



JAMES HSUI, PLLC
Nonprofit | Business | International Law

James Hsui, PLLC
110 Wall Street
New York, NY 10005
United States of America

Tel: +1 929 376 8888
Fax: +1 888 879 7618
james.hsui@jameshsuilaw.com
www.jameshsuilaw.com

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Dear Reader,

Thank you for downloading the New York 501(c)(3) Not-for-Profit Corporation Bylaws Form from our firm's website, www.jameshsuilaw.com.

While this form has been prepared by us, gratis, for your convenience, it is **provided to you for general informational purposes only**. It is **not legal advice, and should not be used as a substitute for legal or other advice**. All information in the **form is current as of 28 February 2018**.

Please be aware that **your use of this form does not create a client-attorney relationship between you and us**. We ask all our clients to sign letters of engagement with us, in accordance with New York's rules governing attorneys. These letters confirm the relationship between us and our clients, and describe the specific parameters of the unique relationship with each distinct client. **Unless you have signed such a letter, we are not your lawyer**. If you have signed such a letter with our firm, please let us take this opportunity to thank you for choosing us!

This sample form contemplates a **very basic approach** for the operations and internal affairs of a New York not-for-profit corporation that is, or plans to be, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Please be aware that the **approach provided in the form may not be suitable or desirable for the specific needs of your nonprofit**. Similar forms are available at legal stationary stores and in legal publications; and online nonprofit formation service companies provide similar documents. **You do not have to use this form, and if you decide to do so, you do so at your own risk. We make no guarantees and will not be responsible for any result that is not to your liking.**

Please also be aware that **incorporating a New York not-for-profit corporation and adopting bylaws is not the same as obtaining recognition as a 501(c)(3) organization**. To be recognized as a 501(c)(3) organization, you **must file a 1023-series form with the Internal Revenue Service**.

Lastly, while this form can be used as the bylaws for your New York 501(c)(3) nonprofit, the bylaws is a **legally binding legal instrument that can affect your rights and obligations and those of others involved with the nonprofit**. It **should not be adopted by the board of directors of the nonprofit without a full understanding its provisions**. Thus, **we highly recommend that the bylaws be prepared under the guidance of a lawyer**, who will be able to explain its terms and carefully tailor its provisions to meet the vision you have for your nonprofit.

We hope this information has been helpful to you. Thank you again for visiting our website.

Yours most faithfully,

James J. Hsui
Principal
on behalf of
James Hsui, PLLC

BYLAWS OF

A NEW YORK NOT-FOR-PROFIT CHARITABLE CORPORATION

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BYLAWS OF

A NEW YORK NOT-FOR-PROFIT CHARITABLE CORPORATION

ARTICLE I: INTERPRETATION

1.1 Definitions

In these Bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

“**Act**” means the Not-for-Profit Corporation Law of the State of New York, as amended from time to time.

“**Board**” means the board of directors of the Corporation as constituted in accordance with Article III, or, in reference to a duly convened meeting of such board at which a quorum is present, the Directors present at such meeting.

“**Bylaws**” means these bylaws of the Corporation, as amended from time to time.

“**Charter**” means the certificate of incorporation of the Corporation.

“**Committee**” means any committee of Directors with powers, authorities or discretions, delegated by the Board pursuant to Section 5.1, including an Executive Committee.

“**Corporate Fund**” means any specific fund established by the Corporation, which may include operating funds, program funds, reserved funds, restricted funds and Endowment Funds, but which shall not include assets held by the Corporation not for investment but primarily to accomplish a programmatic purpose of the Corporation.

“**Corporation**” means _____,
formed pursuant to the Act.

“**Director**” means a member of the board of directors of the Corporation, constituted in accordance with Article III, including an Individual elected to serve as a director of the Corporation at an annual meeting of the Board, or in the interim to fill a vacancy, or otherwise, who has not resigned, been removed, or otherwise terminated his or her service, as a director of the Corporation.

“**Endowment Funds**” means Corporate Funds, or any part thereof, that due to specifically recorded donor restrictions, whether in written, electronic, voice recording or any other tangible or retrievable form, including as a result of a solicitation by the Corporation, are not wholly expendable by the Corporation on a current basis.

“**Executive Committee**” means a Committee designated by the Board pursuant to Section 5.1 and Section 5.2.

“**Entity**” means a Person other than an Individual.

“Individual” means a human being.

“Member” means a member of the Corporation, within the meaning of the Act.

“Officer” means an Individual appointed as an officer of the Corporation pursuant to Section 6.4, to whom executive powers and duties have been delegated in accordance with Article VI, and who has not resigned, been removed, or otherwise terminated his or her service, as an officer of the Corporation.

“Person” means an Individual, partnership, limited partnership, limited liability partnership, limited liability company, association, firm, company, corporation, trust, association, state or public agency or instrumentality, or any other entity.

1.2 Construction

Unless the context clearly indicates otherwise

- (a) singular nouns and pronouns shall be deemed to include plural nouns and pronouns, and vice versa;
- (b) nouns and pronouns of the masculine, feminine or neuter genders shall be deemed to include the masculine, feminine and neuter genders;
- (c) the conjunction “or” shall be deemed to be used both disjunctively and conjunctively;
- (d) the terms “includes” and “including,” and any variations thereof, shall not be given a restrictive meaning, but rather, deemed to be followed by the words “without limitation”;
- (e) the determiners “any,” “all,” “each,” or “every” means “any and all,” and “each and every”;
- (f) general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class, kind, category or nature of acts, matters or things; and
- (g) any references to articles, paragraphs, subparagraphs, sections, subsections are to those of these Bylaws.

1.3 Headings

The headings are inserted for convenience only, and shall not affect the construction or interpretation of these Bylaws.

ARTICLE II: **THE CORPORATION**

2.1 Name

The name of the Corporation is _____.
The Corporation may do business under that name and, as permitted by and in compliance with

applicable law, any other name that the Board deems appropriate or advisable. The Secretary, or an Officer or other Person so designated by the Board, shall file any fictitious name certificates and similar filings, and any amendment thereto, that the Board may consider appropriate or advisable.

2.2 Offices

The principal office of the Corporation shall be located in the State of New York, or such other place determined from time to time by the Board. The Corporation may establish offices within or without the State of New York as determined from time to time by the Board.

2.3 Purposes

Subject to any express limitations set forth in the Charter, the purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Act, as may be determined from time to time by the Board.

2.4 Fiscal Year

The fiscal year of the Corporation may be fixed by resolution of, and may be altered by, the Board. Absent such a resolution, the Corporation's fiscal year shall be the calendar year, beginning on the first day of January and ending on the last day of December.

2.5 Corporate Seal

The Corporation may adopt a corporate seal, which shall be adopted and which may from time to time be altered by the Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

2.6 Membership

The Corporation shall have no Members. Accordingly, the power and authority to decide any question or matter, or take any action, required by the Act to be decided, or taken, exclusively by Members, is hereby conferred upon the Board.

ARTICLE III: **BOARD OF DIRECTORS**

3.1 Number

The board of directors shall consist of three (3) or more members, who each shall serve as the directors of the Corporation. The number of Directors may be increased or decreased from time to time by a resolution passed by not less than a simple majority vote of the entire Board, but in no event shall the number of Directors constituting the Board be fixed at less than three (3). No decrease in the number of Directors shall shorten the term of any incumbent Director.

3.2 Qualification

Each Director shall be an Individual, at least eighteen (18) years of age. A Director need not be a citizen of the United States or a resident of the State of New York.

3.3 Powers

The business and affairs of the Corporation shall be managed by or under the direction of the Board, who shall have and may exercise all powers, authorities and discretion of the Corporation and do all such lawful acts and things as are not prohibited by the Act, the Charter or these Bylaws.

3.4 Election

Each Director shall be elected by the Board, by a plurality vote, at the annual meeting of the Board.

3.5 Tenure

A Director, whether elected at an annual meeting of the Board, in the interim to fill a vacancy or newly created directorship, or otherwise, shall hold office until the next annual meeting of the Board and until such Director's successor is elected and qualified, or until such Director's earlier death, resignation, disqualification or removal. A Director may serve multiple successive terms.

3.6 Resignation

A Director may resign at any time by delivering his or her resignation in writing to the President or Secretary, or to a meeting of the Board. Such resignation shall be effective upon receipt unless specified to be effective at some other time, and without in either case the necessity of its being accepted unless the resignation shall so state.

3.7 Removal

A Director may be removed with or without cause by a simple majority vote of the entire Board, at a special meeting of the Board, called for the purpose of removing such Director, or any regular meeting of the Board. Any notice of a meeting at which the question of a removal of a Director is to be decided shall include notice of such question.

3.8 Compensation

Directors shall not receive compensation for serving on the Board; however, in the discretion of the Board, a Director may be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties as Director, as the Board may determine from time to time. Nothing in this Section 3.8 shall be deemed to preclude a Director from receiving compensation from the Corporation in a capacity other than a Director.

ARTICLE IV:
MEETINGS OF THE BOARD

4.1 Regular and Special Meetings

Regular meetings of the Board may be held without call or notice at such times as the Board may from time to time determine, provided that notice of the first regular meeting following any such determination shall be given to absent Directors. Special meetings of the Board may be held at any time and at any place, when called by the President or not less than a two-thirds (2/3) majority of the entire Board, reasonable notice thereof being given to each Director by the Secretary, President or any one of the Directors calling the meeting.

4.2 Venue

All meetings of the Board shall be held at such place within or without the State of New York as may be determined from time to time by the President or by the Board.

4.3 Notice

It shall be reasonable and sufficient notice to a Director to send notice at least seven (7) days before the meeting by personal delivery, facsimile, telephone or electronic message, or by mail addressed to him or her at his or her usual or last known post office address.

4.4 Waiver of Notice

The decisions made at any meeting of the Board, however called and noticed, and wherever held, shall have the same validity as if taken at a meeting duly held after proper call and notice, if a quorum is present at the meeting, and if, either before or after the meeting, each of the Directors entitled to vote, not present in person, at the meeting, executes a written waiver of notice, consents in writing to the holding of the meeting, or approves of the minutes thereof. No notice of a meeting need be given to a Director if the Director attends the meeting without objecting at the beginning of the meeting to the transaction of any business because the meeting was not properly called or convened, or otherwise votes at the meeting.

4.5 Remote Participation

Directors may participate by means of conference telephone or technology by means of which all Directors participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

4.6 Quorum

No business shall be transacted at any meeting of the Board unless a quorum is present when the meeting proceeds to business. Except as otherwise required in the Act, the Charter or these Bylaws, the presence of simple majority of the entire membership of the Board shall constitute a quorum.

4.7 Voting Rights

Each Director shall be entitled to one (1) vote.

4.8 Action by Vote

When a quorum is present at any meeting of the Board, the simple majority vote of Directors, present and entitled to vote, and voting, shall be sufficient to decide any question or matter before the Board, except when a different vote is required by the Act, the Charter or these Bylaws. Additionally, in the event of an equality of votes, the Individual presiding at the meeting shall have a casting vote.

4.9 Action without Meeting

Except as otherwise required by the Act, the Charter or these Bylaws, any question or matter that may be decided by the Board at a meeting may be decided without meeting, without prior notice and without vote, if consent in writing, setting forth the decision so made, shall be given by every Director entitled to vote on the question or matter to be decided. Such consent shall be treated for all purposes as the decision of the Board.

4.10 Consents

Except as otherwise required by the Act, the Charter or these Bylaws, written consent by a Director may be provided by any reasonable means including but not limited to facsimile signature; provided, however, that if written consent is given by electronic message, the transmission of the consent must set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

ARTICLE V: **COMMITTEES**

5.1 Committees of the Board

Subject to the Act, the Charter and these Bylaws, the Board may by resolution passed by a simple majority vote of the entire Board, delegate any of its powers, authorities and discretions to an Executive Committee and such other Committees consisting of Directors. The Board may retain or exclude its right to exercise the delegated powers, authorities or discretions collaterally with a Committee. Each Committee shall serve at the pleasure of the Board, which may at any time, by resolution passed by a simple majority vote of the entire Board, revoke the delegation or alter any terms and conditions or discharge the Committee in whole or in part. Where a provision of these Bylaws refers to the exercise of a power, authority or discretion by the Board, and that power, authority or discretion has been delegated by the Board to a Committee, the provision shall be construed as permitting the exercise of that power, authority or discretion by the Committee.

5.2 Executive Committee

Except as otherwise limited by the Act, the Charter, these Bylaws or the Board, the Executive Committee, if so designated by the Board, shall have and may exercise, when the Board is not in session, all the powers, authorities and discretion of the Board in the management of the business and affairs of the Corporation.

5.3 Other Committees

To the fullest extent not limited by the Act, the Charter, these Bylaws or the Board, a Committee shall have and may exercise all the powers, authorities and discretion of the Board, necessary for the exercise of its functions, and for the fulfilment of its duties and purposes. Except as otherwise limited by the Act, the Charter, these Bylaws or the Board, a Committee may decide any question or matter referred to it by the Board.

5.4 Restrictions

No Committee shall have the power or authority to

- (a) create or fill vacancies in the Board;
- (b) change the membership of or to fill vacancies in any Committee;
- (c) make, amend, repeal or adopt Bylaws of the Corporation;
- (d) fix the compensation of the Directors for serving on the Board or any Committee;
- (e) amend or repeal any resolution of the Board which by its terms shall not be so amendable or repealable;
- (f) elect, appoint or remove Officers or Directors;
- (g) approve a merger or plan of dissolution;
- (h) authorize any action on the sale, lease, exchange or other disposition of all or substantially all the assets of the Corporation; or
- (i) approve amendments to the Charter.

5.5 Membership

Subject to the Act, the Charter and these Bylaws, the Executive Committee and other Committees shall each consist of not less than three (3) Directors.

5.6 Minutes

Each Committee shall keep minutes of its meetings for presentation and review by the Board.

5.7 Procedure of Committees

To the extent not prohibited by the Act, the Charter, these Bylaws or the Board, and not expressly provided in these Bylaws, each Committee shall elect its own president and adopt its

own rules of procedure for the conduct of its business. To the extent such rules of procedure have not been adopted by a Committee, the provisions in these Bylaws as to meetings or procedures of the Board shall mutatis mutandis apply to the meetings and procedures of such Committee.

5.8 Committees of the Corporation

Except as otherwise limited by the Act, the Charter, these Bylaws or the Board, the Corporation may have such other committees, which may consist of two (2) or more Individuals who need not be Directors, which may be established by a resolution of the Board, and which may have only such power, authority and discretion that the Board may confer upon Officers or agents of the Corporation. The resolution establishing such a committee shall set forth the names of the initial members of the committee, and subject to said resolution establishing the committee, Section 5.6 and Section 5.7 shall mutatis mutandis apply to the committee.

ARTICLE VI: **OFFICERS**

6.1 Designation

The officers of the Corporation shall be a President, a Treasurer, a Secretary, and such other officers and subordinate officers, as the Board may from time to time deem necessary or advisable, including an Executive Director and one (1) or more Deputy Executive Directors, Vice-Presidents, Assistant-Secretaries and Assistant-Treasurers.

6.2 Qualification

Each Officer shall be an Individual, at least eighteen (18) years of age. An Officer need not be a citizen of the United States or a resident of the State of New York. Any two (2) or more offices may be held by the same Individual, provided, however, that the Secretary may not hold the office of President.

6.3 General Powers and Duties

Subject to the Act, the Charter and these Bylaws, each Officer shall have, in addition to the duties, powers and discretions herein set forth in this Article VI, such duties, powers and discretions as are commonly incidental or customary to his or her office and such additional duties and powers that the Board or a supervising Officer, if any, may from time to time properly prescribe.

6.4 Appointment

An Officer shall be appointed by the Board, and shall hold office at the pleasure of the Board. However, an employee of the Corporation may not be appointed to the office of the Officer who shall have the primary duty of presiding over meetings of the Board, without the vote of approval of a two-thirds (2/3) majority of the entire Board, which shall contemporaneously document the basis for its approval in writing; provided that nothing in this Section 6.4 shall be deemed to prohibit such an Officer, who was appointed prior to being an employee of the

Corporation, from becoming an employee of the Corporation without such approval. The Board may delegate to one (1) or more Officers the power to appoint other Officers, provided, however, that the power to appoint the President, Executive Director, Secretary and Treasurer, may not be delegated.

6.5 Tenure

Except as otherwise required by the Act, the Charter or these Bylaws, an Officer shall hold office until such Officer's successor is appointed and qualified, or until such Officer's earlier death, resignation, disqualification or removal.

6.6 Resignation

An Officer may resign at any time by delivering his or her resignation in writing to the President or the Secretary, or to the Board. Such resignation shall be effective upon receipt unless specified to be effective at some other time, and without in either case the necessity of its being accepted unless the resignation shall so state.

6.7 Removal

An Officer may at any time be removed with or without cause by a simple majority vote of the entire Board.

6.8 Vacancies

Vacancies amongst the Officers shall be filled by the Board.

6.9 Compensation

The compensation of each Officer shall be fixed by the Board; however, an Officer shall not be required to serve compensated. No Officer who is a Director or member of a Committee shall be entitled to vote on his or her own compensation. No Officer shall be precluded from receiving a salary by virtue of the fact that he or she is a Director. In the discretion of the Board, each Officer may be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties to the Corporation, as the Board may determine from time to time.

6.10 President

The President shall be a principal officer of the Corporation and shall have authority to execute all contracts and instruments in the name of the Corporation; shall preside, when present, at all meetings of the Board and of Committees in which he or she is a member; and shall have general supervision, and direction over the Executive Director. Unless the Board shall have designated another Individual to be the Executive Director, the President shall be the Executive Director.

6.11 Executive Director

Subject to the control of the Board and such supervisory powers and authority, if any, as may be given by the Board or these Bylaws, the Executive Director shall be the chief executive officer of the Corporation and shall act as the general manager of the Corporation; shall have general supervision, direction and control of the business and affairs of the Corporation; shall have general charge over the assets of the Corporation; shall supervise Officers, employees and agents of the Corporation, other than the President; and shall see that all resolutions and orders of the Board are carried into effect. The Executive Director shall have authority to execute all contracts and instruments in the name of the Corporation; shall have power to select and appoint all necessary officers and employees of the Corporation, except those selected or appointed by the Board, and to remove all such officers and employees except those selected or appointed by the Board.

6.12 Secretary

The Secretary shall record or cause to be recorded, and keep or cause to be kept, all proceedings of the Board and Committees; shall issue or cause to be issued all authorized notices for all meetings; and shall have charge of the corporate minute books and similar records. He or she shall have custody of the corporate seal, if there be one, and shall have the power to affix it to all instruments where its use is required or desirable.

6.13 Treasurer

The Treasurer shall have custody of all funds, securities and valuable papers of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time-to-time an account of all such transactions. Whenever necessary or proper, the Treasurer shall endorse on behalf of the Corporation, for collection, checks, notes, or other obligations, and shall deposit the same to the credit of the Corporation in such bank or banks or depositories, approved by the Board, as the Board, President or Executive Director may designate. The Treasurer may sign receipts or vouchers for payments made to the Corporation, and the Board may require that such receipts or vouchers shall also be signed by some other Officer to be designated by them. Whenever required by the Board, the Treasurer shall render a statement of cash accounts and such other statements respecting the affairs of the Corporation as may be required. The Treasurer shall keep or cause to be kept proper and accurate books of account.

6.14 Subordinate Officers

The Board may appoint and designate such subordinate Officers as the business of the Corporation may require. The subordinate Officers of an Officer shall be subject to the supervision of such Officer, and in the absence or incapacity of such Officer, such subordinate Officers, in order of their rank, or, if not ranked, one (1) of such subordinate Officers, shall carry out the duties, and have and carry out the powers, authorities and discretions of such Officer.

ARTICLE VII:
CONFLICTS OF INTEREST POLICY

7.1 Fiduciary Duties

Directors and Officers are fiduciaries of the Corporation and legally owe fiduciary duties of loyalty, care and obedience to the Corporation. Accordingly, Directors and Officers are expected to exercise their powers, perform their duties and regulate their conduct, in all matters relevant or related to the Corporation, in all loyalty, discretion and conscience, with only the best interest of the Corporation in view.

7.2 Conflicts of Interest Generally

In addition to any conflict of interest set forth in the policy adopted pursuant to Section 7.3, a conflict of interest may occur when the personal or private interests or activities of a Person who is a fiduciary of the Corporation, or who has duties and powers similar to those of a fiduciary of the Corporation, calls into question the ability of that Person to carry out that Person's duties or obligations, or to exercise that Person's powers, authorities or discretions, in the manner consistent with the fiduciary duties described in Section 7.1.

7.3 Adoption of Conflicts of Interest Policy

The Code restricts and prohibits the Corporation from engaging in certain transactions with certain Persons where a conflict of interest of a financial nature may be present. The Board shall exercise due regard with respect to such transactions, in order to protect the Corporation from being subject to loss of tax-exempt status and other penalties, and to prevent the imposition of excise taxes under Section 4941 or Section 4958 of the Code. Accordingly, the Board shall adopt a conflicts of interest policy to address such transactions, and ensure that such transactions are entered into only if it is determined to be fair, reasonable and in the best interest of the Corporation at the time of such determination.

ARTICLE VIII:
MANAGEMENT OF CORPORATE FUNDS

8.1 Duty of Care

Members of the Board shall act in good faith, and with the care an ordinarily prudent person in like position would exercise under similar circumstances

- (a) in the management of Corporate Funds;
- (b) in the delegation of management and investment authority of Corporate Funds to an external agent; and
- (c) in the making of recommendations or decisions to appropriate or accumulate Endowment Funds.

8.2 Respect for Donor Restrictions

Any Corporate Funds subject to specific donor restrictions as to the investment, management, use or expenditure of funds of the Corporation shall be invested, managed, used and spent in accordance with such donor's restrictions, to the extent that such restrictions have been recorded, whether in written, electronic, voice or other tangible or retrievable form, including as a result of a solicitation by the Corporation, but only to the extent that such restrictions have not been released by such donor or that deviation from such restrictions are permissible under applicable law.

8.3 Diversification of Investments

Investments of each Corporate Fund should be diversified to limit the risk of loss resulting from the concentration of assets in a specific type of investment, specific maturity, specific issuer or specific sector, unless the Board prudently determines that, because of special circumstances, the purposes of the Corporate Fund are better served without diversification. The Board shall review the diversification strategy periodically, provided, however, that it must review any decision not to diversify as frequently as circumstances require, but, at a minimum, annually.

8.4 Investment Considerations

In making decisions concerning the management and investment of Corporate Funds, the Board shall, as required by applicable law, consider the following factors, if relevant:

- (a) general economic conditions;
- (b) the possible effect of inflation or deflation;
- (c) the expected tax consequences, if any, of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall investment portfolio of a specific Corporate Fund;
- (e) the expected total return from income and the appreciation of its investments;
- (f) other resources of the Corporation;
- (g) the needs of the Corporation and the specific Corporate Fund to make distributions and to preserve capital; and
- (h) the special relationship or special value, if any, of an asset, in a specific Corporate Fund, to the purposes of the Corporation.

The Board shall not make management and investment decisions regarding any individual asset in a Corporate Fund in isolation, but rather in the context of the specific Corporate Fund's portfolio of investments as a whole, and as part of an overall investment strategy having risk and return objectives reasonably suited to the Corporate Fund and the Corporation. The Board shall make reasonable efforts to verify facts relevant to the management and investment of the Corporate Funds and may incur only costs that are reasonable in relation to the assets in the Corporate Funds, the purpose of the Corporation and the skills available to the Corporation.

8.5 Receipt of Assets

Within a reasonable time after the Corporation's receipt of a gift of property or other financial assets, the Board shall make and carry out decisions regarding retaining or disposing of such assets, or the rebalancing of the Corporate Funds applicable to such assets, in order to ensure compliance with the purposes, terms and distribution requirements of the Corporation, including as provided in this Article VIII, as necessary to meet other circumstances of the Corporation and the requirements of applicable law, subject to Section 8.2.

8.6 Authority to Delegate Management and Investment Authority

To the extent the Board considers prudent, the Board may delegate management and investment decisions of Corporate Funds to one or more external agents, such as a bank, investment advisor, investment manager or custodian, except where prohibited pursuant to Section 8.2. In exercising such delegation authority, the Board shall give due regard, in accordance with the duties set forth in Section 8.1, to

- (a) the selection, continuation or termination of any such external agent, including with respect to the evaluation of such agent's independence and any conflicts of interest such agent has or may have;
- (b) the establishing of the scope and terms of the delegation, including the compensation to be paid to such external agent;
- (c) the monitoring of such external agent's performance and compliance with the scope and terms of the delegation; and
- (d) the conducting of any due diligence as the Board may deem appropriate or advisable.

Any such external agent to whom management and investment authority is delegated pursuant to this Section 8.6 owes a duty to the Corporation to exercise reasonable care, skill and caution to comply with the scope and terms of the delegation.

8.7 Arrangements with External Agents

In the event management and investment authority is to be delegated to an external agent pursuant to Section 8.6, any contract between the Corporation and such agent shall include a provision that such contract shall be terminable by the Corporation at any time, without penalty, upon no more than sixty (60) days' notice. Additionally, the Board shall review from time to time any arrangements with external agents to ensure that the costs and fees associated with such arrangement are appropriate and reasonable in relation to the Corporate Funds, the Corporation's purposes and the skills available to the Corporation.

8.8 Appropriation of Endowment Funds

The final decision to appropriate Endowment Funds for expenditure or to accumulate such funds must be made by the Board, and may not be delegated; although a Committee may be authorized to make recommendations to assist the Board in carrying out its responsibilities with

respect to such expenditure. In carrying out the duties set forth in Section 8.1, the Board, and any such Committee, shall consider the uses, benefits, purposes and duration for which an Endowment Fund was established, and shall also consider each of the following factors, if relevant:

- (a) the duration and preservation of the Endowment Fund;
- (b) the purposes of the Corporation and the Endowment Fund;
- (c) general economic conditions;
- (d) the possible effect of inflation or deflation;
- (e) the expected total return from income and the appreciation of investments;
- (f) other resources of the Corporation;
- (g) where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the Endowment Fund, giving due consideration to the effect that such alternatives may have on the Corporation; and
- (h) the Corporation's investment policy.

8.9 Records of Appropriation of Endowment Funds

The Board, and Committees, if any, shall keep contemporaneous written records of their decisions and recommendations regarding the appropriation of endowment funds for expenditure, describing the nature and extent of the consideration given to each factor set forth in Section 8.8.

8.10 Presumption of Imprudence for Endowment Fund Distributions

Under the Act, unless permitted by a donor in a recorded form, whether in written, electronic, voice or other tangible or retrievable form, including as a result of a solicitation by the Corporation, any annual distribution from an Endowment Fund in an amount exceeding seven-percent (7%) of the fair market value of the Endowment Fund, calculated based on market values determined at least quarterly and averaged over a period of at least the last twenty quarters, ending with the last quarter of the fiscal year preceding the distribution (or for the number of quarters in existence for endowments more recently created), will create a rebuttable presumption that such distribution was imprudent. Accordingly, any decision or recommendation to make an annual distribution in excess of seven-percent (7%) from an Endowment Fund must be accompanied by a contemporaneous written record containing a detailed statement of the basis upon which such decision or recommendation was determined to be prudent.

ARTICLE IX: **FINAL PROVISIONS**

9.1 Reorganizations and Dispositions of Substantially All Assets

Notwithstanding anything to the contrary in these Bylaws, neither shall a merger or plan of dissolution, nor shall an action involving the sale, lease, exchange or other disposition of all or substantially all the assets of the Corporation, be authorized or approved, without a simple majority

vote of the entire Board if there be twenty-one (21) or more Directors, or otherwise by a two-thirds (2/3) majority vote of the entire Board.

9.2 Indemnification

The Corporation shall indemnify, defend and hold harmless any Person, who was or is a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Person, or a Person of whom such Person is a legal representative, is or was a Director or Officer, or is or was serving at the request of the Corporation as a manager, director, officer, trustee, employee or agent, of another Entity, whether the basis of such action, suit or proceeding is alleged action in an official capacity or in any other capacity, against all costs, charges, expenses, liabilities and losses, including attorneys' fees, judgments, damages, fines, ERISA excise taxes, penalties and amounts paid or to be paid in settlement, reasonably incurred or suffered as a result of such action, suit or proceeding, or any appeal therein, to the fullest extent permitted by the Act, as the same exist or may hereafter be amended. Such right to indemnification shall inure to the benefit of the heirs, executors and administrators of such Person. However, notwithstanding anything to the contrary in this Section 9.2, no Person shall be entitled to indemnification as provided for in this Section 9.2 unless

- (a) such Person acted in good faith and in a manner such Person reasonably believed to be in the best interest of the Corporation;
- (b) with respect to any criminal action or proceeding, such Person had no reasonable cause to believe that such Person's conduct was unlawful; and
- (c) with respect to any suit or action by or in the right of the Corporation, such Person was not adjudged to be liable to the Corporation.

9.3 Amendments

The provisions of the Charter and these Bylaws, each may be made, altered, amended or repealed, by and only by a vote of a simple majority of the entire Board.

9.4 Severability

If any provision of these Bylaws or the application of such provision to any Person or circumstance shall be held invalid, illegal or unenforceable, the remainder of these Bylaws or the application of such provision to Persons or circumstances other than those to which it was held invalid, illegal or unenforceable shall not be affected thereby, and each term and provision of these Bylaws shall be construed to be valid and enforceable to the fullest extent permitted by law.

[Bylaws certificate on following page]

BYLAWS CERTIFICATE

I, _____, the undersigned, do hereby certify that

1. I am the duly appointed Secretary of _____
(the "Corporation");
2. I am authorized to execute this certificate on behalf of the Corporation; and
3. The foregoing bylaws, comprising of 16 pages, including this page, but excluding the index pages, constitute the Bylaws of the Corporation as of the _____ day of _____, 20_____, duly adopted by the board of directors of the Corporation.

IN WITNESS WHEREOF, I have executed this certificate as of the _____ day of _____, 20_____.

(signature of secretary)

Secretary