

10102018 Red Line BY-LAWS OF THE NORTH CAROLINA BOTANICAL

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GARDEN FOUNDATION, INC.

(Red line is of the version Revised November 18, 2016)

Article I

Purposes

Section 1: The primary purpose of the North Carolina Botanical Garden Foundation, Inc. (the Foundation) is to support the mission and objectives of the North Carolina Botanical Garden (the Garden). The Foundation will maintain a supporting membership whose primary role is to raise monies for the Garden's support. The Foundation also advocates for the Garden in all venues (university, state legislature, and the general public), and holds lands for the conservation mission of the Garden.

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Article II

Membership

Section 1: All members of the Foundation in a fiscal year, July 1 to June 30, will be members for the year in which dues are paid.

Section 2: Funds derived from all gifts to the Foundation may be used to meet the annual operating expenses of the Foundation and for support of the Garden.

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Section 3: The Board of Directors may designate as honorary members persons who have made significant contributions to the Foundation and the Garden or who have furthered the objectives of these organizations.

Section 4: The Board of Directors shall define the different classes of memberships and specify the fee schedule and membership privileges of each class.

Section 5: Voting. Group memberships and corporate memberships shall be non-voting classes. All other membership classes shall be entitled to one vote per membership, except that in the case of family memberships, both adults of a family are entitled to vote.

Article III

Directors

Section 1: Composition of the Board. The Board of Directors shall consist of at least 15 and no more than 30. Within these limits, the Board may increase or decrease the number of directors, including for the purpose of staggering terms. The Vice Provost for Academic Initiatives and the Director of the Garden shall be *ex officio* members with the power to vote. The President of the Garden Club of North Carolina and the past presidents of the Foundation shall be *ex officio* members without voting power.

Section 2: Honorary Directors. In recognition of significant service to the Foundation or contributions of other nature, the Board of Directors may also appoint honorary or *emeritus* directors. Such directors shall be considered *ex officio* members of the Board of Directors but shall not have the power to vote at Board of Directors meetings.

Section 2.5: Board of Advisors. The Board of Directors may also appoint past Board members, Garden volunteers, donors, or others who have provided valuable service to the Foundation, to a Board of Advisors. Members of the Board of Advisors may serve on committees as voting members and will be kept informed about the activities of the Board of Directors. They shall be encouraged to advise the Board of Directors and to act as advocates for the Garden, but shall not have the power to vote at Board of Directors meetings.

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Section 3: Elections: Terms and Vacancies. Directors shall be elected to serve three-year terms and may not serve more than two consecutive terms, although they may be elected again after being off the Board of Directors for at least one year. Such elections shall occur at the annual meeting of the Foundation by voice vote or by showing of hands of the majority of the Foundation members present. Terms of directors will begin on January 1 of the year following their election and expire on December 31 of the last year of their terms. Vacant, unexpired terms of the Board of Directors may be filled by the Executive Committee, after consultation with the Governance Committee.

Section 4: Meetings. The Board of Directors shall have two regular meetings a year, one in the Spring and one in the Fall at the place of and on the date of the regular Annual Meeting of the Foundation. The President shall designate the time of the Board meetings. Special meetings of the Board may be held at the call of the President, or upon the written request of three members of the Board upon ten days' notice.

Section 5: Quorum. Fifty percent of all serving Board members, including *ex officio* members of the Board with the power to vote, shall constitute a quorum at any meeting of the Board

Section 6: Function. The Board of Directors shall determine in what way, and to what extent, the Foundation can best serve its purpose in furthering the aims of the Garden.

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Article IV

Officers

Section 1: Officers. The officers of this Foundation shall be a President, Vice-President, Secretary, Treasurer, and Assistant Treasurer,

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Section 2. Method of Election: Vacancies. The officers shall be elected by a majority of the quorum of Foundation membership present at any regular Foundation meeting. They shall hold office for two calendar years (one term) following their election, Officers and at-large Board members may serve a maximum of four years (two terms). A vacancy in any officer or member at large position shall be filled by the Executive Committee, after consultation with the Governance Committee for the unexpired term of the officer or member at large whose term is not completed.

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Section 3: Duties of Officers

a. President. The President shall be responsible for carrying out the policies adopted by the Foundation and its Board of Directors. The President shall serve as the Chairman of the Executive Committee. He or she shall preside at all meetings of the Foundation membership, all meetings of the Board of Directors, and all meetings of the Executive Committee. He or she shall insure that there is monthly communication with Board members and shall coordinate the work of all Board committees and task groups. With the Garden Director, he or she shall establish the agenda for all Board meetings. He or

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she shall execute all deeds, contracts, agreements, transfers, and such other instruments as may be ordered by the Board of Directors. The President is also authorized to sign checks,

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b. Vice-President. The Vice-President shall perform such duties as may be prescribed from time to time by the Board of Directors, the Executive Committee, or the President. The Vice-President may, in case of the absence or disability of the President, be assigned by the Board or Executive Committee to perform any or all of the duties of the President.

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c. Secretary. The Secretary shall record and preserve records and minutes of all meetings of the Foundation, its Board of Directors, and its Executive Committee.

d. Treasurer. Subject to the policies of the Foundation, custody and management of the assets of the Foundation shall be undertaken by the Business Manager of the Garden. All financial transactions shall be overseen and approved by the Treasurer of the Foundation and the Director of the Garden. The Foundation shall operate under an annual budget as recommended by the Foundation Treasurer in consultation with the Garden Director and adopted-by the Executive Committee. The Treasurer shall review and authorize disbursement of funds according to the budget and transfer of funds among bank and investment accounts; shall periodically review the status of the budget, interim financial statements, and the transactions and books of the Foundation; shall monitor investment accounts and

performance and shall recommend changes to the Executive Committee; shall review the annual independent audit and recommend and monitor corrective action; and shall render to the Executive Committee accounts of all fiscal transactions and the financial condition of the Foundation.

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- e. Assistant Treasurer. In the absence or unavailability of the Treasurer, the Assistant Treasurer shall assume the responsibilities of the Treasurer.

Article V

Executive Committee

Section 1: Composition. The Executive Committee shall consist of the:

President

~~Vice-President~~

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Secretary

Treasurer

Assistant Treasurer

Immediate Past President

Garden Director

Governance Committee Chair

Development Committee Chair

Conservation Committee Chair

Up to three at-large members

Up to three at-large members of the Board shall be appointed by the President to serve two-year terms as at-large voting members of the Executive Committee. These appointments will be submitted to the Board for confirmation at the Fall Board meeting.

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Section 2: Function. The Executive Committee shall act between the meetings of the Board of Directors and shall possess all the powers of the Board in regard to the conduct of the business of the Foundation, provided, however, that the Executive Committee shall have no power to alter or amend the By-laws of the Foundation. The Executive Committee shall oversee the solicitation, receipt, and disbursement of Foundation funds within the approved annual budget and in accordance with the budgeting procedures established by the Board. The Executive Committee shall also disburse to the Garden funds or grants raised or donated for specific Garden purposes.

Section 3: Procedure. Executive Committee action may be taken on simple majority vote by mail or other means if a meeting is not practical.

Article VI Committees

Section 1: Standing Committees. There shall be five standing committees of the Foundation: Conservation, Governance, Development, Finance, and Audit. The duties and responsibilities of each standing committee shall be fixed in a Charter which shall be approved by the Board of

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Directors or its Executive Committee. The President of the Foundation and the Garden Director shall be ex officio members of each committee and shall have the power to vote in committee meetings, with the exception of the Audit Committee, which shall not include the Garden Director or any members of the Garden staff, other University employees, or paid employees of the Foundation.

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Section 2: Nominations to the Board of Directors. The Governance Committee shall serve as the nominating committee for Board positions. The nomination process is described in detail in the Foundation's policies and procedures. Vacant unexpired terms of the Board of Directors may be filled by the Executive Committee, after consultation with the Governance Committee.

Deleted: Not later than thirty (30) days before the date set for the Annual Foundation Meeting there shall be a general call for nominations to all members with a statement that the Executive Committee will receive suggestions for nominations at any time before the annual Foundation meeting. The Governance Committee shall then report its nominees to the attending membership at the Annual Foundation Meeting

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Section 3: Additional Standing Committees. The Board of Directors may, by resolution, provide for any additional standing committees necessary for the proper conduct of the affairs of the Foundation. Ad hoc committees may be established by the President with the approval of the Executive Committee. The duties and responsibilities of each committee, not inconsistent with the By-laws, shall be fixed by a charter approved by the Executive Committee. The Foundation President and the Garden Director shall be ex officio members of each committee and shall have the power to vote in committee meetings. Committee members may be drawn from the Board or from the Garden membership and all committee members shall have the power to vote.

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Article VII

Meetings of the Foundation Membership

Section 1: Regular Meetings. There shall be one meeting a year, the Annual Meeting of the Foundation, to be held in the Fall at the Garden in Chapel Hill, North _____
_____ Carolina.

Section 2: Special Meetings. Special meetings of the Foundation may be called by a majority vote of the Board of Directors in any of its official meetings.

Section 3: Notice. At least thirty (30) days prior to the date set for any meeting of the _____
_____ Foundation, notice of the time and place of such meeting shall be made through _____
_____ printed or electronic communication to each member of the Foundation.

Section 4: Quorum. Those members present at any regular or special meeting of the Foundation shall constitute a quorum for all purposes.

Article VIII

Fiscal Year

Section 1: Duration. The fiscal year of the Foundation shall be from July 1 through

June 30 inclusive.

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Article IX

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Amendments

Section 1: Method. These By-laws may be amended, altered, or repealed by the Board of Directors at any regular meeting or at any special meeting, provided notice of the proposed change or amendment is given in the notice of such meeting.

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Article X

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INDEMNIFICATION

Commented [A1]: Damon has reviewed this and also asked UNC to look at it the week of September 24, 2018. He and UNC determined that it does not need to be modified

Every member of the Board of Directors, officer, or employee of the Foundation may be indemnified by the corporation against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon such members of the Board, officer or employee in connection with any threatened, pending or completed action, suit or proceeding to which he or she may become involved by reason of his or her being or having been a member of the Board, officer or employee of the corporation, or any settlement thereof, unless adjudicated therein to provide for negligence or misconduct in the performance of his or her duties. Provide, however, that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the corporation. The foregoing right of indemnification shall be in addition and not exclusive of all other rights which such member of the Board, officer or employee is entitled. In addition, the Foundation shall maintain, at all times, a directors and officers liability insurance policy.

Commented [A2]: Damon added this language to ensure Board members are aware that such insurance exists.

Article XI

CONFLICTS OF INTEREST

The work of the Foundation is to be performed without any conflicts of interest. A “conflict of interest” is defined as an actual or perceived interest by a Board member of the Foundation in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. Officers and board members are obligated to always act ethically and in the best interest of the Foundation. This obligation requires that any officer or member, in the performance of Foundation duties, seek only the furtherance of the Foundation’s mission. At all times, officers and board members are prohibited from using their job title or the Foundation’s name or property, for private profit or benefit.

Commented [A3]: This replacement language provided by Carey Durham on October 2, 2018

To ensure the proper monitoring of any applicable "conflict of interest" disclosure, board members will annually be required to read the Foundation's Conflict of Interest Policy and then submit a signed copy of the Foundation's Conflict of Interest Disclosure Form to the Governance Committee Chair (or designee) by the first day of each calendar year.

...

Note: FYI the information below is the detail related to the nomination process that will now be

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The work of the Foundation is to be performed without conflicts of interest. Any activity that would influence or appear to influence decision making for the corporation for personal benefit or gain or that would limit or otherwise impact upon the ability of a director or employee to discharge duties or responsibilities in an ethical manner is to be avoided.¶

included in the Policies and Procedures

All Foundation members may submit nominations to the Governance Committee.

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Nominations must be received by the Governance Committee no later than September 1 to ensure there is sufficient time to evaluate each nominee. The Governance Committee shall then report its nominees to the membership at least 30 days before the Annual Foundation Meeting where elections occur

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