

BYLAWS
OF
NATIONAL COUNCIL OF HIGHER EDUCATION RESOURCES

Adopted March 7, 2018

ARTICLE I

NAME OF CORPORATION

The name of the Corporation is *National Council of Higher Education Resources*.¹ The acceptable acronym shall be "NCHER". Hereinafter, the Corporation may be referred to as "the Corporation", "the Council", or "NCHER".

ARTICLE II

STATE OF INCORPORATION, PRINCIPAL OFFICE, REGISTERED AGENT

Section 1. State of Incorporation. The Corporation is incorporated in the State of Delaware. The address of the registered office of the Corporation in the State of Delaware is:

229 South State Street
Dover, Delaware 19901

and the name of the registered agent of the Corporation at such address is the Corporation Service Company, Inc.

Section 2. Principal Office. The principal office of the Corporation shall be in the District of Columbia.

Section 3. Other Offices. The Corporation may establish other offices within and without the State of Delaware or the District of Columbia.

¹ On May 15, 2012, the membership of the organization voted to do business under this name. Until changed, the formal incorporated name of the organization is the National Council of Higher Education Loan Programs, Inc.

ARTICLE III

MISSION OF THE COUNCIL

The Mission of NCHER is to provide superior advocacy, communications, research, and operational support to its members so they may effectively help students and families develop, pay for, and attain their educational goals, pursue meaningful and rewarding work, and become contributing members of society.

ARTICLE IV

MEMBERSHIP

Section 1. Classes of Membership. Membership on the Council shall be on an organizational basis rather than on an individual or personal basis, and is contingent upon application, Board of Directors approval, and payment of dues. Applications for Emeritus Membership shall be subject to approval by the Board of Directors in accordance with guidelines it establishes. The Council shall have the following classes of membership:

- a. Voting Membership. Voting Membership on the Council shall be open to all nonprofit organizations providing higher education services to help students and families develop, pay for, and attain their educational goals, pursue meaningful and rewarding work, and become contributing members of society. Higher education services shall include, but are not limited to: (i) providing information or services to students, parents, families, borrowers, and/or postsecondary education institutions designed to (I) improve college readiness upon graduation from high school, (II) improve college access and enrollment, (III) assist students and parents in understanding and accessing financial aid, (IV) improve financial education, debt management, and budgetary skills, (V) assist students in making and planning for career choices, (VI) assist students in evaluating, selecting, and applying to postsecondary institutions, (VII) prevent or avert student loan delinquency and default, or (VIII) enhance college completion, including through philanthropic efforts; (ii) originating private education loans, providing financing and refinancing for federal and private education loans, and purchasing federal and private education loans; (iii) administering postsecondary education scholarships, grants, college savings plans, and college access and success programs; (iv) providing loan guaranty services on behalf of the federal government; or (v) servicing federal and private education loans. Each member shall have one vote regardless of the scope or number of higher education services provided.

- b. School Membership (Non-voting). School (non-voting) membership in the Council shall be open to all nonprofit and for-profit postsecondary education institutions accredited by an accrediting agency recognized by the U.S. Department of Education and who are interested in helping students and families develop, pay for, and attain their educational goals, pursue meaningful and rewarding work, and become contributing members of society.

- c. Affiliate Membership (Non-voting). Affiliate (non-voting) membership in the Council shall be open to all nonprofit and for-profit organizations, not otherwise eligible for Voting Membership or School Membership, who: (i) are interested in helping students and families develop, pay for, and attain their educational goals, pursue meaningful and rewarding work, and become contributing members of society, (ii) provide services to members that further their mission to help students and families develop, pay for, and attain their educational goals, pursue meaningful and rewarding work, and become contributing members of society, or (iii) provide financial education, career planning and career development, college access and success, debt management, delinquency aversion, default prevention, information technology linkages, financial aid administration, or collection services to students, parents, families, borrowers and/or postsecondary education institutions as enumerated in Article IV, Section 1a. Organizations eligible to be considered for Affiliate Membership include:
 - i. Private loan providers, servicers, investment banks, and collectors;
 - ii. Federal contractors, including primes and subcontractors involved in the servicing and collection of student loans;
 - iii. Law firms, consulting firms, and market measurement companies; and
 - iv. Other organizations approved by the Board of Directors.

- d. Emeritus Membership. Emeritus Membership shall be open to individuals who have been employed by a Voting Member, School Member, or Affiliate Member of the Council and who are no longer employed full-time in a field related to provision of higher education services. The Board shall specify the benefits of Emeritus Membership.

- e. Exclusions. In order to preserve the integrity and high standards of the Council, the Board, acting through the President, shall have the authority to deny a request for membership from a company that has engaged or is engaging in fraudulent or abusive activity, and those entities affiliated with such companies.

Section 2. Payment of Dues. Membership in the Council, and continuance of such membership, shall be contingent upon payment of applicable annual dues. Members shall pay their annual dues by July 1, but no later than August 31, of each year in order to continue to receive membership services provided by the Council, including attending committee meetings and conferences. The amount of such annual dues shall be determined by affirmative vote of a majority of the Voting Members present at an authorized meeting of the Council.

Section 3. Installment Plan. Notwithstanding any provision of this section to the contrary, the President is authorized to establish, upon the request by a member citing fiscal distress or extraordinary circumstance, the establishment of an installment plan for the payment of dues by such member. Any such established installment plan must provide for the full payment of dues by said member and payment may not extend beyond the fiscal year in which payment is due. The President shall report all established installment plans to the Board without reference to the specific member unless requested by the Board in executive session.

ARTICLE V

BOARD OF DIRECTORS

Section 1. Powers and Duties of the Board of Directors. Management of the activities and affairs of the Council shall be vested in a Board of Directors ("the Board"). The Board shall:

- a. Be in charge of the affairs of the Council between meetings of the membership;
- b. Fix the hour and place of meetings of the Council as described in Article VII, Section 1, except as provided in Article VII, Section 2;
- c. Make recommendations to the Council;
- d. Supervise the work of the President of the Council; and
- e. Perform such other duties as are prescribed by the Certificate of Incorporation and the Bylaws, or by the consent of the Council.

The Board of Directors shall be subject to the order of the Council and none of its acts shall conflict with actions taken by the Council.

Section 2. Composition of Board of Directors. The Board of Directors of the Council shall be composed of sixteen Directors consisting of the Chair, the Chair-Elect, the Immediate

Past-Chair, the Treasurer, and twelve Directors elected at large from the Voting Membership. A Voting Member and its affiliates may hold no more than one Director position on the Board at any one time. The President shall serve as a non-voting member and Secretary of the Board.

Section 3. Terms of Office. The term of office on the Board of Directors for the officers elected by the Voting Membership shall be identical to the term of office described in Article VI, and shall be two years for the Directors at Large elected by the Voting Membership. The terms of the Directors at Large shall be staggered so that six are elected one year and six the next.

Section 4. Liaison Representatives to the Board of Directors. The Board of Directors may seek, through liaison representatives, advice and consultation from groups involved in the Council as School or Affiliate Members or interested parties in the higher education finance community. Liaison representatives shall sit with the Board at meetings of the Board and shall be afforded all of the rights and privileges of members of the Board except for the vote.

Section 5. Executive Committee. There shall be an Executive Committee of the Board of Directors composed of the officers of the Council enumerated in Article VI, Section 1, and one Director at Large elected by the Board from the currently serving Directors at Large. Each Director at Large elected by the Board to the Executive Committee shall serve on the Executive Committee for a one year term. The Director at Large may be elected by the Board to one consecutive one year term to the Executive Committee so long as the person continues to be a Director at Large. The Executive Committee shall receive nominations and recommend the appointment of the Director at Large to the Board for approval, no later than 30 days following the reconstitution of the new Board or no later than 30 days following the resignation of such Director at Large. The Executive Committee, chaired by the Chair, shall be charged with the responsibility for day-to-day management of the affairs of the Council and shall be subject to the order of the Board of Directors. The President of the Council shall report to the Board of Directors through the Chair and the Executive Committee and shall serve as an ex-officio and non-voting member and Secretary of the Executive Committee.

Section 6. Annual Meeting of the Board of Directors. The date of the Annual Meeting of the Board of Directors shall be determined by the Chair. The Chair, or President at the Chair's direction, shall provide the Board with a minimum of 60 days prior written (including electronic mail) notice of such meeting.

Section 7. Other Meetings of the Board of Directors. Meetings of the Board of Directors, other than the Annual Meeting, may be called by the Chair, the President, or any four Directors. The Board may hold periodic conference calls to receive updates from the Chair, the President, or the Executive Committee. Such calls shall not constitute a meeting for the purposes of complying with the requirements of this Article.

Section 8. Notice of Meeting, Attendance, etc. Notice of any meeting of the Board of Directors, other than the Annual Meeting, shall be given at least three days before such meeting by any usual means of communication. Attendance by 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. A majority of the Directors shall constitute a quorum at any meeting of the Board of Directors. The act of a majority of the Directors present in a meeting at which a quorum is reached shall be considered an act of the Board of Directors.

Section 9. Open Meetings. Except as provided herein, meetings of the Board of Directors shall be open to all members of the Council. The Board of Directors may close meetings or portions thereof to attendance by members for the following purposes: (a) consulting with legal counsel; (b) discussing litigation or prospective litigation by or against the Council; (c) reviewing information that is confidential or should not be generally known, such as delinquent dues; (d) discussing contractual issues whose disclosure could negatively impact the contractor's performance or compromise the Council's interest in competitive solicitation; (e) discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action, dismissal, or periodic evaluation of NCHER staff; or (f) handling disciplinary matters or rules violations by members.

Closed meetings shall be held only upon affirmative vote of the Board of Directors in an open meeting. The motion to hold a closed meeting or to close a current meeting shall specifically state the purpose for such closed meeting, and reference to the motion and the stated purpose shall be reflected in the minutes of the open meeting during which the motion was made. The Board of Directors shall restrict the consideration of matters during closed meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in a closed meeting shall become effective unless the Board of Directors, following the closed meeting, reconvenes in open meeting and takes a vote on such contract, motion, or other action which shall have its substance reasonably identified in the open meeting.

Section 10. Board Policies. The Board of Directors shall periodically review and adopt policies for the efficient management of the Council. Such policies shall address at a minimum the collection of dues and other revenues, contractual, and expenditure authority for the President and other NCHER staff, signatory requirements for the expenditure of funds, the full and accurate accounting of the finances of the Council, corporate insurance, and investments of the Council. The Board shall periodically review the conflict of interest policy to ensure that it remains relevant to matters requiring action by the Board and that Directors are disclosing material facts of any financial interest or other matters that may have the potential to create a conflict of interest with respect to transactions involving NCHER. Consistent with the policy, all

Directors are required to complete, sign, and return the requisite form to the President no later than July 1 of each year and, for new Directors, no later than 30 days from the date of election, appointment, or employment.

Section 11. Vacancies. Upon the Chair or President receiving a letter of resignation from any Director or to fill an open seat on the Board, the Executive Committee shall receive nominations and recommend the appointment of a new Director to the Board for approval, no later than 45 days following the resignation of such Director. If the remaining term of a resigning Director exceeds one year, the new Director's appointment shall extend until the following June 30, and the new Director's appointment to the remaining term of the resigning Director shall be subject to approval by the Voting Membership at the next available election as described in Section 12. Notwithstanding any other provision of this section, the Board may leave such position vacant until the next available election as described in Section 12 of this Article.

Section 12. Nominating Committee. The Nominating Committee shall consist of the Chair, Chair-Elect, and up to three Past Chairs of the Council who have served most recently and are employed by or are official representatives of organizations that are still active Voting Members in the Council. Officers of the Council and the Directors at Large shall be elected from a slate proposed by a Nominating Committee following solicitation of recommendations from the Voting Membership. Such slate shall consist normally of at least two candidates for each position and shall be presented by mail or electronic mail ballot to the Voting Membership prior to March 15 of each year. In compiling the slate, the Nominating Committee shall use its best efforts to ensure that officers of the Council and the Directors at Large reflect the diversity of organizations that comprise the Voting Membership. Votes are to be compiled by the Chair and President and decisions are to be announced in writing or electronic mail, or included in the electronic newsletter, to the Council no later than May 15 of each year. In preparation for the annual election for the Directors at Large, the Nominating Committee may determine that there is insufficient interest from the Voting Membership to fill the available positions as described in Section 2. In such limited cases, the Nominating Committee may recommend to the Board for approval that such positions (but no greater than two Director positions) remain vacant until a candidate from the Voting Membership can be identified and becomes available, and the composition of the Board may be temporarily reduced accordingly. In the case where a candidate is identified and becomes available, the position may be filled using the process described in Section 11 of this Article.

ARTICLE VI

OFFICERS

Section 1. Number, Election, and Term. The officers of the Council shall consist of the Chair, the President, the Chair-Elect, the Immediate Past-Chair, and the Treasurer.

Section 2. Chair. The Chair shall serve as Chair of the Board of Directors, as Chair of the Executive Committee, and as Chair of the Nominating Committee. The Chair shall supervise and control the management of the Council in accordance with the Certificate of Incorporation and with these Bylaws. The Chair shall, when present, preside at all meetings of the membership. The Chair shall serve for a one year term starting July 1, and shall automatically succeed to the office of Immediate Past-Chair upon the expiration of the term of office as Chair. Should a vacancy occur in the Chair position, the Chair-Elect shall automatically succeed to the office of Chair.

Section 3. Chair-Elect. The Chair-Elect shall, in the absence or disability of the Chair, perform the duties and exercise the powers of that office. In addition, the Chair-Elect shall perform such duties and shall have such powers as are incident to the usual corporate duties of a Vice Chair, and shall have such other powers as the Board of Directors shall prescribe. The Chair-Elect shall assume the office of Chair upon expiration of the term of the office of the Chair. The Chair-Elect shall be elected by the Voting Members of the Council and shall not be eligible for reelection to a successive term in the same office. Any vacancy occurring in the office of Chair-Elect between Annual Meetings of the Council shall be filled for the remainder of such term by special election by the Voting Membership from a slate proposed by the Nominating Committee, no later than 45 days following the vacancy.

Section 4. Immediate Past-Chair. The Immediate Past-Chair shall, in the absence or disability of the Chair or Chair-Elect, perform the duties and exercise the powers of either office. Should a vacancy occur in the Immediate Past-Chair position, the Board may choose to: (a) appoint the previous Immediate Past-Chair to the position; (b) leave the position vacant; or (c) fill the remainder of such term by special election by the Voting Membership from a slate proposed by the Nominating Committee, no later than 45 days following the vacancy.

Section 5. Treasurer. The Treasurer shall oversee the keeping of full and accurate accounts of the finances of the Council, and shall cause a true statement of its assets and liabilities as of the close of each fiscal year and of the results of its operations for such fiscal year, all in reasonable detail, to be made and filed at the registered or principal office of the Council within four months after the end of such fiscal year. In conjunction with the President, the Treasurer shall be responsible for receipt and disbursement of all monies of the Council under policies approved by the Board of Directors and shall cause to keep adequate and appropriate records of such receipts and disbursements, and shall be ready whenever required to turn over to the Board of Directors all monies, accounts, record books, papers, vouchers, and other records pertaining to the financial affairs of the Council. The Treasurer shall, in general, perform all duties incident to the office and such other duties as may be assigned from time to

time by the Chair or the Board of Directors. The Treasurer of the Council shall take office on the July 1 immediately following the election, and shall serve for the term of two years. The Treasurer shall be elected by the Voting Members of the Council and shall be eligible for reelection to one successive term in the same office. Any vacancy occurring in the office of Treasurer between Annual Meetings of the Council shall be filled for the remainder of such term by special election by the Voting Membership from a slate proposed by the Nominating Committee, no later than 45 days following the vacancy.

Section 6. President. The President shall be appointed by the Board of Directors and serve at the will of the Board of Directors. The President shall be employed under contract by the Council and be responsible to the Board of Directors. The President shall serve as chief executive officer of the Council and as a non-voting member of the Board of Directors. The President shall hire, supervise, and dismiss such other employees of the Council as may be required. The President shall serve as Secretary of the Board and shall keep accurate records of the acts and proceedings of all meetings of the membership and the Board of Directors. The President shall have general charge of the corporate books, records, and of the corporate seal. The President shall sign, in accordance with Article V, Section 10, any certificates of membership in the Council, and execute any deeds, mortgages, bonds, contracts, and other instruments which may lawfully be executed on behalf of the Council, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be delegated by the Board of Directors to some other officer or agent; and in general, shall perform all duties incident to the office of President and such other duties as may be assigned from time to time by the Chair or by the Board of Directors. The President or his/her designee shall serve as ex-officio member of all committees of the Council.

ARTICLE VII

MEMBERSHIP MEETINGS

Section 1. Regular Meetings. The Council shall hold an Annual Meeting of the membership at least once each year, at a time, medium, and venue to be chosen by the Chair and the Board of Directors. A quorum of Voting Members, as prescribed by the parliamentary authority of Article X, shall be required for any action so taken at an Annual Meeting.

Section 2. Special Meetings. The Chair or the President shall have the power to call a special meeting of the full Council membership upon the occurrence of events which, in his/her judgment, warrant the consideration and attention of the Council. A special meeting may also be called (a) by a majority vote of the Board of Directors, or (b) upon the written or electronic petition of twenty-five percent (25%) of the Voting Membership. A special meeting

shall be confined to the principal business for which a special meeting was called. A quorum of Voting Members, as prescribed by the parliamentary authority of Article X, shall be required for any action so taken at a special meeting.

ARTICLE VIII

COMMITTEES

Section 1. Creation of Committees. In addition to the committees established in these Bylaws, other committees may be created or disbanded by the Board of Directors when it is determined that the establishment or termination of such committees is in the best interests of the Council.

Section 2. Composition of Committees. The Board of Directors shall have the power to appoint persons from any class of membership to any committee that shall be established under Article VIII, Section 1. The terms of such appointments, including voting privileges and the duration of such appointments, shall be at the discretion of the Board of Directors.

Section 3. Audit Committee. There shall be an Audit Committee of the Board of Directors composed of one Director at Large (who shall serve as chair), the Treasurer, and three additional Director at Large members. The Chair and the three Director at Large members shall be elected by the Board. The Chair shall serve for a two-year term and shall be eligible for reelection for an additional term, so long as he/she continues to be a Director at Large. The term for two of the Director at Large members shall be for one year and one for two years, so long as the Audit Committee member continues to be a Director at Large. The Audit Committee shall meet, either in person or by conference call, at least once a year or as needed in order to carry out its functions. The Audit Committee shall assist the Board of Directors in its oversight responsibilities regarding financial reporting, financial risk, internal controls, audit processes, standards of conduct, conflict of interest, and compliance with laws and regulations. The Audit Committee shall advise and make recommendations to the Board of Directors and shall have authority to: (a) meet with staff of the Council, external auditors, and legal counsel; (b) direct the selection and retention of outside auditors, after consultation with the Board of Directors and staff of the Council; (c) obtain such information as it deems necessary with respect to financial oversight and internal controls of the Council; and (d) perform such other duties as directed by the Board. The Audit Committee shall review all audit reports pertaining to the Council and shall report to the Board of Directors on the reports and the resolution of any audit findings.

Section 4. Government Relations Committee. There shall be a Government Relations Committee of the Board of Directors composed of the Chair, Chair-Elect, Immediate

Past-Chair, and six Directors at Large. The Directors at Large shall not simultaneously serve on the Executive Committee. For purposes of the Government Relations Committee, a Director at Large shall be defined to include a Liaison Representative as defined in Article V, Section 4. The Chair and the membership of the Government Relations Committee shall be elected by the Board. The Board shall ensure that the membership of the Government Relations Committee represents the Council's diverse membership, to the best of its ability. The terms of service for the Chair and membership of the Government Relations Committee shall be for a one-year term, and all members shall be eligible for reappointment. The Secretary of the Board shall serve as an ex-officio member of the Government Relations Committee, and assist the Committee in carrying out its duties. The Government Relations Committee shall: (a) advise and assist the Executive Committee and the Board in developing, coordinating, and implementing the Council's government relations and advocacy strategy at the federal level; (b) meet and interact with Members of Congress and the Administration to promote the Council's advocacy priorities; (c) solicit and receive feedback from the membership of the Council on items of importance for inclusion in the Council's priorities; and (d) perform such other duties as directed by the Board. The Government Relations Committee shall regularly report to the Board on its activities.

ARTICLE IX

CAUCUSES

Section 1. Legacy Caucuses. There are two legacy caucuses of the Council, each composed of Voting Member organizations: the Guaranty Agency Caucus and the Not-for-Profit Lender Caucus. Legacy Caucuses may apply for Board Recognition under the legacy name or under a revised name. Such caucuses may apply for a voting seat on the Board if not otherwise represented by its members.

Section 2. Member, School Member, and Affiliate Member Caucuses. The Board may recognize caucuses composed of members, School Members, and /or Affiliate Members, such as a Collection Agency Caucus.

Section 3. Board Recognition of a Caucus. If an existing caucus or a newly formed caucus of Voting Members, School Members, or Affiliate Members desires to seek formal Board Recognition, such caucus shall submit to the Board a copy of the caucus's structure and charge which shall define the basis for membership in a caucus, how the caucus shall operate, and the purpose and objectives of the caucus. The Board shall then determine, based upon the provided information or subsequent information so requested by the Board, whether to provide Board Recognition to the caucus. If such Board Recognition is conferred by a majority vote of the Board, then such caucus shall be granted one voting seat on the Board. In

considering whether to grant Board Recognition or not, the Board shall consider the purpose and objectives of the caucus and whether or not the purpose and objectives of the caucus are consistent with the mission, goals, and objectives of the Council. Further, the Board shall determine as part of its consideration for granting Board Recognition whether or not the applicant caucus represents a distinct group of members who do not otherwise have adequate representation on the Board.

ARTICLE X

RULES OF ORDER

Section 1. Rules of Order. The rules contained in the current edition of Robert's Rules of Order, Newly Revised, shall govern the Council in all applicable cases not inconsistent with the Certificate of Incorporation and Bylaws and any special rules which may from time to time be adopted by the Council.

Section 2. Parliamentarian. For membership meetings, the Chair shall appoint a Parliamentarian whose duties shall be to advise the Chair on matters of orderly procedure as provided in Section 1 of this Article. The Parliamentarian may be a permanent or temporary appointee at the discretion of the Chair.

ARTICLE XI

FINANCIAL MATTERS

Section 1. Fiscal Year. The fiscal year of the Council shall run from July 1 through June 30.

Section 2. Restriction on Activities. In no event shall the Council engage in any activity which may jeopardize its ability to obtain and retain an exemption from federal taxation as a charitable, educational, or scientific organization under Section 501 (c)(3) of the Internal Revenue Code of 1954, or successor provisions.

ARTICLE XII

INDEMNIFICATION

Section 1. General. Except as provided in section 6 of this Article or otherwise prohibited by law, the Council shall indemnify any individual who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Council), because the individual is or was a Director, officer, employee, fiduciary, or agent of the Council against liability incurred if the individual:

- a. Conducted himself or herself in good faith;
- b. Reasonably believed, in the case of conduct in his or her official capacity with the Council, that his or her conduct was in its best interests or, in all other cases, that his or her conduct was at least not opposed to the best interests of the Council; or
- c. In the case of any criminal proceeding, had no reasonable cause to believe his her or her conduct was unlawful.

The indemnification shall cover any and all expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding. Without limiting the foregoing, the Council shall indemnify a Director, officer, employee, fiduciary, or agent of the Council who entirely prevails in the defense of any action, suit, or proceeding, or in defense of any claim, issue, or matter therein, for expenses (including attorney fees) actually and reasonably incurred by him or her in connection therewith.

Section 2. Employee Benefit Plan. The conduct of a Director, officer, employee, fiduciary, or agent of the Council, with respect to an employee benefit plan for a purpose that the Director, officer, employee, fiduciary, or agent reasonably believed to be in the interests of the participants in and beneficiaries of the plan, is conduct that satisfies the requirements of Section 1(b) of this Article.

Section 3. Termination. The termination of any action, suit, or proceeding by judgment, order, settlement, or upon a plea of no contest or its equivalent, shall not, of itself, create a presumption that the Director, officer, employee, fiduciary, or agent did not meet the standard of conduct described under this Article.

Section 4. Determination. Any indemnification under Section 1 of this Article (unless ordered by a Court) shall be made by the Council only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee, fiduciary, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set

forth in Section 1 of this Article. Such determination shall be made by the Board by a majority vote of those Directors who were not parties to such action, suit, or proceeding. The authorization, approval, or favorable recommendation of indemnification by the Board, as permitted by this Article, shall not be deemed an act or corporate transaction in which a Director has a conflict of interest, and no such indemnification shall be void or voidable on such ground.

Section 5. Advance Payment of Expenses. To the extent permitted by law, the Council shall pay for or reimburse the reasonable expenses incurred by a Director, officer, employee, fiduciary, or agent who is a party to an action, suit, or proceeding in advance of final disposition of such action, suit, or proceeding as authorized in Section 1 of this Article upon receipt from the Director, officer, employee, fiduciary, or agent of a written affirmation of his or her good faith belief that he or she has met the standard of conduct and that he or she will repay such amount if it is ultimately determined that he or she did not meet the standard of conduct.

Section 6. Criminal Actions. The Council shall not indemnify a Director, officer, employee, fiduciary, or agent under this Article in connection with any criminal action, suit, or proceeding as to which a person covered by Section 1 of this Article shall have been adjudged to be guilty, unless and only to the extent that a Court determines that, despite the adjudication of guilt, but in view of all the circumstances of the case, such person is entitled to indemnification for such expenses or fines which such Court shall deem proper.

Section 7. Right to Impose Conditions. The Council shall have the right to impose, as conditions to any indemnification provided or permitted in this Article or otherwise, such reasonable requirements and conditions as the Board may deem appropriate in each specific case, including but not limited to any one or more of the following: (a) that any counsel representing the person to be indemnified in connection with the defense or settlement of any action shall be counsel that is mutually agreeable to the person to be indemnified and to the Council; (b) that the Council shall have the right to participate in the investigation, defense, and settlement, including the negotiation of a settlement that appears reasonably likely to be covered in whole or in part by the Council; (c) that any and all Directors and officers liability insurance proceeds available be exhausted prior to the Council's expenditure of funds for indemnification; and (d) that the Council shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified person's right of recovery, and that the person to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Council.

ARTICLE XIII

SUSPENSION AND/OR REMOVAL FROM OFFICE

An officer or Director elected by the entire Voting Membership may be suspended or removed from office by a two-thirds vote of the Voting Members present at a regular membership meeting or a special membership meeting of the Council called for that purpose. The Board of Directors may for cause suspend from office any officer or Director pending a review of such action by the Voting Membership at the earliest date possible following such suspension.

ARTICLE XIV

AMENDMENT OF CERTIFICATE OF INCORPORATION AND BYLAWS

Section 1. Amendment of Bylaws. The Bylaws may be amended by a two thirds vote of the Voting Membership. Any Voting Member may offer an amendment to the Bylaws. Any such proposed Bylaw change must be submitted to the Board prior to its presentation to the membership. The Board, upon its consideration and review, may do any of the following: (a) recommend the proposed Bylaw amendment to the membership; (b) recommend an amended version of the proposed Bylaw amendment to the membership; or (c) recommend disapproval of the proposed Bylaw amendment. The Board's recommendation and accompanying amendment must be provided in writing or electronic mail to the membership for consideration. The member who originally proposed such amendment shall have the right to provide comments to the membership regarding their proposed amendment with such comments to accompany the Board's recommendation. Members shall have, at a minimum, 30 calendar days to consider and vote on such proposed amendment. Votes cast shall be returned to the Chair who will report the results of the vote within seven days following the end of the 30 day voting period.

Section 2. Emergency Bylaw Amendments. In the event that the Board determines that voting on a proposed amendment constitutes an emergency, the Board can by a three-fourths affirmative vote of the members of the Board provide for a seven day voting period under the amendment process otherwise outlined in Section 1 of this part.

Section 3. Amendment of Certificate of Incorporation. The Certificate of Incorporation may be amended in the same manner as that prescribed for amending the Bylaws, provided that such amendment of the Certificate of Incorporation shall become effective only upon the filing of such amendment in accordance with the General Corporation Law of the State of Delaware.