

# BYLAWS

of

## San Bernardino Symphony Association

*A California Nonprofit Public Benefit Corporation*

### ARTICLE I. NAME

The name of this corporation is San Bernardino Symphony Association.

### ARTICLE II. OFFICES

Section 1. *Principal Office.* The corporation's principal office is located at 536 W. 11<sup>th</sup> Street, San Bernardino, California 92410. The corporation receives mail at P.O. Box 109, San Bernardino, California 92402. The Board of Directors (the "Board") is granted authority to change the location of the principal office. Any change in the principal office shall be noted on the Bylaws opposite this section, or this section may be amended to state the new location.

Section 2. *Other Offices.* The Board may, at any time and from time to time, establish branch or subordinate offices at any place or places where the Corporation is qualified to conduct its activities.

### ARTICLE III. MEMBERSHIP

Section 1. *Members.* The corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the directors.

Section 2. *Associates.* Nothing in this Article III shall limit the right of the corporation to refer to persons associated with it as "members" even though those persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 5056 of the California Nonprofit Corporation Law.

## ARTICLE IV. DIRECTORS

Section 1. *Powers.* Subject to limitations of the Articles and of these Bylaws, the activities and affairs of the corporation shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board. The Board may delegate the management of the activities of the corporation to any person or persons, a management company, or committees however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to the Board's general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

(a) To select, remove and to contract for the services of all the other officers, agents, and employees of the corporation, prescribe qualifications, powers, and duties for them as may not be inconsistent with law, the Articles, or these Bylaws, fix their compensation, and require from them security for faithful service.

(b) To conduct, manage, and control the affairs and activities of the corporation and to make such rules and regulations therefor not inconsistent with law, the Articles, or these Bylaws, as they may deem best.

(c) To adopt, make and use a corporate seal and to alter its form from time to time as the Board may deem best.

(d) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation, or other evidences of debt and securities for debt.

(e) To carry on a business at a profit and apply any profit that results from the business activity to any activity in which it may lawfully engage within the bounds of IRS Code Section

501(3)(c).

Section 2. *Number of Directors.* The authorized number of directors shall fluctuate according to the needs of the corporation but shall be not less than 21 members nor more than 40 members until changed by amendment of the Articles or by a Bylaw. Except as expressly set forth in section 15.2 hereinbelow, whenever these Bylaws shall refer to a “director” or “directors” or to the “board” or “board of directors” such terms shall be deemed to include only the individual or individuals who are Active Directors as described in section 15.1 below, and shall not include the “Emeritus and Honorary Directors” as described in section 15.2 below.

Section 3. *Selection and Term of Office.* Directors shall be elected at the annual meeting of the Board. Each director shall serve for a three year term until the third annual meeting of the Board following the meeting at which such director is selected and until a successor has been elected and qualified. Directors may be re-elected for an unlimited number of additional terms.

Section 4. *Vacancies.* Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary, or the Board, unless the notice specifies a later time for the effectiveness of the resignation. If the resignation is effective at a future time, a successor may be selected before that time, to take office when the resignation becomes effective.

Vacancies in the Board shall be filled in the same manner as the director(s) whose office is vacant was selected, provided that vacancies to be filled by election by directors may be filled by a majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified. A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors is increased.

The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony or of any crime involving moral turpitude, or found by a final order of judgment of any court to have breached any duty arising under Article 3 of the California Nonprofit Public Benefit Corporation Law. Further, a director shall cease to be a Board member, upon action or determination by the Board when such Director either fails to meet the qualifications to serve as an Active Director as set forth in Article IV, section 15 below.

No reduction of the authorized number of directors shall have the effect of removing any director before expiration of the director's term of office.

No more than 49% of the persons serving on the Board may be interested persons. An interested person is: (a) any person compensated by the corporation for services rendered to it within the previous twelve (12) months, whether as a full time or part time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as a director; and (b) any brother, sister, ancestor, descendent, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the corporation.

Section 5. *Place of Meeting.* Meetings of the Board shall be held at any place within or without the State of California that has been designated from time to time by the Board.

Section 6. *Annual Meetings.* The Board shall hold an Annual Meeting for the purpose of organization, selection of directors and officers, and the transaction of other business. The annual meeting of the board shall be held at such location as is designated by the Board. Annual meetings of the Board shall be held without call or notice on such date no later than the month of June.

Section 7. *Regular Meetings.* Regular meetings of the Board shall be held bi-monthly,

without call or notice on dates and at times fixed by the Board.

Section 8. *Special Meetings.* Special meetings of the Board for any purpose or purposes may be called at any time by the President, any Vice President, the Secretary, or any five directors.

Special meetings of the Board shall be held upon not less than four days' notice by first-class mail or 48 hours' notice given personally or by e-mail, telephone, or other similar means of communication. Any such notice shall be addressed or delivered to each director at the director's address as it is shown upon the records of the corporation or as may have been given to the corporation by the director for purposes of notice or, if the address is not shown on such records or is not readily ascertainable, at the principal office of the corporation.

Notice by mail shall be deemed to have been given two calendar days following the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or electronically, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

Section 9. *Quorum.* One-fifth (20%) of the authorized number of directors constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Section 12 of this Article IV. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, so long as any action taken is approved by at least a majority of the

required quorum for such meeting.

Section 10. *Participation in Meetings by Conference Telephone.* Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in the meeting can hear one another.

Section 11. *Waiver of Notice.* Where notice of a meeting is required by law or pursuant to these Bylaws, notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, before or at its commencement, the lack of notice to that director. All waivers, consents, and approvals as to a director's meeting shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 12. *Adjournment.* A majority of the directors present, whether or not a quorum is present, may adjourn any directors' meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 48 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 13. *Action Without Meeting.* Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to the action. The consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board.

Section 14. *Rights of Inspection.* Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to

inspect the physical properties of the corporation of which such person is a director.

Section 15. *Qualifications; Classification.*

15.1 *Active Directors.*

In order to qualify to serve as a director of the corporation (“Active Director”), an individual must, during each year of his or her term, do *at least* the following: purchase at least one (1) season ticket for the corporation's regular series season, purchase at least one (1) ticket for a major San Bernardino Symphony event or Guild event, make a minimum annual Contribution to the Corporation of at least Five Hundred Dollars (\$500.00), attend bi-monthly General Board meetings, and provide Active Service (as herein defined) to the corporation.

Where a husband and wife both serve on the Board of Directors, each must individually meet the qualifications to serve on the Board as set forth above.

For purposes of this section 15.1, the “Contributions” of directors must be a donation of money to the corporation which is in addition to, and no credit toward such Contribution shall be given for, any other monies paid to the corporation by directors for ticket purchases, for event support or sponsorship, for program ads, or for any other purposes.

For purposes of this section 15.1 “Active Service” to the corporation shall mean attending General Board meetings, serving as an active member of a standing committee of the board of directors, and providing regular and material personal service to the corporation in such capacity(ies) as shall be approved by the Board or the Executive Committee thereof.

Section 16. *Committees.* The Board may appoint one or more committees, as needed, each consisting of three or more directors, and delegate to those committees any of the authority of the Board.

## ARTICLE V. OFFICERS

Section 1. *Officers.* The required officers of the corporation shall be a President (who shall also serve as Chairman of the Board), a First Vice-President, a Secretary, a Treasurer, and the

Immediate Past President ("Required Officers"). At least one year prior to the current President completing his or her final term, a President-Elect shall be designated. The corporation may also have, at the discretion of the Board, one or more additional Vice-Presidents, one or more Assistant Secretaries and/or Treasurers, and such other subordinate officers as may be elected or appointed in accordance with the provisions of Section 3 of this Article V. Any number of offices may be held by the same person except as provided in the Articles or in these Bylaws and except that one person may not serve as more than one of the Required Officers, as set forth above in this section.

Section 2. *Election.* The officers of the corporation, except officers elected or appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be elected by the Board for two-year terms and shall serve at the pleasure of the Board. Each officer shall hold office until his or her resignation, removal, or other disqualification from service, or until his or her respective successor shall be elected.

Section 3. *Subordinate Officers.* The Board may elect, and may empower the President to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. *Removal and Resignation.* Any officer may be removed, either with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any removal of an officer shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time by giving written notice to the corporation addressed and sent to the Board, the President, or the Secretary, but without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. An officer's resignation shall



take effect at the date notice of resignation is received by the addressee or at any later time specified in the resignation and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective.

Section 5. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to the office, provided that vacancies shall be filled as they occur.

Section 6. *President.* The President has, subject to the control of the Board, general supervision, direction, and control of the business and officers of the corporation. In the President's capacity as the Chairman of the Board, the President shall preside at all meetings of the Board. The President has the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as prescribed by the Board. The President whose term most recently ended continues to serve for one additional year as 'Past President,' (as described in Section 11, below) after which time he or she may continue to serve.

Section 7. *First Vice-President; Subordinate Vice-Presidents.* In the absence or disability of the President, the First Vice-President, shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Subordinate Vice-Presidents, if there are any elected, shall have the powers and perform the duties as prescribed for them respectively by the Board.

Section 8. *Secretary.* The Secretary shall keep or cause to be kept, at the principal office or other place ordered by the Board, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, any notice given of the meeting, the names of those present at Board and committee meetings, and the proceedings of the meetings. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the corporation's Articles

and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board and any committees of the Board required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have other powers and perform such other duties as prescribed by the Board.

Section 9. *Treasurer.* The Treasurer is the chief financial officer of the corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation. The books of account shall at all times be open to inspection by any director.

The Treasurer shall cause to be deposited all moneys and other valuables in the name and to the credit of the corporation with depositaries designated by the Board. The Treasurer shall further ensure that reports on the assets, liabilities, income and expenses and general financial condition of the corporation are prepared on a monthly basis and made available to the President and directors. The Treasurer shall have other powers and perform other duties as prescribed by the Board.

Section 10. *Immediate Past President.* The Immediate Past President assists with the business of the organization and the annual meeting as requested by the President and other officers.

Section 11. *Emeritus and Honorary Directors.*

From time to time, the Board of Directors may elect retiring directors to an “Emeritus Director” status. Further, the Board may elect to an “Honorary Director” status individuals whom it believes can contribute expertise and financial resources that would benefit the organization but who have not served as directors.

While listed in corporation publications as Emeritus and Honorary Directors, such Directors shall not, for purposes of these Bylaws nor the California Nonprofit Corporation Law, be deemed

to be directors of the corporation, and Emeritus and Honorary Directors shall not be entitled to vote on corporate governance or other matters put to a vote of the corporation's Board.

Honorary and Emeritus Directors are not required to attend meetings or make an annual contribution.

Section 12. *Reimbursement; Compensation.* Directors may receive such reimbursement for approved expenses, as may be fixed or determined by the Board of Directors through the annual budget. Board members shall receive no compensation for their professional services to the Corporation.

## ARTICLE VI. OTHER PROVISIONS

Section 1. *Endorsement of Documents; Contracts.* Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between the corporation and any other person, when signed by any one of the President, the President Elect, or any Vice-President and by any one of the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer of the corporation shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons, and in the manner, time to time determined by the Board. Unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 2. *Representation of Shares of Other Corporations.* The President or any other officer or officers authorized by the Board or the President are each authorized to vote, represent, and exercise on behalf of the corporation all rights incidents to any and all shares of any other corporation or corporations standing in the name of the corporation. The authority granted in

this Section 2 may be exercised either by any such officer in person or by any person authorized so to do by proxy or power of attorney duly executed by that officer.

Section 3. *Construction and Definitions.* Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

Section 4. *Amendments.* These Bylaws may be amended or repealed by the approval of the Board.

## ARTICLE VII. INDEMNIFICATION

Section 1. *Definitions.* For the purposes of this Article VII, "agent" means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of that predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under Section 4 or 5(b) of this Article VII.

Section 2. *Indemnification in Actions by Third Parties.* The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust), by reason of the fact

that person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with that proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that person was unlawful. The termination of any proceedings by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 3. *Indemnification in Actions by or in the Right of the Corporation.* The corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of that action if the person acted in good faith, in a manner such person believed to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 3:

- (a) In respect of any claim, issue, or matter as to which that person shall have been adjudged to be liable to the corporation in the performance of that person's duty to the corporation, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all

the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;

- (b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- (c) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

Section 4. *Indemnification Against Expenses.* To the extent that an agent of the corporation has been successful on the merits in defense of any proceeding referred to in Section 2 or 3 of this Article VII or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 5. *Required Determinations.* Except as provided in Section 4 of this Article VII any indemnification under this Article VII shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 2 or 3 of this Article VII, by:

(a) A majority vote of a quorum consisting of directors who are not parties to the proceedings; or

(b) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by the corporation.

Section 6. *Advance of Expenses.* Expenses incurred in defending any proceeding may be advanced by the corporation prior to final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay that amount unless it shall be determined

ultimately that the agent is entitled to be indemnified as authorized in this Article VII.

Section 7. *Other Indemnification.* No provision made by the corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution of members or directors, an agreement, or otherwise, shall be valid unless consistent with this Article VII. Nothing contained in this Article VII shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

Section 8. *Forms of Indemnification Not Permitted.* No indemnification or advance shall be made under this Article VII, except as provided in Section 4 or 5(b), in any circumstances in which it appears:

(a) That it would be inconsistent with a provision of the Articles, these Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 9. *Insurance.* The corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against liability under the provisions of this Article VII, provided, however, that a corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the corporation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law.

Section 10. *Nonapplicability to Fiduciaries of Employee Benefit Plans.* This Article VII does not apply to any proceeding against any trustee, investment manager, or other fiduciary of

an employee benefit plan in such person's capacity as such, even though that person may also be an agent of the corporation as defined in Section 1 of this Article VII. The corporation shall have power to indemnify that trustee, investment manager, or other fiduciary to the extent permitted by Section 207(f) of the California General Corporation Law.

*New Date of Adoption: April 16, 2020*