fees and have not otherwise been suspended or had their membership terminated by the board of directors shall be members in good standing.

**Section 3.5 Termination of Membership.** A membership shall terminate on the occurrence of any of the following events:

- (a) Resignation of the member;

- (b) Expiration of the period for membership, unless the membership is renewed on the renewal terms fixed by the board of directors;
- (c) The member's failure to pay any dues or fees within the time period established for payment by the board of directors;
- (d) Termination of the member under Section 3.6 below based on a good faith determination by the board of directors that a member has intentionally and maliciously failed to observe any rules of conduct established by the board of directors from time to time or has engaged in any other conduct the board of directors determines is seriously prejudicial to the corporation's reputation, purposes or interests.

**Section 3.6 Termination or Suspension of Membership.** A member may be suspended or his or her membership terminate based on a good faith determination by the board of directors, that he or she has failed to observe any rules of conduct established by the board of directors from time to time or has engaged in any other conduct the board of directors determines is seriously prejudicial to the corporation's reputation, purposes or interests. A person whose membership is suspended shall not be a "member" and shall have no voting rights during the period of suspension.

The board of directors shall give the member at least 15 days' prior notice of suspension or termination and the reason for the proposed suspension or termination. Notice may be given by first class or registered mail sent to the last address of the member in the corporation's records or by electronic mail to the last email address provided by the member. The member shall be given the opportunity to be heard, either orally or in writing, at least 5 days before the effective date of the suspension or termination. Any action challenging a suspension or termination, including an action based upon defective notice, shall be commenced within one year after the date of suspension or termination.

A suspended Member may appeal the decision of the Board of Directors to the general membership.

**Section 3.7 Memberships Not Transferable.** No membership or right arising from membership shall be transferred. All membership rights cease on the death of a member.

**Section 3.8 Annual Meeting.** A general meeting of members shall be held at least annually in September at such time and place as the board of directors may determine. Unless elected by written ballot, directors shall be elected at the annual meeting of the members. Subject to Sections 3.12 and 3.13 of these bylaws, any other proper business may be transacted at the annual meeting of the members.

**Section 3.9 Special Meetings.** The board of directors, the Chair of the Board, if any, or the President or the Chief Financial Officer or the smaller of 40 Members or five percent (5%) or more of the members may call a special meeting of the members for any lawful purpose at any time.

**Section 3.10 Procedure for Calling Special Meeting.** A special meeting called by any person entitled to call a special meeting of the members shall be called by written request specifying the general nature of the business proposed to be transacted and addressed to the attention of and submitted to the Chair of the Board, if any, or the President or any Vice President or the Secretary of the corporation. The officer receiving the request shall cause notice to be given promptly to the members entitled to vote stating that a meeting will be held at a specified time and date fixed by the board. However, the meeting date shall be at least 35 but no more than 90 days after receipt of the request. If the notice is not given within 20 days after the request is received, the person or persons requesting the meeting may give the notice. Nothing in this Section shall be construed as limiting, fixing, or affecting the time at which a meeting of members may be held when the meeting is called by the board or directors.

**Section 3.11 Purpose of Special Meeting.** No business, other than the business that was set forth in the notice of the meeting, may be transacted at a special meeting.

**Section 3.12 Written Notice Required.** Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each member entitled to vote at that meeting. The notice shall specify the place, date, and hour of the meeting. For the annual meeting, the notice shall state the matters that the board of directors, at the time notice is given, intends to present for action by the members. For a special meeting, the notice shall state the general nature of the business to be transacted and shall state that no other business may be transacted. The notice of any meeting at which directors are to be elected shall include the names of all persons who are nominees when notice is given. Except as provided in Sections 3.11 and 3.13 of these bylaws, any proper matter may be presented at the annual meeting.

**Section 3.13 Required Notice of Certain Agenda Items.** Approval by the members of any of the following proposals, other than by unanimous approval by those entitled to vote, is valid only if the notice of the meeting or a written waiver of notice states the general nature of the proposal or proposals:

- (a) Removing a director without cause;
- (b) Filling vacancies on the board;
- (c) Amending the articles of incorporation; or
- (d) Electing to wind up and dissolve the corporation.

**Section 3.14 Notice Requirements.** Notice of any meeting of members shall be in writing and shall be given at least 10 but no more than 90 days before the meeting date. The notice shall be given either personally or by first-class, registered, or certified mail, or by other means of written communication (e.g. facsimile or electronic mail) as authorized by the Nonprofit Public Benefit Corporation Law, charges prepaid, and shall be addressed to each member entitled to vote, at the address (or facsimile number or email address) of that member as it appears on the books of the corporation or at the address (or facsimile number or email address) given by the member to the corporation for purposes of notice. If no address appears on the corporation's books and no address

has been so given, notice shall be deemed to have been given if either (1) notice is sent to that member by first-class mail or other written communication (e.g. facsimile or electronic mail) to the corporation's principal office, or (2) notice is published at least once in a newspaper of general circulation in the county in which the principal office is located. Notice to email or other electronic personal addresses of a Member (such as a text message) shall be considered effective notice, unless the member has indicated otherwise.

**Section 3.15 Quorum.** The small of forty (40) members, or thirty-five percent (35%) of the members, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the members.

**Section 3.16 Voting.** Subject to the California Nonprofit Public Benefit Corporation Law, each Member in good standing on the record date as determined under Section 3.18 of these bylaws shall be entitled to vote at any meeting of members. Voting may be by voice or by ballot, except that any election of directors must be by ballot if demanded before the voting begins by any member at the meeting. Each Member entitled to vote may cast one vote on each matter submitted to a vote of the members. If a quorum is present, the affirmative vote of a majority of the members represented at the meeting, entitled to vote and voting on any matter, shall be deemed the act of the members unless the vote of a greater number, or voting by classes, is required by the California Nonprofit Public Benefit Corporation Law or by the articles of incorporation.

**Section 3.17 Waiver of Notice or Consent.** The transactions of any meeting of members, however called or noticed and wherever held, shall be as valid as though taken at a meeting duly held after standard call and notice, if (1) a quorum is present either in person or by proxy, and (2) either before or after the meeting, each member entitled to vote, not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice, consent, or approval need not specify either the business to be transacted or the purpose of the meeting except that, if action is taken or proposed to be taken for approval of any matter specified in Section 3.13 of these bylaws, the waiver of notice, consent, or approval shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. A member's attendance at a meeting shall also constitute a waiver of notice of and presence at that meeting unless the member objects at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

**Section 3.18 Record Date.** For purposes of establishing the members entitled to receive notice of any meeting, entitled to vote at any meeting, entitled to vote by written ballot, or entitled to exercise any rights in any lawful action, the board of directors may, in advance, fix a record date. The record date so fixed for

- (a) Sending notice of a meeting shall be no more than 90 nor less than 10 days before the date of the meeting;

- (b) Voting at a meeting shall be no more than 60 days before the date of the meeting;
- (c) Voting by written ballot shall be no more than 60 days before the day on which the first written ballot is mailed or solicited; and
- (d) Taking any other action shall be no more than 60 days before that action.

If not otherwise fixed by the board, the record date for determining members entitled to receive notice of a meeting of members shall be the next business day preceding the day on which notice is given or, if notice is waived, the next business day preceding the day on which the meeting is held. If not otherwise fixed by the board, the record date for determining members entitled to vote at the meeting shall be the day on which the meeting is held. If not otherwise fixed by the board, the record date for determining members entitled to vote by written ballot shall be the day on which the first written ballot is mailed or solicited. If not otherwise fixed by the board, the record date for determining members entitled to exercise any rights with respect to any other lawful action shall be the date on which the board adopts the resolution relating to that action, or the 60th day before the date of that action, whichever is later.

**Section 3.19 Proxies.** Each member entitled to vote shall have the right to do so either in person or by one or more agents authorized by a written proxy, signed by the member and filed with the Secretary of the corporation. A proxy shall be deemed signed if the member's name is placed on the proxy by the member or the member's attorney-in-fact, whether by manual signature, typewriting, facsimile transmission, or otherwise.

No proxy shall be valid after the expiration of 11 months from the date of the proxy, unless provided otherwise in the proxy, except that the maximum term of a proxy shall be 3 years after the date of execution. A validly executed proxy shall continue in full force and effect until either

(1) It is revoked by the member executing it, before the vote is cast under that proxy, (a) by a writing delivered to the corporation stating that the proxy is revoked, or (b) by a subsequent proxy executed by that member and presented to the meeting, or (c) as to any meeting, by that member's personal attendance and voting at the meeting; or

(2) Written notice of the death or incapacity of the maker of the proxy is received by the corporation before the vote under that proxy is counted. A proxy may not be irrevocable.

**Section 3.20 Adjournment; Notice.** Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting, either in person or by proxy. No meeting may be adjourned for more than 45 days. When a members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which members may participate) are announced at the meeting at which adjournment is taken. If after adjournment a new record date is fixed for notice or voting, a notice

of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting.

**Section 3.21 Action by Written Consent.** Any action required or permitted to be taken by the members may be taken without a meeting, if a majority of the members in good standing consent in writing to the action. The written consent or consents shall be filed with the minutes of the meeting. The action by written consent shall have the same force and effect as a majority vote of the members.

**Section 3.22 Action by Written Ballot.** In addition to Section 3.21, any action that members may take at any meeting of members may also be taken without a meeting by complying with this Section 3.22.

(a) Solicitation of Ballots. This corporation shall distribute one written ballot to each member entitled to vote on the matter. The ballot and any related material may be sent by any means permitted by the California Nonprofit Public Benefit Corporation Law. All solicitations of votes by written ballot shall (1) state the number of responses needed to meet the quorum requirement; (2) state, with respect to ballots other than for election of directors, the percentage of approvals necessary to pass the measure or measures; and (3) specify the time by which the ballot must be received in order to be counted. Each ballot so distributed shall (i) set forth the proposed action; (ii) give the members an opportunity to specify approval or disapproval of each proposal; and (iii) provide a reasonable time in which to return the ballot to the corporation. In any election of directors, a written ballot that a member marks “withhold,” or otherwise marks in a manner indicating that authority to vote is withheld, shall not be voted either for or against the election of a director.

(b) Approval Requirements. Approval by written ballot shall be valid only when (i) the number of votes cast by ballot (including ballots that are marked “withhold” or otherwise indicate that authority to vote is withheld) within the time specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and (ii) the number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot without a meeting.

(c) Written Ballots. As irrevocable, a written ballot may not be revoked.

(d) Filing Ballots. All written ballots shall be filed by the Secretary of the corporation and maintained in the corporate records of the corporation.

## **ARTICLE IV BOARD OF DIRECTORS**

**Section 4.1 Power of Board.** Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board of directors. The board of directors may delegate the management of the

activities of the corporation to any person or persons, or committee or committees, however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board of directors.

**Section 4.2 Number of Directors.** The number of directors of the Corporation shall be no less than ten (10) and no more than twenty one (21), unless and until changed by a resolution duly adopted by the membership. In addition, the Board may appoint honorary board members. Honorary board members shall not be counted in determining the acting number of Directors. The privileges afforded such Honorary Directors are set forth below.

**Section 4.3 Restriction on Interested Persons.**

(a) No more than one-third (1/3<sup>rd</sup>) of the persons serving on the board of directors may be “interested persons.” An interested person is (a) any person compensated by the corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor or otherwise, excluding any reasonable compensation paid to a director as a director, and (b) any brother, sister, ancestor or descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person. However, any violation of this paragraph shall not affect the validity or enforceability of any contract or transaction entered into by the corporation.

**Section 4.4 Nominations Of Directors, Election and Term of Office.**

(a) Nomination. At least ninety (90) days before the date of any election of a director or directors, a nominating committee (the “Nominating Committee”) comprised of not less than three (3) or more than five (5) persons shall be convened to nominate qualified candidates for election to the board. The Nominating Committee shall consist of at least three (3) members in good standing who are not current Board Members. The Nominating Committee shall make its report to the Board of Directors at least sixty (60) days before the date of annual meeting, or at such other time as the board of directors may set, and the Secretary of the corporation shall forward to the members, with the notice of the annual or other meeting at which directors are to be elected, a list of all candidates nominated by the Nominating Committee. When a meeting is held for the election of directors, any member present at the meeting in person or by proxy may also place names in nomination from the floor.

(b) Election. At the meeting of the members at which directors are to be elected, each member shall be entitled to vote to either accept or reject a candidate. The candidates receiving the highest number of affirmative votes shall be elected. Votes cast against any candidate and votes withheld shall have no effect.

(c) Term of Office. The directors shall hold office for a term of three (3) years. Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which he or she (or his or her predecessor) was elected and until his or her successor is elected and qualified. A Director filling a vacancy for less than one year shall be eligible to serve two successive three (3) year terms. At each annual meeting of the Association approximately one-

third of the Directors shall be elected to serve a three year term commencing on the date of their election. No Director shall serve more than two successive terms of office. Directors shall not be eligible to serve again after two successive terms in office until at least two years have elapsed from the end of the second term.

**Section 4.5 Removal Without Cause.** Any director may be removed from office without cause by the affirmative vote of a majority of all members provided the corporation has fewer than 50 members. In the event the corporation has 50 or more members, any director may be removed without cause by vote of a majority of the members present at a duly called meeting of the members at which quorum is present (with the affirmative votes constituting a majority of quorum), provided notice is given of the meeting in accordance with Sections 3.12 and 3.13 of this bylaws. A director may also be removed for cause in accordance with the provisions of Section 4.7 below.

**Section 4.6 Resignation.** Any director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary, or the board of directors, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected by the members to take office when the resignation becomes effective. Except upon notice to the California Attorney General, no director may resign if the corporation would then be left without a duly elected director or directors in charge of its affairs.

**Section 4.7 Removal for Cause.** The board of directors may by resolution declare vacant the office of any director who (a) has been declared of unsound mind by a final order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty under the California Nonprofit Corporation Law, (b) or fails to attend three (3) consecutive meetings of the board of directors without notice or a reasonable explanation, or (c) fails to meet all of the required qualifications to be director in effect at the beginning of a director's current term of office. A director may also be removed by the Superior Court of the County of Monterey in the case of fraudulent or dishonest acts, gross abuse of authority or discretion or breach of fiduciary duty in accordance with the provisions of §5223 of the Nonprofit Public Benefit Corporation Law.

**Section 4.8 Vacancies on Board of Directors.** A vacancy on the board of directors shall occur in the event of the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the number of Directors voted on by the membership is less than the maximum allowable amount. Except for vacancies on the board of directors created by the removal of a director by the members, vacancies on the board of directors may be filled by approval of the board of directors or, if the number of directors then in office is less than quorum, by the affirmative vote of a majority of directors then in office at a meeting of the directors held according to notice or waiver of notice complying with §5211 of the Nonprofit Public Benefit Corporation Law, or by the sole remaining director. The board of directors shall exercise its best efforts to fill vacancies as they occur. In filling vacancies, the board shall give consideration to recommendations made by the Nominating committee. The members may, at any time, elect a director to fill any vacancy on the board of directors not filled by the directors and shall fill any vacancy created by the removal of a director by the members. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of that director's term of office unless the resolution approving the reduction or the amendment to these

bylaws which provides for such reduction also provides for the removal of one or more specified directors. A director elected to fill a vacancy on the board of directors shall hold office until the expiration of the term of office of the director whose departure created the vacancy filled, unless the board of directors or members shall otherwise determine.

**Section 4.9 Place of Meetings.** Meetings of the board of directors may be held at any place within or without the State of California which has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal office of the corporation.

**Section 4.10 Annual Meetings.** The board of directors shall hold an annual meeting as soon as possible after the annual September membership meeting for the purpose of electing the directors and officers of the corporation, and all other business as may properly come before the board of directors. Annual meetings of the board of directors shall be held on such date and time as shall be designated by the board of directors.

**Section 4.11 Regular Meetings.** Regular meetings of the board of directors shall be held on such regular dates as the board of directors shall determine. Any member of the board of directors who is unable to attend any regular meeting of the board of directors shall notify the Secretary of the corporation of his or her unavailability prior to the meeting. Notice of regularly scheduled meetings is not required.

**Section 4.12 Special Meetings.** Special meetings of the board of directors for any purpose or purposes may be called at any time by the Chairman of the Board (if any), the President, the Secretary or any two (2) directors. Notice of the time and place of special meetings shall be delivered personally or by telephone (including a voice messaging or other system designed to record and communicate messages) or sent by first-class mail, telegraph, charges prepaid, or by facsimile, email or other electronic means (such as by email) addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by facsimile, telegram, email or other electronic means it shall be delivered at least forty-eight (48) hours before the time of the holding of the meeting. If oral notice is given personally or by telephone, it may be communicated either directly to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice, or waiver of notice, need not specify the purpose of the meeting.

**Section 4.13 Quorum and Action of the Board.** A majority of the duly appointed directors constitutes a quorum of the board of directors for the transaction of business, except for purposes of adjournment as provided in Section 4.16 of these bylaws. Unless a greater number is required by law, the articles of incorporation or these bylaws, every action taken or decision made by a majority of directors present at a duly held meeting at which quorum is present shall be an act of the board of directors, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the board, and (d) indemnification of directors. Except as

otherwise provided in this bylaws or under the Law, a meeting at which quorum is initially present may continue to transact business, despite the withdrawal of some directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

**Section 4.14 Participation in Meetings by Conference Telephone or Similar Means.**

Members of the board of directors may participate in a meeting through the use of conference telephone, electronic video screen communication, or other communications equipment if all of the following apply: (a) each member participating in the meeting can communicate with all of the other members concurrently, (b) each member is provided the means of participating in all matters before the board of directors, 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 some means of verifying both that (i) a person communicating by telephone, electronic video screen, or other communications equipment is a director or other person entitled to participate in the board meeting, and (ii) all actions of, or votes by, the board of directors are taken or cast only by the director and not by any other person not permitted to participate as a director. Participation in a meeting pursuant to this Section 4.14 constitutes presence in person at such meeting.

**Section 4.15 Waiver of Notice.** Notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

**Section 4.16 Adjournment.** A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

**Section 4.17 Action Without Meeting.** Any action required or permitted to be taken by the board of directors may be taken without a meeting, if sixty percent (60%) of the board of directors consent in writing to such action. Such action by written consent shall have the same force and effect as any other action taken by the board at a duly called meeting at which quorum is present. Such written consent or consents shall be filed with the minutes of the proceedings of the board of directors. For example, action approved by 60% of the Board by an email vote, where no objections to the taking of the vote is received, such have the same force and effect as an action taking at a duly scheduled meeting at which a quorum is in attendance and which is approved by a majority of the Board members present.

**Section 4.18 Committees.** The activities of the Association shall be run by committees appointed by the Board to assist in achieving the goals of the Association. Members serve for such term as the Board may determine. Unless the Board selects the chairman of a committee, each committee shall select its own chairman and shall adopt its own procedures. A person may not be a voting member of a committee unless that person is a member of the Association. The activities of all committees shall be at all times under the supervision and control of the Board.

(a) The board of directors may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of at least one director, to serve at the pleasure of the board of directors. Any such committee shall have all the authority of the board to the extent provided in the board resolution or resolutions creating and empowering the committee; provided that, no committee may do any of the following:

(1) Take any final action on any matter that, under the California Nonprofit Public Benefit Corporation Law requires the approval of the members or approval of a majority of members of a nonprofit public benefit corporation (notwithstanding that this corporation has no members);

(2) Elect directors or fill vacancies on the board;

(3) Fix compensation of the directors for serving on the board or any committee of the board;

(4) Amend or repeal bylaws or adopt new bylaws;

(5) Amend or repeal any resolution or action taken by the board that by its express terms is not so amendable or repealable;

(6) Create any other committees of the board or appoint the members of committees of the board, including any appointments to fill vacancies on committees of the board;

(7) Expend corporate funds to support a nominee for director; or,

(8) Approval of any contract or transaction in which one or more directors has a direct or indirect material financial interest, except as special approval is provided for in Section 5233(d)(3).

(9) Bind the organization financially without the express approval of the Board.

(10) Create financial accounts that are not subject to inspection by the Board and access by a duly appointed representative of the Board, such as a Board Member or the Executive Director of the organization.

**Section 4.19 Supporting Committees.** The Board may approve, from time to time, the creation of supporting committees to support one or more of the association's functions. One such duly authorized committee is "Los Amigos de la Historia del Arte de Monterey." This committee, also known as an auxiliary organization, has been organized to "enhance the public image of Monterey History and Art Association (MHAA) through fund raising, educational and promotional activities. Each such supporting committee/auxiliary shall be governed by rules consistent with these bylaws and subject to approval by the Board. The supporting committee's/auxiliaries' rules shall include provision for their budget to be part of the MHAA budget and for the annual election by auxiliary

members of a chairperson, who shall serve as an ex-officio Board Member of MHAA with the right to vote and who shall be counted in determining the total number of MHAA Board members. The President of MHAA shall be an ex-officio member of each supporting committee's/auxiliary's governing body, with the right to vote and who shall be counted in determining the total number of members of that governing body. The Executive Director shall serve as a non voting advisor to each supporting committee's/auxiliary's governing body, working with them and using their assistance as herein described.

(a) Plans and Reports. Each year at a time specified by the MHAA Board, the supporting committee/auxiliary shall submit to the Board for approval any proposed changes in its governing rules, as well as general plans for providing assistance during the Corporation fiscal year, including approximate scheduling and anticipated income and expenses. The supporting committee/auxiliary shall keep the MHAA Board advised about said assistance, and at the end of the association's year shall submit to the Board a comprehensive report on it's activities on behalf of MHAA. The supporting committee/auxiliary shall submit information to the Board as is required by the association's accounting procedures as needed in preparation of the annual association budget.

(b) Payment of Funds. Monies raised by the supporting committee/auxiliary for MHAA shall be given promptly to the MHAA treasurer with a proper accounting. The MHAA Board shall be the sole judge of how such monies shall be used. The MHAA Board may from time to time authorize the supporting committee/auxiliary to raise funds for a specific designated purpose. Such funds shall be restricted to the specified use for which they raised.

(c) Termination. The MHAA Board may terminate a supporting committee's/auxiliary's program, after a duly notice members meeting at which a quorum is present and upon the approval of 2/3 of the MHAA Board members then in attendance, whenever in the Board's considered judgment such action will serve the best interests of the association.

**Section 4.20 Meetings and Actions of Committees.** Meetings and actions of committees of the board of directors shall be governed by, held and taken under the provisions of this Article IV applicable to meetings and actions of the board of directors; except that the time and place for meetings of such committees and the calling of special meetings of committee can be set either by board resolution or the resolution of the committee. The board may adopt rules for the governance of any committee as are consistent with these bylaws. If the board had not adopted rules, the committee may do so.

**Section 4.21 Open Meetings and Executive Session** Any member in good standing may request attendance at an MHAA Board Meeting, and such request may not be unreasonably denied. MHAA members attending Board meetings shall have neither voice nor vote. Any disruptive conduct or attempt to address the Board without permission by such attendees will be considered due grounds for expulsion from the meeting. All requests by MHAA members to address the Board must be conveyed in writing to the Board Secretary before the meeting is called to order. The Board may specifically grant voice to an attendee if the Board desires comment on an

issue. The Chairman may declare an “Executive Session” under the terms of these Bylaws when especially sensitive issues are to be discussed. All member attendees are to be cleared from the meeting room when an “Executive Session” is declared.

- (a) Limitation of use of Executive Session. The MHAA Board may enter into Executive Session only in compliance with this policy.
- (b) Prerequisites to entering Executive Session. Prior to entering Executive Session, a motion must be made, seconded, and passed. The motion must include a reference to the general nature of the topic to be discussed in closed session.
- (c) Identified Topics for Discussion in Executive Session. Identified topics for entering into an Executive Session shall include: i. Legal matters (potential, pending or past) ii. Regulatory and compliance matters (potential, pending or past) iii. Contractual compliance iv. Personnel matters (including evaluation, compensation, hiring or dismissal) v. Board self-evaluation vi. Negotiations (potential, pending or past)
- (d) Limitation on Action while in Executive Session. Any action taken in closed session must be confirmed in the minutes for that meeting. However, a subsequent vote in open session is not required.
- (e) Minutes and Recording of Executive Sessions. i. With regard to Executive Sessions. no recording shall be made and no minutes shall be taken, except for duly made, seconded and voted motions. Immediately upon return to Open Session, any and all motions duly passed in closed session shall be entered into the minutes.
- (f) Confidentiality. Without exception MHAA Board Members are obligated to maintain complete confidentiality regarding what transpires in any Executive Session. The only information that may be communicated by any MHAA Board member regarding any such Executive Session is the time it began, the time it ended, the text of the motion to go into Executive Session, and any publically available details of the debate and voting to go into Executive Session. Any MHAA Board member who is unwilling to commit to adhering to this policy regarding any particular Executive Session is obligated to excuse himself or herself from the entire Executive Session and to request that the Secretary notes his or her absence from the Executive Session in the minutes of the meeting.
- (g) Breach of Confidentiality. Breach of this requirement of confidentiality shall be grounds of disciplinary action by the MHAA Board as limited by these Bylaws or the relevant sections of California Corporation Code. These restrictions shall not be deemed to prohibit any participant in an Executive Session from publically disclosing information discussed in Executive Session, if: (1) compelled by legal process to do so; or (2) the same information is publicly available from other sources; not as a result of a participant’s misconduct, and the participant does not

reveal that it was discussed in Executive Session; or (3) the MHAA Board, and all the participants in the Executive Session, first consent to its release.

- (h) **Liability for Breach of Confidentiality.** Should a Breach of Confidentiality by an MHAA Board Member result in a liability on the part of the Association, its officers, employees, agents, or other MHAA Board members, the Member breaching confidentiality may be held liable for his or her action.

**Section 4.22 Fees and Compensation.** The corporation shall not pay any compensation to directors for services rendered to the corporation as a director, except that directors may be reimbursed for expenses incurred in the performance of their duties to the corporation in reasonable amounts as approved by the board of directors.

## **ARTICLE V OFFICERS**

**Section 5.1 Officers.** The officers of the corporation shall be a President (also referred to as the Board Chair) a Vice President, a Secretary, and a Chief Financial Officer. The corporation also may have, at the discretion of the board of directors, one or more one or more Assistant Secretaries, one or more Assistant Chief Financial Officers, and such other officers as may be elected or appointed in accordance with the provisions of Section 5.3 of this Article V. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as President of the Board.

**Section 5.2 Election.** The officers of the corporation (except such officers as may be elected or appointed in accordance with the provisions of Section 5.3 or Section 5.5 of this Article V), shall be chosen annually by, and shall serve at the pleasure of the board of directors, and shall hold their respective offices until their resignation, removal, or other disqualification from service and until their respective successors are elected and qualify.

**Section 5.3 Subordinate Officers.** The board of directors may elect, and may empower the President to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors from time to time may determine.

**Section 5.4 Removal and Resignation.** Officers serve at the pleasure of the board of directors. Any officer may be removed with or without cause by the board of directors at any time or, in the case of an officer not chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment. Any officer may resign at any time by giving written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

**Section 5.5 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

**Section 5.6 President.** The President shall act as the general manager and chief executive officer of the corporation and, subject to the control of the board of directors, shall be responsible for the general supervision, direction, and control of the business and officers of the corporation. The President shall preside at all meetings of the board of directors.

**Section 5.7 Vice Presidents.** In the absence or disability of the President, the Vice Presidents shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for him or her by the board of directors.

**Section 5.8 Secretary.** The Secretary shall keep or cause to be kept, at the principal office of the corporation or such other place as the board of directors may order, a book of minutes of all meetings of the board of directors and its committees. The minutes shall include the time and place of meetings, whether regular or special, and if special, how authorized, the notice thereof given, and the names of those present and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the corporation's articles of incorporation and bylaws, as amended to date. The Secretary shall give, or cause to be given, notice of all meetings of the board of directors and its committees required by law or by these bylaws to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the board of directors.

**Section 5.9 Chief Financial Officer.** The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the properties and business transactions of the corporation. The Chief Financial Officer shall cause to be given to the directors such financial statements and reports as are required to be given by law, these bylaws or by the board. The books of account shall be open at all reasonable times to inspection by any director. The Chief Financial Officer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The Chief Financial Officer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the Chairman of the Board (if any), President and the board, whenever requested, an account of all transactions as Chief Financial Officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors.

**Section 5.10 Contracts with Directors.** No director of this corporation, nor any other corporation, firm, association, or other entity in which one or more of this corporation's directors are directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or transaction with this corporation, unless (a) the material facts regarding that director's



such proceeding is or was pending to determine whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met.

(c) **Advancement of Expenses.** To the full extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these Bylaws shall be advanced by defending any proceeding covered by these Bylaws shall be advanced by the corporation prior to the final disposition of the proceeding upon receipt by the corporation of an undertaking by or on behalf of such person is entitled to be indemnified by the corporation therefore.

## **Section 6.2 Insurance**

The corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its Officers, Directors, employees and other agents of the corporation, against any liability asserted against or incurred by an Officer, Director, employee or agent in such capacity or arising out of the Officer's, Director's, employee's or agent's status as such.

## **ARTICLE VII - RECORDS AND REPORTS**

### **Section 7.1 Maintenance of Corporate Records**

The corporation shall keep:

- (a) Adequate and correct books and records of account;
- (b) Minutes in written form of the proceedings of the Board and committees of the Board;  
and
- (c) If applicable, a record of its members, giving their names and addresses and the class of membership held.

### **Section 7.2 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 the records 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 7.3 Annual Report.**

Except as provided under Section 6321( c) (d) or (f) of the California Corporations Code, not later than one hundred twenty (120) days after the close of the fiscal year of the corporation, the Board shall cause an annual report to be sent to all members of the Board. Such report shall contain the following information in reasonable detail:

- (i) The assets and liabilities, including the trust funds, of the corporations as of the end of the fiscal year.

- (ii) The principal changes in assets and liabilities, including trusts funds, during the fiscal year.
- (iii) The revenue of receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (iv) The expenses or disbursements of the corporation, for both general and restricted purposes, during fiscal year.
- (v) Any information required by Section 9.04.

**Section 7.4 Annual Statement of Certain Transactions and Indemnifications**

The corporation shall prepare annually and furnish to each director a statement of any transaction or indemnification of the following kind within one hundred and twenty (120) days after the close of the fiscal year of the corporation:

- (a) Any transaction to which the corporation, its parent or its subsidiary was a party, and in which any Director or Officer of the corporation, its parent or subsidiary (but mere common directorship shall not be considered such an interest) had a direct or indirect material financial interest, if such transaction involved over fifty thousand dollars (\$50,000), or was one of a number of transactions with the same person involving, in the aggregate, over fifty thousand dollars (\$50,000).
- (b) Any indemnification or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to any Officer or Director of the corporation pursuant to Section 8.01 hereof.

The statement shall include a brief description of the transaction, the names of the Director(s) or Officer(s) involved, their relationship to the corporation, the natures of such person's interest in the transaction and, practicable, the amount of interest; provided, that in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

**Section 7.5 Tax Reporting Requirements**

In addition to the forgoing reporting requirements, the Corporation shall keep such books and reports so as to comply with all tax reporting requirements and laws of the States of California for non-profit charitable corporations.

**Section 7.6 Members' Inspection of Membership List.**

Unless the corporation provides a reasonable alternative as provided below, any member may do either or both of the following for a purpose reasonably related to the member's interest as a member:

- (1) Inspect and copy the records containing members' names, addresses, and voting rights during usual business hours on 5 days' prior written demand on the corporation, which must state the purpose for which the inspection rights are requested; or

(2) Obtain from the Secretary of the corporation, on written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of members who are entitled to vote for directors as of the most recent record date for which that list has been compiled, or as of the date, after the date of demand, specified by the member. The demand shall state the purpose for which the list is requested. The Secretary shall make this list available to the member on or before the later of 10 days after the demand is received or the date specified in the demand as the date as of which the list is to be compiled.

The corporation may, within 10 business days after receiving a demand under this Section, 7.2 make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the membership list. Any rejection of this offer must be in writing and must state the reasons the proposed alternative does not meet the proper purpose of the demand.

If the corporation reasonably believes that the information will be used for a purpose other than one reasonably related to a person's interest as a member, or if it provides a reasonable alternative under this Section, it may deny the member access to the membership list.

Any inspection and copying under this Section 7.2 may be made in person or by the member's agent or attorney. The right of inspection includes the right to copy and make extracts. This right of inspection extends to the records of any subsidiary of the corporation.

#### **Section 7.7 Members' Inspection of Accounting Records and Minutes.**

On written demand on the corporation, any member may inspect, copy, and make extracts of the accounting books and records and the minutes of the proceedings of the members, the board of directors, and committees of the board at any reasonable time for a purpose reasonably related to the member's interest as a member. Any such inspection and copying may be made in person or by the member's agent or attorney.

#### **Section 7.8 Members' Inspection of Articles and Bylaws.**

This corporation shall keep at its principal California office the original or a copy of the articles of incorporation and bylaws, as amended to the current date, that shall be open to inspection by the members at all reasonable times during office hours. If the corporation has no business office in California, the Secretary shall, on the written request of any member, furnish to that member a copy of the articles of incorporation and bylaws, as amended to the current date.

### **ARTICLE VIII MISCELLANEOUS**

#### **Section 8.1 Membership and Fiscal Year.**

The fiscal year of the corporation shall be the twelve (12) month period ending on September 30 of each year, or such other period as may be fixed by the Board of Directors.

**Section 8.2 Corporate Seal.**

The corporate seal shall be circular in form, shall have the name of the Corporation inscribed thereon and shall contain the words “Corporate Seal” and “California” and the year the corporation was formed in the center, or shall be in such form as may be approved from time to time by the board of directors.

**Section 8.3 Checks, Notes and Contracts.**

The board of directors shall determine who shall be authorized from time to time on the corporation’s behalf to sign checks, drafts, or other orders for payment of money; to sign acceptances, notes, or other evidences of indebtedness; to enter into contracts; or to execute and deliver other documents and instruments.

**Section 8.4 Amendment of Articles of Incorporation.**

The Articles of Incorporation of the corporation may be adopted, amended or repealed in whole or in part upon the approval of the board of directors and the members.

**Section 8.5 Amendment of Bylaws.**

(a) Member Approval Required. The board of directors may not, without the approval of the members, adopt, amend or repeal any bylaw.

(b) Members May Adopt, Amend, or Repeal Bylaws. New bylaws may be adopted, or these bylaws may be amended or repealed, by approval of the members. Any provision of these bylaws that requires the vote of a larger proportion of the members than otherwise is required by law may not be altered, amended, or repealed except by the vote of that greater number. No amendment may extend the term of a director beyond that for which the director was elected.

**Section 8.6 Construction and Definitions**

Unless the context otherwise requires, the general, the general provisions, rules of construction and definitions in the California Nonprofit Public Benefit 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 includes the plural and the plural includes the singular and the term “person” includes both legal entity and natural person.

**CERTIFICATE OF SECRETARY**

**OF**

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The undersigned hereby certifies as follows:

1. I am the duly elected, qualified and acting Secretary of \_\_\_\_\_, INC., a California nonprofit public benefit corporation (the "Corporation"); and,

2. The foregoing bylaws consisting of \_\_\_\_\_ ( ) pages were adopted as the bylaws of the Corporation by the members of the Corporation at a duly called meeting of the members at which quorum was present held on \_\_\_\_\_, 2011.

Dated: \_\_\_\_\_