

**SECOND AMENDED AND RESTATED  
BY-LAWS**

**OF**

**UTAH SYMPHONY & OPERA**

A Utah Nonprofit Corporation

Organized Under the

Utah Revised Nonprofit Corporation Act

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OF

UTAH SYMPHONY & OPERA

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**SECOND AMENDED AND RESTATED**  
**BY-LAWS**  
**OF**  
**UTAH SYMPHONY & OPERA**

**Approved by UTAH SYMPHONY & OPERA**  
**Dated Effective as of May 24, 2007**

**ARTICLE I OFFICES**

Section 1.1. Business Offices. The Corporation (the "Corporation") may have such offices as the Board of Trustees (the "Board" or "Trustees") may from time to time determine or as the business of the Corporation may from time to time require.

Section 1.2. Principal Office. The initial principal office of the Corporation shall be located at 123 West South Temple, Salt Lake City, Utah 84101, or at any other place as may be designated in the most recent document on file with the Utah Department of Commerce, Division of Corporations and Commercial Code (the "Division"), providing information regarding the principal office of the Corporation. The Corporation shall maintain at its principal office a copy of such corporate records as may be required by Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act (the "Act").

Section 1.3. Registered Office. The registered office of the Corporation required to be maintained by Section 16-6a-501 of the Act shall be the registered office as originally so designated in the Corporation's Amended and Restated Articles of Incorporation or subsequently designated as the Corporation's registered office in the most recent document on file with the Division providing such information. The Corporation shall maintain a registered agent at the registered office, as required by Section 16-6a-501 of the Act. The registered office and registered agent may be changed from time to time as provided in Sections 16-6a-501 and 16-6a-502 of the Act.

**ARTICLE II MEMBERS, STOCKHOLDERS, DONORS**

Section 2.1. Members; Stockholders. The Corporation shall have neither members nor stockholders, and shall issue no shares of stock which evidence or claim to evidence that the holder thereof has a membership or ownership interest in the Corporation or interests in or other rights to its property, whether real or personal.

Section 2.2. Donors. The Corporation may recognize donors to the Corporation in its various publications and other communications with the public, and the Corporation may classify those persons, corporations and other entities according to the value of their respective donations in accordance with the system of classification adopted by the Board from time to time. No donor shall have any voting rights merely by virtue of said donor's status as a donor.

### **ARTICLE III BOARD OF TRUSTEES**

Section 3.1. General Powers. As provided in Section 16-6a-801 of the Act, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of the Board, consistent with the provisions of the Act, subject to any limitation set forth in the Corporation's Amended and Restated Articles of Incorporation.

Section 3.2. Number, Tenure and Qualifications. The number of Trustees of the Corporation shall be as fixed from time to time by resolution of the Board or by an amendment to this Section 3.2, but in no instance shall there be fewer Trustees than the minimum number required by Section 16-6a-803 of the Act. The Board may consist of the following classifications of Trustees: (i) elected Trustees as described in Section 3.3, (ii) life-time Trustees as described in Section 3.4, (iii) ex-officio Trustees as described in Section 3.5, (iv) honorary Trustees and Trustees emeriti as described in Section 3.6, and (v) the President & Chief Executive Officer of the Corporation ("President & CEO," as defined below) as described in Section 3.7. No decrease in the authorized number of Trustees shall have the effect of shortening the term of any incumbent Trustees. Trustees need not be residents of the State of Utah, and shall be selected based on their ability and willingness to contribute to the accomplishment of the Corporation's purposes.

#### **Section 3.3. Elected Trustees.**

(a) *Number and Term.* Until changed by a resolution duly adopted by the Board amending this Section 3.3, subject to the limitations set forth in Section 3.2, the number of elected Trustees shall be forty (40). The term of office of each elected Trustee shall, unless otherwise determined by the Board, be limited to a maximum of three (3) three-year terms or until his or her removal, death or resignation in accordance with the provisions of these Amended and Restated By-laws. The Board may provide for staggered terms of elected Trustees, the mechanics of which shall be determined by the Board, from time to time.

(b) *Election of Trustees.* Individuals eligible to be elected to the Board as an elected Trustee shall be nominated to the Board prior to such election pursuant to the nominating procedures set forth in these Amended and Restated By-laws. A Trustee whose term expires, and who has not served three terms, shall be eligible to be re-elected in accordance with this Section 3.3(b).

(c) *Vacancies.* A vacancy on the Board shall exist: (i) upon the death of an elected Trustee; (ii) resignation or removal of any elected Trustee; (iii) the expiration

of the term of office of an elected Trustee; and (iv) whenever the authorized number of elected Trustees is increased by the Board. Individuals duly nominated to the Board in accordance with these Amended and Restated By-laws to fill vacancies on the Board may be elected by an affirmative vote of a majority of the Trustees present at a meeting of the Board at which a quorum is present or, if the number of Trustees then in office is less than a quorum, then by the affirmative vote of a majority of the Trustees then in office at a meeting held pursuant to these Amended and Restated By-laws.

Section 3.4. Life-time Trustees. An individual whose term as Chair of the Board (“Chair,” as defined below) has expired is eligible to be nominated for appointment as a life-time Trustee with voting privileges pursuant to the nominating procedures set forth in these Amended and Restated By-laws. Life-time Trustees shall not be counted in determining a quorum.

Section 3.5. Ex-officio Trustees. The Corporation shall have six appointed ex-officio voting Trustees of the Board. These six positions shall be comprised of the following: (i) two “Musicians”, as provided in the Collective Bargaining Agreement between the Corporation and American Federation of Musicians, Local 104, dated September 1, 1999 through August 31, 2004, as amended, supplemented or superceded (the “Collective Bargaining Agreement”); (ii) one Utah Symphony & Opera Network representative; (iii) one Ogden Opera Guild representative; (iv) one Utah Symphony Guild representative; and (v) one Ogden Symphony Ballet Association Representative. Ex-officio Trustees shall be counted in determining a quorum.

Section 3.6. Honorary Trustees and Trustees Emeriti. The Corporation may have non-voting honorary Trustees and non-voting Trustees emeriti in numbers as the Board deems appropriate. Honorary Trustees and Trustees emeriti shall be appointed by the Board upon the affirmative vote of a majority of the Trustees present at a meeting of the Board at which a quorum is present in accordance with these Amended and Restated By-laws. Honorary Trustees appointed by the Board shall serve a three-year term and Trustees emeriti appointed by the Board shall serve a life-time term until any such Trustee’s death or until such Trustee’s removal or resignation in accordance with these Amended and Restated By-laws. Honorary Trustees and Trustees emeriti shall attend Board meetings only by invitation of the Board.

Section 3.7. President & CEO. The President & CEO of the Corporation shall be a voting Trustee of the Board.

Section 3.8. Removal of Trustees. A Trustee of any classification, except Musician ex-officio Trustees, may be removed from office, whether or not for cause or other reason, if decided by an affirmative vote of two-thirds of the voting membership of the Board then in office at any meeting of the Board called for that purpose at which a quorum is present.

Section 3.9. Resignation of Trustees. A Trustee may resign at any time upon written notice to the Chair or the President & CEO of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the

designated officer, and the acceptance of the resignation by the Board shall not be necessary to make it effective.

Section 3.10. Board Meetings.

(a) *Place of Meetings.* The Board may hold its meetings at such place or places within or without the State of Utah as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or as designated in a notice of any such meeting.

(b) *Annual Meeting of the Board.* The Board, in its discretion, shall designate a place, date and hour for the annual meeting of the Board. Notice of an annual meeting shall be given pursuant to the notice requirements provided in Section 3.10(c) below relating to regular meetings of the Board.

(c) *Regular Meetings.* The Board shall hold a regular meeting no less than once each calendar quarter. The Trustees may provide by resolution for the time of the meeting and may provide for the holding of any other regular meetings deemed by the Board to be appropriate. Except as otherwise provided by law, notice of the time and place of each regular meeting of the Board shall be mailed by United States first class mail, overnight delivery service, facsimile or telecopier, or otherwise delivered to each Trustee, at such Trustee's residence or usual place of business, or delivered personally to each Trustee at such place, or emailed to each Trustee at such Trustee's email address as it appears on the books and records of the Corporation immediately before such notice is to be sent, in any case, at least ten (10) business days before the day on which the meeting is to be held. Except where otherwise required by law or these Amended and Restated By-laws, notice of the purpose of a meeting need not be given.

(d) *Special Meetings.* Special meetings of the Board may be called by the Chair, the President & CEO or at least 25% of the total Trustees then in office upon prior written notice thereof. Notice of special meetings shall be signed by the Chair, the President & CEO or the Secretary of the Corporation and shall be mailed as soon as reasonably practicable to the last known address or email address, as applicable, of each Trustee as such address appears on the records of the Corporation. Notices may be mailed by the following methods as reasonably applicable: (i) United States first class mail, postage prepaid; (ii) certified mail; (iii) overnight delivery and (iv) email attaching the signed notice. Only business disclosed in the notice shall be transacted at a special meeting unless all Trustees present at such special meeting agree to the transaction of additional business.

(e) *Waiver of Notice.*

(i) The attendance of a Trustee at a regular or special meeting of the Board shall constitute a waiver of notice of such meeting except when a Trustee attends such meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

(ii) Whenever any notice is required to be given by any law, the Amended and Restated Articles of Incorporation or these Amended and Restated By-laws, a written waiver of notice, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be the equivalent of the giving of such notice in a timely fashion.

(f) *Trustee Participation.* Trustees may participate in any meeting of the Board by means of physical presence or conference telephone or similar communications equipment, provided that all Trustees participating in the meeting are able to simultaneously talk to and hear other all parties. Such participation shall constitute presence in person at such meeting.

### Section 3.11. Quorum and Voting.

(a) *Quorum Requirements.* A majority of Trustees eligible to vote (including the President & CEO), present in person, or otherwise deemed present as permitted under Section 3.10(f), shall constitute a quorum for the transaction of business. If a lesser number of Trustees is present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without notice other than an announcement at the meeting, until a quorum shall attend. The affirmative vote of a simple majority of the Trustees eligible to vote (including the President & CEO) who are present at any meeting of the Board at which a quorum is present shall be the act of the Board, unless a greater number is required by law, the Amended and Restated Articles of Incorporation, or these Amended and Restated By-laws in connection with the specified actions.

#### (b) *Voting.*

(i) Trustees may vote on any resolution of the Board via any verifiable method of voting including (A) voting in person at a duly called meeting of the Board; (B) voting via telephone in accordance with Section 3.10(f); (C) voting by proxy; provided, however, that a Trustee may only give a proxy to the Chair or the President & CEO; (D) electronic voting; or (E) any other verifiable voting method. Whether a particular method of voting is deemed “verifiable” shall be in the sole discretion of the Board.

(ii) Trustees who shall be entitled to vote on a resolution of the Board shall be: (A) elected Trustees; (B) life-time Trustees, (C) ex-officio Trustees, and (D) the President & CEO, in accordance with Section 3.7.

(c) *Presumption of Assent.* A Trustee who is present at a meeting of the Board at which action on any matter is taken shall be 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 unless he or she shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not be afforded to a Trustee who cast an affirmative vote for such action.

Section 3.12. Action by Unanimous Written Consent. If and when the Trustees shall unanimously consent in writing to any action to be taken by the Corporation, such action shall be as valid as a corporate action as though it had been authorized at a regular meeting of the Board.

Section 3.13. Board Committees.

(a) *General.*

(i) The Board may designate by resolution from among their Trustees an Executive Committee, a Nominating Committee, a Finance Committee, an Investment Committee, an Audit Committee and such other committees and subcommittees as the Board deems appropriate, from time to time. Each committee shall exercise those powers granted to it by an enabling resolution of the Board; provided, however, that no committee shall exercise any power which is excluded from the delegation of power of the Board by the laws of the State of Utah, the Amended and Restated Articles of Incorporation or these Amended and Restated By-laws.

(ii) The Chair, one or more Vice Chairs of the Board (“Vice Chairs,” as defined below) and the President & CEO shall select and nominate to the Board certain Trustees to serve as chairs of each committee and subcommittee. The Board shall appoint nominated Trustees to serve as the chairs of each Board committee and subcommittee upon the affirmative vote of a majority of Trustees present at a meeting of the Board at which a quorum is present. The membership of each Board committee and subcommittee shall be determined by the Chair, one or more Vice Chairs and the President & CEO. Each Board committee and subcommittee shall consist of at least two Trustees. A Trustee may simultaneously serve on more than one committee.

(iii) Fifty-one percent (51%) of the Trustees eligible to vote (including the President & CEO), present in person, or otherwise deemed present in accordance with Section 3.10(f), shall constitute a quorum for the transaction of business by a Board committee or subcommittee. If a lesser number of Trustees is present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without notice other than an announcement at the meeting, until a quorum shall attend. The affirmative vote of a simple majority of the Trustees eligible to vote (including the President & CEO) who are present at any meeting of a Board committee or subcommittee at which a quorum is present shall be the act of the Board committee or subcommittee, unless a greater number is required by law, the Amended and Restated Articles of Incorporation, or these Amended and Restated By-laws in connection with the specified actions. Voting by the Trustees at any meeting of a Board committee or subcommittee shall be done in accordance with Sections 3.11(b)(i), 3.11(c) and 3.12.

(b) *Executive Committee*

(i) The Executive Committee shall be comprised of the Chair, the President & CEO, one or more Vice Chairs, the Musician ex-officio Trustees described in Section 3.5(i), the immediate past Chair (only if appointed as a life-time

Trustee pursuant to Section 3.4) and the chairs of each Board committee (except Board subcommittees). The immediate past Chair, if appointed, shall serve a one (1) year term on the Executive Committee. The Board may, by resolution, alter the composition of the Executive Committee; provided, however, that Musician ex-officio Trustee positions on the Executive Committee shall be governed solely by the Collective Bargaining Agreement and may not be modified by the Board.

(ii) The Executive Committee shall review and consider nominations for the Chair, one or more Vice Chairs and Trustees of the Board as such nominations are received from the Nominating Committee in accordance with subsection (c). The Executive Committee shall vote upon each nomination. Each nomination approved by the Executive Committee shall be forwarded to the Board for action. In addition, the Executive Committee shall formulate and recommend policies to the Board. In the absence of Board action or in the event that the Board is unable to take action on a particular matter, the Executive Committee shall have all of the powers and exercise all of the duties of the Board in managing the business of the Corporation. Any such action taken by the Executive Committee in the absence or inability of the Board to take action shall be considered for ratification by the Board at the next regular meeting or special meeting of the Board.

(c) *Nominating Committee.*

(i) At such times as appropriate, the Nominating Committee shall nominate members of the Board to serve as Chair and as one or more Vice Chairs. Each nomination shall be sent to the Executive Committee and, upon approval, shall be sent to the Board for action.

(ii) At such times as appropriate, the Nominating Committee shall nominate individuals to serve as either elected Trustees, life-time Trustees, Trustees emeriti or honorary Trustees of the Board, as applicable. Each nomination shall be sent to the Executive Committee and, upon approval, shall be sent to the Board for action.

(d) *Finance Committee.* The Finance Committee shall (i) review the budget and plans of the Corporation; (ii) in cooperation with the President & CEO and the Vice President, Finance & Chief Financial Officer (“Vice President, Finance & CFO,” as defined below), establish the financial policies of the Corporation, subject to review and approval by the Board; (iii) assist the Audit Committee in monitoring and reviewing the financial accounting and controls of the Corporation; and (iv) perform any additional duties assigned to it by the Board.

(e) *Investment Committee.* The Investment Committee shall formulate and supervise the investment policies of the Corporation. The Investment Committee is authorized to, in cooperation with the President & CEO and the Vice President, Finance & CFO, take any and all actions, including the giving of such directions as may be required, necessary or appropriate to cause the purchase, sale or exchange, on the Corporation’s behalf, of shares of stock, bonds, debentures, mortgages, trust deeds, notes, certificates or other securities, or real estate, at such price or prices and upon such

terms as it shall deem advisable, or to exercise any other rights on behalf of the Corporation with reference thereto. The Investment Committee may retain investment counsel to advise it with respect to the investment objectives and policies of the Corporation as shall be determined by the Board from time to time.

(f) *Audit Committee.* The Audit Committee shall have oversight of the Corporation's audit and compliance functions and shall monitor and review the financial accounting and controls of the Corporation. The Audit Committee shall be directly and solely responsible for the appointment, compensation, retention and oversight of the work of any and all independent auditors engaged by the Corporation, and any and all such independent auditors shall have a reporting relationship directly with the Audit Committee. The Audit Committee shall cause to be made an annual audit of the Corporation, through the independent auditors, and shall receive, review and report on such independent reports to the Executive Committee and the Board. The report shall state, among other things, whether the Corporation is in a sound condition, whether adequate internal controls and procedures are being maintained, and shall make recommendations, if applicable, of changes to the manner of conducting the affairs of the Corporation that the Audit Committee deems advisable. The Audit Committee shall also be charged with oversight and review of the annual audit plan, the policies and procedures of the independent auditors, the financial statements of the Corporation, the overall accounting and financial controls of the Corporation, and any related-party transactions and situations which present potential conflicts of interest.

#### Section 3.14. Governance of the Board.

##### (a) *Chair of the Board.*

(i) The Chair shall be elected from the membership of the Board. In accordance with the nominating procedures described herein, the Nominating Committee shall determine and submit nominations for Chair to the Executive Committee for action. The Executive Committee shall submit final nominations for Chair to the Board for action. The Board shall, at its first scheduled regular meeting, or at a special meeting called for such purpose (among others, as the case may be), review the nominations and shall elect a Chair upon a majority vote of the Trustees present at a meeting of the Board at which a quorum is present.

(ii) The Chair shall be the individual principally responsible for the general supervision and control of the business and affairs of the Board. When present, he or she shall preside at all meetings of the Board. He or she shall perform all duties usually vested in the office of Chair and such other duties as may be prescribed by the Board, from time to time.

##### (b) *Vice Chairs of the Board.*

(i) One or more Vice Chairs shall be elected from the membership of the Board. In accordance with the nominating procedures described herein, the Nominating Committee shall determine and submit nominations for one or

more Vice Chairs to the Executive Committee for action. The Executive Committee shall submit final nominations for Vice Chairs to the Board for action. The Board shall, at its first scheduled regular meeting, or at a special meeting called for such purpose (among others, as the case may be), review the nominations and shall elect Vice Chairs upon a majority vote of the Trustees present at a meeting of the Board at which a quorum is present.

(ii) Vice Chairs shall assist the Chair and shall perform all duties as may be assigned to them by the Chair or by the Board. The Vice Chairs shall at the request of the Chair, or in the absence or refusal to act of the Chair, perform the duties of the Chair and when so acting, shall have all of the powers of the Chair and be subject to all of the restrictions upon the Chair. The Vice Chairs shall perform all duties incident to the position of Vice Chair.

Section 3.15. Power of Board to Borrow Money. The Board shall have full power and authority to authorize the Corporation to borrow money whenever the Board, by resolution, determines that borrowing is in the general interests of the Corporation. The Board may authorize the proper officers of the Corporation to make, execute and deliver in the name and on behalf of the Corporation such notes, bonds and other evidences of indebtedness as the Board deems proper.

Section 3.16. Compensation. No compensation shall be paid to Trustees for their services as Trustees.

Section 3.17. Inspection of Books and Records. Any Trustee shall have the right at any reasonable time to inspect the books and records of the Corporation; provided, however, that the Board may restrict such inspection rights to the extent that the exercise thereof by any Trustee or group of Trustees is determined to unduly interfere with the Corporation's day-to-day business activities.

#### **ARTICLE IV OFFICERS**

Section 4.1. Numbers and Qualifications. The officers of the Corporation may include one or more of: a President & CEO, a Senior Vice President and Chief Operating Officer ("Senior Vice President & COO"), a Vice President, Finance & CFO and a Secretary. The Corporation may also have such other officers and assistant officers as the President & CEO may determine to be appropriate. Individuals may hold more than one office of the Corporation.

Section 4.2. Employment of Officers and Term of Office. The Chair, one or more Vice Chairs and the Executive Committee shall determine and submit nominations for the President & CEO to the Board for action. The President & CEO shall be primarily responsible for the employment of all officers of the Corporation except the office of President & CEO. The President & CEO can remove an officer at any time; provided, however, that the Board may remove the President & CEO only upon the affirmative vote of two-thirds of the Trustees present at a meeting of the Board at which a quorum is present.

Section 4.3. Authority and Duties. The officers of the Corporation shall have the authority and perform the duties specified below and any such additional duties as may be specified by the President & CEO, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

(a) *President & CEO.* The President & CEO is the principal executive officer of the Corporation and shall report to the Board. The President & CEO shall: (i) ensure full and timely execution of all Board policies, strategies, plans, orders and resolutions and provide executive support to the Board; (ii) provide leadership and artistic direction toward the achievement of the Corporation's mission, strategy, and its annual goals and objectives; (iii) sign deeds, mortgages, bonds, contracts or other instruments; (iv) carry on and have general supervision and control over business of the Corporation including fundraising, marketing, public relations, policy development and finances; (v) manage the Corporation's relationships with the community; (vi) have general supervision and control over the Corporation's officers, agents and employees, all of whom shall report and be responsible to the President & CEO; and (vii) perform all other duties incident to the office of President & CEO as may be assigned to the President & CEO by the Board, from time to time.

(b) *Senior Vice President & COO.* The Senior Vice President & COO shall report to the President & CEO and shall assume the responsibilities of the President & CEO in his or her absence, inability, unavailability or refusal to perform his or her duties. The Senior Vice President & COO shall perform all duties incident to the office of Senior Vice President & COO as may be assigned to the Senior Vice President & COO by the President & CEO, from time to time.

(c) *Vice President, Finance & CFO.* The Vice President, Finance & CFO shall be the principal financial and accounting officer of the Corporation and shall report to the Senior Vice President & COO. The Vice President, Finance & CFO shall: (i) keep complete books and records of account, assist with and supervise the annual audit of the Corporation and prepare and furnish an annual financial report to the President & CEO and the Board showing the financial position of the Corporation and the results of its operations for the fiscal year; (ii) generate monthly financial reports for the Executive Committee and the Board and (iii) perform all other duties incident to the office of Vice President, Finance & CFO and such other duties as may be assigned from time to time by the President & CEO and the Senior Vice President & COO.

(d) *Secretary*. The Secretary shall report to the President & CEO and shall: (i) have responsibility for the preparation and maintenance of the other records and information required to be kept by the Corporation under Section 16-6a-1601 of the Act; (ii) see that all notices are duly given in accordance with the provisions of these Amended and Restated By-laws or as required by the Act or other applicable law; (iii) be custodian of the corporate records and of any seal of the Corporation; (iv) when requested or required, authenticate any records of the Corporation; (v) keep a register of the post office address and e-mail addresses of each Trustee; and (vi) perform all other duties incident to the office of Secretary and such other duties as may be assigned from time to time by the President & CEO.

## **ARTICLE V ARTISTIC DIRECTORS**

### **Section 5.1. Opera Artistic Director.**

(a) The Opera Artistic Director shall work in partnership with the Symphony Music Director and shall be primarily responsible for the artistic vision of the Opera and cooperate in artistic decisions of the Symphony, subject to the control and direction of the President & CEO. The Opera Artistic Director shall report to the President & CEO and shall work in partnership with the President & CEO and the Symphony Music Director to develop, refine and sustain the overall vision of the Corporation and generally perform all duties incident to the position of the Opera Artistic Director and such other duties as may be prescribed by the President & CEO, from time to time.

(b) The Opera Artistic Director shall be selected by the President & CEO, with the input of the Executive Committee and a search committee, which shall be comprised of certain Trustees and other individuals selected by the Chair and the President & CEO. The search committee shall conduct a national search for qualified individuals, from which the search committee, with input from the Chair, shall determine and submit nominations to the President & CEO for final selection.

(c) The Opera Artistic Director may be removed by the President & CEO with the consent of the Executive Committee and the Board; provided, however, that if the same individual holds the positions of Opera Artistic Director and President & CEO, the person holding the combined position may be removed upon the affirmative vote of two-thirds of the Trustees present at a meeting of the Board.

### **Section 5.2. Symphony Music Director.**

(a) The Symphony Music Director shall work in partnership with the Opera Artistic Director and shall be primarily responsible for the artistic vision of the Symphony and cooperate in artistic decisions involving the Opera, subject to the control and direction of the President & CEO. The Symphony Music Director shall report to the President & CEO and shall perform all duties incident to the position of Symphony Music Director and such other duties as may be prescribed by the President & CEO, from time to time.

(b) The Symphony Music Director shall be selected by the President & CEO with the consent of the Executive Committee and the Board. Input shall be provided by the orchestra musicians at large and a search committee, which shall be comprised of certain Trustees and other individuals selected by the Chair and the President & CEO. The search committee shall conduct a national or international search for qualified individuals, who shall then be invited to participate in an audition process, as shall be determined by the search committee, the Chair and the President & CEO. The search committee, with input from the orchestra musicians at large, shall determine and submit nominations to the President & CEO, the Executive Committee and the Board for final selection.

(c) The Symphony Music Director may be removed by the President & CEO with the consent of the Executive Committee and the Board, in accordance with Section 3.11.

## **ARTICLE VI INDEMNIFICATION**

Section 6.1. Indemnification of Trustees and Officers. To the maximum extent permitted by the Act or any other applicable law, the Corporation shall indemnify its Trustees and officers in all cases in which a Corporation may indemnify a Trustee or an officer. Without limiting the foregoing, the Corporation shall indemnify its Trustees and officers in all cases in which it may do so under Section 16-6a-902 of the Act. This provision constitutes authorization of indemnification as contemplated in Section 16-6a-906 of the Act, so that the Corporation can indemnify Trustees once a determination has been made in the specific case that indemnification is permissible in the circumstances because the Trustees have met the applicable standard of conduct set forth in Section 16-6a-902 of the Act. The Corporation shall consider and act as expeditiously as possible on any and all requests by a Trustee or an officer for indemnification.

Section 6.2. Advances of Expenses. Pursuant to the provisions of Section 16-6a-904 and 16-6a-907 of the Act, if a determination is made, following the procedures of Section 16-6a-906 of the Act, that a Trustee or an officer has met the statutory requirements for advancement of expenses, and if an authorization of payment is made, following the procedures and standards set forth in Section 16-6a-906 of the Act, then the Corporation may pay for or reimburse the reasonable expenses incurred by a Trustee or an officer who is a party to a proceeding in advance of final disposition of the proceeding.

Section 6.3. Other Rights and Remedies. The rights to indemnification and advancement of expenses provided in this Article VI shall be in addition to any other rights which a party may have or hereafter acquire under any applicable law, contract, order, or otherwise.

Section 6.4. Insurance. The corporation shall maintain liability insurance coverage for the officers and Trustees of the Corporation in such amounts as deemed appropriate by the Board.

Section 6.5. Severability. If any provision of this Article VI shall be held to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Article shall not be affected or impaired thereby, but shall, to the fullest extent possible, be construed so as to give effect to the intent of this Article that each party covered hereby is entitled to the fullest protection permitted by law.

## **ARTICLE VII AUXILIARY AND ADVISORY ORGANIZATIONS**

### **Section 7.1. Recognition of Auxiliary and Advisory Organizations and Guilds.**

(a) The Board may, from time to time, recognize certain auxiliary and advisory organizations and guilds, and may recognize as ex-officio Trustees (whether by contract, agreement or otherwise) certain members of such auxiliary and advisory organizations and guilds. Such organizations may or may not be affiliated with the Corporation.

(b) The Board may, upon the affirmative vote of a majority of the Trustees present at a Board meeting at which a quorum is present, determine that recognition of certain auxiliary and advisory organizations and guilds is not in the best interests of the Corporation. Pursuant to such resolution, the Board may remove individuals representing such auxiliary and advisory organizations and guilds as ex-officio Trustees; provided that, any such removal of ex-officio Trustees is not in contravention of the terms providing for ex-officio Trustee representation on the Board of the then-current Collective Bargaining Agreement or any other contract or agreement.

Section 7.2. Affiliated Auxiliary and Advisory Organizations. To aid and assist it in the accomplishment of the purposes of the Corporation, the Board may authorize the establishment of one or more unincorporated, auxiliary and advisory organizations and guilds within the Corporation. Any such organization shall not have separate legal identity, shall be and remain at all times a part of the Corporation and subject to the ultimate control and direction of the Board, but may otherwise enjoy such autonomy as the Board may grant. Such organizations may have separate names, but such names shall belong to and be registered by the Corporation as assumed business names of the Corporation. Each such organization may adopt by-laws to govern the conduct of its affairs, but no by-laws shall be in any way contradictory to or in conflict with the laws of the State of Utah, the Amended and Restated Articles of Incorporation or the Amended and Restated By-laws of the Corporation. Organizational by-laws of such organizations shall be submitted to the Board for approval prior to their adoption. No such organization shall conduct any activity which could jeopardize the tax-exempt status of or the tax deductibility of contributions to the Corporation.

## **ARTICLE VIII AMENDMENTS TO AMENDED AND RESTATED BY-LAWS**

Section 8.1. Authority to Amend. As provided in Section 16-6a-1001 of the Act, the Corporation's Board may amend these Amended and Restated By-laws at any time by a majority vote of the Trustees present at a meeting of the Board at which a quorum is present.

## ARTICLE IX MISCELLANEOUS

Section 9.1. Corporate Seal. The Board may provide for a corporate seal, to be in such a form as the Board may determine to be appropriate, and any officer of the Corporation may, when and as required or as determined to be appropriate, affix or impress the seal, or a facsimile thereof, to or on any instrument or document of the Corporation.

Section 9.2. Fiscal Year. The fiscal year of the Corporation shall end on August 31 of each year, unless otherwise established by the Board.

**CERTIFICATE OF ADOPTION**  
**OF**  
**SECOND AMENDED AND RESTATED BY-LAWS**  
**OF**  
**UTAH SYMPHONY & OPERA**

The undersigned hereby certifies that she is the Secretary of Utah Symphony & Opera, and that the foregoing Second Amended and Restated By-laws were approved and adopted by Utah Symphony & Opera effective as of May 24, 2007.

Executed effective as of the 24th of May, 2007.

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*/s/ David S. Green*

Secretary