

**BYLAWS of ASHEVILLE BOTANICAL GARDEN, INC.**

**Amended and Restated [Date]**

**ARTICLE 1  
NAME OF ORGANIZATION**

The name of this organization is "Asheville Botanical Garden, Inc."  
("ABG" or "Organization").

**ARTICLE 2  
PRINCIPAL OFFICE**

The principal office of ABG shall be located at 151 W. T. Weaver Boulevard, Asheville, North Carolina, or such place in the State of North Carolina as the Board of Directors shall designate from to time.

**ARTICLE 3  
PURPOSES OF ORGANIZATION**

The mission of ABG is to promote and showcase the value and diversity of plants native to the Southern Appalachian region by serving as an educational resource and urban destination for nature study and enjoyment. In carrying out its mission, ABG will engage exclusively in charitable and educational activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time, and the corresponding provisions of any future United States Internal Revenue law ("the Code") and that are permitted under the North Carolina Nonprofit Corporation Act (the "Act"). Such activities shall include, but not be limited to:

- A. Promoting public awareness and appreciation of the horticultural diversity and value provided by ABG;
- B. Maintaining and improving the health and diversity of ABG's gardens;
- C. Maintaining and improving the ABG's facilities and grounds;
- D. Sponsoring education and training activities for ABG members and the public and co-sponsoring such activities in partnership with other non-profit and educational organizations; and

E. Raising funds in support of ABG's development, programs, and maintenance.

Notwithstanding any other provision of these Bylaws, ABG shall not conduct or carry on any activities not permitted to be conducted or carried on by (i) an entity exempt from federal income taxation under Section 501(c)(3) of the Code, or (ii) by an entity contributions to which are deductible under Section 170(c)(2) of the Code.

#### **ARTICLE 4 RESTRICTIONS**

ABG shall be subject to such restrictions as are imposed by the Articles of Incorporation, the Code and the Act, as amended from time to time.

#### **ARTICLE 5 MEMBERSHIP**

A. **Classes and Qualifications.** The Board of Directors shall determine and set forth in separate documents the qualifications, dues, terms, and other conditions of each class of member. Members are encouraged to contribute services as volunteers to carry out the mission of ABG. There shall be the following classes of members:

1. **Individual:** Individual members shall consist of those individuals who support the mission of ABG, pay dues, and who meet any additional requirements for individual membership as may be imposed by the Board of Directors from time to time.

2. **Associate:** Associate members shall consist of any corporation or nonprofit association that supports the mission of ABG, makes financial or in-kind contributions and meets any additional requirements for associate membership as may be imposed by the Board of Directors from time to time.

3. **Honorary Members:** The Board of Directors may designate individuals or other entities who do not qualify under the foregoing categories as honorary members, using such criteria as the Board may develop.

## **B. Meetings**

1. **Annual meeting.** An annual meeting of the members shall be held once each calendar year for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The annual meeting shall be held on such date, time, and at either the principal office of ABG or such other place as the Board shall determine.

2. **Special meeting.** Special meetings of the members may be requested by the President, the Board, or twenty-five percent (25%) of the voting members. Notice to all members shall be provided as provided in Paragraph (B)3 of this Article 5.

3. **Notice.** Notice of all member meetings of ABG shall be provided to all members by any reasonable means as determined by the Board and authorized under the laws of North Carolina, including, but not limited to, delivery via U.S. Mail, electronic communication, publication in an ABG newsletter regularly sent to members, or posting on [ashevillebotanicalgarden.com](http://ashevillebotanicalgarden.com). The Notice shall be provided not less than ten (10) days prior to the meeting and shall state the place, date, and hour of the meeting, and if for a special meeting, the purpose of the meeting.

4. **Voting Rights and Quorum.** Only individual members in good standing shall have the right to vote at a meeting of the members noticed as provided in the foregoing Paragraph (3), as well as to vote on such other issues as the Board may choose to bring before the members at any meeting. Each voting member in good standing shall have one vote at any meeting of the members. Other classes of members may attend meetings, but may not vote. A quorum shall consist of 30 (thirty) of the total voting members present in person or by ballot. Any matter requiring a vote of the general membership of ABG will be approved by majority vote of the members eligible to vote and present at such meeting in person or by ballot.

## **ARTICLE 6 BOARD OF DIRECTORS**

A. **Powers.** The Board of Directors ("Board") will function as a board of directors for ABG.

B. **Number.** The Board shall have the power to fix and change the number of members of the Board, provided, that the Board shall consist of no less than nine (9) and no more than fifteen (15) voting members. Unless otherwise

specified, all references to members of the Board in these Bylaws shall refer to voting members.

C. **Qualification.** All individual ABG members in good standing are eligible for election to the Board.

D. **Election.** To ensure continuity, approximately one-third (1/3) of the total number of Board members shall be elected by vote of the ABG members at the annual meeting each year. The Secretary shall provide Notice of the election to all ABG members eligible to vote. The notice shall include the slate of candidates and the date and time specified for the receipt of all ballots. The vote may be made by paper or electronic ballot provided to all members eligible to vote. The candidates receiving the highest number of votes cast will be elected. The Secretary shall compile and tabulate all ballots submitted within the specified voting period and announce the results to the membership.

E. **Term.** Each elected member of the Board shall hold office for a term of three (3) years, or until a successor has been elected, unless otherwise specified by resolution of the Board or these Bylaws. Elected Board members may seek re-election and serve no more than three (3) consecutive terms. Upon the expiration of a one-year hiatus following the conclusion of a Board member's third consecutive term, a prior Board member may seek re-election to the Board. This provision concerning limited consecutive terms shall apply to Board members elected on or after the date of the adoption of these Bylaws.

F. **Resignation.** Any Director may resign at any time by giving written notice to the President. The resignation shall take effect at the time specified in the notice, and unless otherwise specified in such notice, acceptance of the resignation shall not be necessary to make it effective.

G. **Removal.** Any Director may be removed at any time, with or without cause, by majority vote of the other members of the Board at a meeting called for that purpose.

H. **Vacancies.** In the event of a vacancy, the Board may appoint an eligible member fill the unexpired portion of the term, or the position may remain vacant until the next annual election, provided, that the total members of the Board shall not be less than nine (9).

I. **Regular Meetings.** Meetings of the Board shall be held at either the principal office of ABG, or at such other place within or without the State of North Carolina as from time to time may be designated by the Board. The Board

shall convene for not less than four (4) meetings in each calendar year for the purpose of conducting the business of ABG.

J. **Special Meetings.** Special meetings of the Board may be called at the direction of the Chair or by a majority of the voting Directors then in office, to be held at such day, time, and place as shall be designated in the notice of the meeting.

K. **Notice.** Written notice of any meeting of the Board shall be provided to all Board members by any reasonable means, including electronic. Notice shall be delivered not less than seven (7) calendar days prior to any meeting.

L. **Quorum.** Unless a greater number is required by the Act, the Articles of Incorporation, or these Bylaws, a majority of the directors then in office will constitute a quorum for the purpose of conducting business. The directors present at a meeting where a quorum was achieved may continue to transact business until adjournment, even if the withdrawal of some directors results in representation of less than a quorum. Any reference in this Article to a majority vote requirement means a majority vote of the Board members in attendance (in person or by proxy) at a meeting at which a quorum is present.

M. **Participation by telephone or electronic means.** Directors may participate in any meeting by means of telephone or any other means of communication by which all persons participating may simultaneously hear one another during the meeting. A director participating in a meeting by such means shall be deemed to be present in person at the meeting.

N. **Open meeting policy.** All regular meetings of the Board are open to all ABG members described in Article 5 of these Bylaws.

O. **Action without meeting.** Any action required to be taken, or which may be taken, at a meeting may be taken without a meeting and without prior notice if a majority of all Directors consent in writing to any action taken or to be taken by ABG. In such event, the action shall be valid as though it had been authorized at a meeting of the Board. Such written consent(s) shall be filed with the minutes of ABG.

P. **Procedures.** A vote of a majority of Directors present at a properly noticed meeting at which a quorum was achieved shall be the act of the Board of Directors, unless the vote of a greater number is required by law or these bylaws for a particular resolution. A Director 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 their dissent shall be entered in the minutes of the meeting. The Board shall keep written minutes of its proceedings in its permanent records.

Q. **Reimbursement.** Directors shall serve without compensation for their services, but may be reimbursed for reasonable expenses actually incurred in connection with their duties.

## **ARTICLE 7 OFFICERS**

A. **Officers.** The officers of the Corporation shall consist of a President, a Vice President, a Secretary, and a Treasurer. ABG shall have such other assistant officers as the Board of Directors may deem necessary, and such officers shall have the authority prescribed by the Board. One person may hold more than one office, other than the offices of President and Secretary.

B. **Qualification.** All voting members of the Board are eligible for election as President, Vice President, Secretary and Treasurer. The foregoing notwithstanding, only a member who has served on the Board for a minimum of one (1) year shall be eligible for election as President.

C. **Election of Officers.** The officers of the Corporation shall be elected by the voting members at the annual meeting of the members.

D. **Term.** All elected officers will serve for a term of one (1) year. The foregoing notwithstanding, all officers will continue to serve until a successor is elected and assumes office. Officers may seek re-election or re-appointment for unlimited consecutive terms during their tenure on the Board of Directors.

E. **Resignation.** Any officer may resign at any time by giving written notice to the President, or, in the event of the President's resignation, to the next-ranking officer. The resignation will take effect at the time specified in the notice, and unless otherwise specified in such notice, acceptance of the resignation will not be necessary to make it effective.

F. **Removal.** Any officer may be removed at any time, with or without cause, by majority vote of the Board.

G. **Vacancies.** Any vacancy in any office will be filled for the unexpired portion of the term by the Board of Directors.

H. **Reimbursement.** Officers shall serve without compensation for their services, but may be reimbursed for reasonable expenses actually incurred in connection with their duties.

I. **President.** The President shall be the chief executive officer and will determine the agendas for and preside at all meetings of the Board, the Executive Committee, and of the members of ABG. The President shall give active direction and have control of the business affairs of ABG. S/he may sign contracts or other instruments which the Board has authorized to be executed and, in general, perform all duties incident to the office of President and such other duties as may be assigned by the Board.

J. **Vice President.** The Vice President will serve as a member of the Executive Committee; assist the President in conducting the business of the Board; act as the President in the President's absence; and perform all duties incident to the office of Vice President and such other duties as may be assigned by the Board and the President.

K. **Secretary.** The Secretary will serve as a member of the Executive Committee; keep the minutes of all meetings of the membership, Board and Executive Committee; be the custodian of the records of ABG; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; shall have the authority to certify any records, or copies of records, as the official records of ABG; and, shall perform all duties incident to the office of Secretary and such other duties incident to the office of Secretary and such other duties as may be assigned by the Board and the President. In the absence of the President, Vice President and Treasurer, the Secretary shall perform all duties of the President.

L. **Treasurer.** The Treasurer will serve as a member of the Executive Committee; prepare the annual budget and provide financial reports at meetings of the Board, the Executive Committee and members of ABG; account for and disburse funds in accordance with the priorities set by the Board and any applicable operating guidelines; shall be the custodian of the funds and securities belonging to ABG and keep such funds and securities in depositories approved by the Board; disburse the current funds of ABG as directed by the Board; invest all permanent funds as advised by the Board. In the absence of the President and Vice President, the Treasurer shall perform all the duties of the President. The Treasurer may approve and disburse payment for non-budgeted expenditures of not more than \$5,000.00. The Treasurer may serve without bond.

M. **Bonding.** If requested by the Board, any person entrusted with the handling of funds or valuable property of ABG shall furnish a fidelity bond approved by the Board of Directors at ABG's expenses.

## **ARTICLE 8 COMMITTEES**

A. **Creation of Committees.** The Board and the Executive Committee may establish such standing or special committees as are necessary or appropriate to carry out the business of ABG. With the exception of Standing Committees identified in this Article, a committee will terminate when its purpose has been fulfilled.

B. **Appointment of Committee Members.** Standing and special committee Chairs will be appointed by the President, to serve until their successors are appointed. Committees will be comprised of members of ABG selected by the Committee Chair.

C. **Documentation of Committee Activity.** Committee Chairs shall insure that a written record of the committee's activities is made and reported at each meeting of the Board and provide a copy to the Secretary.

D. **Special Committees.** Special committees will undertake specific, defined tasks. Such committees will receive a specific charge which outlines the purpose of the committee and its term of service.

### **E. Standing Committees**

1. **Education Committee.** The Education Committee shall plan, offer and deliver educational programs to the public throughout the year, subject to the instruction of the Board.

2. **Executive Committee:** The Executive Committee shall be comprised of the Officers of ABG and not such other members of the Board appointed by the President. It shall fix its own rules of procedure and keep regular minutes of the business transacted at its meetings. During the intervals between meetings of the Board, the Executive Committee shall possess and may exercise all the powers of the Board except as may from time to time be otherwise provided by resolution of the Board. The Executive Committee is responsible for supervision of paid personnel employed by ABG, as well as volunteers who are responsible for gift shop purchasing and event reservations for the Garden. The President shall serve as Chair of the Executive Committee and shall preside at its meetings.



3. **Facilities Committee:** The Facilities Committee, in cooperation with the Garden employees, shall bear responsibility for maintenance of ABG structures. At the request of the Board, the Committee shall develop plans and obtain estimates for repair and maintenance and new construction and recommend plans to the Board for approval. The Committee shall assist the Garden employees as requested in supervising and/or carrying out repair, maintenance, and new construction of ABG facilities.

4. **Finance Committee:** The Finance Committee shall prepare ABG's annual budget and periodic financial statements, manage the investments and other financial affairs of ABG, periodically review BGA's financial records and statements for both integrity and accuracy, and advise the Board concerning financial matters.

5. **Horticulture Committee:** The Horticulture Committee shall advise and assist the Garden Manager in matters pertaining to garden design and features, including selection, acquisition, care, propagation, and placement of plants in the ABG garden.

6. **Nominating Committee.** Each calendar year, the President shall appoint three (3) members of the Board to serve as a Nominating Committee. The Nominating Committee will recruit and recommend eligible members of ABG for election to the Board and as Officers.

## **ARTICLE 9**

### **INDEMNIFICATION OF DIRECTORS, OFFICERS, and AGENTS**

Except as otherwise provided by law or Article 11 of these Bylaws, ABG may indemnify any director or officer or any former director or officer, and may by resolution of the Board indemnify any employee, against any and all expenses and liabilities incurred in connection with any claim, action, suit, or proceeding to which s/he is made a party by reason of being a director, officer, or employee. There shall be no indemnification, however, in relation to matters as to which s/he shall be adjudged to be guilty of a criminal offense or liable to ABG for damages arising out of his/her own gross negligence in the performance of a duty to ABG.

Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such director, officer, or employee. ABG may advance expenses or, where appropriate, may itself undertake the defense of any director, officer, or

employee. Such director, officer, or employee shall, however, repay such expenses if it should be ultimately determined that s/he is not entitled to indemnification under this Article.

**ARTICLE 10**  
**FISCAL YEAR and BUDGET**

The fiscal year of ABG shall be the calendar year. The annual budget for ABG shall be prepared by the Treasurer for consideration by the Board based on input from ABG committees and employees. The proposed budget, as approved by the Executive Committee, will be presented for approval by the Board of Directors at a duly noticed regularly scheduled meeting each year. The budget will be approved by a majority vote of the members of the Board eligible to vote in attendance (in person or by proxy) at such meeting at which a quorum is present.

**ARTICLE 11**  
**CONFLICTS OF INTEREST**

As used in these Bylaws, the term "conflict of interest" includes, without limitation, the reasonable possibility that the matter involves an arrangement to provide compensation or any financial or tangible benefit or payment, directly or indirectly, to a Director, an officer, or any other "disqualified person" (including a person or entity related to or controlled by the member of the Board, or otherwise as defined in Section 4958 of the Internal Revenue Code and/or Section 55A-8-31 of the North Carolina General Statutes). In the event there is a question whether a conflict exists, the issue shall be determined by majority vote of the Board (other than the affected member of the Board) present and voting. A matter does not involve a "conflict of interest" merely because a member of the Board serves on the board of another non-profit organization that will be giving a grant to, or receiving a grant from, ABG.

**A. Compliance.** No Board member or officer may engage in any excess benefit transaction as defined in Section 4958 of the Code. The Board shall comply with the provisions of Section 55A-8-31 of the North Carolina General Statutes, as amended, regarding "conflicting interest" transactions. The Board may adopt appropriate policies and procedures to implement this Article, and such policies and procedures may only be amended by the same vote required to amend these Bylaws.

B. **Disclosure.** Any member of the Board, voting or otherwise, for whom there may exist a conflict of interest shall disclose such possible conflict of interest to the Board.

C. **Recusal.** No member of the Board shall discuss or vote on any matter which would involve a conflict of interest. Any member of the Board for whom there may exist a conflict of interest shall refrain from discussion or vote on any such matter, and shall not be physically present in the room at the time any vote is taken thereon.

D. **Applicability.** The provisions of this Article shall apply to voting and nonvoting members of the Board.

## **ARTICLE 12 AMENDMENT TO BYLAWS**

These Bylaws may contain any provision for the regulation and management of the affairs of ABG not inconsistent with ABG's status as a nonstock nonprofit corporation and its Articles of Incorporation. Any amendment to these Bylaws may be proposed to the Board by any member of ABG eligible to vote. Any proposed amendment will be presented for approval by affirmative vote of two-thirds (2/3) of the Directors at any regular or special meeting.

## **ARTICLE 13 DISTRIBUTION AND ACTIVITIES**

No part of the assets of ABG and no part of any net earnings of ABG shall be divided among or inure to the benefit of any member, officer, or Director of ABG or any private individual or be appropriated for any purposes other than the purposes of ABG as herein set forth. No substantial part of the activities of ABG shall be the carrying on of propaganda or otherwise attempting to influence legislation, and ABG shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office or engage in any other activities not permitted to be carried on by (a) an entity exempt from federal income taxation under Section 501(c)(3) of the Code, or (b) an entity contributions to which are deductible under Section 170(c)(2) of the Code. ABG shall not indemnify any individual with respect to any excise tax imposed on such individual under Chapter 42 of the Code.

**ARTICLE 14**  
**DISSOLUTION**

Upon dissolution of ABG, any assets that remain after the payment of any and all debts and claims against ABG and expenses of the dissolution shall be transferred or conveyed to one or more charitable, scientific or educational organizations with similar goals and purposes organized and operated exclusively for educational and charitable purposes and shall, at the time of the transfer, qualify as an exempt organization(s) under Section 501(c)(3) of the Code, or shall be distributed to the federal government or to a state or local government for a public purpose, in such proportions and for such exclusively charitable purposes as the Board of ABG may determine. Any such assets not disposed of shall be disposed of by any court of competent jurisdiction in which the principal office of ABG is then located, exclusively for such purposes or to such organization or organizations as said court shall determine.

**ARTICLE 15**  
**MISCELLANEOUS**

**A. Discrimination.** ABG is committed to the elimination of discrimination on the basis race, color, creed, national origin, religion, political beliefs, family and marital status, sex, age, veteran status, sexual orientation, genetic information, or disability and will not knowingly or intentionally discriminate against any member or person.

**B. Meeting Protocol.** ABG endeavors to conduct all meetings with respect; to listen to and value varied opinions, to honor confidentiality and to work constructively to reach consensus.

\*As approved by Board of Directors 4/15/2024