

**AMENDED AND RESTATED BYLAWS**

**OF**

**DSST PUBLIC SCHOOLS FOUNDATION**

Adopted effective November 1, 2017

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## ARTICLE I OFFICES

Section 1.1 Business Offices. The initial principal office of **DSST Public Schools Foundation**, a Colorado nonprofit corporation (the “**Corporation**”), shall be located at 3401 Quebec St, Suite 2000, Denver, CO 80207. The Corporation may have such other offices, either within or outside Colorado, or change offices, as the board of directors may designate or as the affairs of the Corporation may require from time to time.

Section 1.2 Registered Office. The registered office of the Corporation required by the Colorado Revised Nonprofit Corporation Act, C.R.S. §7-121-101 et seq. (the “**Act**”) to be maintained in Colorado may be, but need not be, the same as the principal office if in Colorado, and the address of the registered office may be changed from time to time by the board of directors or by the officers of the Corporation.

## ARTICLE II MEMBERS

Section 2.1 Sole Member. The Corporation shall have a sole member, which is Denver School of Science and Technology, Inc., a Colorado nonprofit corporation and public charter school (the “**Member**”).

Section 2.2 No Transfer. Membership in the Corporation may not be transferred.

Section 2.3 Voting, Appointment and Approval Rights. The Member shall have such voting, appointment, and approval rights as set forth in these Bylaws and the articles of incorporation of the Corporation.

Section 2.4 Transactions Requiring Member Approval. Neither the board of directors nor any officer, agent, or employee of the Corporation shall take any of the following actions without the written consent and approval of the Member:

(a) *Amendment of Governance Documents*. Any amendment or restatement of the articles of incorporation or these bylaws of the Corporation;

(b) *Modification of Purpose*. Any change in the charitable, scientific, and educational purposes of the Corporation;

(c) *Change in Corporate Status*. Merger, consolidation, reorganization, dissolution or sale of substantially all the assets of the Corporation;

(d) *Outside Grants*. Making any grant or award of funds to any recipient other than the Member in any amounts in excess of \$500 in aggregate during any fiscal year.

Section 2.5 Action by Member. Whenever approval by the Member or any other Member action is required pursuant to these Bylaws, the Corporation may rely on any writing signed by the Chief Executive Officer or any other authorized officer of the Member.

Section 2.6 Absence of Member. In the event that there is no Member, either as a result of disqualification, resignation, dissolution, assignment for the benefit of creditors or petition for relief under any federal bankruptcy law, or another reason, then the then-acting board of directors of the Corporation shall have full authority to act and bind the Corporation as the sole member.

Section 2.7 Annual Meeting. Pursuant to § 7-127-101 of the Act, the requirement for holding an annual meeting of Members is hereby eliminated.

### **ARTICLE III BOARD OF DIRECTORS**

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by its board of directors, except as otherwise provided in the Act, the articles of incorporation or these bylaws.

Section 3.2 Number, Appointment and Election, Tenure.

(a) *Number.* The number of directors of the Corporation shall be no less than one and no more than seven.

(b) *Appointment and Election.* At least one director shall be appointed by the Member, and if there are more than three directors, two of the directors shall be appointed by the Member, and if there are more than 5 directors, three of the directors shall be appointed by the member. The remaining directors shall be elected by a Majority Vote, as defined in Section 3.9, of the then-acting directors.

(c) *Tenure.* Directors shall serve terms of three years and until the earlier of their death, resignation or removal and until their successor has been elected and qualified. The terms of the directors shall be staggered in accordance with the following provisions: the total number of directors shall be divided into three groups, with each group containing one-third of the total, as near as may be. The terms of directors in the first group shall expire at the first annual directors' meeting after their election, and the terms of the directors in the second group expire at the second annual directors' meeting after their election, and the terms of directors in the third group expire at the third annual directors' meeting after their election. Upon the expiration of the initial staggered terms, directors shall be elected for terms of three years to succeed those whose terms expire. There shall be no limit on the number of terms any director may serve, or on the number of consecutive terms a director may serve.

Section 3.3 Resignation; Removal; Vacancies. Any director may resign at any time by giving written notice to the chair of the board or to the president of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any director may

be removed in the manner provided by the Colorado Nonprofit Corporation Act, provided, however, that any director appointed by the Member may only be removed by the Member. Any vacancy occurring in the board of directors may be filled by a Majority Vote, as defined in Section 3.9, of the remaining directors, provided, however, that a vacant director position of a Member-appointed director shall be filled by appointment of the Member.

Section 3.4 Annual and Regular Meetings. An annual meeting of the board of directors shall be held during the first four months of each fiscal year for the purpose of electing officers and for the transaction of such other business as may come before the meeting. The board of directors may provide by resolution the time and place, either within or outside Colorado, for the holding of additional regular meetings. No notice shall be required other than such resolution. Failure to hold an annual meeting of the board of directors shall not affect the validity of any corporate action and does not work a forfeiture or dissolution of the Corporation.

Section 3.5 Special Meetings. Special meetings of the board of directors may be called by or at the request of the chair of the board, the president or two or more directors for the transaction of such business as may come before the meeting.

Section 3.6 Notice. Except as allowed by Section 3.4, notice of each meeting of the board of directors stating the place, day and hour of the meeting shall be given to each director at the director's business address at least ten days prior thereto by the mailing of written notice by first class, certified or registered mail, or at least seven days prior thereto by personal delivery of written notice or by telephonic, email, telegraphic, telex or facsimile notice (and the method of notice need not be the same as to each director). If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage thereon prepaid. If telegraphed, such notice shall be deemed to be given when the telegram is delivered to the telegraph company. If transmitted by telex, email or facsimile, such notice shall be deemed to be given when the transmission is completed. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

Section 3.7 Waiver of Notice. Any director may waive notice of any meeting before, at or after such meeting. The 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 and at the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting.

Section 3.8 Presumption of Assent. A director of the Corporation 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 such director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Corporation immediately after the

adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 3.9 Quorum and Voting. One-third (1/3) of the directors in office, at least one of which must be a Member-appointed director if such a director is in office, shall constitute a quorum for the transaction of business at any meeting of the board of directors, and the vote of more than 50% of the directors present in person at a meeting at which a quorum is present (or, solely in the event of an even number of directors casting a vote and a tie vote being the result, then the tie-breaking vote shall be cast by the Member-appointed director who has served for the longest period of time), shall be the act of the board of directors (a “**Majority Vote**”). If less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than an announcement at the meeting, until a quorum shall be present.

Section 3.10 Compensation. The board of directors shall have authority to fix the compensation of officers consistent with their terms and responsibilities established by the board. Directors shall serve without compensation, except that directors may be paid their reasonable expenses incurred in connection with attendance at board or committee meetings. Directors shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the Corporation in any other capacity, subject to the provisions of the Corporation’s articles of incorporation, conflict of interest policy and the Code.

Section 3.11 Meetings by Telephone. Members of the board of directors or any committee thereof may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 3.12 Action Without a Meeting.

(a) *Voting Procedure*. Any action required or permitted to be taken at a meeting of the board of directors or any committee thereof may be taken without a meeting if written notice is transmitted to each member of the board of directors or committee pursuant to Section 3.6 and each such member either: (a) votes in writing for such action; (b) votes in writing against such action; (c) abstains in writing from voting; or (d) fails to respond by the time stated in the notice. Proposals for such action and votes for or against the same by the members of the board of directors may be submitted via electronic mail, consistent with the requirements of this Section 3.12.

(b) *Action Taken*. Action is taken under this Section 3.12 only if at the end of the time stated in the notice, the affirmative vote for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted.

(c) *Notice Required*. The notice required by Section 3.12(a) shall state (i) the action to be taken; (ii) the time by which a member of the board of directors or committee must respond; and (iii) that failure to respond by the time stated in the notice will have the same



effect as abstaining in writing by the time stated in the notice and failing to demand in writing by the time stated in the notice that action not be taken without a meeting. Unless such notice states a different effective date, action taken pursuant to this Section 3.12 shall be effective at the end of the time to respond stated in the notice.

(d) *Revocation of Vote.* Any director or committee member who has delivered a writing pursuant to this Section 3.12 may revoke such writing by a new writing dated by the member of the board of directors or committee describing the action and stating that the prior vote of the member of the board of directors or committee with respect thereto is revoked. Such revocation shall only be effective if it is received by the Corporation before the last writing necessary to effect the action is received by the Corporation.

(e) *Manner of Notice.* All communications under this Section 3.12 may be transmitted or received by the Corporation by electronically transmitted facsimile, e-mail, or other form of wire or wireless communication. For purposes of this Section 3.12, communications to the Corporation are not effective until received by the Corporation.

(f) *Validity of Action.* Action taken pursuant to this Section 3.12 has the same effect as action taken at a meeting of directors and may be described as such in any document.

(g) *Recordkeeping.* All written instruments necessary for any action taken pursuant to this Section 3.12 shall be filed with the minutes of the meetings of the board of directors. In the event action is taken by the requisite affirmative vote of the members of the board of directors, the emails describing such action and the affirmative votes therefor shall be stored with, and in the same manner, as the minutes of the meetings of the board of directors. (By way of clarification, to the extent necessary to carry out the foregoing sentence, emails containing affirmative votes shall be printed out as “hard copies” and shall be included with the paper records of the minutes of the meetings of the board of directors so long as such minutes are kept by the Corporation in physical form.)

## **ARTICLE IV COMMITTEES**

### Section 4.1 Audit Committee.

(a) *Designation.* There may, but shall not be required, to be appointed an Audit Committee of the board of directors which shall consist of not less than two directors of the Corporation, none of whom may be employed by or be the treasurer of the Corporation. The Audit Committee may be elected by the board of directors of the Corporation for a term of one year. The board of directors may elect one of the members of the Audit Committee as chair. The term of the chair shall be one year. No director shall serve more than three consecutive one-year terms as chair or as a member of the Audit Committee.

(b) *Powers.* The Audit Committee shall recommend to the board of directors annually whether or not and who shall be employed as the independent auditors of the Corporation, shall visit with such auditors and oversee the engagement of the auditor, shall

receive and review the annual books, accounting compilation, accounting review or audit and related reports, investigating and reporting on whistleblower allegations and complaints (so long as the Audit Committee members themselves are not implicated in such complaints, in which case investigation shall be designated in compliance with the Corporation's conflict of interest policy), and shall perform such other duties as the board of directors may from time to time direct.

Section 4.2 Finance Committee.

(a) *Designation.* There may, but shall not be required, to be appointed a Finance Committee of the board of directors which shall consist of a chair, the treasurer if the treasurer is a director otherwise the board president will appoint the chair, and no less than one other board member. At least one (1) member of the Finance Committee shall have accounting or financial management expertise.

(b) *Powers.* Its duties shall include overseeing budgeting and financial planning, insurance, monitoring investment performance of any restricted or endowment funds and evaluating and hiring investment advisors for such funds, reviewing and proposing financial operating policies, reviewing financial practices and reports (including budgeted and actual revenues and expenditures), assessing financial challenges, and ensuring that the board receives accurate and timely financial reports.

Section 4.3 Other Committees. The board of directors may designate such additional committees as it deems necessary or desirable. The board of directors shall appoint the members of such additional committees in the manner, for the terms and with such duties and functions as may be prescribed by the board of directors.

Section 4.4 Meetings. Each committee shall meet from time to time on the call of its chair, the chair of the board of the Corporation or of any two or more members of the committee, such meetings to be held at the date, time and place as may be designated in the notice of the meeting given by the person so authorized by these bylaws. Notice of the date, time and place of each meeting of the committee shall be given to each member of the committee either in person, by mail, telegraph or telephone, no later than one day prior to the meeting, with the exception of the Executive Committee, which shall give reasonable advance notice which may be less than one day; such notice need not state the purpose or purposes of the meeting. The committee shall keep regular minutes of its meetings and proceedings. Meetings of committees may be conducted by telephone in the same manner as the board of director meetings as set forth in Section 3.11 of these bylaws.

Section 4.5 Action Without Meetings. Other than as specifically modified within this Article IV, action of any committee may be taken without a meeting as provided in Section 3.12 of these bylaws.

Section 4.6 Quorum. At any meeting of a committee other than the Executive Committee, a majority of members thereof shall constitute a quorum. The acts of a majority of the members of the committee at a meeting at which a quorum is present shall be the acts of the committee.

Section 4.7 Vacancies. Vacancies on any committee shall be filled by the board of directors at a regular meeting of the board or at any special meeting called for that purpose.

## **ARTICLE V OFFICERS AND AGENTS**

Section 5.1 Number and Qualifications. The elected officers of the Corporation shall include a president and such other offices as may be desired by the board of directors, including without limitation a chair of the board, a vice-chair, a secretary and/or a treasurer. The board of directors may also appoint such other officers as it deems necessary. Officers need not be directors of the Corporation. All officers must be at least eighteen years old. Any person may hold more than one office.

Section 5.2 Election and Term of Office. The elected officers of the Corporation shall be elected by the board of directors at each regular annual meeting of the board. If the election of officers shall not be held at such meeting, such election shall be held as soon as convenient thereafter. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified, or until the officer's earlier death, resignation or removal.

Section 5.3 Compensation. The compensation of the officers shall be as fixed from time to time by the board of directors, and no officer shall be prevented from receiving a salary or other compensation as an officer by reason of the fact that such officer is also a director of the Corporation. However, during any period in which the Corporation is a private foundation as described in section 509(a) of the Code, no payment of compensation (or payment or reimbursement of expenses) shall be made in any manner so as to result in the imposition of any liability under section 4941 of the Code. All compensation arrangements must be made pursuant to the conflict of interest policy of the Corporation.

Section 5.4 Removal. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not in itself create contract rights.

Section 5.5 Vacancies. Any officer may resign at any time, subject to any rights or obligations under any existing contracts between the officer and the Corporation, by giving written notice to the president or to the board of directors. An officer's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.

Section 5.6 Authority and Duties of Officers. The only required officer of the Corporation shall be the president. The other officer positions listed herein may, but need not, be filled. The officers shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the chair of the board, the president, the board of directors or these bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law. One person may hold more than one office.

(a) *Chair of the Board.* The chair of the board, if elected, shall (i) preside at all meetings of the board of directors; (ii) see that all orders and resolutions of the board of directors are carried into effect; and (iii) perform all other duties incident to the office of chair of the board and as from time to time may be assigned to the chair by the board of directors.

(b) *Vice-Chair.* The vice-chair or vice-chairs, if any, shall assist the chair and shall perform such duties as may be assigned to them by the chair or by the board of directors. The vice-chair (or if there is more than one, then the vice-chair designated by the board of directors, or if there be no such designation, then the vice-chairs in order of their election) shall, at the request of the chair, or in the chair's absence or inability or refusal to act, perform the duties of the chair and when so acting shall have all the powers of and be subject to all the restrictions on the chair.

(c) *President.* The president shall be the chief executive officer of the Corporation and, subject to the control of the directors, shall in general, supervise and control the business and affairs of the Corporation. So long as the president is also a member of the board of directors, and there is no chair of the board, he or she shall preside at all meetings of the board of directors and have the duties of the chair under these bylaws. The president shall sign or delegate authority to sign checks, instruments, and enter into agreements on behalf of the Corporation. The president shall enforce these bylaws and perform all of the duties incident to the position and office and which are required by law. In the absence of a chair of the board, secretary, or treasurer, the president shall ensure that the duties of those offices are carried out.

(d) *Secretary.* The secretary shall (i) keep the minutes of the proceedings of the board of directors and all committees of the board; (ii) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the Corporation (should any seal be adopted by the Corporation); and (iv) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary by the president or the board of directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

(e) *Treasurer.* The treasurer shall (i) be the principal financial officer of the Corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the board of directors; (ii) receive and give receipts and acquittances for moneys paid in on account of the Corporation, and pay out of the funds on hand all bills, payrolls and other just debts of the Corporation of whatever nature upon maturity; (iii) unless there is a controller, be the principal accounting officer of the Corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all local, state and federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the president and the board of directors statements of account showing the financial position of the Corporation and the results of its operations; (iv) upon request of the board, make such reports to it as may be required at any time; and (v) perform all other duties incident to the office of

treasurer and such other duties as from time to time may be assigned to the treasurer by the president or the board of directors. Assistant treasurers, if any, shall have the same powers and duties, subject to supervision by the treasurer.

Section 5.7 Surety Bonds. The board of directors shall not be required to, but may as appropriate, require any officer or agent of the Corporation to execute to the Corporation a bond in such sums and with such sureties as shall be satisfactory to the board, conditioned upon the faithful performance of such person's duties and for the restoration to the Corporation of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

## ARTICLE VI INDEMNIFICATION

Section 6.1 Definitions. For purposes of this Article VI, the following terms shall have the meanings set forth below:

(a) *"Corporation"* means the Corporation and, in addition to the resulting or surviving corporation, any domestic or foreign predecessor entity of the Corporation in a merger, consolidation or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(b) *"Expenses"* means the actual and reasonable expenses, including attorneys' fees, incurred by a party in connection with a proceeding.

(c) *"Liability"* means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to a private foundation, or an employee benefit plan) or expense incurred with respect to a proceeding.

(d) *"Official Capacity"* when used with respect to a director of the Corporation means the office of director in the Corporation, and when used with respect to a person in a capacity other than as a director (even if such person is also a director) means the office in the Corporation held by the officer or the employment relationship undertaken by the employee on behalf of the Corporation in the performance of his or her duties in his or her capacity as such officer or employee. "Official capacity" does not include service for any other foreign or domestic corporation or for any partnership, joint venture, trust, other enterprise or employee benefit plan when acting directly on behalf of such other corporation, partnership, joint venture, trust, enterprise or plan as a director, officer, employee, fiduciary or agent thereof.

(e) *"Party"* means any person who was, is, or is threatened to be made, a named defendant or respondent in a proceeding by reason of the fact that such person is or was a director or officer of the Corporation, and any person who, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, fiduciary or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise or employee benefit plan. A party shall be considered to be serving an employee benefit plan at the Corporation's request if such party's duties to the Corporation also impose duties on or otherwise involve services by such party to the

plan or to participants in or beneficiaries of the plan. “Party” also means any person for whom the board of directors has authorized indemnification pursuant to Section 6.3, below.

(f) *“Proceeding”* means any threatened, pending or completed action, suit or proceeding, or any appeal therein, whether civil, criminal, administrative, arbitrative or investigative (including an action by the Corporation) and whether formal or informal.

## Section 6.2 Right to Indemnification.

(a) *Standards of Conduct.* Except as provided in Section 6.2(d) below, the Corporation shall indemnify any director or officer of the Corporation who is a party to a proceeding against liability incurred in or as a result of the proceeding if (i) such party conducted himself or herself in good faith; (ii) such party reasonably believed (A) in the case of a director or officer acting in its, his or her official capacity, that its, his or her conduct was in the Corporation's best interests, and (B) in all other cases, that such party's conduct was at least not opposed to the Corporation's best interests; and (iii) in the case of any criminal proceeding, such party had no reasonable cause to believe his or her conduct was unlawful. For purposes of determining the applicable standard of conduct under this Section 6.2, any party acting in his or her official capacity who is also a director of the Corporation shall be held to the standard of conduct set forth in Section 6.2(a)(ii)(A), even if such party is sued solely in a capacity other than as such director.

(b) *Employee Benefit Plans.* A party's conduct with respect to an employee benefit plan for a purpose such party reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirements of Section 6.2(a)(ii)(B). A party's conduct with respect to an employee benefit plan for a purpose that such party did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of Section 6.2(a)(i).

(c) *Settlement.* The termination of any proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not of itself determinative that the party did not meet the applicable standard of conduct set forth in Section 6.2(a).

(d) *Indemnification Prohibited.* Except as hereinafter set forth in this Section 6.2(d), the Corporation may not indemnify a party under this Section 6.2 either (i) in connection with a proceeding by the Corporation in which the party is or has been adjudged liable for gross negligence or willful misconduct in the performance of the party's duty to the Corporation; or (ii) in connection with any proceeding charging that the party derived an improper personal benefit, whether or not involving action in the party's official capacity, in which the party was adjudged liable on the basis that the party derived an improper personal benefit (even if the Corporation was not thereby damaged).

(e) *Court-Ordered Indemnification.* Notwithstanding the foregoing Section 6.2(d), the Corporation shall indemnify any such party if and to the extent required by the court conducting the proceeding, or any other court of competent jurisdiction to which the party has applied, if it is determined by such court, upon application by the party, that despite the

adjudication of liability in the circumstances in clauses (i) and (ii) of Section 6.2(d) or whether or not the party met the applicable standard of conduct set forth in Section 6.2(a), and in view of all relevant circumstances, the party is fairly and reasonably entitled to indemnification for such expenses as the court deems proper in accordance with the Act.

(f) *Claims by Corporation.* Indemnification permitted under this Section 6.2 in connection with a proceeding brought by the Corporation against a party shall be limited to expenses incurred in connection with the proceeding and ordered pursuant to Section 6.2(e).

(g) *Combined Proceedings.* If any claim made by the Corporation against a party is joined with any other claim against such party in a single proceeding, the claim by the Corporation (and all expenses related thereto) shall nevertheless be deemed the subject of a separate and distinct proceeding for purposes of this Article.

Section 6.3 Prior Authorization Required. Any indemnification under Section 6.2 (unless ordered by a court) shall be made by the Corporation only if authorized in the specific case after a determination has been made that the party is eligible for indemnification in the circumstances because the party has met the applicable standard of conduct set forth in Section 6.2(a) and after an evaluation has been made as to the reasonableness of the expenses. Any such determination, evaluation and authorization shall be made by the board of directors by a Majority Vote of a quorum of such board, which quorum shall consist of directors not parties to the subject proceeding, or by such other person or body as permitted by law. The board may in its sole determination and discretion, but is not required to, authorize indemnification in the same manner as provided to directors and officers under this Section 6.2 to other parties, including without limitation employees, fiduciaries or agents of the Corporation.

Section 6.4 Success on Merits of Directors or Officers; Mandatory Indemnification. Notwithstanding any other provision of this Article VI, the Corporation shall indemnify a party to the extent such party has been wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director or officer, against reasonable expenses incurred by the person in connection with the proceeding.

Section 6.5 Advancement of Expenses. The Corporation may pay for or reimburse the expenses, or a portion thereof, incurred by a party in advance of the final disposition of the proceeding if (a) the party furnishes the Corporation a written affirmation of such party's good-faith belief that he or she has met the standard of conduct described in Section 6.2(a)(i); (b) the party furnishes the Corporation a written undertaking, executed personally or on behalf of such party, to repay the advance if it is ultimately determined that the party did not meet such standard of conduct; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article in the manner provided in Section 6.3. The undertaking required by clause (b) must be an unlimited general obligation of the party, but need not be secured and may be accepted without reference to financial ability to make repayment.

Section 6.6 Payment Procedures. The Corporation shall promptly act upon any request for indemnification, which request must be in writing and accompanied by the order of court or other reasonably satisfactory evidence documenting disposition of the proceeding in the case of indemnification under Section 6.4 and by the written affirmation and undertaking to repay as required by Section 6.5 in the case of indemnification under such Section. The right to indemnification and advances granted by this Article shall be enforceable in any court of competent jurisdiction if the Corporation denies the claim, in whole or in part, or if no disposition of such claim is made within ninety days after written request for indemnification is made. A party's expenses incurred in connection with successfully establishing such party's right to indemnification, in whole or in part, in any such proceeding shall also be paid by the Corporation.

Section 6.7 Insurance. The board of directors shall obtain such insurance policies, notwithstanding any interest of the directors in the proceeds thereof, in such amounts as the board of directors deems appropriate to protect itself and any person 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, trustee, employee, fiduciary or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise or employee benefit plan against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under applicable provisions of law or this Article. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the laws of Colorado or any other jurisdiction, including any insurance company in which the Corporation has an equity or any other interest, through stock ownership or otherwise. The Corporation may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such sums as may become necessary to effect indemnification as provided herein.

Section 6.8 Right to Impose Conditions to Indemnification. The Corporation shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the board of directors in each specific case and circumstances, including, but not limited to, any one or more of the following: (a) that any counsel representing the party to be indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the Corporation; (b) that the Corporation shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the party to be indemnified; and (c) that the Corporation shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Corporation.

Section 6.9 Applicability; Effect. The indemnification provided in this Article shall be applicable to acts or omissions that occurred prior to the adoption of this Article, shall continue as to any party entitled to indemnification under this Article who has ceased to be a



director, officer or employee of the Corporation or, at the request of the Corporation, was serving as and has since ceased to be a director, officer, partner, trustee, employee, fiduciary or agent of any other domestic or foreign corporation, or of any partnership, joint venture, trust, other enterprise or employee benefit plan, and shall inure to the benefit of the estate and personal representatives of each such person. The repeal or amendment of this Article or of any Section or provision hereof that would have the effect of limiting, qualifying or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict or otherwise affect the right or power of the Corporation to indemnify any person, or affect any right of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the Corporation and each party covered hereby.

Section 6.10 Indemnification of Agents. The Corporation shall have the right, but shall not be obligated, to indemnify any agent of the Corporation not otherwise covered by this Article to the fullest extent permissible by the laws of Colorado. Unless otherwise provided in any separate indemnification arrangement, any such indemnification shall be made only as authorized in the specific case in the manner provided in Section 6.3.

Section 6.11 Savings Clause; Limitation. If this Article or any Section or provision hereof shall be invalidated by any court on any ground, then the Corporation shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any applicable provision of this Article that shall not have been invalidated. Notwithstanding any other provision of these bylaws, the Corporation shall neither indemnify any person nor purchase any insurance in any manner or to any extent that would jeopardize or be inconsistent with the qualification of the Corporation as an organization described in section 501(c)(3) of the Code, or that would result in the imposition of any liability under section 4941 of the Code.

## **ARTICLE VII PURPOSE, RESTRICTIONS**

Section 7.1 General. The purposes of the Corporation are those set forth in the articles of incorporation, subject to restrictions set forth in such articles of incorporation, restrictions on amendment as may be set forth in the articles of incorporation, and in restrictions on amendment as may set forth in these bylaws pursuant to the authority set forth in the articles of incorporation.

Section 7.2 Contributions, Special Funds. The Corporation may accept contributions, grants, bequests or devises designated to and consistent with its purposes. The designation of funds shall not, however, restrict the Corporation's ownership, dominion and control of the designated funds in any manner which is inconsistent with the Corporation's duties and powers as an organization described in Section 501(c)(3) of the Code. In addition and without limitation, the power of the Corporation to accept any restricted gift shall be vested solely in the board of directors or a duly appointed committee thereof, and no such restricted gift shall be deemed accepted by the Corporation without the approval or ratification of the board of directors or duly appointed committee thereof.

## **ARTICLE VIII DISSOLUTION OR MERGER**

Section 8.1 Voluntary Dissolution. Dissolution, which shall include without limitation disposition of all or substantially all the Corporation's assets, or merger of the Corporation shall be by a Majority Vote together with the written approval of the Member in accordance with these bylaws and the laws of the State of Colorado. Written notice of the proposed dissolution or merger shall have been given to each director at least ten days before the vote on or effective date of the proposed dissolution or merger.

Section 8.2 Assets Upon Dissolution. Upon dissolution of the Corporation, all of the Corporation's assets remaining after payment of or provision for all of its liabilities shall be paid over or transferred as set forth in Section 4.2(d) of the articles of incorporation.

## **ARTICLE IX MISCELLANEOUS**

Section 9.1 Account Books, Minutes, Etc. The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its board of directors and committees. All books and records of the Corporation may be inspected by any director or by the authorized agent or attorney of any such person, for any proper purpose at any reasonable time.

Section 9.2 Public Accountability. The Corporation shall provide for all financial reports necessary or desirable for a charitable organization exempt from tax under Section 501(c)(3) of the Code. The Corporation may provide for an annual independent audit of its financial affairs. The Corporation shall make available to the general public all tax applications and returns as appropriate for a charitable organization exempt from tax under Section 501(c)(3) of the Code.

Section 9.3 Fiscal Year. The fiscal year of the Corporation shall be the same as the fiscal year of the Member. As of the date of these bylaws, the fiscal year of the Corporation shall end June 30.

Section 9.4 Conveyances and Encumbrances. Property of the Corporation may be assigned, conveyed or encumbered by such officers of the Corporation as may be authorized to do so by the board of directors, and such authorized persons shall have power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the Corporation shall be authorized only in the manner prescribed in Article VIII above.

Section 9.5 Loans to Directors and Officers Prohibited. No loans shall be made by the Corporation to its directors or officers.

Section 9.6 Amendments of Bylaws and Articles of Incorporation. The power to alter, amend or repeal these bylaws or the articles of incorporation of the corporation and to adopt new bylaws or articles of incorporation of the Corporation shall be vested in the board of directors

upon receiving the Majority Vote, subject to the written approval of the Member as required by Section 2.4(a); and further provided, however, that no alteration, amendment or repeal shall become effective in contravention of the Act or without any review or filing which may from time to time be required thereunder.

Section 9.7 Severability. The invalidity of any provision of these bylaws shall not affect the other provisions hereof, and in such event these bylaws shall be construed in all respects as if such invalid provision were omitted.

Section 9.8 Non-Discrimination. The Corporation shall not discriminate or otherwise restrict the provision of any of its services, facilities, or programs against persons on the basis of race, color, creed, gender variance, age, disability, marital status, sexual orientation, or national origin.

*(END)*