

**BYLAWS**

**OF**

**ASPEN SANTA FE ENDOWMENT, INC.**

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**ASPEN SANTA FE BALLET ENDOWMENT, INC.**

THESE BYLAWS OF ASPEN SANTA FE BALLET ENDOWMENT, INC. (the "Bylaws") are hereby duly adopted and executed to be effective the 31<sup>st</sup> day of March, 2017 ("Effective Date") by the undersigned.

The Certificate of Incorporation for the Foundation was filed in the Office of the Secretary of State of New Mexico on March 22, 2017.

**ARTICLE ONE**

**DEFINITIONS**

The following terms used in these Bylaws shall have the following meanings (unless otherwise expressly provided herein):

- A. "*Applicable Transaction*" shall have the meaning set forth in Section 12.02 hereof.
- B. "*Alternative*", as the same refers to the Conflict of Interest provisions, shall have the meaning set forth in Section 12.04(E) hereof.
- C. "*Board*" shall mean the Board of Directors of the Foundation as the same is duly constituted pursuant to Article Four hereof.
- D. "*Bylaws*" shall mean these Bylaws of the Foundation, currently in effect and duly approved, as the same may be amended from time to time.
- E. "*Certificate of Incorporation*" shall mean the Certificate of Incorporation of the Foundation, currently in effect and duly filed with the New Mexico Public Regulation Commission, as the same may be amended from time to time.
- F. "*Code*" shall mean collectively the Internal Revenue Code of 1986, as amended, and the corresponding Treasury Regulations thereunder, as amended.
- G. "*Committee Member*" shall have the meaning set forth in Section 12.02(A) hereof.
- H. "*Criteria*", as the same refers to the Conflict of Interest provisions, shall have the meaning set forth in Section 12.03 hereof.
- I. "*Designated Compensation*" shall have the meaning set forth in Section 12.03 hereof.

J. "*Effective Date*" shall mean the date upon which the Bylaws became effective as stated in the preamble hereinabove.

K. "*Foundation*" means the ASPEN SANTA FE BALLET ENDOWMENT, INC., a New Mexico nonprofit corporation.

L. "*Fiscal Year*" shall have the meaning set forth in Section 14.04 hereof.

M. "*NMNCA*" shall mean the New Mexico Nonprofit Corporations Act, as enacted as of the Effective Date of these Bylaws and as the same may be amended from time to time.

N. "*Notice*" shall have the meaning set forth in Section 4.16 hereof.

O. "*Person*", whether or not capitalized, means any individual, partnership, Limited Liability Company, corporation, association, business trust, government or political subdivision thereof, governmental agency or other entity.

P. "*Principal Office*" shall have the meaning set forth in Section 2.02 hereof.

Q. "*Registered Office*" shall have the meaning set forth in Section 2.02 hereof.

R. "*Related Party*" shall have the meaning set forth in Section 12.02(B) hereof.

S. "*Resignation Notice*" shall have the meaning set forth in Section 4.09 hereof.

## ARTICLE TWO

### NAME, LOCATION AND OFFICES

**2.01 Name.** The name of this Foundation is ASPEN SANTA FE BALLET ENDOWMENT, INC. ("*Foundation*").

**2.02 Registered, Principal and Other Offices.** The initial registered office ("*Registered Office*") of the Foundation shall be the Registered Office as stated in the Foundation's Certificate of Incorporation. The Foundation may also have offices at such other places both within and without the State of New Mexico as may be determined from time to time by the Board of Directors ("*Board*"), or as may be required to accomplish the Foundation's purposes. For the purpose of these Bylaws, any reference to the principal office ("*Principal Office*") of the Foundation shall be deemed to refer to such location as may be determined by the Board and set forth in a resolution duly adopted thereby.

**ARTICLE THREE**

**ACTIVITIES OF THE FOUNDATION**

**3.01 Purpose.** The purpose or purposes for which the Foundation is organized are as follows:

A. The administration of Foundation assets and income for exclusively charitable purposes;

**The Aspen Santa Fe Ballet Endowment, Inc. was established in 2017 as a separate non-profit public benefit corporation for the purpose of holding and managing endowment funds for the Aspen Santa Fe Ballet, Inc. (ASFB), a Colorado non-profit corporation. It seeks to provide the ASFB with a reliable source of support while protecting its investments against inflation and wide swings in the capital markets.**

**Each year, a transfer from the Foundation provides support for a variety of ASFB needs, including but not limited to, the creation of new works, touring, financial aid for ASFB School students and the company's Folklorico programs in both Colorado and New Mexico. The annual operating transfer from the Foundation is an increasingly important source of funding for the ASFB.**

B. The corporation is organized under the provisions of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code exclusively for the purpose of maintaining a Type II support organization as described in section 509 (a)(3)(B)9ii);

C. At all times and within such purposes, to operate exclusively for charitable, religious, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "*Code*"), and to transact such other business as may be permitted corporations exempt from tax under Section 501(c)(3) of the Code and incorporated under the New Mexico Nonprofit Corporation Act ("*NMNCA*").

**3.02 Powers.** The Foundation shall possess all corporate powers provided by the NMNCA and shall be entitled to engage in any legitimate pursuit not in contravention of the laws of the State of New Mexico and permitted foundations exempt from tax under Section 501(c)(3) of the Code.

**3.03 Certain Acts Prohibited.** Except as otherwise permitted by Section 501(h) of the Code, no substantial part of the activities of the Foundation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the Foundation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

Notwithstanding any other provision of these Bylaws, the Foundation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

## ARTICLE FOUR

### BOARD OF DIRECTORS

**4.01 General Powers.** The Foundation's business, affairs, and property shall be managed by its Board. The Board may adopt such rules and regulations for the conduct of its meetings and management of the business and affairs of the Foundation as it may deem proper so long as the same are not inconsistent with the laws of the State of New Mexico, the Certificate of Incorporation of this Foundation or these Bylaws. Notwithstanding any provision in these Bylaws to the contrary, the Board shall not exercise any power or take any action that would jeopardize in any manner the Foundation's status as an organization described in Section 501(c)(3) of the Code.

**4.02 Director Duties In General.** Directors shall exercise ordinary business judgment in managing the affairs of the Foundation. In acting in their official capacity as Directors of the Foundation, Directors shall act in good faith and take actions they reasonably believe to be in the best interest of the Foundation and that are not unlawful. In all instances, the members of the Board shall not take any action that they should reasonably believe would be opposed to the Foundation's best interests or would be unlawful. A Director shall not be liable to the Foundation if, in the exercise of ordinary care, the Director acts in good faith relying upon written financial and/or legal statements provided by an accountant or attorney retained by the Foundation.

**4.03 Liability for Acts and Omissions.** A Director of the Foundation is not liable to the Foundation or its members for monetary damages for an act or omission in such Director's capacity as a Director, except that this Section 4.03 does not eliminate or limit the liability of a Director resulting from:

- A. a breach of a Director's duty of loyalty to the Foundation;
- B. an act or omission not in good faith that constitutes a breach of duty of the Director to the Foundation or an act or omission that involves intentional misconduct or a knowing violation of the law;
- C. a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office; or
- D. an act or omission for which the liability of a Director is expressly provided for by statute.

**4.04 Compensation.** Directors shall not receive compensation for their services as such, but may be reimbursed for bona fide expenses incurred and arising out of services rendered as members of the Board.

**4.05 Number of Directors.** The composition of the Board of the Foundation shall consist of not less than five nor more than nine Directors. In all cases, not less than a majority of the board shall be composed of the Executive Director and other members of the Aspen Santa Fe Ballet, Inc. Board of Directors to be designated from time to time by the Board of Directors of Aspen Santa Fe Ballet, Inc. The other members shall be elected by the Board of Directors as hereinafter provided.

**4.06 Term of Directors.** Each Director of the Foundation shall hold office for a term of three (3) years, and may be elected for unlimited successive terms of three (3) years,

**4.07 Election of Directors.** The Directors of the Foundation shall be elected by the Board at its annual meeting.

**4.08 Removal of Director.** Except as provided in Section 4.15 hereof, any Director may be removed, with or without cause, at any meeting of the Directors called expressly for that purpose, by vote of a two-thirds (2/3<sup>ds</sup>) majority of the Directors present at the meeting.

**4.09 Resignation of Directors.** Any Director of the Foundation may resign by giving written notice thereof (the "*Resignation Notice*"), to the President of the Foundation. A resignation shall take effect on the date specified in the Resignation Notice. If a Director's resignation would otherwise leave the Foundation with less than the minimum number of Directors as required by the provisions of Section 4.05 hereof, however, the effective date of the Resignation Notice shall be the date upon which the resigning Director's vacancy is filled pursuant to Section 4.10 hereof. Upon receipt of a Resignation Notice, the President shall forthwith deliver a copy thereof to the Board of the Foundation.

**4.10 Vacancies.** Any vacancy occurring in the Board by reason of the resignation, removal or death of a Director shall be filled by the affirmative vote of a majority of the remaining Directors at a regular meeting, or at a special meeting called for that purpose. If a vacancy would leave the Foundation with less than the minimum number of Directors as required by the provisions of Section 4.05 hereof, then the Board shall name a replacement Director at the next meeting of the Board before considering any other Foundation matter, and such vacancy shall be filled by (i) a unanimous vote of the remaining Directors if less than three (3) Directors remain, or (ii) as otherwise stated in this Section 4.10 if more than three (3) Directors remain. A Director elected to fill a vacancy pursuant to this Section 4.10 shall be elected for either the unexpired term of his or her predecessor in office or for such shorter period as specified by the Board at the time of election.

**4.11 Annual Meeting.** The annual meeting of the Board shall be held each year at such date, time, and place as designated by the Board and specified in the notice of the meeting. The purposes of such annual meeting shall be: (i) the election of Directors; (ii) the election of officers; and (iii) the transaction of such other business as may come before the meeting. The

annual meeting of the Directors shall be called by the President, Vice President, or any three (3) Directors.

**4.12 Regular Meetings.** Regular meetings of Board shall be held on any date and time, at any place (either within or without the State of New Mexico), as designated by resolution of the Board. In the absence of any such designation, regular meetings shall be held at the registered office of the Foundation in the State of New Mexico. Other than the Board's resolution setting the date, time, and place of a regular meeting, no additional notice need be given of any such regular meeting.

**4.13 Special Meetings.** Special meetings of the Board may be called at the request of the President, Vice President, or a majority of the Directors then in office. The person or persons calling the meeting may fix the meeting on any date and time, and at any place (either within or without the State of New Mexico) as the location for holding any special meeting of the Board.

**4.14 Meeting Other Than in Person.** The Board and any committee of the Board may hold a meeting by means of telephone conference or other communications medium by means of which all persons participating in the meeting can hear each other. Participation of a Director in such a meeting shall constitute presence in person at such meeting. The notice of a meeting by telephone conference or other communications medium must state the fact that the meeting will be held by telephone or other such communications medium as well as all other matters required to be included in meeting notices as provided in Section 4.16 of these Bylaws.

**4.15 Attendance at Meetings.** From time to time, the Board may, by resolution, adopt policies regarding the attendance of Directors at meetings of the Board, meetings of the committees of the Board and other Foundation activities. Each Director shall comply with the requirements of those policies. A Director who fails to satisfy those requirements shall automatically be removed unless the Board affirmatively acts to exempt the Board member from the action of this Section 4.15. If the act of removing the offending Director would leave the Foundation with less than the minimum number of Directors required by the provisions of Section 4.05 hereof, then the offending Director shall be replaced pursuant to the provisions of Section 4.10 hereof. In any event, the attendance of each Director at Board or committee meetings shall be a factor to be considered by the Board in determining his or her re-nomination for successive terms.

**4.16 Notice and Waiver of Notice.** Notice of any special meeting of the Board shall be given not less than ten (10) or more than fifty (50) days before the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the officers or persons calling the meeting. Any notice required under this Section 4.16 shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the Director or to an agent of the Director to whom the same is directed. If mailed, such notice shall be deemed to be delivered when deposited with the United States Postal Service addressed to the Director at his or her address as it appears on the records of the Foundation, with postage thereon paid. Except as otherwise provided herein, any such notice shall be deemed to be given three (3) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid. If transmitted by facsimile or

other electronic means, notice is deemed to be delivered on successful transmission of the facsimile or other electronic medium.

Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Neither the business to be transacted at, nor the purpose of, any regular meeting of the Board need be specified in the notice or waiver of notice of such meeting, but the business or purpose shall be specified in the notice or waiver of notice of any special meeting, and in the case of any special meeting the purpose of which is to consider altering, amending or repealing these Bylaws or the enactment of new bylaws, the notice shall enclose the prepared texts of the alterations, amendments or new bylaws.

**4.17 Quorum.** Except as provided by Section 4.18 hereof, a simple majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided, that if less than a majority of such number of Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. Directors represented by a proxy duly executed and effective pursuant to Section 4.19 hereof shall not be counted for purposes of constituting a quorum. Once established, a quorum shall not be broken by the withdrawal of enough Directors to leave less than a quorum and the remaining Directors present may continue to transact business until adjournment.

**4.18 Manner of Acting.** The vote, consent or concurrence of not less than two-thirds (2/3<sup>rd</sup>s) of the Directors then in office shall be required to:

- A. amend the Certificate of Incorporation of the Foundation;
- B. amend Article Three of these Bylaws (which sets out the purposes of the Foundation), or Section 4.06 hereof (the term limitation provisions applicable to all Directors of the Foundation);
- C. amend Article Twelve of these Bylaws (Conflict of Interest provisions);
- D. expend in any one fiscal year, by grant, loan, administrative or program expense or otherwise, an amount greater than eight percent (8%) of the net assets of the Foundation as valued on the first day of such fiscal year; or
- E. dissolve the Foundation, including for this purpose, the decision of the Board disposing of the remaining assets of the Foundation, in accordance with the provisions of Article III of the Certificate of Incorporation of the Foundation.

In all other respects, the act of the majority of the Directors present at a meeting which a quorum is present shall be the act of the Board.



**4.19 Proxies.** A Director may vote by a proxy executed and dated in writing by the Director. No proxy shall be valid after three (3) months from the date of its execution.

**4.20 Informal Action by Directors.** Unless specifically prohibited by the Certificate of Incorporation of this Foundation or these Bylaws, any action required to be taken at a meeting of the Board, or any other action which may be taken at such a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof, as the case may be. Any such consent signed by all of the Directors shall have the same effect as a unanimous vote at a meeting, and may be stated as such in any document filed.

**4.21 Presumption of Assent.** A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail or by facsimile transmission to the Secretary of the Foundation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

## **ARTICLE FIVE**

### **OFFICERS**

**5.01 Number.** The Foundation may have such officers as may be appointed by the Board. Subject to the restrictions set forth in these Bylaws, officers shall have the power to bind the Foundation and enter into contracts and other agreements on behalf of the Foundation. At a minimum, the Foundation shall have a President, a Secretary and a Treasurer. The Foundation may, at the discretion of the Board, have one or more Vice-Presidents (the number thereof to be determined by the Board), a Treasurer, and such officers or honorary officers as may be elected or appointed by the Board. Except for the offices of President and Secretary and Treasurer, any number of offices may be held by the same person.

**5.02 Compensation.** Except with the written consent of two-thirds (2/3rds) of the members of the Board (not including the individual involved) no officer who is also a Director shall either be a paid or unpaid employee of the Foundation. Subject thereto, the Board shall fix the salaries of the remaining officers from time to time. Salaries of officers of the Foundation may be increased or decreased, having due regard to the income, assets and liabilities of the Foundation and in accordance with the services to be performed by such officers. Any compensation that the Foundation pays to an officer shall be commensurate with the services performed and shall be reasonable in amount.

**5.03 Election and Term of Office.** The officers of the Foundation shall be elected annually by the Board at its annual meeting. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. New offices may be created and filled at any meeting of the Board. Each officer shall hold office for a term of three (3) years or until a successor shall have been duly elected and shall have qualified or until

his or her death, resignation or removal in the manner hereinafter set forth for that purpose. Election or appointment of an officer shall not in and of itself create contract rights.

**5.04 Removal.** Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Foundation would be served thereby.

**5.05 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled for the unexpired portion of the term by the Board at any meeting.

**5.06 President.** The Board shall elect a President who shall, unless otherwise designated, be the Chief Executive Officer of the Foundation. The President shall be a Director of the Foundation. The President may call meetings of the Board and shall preside over the meetings of the Board. The President shall exercise such powers as may be delegated to him or her from time to time by the Board and shall in general supervise and control all of the business and affairs of the Foundation. The President shall delegate such of the day-to-day management of the Foundation to other officers as the President shall deem appropriate. He or she may sign, with the Secretary any deeds, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Foundation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

**5.07 Vice-President.** The Board may elect one or more Vice-Presidents. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice-President (or in the event there be more than one Vice-President, the Vice-Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have the powers of and be subject to all the restrictions upon the President. Any Vice-President may sign, with the Secretary or any assistant secretary, documents on behalf of the Foundation as authorized by the Board or President, and shall perform such other duties as from time to time may be assigned by the Board or President.

**5.08 Treasurer.** The Board shall elect a Treasurer, who shall:

A. have charge and custody of and be responsible for all funds and securities of the Foundation, receive and give receipts for moneys due and payable to the Foundation from any source whatsoever, and deposit all such funds in the name of the Foundation in such depository institutions as shall be selected in accordance with the provisions of Article Nine of these Bylaws; and

B. in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board.

**5.09 Secretary.** The Board shall elect a Secretary, who shall:

A. keep the minutes of the meetings of the Board in one or more books provided for that purpose;

B. see that all notices are duly given in accordance with the provisions of these Bylaws, or as required by law;

C. be custodian of the Foundation records; and

D. in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board.

## ARTICLE SIX

### PRIVATE FOUNDATION STATUS

#### **6.01 Additional Restrictions on Foundation and its Directors and Officers.**

Without limiting in any way the provisions of this Article Six, during any period in which the Foundation is deemed to be a private foundation as described in Section 509 of the Code, the Foundation shall comply with Section 508(e) and Chapter 42 of the Code. Specifically, the Foundation and its officers and Directors are:

A. prohibited from engaging in any act of self-dealing within the meaning of Section 4941 of the Code;

B. required to distribute the Foundation's income for each taxable year at such time and in such manner as not to subject the Foundation to tax under Section 4942 of the Code;

C. prohibited from retaining any excess business holdings as defined in Section 4943 of the Code;

D. prohibited from making any investment that would subject the Foundation to tax under Section 4944 of the Code; and

E. prohibited from making any taxable expenditures under Section 4945 of the Code.

**6.02 Precedence.** Notwithstanding anything to the contrary contained in these Bylaws and so long as the Foundation is deemed to be a private foundation, the provisions of this Article Six shall take precedence over any other conflicting provision contained herein.

## ARTICLE SEVEN

### COMMITTEES

**7.01 Establishment of Committees.** The Board may adopt a resolution establishing one or more committees delegating specified authority to a committee, and appointing or removing members of a committee. Members of the Board of Directors shall at all times represent a majority of the membership of any Committee, and in no event should any Committee consist of fewer than three (3) members, at least two (2) of whom shall be members of the Board of Directors. The Board may establish qualifications for membership on a committee. The Board may delegate to the President its power to appoint and remove members of a committee that has not been delegated any authority of the Board. The establishment of a committee or the delegation of authority to it shall not relieve the Board or any individual Director of any responsibility imposed by the Bylaws or otherwise imposed by law. No committee shall have the authority of the Board to:

A. elect, appoint, or remove a member of a committee or a Director or officer of the Foundation;

B. authorize, approve, terminate or repudiate any transaction to which the Foundation is a party; and/or

C. take any action outside the scope of authority delegated to it by the Board.

**7.02 Executive and Standing Committees.** The membership of the Executive Committee shall consist of the Corporate Officers. The initial standing committees will be (a) Finance and (b) Investment.

**7.03 Compensation.** Committee members may not receive salaries for their services. The Board may adopt a resolution providing for payment to committee members of a fixed sum to cover attendance at each meeting for the committee. A committee member may serve the Foundation in any other capacity and receive compensation for those services. Any compensation that the Foundation pays to a committee member shall be commensurate with the services performed and shall be reasonable in amount.

**7.04 Rules.** Each committee may adopt rules on its own operation not inconsistent with these Bylaws or with rules adopted by the Board.

**7.05 Minutes.** Each committee shall keep minutes of its meetings and shall regularly report to the Board.

**7.06 Term of Office.** Each member of a committee shall continue to serve on the committee until the next annual meeting of the Board of the Foundation and until a successor is appointed. However, the term of a committee member may terminate earlier if the committee is terminated, or if the member dies, ceases to qualify, resigns, or is removed as a member.

7.07 **Vacancies.** Vacancies in the membership of any committee shall be filled by the Board.

7.08 **Committee Chairman and Vice-Chairman.** The Committee Chairman and Vice-Chairman of each committee shall be appointed by the President of the Foundation. The Committee Chairman shall call and preside at all meetings of a committee to which he or she is appointed. When the Committee Chairman is absent, is unable to act, or refuses to act, the Committee Vice-Chairman shall perform the duties of the Committee Chairman. When the Committee Vice-Chairman acts in place of the Committee Chairman, the Committee Vice-Chairman shall have all the powers of and be subject to all the restrictions upon the Committee Chairman as provided by these Bylaws and by applicable law.

7.09 **Resignation and Removal.** Any committee member may resign at any time by giving written notice to the President or Secretary of the Foundation. Such resignation shall take effect at the time specified therein. Any committee member may be removed by the Board whenever in its judgment the best interests of the Foundation would be served thereby.

7.10 **Notice.** Committees shall meet at the call of the Chairman of the committee. Notice of any committee meeting shall be given at least five (5) business days before the meeting is to be held. Notice of the meeting may be given either orally or in writing at the discretion of the Committee Chairman.

7.11 **Quorum.** One-half of the number of members of a committee shall constitute a quorum for the transaction of business at any meeting of the committee. The committee members present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough committee members leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of committee members required to constitute a quorum. Committee members represented by proxy shall not be counted toward constituting a quorum. If a quorum is present at no time during a meeting, the chairman may adjourn and reconvene the meeting from time to time without further notice.

7.12 **Actions of Committees.** Committees shall try to take action by consensus. However, the vote of a majority of committee members present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the committee unless the act of a greater number is required by law or by these Bylaws. A committee member who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the act of the committee.

7.12 **Proxies.** A committee member may vote by a proxy executed and dated in writing by the committee member. No proxy shall be valid after three (3) months from the date of its execution.

## ARTICLE EIGHT

### DISTRIBUTIONS AND DISBURSEMENTS

**8.01 Annual Distributions.** From time to time but at least annually, the Board shall determine all grants and other discretionary or mandatory distributions to be made from the net income or principal of the Foundation's assets pursuant to the provisions of these Bylaws, New Mexico law or the Code, and shall make such distributions to or for the benefit of Aspen Santa Fe Ballet, Inc. and shall determine all disbursements to be made for administrative and operational expense incurred by the Foundation.

All such determinations shall be by affirmative vote of a majority of the Board present at any meeting thereof unless otherwise expressly provided herein.

The Board shall additionally recommend and implement a post-grant evaluation process designed to determine the efficacy of each individual grant and the grants program of the Foundation as a whole.

**8.02 While Deemed a Private Foundation.** In the event that the Foundation is deemed a private foundation under the Code for United States federal tax purposes, and notwithstanding anything to the contrary or inconsistent contained in this Article Eight, The Foundation's distributions shall comply with the provisions of Section 6.02 hereof and shall be made only to such qualified organizations or individuals in such amounts and at such time or times and with such accompanying restrictions, if any, that the Board shall deem necessary to insure the use of such funds for authorized charitable, religious, and educational purposes in the manner intended.

**8.03 Principal Distributions.** If distributions of principal are to be made or permitted, the Board shall inform the custodian or any other fiduciary holding funds as far in advance as the Board shall deem practicable, so that such fiduciary may adjust its investment policies accordingly and upon advice from the Board, proceed with the liquidation of investments in an appropriate manner.

**8.04 Evaluation of Needs.** The Board shall gather and analyze facts and conduct investigations and research from time to time as it deems necessary and proper to determine the most effective agencies and means for meeting the Foundation's purposes as set forth in Article Three of these Bylaws, and may direct disbursements for such fact-gathering, analysis, investigation and research from funds available for this purpose. Disbursements for other proper administrative expenses incurred by the Foundation, including salaries for such professional or other assistance as is from time to time deemed necessary by the Board, shall be paid insofar as appears feasible from the income of the unrestricted funds of the Foundation.

**8.05 Private Inurement Prohibited.** No part of the net earnings or assets of the Foundation shall inure to the benefit of or be distributable to its Directors, officers or any other private person or individual whomsoever, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Three of these Bylaws.

**8.06 Distribution Upon Dissolution.** Upon the dissolution of the Foundation, the Board shall, after paying or making provision for the payment of all liabilities of the Foundation, dispose of all of the assets of the Foundation exclusively for the purposes of the Foundation, in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, literary or scientific purposes as shall at the time:

A. qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, and

B. be organized and operated to serve the same purposes as the Foundation's assets and income are pledged pursuant to this Certificate of Incorporation (as it may be amended from time to time) to support as determined by the Board.

Any of such assets not so disposed of shall be disposed of by the District Court of the county in which the registered office of the Foundation is then located, exclusively for such purposes, or to such organization or organizations as said court shall determine which are organized and operated exclusively for such purposes. In no event shall any portion of such assets revert to or vest in any donor, incorporator, director, officer, agent or custodian of said Foundation or any private person or individual whomsoever.

## **ARTICLE NINE**

### **CONTRACTS, LOANS, CHECKS & DEPOSITS**

**9.01 Contracts.** Contracts entered into in the ordinary course of business may be signed by the President, provided however, that any contract which is executed on behalf of the Foundation which is not in the ordinary course of business shall first be authorized by the Board and shall be signed by the President and the Secretary of the Foundation. The Board may authorize by resolution any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument which is in the ordinary course of business in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances.

**9.02 Loans.** No loans shall be contracted on behalf of the Foundation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.

**9.03 Checks and Drafts.** All payments from corporate funds may be made by check (electronic or physical) and signed by an authorized agent of the Foundation.

**9.04 Deposits.** All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board may select.

**ARTICLE TEN**

**BOOKS AND RECORDS**

The Foundation shall keep correct and complete books and records of account. The Foundation's books and records shall include:

A. A file-endorsed copy of all documents filed with the New Mexico Public Regulation Commission relating to the Foundation, including but not limited to, the Certificate of Incorporation;

B. A copy of these Bylaws, and any amended versions or amendments to the Bylaws;

C. Minutes of the proceedings of the Board and committees having any of the authority of the Board;

D. A list of the names and addresses of Directors, officers, and all committee members of the Foundation;

E. All rulings, letters, and other documents relating to the Foundation's federal, state, and local tax status;

F. The Foundation's federal, state, and local information returns or income tax returns for each of the Foundation's five (5) most recent tax years; and

G. A copy of each compilation, review or audit report, if any, of the Foundation.

**ARTICLE ELEVEN**

**AUDITS AND REPORTS**

**11.01 Accounting.** Each custodian, trustee or other fiduciary designated by the Board shall account to the Foundation at least annually for all of its actions and accounts, and the Foundation may request and require an independent audit if it so determines or may rely on the certification of the custodian or trustee that the accounting furnished by it is true and correct according to accepted audit and accounting practices.

**11.02 Audits.** An independent auditor appointed or approved by the Board at such time as the Board may determine shall prepare for the Foundation as a whole, a certified audit and consolidated financial statement, including a statement of distributions, and a list of projects or organizations to or for which funds were used or distributed for charitable or educational purposes, and such other additional reports or information as may be requested from time to time by the Board. The auditor shall also prepare such financial data as may be necessary for returns or reports required by state or federal governments, to be filed by the Foundation. Expenses of such audit and report shall be deemed proper expenses of administration of the Foundation.



**11.03 Public Disclosure.** At least once each year, the Foundation shall furnish a reasonably comprehensive report of its activities during the preceding year as in the opinion of the Board will reasonably inform the public of the operations of the Foundation. The Foundation shall also make all other disclosures and reports required of it by law.

## ARTICLE TWELVE

### CONFLICTS OF INTEREST

**12.01 Purpose.** The purpose of this Article Twelve on conflicts of interest is to protect the Foundation's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, a Director or other individuals associated with the Foundation or might result in a possible excess benefit transaction within the meaning of Section 4958 of the Code. This Article Twelve is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

**12.02 Applicable Transaction.** An "*Applicable Transaction*" is any compensation, loan, investment, grant (other than a charitable contribution to the Foundation), or similar transaction that is being proposed or contemplated between the Foundation and any of the following:

A. a Director, officer or member of a committee that has been delegated any authority or power of the Board (a "*Committee Member*"); or

B. a person or entity that is related to a Director, officer or Committee Member (a "*Related Party*"). A Related Party consists of:

1. a family member of a Director, officer or Committee Member. A family member of a Director, officer or Committee Member includes his or her spouse, ancestors, descendants, brothers, sisters and the spouse of his or her ancestors, descendants, brothers and sisters; and

2. an entity in which a Director, officer or Committee Member or a family member thereof owns at least ten percent (10%) of either the voting power or profits interests therein.

**12.03 Applicable Transaction Involving Compensation Paid to a Director, Officer or Committee Member for Services to be Performed in Such Capacity.** If an Applicable Transaction pertains solely to the payment of compensation to a Director, officer or Committee Member for services to be performed in such capacity ("*Designated Compensation*"), then in that event the provisions of Sections 12.04 through 12.07 below will not apply and a conflict of interest will be deemed not to exist if the following criteria ("*Criteria*") are satisfied:

A. the Designated Compensation is to be paid for services to be rendered in the future;

B. the Designated Compensation is to be a fixed amount and not based in whole or in part upon the revenue of the Foundation or of any entity in which the Foundation owns more than thirty five percent (35%) of either the voting power or profits interest therein;

C. the payment of the Designated Compensation is approved by the Board;

D. the Director, officer, Committee Member to receive the Designated Compensation does not participate in the deliberations of the Board that resulted in the approval of said compensation;

E. if the Designated Compensation is to be paid to a Director, said Director does not vote on whether said compensation should be approved;

F. in approving the Designated Compensation, the Board concludes, based upon its review of appropriate data, that the payment of the Designated Compensation:

1. is reasonable and necessary for the Foundation to carry on its exempt purposes; and

2. is comparable to the compensation that would be agreed upon by disinterested persons under similar circumstances.

G. The Foundation and the Director, officer or Committee Member involved execute and date a written agreement that sets forth the material terms approved by the Board for the payment of the Designated Compensation.

If all of the Criteria set forth above are not satisfied in connection with the payment of Designated Compensation, then in that event this Section 12.03 shall not apply and instead the provisions of Sections 12.04 through 12.07 below shall be applicable.

**12.04 Applicable Transactions Other Than for the Payment of Designated Compensation.**

- A. If a Director, officer or Committee Member believes that the Foundation and said Director, officer or Committee Member or a Related Party thereto may enter into, or are contemplating the entering into of, an Applicable Transaction (other than Designated Compensation described in Section 12.03 hereof), then in that event said Director, officer or Committee Member: (i) must disclose to the Board all material facts pertaining to such Applicable Transaction; and (ii) may disclose to the Board such other information that said Director, officer or Committee Member considers relevant.
- B. If the Board has reasonable cause to believe that a Director, officer or Committee Member was required to disclose an Applicable Transaction pursuant to Section 2.04(A) above but failed to do so, then in that event the Board shall inform said Director, officer or Committee Member of its basis for such belief and afford

such Director, officer or Committee Member an opportunity to explain the alleged failure to disclose. If after hearing such explanation, and after conducting such investigation as warranted by the circumstances, the Board determines that said Director, officer or Committee Member did not have reasonable cause for failing to disclose the Applicable Transaction, then in that event the Board shall take such disciplinary and/or corrective action it considers appropriate under the circumstances. If after hearing the aforesaid explanation, and after conducting such investigation as warranted by the circumstances, the Board determines that said Director, officer or Committee Member did have reasonable cause for failing to disclose the Applicable Transaction, then in that event the requirements of Section 12.04(A) above will be deemed to have been satisfied.

- C. If the Foundation may enter into, or is contemplating the entering into of, an Applicable Transaction (other than Designated Compensation described in Section 12.03 above), with a Director, officer, Committee Member or a Related Party thereto, then in that event said Director, officer or Committee Member shall not participate in or vote on any action of the Board described in Section 12.04(D) and Section 12.04(E) below.
- D. Upon learning of an Applicable Transaction (other than Designated Compensation described in Section 12.03), either from the disclosure thereof pursuant to Section 12.04(A) above or otherwise, the Board shall, without the participation or vote of the Director, officer or Committee Member involved, determine whether such Applicable Transaction will give rise to a conflict of interest. A conflict of interests exists if an Applicable Transaction could provide a more than incidental economic benefit to a Director, officer, Committee Member or Related Party thereto. If after due deliberation the Board determines that an Applicable Transaction will not give rise to a conflict of interest, then the Foundation may, or may not, enter into said Applicable Transaction as it considers appropriate.
- E. If the Board determines that an Applicable Transaction (other than Designated Compensation described in Section 12.03), will give rise to a potential conflict of interest, then in that event the Board shall, without the participation or vote of the Director, officer or Committee Member involved, investigate alternatives to the Applicable Transaction (the "*Alternative*" in the singular, "*Alternatives*" in the plural). An Alternative is any transaction other than an Applicable Transaction. If the Board is able to identify one or more Alternatives, then in that event it shall ascertain whether any of such Alternatives will be more advantageous to the Foundation than the Applicable Transaction. If the Board determines that one or more such Alternatives is more advantageous to the Foundation than the Applicable Transaction, then in that event the Board shall not enter into the Applicable Transaction. If the Board determines that no Alternative is more advantageous to the Foundation than the Applicable Transaction, then the Board may vote to approve said Applicable Transaction provided that the following requirements are satisfied:

1. the Director, officer or Committee Member interested in the Applicable Transaction does not participate in the deliberations of the Board concerning, or vote to approve, said Applicable Transaction;

2. the Board expressly finds:

a. that the Applicable Transaction is in the Foundation's best interest, for its own benefit and is fair and reasonable under the circumstances; and

b. that the terms of the Applicable Transaction are comparable to the terms that disinterested persons would enter into under similar circumstances; and

3. The documentation requirements of Section 12.05 below are satisfied.

**12.05 Documentation Requirements.** In regard to any Applicable Transaction considered by the Board (other than Designated Compensation described in Section 12.03 above), the minutes of the Board shall, to the extent applicable, set forth the following:

A. a description of the Applicable Transaction including:

1. its material terms;

2. the name of each Director, officer and/or Committee Member involved; and

3. the potential financial interest of said Director, officer and/or Committee Member in such Applicable Transaction;

B. the decision of the Board whether or not the Applicable Transaction gives rise to a conflict of interest, the reasons or basis for such decision, the name of each Director who voted for the decision, the name of each Director who voted against the decision, and the name of each Director who did not participate in the deliberations or vote on such decision;

C. If the Board determines that an Applicable Transaction does give rise to a conflict of interest:

1. a description of each Alternative to the Applicable Transaction considered by the Board; and

2. if the Board determines to enter into an Alternative, an explanation why this Alternative was accepted in place of the Applicable Transaction; or

3. if the Board determines to enter into the Applicable Transaction instead of any Alternative:

a. an explanation why the Applicable Transaction is more advantageous to the Foundation than any Alternative;

b. an explanation why the Applicable Transaction is in the Foundation's best interests and for its own benefit;

c. an explanation why the terms of the Applicable Transaction are comparable to terms that disinterested persons would enter into under similar circumstances; and

d. the name of each Director who voted to enter into the Applicable Transaction, the name of each Director who voted not to enter into the Applicable Transaction, and the name of each Director who did not participate in the deliberations or vote on whether the Applicable Transaction should be entered into.

**12.06 Required Statements.** Each Director, officer and Committee Member shall at the commencement of his or her term in office sign a statement which affirms that he or she: (i) has received, read, and understands this Article Twelve and agrees to comply with its provisions; and (ii) understands that in order for the Foundation to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes as described in Article Three of these Bylaws.

**12.07 Periodic Reviews.**

A. To ensure that the Foundation operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, the Board shall conduct periodic reviews which shall, at a minimum verify:

1. that the compensation paid to each Director, officer, Committee Member and employee is reasonable, not excessive, and the result of arm's length bargaining. Whenever appropriate, the Board shall obtain competent survey information of nonprofit corporations to ensure compliance with this Section 12.07(A)(1); and

2. that each partnership, joint venture, and arrangement with a management organization:

a. conforms to the Foundation's written policies (including those set forth in this Article Twelve);

b. is properly documented in the records of the Foundation;

c. reflects a reasonable investment or payment by the Foundation for goods or services;

d. furthers the charitable purposes of the Foundation; and

e. does not result in inurement, impermissible private benefit or in an excess benefit transaction.

B. When conducting the periodic reviews described in this Section 12.07, the Foundation may, but need not, use outside advisors. Notwithstanding the foregoing, any such

use of outside advisors shall not relieve the Board of its responsibility to ensure that periodic reviews are properly conducted.

## ARTICLE THIRTEEN

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

**13.01 Right to Indemnification.** The Foundation shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether civil, criminal, administrative, arbitrative, or investigative, including all appeals, by reason of the fact that person is or was a Director, officer, employee, member of a committee, member or agent of the Foundation, or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

Indemnification shall be against all reasonable expenses, including without limitation, attorneys' fees, court costs, expert witness fees, judgments, decrees, fines, settlements, penalties (including excise and similar taxes), and reasonable expenses actually incurred by the person in connection with the proceeding, except that if the person is found liable to the Foundation or is found liable on the basis that he or she improperly received personal benefit, indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding, and shall not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his or her duty to the Foundation.

#### **13.02 Limitations on Indemnification.**

A. No indemnification shall be made for obligations resulting from a proceeding in which the person is found liable on the basis that personal benefit was improperly received by him or her, whether or not the benefit resulted from an action taken in the person's official capacity, or from a proceeding in which the person is found liable to the Foundation; and

B. Indemnification under this Article Thirteen shall be available only after a determination has been made that the person acted in good faith, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful, and:

1. In the case of conduct in an official capacity, reasonably believed his or her conduct to be in the best interests of the Foundation, or

2. In all other cases, reasonably believed his or her conduct to be at least not opposed to the best interests of the Foundation.

The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent, shall not of itself be determinative that the person failed to act in accordance with these requirements. A person shall be deemed to have been found liable in respect of any claim, issue, or matter only after the person shall have

been so adjudged by a court of competent jurisdiction after exhaustion of all appeals from the judgment.

C. The determination of indemnification required by Paragraph (B) above, must be made:

1. By majority vote of a quorum of Directors not named as defendants or respondents in the proceeding; or
2. If such a quorum cannot be obtained, by a majority vote of a committee of the Board, designated by majority vote of all Directors, consisting solely of two (2) or more Directors not named defendants or respondents in the proceeding; or
3. By special legal counsel selected by the Board or by a committee of the Board by vote as set forth in Paragraphs (1) or (2) above, or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

Authorization of indemnification and determination of reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified in Paragraph (3) above, for the selection of special legal counsel.

**13.03 Indemnity for Successful Defense.** In spite of any limitations set forth in Sections 13.01 and 13.02, above, to the extent that any person has been wholly successful on the merits or otherwise in defense of any proceeding referred to in those paragraphs, that person shall be indemnified against all reasonable expenses incurred by him or her, including, without limitation, attorneys' fees, court costs, and expert witness fees, and expenses incurred in securing indemnification.

**13.04 Reimbursement of Expenses.** Notwithstanding anything to the contrary contained herein, the Foundation shall pay or reimburse the 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.

**13.05 Advancement of Expenses.** Reasonable expenses incurred by a director, officer, employee, or agent of the Foundation who was or is threatened to be made a named defendant or respondent in an action, suit, or proceeding may be paid or reimbursed by the Foundation in advance of the final disposition as authorized by the Board. Before authorizing the advance, the Board must determine that under the facts then known indemnification would not be precluded under these Bylaws. In addition, the Board must receive:

- A. A written affirmation by the Director, officer, employee, or agent involved of that person's good faith belief that he or she had met the standard of conduct necessary under these Bylaws for indemnification; and

B. A written undertaking by or on behalf of the Director, officer, or employee involved to repay the expenses if it is ultimately determined that he or she had not met the standard of conduct necessary under these Bylaws for indemnification.

**13.06 Indemnification Not Exclusive.** The indemnification provided by this Article Thirteen shall not be deemed to be exclusive of any other rights to which any person indemnified may be entitled under any regulation, agreement, vote of the shareholders or disinterested Directors or otherwise. The indemnification provided by this Article Thirteen shall not be deemed exclusive of any other power to indemnify or right to indemnification that the Foundation or any person referred to in this Article may have or acquire under the laws of the State of New Mexico. Indemnification shall continue and inure to the benefit of the heirs, executors, and administrators of any person entitled to indemnification under this Article.

**13.07 Insurance.** The Foundation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Foundation or who is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him or her and incurred in such a capacity or arising out of his or her status as such a person, whether or not the Foundation would have the power to indemnify him or her against that liability under this Article Thirteen.

Without limiting the power of the Foundation to procure or maintain any kind of other arrangement, the Foundation, for the benefit of the persons it has indemnified, may: (i) create a trust fund; (ii) establish any form of self-insurance; (iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Foundation; or (iv) establish a letter of credit, guaranty, or surety arrangement. The insurance may be procured or maintained with an insurer, or the other arrangement may be procured, maintained, or established within the Foundation or with any insurer or other person considered appropriate by the Board, regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the Foundation. In the absence of fraud, the judgment of the Board as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement is conclusive, and the insurance or arrangement is not voidable and does not subject the Directors approving the insurance or arrangement to liability, on any ground, regardless of whether Directors participating in the approval are beneficiaries of the insurance or arrangement.

**13.08 Report of Indemnity or Advance.** Any indemnification of or advance of expenses to a Director in accordance with this Article shall be reported in writing to the Directors of the Foundation: (i) with or before the notice or waiver of notice of the next meeting of Directors; (ii) with or before the next submission to Directors of a consent to action without a meeting; and (iii) in any case, within the twelve (12) month period immediately following the date of the indemnification or advance.



**ARTICLE FOURTEEN**

**MISCELLANEOUS PROVISIONS**

**14.01 Corporate Seal.** No corporate seal shall be required. The Board shall have the power to adopt and alter the seal of the Foundation.

**14.02 Evidence of Authority.** A certificate by the Secretary or other authorized officer as to any action taken by the Directors or any officer or representative of the Foundation shall, as to all persons who rely thereon in good faith, be conclusive evidence of such action. The exercise of any power, which by law, by the Certificate of Incorporation or by these Bylaws, or under any vote of the Board, may be exercised by an officer of the Foundation only in the event of absence of another officer or any other contingency shall bind the Foundation in favor of anyone relying thereon in good faith, whether or not such absence or contingency existed.

**14.03 Execution of Instruments.** All deeds, leases, transfers, contracts, bonds, notes, and other obligations authorized to be executed by an officer of the Foundation on its behalf shall be signed by the President and the Secretary except as the Board may generally or in particular cases otherwise determine.

**14.04 Fiscal Year.** The Foundation shall have a fiscal year ending on last day of the month of August.

**14.05 Gender and Number.** Whenever the context requires, all words in these Bylaws in the male or female gender shall be deemed to include the neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

**14.06 Governing Law.** These Bylaws shall be construed in accordance with the laws of the State of New Mexico. All references in these Bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as currently they may be amended from time to time.

**14.07 Headings.** The headings used in these Bylaws are used for convenience and shall not be considered in construing the terms of the Bylaws.

**14.08 Legal Construction.** If any Bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in these Bylaws.

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**CERTIFICATE**

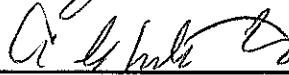
We, **JAY R. LERNER**, President, and **A. CHARLES FORTE**, Secretary of the **ASPEN SANTA FE BALLET ENDOWMENT, INC.**, do hereby certify that the foregoing is a true and correct copy of the Bylaws of the Foundation duly adopted by the Board of Directors as of the Effective Date set forth hereinabove

8/24/18



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**Jay R. Lerner, President**



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**A. Charles Forte, Secretary**