

**Amended & Restated Bylaws  
of  
ACCOUNTING EDUCATION FOUNDATION**

A Texas Nonprofit Corporation

As adopted June 1, 2022

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**ARTICLE I**  
**GOVERNANCE AND PURPOSE**

Section 1.1 Governance. The Accounting Education Foundation (the “**Corporation**”) is a nonprofit corporation incorporated under and governed by the Texas Business Organizations Code (the “**TBOC**”).

Section 1.2 Purposes. The Corporation is organized and shall be operated exclusively for charitable purposes (which shall be deemed to include religious, charitable, scientific, literary or educational purposes, within the meaning of those terms as used in section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provisions of any subsequent federal tax law (the “**Code**”) and under the laws of the State of Texas). Within the scope of the foregoing purposes, the purposes for which the Corporation is organized include, without limitation, to: (i) advance education, awareness and thought leadership related to the study, teaching and practice of accountancy and allied fields through charitable, educational and research initiatives; (ii) expend money and enter into agreements for the above purposes; and (iii) carry out any other activity and provide any other service in furtherance of the foregoing purposes not inconsistent with applicable law and with the Corporation’s status as an exempt organization under Section 501(c)(3) of the Code.

Section 1.3 Prohibited Acts. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its Member, directors, officers, or other persons, except that, subject to Section 3.6, the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, including service as an officer, and to make payments and distributions in furtherance of its purposes. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation 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 Bylaws, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code.

**ARTICLE II**  
**MEMBERS**

Section 2.1 Single Class of Member. The Corporation shall have a single class of members with the rights specified in Section 2.3.

Section 2.2 Sole Member. The sole member of the Company shall be the Texas Society of Certified Public Accountants, a Texas non-profit corporation (“**TXCPA**” or the “**Member**”).

Section 2.3 Rights of Member. The Member shall have the right to vote on all matters which the Member may or is required to vote on pursuant to the TBOC, the Restated Certificate of Formation with Amendments effective as of 5:02 p.m. on May 31, 2022 (the “**2022 Restated Certificate**”), as amended (the “**Certificate**”), or these Bylaws, as amended (the “**Bylaws**”), including but not limited to the election of directors as set forth in Section 3.5.

Notwithstanding any provision in these Bylaws, the Member shall be entitled to access to the materials and stored knowledge of the Corporation to the maximum extent permitted by the TBOC. The Member shall have all other rights provided to members under the TBOC, the Certificate and these Bylaws.

Section 2.4 Meetings. There shall be no requirement that the Corporation hold an annual meeting of Members.

### **ARTICLE III** **THE BOARD**

#### Section 3.1 Composition.

(A) The number of directors of the Board of Directors of the Corporation (the “**Board**”) shall be determined by resolution of the Member from time to time; provided, however, that at no time shall the Board consist of fewer than eleven (11) directors nor more than twenty (20) directors elected pursuant to Section 3.5;

(B) To the extent possible without removing or shortening the term of any incumbent director, when filling vacancies in the Board or electing directors pursuant to Section 3.5, the Member shall elect individuals who would constitute Independent Directors so that a majority of the Board will consist of Independent Directors. “**Independent Director**” shall be a director who (i) has been determined to be independent by the Nominating Committee in accordance with these Bylaws; and (ii) does not satisfy any of the situations described in Section 3.16(A) through Section 3.16(I).

Section 3.2 Qualifications. All directors must be individuals over the age of eighteen (18). Directors may, but need not, be members of TXCPA.

Section 3.3 Duties. The property and affairs of the Corporation shall be managed, conducted and directed under the supervision of the Board. In addition to the powers and duties conferred or imposed upon the Board under the TBOC, the Board shall also (i) meet at such times and places as required or permitted by these Bylaws; and (ii) interpret the provisions of these Bylaws. Any interpretation of the Bylaws by the Board shall be binding on the Corporation.

#### Section 3.4 Term of Office.

(A) Members of the Board Commencing as of 5:02 p.m. on May 31, 2022. Commencing as of 5:02 p.m. on May 31, 2022, the members of the board of directors of the Corporation and their terms shall be as set forth in the 2022 Restated Certificate. Additional directors may be elected, appointed, or designated in the manner and for the term provided by these Bylaws.

(B) Terms of New or Additional Directors. Subject to the list of directors set forth in the 2022 Restated Certificate and the terms set forth above and further subject to Section 3.4(D) of these Bylaws, each new or additional director shall serve a term commencing on the Starting Date and ending on the third anniversary of the Starting Date (such three year period, the

“**Term**”), which Term shall be extended until his or her successor is duly elected and qualified, or until such director’s earlier death, resignation, or removal pursuant to the provisions of Section 3.15. The Term of each director shall begin on June 1 following the date on which the incoming director is elected (the “**Starting Date**”).

(C) No individual serving as a director shall serve for more than two (2) consecutive three (3) year terms (the “**Two-Term Limit**”), though individuals may be again appointed as a director after a break in service of at least one (1) year. The term of service of those directors set forth in the 2022 Restated Certificate shall count as a full three (3) year term for purposes of the Two-Term Limit. If an individual is elected to fill a vacancy on the Board pursuant to Section 3.15, such individual’s service for such unexpired term shall not count as a term for purposes of the Two-Term Limit.

(D) The Member shall stagger the terms of the directors in the resolution electing directors so that no fewer than three directors are up for election each year. The Member shall have the authority to take whatever action is necessary in its judgment to implement the system of staggered terms of the directors, as provided for in this Section 3.4(D). This includes, but is not limited to, the authority to set the initial term of any additional director at one (1), two (2), or three (3) years in order to preserve the system of staggered terms, as provided for in this Section 3.4(D).

### Section 3.5 Election of Directors.

(A) The individual who will replace any director whose term expires at the end of a year shall be elected by the Member from the list of candidates recommended by the Nominating Committee for the director position in accordance with the remainder of this Section 3.5. The election for directors shall take place prior to May 31 of each year at such time as the Member shall determine.

(B) Elections of the directors shall take place either at a meeting of the Member or by written consent of the Member. For the avoidance of doubt, if the Executive Board of the Member is authorized to elect directors of the Corporation, election of directors may take place at a meeting of the Executive Board or by written consent of the Executive Board.

Section 3.6 Compensation. Directors shall not be compensated for their service as directors. Directors may be entitled to receive reasonable reimbursement of expenses incurred in the accordance with the Corporation’s current director Expense Policy (as the same may be amended from time to time in accordance with its terms) and reasonable compensation for other services provided to the Corporation. In all such matters, the Corporation shall comply with the TBOC and the rules for excess benefit transactions established under the Code and the regulations promulgated thereunder.

Section 3.7 Place of Meetings; Electronic Conference Meetings. The location of any meeting of the Board shall be determined by the Chair. Board meetings may be held with all directors attending the meeting physically present in one (1) location, or with one (1) or more directors present via teleconferencing, video conferencing, or interactive webcasting, or any other

means of communication by which all directors participating in such meeting can adequately hear and be heard.

Section 3.8 Regular Meetings. The annual meeting of the Board shall be held each calendar year on such date and at such time as the Board shall determine. Other regular meetings of the Board shall be held on such regularly scheduled dates and at such times as the Board shall determine. In accordance with Section 3.14, notice of regular meetings shall be in writing.

Section 3.9 Special Meetings. Special meetings of the Board may be called by the Executive Director or by the Chair on twenty-four (24) hours' notice to each director in accordance with Section 3.14(B). Special meetings of the Board shall be called by the Executive Director or the Chair in like manner and on like notice on the written request of any three (3) directors. In accordance with Section 3.14, notice of special meetings shall be in writing and state the general nature of the business to be transacted at such meeting.

Section 3.10 Quorum for Board Meetings. A quorum shall consist of a majority of directors then in office. Except as otherwise provided in these Bylaws, in the Certificate of Formation, or by law, no business shall be transacted by the Board at any meeting at which a quorum is not present, and the only motion which shall be entertained at a meeting at which quorum is not present is a motion to adjourn.

Section 3.11 Majority Decision as Board Decision. Every decision made by a majority of the directors present at a meeting duly held at which a quorum is present is the decision of the Board, unless the Certificate of Formation or non-waivable provisions of law require a greater percentage or different voting rules for approval of a matter by the Board.

Section 3.12 Minutes and Governance. Minutes of each meeting of the Board shall be kept by the Secretary, or in the absence of the Secretary, an Assistant Secretary or any other individual authorized by the Board, and filed as a permanent record of the Corporation in accordance with Article VI. Meetings shall be governed by such rules as may be determined by the Board.

Section 3.13 Action by Written Consent. Unless otherwise restricted by the Certificate of Formation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by the number of directors or committee members whose vote would be necessary to take an action at a meeting at which all of the directors or committee members entitled to vote were present and voted. The consent must state the date of each director's or committee member's signature. Prompt notice of the taking of an action by directors or a committee without a meeting by less than unanimous written consent shall be given to each director or committee member who did not consent in writing to the action. Any written consent may also be obtained via email and other electronic communications to the fullest extent permitted under TBOC § 6.205.

Section 3.14 Notice.

(A) Not less than five (5) days prior to a regular meeting described in Section 3.8, the Secretary shall cause to be delivered to the directors notice of the time and place of the regular meeting.

(B) Not less than twenty-four (24) hours or more than sixty (60) days prior to a special meeting described in Section 3.9, the Secretary shall cause to be delivered to the directors notice of the general purpose, time and place of the special meeting.

(C) Notice under this Section 3.14 may be given in person, by mail, private carrier, telephone, electronically transmitted, or other form of wire or wireless communication.

(D) In order for the Secretary to provide the notices required in this Section 3.14, each director shall register his or her addresses, e-mail addresses, and phone numbers with the Secretary of the Corporation, and notices of meetings mailed, e-mailed or telephoned to them at such addresses shall be valid notices thereof.

#### Section 3.15 Vacancies and Removal.

(A) Vacancies on the Board shall exist upon the death, resignation or removal of any director. Any director may resign at any time by giving written notice to the Board. Any such resignation shall take effect on the date of receipt of such notice or on any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(B) Prior to the expiration of a director's term, a director may be removed with or without cause (which includes, but is not limited to, a violation by such director of the Code of Conduct or Code of Ethics ) by the Member. "**Code of Conduct**" means the Conflict Policy and any other code of conduct as may be adopted from time to time by the Board, as each of the same may be later amended or revised from time to time by the Board. "**Code of Ethics**" means the Code of Ethics of the Corporation as approved and revised from time to time by the Board.

(C) Following an expiration of a director's term, such director may be removed prior to the election and qualification of such director's successor at any time and for any reason by a majority vote of the Board.

(D) A vacancy in one of the director positions may be filled by the Member acting in the same manner provided under Section 3.5.

(E) An individual elected to fill a vacancy on the Board shall hold such office until the earlier of the end of the term of the director that the individual is replacing, or until the new director's death, resignation or removal from office.

Section 3.16 Independence. Notwithstanding any determination by the Executive Committee, a director shall not be considered an Independent Director if any of the following circumstances are applicable:

(A) A director who is, or has been within the past three years, an employee or Executive Officer of the Corporation or of the Texas Society of Certified Public Accountants, Inc.;



provided, however, that this Section 3.16(A) shall not apply to a director serving as the Chair or Vice-Chair of the Board solely due to the director's service in such office. "**Executive Officer**" means any officer of the Corporation who, as a result of such officer's role as an officer, performs a policy making function for the Corporation, such as the Executive Director, principal financial officer, principal accounting officer, or any other officer who performs a similar function for the Corporation; *provided, however*, that the Secretary and Treasurer do not perform policy making functions for the Corporation and shall not be considered Executive Officers.

(B) A director who has any Immediate Family Member who is, or has been within the past three years, an Executive Officer of the Corporation. "**Immediate Family Member**" means a spouse, daughter, stepdaughter, son, stepson, mother, stepmother, father, stepfather or an individual in a close personal relationship.

(C) A director who is, or has been, an employee, partner or Affiliate of any current or former internal or external auditor of the Corporation, unless three years have elapsed since the end of (i) director's relationship with the internal or external auditor or (ii) the auditor's relationship with the Corporation; *provided*, that for purposes of this Section 3.16(C), a partner does not include a fixed income partner whose interest in the external auditor is limited to the receipt of fixed amounts of compensation (including deferred compensation) for prior service with such external auditor if the compensation is not contingent in any way on continued service. An "**Affiliate**" of a Person means any other Person that directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with, such Person, including with regards to the Corporation, the Member or any chapters of the Member. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. "**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental entity, unincorporated organization, trust, association or other entity.

(D) A director who has an Immediate Family Member who (i) is, or has been, an employee, partner or Affiliate of any current or former internal or external auditor of the Corporation or (ii) has received (directly or indirectly) any consulting, advisory or other compensatory fee from the Corporation or any Affiliate of the Corporation, unless in each case three years have elapsed since the end of (x) such individual's relationship with the internal or external auditor or (y) the auditor's relationship with the Corporation.

(E) A director who has, or who has a Close Entity or Immediate Family Member who has, a relationship with the Corporation (e.g., as or with a member of its management team) pursuant to which such director, Close Entity or Immediate Family Member has received within the last three years or may receive, directly or indirectly, any consulting, advisory or other compensatory fee for services or other advice, as the case may be, from the Corporation or any of its Affiliates or subsidiaries; *provided, however*, that this Section 3.16(E) shall not apply to fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Corporation if the compensation is not contingent in any way on continued service or the provision of additional services as a consultant engaged specifically by the Board, including running internal investigations. "**Close Entity**" means an entity (x) in which a director or one or more of his Immediate Family Members is a partner, member, officer, director or occupies a

similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the Corporation); and (y) which provides accounting, consulting, legal, investment banking or financial advisory services to the Corporation or any Affiliate of the Corporation.

(F) A director who belongs, or has belonged within the past three years, or who has any Immediate Family Member who belongs, or has within the past three years belonged, to the operational management team of another entity (i) which has a material customer, supplier or cooperative relationship with the Corporation that is significant either to the other entity or the Corporation or (ii) that has a director or other equivalent governing person who also serves as a member of the operational management team of the Corporation;

(G) A director who, or any of whose Immediate Family members, is or has been within the past three years, an Executive Officer of another entity on whose compensation committee any Executive Officer of the Corporation serves or has served within the past three years;

(H) A director who is an Affiliate of the Corporation or any of its subsidiaries;  
or

(I) A director who, or who has an Immediate Family Member who, directly or indirectly through one or more intermediaries, (i) receives monetary income or benefit exceeding \$10,000 during any tax year of the Corporation that is attributable, in whole or in part, to the director's use, directly or indirectly through one or more intermediaries, of the Corporation's Materials or (ii) enters into any loan, guarantee, grant or Business Transaction with the Corporation or any of its Affiliates, unless in each case three years have elapsed since the tax year in which the director or Immediate Family Member received such income or entered into or performed such transaction. "**Business Transaction**" means any joint venture or contract of sale, lease, license, insurance or performance of services that involve monetary payments or other benefits in excess of \$10,000 in any tax year of the Corporation. "**Materials**" means educational or other materials that (i) include or reference certifications or designations indicating the Person's particular qualifications due to training or other association with the Corporation, or (ii) include any logo, trademark or other intellectual property of the Corporation.

#### **ARTICLE IV** **OFFICERS**

Section 4.1 Enumeration of Officers. The officers of the Corporation shall be the Executive Director, Secretary, and Treasurer. In addition, the Corporation may have one (1) or more assistant secretaries, assistant treasurers and such other officers as the Board may from time to time determine. The Board of Directors may elect from among its members a Chairman of the Board and a Vice Chairman of the Board.

Section 4.2 Election and Term of Office. Except as otherwise provided by the Certificate of Formation or these Bylaws, the officers shall be elected by the Board. Each officer shall serve until his or her successor is duly elected and qualified or until he or she dies, resigns or is removed from office by the Board.

Section 4.3 Qualifications. The Chair and Vice-Chair must be current directors. The Executive Director, Secretary, Treasurer, assistant secretaries, assistant treasurers and individuals filling such other offices as the Board may from time to time create are not required to be directors. Unless otherwise determined by the Member, the Executive Director shall be the Chief Executive Officer of TXCPA by virtue of holding such office in accordance with Section 4.6(C).

Section 4.4 Vacancies. Vacancies in officer positions shall exist on the death, resignation, or removal of any officer. Officers may be removed from office by a majority vote of the Board. Any officer may resign at any time by giving written notice to the Board. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. It shall be the Board's responsibility to appoint a new officer to fill an officer vacancy. Any officer appointed to fill an officer vacancy will serve in accordance with Section 4.2.

Section 4.5 Limitation of Authority. The officers have no authority to make or rescind commitments of the Corporation other than as explicitly stated in their duties or as provided by the Board.

Section 4.6 Duties of Officers.

(A) Chair. The Chair shall preside at all meetings of the Board. The Chair shall perform such other duties as shall be provided in these Bylaws or as may be prescribed by the Board. The Chair shall be an Independent Director.

(B) Vice-Chair. The Vice-Chair shall act in the Chair's stead in the event of the absence or disability of the Chair, and shall perform such other duties as shall be provided in these Bylaws or as may be prescribed by the Board.

(C) Executive Director. Subject to the direction and control of the Board, in general, the Executive Director shall supervise and control all of the business and affairs of the Corporation. The Executive Director shall assist the Chair, Vice-Chair, Secretary and Treasurer in the performance of their duties as provided in these Bylaws. The Executive Director shall be responsible for the hiring, firing, supervising, and, within the limits set forth by the Board in the Corporation's budget, setting the compensation for all employees of the Corporation pursuant to the compensation programs administered by the Finance Committee. As authorized by the Board, the Executive Director shall execute all instruments requiring such execution, except to the extent that signing and execution thereof is expressly delegated by the Board to some other officer or agent of the Corporation. Subject to the direction and control of the Board, in general, the Executive Director shall perform, the duties as shall be provided in these Bylaws or as may be prescribed by the Board. Upon request of the Board, the Executive Director shall report to the Board all matters which the interests of the Corporation may require to be brought to the attention of the Board.

(D) Treasurer. The Treasurer shall have care and custody of the books and records of account of the Corporation and, subject to the direction of the Board, shall have charge

of and be responsible for all funds and securities of the Corporation. He or she shall render financial statements to the Board from time to time upon request. The funds of the Corporation shall be deposited to its credit in such a manner and in such depositories as the Board may from time to time designate and shall be subject to withdrawal by check, draft or other order by such officer or officers, the Executive Director, or by any combination of them, as may from time to time be designated by the Board. The Treasurer shall have such other duties as shall be provided in these Bylaws or as may be designated by the Board.

(E) Secretary. The Secretary shall be responsible for seeing to the preparation and maintenance of minutes and records of the Corporation and shall give such notices of meetings as required by these Bylaws. The Secretary shall attend, or cause an Assistant Secretary to attend, all meetings of the Board and any Committee of the Board. The Secretary shall have such other duties as shall be provided in these Bylaws or as may be designated by the Board.

Section 4.7 Compensation and Reimbursement of Officers. Officers may receive compensation for their services as an officer so long as such compensation is reasonable. Officers may be entitled to reimbursement for any reasonable expenses incurred in rendering services to the Corporation and for which such officers provide appropriate substantiating documentation, in the manner and to the extent provided by the Board and any policy adopted by the Board. In all such matters, the Corporation shall comply with the TBOC and the rules for excess benefit transactions established under the Code and the regulations promulgated thereunder.

Section 4.8 Surrender of Records. Upon completion of the term of office, resignation or removal, each office holder shall turn over to his/her successor or other officer all records, correspondence, documents and other Corporation property in his/her possession.

## **ARTICLE V** **COMMITTEES**

### Section 5.1 Executive Committee.

(A) The Corporation shall have an Executive Committee (the “**Executive Committee**”). The Executive Committee will have such responsibilities as are provided for in these Bylaws and the Executive Committee Charter as adopted by the Board and as may be later amended by the Board from time to time (the “**Executive Committee Charter**”) and such other powers and authority of the Board in the management of the business and affairs of the Corporation as may be delegated to the Executive Committee from time to time by the Board, to the extent permitted by provisions of the TBOC or other law. By a majority vote of the directors after written notice to the Executive Committee, the Board may at any time (i) revoke or modify any or all of the Executive Committee authority so delegated; and (ii) increase or decrease the number of the members of the Executive Committee, *provided that*, the number of members of the Executive Committee shall never be decreased below three (3).

(B) The Executive Committee shall consist solely of directors, at least a majority of whom shall be Independent Directors, and must be comprised of at least three (3) directors but may have more directors as may be specified in the Executive Committee Charter. At any time by a majority vote of the directors, the Board may fill vacancies on the Executive

Committee with the directors. The Chair of the Board shall be the chair of the Executive Committee.

(C) The Executive Committee Charter will be kept in the records of the Corporation. The Executive Committee shall (i) keep regular minutes of its proceedings; (ii) cause them to be filed with the corporate records; and (iii) report the same to the Board from time to time as the Board may require.

#### Section 5.2 Nominating Committee.

(A) The Corporation shall have a Nominating Committee (the “**Nominating Committee**”). The Nominating Committee will have such responsibilities as are provided for in these Bylaws and the Nominating Committee Charter as adopted by the Board and as may be later amended by the Board from time to time (the “**Nominating Committee Charter**”) and such other responsibilities as may be delegated to the Nominating Committee from time to time by the Board. The responsibilities of the Nominating Committee include the nomination of the candidates to be elected as directors in accordance with Section 3.5.

(B) The Nominating Committee shall consist solely of directors, at least a majority of whom shall be Independent Directors, and must be comprised of at least three (3) directors but may have more directors as may be specified in the Nominating Committee Charter. The members of the Nominating Committee shall be designated by the Board and consist of individuals with such qualifications and attributes as may be specified in the Nominating Committee Charter.

(C) The Nominating Committee Charter will be kept in the records of the Corporation. The Nominating Committee shall (i) keep regular minutes of its proceedings; (ii) cause the minutes to be filed with the corporate records; and (iii) report the same to the Board from time to time as the Board may require.

#### Section 5.3 Finance Committee.

(A) The Corporation shall have a Finance Committee (the “**Finance Committee**”). The Finance Committee will have such responsibilities as are provided for in these Bylaws and the Finance Committee Charter as adopted by the Board and as may be later amended by the Board from time to time (the “**Finance Committee Charter**”) and such other responsibilities as may be delegated to the Finance Committee from time to time by the Board. The responsibilities of the Finance Committee will include developing a Director Expense Policy for approval by the Board, making determinations with respect to reimbursements of expenses in accordance with the Director Expense Policy, and monitoring and enforcing the Code of Conduct and Article VII.

(B) The Finance Committee shall consist solely of directors, at least a majority of whom shall be Independent Directors, and must be comprised of at least three (3) directors but may have more directors as may be specified in the Finance Committee Charter. The members of the Finance Committee shall be designated by the Board and consist of individuals with such qualifications and attributes as may be specified in the Finance Committee Charter.

(C) The Finance Committee Charter will be kept in the records of the Corporation. The Finance Committee shall (i) keep regular minutes of its proceedings; (ii) cause the minutes to be filed with the corporate records; and (iii) report the same to the Board from time to time as the Board may require.

Section 5.4 Development Committee. The Development Committee of the Board (the “*Development Committee*”) shall work with the staff to establish an appropriate fundraising plan and goals, take the lead in certain types of outreach effort and be responsible for the involve of all directors in the fundraising efforts and monitor the progress on fundraising and make recommendations to the Board regarding the same. The Development Committee shall consist of one or more directors, and such committee may include persons who are not directors of the Company so long as no such person is designated as the chair of the Development Committee.

Section 5.5 Other Committees. The Board may have such other committees as may be designated by the Board from time to time. These committees may consist of individuals who are not directors and shall act in an advisory capacity to the Board.

Section 5.6 Restrictions on Committee Activities. No committee shall (a) authorize distributions; (b) approve an action or propose an action to Members that the TBOC requires be approved by Members; (c) elect, appoint, or remove any director; (d) amend the Certificate of Formation; (e) adopt, amend, or repeal these Bylaws; (f) approve a plan of conversion or plan of merger; or (g) approve a sale, lease, exchange, or other disposition of all, or substantially all, of the Corporation’s property with or without goodwill, other than in the usual and regular course of business subject to approval by Members.

## **ARTICLE VI**

### **RECORDS AND FISCAL YEAR**

Section 6.1 Books and Records to Be of the Corporation. The Corporation shall keep the records required by the TBOC at its principal office in a written form or another form capable of conversion into a written form within a reasonable time.

Section 6.2 Access to Books and Records. The Member shall be entitled to examine and copy, at its own expense, in person or by agent, accountant or attorney, at any reasonable time, the books and records and records of the Corporation.

Section 6.3 Fiscal Year. The fiscal year shall commence on June 1st and end on May 31st.

## **ARTICLE VII**

### **CONFLICT OF INTEREST**

Section 7.1 Conflicts of Interest. The purpose of the conflict of interest policy set forth in this Article VII (this “**Conflict Policy**”) is to protect the Corporation’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer of the Corporation or director or might result in a possible excess benefit transaction (as defined in the Code). This Conflict Policy is intended to supplement but not replace any

applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations. The Board may delegate to any committee the responsibility for enforcement of this Conflict Policy to the extent permitted by federal and state law.

**Section 7.2** Definition of Interested Person. Any director, officer, member of a committee with Board delegated powers (“**Covered Individual**”), who (i) has a direct or indirect Financial Interest, or (ii) has an Immediate Family Member or Affiliate who has a direct or indirect Financial Interest in a contemplated or completed transaction is an “**Interested Person**”. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A Financial Interest is not necessarily a conflict of interest. Under this Article VII, an Interested Person may have a conflict of interest only if the Board decides that a conflict of interest exists. In addition to the other requirements of this Conflict Policy, each director must report to the Finance Committee any material conflict of interest. “**Financial Interest**” exists, with respect to a certain Person, if the Person has, directly or indirectly, through business, investment, or family: (i) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement; (ii) compensation arrangement with the Corporation or with any Person with which the Corporation has a transaction or arrangement; or (iii) a potential ownership or investment interest in, or compensation arrangement with, any Person with which the Corporation is negotiating a transaction or arrangement.

**Section 7.3** Addressing Conflicts.

(A) In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of the Financial Interest and be given the opportunity to disclose all material facts to the Board and members of committees with Board delegated powers considering the proposed transaction or arrangement.

(B) An Interested Person may make a presentation at a Board or committee meeting, but after the disclosure of the Financial Interest and all material facts, and after any discussion between the Board or the committee and the Interested Person, the Interested Person shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists via a vote in accordance with Section 7.3(C).

(C) In assisting the Board or committee in making its decision:

(i) The Chair or committee chair shall, if appropriate, appoint a disinterested Person or committee to consider alternatives to the proposed transaction or arrangement.

(ii) The Board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a Person that would not give rise to a conflict of interest.

(iii) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement

is (a) in the Corporation's best interest; (b) for the Corporation's own benefit, and (c) fair and reasonable. In conformity with the above determination, the Board or committee shall make its decision as to whether the Corporation may enter into the transaction or arrangement.

(D) If the Board or committee has a reasonable basis to believe a Covered Individual has failed to disclose actual or possible conflicts of interest:

(i) It shall inform the Covered Individual of the basis for such belief and afford the Covered Individual an opportunity to explain the alleged failure to disclose.

(ii) If, after hearing the Covered Individual's response and after making further investigation as warranted by the circumstances, the Board or committee determines the Covered Individual has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action as the Board or relevant committee determines in its discretion.

Section 7.4 Statement Affirming Compliance with Policy. Annually, each Covered Individual shall sign a statement which affirms such individual:

(A) Has received a copy of this Conflict Policy;

(B) Has read and understands this Conflict Policy;

(C) Has agreed to comply with this Conflict Policy; and

(D) Understands the Corporation is charitable and in order to maintain its federal tax exemption, the Corporation must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 7.5 Records of Proceedings. The minutes of the Board and all committees with Board delegated powers, including those standing committees created by Article V, shall contain: (a) the names of the Persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the Board's or the committee's decision as to whether a conflict of interest in fact existed; and (b) the names of the individuals who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 7.6 Periodic Reviews. To ensure the Corporation operates in a manner consistent with its tax-exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted by the Board or any committee to which the Board has delegated this authority. The periodic reviews shall, at a minimum, include review of whether (a) compensation arrangements and benefits of officers are reasonable, based on competent survey information, and the result of arm's length bargaining; and (b) partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the Corporation's tax-exempt purposes and do not result in inurement, impermissible



private benefit or in an excess benefit transaction. When conducting the periodic reviews as provided for in this Section 7.6, the Corporation may, but need not, use outside advisors. If outside advisors are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

Section 7.7 Code of Conduct and Conflict of Interest Designation. In addition to complying with the Conflict Policy, each director must sign the Code of Conduct and any updated versions of the same. Each director shall be responsible for complying with the Code of Conduct in addition to such director's compliance with this Article VII.

## **ARTICLE VIII** **DISSOLUTION**

Section 8.1 Dissolution. In order to dissolve the Corporation, the Member must adopt a proposal to dissolve the Corporation.

Section 8.2 Dedication of Assets to Exempt Purposes. Upon the winding up and termination of the Corporation, its assets shall be distributed as set forth in the Certificate of Formation of the Corporation.

## **ARTICLE IX** **PERSONAL LIABILITY AND INDEMNIFICATION OF DIRECTORS, OFFICERS** **AND OTHER PERSONS**

Section 9.1 Personal Liability.

(A) The directors, officers, employees, and Member of the Corporation shall not, as such, be personally liable for the acts, debts, liabilities, or obligations of the Corporation.

(B) A director or officer shall not be personally liable to the Corporation or its Member for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of his or her position (i) in good faith; (ii) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (iii) in a manner the director or officer reasonably believes to be in the best interests of the Corporation.

(C) A director or officer of the Corporation, in the performance of his or her duties, shall not have any fiduciary duty to any creditor of the Corporation arising only from such creditor's status as a creditor of the Corporation.

(D) No director or officer shall be personally liable for any injury to a Person or property arising out of a tort committed by an employee, unless such director or officer was personally involved in the situation giving rise to the litigation or unless such director or officer committed a criminal offense in connection with such situation.

Section 9.2 Mandatory Indemnification. The Corporation shall indemnify an individual who was wholly successful, on the merits, in the defense of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or

informal, to which the individual was a party because the individual is or was a Member, director or officer of the Corporation, or, while a Member, director or officer, is or was serving at the Corporation's request as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of another domestic or foreign entity or of an employee benefit plan, against reasonable expenses (including attorneys' fees) incurred by the individual in connection with such action, suit or proceeding. An individual entitled to indemnification under this Section 9.2 is hereafter called "an individual covered by Section 9.2 hereof."

Section 9.3 Optional Indemnification. Except as provided in Section 9.4, the Corporation may (but shall not be obligated to) indemnify an individual made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, because the individual is or was a director, officer, employee, fiduciary, or agent of the Corporation, or an individual who, while a director of a nonprofit corporation, is or was serving at the nonprofit corporation's request as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of another domestic or foreign entity or of an employee benefit plan, against liability incurred in such action, suit or proceeding, if (i) the individual's conduct was in good faith; (ii) the individual reasonably believed, in the case of conduct in an official capacity, that the conduct was in the Corporation's best interests, and in all other cases, that the conduct was at least not opposed to the Corporation's best interests; and (iii) in the case of any criminal proceeding, the individual had no reasonable cause to believe the conduct was unlawful. Indemnification permitted under this Section 9.3 in connection with an action, suit, or proceeding by or in the right of the Corporation is limited to reasonable expenses (including attorneys' fees) incurred in connection with such action, suit, or proceeding.

Section 9.4 Exceptions. No indemnification under Section 9.3 shall be provided to an individual (a) in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, by or in the right of the Corporation in which the individual was adjudged liable to the Corporation; or (b) in connection with any other threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, alleging that the individual derived an improper personal benefit, whether or not involving action in an official capacity, as defined in § 8.001(6) (as amended from time to time), in which such action, suit, or proceeding such individual was adjudged liable on the basis that such individual derived an improper personal benefit. The Board is hereby authorized, at any time, to add to the above list of exceptions from the right of indemnification under Section 9.3, but any such additional exceptions shall not apply with respect to any event, act or omission which has occurred prior to the date that the Board in fact adopts such exceptions. Any such additional exception may, at any time after its adoption, be amended, supplemented, waived or terminated by further resolution of the Board.

Section 9.5 Advancement of Expenses. Expenses incurred in connection with an action, suit, or proceeding described in Section 9.3 hereof may be paid by the Corporation in advance of a final disposition of such action, suit, or proceeding if (a) the individual who has been made party to such action, suit, or proceeding furnishes to the Corporation a written affirmation of such individual's good faith belief that they have met the standard of conduct described in Section 9.3; (b) the individual furnishes to the Corporation a written undertaking, executed personally or on such individual's behalf, to repay the advance if it is ultimately determined that such individual

did not meet the standard of conduct; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under the TBOC or Section 9.4.

Section 9.6 Continuation of Rights. The indemnification and advancement or reimbursement of expenses provided by, or granted pursuant to, this Article IX shall continue as to an individual who has ceased to be a director or officer of the Corporation, and shall inure to the benefit of heirs, executors and administrators of such individual.

Section 9.7 General Provisions.

(A) The Corporation shall not indemnify any individual under Section 9.3 unless such indemnification is authorized in the specific case after determination has been made that indemnification of the individual is permissible in the circumstances because the individual has met the standard of conduct described in Section 9.3. The Corporation shall not advance expenses to an individual under Section 9.5 unless authorized in the specific case after the written affirmation and undertaking required in Section 9.5 are received and the determination required by Section 9.5 has been made. The determinations required by Section 9.3, Section 9.5 and this Section 9.7(A) shall be made (i) by a majority vote of those present at a meeting of the Board at which quorum is present, in which only those directors not parties to the action, suit, or proceeding are counted to satisfy quorum; or (ii) if a quorum cannot be obtained in accordance with clause (i), by a majority vote of a committee of the Board designated by the Board, which committee shall consist of two or more directors not parties to the action, suit, or proceeding. In the event quorum cannot be obtained, and a committee cannot be established, as contemplated in the previous sentence, or, even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made shall be made by independent legal counsel selected by a vote of the Board or the committee in the manner specified above in this Section 9.7(A) or, if a quorum of the full Board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority of the full Board. If the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

(B) The right of an individual covered by Section 9.2 hereof to be indemnified (i) may also be enforced as a contract right pursuant to which the individual entitled thereto may bring suit as if the provisions hereof were set forth in a separate written contract between the Corporation and such individual; and (ii) shall continue to exist after the rescission or restrictive modification (as determined by such individual) of this Article IX with respect to events, acts or omissions occurring before such rescission or restrictive modification is adopted.

(C) If a request for indemnification under Section 9.2 or for the advancement or reimbursement of expenses validly authorized pursuant to Section 9.5 is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation together with all supporting information reasonably requested by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim (plus interest at the prime rate announced from time to time by the Corporation's primary banker) and, if successful in whole or in part, the claimant also shall be entitled to be paid the

expenses (including, but not limited to, attorneys' fees and costs) of prosecuting such claim. Neither the failure of the Corporation (including its Board, independent legal counsel, or its Member) to have made a determination prior to the commencement of such action that indemnification of or the advancement or reimbursement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board, independent legal counsel, or its Member) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the TBOC or create a presumption that the claimant is not so entitled.

(D) The indemnification and advancement or reimbursement of expenses provided by, or granted pursuant to, this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement or reimbursement of expenses may be entitled under any bylaw, agreement, vote of the directors or otherwise, both as to action in such director's or officer's official capacity and as to action in another capacity while holding that office.

(E) Nothing contained in this Article IX shall be construed to limit the rights and powers the Corporation possesses under the TBOC, or otherwise, including, but not limited to, the powers to purchase and maintain insurance, create funds to secure or insure its indemnification obligations, and any other rights or powers the Corporation may otherwise have under applicable law.

(F) The Corporation shall have the right to appoint the attorney for an individual covered by Section 9.2 hereof or for an individual covered by Section 9.3 hereof, provided such appointment is not unreasonable under the circumstances.

Section 9.8 Insurance for Corporate Agents. Except as may be otherwise provided under provisions of law, the Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of an individual who is or was a director, officer, employee, fiduciary or agent of the Corporation, or who, while a director, officer, employee, fiduciary, or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of any domestic or foreign entity or of any employee benefit plan, against liability asserted against or incurred by the individual in such capacity or arising out of the individual's status as such, whether or not the Corporation would have the power to indemnify the individual against such liability under the Certificate of Formation, these Bylaws or provisions of law.

## **ARTICLE X**

### **AMENDMENTS AND VALIDITY**

Section 10.1 Amendments to the Bylaws. The Member shall have the right to amend these Bylaws.

Section 10.2 Validity. The invalidity of any part of these Bylaws shall not impair or otherwise affect in any manner the validity, enforceability, or intent of the balance these Bylaws.

Section 10.3 Repeal of Prior Bylaws. Upon the adoption of these Bylaws, the previous Bylaws of the Corporation shall be repealed.

I, the undersigned, being the Secretary of \_\_\_\_\_, a Texas non-profit corporation, DO HEREBY CERTIFY that the foregoing are the Amended and Restated Bylaws of said corporation adopted by the Board as the Bylaws of the Corporation at a meeting occurring on [Date]

\_\_\_\_\_  
\_\_\_\_\_, Secretary