

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
REGISTRY OF CHARITABLE TRUSTS
P.O. Box 903447
Sacramento, CA 94203-4470

REGISTRATION FORM

1. Official name and mailing address of organization: **MOZILLA FOUNDATION**
c/o OSAF
543 Howard Street, 5th Floor
San Francisco, CA 94105

Federal Employer Identification Number: **20-0097189**
Corporate Number: **C2543436**

2. Names and addresses of ALL trustees or directors and officers (attach list if necessary):

Please see attached Exhibit "A"

3. Attach a statement fully describing the primary activity of the organization. (A copy of the material submitted with the application for Federal or State tax exemption will normally provide this information.)

Please see attached Exhibit "B"

4. If the organization is **based outside California**, comment fully on the extent of activities in California and how the California activities relate to total activities. In addition, list all funds, property and other assets held or expected to be held in California. Indicate whether or not you are monitored in your home state, and if so, by whom.

5. A) If assets (funds, property, etc.) have been received, enter the date first received: **July 2003.**
Financial statements for past accounting periods are required. See instructions on reverse.

Please see attached Exhibit "C"

B) If assets (funds, property, etc.) have not been received, enter the date when such receipts are expected
Registration will be processed upon receipt of your first financial statement showing assets and/or revenue.

6. Annual accounting period adopted:

- Fiscal Year Ending
 Calendar Year

7. Attach your founding documents as follows:

A) Corporations – Furnish a copy of the Articles of Incorporation and all amendments and current bylaws. If incorporated outside California, enter the date the corporation qualified through the California Secretary of State's Office to conduct activities in California: _____

Please see attached Exhibits "D" and "E"

B) Associations – Furnish a copy of the instrument creating the organization (Bylaws, Constitution, and/or Articles of Association).

C) Trusts – Furnish a copy of the Trust Instrument or Will and Decree of Final Distribution.

8. Attach a copy of the Federal exemption determination letter, if available. **Applied For**

Signature *Mitchell Baker* Title **Mitchell Baker, President**

Address **c/o OSAF, 543 Howard Street, 5th Floor, San Francisco, CA 94105**

Date 4/22/04 Organization's Telephone Number: **415-946-3020**

CT-1 (1/99)

MOZILLA FOUNDATION

EXHIBIT "A" TO FORM CT-1

List of Directors & Officers

Name

Address

Directors

Mitchell Kapor

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

Mitchell Baker

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

Brian Behlendorff

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

Brendan Eich

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

Chris Blizzard

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

President

Mitchell Baker

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

Secretary

Chris Blizzard

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

Treasurer

Bart Decrem

c/o Mozilla Foundation
543 Howard Street, 5th Floor
San Francisco, CA 94105

MOZILLA FOUNDATION

EXHIBIT "B" TO FORM CT-1

Description of Activities

Background.

The Internet, which was initially created as a project to connect leading research institutions funded by the U.S. Department of Defense, has become the key infrastructure for the emerging information society. What distinguishes the Internet from computer networks that came before it, and the key to its success, is that it is not a network, but a "network of networks" that is not controlled by any central authority. Rather, at its most fundamental level, the Internet is a series of technology and communications standards (also referred to as "protocols") that allow diverse computer networks, whether operated by government agencies, academic institutions, or commercial enterprises, to interact with each other and to operate as one giant network.

The most famous and widespread uses of the Internet are e-mail and the World Wide Web (the "Web"). These technologies, more than any other, are the foundation of the information economy and, more generally, of the information society. The true power of e-mail and the Web lies in their universality. Over the Internet, one can send e-mail to people around the world, unfettered by the kind of computer and Internet service used by the recipients. Similarly, one can access Web pages from anywhere in the world, regardless of how the pages were created and regardless of the type of computer used to "serve" the pages. This universality of e-mail and the Web owes its existence to a set of standards to which all the key contributors to the Internet adhere. These contributors consist of software vendors, telecommunications providers, and, in the case of the Web, content providers.

However, such universality is not natural, but is the result of tremendous efforts spanning decades by academics, business leaders, and government agencies, largely in standards organizations and open source software development projects (described below). Furthermore, some Internet technologies, such as "instant messaging" (also known as "chat") are not universal because commercial vendors that control these technologies have no interest in making their technologies interoperate. Even more daunting is the fact that the universality of e-mail and the Web can be substantially curtailed. For instance, the massive volume of spam (commercial junk e-mail) is threatening the universality of e-mail, as users reconfigure their e-mail programs to reject mail from strangers. Further, some Web pages can be viewed solely on a certain type of computer or with a specific Web browsing software. The use of such non-standard technologies, often promoted by commercial software developers and vendors who are eager to maintain a competitive advantage, reduces the Web's universality and, consequently, limits Internet access on those unable or unwilling to afford the commercial technologies. Commercial software developers and vendors seek to maintain their monopoly over specific Web applications by keeping the software's "source code"

confidential, while releasing the “object code” to their licensees. The source code consists of the lines of human-readable computer programming code that make up a software application. The object code consists of the 0’s and 1’s that are decipherable only by computers. One way to visualize the relationship between the two codes is to think of the object code as enabling the software to perform its function without revealing the source code.

In marked contrast to the foregoing commercially driven mode of operation is the approach adopted by the open source software community. Under an open source arrangement, the source code is made available, through royalty-free software licenses, to interested users and developers, even though they were not involved in creating the original product. The distributors of open source software expect and encourage users and outside programmers to examine the code in order to identify problems, and to modify the code with suggested improvements and enhancements. The practical benefit of the collaboration that is inherent in the open source process is the rapid development of high quality software. This has been borne out in practice through the Linux computer operating system and many of the core computer programs that allow the Internet to function (e.g., “web servers,” “domain name servers” and “proxy servers” programs). It is fair to say that the Internet was built and continues to operate largely on open source software.

Exempt Purpose of the Foundation.

The exempt purpose of the Foundation is to serve the general public by undertaking activities to (1) keep the Internet a universal platform that is accessible by anyone from anywhere, using any computer, and (2) promote the continuation of the innovation on the Internet (which has already affected the lives of more than 500 million Internet users). Specifically, the Foundation’s exempt purpose is to develop (a) open source, standards-compliant, free Internet applications that will be usable by (and made available free-of-charge to) tens of millions of users, and (b) foundational technologies that will be used by content developers and software developers to develop standards-compliant online content and open source Internet software. By doing so, the Foundation will help guard the open nature of the Internet. The gateway technologies of the Internet are the key to the development of the information economy in much the same way that the network of public highways was the engine of our country’s industrial development. The Foundation will help ensure that the new, virtual highways can accommodate all members of the general public, are free of toll-booths and will provide other software and content developers with the tools to do the same.

Key Activities. The Foundation plans to engage in the following key activities in pursuance of its exempt purpose:

(1) Facilitate the development of a web browser, e-mail software and other Internet software that (a) are open source, (b) implement open standards, (c) are available free of charge to all Internet users around the world, regardless of the make or model of computers they use, the language they speak, or disabilities they may have, (d) are developed in an open process in which any interested party (individuals, government agencies, nonprofit organizations, corporations) can contribute, and (e) are powerful and easy to use. The Foundation plans to spend approximately 40% of its time on this activity.

(2) Facilitate the development of technologies that can be used by other software developers as building blocks for other Internet software. These technologies will be fully open source, standards-compliant and available free of charge to all software developers. The Foundation plans to dedicate approximately 20% of its time to this activity.

(3) Facilitate the development of software products that can be used by any open source development project to improve their ability to develop software. These products will be fully open source, standards-compliant and available free of charge to all open source software development projects. The Foundation plans to spend approximately 15% of its time on this activity.

(4) Provide documentation and training for all of the above-mentioned technologies, aimed at both end users and software developers, with the goals of (a) increasing awareness among the public and software developers about the importance of open source software and open standards, and (b) providing a methodology for the development of Internet software and content that will be accessible to people regardless of disability, language or computer environment. The Foundation also plans to conduct educational campaigns directed at the general public to promote adoption of the Mozilla software. The Foundation plans to devote approximately 15% of its time to this activity.

(5) Participate in Internet standards development efforts with the focus of promoting standards that complement the Foundation's exempt purpose (*i.e.*, the availability of software to the general public free-of-charge, regardless of the make or model of computers they use, the language they speak, or disabilities they may have). The Foundation plans to spend approximately 10% of its time on this activity.

Specific Undertakings.

Specific Undertakings for Activities Described in (1) through (3): The Foundation plans the following specific undertakings to carry out the three activities described in paragraphs (1) through (3) above:

- create open source software;
- establish and maintain the necessary facilities to make the source code available to software developers;
- create and maintain forums where software developers can collaborate in the development of the open source software;
- serve as a repository of code and documentation contributed by software developers;
- oversee the operations, technology strategy and the incorporation of the technology contributed by software developers into the open source software and the source code, as applicable;
- establish technical standards for the open source software;
- license Mozilla software to all members of the general public, including commercial and non-commercial software developers, generally on a royalty-free basis. Such licensing would be consistent with the Foundation's exempt purpose. However, it is possible that the Foundation will grant some licenses

for the use of Mozilla software in return for royalty payments. If such licensing occurs, the Foundation will take the necessary steps to insure that the terms are fair and reasonable to it; and

- promote world-wide adoption of the Mozilla (open source) software, documentation and standards by working with organizations outside the United States that are organized and operated for substantially the same exempt purpose as the Foundation. Specifically, the Foundation plans to assume a leadership role with respect to issues and policies of global concern to the international open source community. For example, the Foundation would take the lead on the formulation of the technical direction for the core Mozilla distributions. The Foundation plans to assist such overseas organization in fulfilling their purposes by licensing the Mozilla name and trademarks to those organizations, on a royalty-free basis, to be used in connection with their Mozilla open source projects at the local level (e.g., Mozilla France, Mozilla Japan).

With regard to adoption of Mozilla software, the Foundation notes that many universities have adopted Mozilla technologies. These include Columbia University, Rutgers, Purdue, the University of California at Davis, Florida State University, St. Joseph's College, University of Saskatchewan, University of Calgary, Deakin University (Australia), Vrije University (the Netherlands), Wake Forest, and the University of Chicago. The fact that the Mozilla stability releases have been downloaded at the monthly rate of approximately 100,000 times is additional evidence of wide adoption. In addition, the South Korean government is adopting the Mozilla browser as the national standard. Moreover, various agencies of both the French and Swiss governments have provided Mozilla software to their citizens.

Additional Specific Undertakings for Activity Described in (1): In connection with the activity described in paragraph (1) above, the Foundation plans to:

- establish and maintain the necessary facilities to make the executable code¹ available to all end users (i.e., members of the general public). Users may download the code free-of-charge at the Foundation's Web site. In addition, the Foundation has learned that many users prefer to obtain complex software on compact discs ("CDs") over a long download via the Internet. In order to facilitate adoption of the Mozilla software by this group, the Foundation will arrange to make the code available on CD by contracting with an independent third party (the "CD Service"). The Foundation expects that those who choose to get a CD rather than use the *free* Internet service will be charged a fee for this optional delivery mechanism. The initial fee is anticipated to be \$4.00. The Foundation does not anticipate generating significant revenues from this activity; and

¹ In most instances, the "executable code" is the same as the "object code."

- make technical assistance available to end users of the Mozilla open source software. By way of background, the Foundation has learned that many people cannot adopt the software for use unless there is someone available to answer their questions or walk them through the process. Accordingly, the Foundation plans to provide a variety of technical assistance options free of charge to all users who request them. However, because of its limited resources, the Foundation also plans to arrange for an independent third party to provide technical support by telephone (the "TTS Service"). Because the provision of individualized technical support (via telephone) is generally time consuming, users will be charged a fee. The current fee is \$39.95 per call, based on an anticipated call average of 25 minutes. The Foundation does not anticipate generating significant revenues from this activity.

Specific Undertakings for Activity Described in (4): The Foundation further plans the following specific undertakings to carry out the activity described in paragraph D(4) above:

- create the documentation;
- establish and maintain the necessary facilities to make the documentation available to developers and end-users;
- create and maintain forums where documentation writers can collaborate in the development of the documentation;
- oversee the operations, documentation strategy and the incorporation of the materials contributed by documentation writers into the documentation; and
- establish technical standards for the documentation.

Specific Undertakings for Activity Described in (5): Finally, the Foundation plans the following undertakings in furtherance of the activity described in paragraph (5) above:

- join Internet standards organizations such as the World Wide Web Consortium, the Internet Engineering Task Force and other standards bodies and contribute to the development of Internet standards;
- establish a Technology Advisory Board composed of representatives from the technology industry and research institutions to help identify new standards to be developed; and
- operate an outreach program that works with web site developers to ensure that web sites are standards-compliant.

MOZILLA FOUNDATION

EXHIBIT "C" TO FORM CT-1

Budget

BUDGET

	<u>7/14/03-12/31/03</u>	<u>FYE 12/31/04^A</u>
<u>Revenue</u>		
1. Grants & Contributions	\$2,151,920	\$ 660,000
2. Gross receipts from the provision of the CD Service and the TTS Service (activities that are substantially related to the Foundation's exempt purpose)	\$ 0	\$ 25,550
3. Investment Income ^B	\$ 1,013	\$ 5,000
4. Other (e.g., advertising)	\$ 0	\$ 5,475
TOTAL REVENUE	\$2,152,933	\$ 696,025

^A The figures in this column are an estimation only.

^B The Foundation anticipates that some of its investment income will be in the form of dividends from its wholly-owned taxable Subsidiary.

[Budget continues on next page.]

7/14/03-12/31/03 FYE 12/31/04^A

Expenses

1. Wages & Salaries (see attached <u>Schedule I</u>)	\$ 259,954	\$ 1,289,352
2. Cost of operating Web site	\$ 0	\$ 24,000
3. Postage & Parcel Delivery	\$ 187	\$ 150
4. Occupancy Costs (Office Space)	\$ 5,433	\$ 31,336
5. Office Furniture	\$ 649	\$ 1,000
6. Computers, Servers, Translators	\$ 13,660	\$ 24,000
7. Telephone Installation & Service	\$ 3,771	\$ 3,000
8. Supplies	\$ 1,524	\$ 1,500
9. Legal	\$ 37,009	\$ 20,000
10. Accounting	\$ 1,011	\$ 5,000
11. Insurance	\$ 8,472	\$ 10,000
12. Photocopier	\$ 0	\$ 500
13. Web Site Design, Installation & Service	\$ 0	\$ 6,400
14. High Speed Line Installation & Service	\$ 12,899	\$ 4,200
15. Travel	\$ 452	\$ 5,000
16. Consulting	\$ 37,308	\$ 0
TOTAL EXPENSES	\$ 382,329	\$1,425,438
EXCESS OF SUPPORT AND REVENUE OVER EXPENSES	\$1,770,604	(\$729,413)

^A The figures in this column are an estimation only.

SCHEDULE I

Wages & Salaries

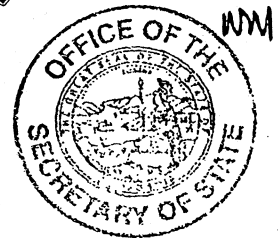
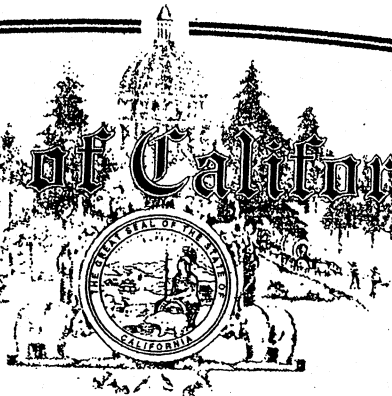
Title	<u>7/14/03-12/31/03</u>	<u>FYE 12/31/04</u>
1. Chief Architect	\$ 23,077	\$ 150,000
2. Senior Director	\$ 53,846	\$ 140,000
3. Technical Lead	\$ 50,000	\$ 130,000
4. Technical Lead	\$ 17,692	\$ 115,000
5. Technical Lead	\$ 21,154	\$ 110,000
6. Technical Lead	\$ 14,616	\$ 95,000
7. Technical Lead	\$ 25,846	\$ 80,000
8. Technical Lead	\$ 15,385	\$ 80,000
9. Technical Lead	\$ 15,385	\$ 80,000
10. Outreach Coordinator	\$ 0	\$ 45,000
11. Education Coordinator	\$ 0	\$ 45,000
12. Fringe Benefits	<u>\$ 22,953</u>	<u>\$ 219,352</u>
Total	<u>\$ 259,954</u>	<u>\$1,289,352</u>

MOZILLA FOUNDATION

EXHIBIT "D" TO FORM CT-1

Articles of Incorporation

State of California



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 14 2003



Kevin Shelley
Secretary of State

ARTICLES OF INCORPORATION

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

OF

JUL 14 2003

MOZILLA FOUNDATION

KEVIN SHELLEY
Secretary of State

(A California Nonprofit Public Benefit Corporation)

I.

The name of the corporation is Mozilla Foundation (the "Corporation").

II.

- A. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public or charitable purposes.
- B. The specific purpose of the Corporation is to promote the development of, public access to and adoption of the open source Mozilla web browsing and Internet application software.
- C. The Corporation is organized and operated exclusively for scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") or the corresponding provision of any future United States internal revenue law.
- D. Notwithstanding any other provision of these articles, the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Corporation, and the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or the corresponding provision of any future United States internal revenue law or (b) by a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code or the corresponding provision of any future United States internal revenue law.

III.

The name of the Corporation's initial agent for service of process is CT Corporation System.

IV.

No substantial part of the activities of the Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Code

or the corresponding provision of any future United States internal revenue law and the Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of or in opposition to any candidate for public office, except as provided in section 501(h) of the Code or the corresponding provision of any future United States internal revenue law.

V.

The property of the Corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person, within the meaning Section 501(c)(3) of the Code. Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to an organization (or organizations) which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Code or the corresponding provision of any future United States internal revenue law.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation as of the 14 day of July, 2003.


W. Mitchell Baker, Sole Incorporator



MOZILLA FOUNDATION

EXHIBIT "E" TO FORM CT-1

Bylaws

BYLAWS
OF
MOZILLA FOUNDATION

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BYLAWS
OF
MOZILLA FOUNDATION

ARTICLE I

OFFICES; CORPORATE SEAL

Section 1.1 Principal Office. The principal office of Mozilla Foundation (the "Foundation") shall be located at such place as the Board of Directors may from time to time authorize. If the principal office is located outside the State of California, and the Foundation has one or more offices in the State of California, the Board of Directors shall fix and designate a principal office in the State of California.

Section 1.2 Other Offices. Additional offices of the Foundation shall be located at such place or places, within or outside the State of California, as the Board of Directors may from time to time authorize.

Section 1.3 Corporate Seal. If the Board of Directors adopts a corporate seal such seal shall have inscribed thereon the name of the Foundation and the state and date of its incorporation. If and when a seal is adopted by the Board of Directors, such seal may be engraved, lithographed, printed, stamped, impressed upon or affixed to any contract, conveyance or other instrument executed by the Foundation.

ARTICLE II

MEMBERS

Section 2.1 Members. This Foundation shall have no members.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Powers. Subject to the provisions of law, the activities and affairs of the Foundation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors. The Board of Directors may delegate the management of the activities of the Foundation to any person or persons, management company or committee, 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 of Directors.

Section 3.2 Number of Directors. The authorized number of directors of the Foundation shall be not less than a minimum of five (5) nor more than a maximum of fifteen (15) until changed by a duly adopted amendment to these bylaws. The exact number of directors shall be set within these limits from time to time by approval of the Board of Directors.

No reduction of the authorized number of directors shall remove any director prior to the expiration of such director's term of office.

Section 3.3 Election Of Directors, Term. All directors of the Foundation shall be elected annually by the Board of Directors and shall hold office until their respective successors are elected and have qualified, or until their death, resignation or removal.

Section 3.4 Resignations. Any director of the Foundation may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors of the Foundation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation specifies effectiveness at a future time, a successor may be elected pursuant to Section 3.6 of these bylaws to take office on the date the resignation becomes effective. Notwithstanding the foregoing, except upon notice to the Attorney General of the State of California no director may resign if such resignation would leave the Foundation without a duly elected director or directors in charge of its affairs.

Section 3.5 Removal. Any director may be removed from office, with or without cause, by the vote of a majority of the other directors then in office.

Section 3.6 Vacancies. A vacancy or vacancies on the Board of Directors shall be deemed to exist in case of the death, resignation or removal of any director, or upon increase in the authorized number of directors or if, for whatever reason, there are fewer directors on the Board of Directors than the full number authorized. Such vacancy or vacancies may be filled by the remaining directors, though less than a quorum, or by a sole remaining director.

Section 3.7 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, places and dates as fixed by the Board of Directors; provided, however, that if the date for such a meeting falls on a legal holiday, then the meeting shall be held at the same time on the next succeeding full business day. Regular meetings of the Board of Directors held pursuant to this Section 3.7 may be held without notice.

Section 3.8 Participation by Telephone. Directors may participate in a Board of Directors meeting through use of conference telephone or similar communications equipment, so long as all directors participating in such meeting can hear one another. Such participation constitutes presence in person at such meeting.

Section 3.9 Special Meetings. Special meetings of the Board of Directors for any purpose may be called by the Chairman of the Board or the President or any vice president or the Secretary of the Foundation or any three (3) directors.

Section 3.10 Notice of Meetings. Notice of the date, time and place of all meetings of the Board of Directors, other than regular meetings held pursuant to Section 3.7 hereinabove, shall be delivered personally, orally or in writing, or by telephone, including a voice messaging

system or other system or technology designed to record and communicate messages, by facsimile or electronic mail, or other electronic means to each director, at least forty-eight (48) hours before the meeting, or sent in writing to each director by first-class mail, charges prepaid, at least four (4) days before the meeting or other means specifically permitted under the California Nonprofit Corporation Law, including amendments of such law, after the date of these bylaws. Such notice may be given by the Secretary of the Foundation or by the person or persons who called the meeting. Such notice need not specify the purpose of the meeting. Notice of any meeting of the Board of Directors need not be given to any director who signs a waiver of notice of such meeting, or a consent to holding the meeting or an approval of the minutes thereof, either before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement such director's lack of notice. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.11 Place of Meetings. Meetings of the Board of Directors may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated by resolution of the Board of Directors or, if not so designated or stated, at the principal office of the Foundation.

Section 3.12 Action by Written Consent Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all directors individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as a unanimous vote of such directors.

Section 3.13 Quorum and Transaction of Business. A majority of the authorized number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by law or, the Articles of Incorporation or these bylaws specifically requires a greater number. A meeting at which a quorum is initially present may continue to transact business, notwithstanding withdrawal of directors, if any action taken is approved by at least a majority of the number of directors constituting a quorum for such meeting. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present may adjourn the meeting, as provided in Section 3.14 of these bylaws.

Section 3.14 Adjournment. Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the affirmative vote of a majority of the directors present. If the meeting is adjourned for more than twenty-four (24) hours, notice of such 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 3.15 Organization. The Chairman of the Board shall preside at every meeting of the Board of Directors, if present. If the Chairman of the Board is not present, a director chosen by a majority of the directors present shall act as chairman. The Secretary of the Foundation or, in the absence of the Secretary, any person appointed by the Chairman of the Board shall act as secretary of the meeting.

Section 3.16 Compensation. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the Board of Directors.

Section 3.17 Committees. The Board of Directors may, by resolution adopted by a majority of the directors then in office, provided a quorum is present, create one or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board of Directors. Appointments to such committees shall be by a majority vote of the directors then in office. The Board of Directors may appoint one or more directors as alternate members of any committee to replace any absent member at any meeting of such committee. Any such committee shall have authority to act in the manner and to the extent provided in the resolution of the Board of Directors, and may have all the authority of the Board of Directors in the management of the activities and affairs of the Foundation, except with respect to:

- (a) the approval of any action for which, if the Foundation had members, approval of the members or approval of a majority of all members would be required by the California Corporations Code;
- (b) the filling of vacancies on the Board of Directors or any committee which has the authority of the Board of Directors;
- (c) the fixing of compensation of directors for serving on the Board of Directors or any of its committees;
- (d) the amendment or repeal of these bylaws or the adoption of new bylaws;
- (e) the amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (f) the appointment of other committees of the Board of Directors or the members thereof;
- (g) the expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected; or
- (h) the approval of any transaction within the provisions of California Corporations Code Section 5233, except as provided in California Corporations Code Section 5233(d)(3).

The foregoing provisions of this Section 3.17 shall not apply to any committee which is not authorized to exercise the authority of the Board of Directors.

Any committee may from time to time provide by resolution for regular meetings at specified times and places. If the date of such a meeting falls on a legal holiday, then the meeting shall be held at the same time on the next succeeding full business day. No notice of such a meeting need be given. Such regular meetings need not be held if the committee shall so determine at any time before or after the time when such meeting would otherwise have taken place. Special meetings may be called at any time in the same manner and by the same persons

as stated in Sections 3.9 and 3.10 of these bylaws for meetings of the Board of Directors. The provisions of Sections 3.8, 3.11, 3.12, 3.13, 3.14 and 3.15 of these bylaws shall apply to committees, committee members and committee meetings as if the words "committee" and "committee member" were substituted for the word "Board of Directors", and "director", respectively, throughout such sections.

Section 3.18 Interested Persons. At no time shall more than forty-nine percent (49%) of the directors of the Foundation be "interested persons" as defined in Section 5227 of the California Corporations Code. As presently in effect, Section 5227 of the California Corporations Code defines an "interested person" as:

(a) any person currently 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 director as a director; or

(b) 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.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The Foundation shall have a Chairman of the Board or a President or both, a Secretary, a Treasurer and such other officers with such titles and duties as the Board of Directors may determine. Any two or more offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President or Chairman of the Board. Other than a Chairman of the Board, an officer may, but need not be, a Director. Only a Director may serve as Chairman of the Board.

Section 4.2 Appointment. All officers shall be chosen and appointed by the Board of Directors; provided, however, that the Board of Directors may empower the chief executive officer of the Foundation to appoint such officers, other than Chairman of the Board, President, Secretary or Treasurer, as the activities of the Foundation may require. All officers shall serve at the pleasure of the Board of Directors, subject to the rights, if any, of an officer under a contract of employment.

Section 4.3 Inability to Act. In the case of absence or inability to act of any officer of the Foundation or of any person authorized by these bylaws to act in such officer's place, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer, or any director or other person whom it may select, for such period of time as the Board of Directors deems necessary.

Section 4.4 Resignations. Any officer may resign at any time upon written notice to the Foundation, without prejudice to the rights, if any, of the Foundation under any contract to which such officer is a party. Such resignation shall be effective upon its receipt by the Chairman of the Board, the President, the Secretary or the Board of Directors, unless a different

time is specified in the notice for effectiveness of such resignation. The acceptance of any such resignation shall not be necessary to make it effective unless otherwise specified in such notice.

Section 4.5 Removal. Any officer may be removed from office at any time, with or without cause, but subject to the rights, if any, of such officer under any contract of employment, by the Board of Directors or by any committee to whom such power of removal has been duly delegated, or, with regard to any officer who has been appointed by the chief executive officer pursuant to Section 4.2 hereinabove, by the chief executive officer or any other officer upon whom such power of removal may be conferred by the Board of Directors.

Section 4.6 Vacancies. A vacancy occurring in any office for any reason may be filled by the Board of Directors, in the manner prescribed by this Article of the bylaws for initial appointment to such office.

Section 4.7 Chairman of the Board. The Chairman of the Board, if there be such an officer, shall, if present, preside at all meetings of the Board of Directors and shall exercise and perform such other powers and duties as may be assigned from time to time by the Board of Directors or prescribed by these bylaws. If no President is appointed, the Chairman of the Board shall be the general manager and chief executive officer of the Foundation, and shall exercise all powers of the President described in Section 4.8 herein below.

Section 4.8 President. Subject to such powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall be the general manager and chief executive officer of the Foundation and shall have general supervision and control over the activities and affairs of the Foundation, subject to the control of the Board of Directors. The President may sign and execute, in the name of the Foundation, any instrument authorized by the Board of Directors, except when the signing and execution thereof shall have been expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the Foundation. The President shall have all the general powers and duties of management usually vested in the president of a Foundation, and shall have such other powers and duties as may be prescribed from time to time by the Board of Directors or these bylaws. The President shall have discretion to prescribe the duties of other officers and employees of the Foundation in a manner not inconsistent with the provisions of these bylaws and the directions of the Board of Directors.

Section 4.9 Secretary. The Secretary shall:

(a) Keep, or cause to be kept, minutes of all meetings of the Board of Directors and committees of the Board of Directors, if any. Such minutes shall be kept in written form.

(b) Keep, or cause to be kept, at the principal office of the Foundation, or if the principal office is not in California, at its principal office in California, an original or copy of the Articles of Incorporation and these bylaws, as amended.

(c) Give, or cause to be given, notice of all meetings of directors and committees of the Board of Directors, as required by law or by these bylaws.

(d) Keep the seal of the Foundation, if any, in safe custody.

(e) Exercise such powers and perform such duties as are usually vested in the office of secretary of a Foundation, and exercise such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors or these bylaws.

If any assistant secretaries are appointed, the assistant secretary, or one of the assistant secretaries in the order of their rank, as fixed by the Board of Directors or, if they are not so ranked, the assistant secretary designated by the Board of Directors, in the absence or disability of the Secretary or in the event of such officer's refusal to act or if a vacancy exists in the office of Secretary, shall perform the duties and exercise the powers of the Secretary and discharge such duties as may be assigned from time to time pursuant to these bylaws or by the Board of Directors.

Section 4.10 Treasurer. The Treasurer shall:

(a) Be responsible for all functions and duties of the treasurer of the Foundation.

(b) Keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account for the Foundation.

(c) Receive or be responsible for receipt of all monies due and payable to the Foundation from any source whatsoever; have charge and custody of, and be responsible for, all monies and other valuables of the Foundation and be responsible for deposit of all such monies in the name and to the credit of the Foundation with such depositaries as may be designated by the Board of Directors or a duly appointed and authorized committee of the Board of Directors.

(d) Disburse or be responsible for the disbursement of the funds of the Foundation as may be ordered by the Board of Directors or a duly appointed and authorized committee of the Board of Directors.

(e) Render to the chief executive officer and the Board of Directors a statement of the financial condition of the Foundation if called upon to do so.

(f) Exercise such powers and perform such duties as are usually vested in the office of chief financial officer of a Foundation, and exercise such other powers and perform such other duties as may be prescribed by the Board of Directors or these bylaws.

If any assistant financial officer is appointed, the assistant financial officer, or one of the assistant financial officers, if there are more than one, in the order of their rank as fixed by the Board of Directors or, if they are not so ranked, the assistant financial officer designated by the Board of Directors, shall, in the absence or disability of the Treasurer or in the event of such officer's refusal to act, perform the duties and exercise the powers of the Treasurer, and shall have such powers and discharge such duties as may be assigned from time to time pursuant to these bylaws or by the Board of Directors.

Section 4.11 Compensation. The compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a director of the Foundation.

ARTICLE V

CONTRACTS, LOANS, BANK ACCOUNTS, CHECKS AND DRAFTS

Section 5.1 Execution of Contracts and Other Instruments. Except as these bylaws may otherwise provide, the Board of Directors or its duly appointed and authorized committee may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authorization may be general or confined to specific instances. Except as so authorized or otherwise expressly provided in these bylaws, 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 in any amount.

Section 5.2 Loans. No loans shall be contracted on behalf of the Foundation and no negotiable paper shall be issued in its name, unless and except as authorized by the Board of Directors or its duly appointed and authorized committee. When so authorized by the Board of Directors or such committee, any officer or agent of the Foundation may effect loans and advances at any time for the Foundation from any bank, trust company or other institution, or from any firm, Foundation or individual, and for such loans and advances may make, execute and deliver promissory notes, bonds or other evidences of indebtedness of the Foundation and, when authorized as aforesaid, may mortgage, pledge, hypothecate or transfer any and all stocks, securities and other property, real or personal, at any time held by the Foundation, and to that end endorse, assign and deliver the same as security for the payment of any and all loans, advances, indebtedness and liabilities of the Foundation. Such authorization may be general or confined to specific instances. Except as provided by Section 5236 of the Nonprofit Public Benefit Corporation Law, this Foundation shall not make any loan of money or property to or guarantee the obligation of any director or officer.

Section 5.3 Bank Accounts. The Board of Directors or its duly appointed and authorized committee from time to time may authorize the opening and keeping of general and/or special bank accounts with such banks, trust companies or other depositaries as may be selected by the Board of Directors, its duly appointed and authorized committee or by any officer or officers, agent or agents, of the Foundation to whom such power may be delegated from time to time by the Board of Directors. The Board of Directors or its duly appointed and authorized committee may make such rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these bylaws, as are deemed advisable.

Section 5.4 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, acceptances or other evidences of indebtedness issued in the name of the Foundation shall be signed by such officer or officers, agent or agents, of the Foundation, and in such manner, as shall be determined from time to time by resolution of the Board of Directors or its duly appointed and authorized committee. Endorsements for deposit to the credit of the Foundation in any of its duly authorized depositaries may be made, without counter-signature, by

the President or any vice president or the Treasurer or any assistant financial officer or by any other officer or agent of the Foundation to whom the Board of Directors or its duly appointed and authorized committee, by resolution, shall have delegated such power or by hand-stamped impression in the name of the Foundation.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 6.1 Indemnification by Foundation.

(a) For the purposes of this Article VI, "agent" means any person who is or was an employee or other agent of the Foundation, or is or was serving at the request of the Foundation as an employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was an employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Foundation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under Paragraphs (b), (c) and (d) of this Section 6.1.

(b) The Foundation shall, to the fullest extent permitted by law, indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a director or officer, or is or was serving at the request of the Foundation as a director or officer of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise or was a director or officer 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 of the Foundation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding.

(c) The Foundation may, in its discretion, upon the affirmative vote of a majority of the Board of Directors, to the fullest extent permitted by law, indemnify any person who was or is a party or is threatened to be made a party to any proceeding 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.

(d) In the event entitlement to indemnification is required by law to be based upon a determination by the Board of Directors that the director, officer or agent has met the standards of conduct prescribed by law, such body shall meet and shall reach a determination on the issue within a reasonable period of time after request for such body to meet is received by the Foundation from the director, officer or agent.

Section 6.2 Advancing Expenses.

(a) The Foundation shall advance to each director and officer the expenses incurred in defending any proceeding referred to in Section 6.1 of these Bylaws prior to the final

disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount unless it shall be determined ultimately that such director or officer is entitled to be indemnified as authorized in Section 6.1.

(b) The Foundation may advance to each agent the expenses incurred in defending any proceeding referred to in Section 6.1 of these Bylaws 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 Section 6.1.

Section 6.3 Insurance.

The Foundation shall have power to purchase and maintain insurance on behalf of any director, officer or agent of the Foundation against any liability asserted against or incurred by such director, officer or agent in such capacity or arising out of such director's, officer's or agent's status as such whether or not the Foundation would have the power to indemnify such director, officer or agent against such liability under the provisions of this Article VI; provided, however, that the Foundation shall have no power to purchase and maintain such insurance to indemnify any director, officer or agent of the Foundation for a violation of Section 5233 of the California Corporations Code (relating to self-dealing transactions).

Section 6.4 Other Rights to Indemnification.

The provisions of this Article VI are in addition to and not in limitation of any other rights to indemnification to which the agent might be entitled.

ARTICLE VII

FISCAL YEAR AND FINANCIAL MATTERS

Section 7.1 Fiscal Year.

The fiscal year of the Foundation shall begin on the first day of January and end on the last day of December, and may be changed, by resolution of the Board of Directors.

Section 7.2 Distribution of Income and Prohibited Activities.

In the event that the Foundation shall at any time be a private foundation within the meaning of section 509 of the United States Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"), the Foundation, so long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to subject it to the tax on undistributed income imposed by section 4942 of the Code, and the Foundation shall not (i) engage in any act of self-dealing as defined in section 4941(d) of the Code; (ii) retain any excess business holdings as defined in section 4943(c) of the Code; (iii) make any investments in such manner as to subject the Foundation to any tax under section 4944 of the Code; or (iv) make any taxable expenditures as defined in section 4945(d) of the Code. (All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.)

Section 7.3 Annual Audit.

The Board of Directors shall cause an annual audit by independent accountants to be prepared and sent to the Directors not later than one hundred eighty (180) days after the close of the Foundation's fiscal year unless such requirement is waived by a majority vote of the Directors then in office.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Directors' Inspection Rights. Every director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind of the Foundation and any of its subsidiaries and to inspect the physical properties of the Foundation and any of its subsidiaries. Such inspection may be made by the director in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts.

Section 8.2 Bylaw Amendments. Except as otherwise provided by law, these bylaws may be amended or repealed and new bylaws may be adopted by the Board of Directors.

Section 8.3 Time Notice Given or Sent. Whenever any notice is given or sent pursuant to these bylaws, the time such notice is deemed to have been given or sent shall be determined by reference to Section 5015 of the California Corporations Code.

Section 8.4 Construction and Definition. Unless the context requires otherwise, the general provisions, rules of construction and definitions contained in the California Corporations Code shall govern the construction of these bylaws. Without limiting the foregoing, "shall" is mandatory and "may" is permissive.