

**BYLAWS  
OF  
WHITE MOUNTAIN COMMUNITY GARDEN**

**ARTICLE I  
GENERAL**

1.1 Name. The name of the corporation is White Mountain Community Garden, a nonprofit corporation organized and existing under the laws of the State of Arizona (hereinafter the "Corporation" or "WMCG").

1.2 Principal Place of Business, Registered Office and Registered Agent. The principal office of WMCG shall be located at 842 Turkey Trail, Lakeside, Arizona 85929, or at such other places as shall be designated by the Board of Directors from time to time by resolution. WMCG may also have offices at such other places within the State of Arizona as the Board of Directors may from time to time determine or the business of the Corporation may require. The Corporation shall maintain a registered office and registered agent in the State of Arizona. The registered office may, but need not be, the same as any of its places of business. The current identity and address of the registered agent, also known as the statutory agent, is on file with the Arizona Corporation Commission, and any change in the identity or address of such agent shall be promptly submitted to the Arizona Corporation Commission. The principal place of business of WMCG shall be within the State of Arizona, specifically in Navajo County and Apache County (hereinafter the "Catchment Area").

1.3 Purpose. As established in the Corporation's Articles of Incorporation, WMCG is organized exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 and its regulations as such section and regulations now exist or may hereafter be amended, or the corresponding section of any future federal tax code laws and regulations hereafter adopted under the United States Internal Revenue law governing exempt organizations (hereinafter generally referred to as "IRC 501(c)(3)"). WMCG may make distributions to organizations that are not qualified under Section 501(c)(3) as long as WMCG retains control over the use of the funds and maintains records showing that the funds are used exclusively for charitable purposes.

No substantial part of the activities of WMCG shall be the carrying on of propaganda or otherwise attempting to influence legislation, and WMCG shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, WMCG shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under IRC 501(c)(3) or the corresponding section of any future federal tax code, or (b) by any corporation, contributions to

which are deductible under section IRC 170(c)(2) or the corresponding section of any future federal tax code.

More specifically, WMCG shall exist primarily for the following purposes: (1) educating the public regarding the benefits of producing and consuming locally grown organic produce; (2) educating the public about gardening in the unique climate of northeastern Arizona; (3) providing gardening space for individuals, children, seniors, and other non-profit organizations that are unable to purchase fresh produce commercially, or that lack space of their own to grow produce; and (4) to promote healthy, sustainable lifestyles for the citizens in the White Mountains of Northeastern Arizona.

1.4 Use of Earnings. WMCG has not been formed for the making of any profit, or personal financial gain. No part of the net earnings or assets of WMCG shall be distributable to, or inure to the benefit of, any of its members, trustees, directors, or officers or other private persons. Nothing contained herein, however, shall be deemed to prohibit the payment of reasonable compensation to employees and independent contractors for services rendered for the benefit of WMCG and to make payments and distributions in furtherance of its exempt purposes or reasonable fixed compensation to directors or officers as set forth in Article IX below.

## **ARTICLE II**

### **MEMBERS**

WMCG shall have members. The qualifications and rights of the members, which are established by these Bylaws, are as follows:

2.1 Membership Qualifications. Membership in WMCG shall be open to any person eighteen (18) years of age or older, living within the boundaries of the Catchment Area described in Article I, Section 1.2 of these Bylaws, who support the purposes of WMCG.

2.2 Membership Classes. Membership shall be divided into separate classes as follows: Active, Honorary, Consulting, and Supporting.

2.2.1 Active. Active members shall be those members who have paid the required dues to be an active member and have attended a certain minimum number of required WMCG meetings and/or activities annually. Annual attendance requirements at meetings or events for all active members, and any exceptions thereto, shall be determined by the Board of Directors from time to time and shall be set forth in the WMCG's Standing Rules.

2.2.2 Honorary. Honorary Membership in WMCG may be granted to long-standing active members who have made significant contribution to the organization throughout their membership but are no longer able to maintain their active membership, as well as to the non-members who are in positions that could enhance the standing of WMCG in the community.

Honorary membership may be granted contingent upon the following requirements:

- (a) A request by an active member for an individual to be granted the status of Honorary Member shall be presented to the Board of Directors. After review of the request, the Board may place the request before a meeting of the Board for vote.
- (b) If the Board votes in favor of approving the request, then the general membership must ratify the approved request by at least a two-thirds (2/3) vote of the active membership present at a general membership meeting at which there is a quorum pursuant to these Bylaws.

2.2.3 Consulting. Consulting Membership in WMCG may be granted to non-member individuals and/or entities that can significantly add benefit to the Corporation through their life experience, knowledge or specific expertise. Consulting membership is contingent on the same requirements as listed above under Honorary Membership.

2.2.4 Supporting. Supporting Membership in WMCG will be granted to non-member individuals and/or entities that have significantly contributed to the mission of WMCG through donations, including monetary donations, donated materials and/or resources, and donated services. A separate list of Supporting Members will be maintained by WMCG on an annual basis. Supporting Members may also be designated as “Friends of White Mountain Community Garden” or as “Master Friends of White Mountain Community Garden” based upon the level of their support or contribution, as determined by the Board of Directors.

2.3 Membership Lists. WMCG Membership Lists will be maintained on an annual basis and shall have restricted distribution, and shall be available only to the Board. Separate lists will be maintained for each of the membership classes. The membership list constituting the record of active members entitled to vote will be made available for inspection by any member at any meeting at which a vote is called.

2.4 Dues. The amount of dues payable by active members for each ensuing year shall be voted upon by the Board of Directors prior to beginning of each new fiscal year. Within thirty (30) days of the Board’s setting of the amount of dues payable, the members shall be notified of the amount and when payment thereof is due. Requirements for the payment of dues shall be set forth in WMCG’s Standing Rules.

2.4 Membership Meetings. There shall be an annual meeting of the members of WMCG in September of each year, for the purpose of electing directors and members-at-large for the ensuing year and such other business as may properly come before the meeting. Special meetings of the members may be called by the President or by the Secretary in the President’s

absence. The business conducted at a special meeting shall be confined to the purposes stated in the call to such meeting given pursuant to the Notice requirements set forth in these Bylaws.

2.6 Place of Meetings. Meetings of the members of WMCG shall be held within the Catchment Area described in Article I, Section 3 of these Bylaws, at such place and at such time as the Board may fix or determine from time to time.

2.7 Notice of Meetings. Notice of membership meetings will be given to members by the methods set forth in Article VII of these Bylaws. Notice of membership meetings open to the public shall also be given by publication in a local medium providing coverage to the Catchment Area at least seven (7) days prior to the meeting, and by posting notice of such meeting at such public bulletin boards as may be available for such posting.

2.8 Election of Directors and Members-at-Large. Except as provided in these Bylaws for the filling of vacancies, following the report of the nominating committee at the annual meeting of the members, any member may nominate any other active member in good standing as a candidate for director or as a member-at-large, provided that each nominee agrees to serve if elected. The number of open director positions to be voted upon shall be set forth in the report of the nominating committee. At the conclusion of nominations, the active members in good standing shall vote for each position by secret written ballot. A simple majority of the members entitled to vote at a meeting at which there is a quorum present, shall be required to elect the directors and members-at-large.

2.9 Members-at-Large. ~~There shall be two (2) members-at-large elected~~The number of active members elected as members-at-large shall be not less than three (3) unrelated members and not more than five (5) members. The number of members-at-large to be elected shall be determined by the Board of Directors prior to the annual meeting at which they will be elected. Each member-at-large duly qualified and elected at the annual membership meeting shall hold office for one (1) year or until a successor is elected and qualifies, or earlier resignation or removal. A member-at-large shall be subject to removal, with or without cause, at a meeting called for that purpose. Any vacancy that occurs, whether by death, resignation, removal or any other cause, may be filled by the affirmative vote of a majority of the directors and members-at-large then remaining on the Board of Directors. A member-at-large elected to fill a vacancy shall serve the remaining term of his or her predecessor, or until a successor has been elected and qualified, including any committees of which his or her predecessor was a member. Members-at-large shall attend all meetings of the Board of Directors and will have full voting powers and be subject to the same powers and responsibilities as directors of the Corporation.

2.10 Participation and Voting Rights. Each member, whether active, honorary, consulting or supporting, is encouraged to participate in the operations and functions of WMCG to the best of his or her ability in order to assist in WMCG's mission. The right to vote and the right to be elected to hold office as a director or member-at-large shall be reserved only to active members in good standing, whose dues are paid and who ~~has~~have attended the prerequisite WMCG meetings or activities as set forth by the Standing Rules adopted by the Board. Voting shall be limited to one (1) vote per active member in good standing that is present at the meeting at the time a vote is called.

2.11 Proxy. No proxies shall be allowed.

2.12 Quorum. At all membership meetings, a minimum of one-tenth (1/10) of the active members in good standing and entitled to vote, including at least one director, but excluding any honorary, consulting or supporting members, shall be required to constitute a quorum. At any meeting of the members, if there is less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which may have been transacted at that meeting as originally called.

### **ARTICLE III**

#### **DIRECTORS**

The business and affairs of WMCG shall be managed by, and all rights, powers and responsibilities of WMCG shall be vested in, the Board of Directors, which shall be comprised of the directors and members-at-large, herein referred to as “Board of Directors” or “Board.”

3.1 Number, Tenure and Qualification. The initial number of six (6) persons serving as directors as set forth in the Articles of Incorporation may be increased or decreased by resolution of the Board of Directors; however, the number of directors serving on the Board at any given time shall consist of not less than three (3) unrelated persons, nor more than fifteen (15) persons. The persons constituting the initial Board of Directors shall hold office until their successors are duly or until removal or resignation. Any paid employees of WMCG and their immediate family members may not serve as directors of WMCG. Each director duly qualified and elected at the annual membership meeting shall hold office for one (1) year or until a successor is elected and qualifies, or until such director's earlier resignation or removal.

3.3 Vacancies/Removal. A director shall be subject to removal, with or without cause, at a meeting called for that purpose. Any vacancy that occurs on the Board of Directors, whether by death, resignation, removal or any other cause, may be filled by the affirmative vote of a majority of the directors then remaining in office. A director elected to fill a vacancy shall serve the remaining term of his or her predecessor, or until a successor has been elected and qualified, including any committees of which his or her predecessor was a member.

3.4 Duties of Directors and Members-at-Large. Directors shall attend each meeting of the Board, and actively participate in the meeting and assist to the best of his or her ability to reach resolution of any business currently before the Board. Members-at-Large shall also attend the Board meetings and as set forth in Article II, Section 2.8, and will have full voting powers.

3.5 Procedures. The vote of a majority of the directors and members-at-large present at a properly called meeting at which a quorum is present shall be the act of the Board of Directors, unless the vote of a greater number is required by law or by these Bylaws for a particular resolution. A director who is present at a meeting of the Board of Directors at which action on any corporate 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. The Board shall keep written minutes of its proceedings in its permanent records.

3.6 Budgets. The Board of Directors shall approve the annual budget of WMCG during the first quarter of each fiscal year upon recommendation of the Executive Committee.

3.7 Inspection. Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation.

## **ARTICLE IV**

### **OFFICERS**

4.1 Officers. The officers of the Corporation, all of whom shall be elected by the Board of Directors, shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers and agents as it deems necessary or appropriate. Each office must be held by one person, who must also be a director. The Board of Directors may delegate to the President of the Corporation the authority to appoint any officer or agent of the Corporation other than the President, Vice President, Secretary, Treasurer, or Chairman of the Board. All officers of the Corporation shall exercise such powers and perform such duties as shall from time to time be determined by the Board of Directors.

4.2 Election and Term of Office. The officers of the Corporation shall be elected at the annual meeting of the Board of Directors, and each such officer shall serve a one (1) year term or until a successor has been duly elected and qualified, or until his or her death, resignation or removal.

4.3 Vacancies. A vacancy in any office may be filled by the Board of Directors or by the President in accordance with Section 4.1 hereof, and the officer so elected or appointed shall hold office until his or her successor is duly elected and qualified, or until his earlier death, resignation or removal.

4.4 President. The President shall be the chief executive officer. The President shall preside at all meetings of the Executive Committee. The President shall preside at all meetings of the Board of Directors but may appoint another director to preside over any such meeting in the President's stead. The President, subject to the direction of the Board of Directors, shall have general charge of the business affairs and property of the Corporation and general supervision over its other officers and agents. In general, the President shall perform all duties incident to the office of President and shall see that all orders and resolutions of the Board of Directors are carried into effect.

4.5 Vice President. The Vice President (or in the event there be more than one, the Vice Presidents in the order designated, or in the absence of any designation, in the order of their election), shall, in the absence of the President or in the event of the President's disability, perform the duties and exercise the powers of the President and shall generally assist the President and

perform such other duties and have such other powers as may from time to time be prescribed by the Board of Directors.

4.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and record all votes and the proceedings of the meetings in a book to be kept for that purpose, and shall perform like duties for all committees of the Board of Directors. The Secretary shall give, or cause to be given, notice of meetings of directors, and shall perform such other duties as may from time to time be prescribed by the Board of Directors, or the President, under whose supervision the Secretary shall act. The Secretary shall have custody of the corporate seal, if any, and shall have authority to affix any such seal to any instrument requiring it. An Assistant Secretary may be appointed by the Board to assist the Secretary from time to time.

4.7 Treasurer. The Treasurer shall have the custody of the corporate funds and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may from time to time be designated by the President. The Treasurer shall disburse the funds of the Corporation as may be ordered by the President or by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, whenever requested by the President or the Board of Directors, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

4.8 Vacancy or Removal. The Board of Directors shall have the power to remove an officer or agent of the corporation. Any vacancy that occurs for any reason may be filled by the Board of Directors.

## **ARTICLE V**

### **COMMITTEES**

The Board of Directors may, from time to time, designate one or more committees which shall exercise such powers as may be assigned to it by the Board. The majority of the members of any committee so created must be directors. There shall be four (4) standing committees of the organization: executive, nominating, fund-raising/public relations, and audit. The President shall appoint the chairpersons of all committees from the membership of the Board of Directors with the approval of the Board of Directors. All committee appointments shall terminate upon the election of a new President, unless specifically determined otherwise at the Annual meeting. All committees shall function within the guidelines and budgets established by the Board of Directors.

5.1 Executive Committee. The Executive Committee shall be composed of the officers of the organization and the members-at-large, as specified herein, and shall have the full authority to undertake the duties and powers of the Board except as these By-laws specifically state otherwise. All actions of the Executive Committee shall be reported to the Board at its next meeting.

5.2 Nominating Committee. The Nominating Committee shall be composed of the chairperson appointed by the President, and the chairperson will select his or committee members. The Nominating Committee, with the approval of the Board, shall gather from active members the names and intent of those interested in serving as a director. Current Directors of the Board may be considered for re-election. The Nominating Committee shall, at least thirty (30) days prior to the annual meeting of the membership, present a slate of qualified candidates included with the notice of the annual meeting.

5.3 Fundraising/Public Relations Committee. The Fundraising/Public Relations Committee shall be composed of the chairperson appointed by the President, and the chairperson will select his or her committee members.

5.4 Audit Committee. An Audit Committee shall be composed of the chairperson appointed by the President and at least one (1) other committee member appointed by the chairperson, on of whom shall be a member-at-large. The Treasurer cannot be a member of the Audit Committee.

5.5 Ad Hoc Committees. Ad hoc committees may be established by the President at any time. All ad hoc committees are subject to the same rules and operating procedures as standing committees.

The President is automatically an ex officio member of all committees. Committee meetings shall be held at such place, within of the State of Arizona, as the President and the chairperson of such committee may fix or determine from time to time.

## ARTICLE VI

### MEETINGS OF THE BOARD OF DIRECTORS

6.1 Place of Meeting. All meetings of the Board of Directors shall be held at such place, within of the State of Arizona, as the directors may fix or determine from time to time.

6.2 Annual Meetings. The annual meeting of the newly-elected Board of Directors shall be held immediately following the annual membership meeting for the purpose of electing the officers of WMCG in order to provide continuity during the transition from the old directors to the newly-elected directors and the replacement of the prior officers with the newly-elected officers. If the newly-elected Board of Directors are unable to meet immediately following the annual membership meeting at which they were elected, the Board shall meet in within thirty (30) days after such annual membership meeting, or at such other time as designated by the Board. The Board of Directors may conduct any other business as may properly come before such meeting. Notice of the annual meeting shall be given in the same manner as notices of any regular or special meeting.

6.3 Regular Meetings. The Board of Directors shall have regular meetings, at least every quarter or more frequently for the purpose of transacting any business as may properly come before such meeting.

6.4 Special Meetings. A special meeting of the Board of Directors may be called at any time by the President (or, in the absence of action by the President, by the Secretary) upon request of a majority of the directors then serving. A special meeting of the Board of Directors may be held upon twenty-four (24) hours notice to each director. Notice given of a special meeting of the Board of Directors may, but need not, identify the business to be transacted at, or the purpose of, the meeting so called. Minutes of the special meeting shall be provided to the Board of Directors within two weeks after the meeting.

6.5 Telephonic or Electronic Meeting. Directors, comprising at least three (3) who are unrelated, may participate in a meeting of the Board of Directors by means of a conference telephone conversation or any similar electronic communications equipment by means of which all persons participating in the meeting may hear each other, and participation in such a meeting shall constitute attendance in person at such meeting. Any action taken in such a meeting shall be recorded in the minutes of the next properly called board meeting.

6.6 Action Without a Meeting. Any action required or permitted to be taken at a meeting of Board of Directors may be taken without a meeting if a consent in writing setting forth the action so taken, is signed by all of the directors and members of the Board, as the case may be. Should action be required when it is not possible to assemble the Board of Directors in a properly called meeting or when the Executive Committee explicitly cannot assume the powers of the full Board, written or oral approval of the proposed action by a majority of the Board may be obtained in a poll of the entire Board of Directors authorized by the President or majority of the Executive Committee. Any action so taken shall be recorded in the minutes of the next properly called board meeting.

6.7 Quorum. At all meetings of the Board of Directors, a majority of the directors and members-at-large then in office shall constitute a quorum for the transaction of business; but if, at any meeting of the Board of Directors, there is less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum of the directors shall be present, any business may be transacted which may have been transacted at that meeting as originally called.

6.8 Proxy. No vote by Proxy shall be allowed.

6.9 Order of Business. The recommended order of business, at the discretion of the presiding officer, shall be as follows

- a. Call to Order
- b. Secretary's reading of minutes from previous meetings
- d. Treasurers report
- e. Reports of regular or special committees
- f. Unfinished business
- g. New Business
- h. Announcements
- i. Scheduling of date, time and place for next meeting
- j. Adjournment

In the event of any questions concerning orders of business procedures or voting, Roberts Rules of Order shall prevail.

## **ARTICLE VII**

### **NOTICE**

7.1 Methods of Giving Notice. Notice of any annual, regular or special meeting of members or directors, and any other notice required to be given under these Bylaws or the ANCA may be communicated in person, by telephone, telegraph, teletype, facsimile, email, or other form of wire or wireless communication, or by mail or private carrier. Oral notice is effective when communicated. Written notice is effective at the earliest of the following:

- (a) When received.
- (b) Five (5) days after its deposit in the United States mail, if mailed postage prepaid and addressed to each addressee at his or her last known address, or as to each Director, at his or her address that appears on the books of the corporation.
- (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

If any of the foregoing forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation published in the Catchment Area, or by radio, television or other form of public broadcast communication.

7.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of these Bylaws, or under the provision of the Articles of Incorporation, or under a provision of law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

## **ARTICLE VIII**

### **CONFLICTS OF INTEREST**

8.1 Disclosure. Each director shall disclose to the Board of Directors any duality of interest or possible conflict of interest whenever the duality or conflict pertains to a matter being considered by the Board.

8.2 Abstain from Voting. Any director having duality of interest or conflict of interest on any matter shall abstain from voting on the matter and shall not be counted in determining the quorum for the vote on the matter. In addition, he or she shall not use his or her personal influence on the matter, but may briefly state his or her position on the matter and may answer pertinent questions from other directors since his or her knowledge may be of great assistance.

8.3 Disclosure Recorded. The minutes of the meeting involving any such situation shall reflect that a disclosure was made, the abstention from voting, and the quorum situation.

8.4 Ruling on Conflict. If a director is uncertain as to whether he or she has a duality or conflict of interest which requires abstention, or if a director asserts that another director has such a duality or conflict, the Board, by majority vote of those present other than the director having the possible conflict, shall decide whether abstention is required. If so, the director will be deemed to have abstained.

8.5 Conflict of Interest Policy. A Conflict of Interest Policy shall be adopted by the Corporation by resolution of the Board of Directors which shall be signed by all interested persons, including members, directors and officers of the Corporation, whenever the Corporation is contemplating entering into a transaction or arrangement that might benefit the private interest of an interested person in order to assure that persons who have a conflict of interest will not have influence over the Corporation with regard to setting compensation or business dealings. Such policy shall supplement but not replace any applicable state or federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

## ARTICLE IX

### COMPENSATION AND REIMBURSEMENT OF EXPENSES

9.1 Compensation. No member, director, officer or committee member shall receive at any time any of the net earnings or profit, or unfairly benefit, from the operations of the Corporation. However, this shall not prevent the payment to any such person of reasonable compensation for services rendered to or for the Corporation. Although the initial directors and officers shall serve initially without compensation and may continue to do so, the time devoted to services rendered to or for the Corporation may become increasingly burdensome so that the payment of reasonable compensation will be necessary. Any such reasonable compensation shall be a fixed amount as determined by the Board of Directors from time to time. No director or officer shall be given the ability to establish his or her own compensation. Compensation arrangements shall be based on information about compensation paid by similarly situated taxable or tax-exempt organizations for similar services. Any such compensation shall be approved by written resolution signed by the Board of Directors in advance of paying such compensation and shall record (a) the date and terms of the approved compensation arrangements; (b) the information on which the Board relied to base its decision and its source; and (c) shall record the vote of each director who voted, and record the abstention of any director who did not vote pursuant to any real or perceived conflict of interest.

9.2 Reimbursement of Expenses. Any director, officer or committee member shall be entitled to receive reimbursement for reasonable expenses incurred on behalf of the Corporation. The Board shall from time to time establish a monetary limit on expenditures that may be advanced by any director, officer or committee member without first obtaining approval of the Board of Directors.

## ARTICLE X

### CONTRACTS, LOANS, CHECKS, AND DEPOSITS

10.1 Contracts. By resolution of the Board of Directors, any officer or agent of the Corporation may be authorized to enter into any contract, or execute and deliver any instrument, in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

The Board of Directors is empowered to enter into contractual arrangements with voluntary and government corporations or other parties for the provision of the community garden. The Board is further empowered to enter into working agreements with agencies, corporations and parties similarly engaged in providing services for the community garden.

10.2 Loans. No loans which require security shall be contracted on behalf of the Corporation, and no evidence of indebtedness which requires security shall be issued in the name of the Corporation, unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

10.3 Checks, Drafts, or Other Orders. All checks, drafts, or other orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Corporation shall be signed by such officers or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

10.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

## ARTICLE XI

### FINANCIAL RECORDS AND OFFICIAL DOCUMENTS

11.1 Official Documents. The official documents and records of the Corporation, including but not limited to records of transactions, minutes of meetings, membership lists, shall be maintained at such location or locations as determined by the Board of Directors.

11.2 Financial Records. The financial records of the Corporation shall be maintained by the Treasurer at such location or locations as determined by the Board of Directors, and

copies of such financial records as the Board may deem necessary shall also be maintained with the official documents and records of the Corporation.

11.3 Audit. An audit will be conducted annually by the Audit Committee, and the Audit Committee shall present its findings in a written report to the Board of Directors. Upon review by the Board of the Audit Committee's report, the Board shall determine if an independent audit is necessary, and if so, such independent audit shall be conducted by an independent certified public accounting firm, which shall promptly present its written findings to the Board.

## **ARTICLE XII**

### **DISCRIMINATION**

In rendering its functions and in exercising its purposes, WMCG shall not practice or permit discrimination on the basis of sex, age, race, religion, physical handicap or disability, sexual orientation, or national origin of any person.

## **ARTICLE XIII**

### **LIABILITY AND INDEMNIFICATION**

13.1 Liability. The directors, officers, and members-at-large voting or taking action as a member of the Board of Directors, of the Corporation shall not be individually liable for the nonprofit corporation's debts or other liabilities, except for liability for unlawful distributions. Pursuant to A.R.S. §10-3833, a director who votes for or assents to a distribution made in violation of A.R.S. §10-11301 and §10-11302 or the Articles of Incorporation is personally liable to the Corporation for the amount of the distribution that exceeds what could have been distributed without violating A.R.S. §10-11301 and §10-11302 or the Articles of Incorporation if it is established that the director's duties were not performed in compliance with A.R.S. §10-3830. A director who is present at a meeting of the Board of Directors at which action on any distribution in violation of A.R.S. §10-11301 is taken is presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting or unless he or she files a written dissent to the action with the Secretary of the meeting before the adjournment of the meeting or forwards the dissent by registered or certified mail to the Secretary of the Corporation before 5:00 p.m. of the next business day after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action. A director who is held liable under this section is entitled to contribution from (a) every other director who could be held liable under this section, and (b) each person who received such unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of A.R.S. §10-11301 and §10-11302 or the Articles of Incorporation. A proceeding under this section is barred unless it is commenced within two (2) years after the date on which the distribution was made.

This article shall not eliminate or limit the liability of a director or officer who failed to meet the standard of conduct as may be set forth in the applicable Arizona Revised Statutes as may be amended from time to time. If such statutes are amended to authorize

further elimination or limitation of the liability of a director or officer, the liability of such director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the applicable statutes as so amended. Any repeal or modification of this article shall not increase the liability of a director of the Corporation arising out of acts or omissions occurring before the repeal or modification of such law becomes effective.

13.2 Indemnification. Pursuant to A.R.S. §10-3852, any individual who is or was a director or officer who is made party to a proceeding by reason of his or her position as a director or officer of this Corporation shall be indemnified and held harmless by the Corporation to the fullest extent authorized by law as it now exists or may subsequently be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights).

13.2.1 Authority to Indemnify; Conditions. Except as otherwise provided in these Bylaws, the Corporation shall indemnify an individual made a party to a proceeding because either (1) the individual is or was a director against liability incurred in the proceeding if all of the following conditions exist:

- (a) The individual's conduct was in good faith;
- (b) The individual reasonably believed:
  - (i) In the case of conduct in a official capacity with the Corporation, that the conduct was in the Corporation's best interests;
  - (ii) In all other cases, that the conduct was at least not opposed to the Corporation's best interests.
- (c) In the case of any criminal proceedings, the individual had no reasonable cause to believe the conduct was unlawful.

or, (2) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under any section of the Corporation's Articles of Incorporation.

13.2.2 Exclusions. Except insofar as permitted by law, Corporation shall not indemnify a director either:

- (a) In connection with a proceeding by or in the right of the Corporation in which the director was adjudged liable to the Corporation;
- (b) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving actions in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

13.2.3 Limitation. Indemnification permitted in connection with a proceeding by or in the right of the Corporation is limited to reasonable expenses incurred in connection with the proceeding.

13.2.4 Advance for Expenses. The Corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if both of the following conditions exist:

- (a) The director furnishes to the Corporation a written affirmation of the director's good faith belief that the director has met the appropriate standard of conduct set forth in A.R.S. §10-3851 or that the proceeding involves conduct for which liability has been eliminated under the Corporation's Articles of Incorporation.
- (b) The director furnishes the Corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if the director is not entitled to mandatory indemnification under A.R.S. § 10-3852 and it is ultimately determined that the director did not meet the standard of conduct.

13.2.5 Determination and Authorization of Indemnification. Pursuant to A.R.S. §10-3855, the Corporation may not indemnify a director pursuant to A.R.S. §10-3851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in A.R.S. §10-3851. The determination shall be made either (a) by the Board of Directors by a majority vote of the directors not at the time parties to the proceeding; (b) by special legal counsel selected by a majority of the disinterested directors, or by majority vote of the Board of Directors if there are no disinterested directors. Special legal counsel shall have no liability whatsoever for a determination made pursuant to this paragraph. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled to select counsel.

13.2.6 Indemnification of Officers. Pursuant to A.R.S. §10-3856, The Corporation shall indemnify and advance expenses to an officer of the Corporation who is a party to a proceeding because the individual is or was an officer of the corporation as follows:

- (a) To the same extent as a director;
- (b) If the individual is an officer but not a director, to the further extent as may be provided by a resolution of the Board of Directors or contract, except for:

- (i) Liability in connection with a proceeding by or in the right of the Corporation other than for reasonable expenses incurred in connection with the proceeding; or,
- (ii) Liability arising out of conduct that constitutes receipt by the officer of a financial benefit to which the officer is not entitled; an intentional infliction of harm on the Corporation; or an intentional violation of criminal law.

The foregoing applies to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer. An officer who is not a director is entitled to mandatory indemnification under A.R.S. §10-3852, may apply to a court under A.R.S. §10-3854 for indemnification or an advance for expenses, in each case to the same extent to which a director is entitled to indemnification or a advance for expenses under those statute sections.

#### **ARTICLE XIV**

##### **CORPORATE SEAL, EXECUTION OF INSTRUMENTS**

14.1 Adoption. The Corporation may or may not adopt a seal.

14.2 Form. If a seal is adopted by the Corporation, the seal of the Corporation shall have inscribed thereon the name of the Corporation, the state and year of its incorporation and the words "Corporate Seal."

14.3 Execution of Instruments. All instruments that are executed on behalf of the Corporation which are acknowledged and which affect an interest in real estate shall be executed by the President or any Vice-President and the Secretary or Treasurer. All other instruments executed by the Corporation may be executed by the President or any Vice-President. Notwithstanding the preceding provisions of this section, any written instrument may be executed by any officer(s) or agent(s) that are specifically designated by resolution of the Board of Directors.

#### **ARTICLE XV**

##### **FISCAL YEAR**

The fiscal year of the Corporation shall begin on the first day of January and end the last day of December.

#### **ARTICLE XVI**

##### **AMENDMENT TO BYLAWS**

16.1 Amendments. The Bylaws may be amended, altered, or repealed by the Board of Directors by an affirmative vote of a majority of a quorum vote of all directors at any

regular or special meeting, provided that notice of the proposal to make, alter or repeal these Bylaws, or to adopt new bylaws, must be included in the notice of the meeting of the directors at which such action takes place. The text of the proposed change shall be distributed to all members of the Board of Directors at least ten (10) days before the meeting.

16.2 Implied Amendments. Any emergency action taken or authorized by the Board of Directors, which would be inconsistent with the Bylaws then in effect but is taken or authorized by affirmative vote of not less than the number of directors required to amend the Bylaws so that the Bylaws would be consistent with such action, shall be given the same effect as though the Bylaws had been temporarily amended or suspended so far, but only so far, as is necessary to permit the specific action so taken or authorized. Written record of such action shall be included in the minutes of the next regular or special meeting of the Board of Directors. Any formal amendment to the Bylaws necessary to be consistent with such action shall then be presented for adoption pursuant to section 16.1.

## **ARTICLE XVII**

### **DISSOLUTION**

In the event of the dissolution of the organization, the assets shall be applied and distributed as follows:

- (a) All liabilities and obligations shall be paid, satisfied and discharged, or adequate provision shall be made therefor. Assets not held upon a condition requiring return, transfer, or conveyance to any other organization or individual shall be distributed, transferred, or conveyed, in trust or otherwise, to one or more charitable and educational organizations organized under IRC 501(c)(3) of a similar or like nature to this organization, as determined by the Board of Directors, for one or more exempt purposes within the meaning of IRC 501(c)(3).
- (b) Any such assets not so disposed of by the Board of Directors shall be disposed of by the Superior Court of the county in which the principal office of the corporation is then located, exclusively for such purpose or to such organization or organizations as said court shall determine which are organized and operated exclusively for such purpose. The court may take into its consideration for such disposition such organizations organized and operated exclusively for such charitable and/or educational purpose which may not then be qualified under IRC 501(c)(3) but nevertheless have historically demonstrated such purposes.

**ARTICLE XVIII**  
**PRIVATE FOUNDATION**

Notwithstanding any other provision hereof, if WMCG becomes a private foundation, as defined in Section 509 of the Internal Revenue Code of 1986, as amended, while it is a private foundation, the corporation:

- (a) shall not engage in any act of self-dealing as defined in Section 4941(d) thereof;
- (b) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 thereof;
- (c) shall not retain any excess business holdings as defined in Section 4943(c) thereof;
- (d) shall not make any investment in such manner as to subject it to tax under Section 4944 thereof;
- (e) shall not make any taxable expenditure as defined in Section 4945(d) thereof.

**KNOW ALL MEN BY THESE PRESENTS:**

That we, the undersigned, being all of the members of the Board of Directors of White Mountain Community Garden, a corporation organized and existing under the laws of the State of Arizona, hereby adopt these Bylaws, consisting of 19 pages inclusive of the pages bearing the signatures of the directors and members-at-large and the certification by the President and Secretary, and adopt the same as the Bylaws of said Corporation.

**IN WITNESS WHEREOF**, we have hereunto set our hands this \_\_\_\_ day of December, 2011.

\_\_\_\_\_  
Sandra Russell

\_\_\_\_\_  
Mary Gordon

\_\_\_\_\_  
Mary Alice Vertz

\_\_\_\_\_  
Joan Hunter

\_\_\_\_\_  
Daniel L. Vertz

\_\_\_\_\_  
JoAnn Hall

\_\_\_\_\_  
William Loffswold

**CERTIFICATION OF BYLAWS  
Of  
WHITE MOUNTAIN COMMUNITY GARDEN**

We hereby certify that the foregoing is a true and correct copy of the Bylaws of the White Mountain Community Garden, duly adopted by the Board of Directors on the \_\_\_\_\_ day of December, 2011.

\_\_\_\_\_  
Sandra Russell, President

\_\_\_\_\_  
Mary Alice Vertz, Secretary