

BYLAWS FOR  
THE DALLAS ARBORETUM AND BOTANICAL  
SOCIETY, INCORPORATED

(As Amended and Restated Effective December 14, 2009)

NAME

The name of the organization shall be THE DALLAS ARBORETUM AND BOTANICAL SOCIETY, INCORPORATED, a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act, hereinafter referred to as "the Society".

PURPOSE AND OBJECTIVES

The purpose of the Society is to establish, develop, and maintain one or more Arboreta and Botanical Gardens for the benefit of the public and the Members, with the following objectives:

1. Accumulate, maintain, and conserve plant collections from the North Central Texas Region and from other areas of the world with similar climatic conditions and participate in plant collecting expeditions for the benefit, promotion and encouragement of the public and the Members.
2. Enhance and beautify the designated areas for the purposes of the Society.
3. Educate and encourage the public by various means, including research, lectures, displays, demonstrations, collections, publications and a library.
4. Study the adaptability of exotic and native plants to cultivation and their artistic, ornamental, and economic uses in local gardens.
5. Study the use of plant material to enhance the quality of our environment and to preserve the natural habitat to aid in the protection of native plants and birds.

6. To use all cash monies, gifts, pledges, bequests, securities, and other financial gain and assets to manage, maintain and develop Arboreta and Botanical Gardens which are for the benefit, promotion, and encouragement of the public and the Members. No part of the assets of the Society or the income therefrom shall ever inure to the benefit of any Member or any individual who has a private interest in the activities of the Society, nor shall any assets of the Society or income therefrom be used to influence legislation by propaganda or otherwise, or to participate or interfere, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

7. Notwithstanding any of the above statements of purposes and powers, the Society shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Society.

## ARTICLE I

### OFFICES

Section 1. Principal Office. The principal office of the Society shall be located in the City of Dallas, Dallas County, State of Texas. The Society also may have and maintain offices at such other places, both within and without the State of Texas, as the Board of Directors may from time to time determine.

Section 2. Registered Office and Registered Agent. The Society shall have and continue to maintain in the State of Texas a registered office and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the Society in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors. Until otherwise changed by subsequent resolution of the Board of Directors, the registered office of the Society shall be at 8617 Garland Road, Dallas, Texas 75218, and the registered agent shall be the President of the Society.

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Powers. The business and affairs of the Society shall be managed by its Board of Directors which may exercise all such powers of the Society and do all such lawful acts and things as are not expressly limited by statute, by the Articles of Incorporation of the Society, or by these Bylaws.

Section 2. Number of Directors. The number of directors constituting the Board of Directors of the Society shall consist of seventy-five members. The Board of Directors in its sole and absolute discretion may appoint such other ex-officio members of the Board as it may determine from time to time. The term of each ex-officio member appointed by the Board of Directors shall be determined by the Board at the time of appointment and each such member shall have such powers and privileges as determined by the Board. The President and the Director of the Gardens shall be ex-officio members of the Board of Directors, and shall not be entitled to vote. If an ex-officio member is to be a representative of an entity, organization or group, such member shall designate its official representative who shall be entitled to attend all meetings of the Board of Directors and to exercise all powers and privileges of such ex-officio member.

Section 3. Election and Terms. Each director elected by the Members at an annual meeting of the Society shall serve a three-year term commencing as of the first day of the first fiscal year of the Society following his election. The terms of the members of the Board of Directors are staggered so that the terms of one-third of the directors expire as of the last day of each fiscal year of the Society. At each annual meeting of the Society, the Members shall elect the number of new directors equal to the number of directors whose terms expire as of the end of the fiscal year for which such annual meeting is held. Each director shall hold office until his or her successor shall be elected and shall qualify or until his or her earlier death, resignation, or removal. No director (except a director who is also an officer of the Society) shall be eligible for more than two full three-year terms consecutively. Upon completion of two-consecutive terms, such director shall not be eligible to be nominated or elected as a director before the annual meeting for the first fiscal year of the Society next following the fiscal year as of which his second-consecutive term expired. Ex-officio members whose terms expire as of the end of a fiscal year may be re-appointed for one or more successor terms as determined by the Board of Directors in its sole and absolute discretion. All directors must be Members of the Society, but all need not be residents of the State of Texas.

Section 4. Vacancies. Any vacancy occurring in the Board of Directors may be filled at any regular or special meeting of the Board of Directors by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors is present. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a meeting of the Members called for that purpose by the Board of Directors in its sole discretion, or by an affirmative vote of a majority of the directors present at a regular or special meeting at which a quorum is present. A director elected to fill a newly created directorship shall hold office until the next succeeding annual meeting of the Members and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal; provided, however, the Board of Directors may extend the term of such newly created directorship beyond such next annual election, as this may reasonably be required to ensure compliance with the terms and conditions of Section 3 of this Article.

Section 5. Resignation and Removal. Any director may resign at any time upon giving written notice to the Board of Directors. At any meeting of the Board of Directors called expressly for the purpose of removing one or more directors, such director or directors may be removed by majority vote of the directors then in office.

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held with notice at such time and at such place either within or without the State of Texas as from time to time shall be prescribed by resolution of the Board of Directors. The Board of Directors shall meet four or more times a year, either through regular or special meetings.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman or Vice Chairman of the Board of Directors or by the President, and shall be called by the Chairman or Vice Chairman of the Board of Directors, the President or the Secretary on the written request of two directors. Written notice of special meetings of the Board of Directors shall be given to each director at least two days before the date of the meeting (except as provided under Article VII, Section 5).

Section 8. Business at Regular or Special Meetings. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting (except as provided in Article VII, Section 5).

Section 9. Quorum of Directors. One-third of the directors then in office and present in person shall constitute a quorum for the transaction of business unless a greater number is required by law or the Articles of Incorporation of the Society. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement of the meeting, until a quorum shall be present.

Section 10. Act of Directors' Meeting. The act of a majority of the directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or the Articles of Incorporation of the Society. The Board of Directors shall keep minutes of their meetings and action, and the Chairman of the Board of Directors (or his or her delegate) shall distribute copies of the minutes of each meeting to each director within a reasonable time after such meeting.

Section 11. Action by Written Consent Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors or any committee thereof under the applicable provisions of any statute, the Articles of Incorporation of the Society or these Bylaws may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all members of the Board of Directors or respective committee thereof, as the case may be. Such consent shall have the same force and effect as a unanimous vote of directors or committee members, as the case may be.

Section 12. Compensation of Directors. As specifically prescribed from time to time by resolution of the Board of Directors, directors may be paid their expenses for attendance at a meeting of the Board of Directors but may not be otherwise compensated for serving on the Board. This provision shall not preclude any director from serving the Society in any special capacity and receiving compensation therefor. Members of special or standing committees may be allowed like expenses for attending committee meetings.

Section 13. Loans Prohibited. No loans shall be made by the Society to its directors, committee members or officers.

Section 14. Fiduciary Position. The directors (by virtue of their directorship) are to stand in a fiduciary relationship to the Society; provided, however, in no event and under no circumstances, are the directors (by virtue of their directorship) to be deemed to stand in any fiduciary relationship to the Members.

Section 15. Director Emeritus. The Board of Directors in its sole and absolute discretion may bestow Director Emeritus status for life upon any one or more individuals whom the Board determines has served the Society in an active capacity for a number of years with enthusiasm, generosity, loyalty and vision and who has made a genuine difference in the development of the Society. Each Director Emeritus shall be entitled to attend all meetings of the Board of Directors and shall have such other powers and privileges as may be determined by the Board.

### ARTICLE III

#### COMMITTEES OF THE BOARD

Section 1. General. The Board of Directors, by resolution shall designate (or as otherwise provided hereinafter) the members of an Executive Committee, a Nominating Committee, an Architecture and Construction Committee, a Gardens and Grounds Committee, a Marketing and Public Programs Committee, a Development Committee, an Education and Research Committee, a Finance and Administration Committee, and a Governmental Affairs Committee, and such other committees as may be determined by the Board from time to time in its sole and absolute discretion. Except with respect to the Executive Committee, the membership of each committee shall consist of two or more persons, at least one of whom must be a director. A majority of the members of the Executive Committee shall be directors. The term of each member of a committee shall be determined by the Board of Directors at the time of appointment and shall coincide with the fiscal year of the Society. Each such committee shall have and may exercise only such authority as may specifically be delegated by the Articles of Incorporation of the Society, by these Bylaws, or by resolution of the Board of Directors; provided, however, that at no time shall a committee have the authority of the Board of Directors in reference to amending the Articles of Incorporation, approving a plan of merger or consolidation of the Society, recommending the sale, lease, or exchange of all or substantially all of the property and assets of the Society otherwise than in the usual and regular course of its business, voluntary dissolving the Society, amending, altering or repealing the Bylaws or adopting new Bylaws for the Society, filling vacancies in or removing members of the Board of Directors, or fixing the compensation of any member of such committee, or altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be so amendable or repealable. The Board of Directors shall designate the chairman of each committee, who must be a member of the Board. Vacancies in the membership of each committee shall be filled by the chairman of that committee and the Chairman of the

Board. The designation of each committee and the delegation of authority thereto shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law. Any non-director who becomes a member of a committee shall have the same responsibility with respect to any committee as a director who is a member thereof.

Section 2. Executive Committee. The membership of the Executive Committee shall consist of the Chairman of the Board of Directors, each Vice Chairman, the President, the Treasurer, the Secretary, the chairman of each committee of the Board of Directors and such ex-officio members of the Board of Directors as the Board determines appropriate for appointment to the Executive Committee. Subject to the limitations set forth above in Section 1 of this Article III, the Executive Committee shall have and exercise all authority of the Board of Directors between meetings of the Board of Directors. A majority of the members of the Executive Committee must be members of the Board of Directors. Only directors shall be voting members of the Executive Committee. At all meetings of the Executive Committee the presence of a majority of the voting members of the Executive Committee shall be a quorum for the transaction of business, and the act of a majority of the voting members present at any meeting at which a quorum is present shall constitute the act of the Executive Committee. The Executive Committee shall keep regular minutes of its proceedings and report the same to the Board of Directors when required. Time, place, and notice (if any) of Executive Committee meetings shall be determined by the Executive Committee.

Section 3. Nominating Committee. The Nominating Committee shall be comprised of at least five members, who shall be appointed in a manner and on such terms as the Board of Directors deems appropriate. No paid officer or employee of the Society or any affiliate thereof shall be eligible to serve on the Nominating Committee. At all meetings of the Nominating Committee the presence of a majority of the members of the Nominating Committee shall be a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall constitute the act of the Nominating Committee. Time, place, and notice (if any) of Nominating Committee meetings shall be determined by the Nominating Committee.

The primary functions of the Nominating Committee shall be:

- (i) to nominate candidates for the Board of Directors to be elected at the next annual meeting of the Members, with such Committee being open to suggestions and advice from the membership with respect to suitable candidates;
- (ii) to orient new directors at the beginning of their term of office;
- (iii) to advise the Board of Directors with respect to candidates for membership on the Executive Committee and the various other committees of the Board, as such advice may be requested from

time to time by the Board of Directors;

- (iv) to advise the Board of Directors with respect to candidates for the officer positions to be appointed at the next annual meeting of the Board of Directors;
- (v) to perform such other tasks and to render such other advice as may be requested from time to time by the Board of Directors; and
- (vi) to nominate candidates to fill vacancies on the Board of Directors as they occur.

#### ARTICLE IV

##### MEMBERS

Section 1. General. (a) While, in no event and under no circumstances, shall the Members of the Society be deemed to have any contract, property or other vested rights (normally associated with shareholders of a profit-making corporation) in the Society, the Board of Directors recognizes a vital and continuing importance and need for membership participation in the activities of the Society. Specifically, unless otherwise redefined by the Board of Directors, the role and function of the Members shall primarily be:

- (i) to provide a foundation of support for the services conducted by the Society;
- (ii) to help provide the Society with the financial resources necessary to conduct its activities;
- (iii) to provide the Society with community "input" and ascertainment so as to assist the Board of Directors and officers in managing and conducting the affairs of the Society; and
- (iv) to exercise those rights and powers specifically conferred upon the Members by the Board of Directors from time to time.

(b) A person shall become a voting Member of the Society by making a grant or donation to the Society in such amount as may from time to time be determined by the Board of Directors. The duration of each membership in the Society shall be one year commencing as of the date of the Society's receipt and acceptance of the prescribed payment or donation. While it is desirable that Members be drawn from residents of the area served by the Society, there is no residency requirement for membership.



Memberships are not assignable or transferable.

(c) The membership rights of a Member which is a corporation or other entity shall be exercised on behalf of such corporation or entity by the individual designated in written notification to the Society signed by the president of such corporation or entity (or his designated representative).

(d) The President of the Society (or his designee) shall at all times have the right to reject any offers to subscribe to the Society's services if, in his or her sole discretion, the acceptance of such offer would be contrary to the purposes of the Society or otherwise not in the best interests of the Society.

(e) Following the receipt and acceptance of a payment or donation in the amount set forth in subsection (b) above, the Society shall give notification of membership and of the rights pertaining thereto in such manner as the officers of the Society shall deem appropriate.

(f) Any Member may resign such membership by submitting a resignation in writing to the Board of Directors or to any officer of the Society; provided, however, that such resignation shall not release such Member from the obligation of paying any unpaid balance of any pledge or contribution to the Society.

Section 2. Voting Rights and Advisory Resolutions. The Members shall be entitled to one vote on each matter submitted to the vote of the Members, and as expressly authorized by these Bylaws or by resolution of the Board of Directors. Specifically, the Members shall have the right:

(a) To vote with respect to the election of directors in accordance with the procedures established from time to time by the Board of Directors and the Nominating Committee.

(b) To nominate candidates with respect to the election of directors at any meeting of Members specifically called for such purpose, provided:

(i) each such nomination is made by at least ten percent of all Members of the Society (who are in good standing at the time notice of such meeting is given) by means of written statement setting forth the name of each nominee and signed by all such Members, with such written statement having been delivered to the President or Secretary of the Society at least five days prior to the date of such meeting; and

(ii) each such nominee is present in person at such meeting and

declares his or her willingness to serve as a director. Cumulative voting by Members is hereby expressly prohibited at any annual or special meeting of Members and in all instances. Any vote of the Members may be taken by voice or by show of hands unless any one person entitled to vote objects, in which case written ballots shall be used.

The Members, at any annual or special meeting, may (as they deem appropriate) pass any non-binding advisory resolutions with respect to matters concerning the Society and may submit such resolutions to the Board of Directors, or any committee thereof, or to the officers of the Society who (in each case) shall give good faith consideration to the substance of such resolutions. Special classes of non-voting, honorary, or other special categories of membership may be established from time to time by the Board of Directors.

### Section 3. Meetings of Members.

(a) An annual meeting of Members shall be held each year at such time and place as shall be determined by the Board of Directors of the Society. Except for the election of directors, the passing of advisory resolutions, the transaction of any other business affecting the internal organization of the annual meeting, or as may otherwise be determined by the Board of Directors from time to time, such annual meeting shall be primarily for informational purposes. The annual meeting of the Society shall apprise the Members of the activities of the Society during the preceding year and also of any appropriate and material pending activities of the Society. A representative from the Board of Directors and an officer of the Society shall be present at such annual meeting to answer appropriate questions and to receive appropriate suggestions with respect to the management and operation of the Society.

(b) A special meeting of the Members may be called by the Chairman of the Board or Directors, Vice Chairman of the Board, or the President, or by resolution of the Board of Directors or the Executive Committee, or upon the written request of not less than ten percent of all Members of the Society.

(c) Twenty-five Members in good standing who are present in person shall constitute a quorum for the transaction of business at a meeting of the Members. The vote of a majority of the Members present in person at a meeting at which a quorum is present shall constitute the act of the Members, unless the vote of a greater number of Members is required by the provisions of any applicable statute.

(d) The Secretary of the Society may give notice of each annual or special meeting of the Members in the manner directed by the Board of Directors of the Society, such notice to be given in each case not less than ten nor more than fifty days prior to the date of such meeting. Notice may be by publication, and the Society shall,

where reasonably practicable, additionally use its communication facilities to announce to its Members the calling of such annual or special meeting of Members. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the Members need be specified in the notice of such meeting, unless specifically required by law or by resolution of the Board of Directors.

## ARTICLE V

### OFFICERS

Section 1. Executive Officers. The officers of the Society shall consist of a Chairman of the Board, one or more Vice Chairmen of the Board, a President, a Secretary, and a Treasurer, each of whom shall be appointed by the Board of Directors as provided in Section 2 of this Article. Any two offices may be held by the same person, except that the President and the Secretary shall not be the same person.

Section 2. Election and Qualification. Annually, the Board of Directors shall appoint a President, a Secretary, and a Treasurer. The Secretary and Treasurer must be members of the Board of Directors. The Board also shall appoint one of its members Chairman of the Board and may appoint one or more of its members Vice Chairman of the Board.

Section 3. Other Officers and Agents. The Board of Directors may appoint such other officers, assistant officers and agents as may be necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. Term, Removal and Vacancies. Each officer of the Society shall hold office until his or her successor is chosen and qualified or until his or her earlier death, resignation or removal. Any officer may resign at any time upon giving written notice to the Board of Directors. Any officer or agent or member of a committee appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Society will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer or agent shall not of itself create contract rights. Any vacancy occurring in any office of the Society by reason of the death, resignation, or removal of an individual, or otherwise, shall be filled by the Board of Directors.

Section 5.Chairman of the Board. Unless otherwise designated by resolution of the Board of Directors, the Chairman of the Board shall be the chief executive officer of the Society, and in the absence of the Chairman of the Board, the Vice Chairman shall assume the powers and duties of the Chairman. The chief executive officer shall preside at all meetings of the Members and the Board of Directors, and shall have such other powers and duties as usually pertain to such office or as may be delegated by the Board of Directors.

Section 6.President. Unless otherwise designated by resolution of the Board of Directors, the President shall be the chief operating officer of the Society and shall have such powers and duties as usually pertain to such office, except as the same may be modified by the Board of Directors. Unless the Board of Directors shall otherwise delegate such duties, the President shall be an ex-officio member of all standing committees (except the Nominating Committee), shall have general powers of oversight, supervision, and management of the business and affairs of the Society, and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the Society, if any, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Society.

Section 7.Secretary. The Secretary shall attend all meetings of the Board of Directors, and all meetings of the Members, and record all the proceedings of the meetings of the Members and of the Board of Directors in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. He or she shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he or she shall be. He or she shall keep in safe custody the seal of the Society, and, when authorized by the Board of Directors, affix the same to any instrument requiring it, and when so affixed, it shall be attested by his or her signature.

Section 8.Treasurer. The Treasurer shall have the custody of the assets and funds of the Society, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Society, and shall deposit all monies and other valuable effects in the name and to the credit of the Society in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Society as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer, and of the financial condition of the Society.

Section 9.Officer's Bond. If expressly required by the Board of Directors, any officer so required shall give the Society a bond (which shall be renewed as the Board may require) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for

the faithful performance of the duties of his or her office and for the restoration to the Society, in case of his or her death, resignation, retirement or removal from office, of any and all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Society.

## ARTICLE VI

### LIMITATION OF LIABILITY; INDEMNIFICATION

Section 1. Limitation of Liability. No person shall be liable to the Society on account of any action taken or omitted to be taken in good faith as a director, officer, Executive Committee member, advisory counsel member, committee member, agent or employee of the Society or other entity as the Board of Directors may provide by resolution, if in respect thereto he or she used or exercised ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or omission. Without limitation of the foregoing, any such person shall be deemed to have used and exercised such degree of care and prudence if he or she took or omitted to take such action in good faith upon reliance of advice of counsel for the Society, the books of account or other records of the Society or reports or information made or furnished to the Society by any of its officers, accountants, agents or employees, or by independent accountants, auditors, appraisers or other experts employed by the Society and selected with ordinary business care and prudence by the Board of Directors or an authorized officer or committee of the Society.

Section 2. Indemnification of Directors. The Society shall indemnify a director of the Society against reasonable expenses incurred by such director in connection with a proceeding in which he or she is a named defendant or respondent because he or she is or was such a director, as the case may be, if he or she has been wholly successful, on the merits or otherwise, in the defense of the proceeding. The Society shall also indemnify a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director, against any judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses actually incurred by the person in connection with the proceeding if it is determined, in the manner described below, that the person (i) conducted himself or herself in good faith, (ii) reasonably believed, in the case of conduct in his or her official capacity as a director of the Society, that his or her conduct was in the Society's best interests, and in all other cases, that his or her conduct was at least not opposed to the Society's best interests and (iii) in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; provided that if the proceeding was brought by or on behalf of the Society, the indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding; and provided further that a director may not be indemnified for obligations resulting from a proceeding (i) in which such director is found liable on the basis that he or she improperly received personal benefit, whether or not the benefit resulted from an action taken in such director's official

capacity, or (ii) in which the director is found liable to the Society. Determinations that a person has satisfied the prescribed conduct and belief standards must be made (i) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the proceeding, (ii) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors designated to act in the matter by a majority vote of all directors and consisting solely of two or more directors who as of the time of the vote are not named defendants or respondents in the proceeding, or (iii) by special legal counsel selected by the Board of Directors or a committee of the Board if the vote as set forth in clause (i) cannot be obtained and the committee described in clause (ii) cannot be established. Authorization of indemnification and a termination as to reasonableness of expenses shall be made in the same manner as the determination that the person has satisfied the prescribed conduct and belief standards, except that if the determination that the person has satisfied the prescribed conduct and belief standards is made by special legal counsel, authorization of indemnification and the determination as to reasonableness of expenses shall be made by the Board of Directors or a committee of the Board by vote as set forth in clause (i) or (ii) of the immediately preceding sentence or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors. The termination of a proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, is not of itself determinative that the person did not meet the requirements for indemnification set forth above. Notwithstanding any other provision of these Bylaws, the Society shall pay or reimburse expenses incurred by a director in connection with his or her appearance as a witness or other participation in a proceeding at a time when he or she is not a named defendant or respondent in the proceeding.

Section 3. Advancement of Expenses to Directors. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Society in advance of the final disposition of the proceeding after the Society receives (i) a written affirmation by the director of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under Section 2 of this Article and a written undertaking by or on behalf of such director to repay the amount paid or reimbursed if it is ultimately determined that he or she has not met such standard, and (ii) a determination that the facts then known to those making the determination would not preclude indemnification under Section 2 of this Article. The written undertaking described in the immediately preceding sentence to repay the amount paid or reimbursed to the director by the Society must be an unlimited general obligation of the director but need not be secured, and it may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payment under this Section 3 must be made in the manner specified in Section 2 of this Article for the determination that the person has satisfied the conduct and belief standards.

Section 4. Officers, Executive Committee Members and Standing Committee Members. The Society shall indemnify and advance expenses to an officer, Executive Committee member, or standing committee member of the Society to the same extent that it is required

to indemnify and advance expenses to directors under these Bylaws or by statute. In addition, the Society may indemnify and advance expenses to an officer, Executive Committee member, or standing committee member to such further extent, consistent with law, as may be provided by the Articles of Incorporation of the Society, these Bylaws, general or specific action of the Board of Directors, or contract or as permitted or required by common law.

Section 5.Others. The Society may indemnify and advance expenses to all other persons listed in the first sentence of Section 1 of this Article and not otherwise indemnified under the mandatory indemnification provisions of Section 2 or Section 4 of this Article, to the same extent that the Society is permitted or required to indemnify and advance expenses to directors under the Bylaws or by statute. The Society may indemnify and advance expenses to persons who are not or were not officers, employees or agents of the Society but who are or were serving at the request of the Society as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation subject to the provisions of the Texas Non-Profit Corporation Act, non-profit corporation organized under laws other than the laws of Texas, other non-profit entity, corporation for profit subject to the provisions of the Texas Business Corporation Act, corporation for profit organized under laws other than the laws of Texas, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it is permitted or required to indemnify and advance expenses to directors under this Article or by statute. In addition, the Society may indemnify and advance expenses to any person described above in this Section 5 to such further extent, consistent with law, as may be provided by the Articles of Incorporation of the Society, these Bylaws, general or specific action of the Board of Directors, or contract or as permitted or required by common law.

Section 6.Insurance. The Society may purchase and maintain insurance on behalf of any person who is or was a corporation or entity, officer, Executive Committee member, committee member, employee or agent of the Society or any other person described in Section 5 of this Article against any liability asserted against him or her and incurred by such person in such a capacity or arising out of his or her status as such a person, whether or not the Society would have the power to indemnify him or her against that liability under these Bylaws or by statute.

Section 7.Limitation. Notwithstanding the other provisions of this Article, the Society may not indemnify or advance expenses to or maintain insurance on behalf of any person if such indemnification, advancement or maintenance of insurance would subject the Society to income or excise tax under the Internal Revenue Code of 1986, as amended, or the provisions of any subsequent United States internal revenue law.

Section 8.Entitlement. These indemnification provisions shall inure to each of the directors, officers, Executive committee members, advisory counsel members, committee members, employees, and agents of the Society, and other persons described in Section 5 of this Article, whether or not the claim asserted against him or her is based on matters that

antedate the adoption of this Article, and in the event of any such person's death shall extend to his or her legal representatives, heirs and devisees, but such rights shall not be exclusive of any other rights to which such person may be entitled under any bylaw, agreement, vote of directors, principle of law or otherwise.

Section 9. Definitions. For purposes of this Article:

- (a) The term "expenses" includes court costs and attorney's fees;
- (b) The term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding;
- (c) The term "director" means any person who is or was a director of the Society and any person who, while serving as a director of the Society, is or was serving at the request of the Society as a director, officer, partner, venturer, proprietor, trustee, agent or similar functionary of another corporation or other entity described in Section 5 of this Article;
- (d) The term "official capacity" means, when used with respect to a director, the office of director in the Society and, when used with respect to a person other than a director, the elective or appointive committee member, or committee member, or the employment or agency relationship undertaken by the employee or agent on behalf of the Society, but does not include service for any other corporation or other entity; and
- (e) The Society is deemed to have requested a director to serve an employee benefit plan whenever the performance by such director of his or her duties to the Society also imposes duties on or otherwise involves services by such director of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law are deemed fines. Action taken or omitted to be taken by a director with respect to an employee benefit plan in the performance of his or her duties for a purpose reasonably believed by such director to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the Society.

Section 10. Rights Cumulative. The provisions of this Article shall be deemed cumulative of and in addition to any other limitation of liability or right of indemnity to which the Society directors, officers, Executive Committee members, advisory counsel members, committee members, agents or employees or any other persons described in Section 5 of this Article may be entitled under any bylaw, agreement, vote of directors, principle of law or otherwise.



Section 11. Severability. The provisions of this Article are intended to comply with Article 1396-2.22A of the Texas Non-Profit Corporation Act. To the extent that any provision of this Article authorizes or requires indemnification or the advancement of expenses contrary to such statute or the Articles of Incorporation, the Society's power to indemnify or advance expenses under such provision shall be limited to that permitted by such statute and the Articles of Incorporation, and any limitation required by such statute or the Articles of Incorporation shall not affect the validity of any other provision of this Article.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. No Dividends. The Board of Directors shall not declare, and the Society shall not pay, any dividends of any kind under any circumstances.

Section 2. Checks. All checks or demands for money and notes of the Society shall be signed by such officer or officers or such other person or persons as the Board of Directors from time to time may designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Seal. The corporate seal, if any, shall have inscribed thereon the name of the Society and may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 5. Amendments. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of a majority of directors present at any regular or special meeting at which a quorum is present, provided that at least ten (10) days' written notice is given of the intention to alter, amend, or repeal the Bylaws or to adopt new Bylaws at such meeting.

Section 6. Methods of Giving Notice. Unless otherwise specifically provided for in these Bylaws, whenever any notice is required to be given to any director, or committee member under the provisions of any statute, the Articles of Incorporation or these Bylaws, it shall be given in writing and delivered at such address as appears on the books of the Society, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail with sufficient postage thereon prepaid. Notice to directors and committee members may also be given by telegram or telephone, and notice given by such means shall be deemed given at the time it is delivered to the telegraph office or the call is personally received.

Section 7.Waiver of Notice. Whenever any notice is required to be given to any Member, director or committee member under the provisions of any statute, the Articles of Incorporation of the Society or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 8.Attendance as Waiver. Attendance of a director or committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 9.Telephone and Similar Committee Meetings. In those instances where it is reasonably necessary to transact business of the Society at any regular or special meeting of any committee of the Board of Directors and where a quorum is not present at such meeting, the presence of any or all members of a committee at such meeting shall be deemed to include not only physical presence, but also the participatory presence of a member of a committee by means of conference telephone or similar communication equipment through which all persons participating in the meeting for the express purpose of objecting to the transaction of any business at such meeting can hear each other. Notwithstanding the above, the provisions of this Section 9 shall not be applicable, however, with respect to any regular or special meeting of the Board of Directors or any meeting of the Members of the Society.

#### CERTIFICATION

I, Stephen A. Coke, Chairman of the Society hereby certify that the forgoing is a true, accurate and complete copy of the amended and restated Bylaws of the Dallas Arboretum and Botanical Society, Incorporated, adopted by its Board of Directors as of December 14, 2009.

Stephen A. Coke, Chairman