

**CERTIFICATE CONCERNING
THE
ARTICLES OF AMENDMENT AND RESTATEMENT
TO THE
ARTICLES OF INCORPORATION
OF
THE DESERT BOTANICAL GARDEN, INC.**

FIRST: The name of the nonprofit corporation is The Desert Botanical Garden, Inc.

SECOND: The document attached hereto as Exhibit A sets forth a restatement of the Articles of Incorporation, which contains amendments to the Articles of Incorporation (the "Amended and Restated Articles of Incorporation").

THIRD: The Amended and Restated Articles of Incorporation were adopted on _____, 2020.

FOURTH: The Amended and Restated Articles of Incorporation were duly adopted by the Board of Trustees and the nonprofit corporation's members, and there is no other group or person whose approval is required.

Dated: _____, 2020

THE DESERT BOTANICAL GARDEN, INC.,
an Arizona nonprofit corporation

By: _____

Name: Tammy McLeod

Title: President

EXHIBIT A

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF THE DESERT BOTANICAL GARDEN, INC. (a nonprofit corporation)

Article 1 – Name and Place of Business

The name of the corporation shall be The Desert Botanical Garden, Inc. (the “Corporation”). The known place of business for the Corporation in the State of Arizona shall be 1201 North Galvin Parkway, Phoenix, Arizona 85008.

Article 2 – Purposes and Activities

This Corporation is an Arizona nonprofit corporation. The Corporation is organized and shall always be operated exclusively for charitable and educational purposes, solely and exclusively in the interest of the general public. More specifically, the objects, purposes, and nature of the Corporation’s activities are to advance excellence in education, research, exhibition, and conservation of desert plants of the world with emphasis on the Southwestern United States; provided that such activities of the Corporation are for purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future federal tax code (the “Code”)) and permitted by the laws of the State of Arizona.

Notwithstanding any other provisions of these Amended and Restated Articles of Incorporation, the Corporation shall only engage in any lawful activities that may be conducted by an organization (a) which is described in Section 501(c)(3) of the Code and (b) contributions to which are deductible pursuant to Sections 170(c)(2), 642(c), 2055, and 2522 of the Code.

Article 3 – Limitation on the Scope of Activities

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its trustees, officers, or other private persons, or be appropriated for any purposes other than the purposes of the Corporation as herein set forth; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 2 hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. The Corporation shall not participate in or intervene in (including the publishing or distribution of statements with respect to) any political campaign on behalf of or in opposition to any candidate for public office.

Article 4 – Members

Any person, firm, corporation, association or other organization shall be eligible for membership in the Corporation. Such persons and organizations may become members by paying

dues. The dues of members shall be fixed from time to time by the Board of Trustees and shall be payable at such times as the Bylaws of the Corporation may prescribe.

There shall be such class or classes of membership as may be set forth and provided for in the Bylaws of this Corporation together with such voting privileges and other privileges, obligations and rights as therein set forth.

Article 5 – Statutory Agent

The name and address of the Corporation’s current statutory agent is Capitol Corporate Services Inc., 8825 N 23rd Ave, Suite 100, Phoenix, AZ 85021.

Article 6 – Board of Trustees

The business and affairs of the Corporation shall be conducted by a Board of Trustees. As set forth in the Bylaws of the Corporation, provided that the Board of Trustees will be comprised of not fewer than twenty-four (24) nor more than forty-eight (48) persons who shall be members of the Corporation.

The names and addresses of the persons who currently serve as trustees of the Corporation are as follows:

<u>Name</u>	<u>Address:</u>
Crista Abel	1201 N Galvin Parkway, Phoenix, AZ 85008
Rebecca Ailes-Fine	1201 N Galvin Parkway, Phoenix, AZ 85008
Patricia Auch	1201 N Galvin Parkway, Phoenix, AZ 85008
Kate Baker	1201 N Galvin Parkway, Phoenix, AZ 85008
Jason Barlow	1201 N Galvin Parkway, Phoenix, AZ 85008
Scott Burdick	1201 N Galvin Parkway, Phoenix, AZ 85008
John Burnside	1201 N Galvin Parkway, Phoenix, AZ 85008
Doug Carter	1201 N Galvin Parkway, Phoenix, AZ 85008
Shelley Cohn	1201 N Galvin Parkway, Phoenix, AZ 85008
Dirk Ellsworth	1201 N Galvin Parkway, Phoenix, AZ 85008
Barton Faber	1201 N Galvin Parkway, Phoenix, AZ 85008
Amy Flood	1201 N Galvin Parkway, Phoenix, AZ 85008
Ursula Gangadean	1201 N Galvin Parkway, Phoenix, AZ 85008
Christopher Gately	1201 N Galvin Parkway, Phoenix, AZ 85008
Diana Gregory	1201 N Galvin Parkway, Phoenix, AZ 85008
Lori Higuera	1201 N Galvin Parkway, Phoenix, AZ 85008
Barbara Hoffnagle	1201 N Galvin Parkway, Phoenix, AZ 85008
Carrie Hulburd	1201 N Galvin Parkway, Phoenix, AZ 85008
Harriet Ivey	1201 N Galvin Parkway, Phoenix, AZ 85008
Bill Jacoby	1201 N Galvin Parkway, Phoenix, AZ 85008
Thomas R. Jones	1201 N Galvin Parkway, Phoenix, AZ 85008
Jane Jozoff	1201 N Galvin Parkway, Phoenix, AZ 85008
Carole Kraemer	1201 N Galvin Parkway, Phoenix, AZ 85008
Mark Landy	1201 N Galvin Parkway, Phoenix, AZ 85008

Kimberly Larkin	1201 N Galvin Parkway, Phoenix, AZ 85008
Jan Lewis	1201 N Galvin Parkway, Phoenix, AZ 85008
Laura A. Lo Bianco	1201 N Galvin Parkway, Phoenix, AZ 85008
Bruce Macdonough	1201 N Galvin Parkway, Phoenix, AZ 85008
Tahniah McKeever	1201 N Galvin Parkway, Phoenix, AZ 85008
Tammy McLeod	1201 N Galvin Parkway, Phoenix, AZ 85008
Paul Morell	1201 N Galvin Parkway, Phoenix, AZ 85008
Paul J. Mountain	1201 N Galvin Parkway, Phoenix, AZ 85008
Kathy Munson	1201 N Galvin Parkway, Phoenix, AZ 85008
Adriana Murrietta	1201 N Galvin Parkway, Phoenix, AZ 85008
Carolyn O'Malley	1201 N Galvin Parkway, Phoenix, AZ 85008
Dan Perez	1201 N Galvin Parkway, Phoenix, AZ 85008
Linda "Mac" Perlich	1201 N Galvin Parkway, Phoenix, AZ 85008
Dave Roberts	1201 N Galvin Parkway, Phoenix, AZ 85008
Lawrence Robinson	1201 N Galvin Parkway, Phoenix, AZ 85008
Rick Robinson	1201 N Galvin Parkway, Phoenix, AZ 85008
Steve Roman	1201 N Galvin Parkway, Phoenix, AZ 85008
Brian Schwallie	1201 N Galvin Parkway, Phoenix, AZ 85008
Ginger Spencer	1201 N Galvin Parkway, Phoenix, AZ 85008
Ann Stanton	1201 N Galvin Parkway, Phoenix, AZ 85008
Kathleen Taddie	1201 N Galvin Parkway, Phoenix, AZ 85008
Bruce Weber	1201 N Galvin Parkway, Phoenix, AZ 85008
Jamey Wetmore	1201 N Galvin Parkway, Phoenix, AZ 85008
Robin Woodworth	1201 N Galvin Parkway, Phoenix, AZ 85008

Article 7 – Limitation of Liability

To the fullest extent permitted by the Arizona Nonprofit Corporation Act, ("ANCA"), as the same exist or may be hereafter amended, no existing or former trustee of the Corporation shall be liable to the Corporation for monetary damages for any action taken or any failure to take any action as a trustee. Any repeal or modification of this Article shall not adversely affect any right or protection of any existing or former trustee of the Corporation existing hereunder with respect to any act or omission occurring prior to or at the time of such repeal or modification.

Article 8 – Indemnification

To the fullest extent permitted by the ANCA, as the same exist or may be hereafter amended, the Corporation shall indemnify any and all of its existing and former trustees and officers to the fullest extent permitted by Arizona law. If Arizona law is amended to authorize corporate action broadening the Corporation's ability to indemnify its trustees or officers, the Corporation shall indemnify its existing and former trustees and officers to the fullest extent permitted by Arizona law, as applicable and as amended. Any repeal or modification of this Article shall not adversely affect any right or protection of any existing or former trustee or officer of the Corporation existing hereunder with respect to any act or omission occurring prior to or at the time of such repeal or modification.

Article 9– Dissolution

Upon the winding up and dissolution of the Corporation, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of its assets to: (i) a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable or educational purposes, and which has established its tax-exempt status pursuant to Code Section 501(c)(3), and/or (ii) one or more states, possessions of the United States, any political subdivision of any of the forgoing, or the United States or District of Columbia to be used exclusively for public purposes, as the Board of Trustees shall determine. Any of such assets not so distributed shall be distributed to one or more of such organizations as determined by the Superior court of the county in which the principal office of the Corporation is then located.

Article 10 – Private Foundation

In the event that this Corporation becomes a “private foundation”, as defined in Section 509 of the Code, while it is a “private foundation”:

1. the Corporation will distribute its income for each tax year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code;
2. the Corporation will not engage in any action of self-dealing as defined in Section 4941(d) of the Code;
3. the Corporation will not retain any excess business holdings as defined in Section 4943(c) of the Code;
4. the Corporation will not make any investments in such manner as to subject it to tax under Section 4944 of the Code; and
5. the Corporation will not make any taxable expenditure as defined in Section 4945(d) of the Code.

Article 11 – Amendment

These Amended and Restated Articles of Incorporation may be amended upon the approval of the Corporation’s Board of Trustees and the Corporation’s members, provided, however, that these Amended and Restated Articles of Incorporation shall never be amended to alter the character of the Corporation as a tax-exempt organization under Section 501(c)(3) of the Code.