

**BYLAWS  
OF  
SMOKERISE ELEMENTARY FOUNDATION, INC.  
(a Georgia nonprofit corporation)**

References herein to the “Articles of Incorporation” are to the articles of incorporation of **Smokerise Elementary Foundation, Inc.**, a Georgia nonprofit corporation (the “Corporation”), as the same may be amended or restated from time to time.

**ARTICLE I  
Offices**

**1.1 Registered Office and Agent.** The Corporation shall continuously maintain a registered office in the State of Georgia that may be the same as any of its places of business and a registered agent whose business office is identical with the registered office.

**1.2 Principal Office.** The principal office of the Corporation shall be at such place, located in or out of the State of Georgia, as shall be determined from time to time by the Corporation’s board of directors (the “Board of Directors” and each member thereof, a “Director”) and designated in the annual registration filed with the Secretary of State of Georgia pursuant to Section 14-3-1622 of the Georgia Nonprofit Corporation Code, as amended (the “GNCC”).

**1.3 Other Offices.** In addition to its registered office and principal office, the Corporation may have offices at such other places located in or out of the State of Georgia as the Board of Directors may from time to time determine and the business of the Corporation may require or make desirable. The Board of Directors may designate any of the Corporation’s offices as its principal office.

**ARTICLE II  
Purposes and Powers**

**2.1 Nonprofit Corporation.** The Corporation shall be organized and operated as a nonprofit corporation under the provisions of the GNCC.

**2.2 Governing Instruments.** The Corporation shall be governed by its Articles of Incorporation and these Bylaws.

**2.3 Purposes.** The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (the “Code”) including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code. In furtherance and not in limitation of the foregoing purposes, the Corporation is organized, and all times shall operate, for purposes set forth in its Articles of Incorporation. The Corporation is not organized and shall not be operated

for the pecuniary gain or profit, incidental or otherwise, of any private individual.

**2.4 Powers.** The Corporation shall have all powers necessary to carry out its purposes, including but not limited to, all powers now or hereinafter enumerated in the GNCC. Except as otherwise permitted by the GNCC, the Corporation shall not make any “distribution” (as such term is defined in Section 14-3-140(9) of the GNCC) to its directors or officers.

### **ARTICLE III Board of Directors**

#### **3.1 Power and Authority.**

(a) All corporate powers of the Corporation conferred by the Articles of Incorporation, these Bylaws, the GNCC, or otherwise, shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by or under the direction, and subject to the oversight, of the Board of Directors.

(b) By majority vote of the Directors then in office, the Board of Directors may adopt such rules and regulations for the conduct of its business and the business and affairs of the Corporation as the Board of Directors deems advisable, and may, in the execution of its powers, delegate certain of its authority and responsibility to, or seek advice from, one or more committees as provided in **Article V** below.

(c) Notwithstanding any other provision of these Bylaws or the Articles of Incorporation:

(i) the Corporation shall at all times operate for the exclusive benefit of organizations qualifying as exempt organizations under Section 501(c)(3) of the Code and for public charity status under Section 509(a)(1) or 509(a)(2) of the Code, and that if any of such organizations should cease to qualify as an organization exempt from federal income taxation by virtue of being described in Section 501(c)(3) of the Code or cease to be described in Section 509(a)(1) or 509(a)(2) of the Code, then the Corporation shall be operated as aforesaid solely for the benefit of such other organizations which are then so qualified as shall be selected by the Board of Directors;

(ii) the Board of Directors shall not permit any part of the net earnings, capital or other property of the Corporation to inure to the benefit of, or be distributable to its directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the Articles of Incorporation and these Bylaws;

(iii) 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;

(iv) the Corporation shall not carry on any other activities not

permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (b) by a corporation to which contributions are deductible under Section 170(c)(2) of the Code; and

(v) the affairs of the Corporation at all times shall be conducted in such a manner as to assure the Corporation's status as an organization qualifying for exemption from tax pursuant to Section 501(c)(3).

**3.2 Number, Election and Term of Office.** The number of Directors shall be not less than three (3), nor more than eleven (11), and shall be fixed within such range by the Board of Directors. Any resolution of the Board of Directors fixing the number of Directors shall require the affirmative vote of at least a majority of the Directors then in office. The Directors shall be divided into two classes, designated as Class I and Class II. Each class shall consist, as nearly as may be possible, of one-half of the total number of Directors constituting the entire Board of Directors. Initially, the Directors of Class I shall serve for a term of one (1) year, and those of Class II for a term of two (2) years, commencing on the date of election, and each Director shall hold office until his or her successor is elected and qualified, subject however, to prior death, resignation, disqualification, or removal. At each subsequent annual meeting of the Board of Directors, the successor of those Directors whose term then expires shall be elected by the affirmative vote of a majority of the entire Board of Directors to serve a term of two (2) years and until their successors are elected and qualified, subject however, to prior death, resignation, disqualification, or removal. The number of Directors may be increased or decreased from time to time as provided in this **Section 3.2** or by amendment to these Bylaws, provided, however, that any amendment to these Bylaws or any new Bylaw adopted by the Board of Directors that increases or decreases the number of directors of the Corporation shall be approved by the affirmative vote of at least two-thirds (2/3rds) (a "Super Majority") of the entire Board of Directors, provided, further, that no decrease in the number of directors shall have the effect of shortening the term of an incumbent Director. If the number of Directors has changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Directors in each class as nearly equal as possible. Any additional Director of any class elected to the Board of Directors to fill a vacancy resulting from an increase in such a class shall hold office for a term that shall coincide with the remaining term of that class. There shall be no limitation on the number of successive terms of office for which a Director may serve. An incumbent Director's term of office shall not be shortened by a shortening of the term of office for directors. Recommendations for Director nominees may be submitted by incumbent Directors and officers of the Corporation to the Board of Directors.

**3.3 Resignation.** Any Director may resign at any time by delivering notice in writing or by electronic transmission to the Board of Directors, or to the President or Secretary. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then upon receipt. A resignation need not be accepted to be effective.

**3.4 Removal of Directors.** One or more Directors or any individual Director may be removed from office, with or without cause, at any regular or special meeting of the Board of Directors, by the affirmative vote of a majority of Directors then in office, if notice of the purpose of acting upon such removal shall have been given in the notice calling such meeting. A removed Director's successor may be elected or appointed at the same meeting to serve the

unexpired term.

**3.5 Vacancies.** Any vacancy in the Board of Directors arising at any time and from any cause, including the authorization of an increase in the number of directors, may be filled for the unexpired term at any meeting of the Board of Directors by the affirmative vote of a majority of the Directors remaining in office, though less than a Quorum (as defined in section 4.7) of the Board of Directors. Each Director so elected shall hold office until the election and qualification of such Director's successor. A vacancy or vacancies in the Board of Directors shall be deemed to exist in case of the death, resignation, retirement or removal of any Director, or if the Directors fail to elect the fully authorized number of Directors at any regular or special meeting of the Board of Directors at which any Director or Directors are elected, or if there are newly created directorships resulting from any increase in the authorized number of Directors.

**3.6 Attendance.** If a Director fails to attend a minimum of one-half of the regularly scheduled meetings per year, that Director will be deemed to have resigned and his or her position shall be deemed to have become vacant for the remainder of his or her term or until the vacancy is filled pursuant to **Section 3.5** of these Bylaws. A majority the Board of Directors may, in their discretion, vote to waive application of this provision and excuse absences due to extenuating circumstances.

**3.7 Compensation and Expenses.** No Director of the Corporation shall receive, directly or indirectly, any salary, compensation from the Corporation in any capacity. unless authorized by the concurring vote of a majority of all Directors then in office or (notwithstanding any quorum requirement of these Bylaws) by the concurring vote of all disinterested directors, although the reasonable expenses of Directors actually incurred in the performance of his or her duties may be paid or reimbursed by the Corporation.

**3.8 Qualification of Directors.** All Directors shall be natural persons who are 18 years of age or older but need not be residents of the State of Georgia. No person elected to serve as a Director shall assume such office and commence such service unless and until such persons shall be duly qualified therefor. Such a director-elect shall not be deemed to be duly qualified to assume the office of and serve as a Director if such assumption or service by the person would violate, or would cause the Corporation to be in violation of, any applicable federal or state law or regulation.

**3.9 Voting Rights; Right to Hold Office.** Each member of the Board of Directors shall have the right to vote on any issue that may properly come before any meeting of the Board of Director and to hold any office in the Corporation to which he or she may be elected or appointed, except to the extent these Bylaws provide otherwise.

## **ARTICLE IV**

### **Meetings and Action of the Board of Directors**

**4.1 Place of Meetings.** Meetings of the Board of Directors may be held at any place in or out of the State of Georgia as set forth in the notice calling such meeting or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver, or if no place is so specified, at the principal office of the Corporation.

**4.2 Regular Meetings.** A regular annual meeting of the Board of Directors shall be held within three months after the conclusion of the Corporation's fiscal year at the time and place determined by the Board of Directors for the purpose of electing Directors and officers and for the transaction of such other business as may properly come before the meeting. Such other regular meetings of the Board of Directors may be held from time to time at such times and places as the Board of Directors may designate by resolution, without notice of the date, time, place and purpose of the meeting.

**4.3 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any Quorum of Directors in office at that time. Unless waived as contemplated in **Section 6.2**, notice of the date, time, place, but not the purpose, of any special meeting of the Board of Directors shall be given to each Director either by mail not less than forty-eight (48) hours before the time of the meeting, by telephone, email, facsimile transmission or other electronic transmission not less than twenty-four (24) hours before the time of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

**4.4 Purpose of Meetings; Notice.** In the case of any meeting of the Board of Directors at which an amendment to these Bylaws or to the Articles of Incorporation is to be considered, notice of the meeting shall include the proposed amendment.

**4.5 Failure to Give Notice.** If the Secretary refuses or neglects for more than twenty-four (24) hours after receipt of a request to provide notice of any meeting to the Directors, or if the office of the Secretary is vacant, or if the Secretary is not available to provide the notice or is incapacitated, the notice may be given by or caused to be given by any officer of the Board of Directors.

**4.6 Waiver.** Waiver of notice of all meetings of the Board of Directors shall be governed by **Section 6.2** of these Bylaws.

**4.7 Quorum.** At meetings of the Board of Directors, a majority of the directors then in office (but not less than one-third of the number of directors prescribed by **Section 3.2**) shall be necessary to constitute a quorum for the transaction of business (a "Quorum").

**4.8 Vote Required for Action.** Except as otherwise provided in these Bylaws, the act of a majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board of Directors. Adoption, amendment, and repeal of a bylaw is provided for in **Article XII** of these Bylaws. Vacancies in the Board of Directors may be filled as provided in **Section 3.5** of these Bylaws.

**4.9 Action by Directors Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if one or more consents in writing or by electronic transmission describing the action taken shall be signed by all the Directors, or all the members of the committee, as the case may be, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form. Such consent shall have

the same force and effect as a unanimous vote of the Board of Directors or the committee.

**4.10 Participation by Conference Telephone.** Directors, or members of any committee designated by the Board of Directors, may participate in and hold a meeting of the Board of Directors or any such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can simultaneously hear each other during the meeting. Participation in such a meeting shall constitute presence in person at the meeting, except where a Director participates in the meeting and, at the beginning of the meeting or promptly upon beginning participation, objects to holding the meeting or transacting business at the meeting and does not subsequently vote for or assent to any action taken at the meeting.

**4.11 Adjournments.** A meeting of the Board of Directors, regardless of whether a Quorum is present, may be adjourned by a majority of the Directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at a meeting which was adjourned.

**4.12 Rules.** The Board of Directors may adopt rules and regulations that are not inconsistent with law or these Bylaws for the conduct of their meetings and the management of the affairs of the Corporation.

## **ARTICLE V Committees of the Board**

**5.1 Committees.** The Board of Directors, in its discretion, may designate from among its members, standing or special committees having such authority of the Board of Directors in the management of the Corporation as is set forth by resolution adopted by a majority of Directors present at a meeting at which a quorum is present; provided, however, that no committee may authorize distributions; approve dissolution, merger or sale, pledge or transfer of all or substantially all of the Corporation's assets; elect, appoint or remove Directors or fill vacancies on the Board of Directors or on any of its committees; or adopt, amend or repeal the Articles of Incorporation or these Bylaws. Each committee so designated shall consist of one or more current Directors. Except as otherwise provided in such resolution, members of each such committee and the chair of such committee shall be appointed by the President.

**5.2 Advisory Committees.** The Board of Directors may provide for such other advisory committees or advisory boards consisting in whole or in part of persons who are not Directors, as it deems necessary or desirable, and discontinue any such committee at its pleasure. It shall be the function and purpose of each such committee or body to advise the Board of Directors; and each such committee or body shall have such powers and perform such specific duties or functions, not inconsistent with the Articles of Incorporation or these Bylaws, as the Board of Directors may prescribe; provided, however, that no such advisory committee or board created pursuant to this **Section 5.4** shall have the authority to act on behalf of the Board of Directors. Appointments to, and the chair of, any such advisory committees or boards shall be made by the President, unless the Board of Directors otherwise provides.

**5.3 Term of Appointment.** Each member of a committee shall serve at the pleasure of the Board of Directors.

**5.4 Vacancies.** Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

**5.5 Quorum.** Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum; and the act of a majority of members present at a meeting at which a quorum is present shall be the act of the committee.

**5.6 Rules.** Each committee may adopt rules for its own government, so long as such rules are not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

## **ARTICLE VI Notice and Waiver**

**6.1 Notices.** Whenever written notice is required by law, the Articles of Incorporation, or these Bylaws to be given to any director or member of a committee, such notice, subject to the limitations set forth in the GNCC and these Bylaws, may be given by mail, addressed to such Director or member of a committee at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be effective at the time when the same shall be deposited in the United States mail. Written notice may also be given in person or by electronic transmission or private carrier. Notice given by electronic transmission shall be deemed effective: (a) if by facsimile telecommunication, when transmitted to a telephone number at which the Director has consented to receive notice; (b) if by e-mail, when transmitted to an e-mail address at which the Director has consented to receive notice; (c) if by posting on an electronic network together with separate notice to the Director of such specific posting, upon the later of (i) such posting or (ii) the giving of such separate notice; or (d) if by any other form of electronic transmission, when transmitted.

**6.2 Waiver of Notice.** A Director may waive any notice of a meeting either before or after the date and time stated in the notice. Such waiver must be in writing, signed by the director entitled to the notice or by electronic transmission, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A Director's attendance at or participation in a meeting shall constitute a waiver of any required notice to him or her of the meeting unless the Director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

## **ARTICLE VII Officers**

**7.1 Number and Qualifications.** The Board of Directors shall appoint from its membership a President, Secretary, and Treasurer. The Board of Directors may from time to time create and establish the duties of such other officers or assistant officers as it deems necessary for the efficient management of the Corporation, but the Corporation shall not be

required to have at any time any officers other than a President, a Secretary, and a Treasurer. Any two (2) or more offices may be held by the same person.

**7.2 Election and Term of Office.** All officers of the Corporation shall be elected by the Board of Directors and shall serve for terms of two (2) years and until their successors have been elected and qualified, or until their earlier death, resignation, removal, retirement, or disqualification.

**7.3 Other Agents.** The Board of Directors may appoint from time to time such agents as it may deem necessary or desirable, each of whom shall hold office during the pleasure of the Board of Directors and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

**7.4 Resignation.** Any officer of the Corporation may resign at any time by delivering notice in writing or by electronic transmission to the Board of Directors, or to the President.. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then upon receipt. A resignation need not be accepted to be effective. If any person serving as an officer resigns or is removed as a Director, such person shall be deemed to have resigned automatically from all of his or her offices with the Corporation.

**7.5 Removal.** All officers of the Corporation who are Directors serve at the will of the Board of Directors and may be removed at any time, with or without cause, at any regular or special meeting of the Board of Directors, by the affirmative vote of a majority of Directors then in office if notice of the purpose of acting upon such removal shall have been given in the notice calling such meeting. Any officer or agent not a Director that is elected or appointed by the Board of Directors may be removed by the Board of Directors at any time, with or without cause.

**7.6 Vacancies.** Any vacancy of an office occasioned by the death, resignation, removal or the expiration of an appointment may be filled for the unexpired term at any meeting of the Board of Directors by the affirmative vote of a majority of the Directors then in office. Each officer so elected shall hold office until the election and qualification of such director's successor.

**7.7 President.** The President shall be the principal executive officer of the Corporation. The President shall preside at all meetings of the Board of Directors. The President shall be an ex officio member of all committees of the Board of Directors and shall have such other duties and have such other authority and powers and the Board of Directors may from time to time prescribe. Subject to limitations thereon that may be approved by the Board of Directors, the President shall be authorized to enter into any contract or agreement on behalf of the Corporation and to execute in the corporate name any instrument or other writing. The President shall see that all orders and resolutions of the Board of Directors are carried into effect and shall supervise and direct the management and operation of the Corporation.. The President shall perform these and such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe.

**7.8 Vice Presidents.** The Vice-Presidents, in the order of their seniority, unless

otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and have the authority and exercise the powers of the President. They shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe, or as the President may from time to time delegate.

**7.9 Secretary.**

(a) The Secretary shall attend all meetings of the Board of Directors, shall record all votes, actions and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the executive and other committees when required.

(b) The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors.

(c) The secretary shall, for the purpose of authenticating records of the Corporation, keep in safe custody the seal of the Corporation and, when authorized by the Board of Directors or the President, affix the seal to any corporate instrument. When so affixed, the seal shall be attested by the Secretary's signature or by the signature of the Treasurer or an Assistant Secretary. (d) The Secretary shall be under the supervision of the President. The Secretary shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe, or as the President may from time to time delegate.

**7.10 Treasurer.**

(a) The Treasurer shall have the custody of the corporate funds, shall keep full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuables in the name and to the credit of the Corporation into depositories designated by the Board of Directors.

(b) The Treasurer shall disburse the funds of the Corporation as ordered by the Board of Directors, and shall prepare financial statements at such intervals as the Board of Directors shall direct. The Treasurer shall also be authorized to sign checks, drafts, and other orders for the payment of money.

(c) The Treasurer shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe, or as the President may from time to time delegate.

**ARTICLE VIII**  
**Contracts, Checks, Deposits and Funds**

**8.1 Contracts.** The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Such authority must be in writing and may be general or confined to specific instances.

**8.2 Checks, Drafts, Notes, Etc.** All checks, drafts or other orders for the payment of

money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents, of the Corporation and in such other manner as may from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer and countersigned by the President or a Vice-President.

**8.3 Deposits.** All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such federally-insured banks, trust companies, or other depositories as the Board of Directors may select.

**8.4 Gifts.** The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation.

## **ARTICLE IX Indemnification and Insurance**

**9.1 Definitions.** As used in this **Article IX**, the term:

(a) “Corporation” includes any domestic or foreign predecessor entity of the Corporation in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.

(b) “Director” or “Officer” means an individual who is or was a member of the Board of Directors or an officer elected by the Board of Directors, respectively, or who, while a member of the Board of Directors or an officer of the Corporation, is or was serving at the Corporation’s request as a director, officer, partner, member, manager, trustee, employee or agent of another domestic or foreign nonprofit or business corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other entity. An individual is considered to be serving an employee benefit plan at the Corporation’s request if his or her duties to the Corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. “Director” or “Officer” includes, unless the context otherwise requires, the estate or personal representative of a Director or Officer.

(c) “Disinterested Director” or “Disinterested Officer” means a Director or Officer, respectively, who at the time of an evaluation referred to in **Section 9.5(b)** is not: (i) a Party to the Proceeding; or (ii) an individual having a familial, financial, professional or employment relationship with the person whose advance for Expenses is the subject of the decision being made with respect to the Proceeding, which relationship would, in the circumstances, reasonably be expected to exert an influence on the Director’s or Officer’s judgment when voting on the decision being made.

(d) “Expenses” includes counsel fees.

(e) “Liability” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), and reasonable Expenses incurred with respect to a Proceeding.

(f) “Official capacity” means: (i) when used with respect to a Director, the office of director in a corporation; and (ii) when used with respect to an Officer, as contemplated in GNCC Section 14-3-856, the office in a corporation held by the officer. “Official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(g) “Party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a Proceeding.

(h) “Proceeding” means any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative or investigative and whether formal or informal.

(i) “Reviewing Party” shall mean the person or persons making the determination as to reasonableness of Expenses pursuant to **Section 9.5** of this **Article IX**, and shall not include a court making any determination under this **Article IX** or otherwise.

**9.2 Basic Indemnification Arrangement.** The Corporation shall indemnify to the fullest extent permitted by the GNCC, any individual who is a Party to a Proceeding because he or she is or was a Director or Officer against Liability incurred in the Proceeding if such individual (a) conducted himself or herself in good faith; and (b) reasonably believed: (i) in the case of conduct in his or her Official Capacity, that his or her conduct was in the best interests of the Corporation; (ii) in all other cases, that his or her conduct was at least not opposed to the best interests of the Corporation; and (iii) in the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; provided, however, that the Corporation shall not indemnify a Director or Officer under this **Article IX** for any Liability incurred in a Proceeding in which the Director or Officer is adjudged liable to the Corporation or is subjected to injunctive relief in favor of the Corporation for: (i) any appropriation, in violation of his or her duties, of any business opportunity of the Corporation; (ii) acts or omissions which involve intentional misconduct or a knowing violation of law; (iii) the types of liability set forth in GNCC Sections 14-3-860 through 14-3-864; or (iv) any transaction from which he or she received an improper personal benefit.

### **9.3 Advances for Expenses.**

(a) The Corporation shall, before final disposition of a Proceeding, advance funds to pay for or reimburse the reasonable Expenses incurred by a Director or Officer who is a Party to a Proceeding because he or she is a Director or Officer if he or she delivers to the Corporation: (i) a written affirmation of his or her good faith belief that he or she has met the relevant standard of conduct described in GNCC Section 14-3-851(a) or that the Proceeding involves conduct for which liability has been eliminated under a provision of the Articles of Incorporation pursuant to GNCC Section 14-3-202(b)(4); and (ii) his or her written undertaking (meeting the qualifications set forth below in **Section 9.3(b)**) to repay any funds advanced if it is ultimately determined that he or she is not entitled to indemnification under this **Article IX** or the GNCC.

(b) The undertaking required by **Section 9.3(a)(ii)** above must be an

unlimited general obligation of the proposed indemnitee but need not be secured and shall be accepted without reference to the financial ability of the proposed indemnitee to make repayment.

**9.4 Court-Ordered Indemnification and Advances for Expenses.** A Director or Officer who is a Party to a Proceeding shall have the rights to court-ordered indemnification and advances for expenses as provided in the GNCC.

**9.5 Determination of Reasonableness of Expenses.**

(a) The Corporation acknowledges that indemnification of, and advancement of expenses to, a Director or Officer under **Section 9.2** has been pre-authorized by the Corporation as permitted by GNCC Section 14-3-858(a), and that no determination need be made for a specific Proceeding that advances of expenses to the Director or Officer is permissible in the circumstances because he or she has met a particular standard of conduct. Nevertheless, except as set forth in **Section 9.5(b)** below, an evaluation as to reasonableness of the Expenses of a Director or Officer for a specific Proceeding shall be made as follows: (i) if there are two or more Disinterested Directors, by the Board of Directors by a majority vote of all Disinterested Directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two or more Disinterested Directors appointed by such a vote; or (ii) if there are fewer than two Disinterested Directors, by the Board of Directors (in which determination Directors who do not qualify as Disinterested Directors may participate).

(b) Notwithstanding the requirement under **Section 9.5(a)** that the Reviewing Party evaluate the reasonableness of Expenses claimed by the proposed indemnitee, any Expenses claimed by the proposed indemnitee shall be deemed reasonable if the Reviewing Party fails to make the evaluation required by **Section 9.5(a)** within sixty (60) days following the later of: (i) the Corporation's receipt of the affirmative undertaking required by **Section 9.3(a)**; or (ii) the Corporation's receipt of invoices for specific Expenses to be reimbursed or advanced.

**9.6 Indemnification of Employees and Agents.** The Corporation may indemnify and advance Expenses under this **Article IX** to an employee or agent of the Corporation who is not a Director or Officer to the same extent and subject to the same conditions that a Georgia nonprofit corporation could indemnify and advance Expenses to a Director, or to any lesser extent (or greater extent if permitted by law) determined by the Board of Directors, in each case consistent with public policy and subject to the limitations set forth in GNCC Section 14-3-856(a)(2).

**9.7 Liability Insurance.** The Corporation may purchase and maintain insurance on behalf of an individual who is a Director, Officer, employee or agent of the Corporation or who, while a Director, Officer, employee or agent of the Corporation, serves at the Corporation's request as a director, officer, partner, member, manager, trustee, employee or agent of another domestic or foreign nonprofit or business corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other entity against Liability asserted against or incurred by him or her in that capacity or arising from his or her status as a Director, Officer, employee, or agent, regardless of whether the Corporation would have power to indemnify or advance Expenses to him or her against the same Liability under this **Article IX** or the GNCC.

**9.8 Witness Fees.** Nothing in this **Article IX** shall limit the Corporation's power to pay or reimburse Expenses incurred by a person in connection with his or her appearance as a witness in a Proceeding at a time when he or she is not a Party.

**9.9 No Duplication of Payments; Nonexclusive.** The Corporation shall not be liable under this **Article IX** to make any payment to a person hereunder to the extent such person has otherwise actually received payment (under any insurance policy, agreement or otherwise) of the amounts otherwise payable hereunder. The rights of a Director or Officer hereunder shall be in addition to any other rights with respect to indemnification, advancement of expenses or otherwise that he or she may have under contract or the GNCC or otherwise.

**9.10 Subrogation.** In the event of payment under this **Article IX**, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

**9.11 Contract Rights.** The right to indemnification and advancement of Expenses conferred hereunder to Directors and Officers shall be a contract right and shall not be affected adversely to any Director or Officer by any amendment of these Bylaws with respect to any action or inaction occurring prior to such amendment; provided, however, that this provision shall not confer upon any indemnitee or potential indemnitee (in his or her capacity as such) the right to consent or object to any subsequent amendment of these Bylaws.

**9.12 Amendments.** Pursuant to GNCC Section 14-3-858(f), the provisions of Part 5, Article 8 of the GNCC are hereby incorporated by this reference into these Bylaws. It is the intent of the Corporation to indemnify and advance Expenses to its Directors and Officers to the fullest extent permitted by the GNCC, as amended from time to time. To the extent that the GNCC is hereafter amended to permit a Georgia business corporation to provide to its directors or officers greater rights to indemnification or advancement of Expenses than those specifically set forth hereinabove, this **Article IX** shall be deemed amended to require such greater indemnification or more liberal advancement of Expenses to the Corporation's Directors and Officers, in each case consistent with the GNCC as so amended from time to time. No amendment, modification or rescission of this **Article IX**, or any provision hereof, the effect of which would diminish the rights to indemnification or advancement of Expenses as set forth herein shall be effective as to any person with respect to any action taken or omitted by such person prior to such amendment, modification or rescission.

## **ARTICLE X**

### **Conflict and Disclosure of Interest Policy**

**10.1 Conflict and Disclosure of Interest Policy.** The Corporation has adopted a conflict and disclosure of interest policy that complies with (i) the disclosure, approval and other requirements of Article 8, Part 6 of the GNCC regarding conflicting interest transactions and (ii) the Internal Revenue Service guidelines for conflicts of interest policies applicable to nonprofit corporations that are exempt from federal income taxation under Section 501(c)(3) of the Code, which are attached hereto and incorporated herein as Appendix A.

**ARTICLE XI**  
**Miscellaneous**

**11.1 Books and Records.** The Corporation shall maintain books and records of account and minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors, executed consents evidencing all actions taken by the Board of Directors without a meeting, and waivers of notice of all meetings of the Board of Directors and its committees. In addition, the Corporation shall keep copies of all records required to be kept under Georgia law.

**11.2 Corporate Seal.** The corporate seal (of which there may be one or more exemplars) shall be in such form as the Board of Directors may from time to time determine.

**11.3 Fiscal Year.** The Board of Directors is authorized to fix the fiscal year of the Corporation and to change the year from time to time as it deems appropriate.

**11.4 Internal Revenue Code.** All references in these Bylaws to sections of the Code shall be considered references to the Internal Revenue Code of 1986, as from time to time amended, and to the corresponding provisions of any applicable future United States Internal Revenue law.

**11.5 Relation to Articles of Incorporation.** These Bylaws are subject to, and governed by, the Articles of Incorporation.

**11.6 Electronic Transmission.** For purposes of these Bylaws, “electronic transmission” or “electronically transmitted” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Electronic transmissions include, but are not limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail and facsimile transmissions.

**ARTICLE XII**  
**Amendments**

**12.1 Power to Amend Bylaws.** The Board of Directors shall have the power to alter, amend or repeal these Bylaws and to adopt new Bylaws at a Board of Directors meeting by the affirmative vote of a Super-Majority of the Directors then in office.