



**SECOND AMENDED AND RESTATED BYLAWS
OF**

NSHMBA FOUNDATION

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**SECOND AMENDED AND RESTATED
BYLAWS
OF
NSHMBA FOUNDATION**

**ARTICLE I
OFFICES**

Section 1.1. **Registered Office.** The registered office of NSHMBA Foundation, a California non-profit corporation (the “*Corporation*”), shall be located at the address set forth in the Articles of Incorporation of the Corporation, as the same may be amended or amended and restated from time to time (the “*Articles*”), or such other place as may be designated by the Corporation’s board of directors (the “*Board of Directors*”) and filed with the Secretary of State of the State of California in accordance with the California Nonprofit Corporation Law, as it may hereafter be amended, restated or codified (the “*Act*”).

Section 1.2. **Principal Office.** The principal office of the Corporation shall be located in the county of Dallas in the State of Texas. The Board of Directors may change the principal office of the Corporation at any time and from time to time. The Corporation may have additional business offices at such places, either within or without the State of California, as the Board of Directors may designate from time to time.

**ARTICLE II
PURPOSES**

Section 2.1. **Non-Profit Purposes.** The purposes for which the Corporation is organized are to operate exclusively for charitable and educational purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law (the “*Code*”) and under the laws of the State of California; and, subject to such limitations and conditions as are or may be prescribed by federal and California law, and to exercise such other powers which now or hereafter may be conferred by law upon a corporation organized for the purposes herein set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the above-stated purposes of the Corporation. The Corporation’s purposes shall in all events, and notwithstanding any contrary provision of the Articles or these Bylaws, be construed to be exclusively for purposes that are within the meaning of §501(c)(3) of the Code.

**ARTICLE III
MEMBERSHIP**

Section 3.1. **No Members.** The Corporation shall have no “members” as that term is defined in Section 5056 of the Act.

**ARTICLE IV
DIRECTORS**

Section 4.1. **Powers.** The Corporation shall have powers conferred by the laws of the State of California upon corporations organized under the Act, subject to the restrictions set forth in the Articles and in these Bylaws. All powers and activities of the Corporation shall be exercised and managed by the Board of Directors directly or, if delegated, under the ultimate direction of the Board.

Section 4.2. **Number of Directors; Qualifications.** The number of directors (each a “*Director*”) shall be not less than three (3) nor more than five (5). The number of Directors may be increased

or decreased from time to time by resolution of the Board of Directors, but no decrease shall have the effect of shortening the term of any incumbent Director. Directors need not be residents of the State of California.

Section 4.3. **Classes of Directors.** The Board of Directors shall have two classes of Directors—being Designated Directors and Appointed Directors.

A. *Designated Directors.* There shall be two (2) Designated Director positions on the Board of Directors, which shall at all times be filled by the persons serving from time to time in the following capacities for the National Society of Hispanic MBA's, Inc., a Texas nonprofit corporation ("*NSHMBA*"), or its successor:

- (i) Vice Chair of NSHMBA; and
- (ii) immediate past Chair of NSHMBA.

In the event either the Vice Chair of NSHMBA or the immediate past Chair of NSHMBA are unable or unwilling to serve as a Director, the board of directors of NSHMBA (the "*NSHMBA Board*") shall appoint a successor for such Director, acting upon the recommendation of the Nominating Committee of NSHMBA.

B. *Appointed Directors.* There shall be three (3) Appointed Directors. Appointed Directors may, but need not be, officers, directors or otherwise affiliated with NSHMBA.

C. *NSHMBA CEO.* The person acting as CEO of NSHMBA shall be an ex officio member of the Board of Directors but only for so long as such person continues to serve in such capacity. The CEO of NSHMBA shall be entitled to receive notice of and to attend all meetings of the Board of Directors but shall not be entitled to vote on matters before the Board of Directors.

Section 4.4. **Limitations on Interested Persons.** At all times, not more than forty-nine percent (49%) of the Directors of the Corporation may be "interested persons." An interested person means either:

- (i) any person currently being compensated by the Corporation for services rendered to the Corporation within the previous twelve months, whether as a full-time or part-time employee, independent contractor, or otherwise; or
- (ii) any parent, brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Section 4.5. **Election of Directors; Term.**

A. The Designated Directors shall assume their positions on the Board of Directors at the same time they assume their respective positions, as specified in Section 4.3.A, above in NSHMBA, and shall, with respect to the Vice Chair of NSHMBA, continue until the expiration of his/her term in such position and, with respect to the immediate Past Chair of NSHMBA, continue for a period of two (2) years. In the event a Designated Director dies, resigns or is removed as a Director or is removed from their respective office in NSHMBA, such person shall automatically be deemed removed as a Director of the Corporation and the NSHMBA Board, acting upon the recommendation of Nominating Committee of NSHMBA, shall appoint his/her successor to fill such vacant directorship.

B. The Appointed Directors shall be elected by the NSHMBA Board, acting upon the recommendation of the Nominating Committee of NSHMBA. Appointed Directors shall hold office for one

(1) year, commencing on the date of such Director's appointment. Notwithstanding any contrary provision of these Bylaws, no Appointed Director may serve more than three (3) consecutive terms as an Appointed Director. In the event any Appointed Director does serve three (3) consecutive terms, such Director may not thereafter be appointed as a Director of the Corporation until the first regular meeting of the Board of Directors that occurs after one (1) year has passed from the expiration of his or her third (3rd) consecutive term.

Section 4.6. **Vacancies.** A vacancy shall be deemed to exist on the Board in the event that the actual number of Directors is less than the authorized number for any reason. Vacancies may be filled by the NSHMBA Board, acting upon the recommendation of the Nominating Committee of NSHMBA, for the unexpired portion of the term of such vacant directorship or until a new election is held pursuant to Section 4.5.

Section 4.7. **Resignation and Removal.** Any Director may resign as a Director by delivery of a written resignation to the Chair or the Secretary. Resignations shall be effective upon receipt of such written resignation by the Chair or the Secretary, unless a later effective date is specified in the resignation. Any director may be removed, with or without cause, at any time by the NSHMBA Board.

Section 4.8. **Meetings of the Board of Directors.** Meetings of the Board of Directors, regular or special, may be held either within or without the State of California. Any regular or special meeting is valid, wherever held, if held on written consent of all members of the Board of Directors given either before or after the meeting and filed with the Secretary.

Section 4.9. **Annual Meeting.** A regular annual meeting of the Board of Directors shall be held immediately following the annual meeting of NSHMBA Board at such place as shall be fixed by notice from the Chair, and no notice of such meeting shall be necessary to the newly appointed Directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure to fix the time and place of such regular annual meeting of the newly elected Board of Directors, or in the event such meeting is not held at the time and place so fixed, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the Directors.

Section 4.10. **Special Meetings.** Special meetings of the Board of Directors may be called by the Chair. Notice of a special meeting shall be provided to the Directors in accordance with Section 4.11.

Section 4.11. **Notice.** Notice of the annual meeting and any special meetings of the Board of Directors shall state the date, place, and time of the meeting and shall be given to each Director at least four days before any such meeting if given by first-class mail or seventy-two hours before any such meeting if given personally or by Electronic Transmission.

Section 4.12. **Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be valid as though taken at a meeting duly held after proper call and notice, if a quorum is present, and if, either before or after the meeting, each of the Directors not present provides a waiver of notice, a consent to holding the meeting, or an approval of the minutes in writing. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting the lack of adequate notice before the meeting or at its commencement.

Section 4.13. **Quorum; Action by the Board of Directors.** A majority of the total number of Directors then in office shall constitute a quorum, provided that in no event shall the required

quorum be less than one-fifth of the authorized number of Directors or two directors, whichever is larger. The act of a majority of all of the Directors then in office shall be the act of the Board of Directors, except as otherwise provided in Section 4.6, Section 4.14, Section 5.1, Article VIII, Article IX, Section 12.5 of these Bylaws or the Act. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors; provided, however, that no action may be approved without the vote of at least a majority of the number of Directors required for a quorum.

Section 4.14. Action Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all members of the Board. Such written consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as the unanimous vote of such Directors.

Section 4.15. Telephone and Electronic Meetings. Subject to the provisions required or permitted by the Act and these Bylaws for notice of meetings, Directors may participate in a meeting by means of conference telephone, electronic video screen communication or Electronic Transmission by and to the Corporation. Participation in a meeting through use of conference telephone or electronic video screen communication constitutes presence in person at that meeting as long as all Directors participating in the meeting are able to hear one another. Participation in a meeting through use of Electronic Transmission by and to the Corporation, other than conference telephone and electronic video screen communication constitutes presence in person at that meeting if: (A) each participant can communicate with all of the other participants concurrently; and (B) each participant is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation.

Section 4.16. Standard of Care.

A. **General.** A Director shall perform the duties of a director, including duties as a member of any Board Committee (herein defined) on which such Director may serve, in good faith, with ordinary care, in a manner such Director believes to be in the best interest of the Corporation.

B. **Reliance of Certain Information.** In performing the duties of a director, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the Corporation whom the Director believes to be reliable and competent as to the matters presented;

(ii) counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

(iii) a Board Committee upon which the Director does not serve, as to matters within such committee's designated authority, provided that the Director believes such committee merits confidence;

so long as in any such case, the Director acts in good faith after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

C. **Non-liability of Directors.** Except as provided in Article IX, a person who performs the duties of a Director in accordance with this Section 4.16 shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

D. **Investments.** Except with respect to assets held for use or used directly in carrying out the Corporation's purposes, the Board shall avoid speculation in investing, reinvesting, purchasing or acquiring, exchanging, selling, and managing the Corporation's investments, looking instead to the permanent disposition of the funds, considering the probable income as well as the probable safety of the Corporation's capital. No investment violates this section where it conforms to provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to the Corporation.

Section 4.17. Inspection. Every Director shall have the shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation.

Section 4.18. Director Compensation. No Director shall receive compensation from the Corporation for services as a Director; provided, however, that the Board may authorize the advance or reimbursement to a Director of actual reasonable expenses incurred in carrying out his or her duties as a Director, such as for attending meetings of the Board and Board Committees. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE V COMMITTEES

Section 5.1. Board Committees. The Board of Directors may, by resolution adopted by a majority of the Directors then in office, create any number of committees (the "***Board Committees***"). Each Board Committee shall consist of two or more Directors, and only of Directors. Each appointee to any Board Committee shall serve at the pleasure of the Board. Appointments to any Board Committee shall be by a majority vote of the Directors then in office. Board Committees may be given all the authority of the Board, except for the powers to:

- A. elect Directors or remove Directors without cause;
- B. fill vacancies on the Board of Directors or on any Board Committee;
- C. amend or repeal these Bylaws or adopt new Bylaws;
- D. adopt amendments to the Articles;
- E. amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- F. create any other Board Committees or appoint the members of any Board Committees; or
- G. approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of the Corporation.

Section 5.2. Advisory Committees. The Board of Directors may establish one or more advisory committees to the Board (the "***Advisory Committees***"). The members of any Advisory Committee may consist of Directors or non-directors and may be appointed as the Board determines. Advisory Committees shall not exercise the authority of the Board to make decisions on behalf of the Corporation. Advisory Committees shall have the power to make recommendations to the Board or any Board Committee

and to implement Board or Board Committee decisions and policies under the supervision and control of the Board or any Board Committee.

Section 5.3. **Meetings.**

A. Meetings of Board Committees. Meetings and actions of Board Committees shall be governed by and held and taken in accordance with the provisions of Article IV of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

B. Meetings of Advisory Committees. Subject to the authority of the Board of Directors, Advisory Committees may determine their own meeting rules and whether minutes shall be kept.

Section 5.4. **Governance of Committees.** The Board of Directors may adopt rules for the governance of any Board Committee or Advisory Committee not inconsistent with the provisions of these Bylaws.

**ARTICLE VI
OFFICERS**

Section 6.1. **Officers.** The officers of the Corporation shall be a Chair, a Vice Chair, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Directors one or more other officers as may be appointed by the Board of Directors. Any number of offices may be held by the same person other than the offices of chair and secretary or chair and treasurer.

Section 6.2. **Election.** The Designated Director who is the Vice-Chair of NSHMBA shall be the Chair and shall assume his or her position as Chair at the same time he or she assumes the position of Vice-Chair of NSHMBA; provided, however, that if the Vice Chair of NSHMBA is not a Director for any reason, the person appointed to fill his or her vacancy on the Board of Directors pursuant to Section 4.3.A or Section 4.5.A shall serve as Chair of the Corporation for the remainder of the term of office. The remaining officers of the Corporation shall be nominated by a member of the Board of Directors, or a committee of the Board, and elected by a majority of the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 6.3. **Term.** The Chair shall serve for a term of two (2) years. Each remaining officer shall serve for a term of one (1) year.

Section 6.4. **Removal.** Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors or by an officer on whom such power of removal may be conferred by the Board of Directors; provided, however, that the Chair may not be removed without the approval of the NSHMBA Board.

Section 6.5. **Resignation.** Any officer may resign at any time by delivering written notice to the Board of Directors. Any resignation shall take effect on receipt of that notice by any other officer than the person resigning or at any later time specified by that notice and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 6.6. **Vacancies.** A vacancy in any office for any reason shall be filled in the same manner as these Bylaws provide for election to that office.

Section 6.7. **Chair.** The Chair shall, subject to control of the Board, generally supervise, direct and control the business and other officers of the Corporation. The Chair shall preside at all meetings of the Board of Directors. The Chair shall have the general powers and duties of management usually vested in the office of Chair of the Corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 6.8. **Vice-Chair.** The Vice Chair shall, in the absence of the Chair, carry out the duties of the Chair and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 6.9. **Secretary.** The Secretary shall supervise the keeping of a full and complete record of the proceedings of the Board of Directors and its committees, shall supervise the giving of such notices as may be proper or necessary, shall supervise the keeping of the minute books of the Corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 6.10. **Treasurer.** The Treasurer shall supervise the charge and custody of all funds of the Corporation, the deposit of such funds in the manner prescribed by the Board of Directors, and the keeping and maintaining of adequate and correct accounts of the Corporation's properties and business transactions, shall render reports and accountings as required, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE VII CERTAIN TRANSACTIONS

Section 7.1. **Loans.** Except as permitted by Section 5236 of the California Nonprofit Public Benefit Corporation Law, the Corporation shall not make any loan of money or property to, or guarantee the obligation of, any Director or officer; provided, however, that the Corporation may advance money to a Director or officer of the Corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such Director or officer so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

ARTICLE VIII CONFLICTS OF INTEREST

Section 8.1. **Conflicts of Interest.** The purpose of this conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director of the Corporation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations. As used in this Article VIII, the following terms have the following definitions:

A. **Interested Person.** Any Director, officer, or member of a committee of the Board of Directors, who has a direct or indirect financial interest, as defined below, in a contemplated or completed transaction is an interested person.

B. **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

(i) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;

(ii) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or

(iii) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

C. Compensation. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Section 8.2.B, a person who has a financial interest may have a conflict of interest only if the Board of Directors or a committee thereof decides that a conflict of interest exists.

Section 8.2. Procedures.

A. Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board of Directors and members of any committees thereof considering the proposed transaction or arrangement.

B. Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested person shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members, as the case may be, shall decide if a conflict of interest exists.

C. Procedures for Addressing the Conflict of Interest.

(i) An interested person may make a presentation at the Board or committee meeting, but after the presentation, that person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

(ii) The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(iii) After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(iv) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

D. Violations of the Conflicts of Interest Policy.

(i) If the Board or committee has reasonable cause to believe any person has failed to disclose actual or possible conflicts of interest, it shall inform such person of the basis for such belief and afford such person an opportunity to explain the alleged failure to disclose.

(ii) If, after hearing the person's response and after making further investigation as warranted by the circumstances, the Board or committee determines such person failed to disclose an actual or possible conflict of interest, the Board or committee shall take appropriate disciplinary and corrective action.

Section 8.3. **Records of Proceedings.** The minutes of the Board and all committees thereof shall contain:

(i) the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

(ii) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 8.4. **Compensation.**

(i) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to such committee member's compensation.

(ii) No voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Section 8.5. **Annual Statements.** Each Director, officer and committee member shall sign an annual "Code of Conduct" that, among other things, affirms that such person:

(i) has received a copy of the conflicts of interest policy;

(ii) has read and understands the policy;

(iii) has agreed to comply with the policy; and

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

Section 8.6. **Periodic Reviews.** To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

(i) whether compensation arrangements and benefits are reasonable, based on competent survey information, and are the result of arm's length bargaining;

(ii) whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in private inurement, impermissible private benefit or in an excess benefit transaction.

Section 8.7. **Use of Outside Experts.** When conducting the periodic reviews as provided for in Section 8.6, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring periodic reviews are conducted.

ARTICLE IX INDEMNIFICATION AND INSURANCE

Section 9.1. As utilized in this Article, the following terms shall have the meanings indicated:

(i) “Corporation” includes any domestic or foreign predecessor entity of the Corporation in a merger, conversion, consolidation, or other transaction in which the liabilities of the predecessor are transferred or allocated to the Corporation by operation of law and any other transaction in which the Corporation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

(ii) “director” means any person who is or was a director of the Corporation and any person who, while a director of the Corporation, is or was serving at the request of the Corporation as a partner, director, officer, venturer, proprietor, trustee, employee, administrator, agent or similar functionary at another foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise. A person represents the Corporation at an employee benefit plan if the performance of the person’s official duties to the Corporation also imposes duties on or otherwise involves service by the person to the plan, participants in, or beneficiaries of the plan.

(iii) “expenses” include court costs and reasonable attorney’s fees.

(iv) “official capacity” means (a) when used with respect to a director, the office of director in the Corporation or the exercise of authority by or on behalf of the director under the Act or the governing documents of the Corporation, and (b) when used with respect to a person other than a director, the elective or appointive office in the Corporation held by the officer, or the employment or agency relationship undertaken by the employee or agent on behalf of the Corporation; however, notwithstanding any contrary provision of this Section 9.1(iv), “official capacity” as defined in both (a) and (b) above does not include service for any other foreign or domestic corporation or any partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

(v) “proceeding” means any threatened, pending, or completed action, suit or other proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

Section 9.2. The Corporation shall indemnify a director or officer of the Corporation in connection with a proceeding in which he or she is a named defendant or respondent because he or she is or was a director if the director has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

Section 9.3. The Corporation shall indemnify a person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director only if it is determined in accordance with Section 9.7 that, with respect to amounts described in Section 9.6(i) the amounts actually incurred by the person in connection with the proceeding (other than a judgment) are reasonable, and that the person:

(i) conducted himself or herself in good faith;

(ii) reasonably believed (a) in the case of conduct in his or her official capacity as a director of the Corporation, that his or her conduct was in the Corporation's best interests, and (b) in all other cases, that his or her conduct was at least not opposed to the Corporation's best interests; and

(iii) in the case of any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

This Bylaw provision shall be deemed to be the requisite determination that indemnification should be paid to persons who meet the above standards contemplated in Section 5238 of the Act.

Section 9.4. Except as may otherwise be permitted in Section 9.6(ii), a director shall not be indemnified by the Corporation as provided in Section 9.3 for obligations resulting from a proceeding (i) in which the director is found liable on the basis that personal benefit was improperly received by him or her, whether or not the benefit resulted from an action taken in the person's official capacity, or (ii) in which the person is found liable to the Corporation.

Section 9.5. The termination of a proceeding by judgment, order, settlement or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section 9.3. A person shall be deemed to have been found liable in respect of any claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by law.

Section 9.6.

(i) Subject to Section 9.6(i), a person shall be indemnified by the Corporation as provided in Section 9.3 against judgments (including arbitration awards), penalties, settlements, fines, and excise or similar taxes (except as expressly excluded in Section 9.16), including an excise tax assessed against the person with respect to an employee benefit plan, and reasonable expenses actually incurred by the person in connection with the proceeding.

(ii) Notwithstanding any contrary provision of Section 9.6(i), if the person to be indemnified with respect to a proceeding is found liable to the Corporation or is found liable on the basis that personal benefit was improperly received by the person, the indemnification described in Section 9.3 and Section 9.6(i):

(a) is limited to reasonable expenses actually incurred by the person in connection with the proceeding;

(b) shall not include a judgment, a penalty, a fine, and an excise or similar tax, including an excise tax assessed against the person with respect to an employee benefit plan; and

(c) shall may not be made in relation to a proceeding in which the person has been found liable for: (1) willful or intentional misconduct in the performance of the person's duty to the Corporation; (2) breach of the person's duty of loyalty owed to the Corporation; or (3) an act or omission not committed in good faith that constitutes a breach of a duty owed by the person to the Corporation.

Section 9.7. Determination of the permissibility of indemnification under Section 9.3, and the reasonableness of amounts (other than judgments) actually incurred, must be made (a) by a majority vote of directors who at the time of the vote are disinterested and independent, regardless of whether the directors

who are disinterested and independent constitute a quorum; (b) by a majority vote of a committee of the Board, designated to act in the matter by a majority vote of directors who at the time of the vote are disinterested and independent, regardless of whether the directors who are disinterested and independent constitute a quorum, and consisting solely of one or more directors who at the time of the vote are disinterested and independent; or (c) by special legal counsel selected by the Board or a committee of the Board by vote as set forth in clause (a) or (b) of this Section 9.7, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors.

Section 9.8. Notwithstanding any contrary provision of Section 9.7, if the determination that indemnification is permissible is made by special legal counsel described in Section 9.7(c), determination as to reasonableness of expenses must be made by special legal counsel described in Section 9.7(c).

Section 9.9. If, upon application of a director or officer of the Corporation, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she has met the requirements set forth in Section 9.3 or has been found liable in the circumstances described in Section 9.4, then in addition to any indemnification otherwise provided in these Bylaws, the Corporation shall indemnify the director or officer to such further extent as the court shall determine that the person is fairly and reasonably entitled in view of all the relevant circumstances, including an award of the expenses incurred in securing the indemnification; but if the person is found liable to the Corporation or is found liable on the basis that personal benefit was improperly received by the person, without regard to whether the benefit resulted from an action taken in the person's official capacity, the indemnification shall in all cases be limited to reasonable amounts described in Section 9.6(i).

Section 9.10. Reasonable expenses incurred by a currently serving director who was, is or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Corporation in advance of the final disposition of the proceeding and without the determinations specified in Section 9.3 or Section 9.7, after the Corporation receives:

(i) a written affirmation by the director of the director's good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article; and

(ii) a written undertaking by or on behalf of the director to repay the amount paid or reimbursed if it is ultimately determined that the director has not met that standard or it is ultimately determined that indemnification of the director against expenses incurred by him or her in connection with that proceeding is prohibited by Section 9.6(ii).

The written undertaking required by Section 9.10(ii) must be an unlimited general obligation of the director, and may but need not be secured. It may be accepted by the Corporation without regard to the director's ability to make repayment.

Section 9.11. Reasonable expenses incurred by a former director, or a current or former officer, employee or agent who was, is or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the Corporation in advance of the final disposition of the proceeding on terms the Corporation considers appropriate.

Section 9.12. Notwithstanding any other provision of this Article, the Corporation shall pay or reimburse reasonable expenses incurred by a director in connection with his or her appearance as a witness or other participation in a proceeding relating to the Corporation at a time when the director is not a named defendant or respondent in the proceeding.

Section 9.13. In addition to the required indemnification of officers provided in Section 9.2 and Section 9.9, the Corporation may indemnify, advance and reimburse expenses to an officer, employee or agent of the Corporation to the same extent and in the same manner that it may indemnify, advance and reimburse expenses to directors under this Article, and such a person may seek such indemnification, advancement or reimbursement to the same extent as could a director of the Corporation.

Section 9.14. The Corporation may indemnify and advance expenses to an officer, employee or agent and who is not a director to such further extent, consistent with law, as may be provided by general or specific action of the Corporation Board, contract or as permitted or required by common law.

Section 9.15.

(i) The Corporation may purchase or procure, or establish and maintain insurance or another arrangement to indemnify or hold harmless any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, partner, manager, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify the person against that liability under other provisions of this Article.

(ii) Without limiting the power of the Corporation to purchase or procure, or establish and maintain any kind of other arrangement, the Corporation may, for the benefit of persons described in Section 9.15(i): (a) create a trust fund; (b) establish any form of self-insurance, including a contract to indemnify; (c) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Corporation; or (d) establish a letter of credit, guaranty or surety arrangement.

(iii) The insurance may be purchased or procured or established and maintained with any insurer, or another arrangement may be procured, maintained or established within the Corporation or with any insurer or other person deemed appropriate by the Corporation Board, regardless of whether all or part of the stock, securities or other ownership interest in the insurer or other person is owned in whole or part by the Corporation. In the absence of actual fraud, the judgment of the Corporation Board as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive, and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

Section 9.16. The coverage of any liability insurance purchased by the Corporation pursuant to Section 9.15 may include coverage for the indemnifiable expenses described elsewhere in this Article IX, as well as judgments, fines, settlements, penalties, taxes and expenses of correction, including, if the Corporation is ever considered a private foundation, such expenses as may be related to taxes, penalties and expenses of correction imposed under Chapter 42 of the Code. However, if the Corporation is ever considered a private foundation, and coverage for judgments, fines, settlements, penalties, taxes and expenses of correction is included in any liability insurance so purchased by the Corporation, the Corporation shall request the insurance carrier from whom such insurance is purchased to furnish the Corporation with the portion of any insurance premium payable that is attributable to such coverage of a foundation manager's expenses for (i) any penalty, tax (including a tax imposed by chapter 42 of the Code), or expense of correction, (ii) any expense not reasonably incurred by such a manager in connection with a civil judicial or civil administrative proceeding arising out of such manager's performance of services on behalf of the Corporation, or (iii) any expense resulting from an act or failure to act with respect to which such manager has acted willfully and without reasonable cause. That portion of such premium as is so designated by the

insurance carrier shall be allocated pro rata among the directors, officers and employees of the Corporation, as well as any other party actually included within such coverage pursuant to the provisions of Section 9.15, and included, where applicable, in the compensation paid to each such director, officer, employee or other party by the Corporation, all as described in Treas. Reg. § 53.4941(d)-2(f).

Section 9.17. No purchase of insurance, indemnification or other action contemplated or allowed by this Article shall be construed to allow or permit any such purchase, indemnification or action, except as such is within any limitations placed on the Corporation as a tax exempt organization under the provisions of the Code, the Act or other laws of the State of California, or any other applicable rule or regulation.

Section 9.18. If the Corporation ever has members, the Corporation Board shall report to the members in writing regarding any indemnification or advance of expenses made pursuant to this Article IX. Any such report must be made with or before the notice or waiver of notice of the next meeting of the members and before the next submission to the members of any consent to action without meeting, provided in all events such report must be made not later than the first anniversary date of the indemnification or advance.

ARTICLE X GRANTS ADMINISTRATION

Section 10.1. **Purpose of Grants.** The Corporation shall have the power to make grants and contributions and to render other financial assistance for the purposes expressed in the Corporation's Articles and these Bylaws.

Section 10.2. **Board of Directors Oversight.** The Board of Directors shall exercise itself, or delegate, subject to its supervision, control over grants, contributions, and other financial assistance provided by the Corporation. The Board shall approve a process for reviewing and approving or declining all requests for funds made to the Corporation, which shall require such requests to specify the use to which the funds will be put, and include a mechanism for regular Board review of all grants made. The Board shall similarly approve a process for authorizing payment of duly approved grants to the approved grantee. The NSHMBA Board may suggest uses or applications of grants to be made by the Corporation, and the Board of Directors shall give due consideration to, but need not adopt, said suggestions.

Unless otherwise authorized by majority vote at a meeting of the NSHMBA Board at which a quorum of said board is present, the Corporation shall: (i) disburse no more than eighty-five percent (85%) of the income otherwise available for distribution, with the balance to be retained by the Corporation and added to the principal of the fund earning said income; and (ii) not disburse any part of the principal of the fund. In this manner the Corporation plans to provide a means for growth of the principal generating income to be used for the purposes of the Corporation.

Section 10.3. **Refusal and Withdrawal.** The Board of Directors, in its absolute discretion, shall have the right to refuse to make any grants or contributions, or to render other financial assistance, for any or all of the purposes for which the funds are requested. In addition, the Board, in its absolute discretion, shall have the right to withdraw its approval of any grant at any time and use the funds for other purposes within the scope of the purposes expressed in the Articles, subject to any rights of third parties under any contract relating to such grant.

Section 10.4. **Accounting.** The Board of Directors shall determine under what circumstances to require that grantees furnish a periodic accounting to show that the funds granted by the Corporation were expended for the purposes that were approved by the Board.

Section 10.5. **Restrictions on Contributions.** Unless otherwise determined by resolution of the Board of Directors in particular cases, the Corporation shall retain complete control and discretion over the use of all contributions it receives, and all contributions received by the Corporation from solicitations for specific grants shall be regarded as for the use of the Corporation and not for any particular organization or individual mentioned in the solicitation. The Corporation may accept contributions earmarked by the donor exclusively for allocation to one or more foreign organizations or individuals only if the Board of Directors of the Corporation has approved in advance the charitable activity for which the donation was made.

ARTICLE XI ELECTRONIC TRANSMISSION

Section 11.1. **Electronic Transmissions.** Unless otherwise provided in these Bylaws, and subject to any guidelines and procedures that the Board of Directors may adopt from time to time, the terms “written” and “in writing” as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means, and may include Electronic Transmissions, such as facsimile or email, provided (a) for Electronic Transmissions from the Corporation, the Corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (b) for Electronic Transmissions to the Corporation, the Corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (c) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form. As used herein “**Electronic Transmission**” (i) by the Corporation means a communication delivered by (A) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the Corporation, (B) posting on an electronic message board or network which the Corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (C) other means of electronic communication; and (ii) to the Corporation means a communication delivered by (A) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Corporation has provided from time to time to Directors for sending communications to the Corporation, (B) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (C) other means of electronic communication.

ARTICLE XII MISCELLANEOUS

Section 12.1. **Fiscal Year.** The fiscal year of the Corporation shall be as determined by resolution of the Board of Directors.

Section 12.2. **Contracts Notes and Checks.** All contracts in excess of \$100,000, or series of contracts which are in the aggregate in excess of \$100,000, entered into on behalf of the Corporation must be authorized by the Board of Directors or the committee, person or persons on whom such power may be conferred by the Board from time to time, and, except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of the Corporation shall be signed by the person or persons on whom such power may be conferred by the Board from time to time.

Section 12.3. **Annual Reports to Directors.** The Chair shall furnish an annual written report to all directors of the Corporation containing the following information:

A. the assets and liabilities, including the trust funds of the Corporation, as of the end of the fiscal year;

B. the principal changes in assets and liabilities, including trust funds, during the fiscal year;

C. the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

D. the expenses or disbursements of the Corporation, for both general and restricted purposes, for the fiscal year; and

E. any transaction during the previous fiscal year involving more than \$50,000 between the Corporation (or its parent or subsidiaries, if any) and any of its directors or officers (or the directors or officers of its parent or subsidiaries, if any) or any holder of more than ten percent of the voting power of the Corporation or its parent or subsidiaries, if any, or any of a number of such transactions in which the same person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than \$50,000, as well as the amount and circumstances of any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any director or officer of the Corporation. For each transaction, the report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the value of such interest.

The foregoing report shall be accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without an audit from the books and records of the Corporation. The report and any accompanying material may be sent by Electronic Transmission.

Section 12.4. **Required Financial Audits.** The Corporation shall obtain a financial audit for any tax year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting.

Section 12.5. **Amendments.** These Bylaws may be amended by the affirmative vote, or written consent, of two-thirds (2/3) of all of the Directors then in office; provided, however, that no amendment may be made to these Bylaws which would: (a) restrict the ability of NSHMBA to designate a majority of the members of the Board of Directors or (b) modify the restrictions on disbursement of principal and income set forth in Section 10.2, unless such amendment is approved by (i) the affirmative vote of two-thirds (2/3) of the Directors of the Corporation, and (ii) the affirmative vote of two-thirds (2/3) of the members of the NSHMBA Board at the time in question.

Section 12.6. **Governing Law.** The place of these Bylaws, their status and their forum, shall be at all times in the State of California; and these Bylaws shall be governed by the Laws of the State of California as to all matters relating to their validity, construction and interpretation. In the event that any court of competent jurisdiction shall adjudge to be invalid or unlawful any clause, sentence, paragraph, subsection, section or article of these Bylaws, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of these Bylaws, or any other provision hereof, but the effect of such judgment or decree shall be confined to the clause, sentence, paragraph, subsection, section or article so adjudged to be invalid or unlawful.