

**BYLAWS**

**OF**

**FOX OAKLAND THEATER, INC.**

**A California Nonprofit Public Benefit Corporation**

## **ARTICLE I**

### **NAME**

The name of this Corporation is Fox Oakland Theater, Inc., a California nonprofit public benefit corporation.

## **ARTICLE II**

### **OFFICES**

The principal executive office of the Corporation shall be located in the City of Oakland, State of California, at 250 Frank Ogawa Plaza, 5<sup>th</sup> floor, Oakland, California, or such other address as the Board of Directors may from time to time designate. Additional offices may be established and maintained at such place or places in the City of Oakland, State of California, as the Board of Directors may from time to time designate.

## **ARTICLE III**

### **GENERAL AND SPECIFIC PURPOSES; LIMITATIONS**

Section 1. General and Specific Purposes. The purposes of the Corporation as outlined in the Articles of Incorporation are:

- (1) the preservation of historic resources for cultural, historic, educational, and recreational purposes in the City of Oakland,
- (2) to serve low-income communities and low-income persons in the City of Oakland by promoting economic development and job creation in such communities by removing physical, social and economic blight thereby creating and encouraging economic development.

This Corporation is formed, and shall be operated, to support the City of Oakland, a municipal corporation in the State of California, and the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law. In the context of this purpose, the principal activities of the Corporation will be restore and operate the Fox Theater in Oakland, California as an historic resource in Oakland, as an educational facility, and as a performing arts venue.

Section 2. Limitations. Notwithstanding any other provisions of the Articles of the Incorporation, the Corporation shall not, except to an insubstantial degree, engage in any other activities or exercise of power that do not further the purposes of the Corporation. The Corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3)

of the Internal Revenue Code, or the corresponding section of any future federal tax code; or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

## **ARTICLE IV**

### **MEMBERSHIP**

This Corporation shall have no members. All corporate actions shall be approved by the Board of Directors as provided in these Bylaws. All rights which would otherwise rest in the members shall rest in the Directors.

## **ARTICLE V**

### **DIRECTORS**

#### **Section 1. Powers of Directors.**

(a) **General Powers.** Subject to the provisions and limitations of the California Public Benefit Corporation Law and any other applicable laws, and subject to any limitations of the Articles of Incorporation or these Bylaws, the Corporation's powers shall be exercised, by or under the direction of the Board of Directors

(b) **Specific Powers.** Without prejudice to the general powers set forth in Section 1(a) of these Bylaws, but subject to the same limitations, the board shall have the power to do the following:

(1) Appoint and remove, at the pleasure of the Board of Directors, all corporate officers, agents, and employees; prescribe powers and duties for them as consistent with the California Public Benefit Corporations Law, the Articles of Incorporation, and these Bylaws; fix their compensation; and require from them security for faithful service.

(2) Change the principal office or the principal business office in California from one location to another; and designate a place in California for holding any meeting of members.

(3) Borrow money and incur indebtedness on the Corporation's behalf and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidence of debt and securities.

- (4) Adopt and use a corporate seal; and alter the forms of the seal.

Section 2. Number of Directors. The Board of Directors shall consist of at least three but no more than seven directors unless changed by amendment to these bylaws.

Section 3. Designation of Directors. The initial Directors shall be Daniel Vanderpriem, Niccolo Deluca, Katano Kasaine, Gregory Hunter, and Patrick Lane. Thereafter all Directors shall be designated by the Agency Administrator of the Redevelopment Agency of City of Oakland. Each Director shall hold office until the expiration of the term for which designated and until a successor has been designated and qualified.

The City of Oakland and the Redevelopment Agency of the City of Oakland are governmental agencies that represent the interests of residents of low-income communities in the City of Oakland. All of the Directors of the Corporation shall be employees of the City of Oakland or the Redevelopment Agency of the City of Oakland ("Oakland Redevelopment Agency") whose employment duties are related in whole or in part to the advancement of redevelopment, community development, or economic development in the City of Oakland. A Director's term shall be ended and his or her position shall be deemed vacant upon that Director's ceasing to be an employee of the City of Oakland or the Redevelopment Agency of the City of Oakland.

Section 4. Term of Office of Directors. Directors are designated for a term of five (5) years.

Section 5. Vacancies. A vacancy shall be deemed to exist in the event that the actual number of Directors is less than the authorized number for any reason, including, but not limited to, death, removal, resignation, or the Director's ceasing to be an employee of the City of Oakland or the Redevelopment Agency of the City of Oakland. A resignation shall be effective upon receipt of written notice by the Board, the President, or the Secretary, unless the notice specifies a later time of effectiveness. The Agency Administrator of the Oakland Redevelopment Agency may remove any Director with or without cause. Absence of a Director from three or more consecutive Board meetings shall constitute cause for removal. If a vacancy occurs, the Agency Administrator of the Oakland Redevelopment Agency shall designate a Director to fill the vacancy. A Director so designated shall serve for the unexpired term of his or her predecessor and shall be subject to the same qualifications as provided for herein for Directors.

Section 6. Meetings of the Board. The Board of Directors shall meet at least twice each fiscal year at such dates, times and places as the Board of Directors may determine. At the first meeting held during each fiscal year, the Board of Directors shall elect officers. In addition to the semi-annual meetings, additional regular or special meetings shall be held at such times as shall from time to time be fixed by the Directors.

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President of the Board or by any three (3) Directors.

Section 7. Meetings by Telephone or Other Telecommunications Equipment. Any Board meeting may be held by conference telephone, video screen communication, or other communications equipment. Participation in a meeting under this Section shall constitute presence in person at the meeting if all of the following apply:

- (a) Each Director participating in the meeting can communicate concurrently with all other Directors;
- (b) Each Director is provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation;
- (c) The Board has adopted and implemented a means of verifying both of the following:
  - (1) A person communicating by telephone, video screen, or other communications equipment is a Director entitled to participate in the Board meeting.
  - (2) All statements, questions, actions or votes were made by that Director and not by another person not permitted to participate as a Director.

Section 8. Notice of Special Board Meetings. Notice of special meetings shall be given to the Directors not less than four (4) days prior to the meeting if delivered by first class mail or not less than forty-eight (48) hours prior to the meeting if the notice is delivered personally or by telephone. If mailed, such notice shall be deemed given when deposited in the United States mail, with postage thereon prepaid, directed to the Director.

Section 9. Waivers of Notice. The notice requirements contained in these bylaws may be waived in writing by any Director, either before or after the meeting. The attendance of any Director at a meeting without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by him or her. All waivers shall be made part of the minutes of the meetings.

Section 10. Quorum of Directors. A quorum for any meeting of the Board of Directors shall be three (3) members of the Board. Except where a greater vote is required by the Articles of Incorporation or these Bylaws or by applicable law, if a quorum is present, the affirmative vote of a majority of the Directors present at the meeting, entitled to vote, and voting on any matter, shall be the act of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by

at least a majority of the required quorum for such meeting. A majority of the Directors then present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 11. Action In Lieu of a Meeting. Any Board action required or permitted to be taken by the Board may be taken without a meeting, if all Directors of the Board, not including any "interested director" as defined in Corporations Code Section 5233, individually or collectively consent in writing. Such written consent shall be made a part of the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of the Directors.

Section 12. Standard of Care. A Director shall perform the duties of a director, including duties as a member of any committee of the Board on which the Director may serve, in good faith, in a manner such Director believes to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

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A person who performs the duties of a Director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

Section 13. Loans and Self-Dealing Transactions.

A. Loans. The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or officer.

B. Self-Dealing Transactions. The Board shall not approve a self-dealing transaction. A self-dealing transaction is one to which the Corporation is a party and in which one or more of the Directors has a material financial interest and which does not meet the requirements of Subsection C below.

C. Exemptions. The following transactions are exempted from the prohibition of Subsection B above:

- (1) A transaction which is part of a public or charitable program approved in good faith by the Board of Directors without unjustified favoritism and which results in a benefit to one or more Directors of their families only because they are in a class of persons intended to be benefited by the program.
- (2) A transaction of which the Director with a material financial interest has no actual knowledge, and which does not exceed the lesser of one percent of the gross receipts of the Corporation for the preceding fiscal year or \$100,000.
- (3) A transaction which has been approved by the Attorney General before or after it was consummated.
- (4) A transaction which the Board of Directors, having knowledge of the material facts concerning the transaction and the Director's interest in the transaction, authorizes (by a vote of a majority of the Directors then in office without counting the vote of the interested Director) after considering and in good faith determining, upon reasonable investigation under the circumstances, that (a) the transaction will be entered into by the Corporation for its own benefit, (b) the transaction is fair and reasonable as to the Corporation, and (c) the Corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

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Section 14. Contracts with Directors. No director of this Corporation nor any other Corporation, firm, association, or other entity in which one or more of this Corporation's Directors are Directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or transaction with this Corporation, unless (a) the material facts regarding that Director's financial interest in such contract or transaction or regarding such common directorship, officeship, or financial interest are fully disclosed in good faith and noted in the minutes, or are known to all members of the board prior to the board's consideration of such contract or transaction; (b) such contract or transaction is authorized in good faith by a majority of the Board of Directors by a vote sufficient for that purpose without counting the votes of the interested Directors; (c) before authorizing or approving the transaction, the Board of Directors considers and in good faith decides after reasonable investigation that the Corporation

could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and (d) the Corporation for its own benefit enters into the transaction, which is fair and reasonable to the Corporation at the time the transaction is entered into.

This Section does not apply to a transaction that is part of a charitable program of this Corporation if it (a) is approved or authorized by the Corporation in good faith and without unjustified favoritism and (b) results in a benefit to one or more Directors or their families because they are in the class of persons intended to be benefited by the charitable program of this Corporation.

Section 15. Inspection Rights. Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation. Such inspection by a Director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.

Section 16. Compensation. No Director shall receive any compensation from the Corporation for serving on the Board, other than his or her salary or other regular compensation received as an employee of the City of Oakland. Subject to approval by the Board of Directors, Directors shall be entitled to receive reimbursement for necessary travel and other actual expenses incurred in performing duties of his or her office and in attending meetings of the Board of Directors and meetings of committees of the Board of Directors.

Section 17. Interested Persons Limit. No more than forty-nine (49) percent of the persons serving on the Corporation's Board may be interested persons. For purposes of this section, "interested persons" means either:

- (a) Any person currently being compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full- or part-time employee, independent contractor, or otherwise; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person.

## ARTICLE VI

### **COMMITTEES**

Section 1. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the Directors then in office, designate one or more committees, each consisting of two or more Directors, to serve at the pleasure of the Board. Appointments to such committees shall be made annually by majority vote of the



Directors then in office. Any committee, to the extent provided in the resolution, shall have all the authority of the Board, except that no committee, regardless of the Board resolution, may:

- (a) Fill vacancies on the Board of Directors or on any committee;
- (b) Fix compensation of the Directors for serving on the Board or any committee;
- (c) Amend or repeal these Bylaws or adopt new bylaws;
- (d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (e) Appoint any other committees of the Board of Directors or the members of these committees; or
- (f) Approve any self-dealing transaction .

Section 2. Advisory Committees. Advisory committees may be appointed from time to time by the Board of Directors. Advisory committees' membership may consist of Directors only, both Directors and nondirectors, or nondirectors only. Advisory committees have no legal authority to act for the Corporation, but shall report their findings and recommendations to the Board of Directors.

Section 3. Meetings. Except as otherwise provided in this Article, meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of these Bylaws concerning meetings of Directors, with such changes in the content of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

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## ARTICLE VII

### **OFFICERS**

Section 1. Officers. The officers of the Corporation shall be a President, Secretary, Chief Financial Officer and such officers as the Board of Directors may appoint. No person may hold more than one of these offices at one time. Other than the President, the officers need not be members of the Board of Directors

Section 2. Appointment. The Board of Directors shall elect all officers of the Corporation for terms of one year, or until their successors are elected and qualified.

Section 3. Removal. Subject to the rights, if any, of the officer under any contract of employment, any officer of the Corporation may be removed with or without cause by the Board of Directors at any time.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified by that notice and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. President. The President shall be the chief executive officer of the Corporation and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board of Directors. He or she shall supervise, direct, and control the Corporation's activities, affairs, and officers. The President shall have such other powers and duties as the Board of Directors or these Bylaws, as amended, may require.

Section 6. Secretary. The Secretary shall serve notice of and act as secretary at all meetings, proceedings of the Board of Directors, shall record all such proceedings and actions of the Board of Directors in the minute book and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board of Directors. The minutes of the meetings shall include the time and place that the meeting.

The Secretary shall keep or cause to be kept, at the principal California office, a copy of the Articles of Incorporation and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors, and of Committees of the Board of Directors that these Bylaws require to be given. The Secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the Board of Directors or the Bylaws may require.

Section 7. Chief Financial Officer. The Chief Financial Officer of the Corporation shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The Chief Financial Officer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board of Directors. The books of account shall be open to inspection by any Director at all reasonable times.

The Chief Financial Officer shall (i) deposit or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board of Directors may designate; (ii) disburse the Corporation's

funds as the board may order; (iii) render to the President, Chairman of the Board, if any, and the Board of Directors, when requested, an account of all transactions as[ Chief Financial Officer ]and of the financial condition of the Corporation; and (iv) have such other powers and perform such other duties as the Board or these Bylaws may require.

If required by the Board of Directors, the Chief Financial Officer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board of Directors for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement, or removal from office.

The Chief Financial Officer may be an employee of the City of Oakland or Oakland Redevelopment Agency appointed by the City Administrator or Agency Administrator.

Section 8. Compensation. Officers shall not receive compensation for serving in their capacities as such provided, other than his or her salary or other regular compensation received as an employee of the City of Oakland or the Oakland Redevelopment Agency. However, officers may be reimbursed for their reasonable expenses incurred in performing duties of his or her office.

Section 9. Execution of Instruments. Any and all instruments executed in the name of the Corporation, including, but not limited to, contracts, agreements, purchase orders, notes, deeds, deeds of trust, mortgages, leases, security agreements, checks and drafts issued, endorsements of checks and drafts received, certificates, applications and reports, shall be executed by one or more officers, employees or agents of the Corporation as authorized from time to time by the Board of Directors. Such authorization may be general or confined to specific instances. The respective officers and duties thereof as established and defined in this Article and by resolution of the Board of Directors include, except as otherwise provided, the authority to execute instruments in the name of the Corporation when the execution of the instrument is incident to carrying out the duties of the offices.

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## ARTICLE VIII

### **RECORDS**

Section 1. Minute Book. The Corporation shall keep or cause to be kept a minute book which shall contain:

- (a) The record of all meetings of the Board of Directors including date, place, those attending the proceedings thereof, a copy of the notice of the meeting and when and how given, written waivers of notice of meeting, written consent to holding meeting, written approvals of

minutes of meeting, and unanimous written consents to action of the Board of Directors without a meeting, and similarly as to meetings of committees of the Board of Directors and as to meetings or written consents of the Incorporator of the Corporation prior to the appointment of the initial Board of Directors.

- (b) A copy of the Articles of Incorporation and all amendments thereof and a copy of all certificates filed with the Secretary of State.
- (c) A copy of the Bylaws, as amended, duly certified by the Secretary.

Section 2. Annual Report. Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

- (a) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year.
  - (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
  - (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
  - (d) The expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year.
  - (e) Any transaction during the previous fiscal year involving \$50,000 or more to which the Corporation or a subsidiary was a party and in which any Director or officer of the Corporation or subsidiary had or has direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest.
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- (f) The amount and circumstances of any indemnification or advances aggregating more than \$10,000 paid during the fiscal year to any officer or Director of the Corporation.

Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation. A report including the financial statements prescribed above shall be furnished annually to all Directors of the Corporation.

## ARTICLE IX

### **INDEMNIFICATION**

Section 1. Indemnification of Directors, Officers and Employees. The Corporation shall indemnify its Directors, officers, employees and other eligible persons pursuant to the provisions of Section 5238 of the California Nonprofit Public Benefit Corporation Law, or pursuant to a contract entered into with any employee who is not an officer or Director, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding." As that term is used in that section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section. "Expenses", as used in this bylaw, shall have the same meaning as in that Section 5238 of the Corporations Code.

On written request to the Board of Directors by any person seeking indemnification under Corporations Code Section 5238(b), the Board of Directors shall promptly decide under Corporation Code Section 5238(c) whether the applicable standard of conduct set forth in Corporations Code Section 5238(b) or Section 5238(c) has been met and, if so, the Board of Directors shall authorize indemnification. If the Board of Directors cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the Board of Directors shall not authorize the indemnification, and schedule another meeting for this authorization to be voted on by a quorum of the Board of Directors

To the fullest extent permitted by law and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person seeking indemnification under Article IX of these Bylaws in defending any proceeding covered by those Sections shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the Corporation for those expenses.

Section 2. Advancement of Expenses. Expenses incurred in defending any proceeding may be advanced by the Corporation as authorized in Section 5328 of the California Nonprofit Public Benefit Corporation Law prior to final disposition of such proceeding, upon receipt of an undertaking by or on behalf of the Director, officer or employee who is entitled to be indemnified.

**ARTICLE X**

**MISCELLANEOUS**

Section 1. Fiscal Year. The fiscal year of the Corporation shall be from July 1 through June 30 of each year.

Section 2. Dedication of Assets. The property of the Corporation is irrevocably dedicated to public purposes and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. In the event of dissolution, any assets of the Corporation remaining after compliance with the applicable provisions of Chapter 15 (commencing with Section 6510), Chapter 16 (commencing with Section 6610), and Chapter 17 (commencing with Section 6710) of the California Nonprofit Public Benefit Corporation Law shall be distributed to a nonprofit fund, foundation, or corporation, other than one created for religious purposes, that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or the corresponding provision of any future Internal Revenue Law.

Section 3. Amendment of Bylaws. These Bylaws may be amended by the vote of a majority of all of the members of the Board of Directors. All Directors must receive at least thirty (30) days notice of any vote on amending or repealing these Bylaws.

Section 4. Reimbursement of Expenses of the Corporation. The Corporation shall provide full reimbursement for monies expended on behalf of the Corporation by its officers or Directors if such expenditures have received prior approval from the Board of Directors.

**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of Fox Oakland Theater, Inc., a California nonprofit public benefit corporation; that these Bylaws, consisting of eleven pages are the Bylaws of this Corporation as adopted by the Board of Directors on August 8, 2006 and that these Bylaws have not been amended or modified since that date.

Executed on \_\_\_\_\_ at Oakland, California.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Secretary